

**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, June 5, 2017 at 6:00 P.M.**

Council President Robert J. Sylvia, Presiding

Vice President Paul M. Rodrigues

Councillor Henry F. Lombardi, Jr.

Councillor M. Theresa Santos

Councillor Dennis B. Turano

Councillor Antone C. Viveiros

Councillor Barbara A. VonVillas, Members Present

PLEDGE OF ALLEGIANCE TO THE FLAG

Council President Sylvia requested a moment of silence for retired Middletown Deputy Fire Chief Henry F. Perry.

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)

Town Solicitor Peter B. Regan reviewed the process for the following reconsideration noting the adoption of the ordinance was April 17, 2017, a motion to reconsider was passed on May 1, 2017, the item was re-advertised and abutters were re-noticed for action on June 5, 2017.

Reconsideration – from May 1, 2017 Meeting to be acted on at this time.

1. Public Hearing (Advertised; Abutters notified)

An Ordinance of the Town of Middletown (Second Reading)

An Ordinance in amendment to the Town Code of the Town of Middletown, Title XV Land Usage, Chapter 152 Zoning Code, seeking to change the zoning classifications of Lots 108 and 109 on TAP 114 from Medium Density Residential Traffic Sensitive (R-20A) to Limited

Business Traffic Sensitive (LBA) (TAP 114 Lot 108 property address is 650 Aquidneck Avenue; TAP 114 Lot 109 property is Aquidneck Avenue). (Planning Board recommendation attached)

Public Hearing was declared open.

On motion of Council President Sylvia, duly seconded to amend the pending motion by inserting the following language at the end of the Motion:

“Provided that the following uses shall not be permitted on the subject property: (a) Tattoo Parlors; (b) Adult-Orientated Establishments; (c) Taverns, cafés, club bars or cocktail lounges serving alcoholic beverages; (d) Gas Stations; (e) Supermarkets; and, (f) Drive-up Hamburger Restaurants.”

Councillor Santos noted that after speaking with Mr. Bazarsky the dumpsters at the Polo Center will be picked up after 7:00 am and

before 10:00 pm. Ms. Santos also noted that there have been 183 ambulance calls to the Polo Center area over the past five years. The lighting in the Polo Center expansion will only shine down.

Vice President Rodrigues noted concern with Aquidneck Avenue being a commercial sprawl.

Councillor Lombardi suggested that (f) be amended to Drive-up Restaurant.

Robert M. Silva, Esquire, 1100 Aquidneck Avenue, representing Mr. Bazarsky addressed the Council noting that the actual language of the motion was all he had discussed with Mr. Bazarsky.

Discussion centered around drive up facilities, if the language in section (f) of the amendment should be revised and drive up facilities require zoning relief.

Ken Andrews, 10 Julia Court, addressed the Council suggesting the Council discuss the type and size the business which would be placed at the Polo Center.

Darcy Roland, 689 Aquidneck Avenue, noted concern with additional medical facilities being placed at the Polo Center. Ms. Roland explained that EMS services going to medical offices reduces the selling price of surrounding properties and suggests that homes should be placed on the properties in lieu of medical offices.

Discussion centered around the need to have medical facilities in Middletown, if there is a plan in place for the expansion of the Polo Center, the expansion would be tenant driven, currently there are no contracts with tenants and a concept plan was submitted to the Planning Office on June 2, 2017.

Lorraine Morse, 671 & 673 Aquidneck Avenue, addressed the Council explaining that this issue is a quality of life issue and it is the job of

the Council to protect the residents. Ms. Morse requested that the business hours be limited with the exception of the current restaurant.

Discussion centered around current zoning and limitations which can be placed on the property.

On motion of Council President Sylvia, duly seconded, it was voted unanimously to remove the word Hamburger from (f) within the prior motion.

Howard Hall, 151 Atlantic Drive, addressed the Council questioning the sign located at the Polo Center which states retail coming soon.

David Bazarsky, responding to Mr. Hall, explained that the sign is for the existing building on lot 107; it's an expansion of family medical center, nothing to do with the new space.

Lorraine Morse, 671 & 673 Aquidneck Avenue, addressed the Council noted that the residents would be agreeable to have an assisted living facility placed on the Polo Center property. Ms. Morse suggested that medical facility parking could be placed behind the assisted living facility.

Terri Flynn, 34 Warren Avenue, addressed the Council explaining the need to be fair to residents of Middletown.

Darcy Roland, 689 Aquidneck Avenue, noted that a mixed use ordinance will be reviewed at a June 7, 2017 meeting.

Ken Andrews, 10 Julia Court, addressed the Council suggesting the Council limit the hours of operation and size of businesses placed in the Polo Center.

On motion of Vice President Rodrigues, duly seconded, it was voted to amend the current hours of the Polo Center restricting no business past 8:00 pm, except for what is already in the existing Polo Center; Vice President Rodrigues, Councillor Turano and Councillor Viveiros voted YES; Council President Sylvia, Councillor Lombardi, Councillor Santos and Councillor VonVillas voted NO to said motion; MOTION FAILED TO PASS.

On motion of Council President Sylvia, duly seconded, it was voted to amend said ordinance by inserting the following language at the end of the Motion:

“Provided that the following uses shall not be permitted on the subject property: (a) Tattoo Parlors; (b) Adult-Orientated Establishments; (c) Taverns, cafés, club bars or cocktail lounges serving alcoholic beverages; (d) Gas Stations; (e) Supermarkets; and, (f) Drive-up Restaurants”; Council President Sylvia, Councillor Lombardi, Councillor Santos and Councillor VonVillas voted YES; Vice President Rodrigues, Councillor Turano and Councillor Viveiros voted NO.

There being no other persons present desiring to be heard, public hearing was declared closed.

On motion of Vice President Rodrigues, duly seconded, it was voted to adopt said ordinance on its second reading, as amended; Council President Sylvia, Councillor Lombardi, Councillor Santos and Councillor VonVillas voted YES; Vice President Rodrigues, Councillor Turano and Councillor Viveiros voted NO.

PUBLIC FORUM

2. 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.

Lisa Wood, 91 Gosset's Turn Drive, addressed the Council noting that she appreciates all the hours and research done by the Council. Ms. Wood explained that she is not requesting the Council to reconsider the vote for level funding the Town budget, but expressed concern with the transparency of the budget process.

Vice President Rodrigues requested that item #19 be heard under the regular portion of the agenda.

CONSENT

3. Approval of Minutes, re: Special Meeting, May 8, 2017.

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

4. Approval of Minutes, re: Regular Meeting, May 15, 2017.

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

5. Approval of Minutes, re: Special Meeting, May 17, 2017.

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

6. Approval of Minutes, re: Special Meeting, May 24, 2017.

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

7. Continued from Special Meeting, May 24, 2017.

Resolution of the Council, re: Levy Resolution.

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

8. At the request of Council President Sylvia, Resolution of the Council, re: In opposition to H5475 & S0481, An Act Relating to Cities and Town-Subdivision of Land.

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

9. Communication of Paul Croce, Chairman, Middletown Planning

Board, with enclosures, re: Proposed amendments to Middletown Zoning Ordinance Articles 15 and 19 the Middletown Rules and Regulations Regarding the Subdivision and Development of Land Article 3 regarding development density limitations for conservation developments. (Requires advertising for Public Hearing)

On motion of Vice President Rodrigues, duly seconded, it was voted unanimously to receive said communication and advertise for public hearing, August 21, 2017.

10. Communication of Charles B. Allott, Esquire, Executive Director, Aquidneck Land Trust, re: Appreciation for support and update of the Spruce Acres Farm effort.

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

11. Clean Ocean Access, re: Public Access Quarterly Report.

On motion of Vice President Rodrigues, duly seconded, it was voted unanimously to receive said Public Access Quarterly Report.

12. Communication of George W. Watson, III, Robinson & Cole, with enclosure, re: The Narragansett Electric Company dba National Grid Aquidneck Island Reliability Project – Docket No. SB-2016-01.

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

13. Resolution of the Town of Burrillville, re: Opposing H5475 and S0481 – Acts Relating To Cities and Towns – Subdivision of Land.

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

14. Memorandum of John F. Pacheco, III, Burrillville Town Council President, re: House Bill 2017-H6051 and Senate Bill 2017-S0769.

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

15. Resolution of the Town of Burrillville, re: Requesting General Assembly to Take Action on Bill to Change Energy Facility Siting Act.

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

16. Application of Papa Gino's, 619 West Main Road, for RENEWAL of a Mechanical Amusement Device License for the 2017-2018 licensing year.

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

17. Application of ANLI Spa, Inc., 238 East Main Road, for RENEWAL of a Body Works Establishment License for the 2017-2018 licensing year.

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

18. Application for Special Event Permit for Frosty Freez Family Fun 5K, 5K Road Race and .3 mile kids run, on Sunday, September 24, 2017 at 9:00 am at the Sachuest Beach Parking Lot.

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

unanimously to grant said Special Event Permit.

19. Application for Special Event Permit for Newport Rhode Races Marathon, on Saturday, April 14, 2018, 7:30 am – 1:30 pm on various roads in Middletown – See attached map.

On motion of Vice President Rodrigues, duly seconded, to grant said Special Event Permit.

Councillor Turano noted concern that the applicant paints mile marker lines on Town roads.

On motion of Councillor Turano, duly seconded, it was voted unanimously to restore Town roads to the way the condition when the race starts, no painting.

Karen Zyons, representing Newport Rhode Races Marathon, noted that the roads are not painted; tape is used and everything will be removed after the race.

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

20. Application for Special Event Permit for Peterson Farewell Celebration, Farewell Party for Head of School, St. George's School, on June 17, 2017 at 372 Purgatory Road.

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

21. Application for Special Event Permit for Newport Film Outdoors Documentary Film Screening, Screening of documentary film "Chasing Coral" to be held on Thursday, July 6, 2017, 6:30 pm to 10:30 pm at St. George's School Lawn, 372 Purgatory Road.

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

Vice President Rodrigues recused himself from acting on the following item of business, due to a possible conflict of interest.

22. Application for Special Event Permit for Elliott/Powell Wedding to be held on Saturday, June 24, 2017, 4:30 pm to 10:00 pm at 178 Fayal Lane.

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

23. Application for Special Event Permit for Allston Avenue Block BBQ, Neighborhood BBQ – Casual on Street, Saturday, June 24, 2017,

2:00 pm to 6:00 pm, 174 Allston Avenue.

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

OTHER COMMUNICATIONS

24. Communication of Megan Leonard, Adapted Physical Activity and Special Olympics Director, Newport County YMCA, re: Request for support by sponsoring a Tee Sign (Town Name will appear on tee sign, listing in the program booklet).

On motion of Vice President Rodrigues, duly seconded, it was voted unanimously to receive said communication and authorize a \$150. donation for sponsorship of a Tee Sign, said donation to be appropriated from the Council President's Discretionary Fund.

25. Communication of MHS Senior and Junior Post Prom Committee, re: Requesting support for Senior and Junior Post Prom activities.

On motion of Vice President Rodrigues, duly seconded, it was voted unanimously to receive said communication and approve \$125.00 for the Senior Post Prom activities and \$125.00 for the Junior Post Prom activities to be appropriated from the Council President's Discretionary Fund.

ORDINANCES

26. Public Hearing (Advertised)

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 Usage, Chapter 152 Zoning Code, Article 7, adding a new Section 726 Collection Boxes. (Planning Board recommendation attached)

Public Hearing was declared open.

Howard Hall, 151 Atlantic Drive, addressed the Council making the following suggestions and inquires:

- 1. D (2) F – The insurance information requirement should be clearly announced in the newspaper advertisement. Mr. Hall noted concern about the amount of insurance required.**
- 2. E (1) g (6) – Requests to amend to 150 feet from residential zoning districts.**
- 3. E (1) g (1) – Inquired about the dust free surface.**
- 4. I (1 &2) – Inquired about the fine and also the reference to criminal offense.**

Town Solicitor Peter B. Regan explained that collection boxes are currently not addressed in the Zoning Code; the Federal Courts do not allow banning of collection boxes, it is seen as a form of solicitation protected by the first amendment.

Town Administrator Shawn Brown noted that collection bins are problematic.

There being no other persons present desiring to be heard, public hearing remains open.

On motion of Vice President Rodrigues, duly seconded, it was voted unanimously to receive said ordinance on its first reading.

27. An Ordinance of the Town of Middletown (First Reading)

An Ordinance in amendment to the Town Code of the Town of Middletown, Title XI Business Regulations, adding a new Section 118

Tobacco Retailers Licensing. (Summary of Ordinance attached)

On motion of Vice President Rodrigues, duly seconded, to receive said ordinance on its first reading.

Meg Barrett, 19 Osage Drive, requested the Council to adopt this ordinance. Ms. Barrett explained that the issue is a priority for youth.

Tom Lyons, 286 Chases Lane, MPC Chair, Owner of Beach Wine and Liquors, addressed the Council noting that he has never been cited for any underage violation, all his employees are trained, and the license fee is reasonable. Mr. Lyons requests the Council to support the ordinance.

Discussion centered around the ordinance not being perceived as anti-business, the fines are specific and allow for revocation of the license.

Jennifer Baldwin, 64 Beagle Drive, presented a PowerPoint, which is on file in the Office of the Town Clerk.

Nat Baldwin, Middletown, presented the Council with sample packages of flavored tobacco products and candy to show the similarity in the packaging.

Andrew Yang, Middletown, MHS Junior, noted that he has many friends that use flavored tobacco products, who think it is not harmful. Mr. Yang requested the Council to support the ordinance.

Caroline Craft, Middletown, MHS Junior, addressed the Council explaining that her friends see cigarillo's as cheap fun and noted the need to keep kids here safe.

Jennifer Wall, 260 West Exchange Street, Providence, addressed the

Council explaining that the tobacco environment flavors such as fruit loops, gummy bears, which are marketing to the kids. The tobacco companies are looking for replacement smokers. There are nine other Cities and Towns which have enacted this ordinance and noted the importance of putting this ordinance in place.

Carol Formica, 21 Mast Court, thanked the Town Council for their commitment. Ms. Formica explained that this ordinance will give an additional tool to help keep youth safe.

Lori Verderosa, MPC Coordinator, addressed the Council noting the vision of the MPC is to create a safe, healthy and drug free Middletown. Ms. Verderosa completed the PowerPoint, which was presented by Jennifer Baldwin, Ms. Verderosa reviewed the survey data of local students. Ms. Verderosa also reviewed the following summary, entered here:

Ms. Verderosa noted the issue is about protecting our kids.

Discussion centered around the grant being a two year grant, enforcement, compliance checks and retailer education.

Gerri Guardino, RI Department of Health, addressed the Council noting that the Middletown MPC does a tremendous amount of work. Ms. Guardino noted state statistics of tobacco use in youth.

Town Administrator Shawn Brown reviewed the following:

Councillor Lombardi noted that he is the liaison for the MPC, this ordinance is about what is right for the youth. Mr. Lombardi requests his fellow Councillors support.

Discussion centered around enforcement of the ordinance and education of parents.

Police Chief Anthony Pesare, addressed the Council, noting concern with enforcement of the ordinance.

Vice President Rodrigues requested additional information regarding costs for licensing and enforcement of the ordinance. Mr. Rodrigues noted support for the kids, but needs to see the data to make an informed decision.

Council President Sylvia noted that the ordinance is for the children's future.

On motion of Vice President Rodrigues, duly seconded, it was voted unanimously to receive said ordinance on its first reading.

TOWN COUNCIL

28. (Tabled from the May 15, 2017 Regular Meeting)

Communication of Councillor Viveiros, re: Discuss installation of Work Order program for the Public Works Department.

On motion of Councillor Viveiros, duly seconded, it was voted unanimously to table this item to the July 3, 2017, Regular Meeting.

29. Communication of Councillor Viveiros, re: Discuss the purpose of the Conservation Committee, Planning Board and Zoning Board, and what their charge and responsibilities are, and what is expected of them.

On motion of Vice President Rodrigues, duly seconded, to receive said communication.

Councillor Viveiros noted that board recommendations are not being

given consideration by other boards, along with not enough information regarding how the recommendation was decided upon.

On motion of Councillor Viveiros, duly seconded, to direct Mr. Brown to inform all Board members what is expected of them, especially the 3 named boards and make sure all boards realize their charge.

Council President Sylvia suggests the information to the boards be given by the solicitor.

Town Solicitor Peter B. Regan noted that he gives an orientation explaining board member roles and responsibilities.

Discussion centered around that some board members may not agree with decisions or recommendation by other boards, the Town Solicitor will meet with boards and the Planner to make sure there is an understanding of roles and why a recommendation were made.

On motion of Council President Sylvia, duly seconded, it was voted unanimously to amend the Town Solicitor in lieu of Town Administrator in the previous motion.

Discussion centered around that videotaped meetings are not official minutes, state law does not require minutes to be verbatim of the meeting, boards should be independent of each other and make their own decisions and board members have a responsibility to do their own research.

On motion of Councillor Viveiros, duly seconded, it was voted unanimously to direct the Town Solicitor to inform all Board members what is expected of them, especially the 3 named boards and make sure all boards realize their charge.

30. At the request of Council President Sylvia, re: Discussion and approval of summer schedule, June 19, 2017, July 3, 2017 and August 21, 2017. (No documentation)

On motion of Vice President Rodrigues, duly seconded, it was voted unanimously to approve said summer schedule.

On motion of Vice President Rodrigues, duly seconded, it was voted unanimously to adjourn said meeting at 10:04 P.M.

Wendy J.W. Marshall, CMC

Council Clerk

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