

At a Regular Meeting of the Town Council of the Town of Middletown, RI held at the Middletown Town Hall, 350 East Main Road, Middletown, RI on Monday, April 18, 2016 at 6:00 P.M.

Council President Robert J. Sylvia, Presiding

Vice President Robert Kempenaar, II

Councillor Henry F. Lombardi, Jr.

Councillor Paul M. Rodrigues

Councillor M. Theresa Santos

Councillor Barbara A. VonVillas, Members Present

Councillor Antone C. Viveiros, Absent

PLEDGE OF ALLEGIANCE TO THE FLAG

RECONSIDERATION

The Middletown Town Council follows the codification of present-day general parliamentary law as articulated in Robert's Rules of Order Newly Revised 10th edition (2000), together with whatever rules of order the Council has adopted for its own governance. The motion to reconsider is one of the motions that can bring a question again before an assembly, and is designed to bring back for further consideration a motion which has already been voted on:

If, in the same session that a motion has been voted on, but no later than the same day or the next day on which a business meeting is held, new information or a changed situation makes it appear that a different result might reflect the true will of the assembly, a member who voted with the prevailing side can, by moving to Reconsider [RONR (10th ed.), p. 304-321] the vote, propose that the question shall come before the assembly again as if it had not previously been considered. (From Robert's Rules of Order Newly Revised In Brief, Robert, Evans et al., De Capo Press, 2004)

6:00 PM - EXECUTIVE SESSION

- 1. Executive Session - Pursuant to provisions of RIGL, Sections 42-46-2, 42-46-4 and 42-46-5 (a) (5) Lease/MOU (West Main Road)**

On motion of Vice President Kempenaar, duly seconded, it was voted unanimously to recess open session and reconvene in executive session at 6:01 pm.

On motion of Vice President Kempenaar, duly seconded, it was voted unanimously to recess executive session and reconvene in open session 6:08 pm.

On motion of Vice President Kempenaar, duly seconded, it was voted unanimously to authorize the Town Administrator and Library Board of Directors to execute the Memorandum of Understanding (MOU)

with the Friends of the Library.

On motion of Vice President Kempenaar, duly seconded, it was voted unanimously to seal the executive session minutes pursuant to Section 42-46-7. RIGL.

On motion of Council President Sylvia, duly seconded, it was voted unanimously to recess this meeting at 6:10 pm.

On motion of Vice President Kempenaar, duly seconded, it was voted unanimously to reconvene this meeting at 6:32 pm.

6:30 P.M. - BUDGET

2. Review of Proposed FY2016-2017 Budgets – General Fund and Enterprise Funds.

On motion of Vice President Kempenaar, duly seconded, it was voted unanimously to begin said Review of Proposed FY2016-2017 Budgets – General Fund and Enterprise Funds.

Town Administrator Shawn Brown reviewed the Revenue Manual, Capital Improvement Program and the Consolidated Budgets, which are on file in the Office of the Town Clerk.

7:00 P.M. PRESENTATION

3. At the request of Council President Sylvia, Citation of the Council, re: CyberPatriot Team VIII – “The Islanders”.

On motion of Vice President Kempenaar, duly seconded, it was voted unanimously to begin said presentation.

Council President Sylvia presented the citation to Coach Matthew Wainwright, Co-Captain Matthew Silva and Team member Jimmy Adams.

On motion of Council President Sylvia, duly seconded, it was voted unanimously to act on items #28, #24 and 27a at this time and in this order.

Item #28 was acted on at this time.

PUBLIC FORUM

4. Pursuant to Rule 23 of the Rules of the Council, Citizens may address the town on one (1) subject only, said subject of substantive Town business, neither discussed during the regular meeting nor

related to personnel or job performance. Citizens may speak for no longer than five (5) minutes and must submit a public participation form to the Council Clerk prior to the start of the meeting. All items discussed during this session will not be voted upon.

No one spoke during this session.

On motion of Vice President Kempenaar, duly seconded, it was voted unanimously to act as a board of license commission.

BOARD OF LICENSE COMMISSION

5. Application of Mizu Yama Japanese Restaurant Corporation dba Mizu Steak House, 250 East Main Road, holder of a Class BV Alcoholic Beverage License to TRANSFER said License to Mizu Wei Japanese Restaurant Corporation dba Mizu Wei Japanese Restaurant for use at the same premises. (Requires Advertising for Public Hearing)

On motion of Vice President Kempenaar, duly seconded, it was voted unanimously to receive said application and advertise for public hearing for May 16, 2016, regular meeting of the board.

On motion of Council President Sylvia, duly seconded, it was voted unanimously to reconvene as a Town Council.

Vice President Kempenaar requested that items #7 and #18 be heard under the regular portion of the docket.

CONSENT

6. Approval of Minutes, re: Regular Meeting, April 4, 2016.

On motion of Vice President Kempenaar, duly seconded, it was voted unanimously to approve said minutes.

7. Communication of Tax Assessor, with enclosures, re: Cancellation of Taxes for certain Middletown residents.

On motion of Vice President Kempenaar, duly seconded, it was voted unanimously to receive said communication.

Councillor Santos noted that she has spoken to the Tax Assessor and they are in agreement that no extra information is required for future abatements.

8. Resolution of the Council, re: Cancellation of Taxes for certain Middletown residents.

On motion of Vice President Kempenaar, duly seconded, it was voted unanimously to pass said resolution.

9. Communication of Tax Assessor and Interim Finance Director, dated April 11, 2016, with enclosures, re: Cancellation of Taxes for certain Middletown residents.

On motion of Vice President Kempenaar, duly seconded, it was voted unanimously to receive said communication.

10. Resolution of the Council, re: Cancellation of Taxes for certain Middletown residents.

On motion of Vice President Kempenaar, duly seconded, it was voted unanimously to pass said resolution.

11. Communication of Tax Assessor and Interim Finance Director, dated April 12, 2016, with enclosures, re: Cancellation of Taxes for certain Middletown residents.

On motion of Vice President Kempenaar, duly seconded, it was voted unanimously to receive said communication.

12. Resolution of the Council, re: Cancellation of Taxes for certain Middletown residents.

On motion of Vice President Kempenaar, duly seconded, it was voted unanimously to pass said resolution.

13. Notice of Public Hearing from the Middletown Zoning Board of Review, re: Petition of Marc Fanticola (Jiffy Lube) applicant Notarianni Realty, Inc. (owner) for a Special Use Permit from Section 602 – to modify the existing Special Use Permit to include the

following services and repairs: signature service oil change, air conditioning, air filtration, battery maintenance and replacement, brakes, cooling system, drivetrain, engine, fuel system cleaning, tires, transmissions, windshield and suspension. On real estate located at 717 West Main Road, TAP 107NE, Lot 21.

On motion of Vice President Kempenaar, duly seconded, it was voted unanimously to receive said Notice of Public Hearing.

14. Notice of Public Hearing from the Middletown Zoning Board of Review, re: Petition of Newport Beach House Real Estate, LLC (owner) by their attorney Brian G. Bardorf for a Special Use Permit from Sections 602 & 902 – to allow a modification to the previously granted special use permit for expansion of the restaurant to include the service of alcoholic beverages and food in conjunction with ceremonies and events on the portion of its beach property. On real estate located at 53-55 Purgatory Road, TAP 116NW, Lot 51.

On motion of Vice President Kempenaar, duly seconded, it was voted unanimously to receive said Notice of Public Hearing.

15. Notice of Public Hearing from the Middletown Zoning Board of Review, re: Petition of Thomas O'Connor, Jr. (owner) for a Special Use Permit from Sections 1212(D)(1)(A) & 1212(E)(3) - to allow a 24 sq.ft. freestanding post sign where 6 sq.ft. is allowed and a 0' front yard setback where 5' is required. On real estate located at 303 Mitchell's Lane, TAP 123, Lot 6.

On motion of Vice President Kempenaar, duly seconded, it was voted unanimously to receive said Notice of Public Hearing.

16. Communication of Jennifer Barrera, Program Director, Lucy's Hearth, Middletown, re: Appreciation for Support and mid-year status report.

On motion of Vice President Kempenaar, duly seconded, it was voted unanimously to receive said communication.

17. Communication of Natasha Harrison, Executive Director, Norman Bird Sanctuary, re: Appreciation for Support and Funding Report.

On motion of Vice President Kempenaar, duly seconded, it was voted unanimously to receive said communication and report.

18. Communication of Peter V. Lacouture, Robinson & Cole, with enclosures, re: The Narragansett Electric Company dba National Grid – Aquidneck Island Reliability Project – Docket No. SB-2016-01.

On motion of Vice President Kempenaar, duly seconded, it was voted unanimously to receive said communication.

Councillor Lombardi noted that the project will have an impact on the residents and he will not support this issue.

Councillor Rodrigues noted his agreement with Councillor Lombardi.

19. Application of KJ's Pub, LLC dba KJ's Pub, 59-61 Aquidneck Avenue, for RENEWAL of an Amusement License for the 2016-2017 licensing year.

On motion of Vice President Kempenaar, duly seconded, it was voted unanimously to grant said license renewal.

20. Application of Peter Kelly's Ice Cream dba Pete's Ice Cream, Portsmouth, for RENEWAL of a Peddler's License for the 2016-2017 licensing year.

On motion of Vice President Kempenaar, duly seconded, it was voted unanimously to grant said license renewal.

21. Application for Special Event Permit received from Shelley Dungan, Yoga on the Beach, Group Classes by donation at Third Beach in Navy Lot, every Tuesday and Thursday evenings at 6:00 pm, Friday and Saturday mornings at 7:00 am from June 15, 2016 to September 15, 2016.

On motion of Vice President Kempenaar, duly seconded, it was voted unanimously to grant said Special Event Permit.

LICENSES

22. Application for Special Event Permit from Middletown Education Collaborative (MEC), Annual Duck Race and Family Beach Party Fundraiser to be held at Third Beach on Thursday, July 7, 2016 from 5:00 pm to 7:00 pm, includes a request to waive said fee.

On motion of Vice President Kempenaar, duly seconded, it was voted unanimously to grant said Special Event Permit and waive said fee.

23. Application of Diegos Newport, LLC dba Diego's Bodega & Catering Company, 124 Aquidneck for a Victualling House License for the 2016-2017 licensing year. (NEW)

On motion of Vice President Kempenaar, duly seconded, it was voted unanimously to grant said license contingent on Building Official, Fire Marshal, Public Works and Board of Health approvals.

Item #24 was acted on after item #28.

OTHER COMMUNICATION

24. Memorandum of Rosemarie K. Kraeger, Superintendent of

Schools, with enclosures, re: Contracts.

On motion of Vice President Kempenaar, duly seconded, to receive said memorandum and ratify the 2015-2018 Tentative Agreement with the Middletown Teachers Association (NEA Middletown).

Councillor Santos explained that she will support the contract even though she and other seniors are living on fixed incomes.

Councillor Rodrigues noted his support for the contract.

Councillor Lombardi noted support for the contract, explaining it's about the kids.

Councillor VonVillas explained that she does not support some of the school initiatives, technology does not replace teachers and the

importance of students needing to read, write and think critically. Ms. VonVillas noted she will support the contract.

Council President Sylvia explained he is not pleased with what has transpired this year. Mr. Sylvia reviewed the purchase of computers and the impact of the contract on the tax payers.

Motion was voted on at this time.

On motion of Vice President Kempenaar, duly seconded, it was voted unanimously to receive said memorandum and ratify the 2015-2018 Tentative Agreement with the Middletown Teachers Association (NEA Middletown).

TOWN COUNCIL

25. At the request of Council President Sylvia, re: Resolution of the Council, re: In support of the Green Economy Bond.

On motion of Vice President Kempenaar, duly seconded, it was voted unanimously to pass said resolution.

Charles Allott, Executive Director, Aquidneck Land Trust, addressed the Council explaining that the Green Economy Bond is a great opportunity for the Town. The bond will have a provision for stormwater improvements.

26. Communication of Council President Sylvia, re: Proposed Charter Provision – Complaints by qualified electors of Charter violations.

On motion of Vice President Kempenaar, duly seconded, it was voted unanimously to receive said communication.

Council President Sylvia reviewed his memorandum, above.

Town Solicitor Peter Regan noted there currently is no enforcement or penalty provision in the Town Charter for a violation of the charter.

On motion of Vice President Kempenaar, duly seconded, to schedule a public hearing for May 16, 2016.

Councillor Rodrigues noted concern that the volunteers of the Town may not realize they are violating the charter.

Town Solicitor Peter Regan noted that out of 15 communities only half have a penalty for charter violations.

Council President Sylvia explained that he thinks the citizens of

Middletown should decide if there should be a penalty for violating the charter.

Discussion centered around the Ethics Commission only hearing state ethics code violations and who will hear the Charter violations.

Councillor Lombardi explained that the issue is about accountability; if a violation of the charter is done knowingly, the violated should be held accountable.

Councillor VonVillas explained there is no point to rules, if there is no penalty.

Councillor Santos noted agreement and wants to hear from the residents.

Vote was taken here on the following motion.

On motion of Vice President Kempenaar, duly seconded, it was voted unanimously, to schedule a public hearing for May 16, 2016.

27. Memorandum of Councillor Lombardi, re: Recommendation to Research/Develop a Zoning Ordinance for Medical Marijuana & Potential Legalization of Marijuana.

On motion of Vice President Kempenaar, duly seconded, it was voted unanimously to receive said memorandum.

Councillor Lombardi read the memorandum above into the record.

Kellie Simeone, 18 Pocahontas Drive, addressed the Council urging them to support the development of a zoning ordinance for medical

marijuana and potential legalization of marijuana.

Carol Formica, 21 Mast Court, addressed the Council in opposition of Marijuana legalization. Ms. Formica requests the Council to send a resolution opposing legalization of Marijuana.

Councillor Lombardi explained that the intent is to oppose legalization of Marijuana. The ordinance would be prepared to control the issue.

Liana Ferreira Fenton, 53 Berkeley Avenue, noted businesses are having issues with employees passing drug tests where marijuana is legalized.

Council President Sylvia noted support for the ordinance.

On motion of Councillor Lombardi, duly seconded, it was voted unanimously to direct the Town Administrator to direct the Town Solicitor to work in conjunction with the Planning/Zoning to develop a workable ordinance, regarding marijuana dispensaries and retail marijuana shops, including grows and agriculture of marijuana and look at bringing on a consultant to assist the Planner and Prevention Coalition with the development of an ordinance.

Item #27a was acted on after item #24.

27a. Memorandum of Councillor VonVillas, requesting that the following item be taken off the table for consideration and a vote, re: Gun Free Schools – Resolution which was tabled at the April 4, 2016 Regular Meeting- At the request of Councillor Rodrigues, with enclosures, re: Resolution of the Council, re: In Support of 2016 – H 7243 and S 2761 on Gun Free Schools.

On motion of Council President Sylvia, duly seconded, it was voted to remove this item from the table.

Councillor VonVillas explained that she has received emails both in support of the issue and opposing the issue. Ms. VonVillas noted that continuing to postpone this item shows a lack of courage.

The vote was taken at this time.

On motion of Council President Sylvia, duly seconded, it was voted to remove this item from the table; Council President Sylvia, Councillor Lombardi and Councillor VonVillas voted YES; Vice President Kempenaar, Councillor Rodrigues and Councillor Santos voted NO to said motion; MOTION FAILED TO PASS.

On motion of Council President Sylvia, duly seconded, it was voted unanimously to recess this meeting at 7:45 pm.

On motion of Vice President Kempenaar, duly seconded, it was voted

unanimously to reconvene this meeting a 7:47 pm.

Item #28 was acted on after item #3.

PUBLIC HEARING

28. (Public Hearing Advertised; Abutters Notified)

An Ordinance of the Town of Middletown (First Reading)

An ordinance in Amendment to the Town Code of the Town of Middletown, Title XV, Land Use, Chapter 152 Zoning Code, Amending the Town's Zoning Map,

TAP 111, Lots 11, 12, 13, 15, 16, 17, 18, 19, 20, 21, 22, 23A, 24, 25, 32, 33, 34, 35 to Traffic Sensitive High Density Residential (R-10A), TAP 111, Lots 20A, 26, 27, 28, 29, 30 31, 63 to High Density Residential (R-10), shown in Attachment 1. TAP 118, Lot 31 to Traffic Sensitive Open Space (OSA), TAP 123, Lot 700 to Open Space (OS), TAP 113, Lots 6A, 7, 8, 9, 10, 11, 12 to Medium Density Residential (R-20), TAP

107SW, Lot 142 to Traffic Sensitive General Business (GBA), shown in Attachment 2. TAP 120, Lots 201, 202, 203, 206, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 54, 55, 56, 57, 59, 60, 61, 61A, 61B, 61C, 61D, 62, 63, 64, 65A, 66 to Low Density Residential (R-40), shown in Attachment 3. TAP 121, Lots 11, 12, 15, 16, 17, 17A, 19, 20, 21, 4, 5, 6, 7, 8, 8A to Low Density Residential (R-40), shown in Attachment 4. TAP 126, Lots 11, 12, 13, 13A, 15, 17, 17A, 17B, 18, 19, 19B, 20, 201, 22, 23, 26, 27, 28, 29, 30, 31, 32, 33, 36C, 68 to Low Density Residential (R-40) and TAP 127, Lots 1, 19, 30, 3A, 3C, 4 to Low Density Residential (R-40), shown in Attachment 5.

(Planning Board recommendation attached)

Council President Sylvia noted that the Town Solicitor has requested the Council to continue this item, due to some typos on the agenda. Council President Sylvia explained the advertising and notification to abutters were correct.

Town Solicitor Peter Regan explained that all notices and advertisement were correct, but recommends the Town Council to continue this item to the next regular meeting.

On motion of Vice President Kempenaar, duly seconded, it was voted unanimously to continue this item to May 2, 2016, Regular Meeting of the Council.

APPOINTMENT TO BOARDS AND COMMITTEES

29. Appointment of one (1) member to the Conservation Commission, for a term expiring July 2018.

On motion of Vice President Kempenaar, duly seconded, it was voted unanimously to appoint Betty Jane Owen to the Conservation Commission to complete a term expiring July 2018.

30. Appointment of one (1) member to the Tax Assessment Review Board, Bi-partisan Board.

On motion of Vice President Kempenaar, duly seconded, it was voted unanimously to appoint Stephen Barth for a term expiring October 2018.

31. Appointment of two (2) members to the Tax Exploration Sub-Committee, terms to be set by Council.

On motion of Vice President Kempenaar, duly seconded, it was voted unanimously to appoint Thomas A. Heaney, Jr. and Dennis Turano to the Tax Exploration Sub-Committee.

On motion of Council President Sylvia, duly seconded, it was voted unanimously to adjourn said meeting at 8:25 pm.

Wendy J.W. Marshall, CMC

Town Clerk

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