



**TOWN OF MIDDLEBURG
PLANNING COMMISSION
REGULAR MEETING MINUTES**



**MONDAY, JUNE 28, 2021
PENDING APPROVAL**

PRESENT: Terence S. Cooke, Chair
Donald Woodruff, Vice Chair
Edward R. Fleischman, Member
Rachel Minchew, Member
H. H. “Dev” Roszel, Member
Mimi Dale Stein, Member
Morris “Bud” Jacobs, Councilmember

STAFF: William M. Moore, Deputy Town Manager/Town Planner
Rhonda S. North, MMC, Town Clerk
Estee LaClare, Planning & Project Associate

The Middleburg Planning Commission held their work session and regular meeting on Monday, June 28, 2021. As allowed under Governor Northam’s executive order, the meeting was held remotely with some members of the Commission participating from their respective homes/offices and others participating from the Town Hall Council Chambers.

Chair Cook called the work session to order at 6:30 p.m. Town Clerk North called the roll.

Town Clerk North provided Appointed Officials Training to the members of the Commission during the work session.

Chair Cooke adjourned the work session at 6:58 p.m. He called the regular meeting to order at 7:00 p.m.

Disclosure of Meetings with Applicants

The members reported that they had no meetings with applicants.

Approval of Meeting Minutes

Vice Chair Woodruff moved, seconded by Commissioner Roszel, that the Planning Commission approve the minutes from the May 24, 2021 meeting as presented.

Vote: Yes – Commissioners Woodruff, Fleischman, Minchew, Roszel, Stein and Councilmember Jacobs
No – N/A

Abstain – N/A

Absent – N/A

(Chair Cooke only votes in the case of a tie.) (By roll call vote)

Public Hearing

Special Use Permit 21-01: Front Yard Greater Than 30 Feet in C-2 District – 10 West Marshall Street – Town of Middleburg

Chair Cooke reviewed the public hearing procedures.

Town Clerk North, Project Lead for the Town Hall Project, reminded the Commission that at the Council's direction, a project was initiated to build a new Town Hall, which would be located immediately behind the existing one. She advised that once the new building was occupied, the existing one would be vacated, and it would be demolished. Ms. North noted that the HDRC approved the demolition and the issuance of a Certificate of Appropriateness for the new building during a special meeting on June 17th. She reported that the Town was proposing that a pocket park be constructed off Marshall Street. Ms. North explained that because the Town staff would maintain occupancy of the existing building and due to the desire to construct the pocket park, a front yard setback of greater than thirty feet was needed. She advised that accordingly, the Town was seeking a special use permit to allow for this setback.

Mayor Bridge Littleton, 5 Orange Drive, advised that while it was difficult to see the existing building go, it was time for the Town staff to have appropriate workspaces. He noted that he was proud the Town staff and committees have worked together and were proposing the idea of a pocket park. Mr. Littleton reminded the members that the Comprehensive Plan called for more open, green space in the town. He noted that Middleburg was built out; therefore, it was challenging to find space for it. Mr. Littleton opined that the Town found an innovative way to provide green space and noted that it would also provide a nice entry for the new Town Hall. He asked for the Commission's favorable consideration of the application.

Vice Mayor Philip Miller, 8 Orange Drive, noted that the Council had worked hard on this project for over six years and went over all the details. He advised that while it was not perfect, this was the only way to accomplish it. Mr. Miller opined that the value outweighed the compromises that were made. He advised that four of the Comprehensive Plan strategic objectives would be achieved through this project, including the Village Green and pocket park; public restrooms; public parking; and, public meeting spaces, in addition to having a location for the Town government.

Councilmember Cindy Pearson noted that she also served on the HDRC. She opined that the pocket park would create a nice entrance to the building. Ms. Pearson asked for the Commission's favorable vote on the application.

Councilmember Kevin Daly, 112 N. Jay Street, advised that he liked green space and opined that the pocket park would be a tribute to the town. He advised that there would be no wasted space in the Town Hall Project. Mr. Daly opined that the pocket park would create a beautiful entrance to the new Town Hall. He asked for the Commission's vote to ensure it occurred.

No one else spoke and the public hearing was closed.

Commissioner Fleischman advised that he reviewed the application, as well as the history of the project. He opined that it was inconsistent with the previous actions of the Commission. Mr. Fleischman further opined that this would push the building's entrance from the historical core of the town and change the look and feel of Middleburg. He suggested the Town reuse the existing building and focus on historical Middleburg. Mr. Fleischman expressed his opinion that the focus of the new building was too much on the Salamander side. He noted that large construction projects often went over budget and opined that this one would as well. Mr. Fleischman opined that the project was overblown and was more attuned to being in Ashburn.

Councilmember Jacobs opined that the staff made the case that the special use permit should be approved due to the benefits to the Town. He further opined that those benefits were self-evident. Mr. Jacobs urged the Commission to recommend approval of the application.

Vice Chair Woodruff reminded the Commission that he expressed the same concerns as Commissioner Fleischman earlier in the project; however, he spoke with the Town staff who explained why his suggestions would not work. He opined that the pocket park would be wonderful. Mr. Woodruff disagreed that the planned entrances and parking would promote Salamander. He agreed with Councilmember Jacobs that the Commission should move forward with a positive recommendation.

Commissioner Stein advised that she was excited about the opportunity to have a pocket park and opined that it would form a wonderful presentation to the Town Hall. She noted that Middleburg has needed green space for years, which this would provide. Ms. Stein further noted that it was in sync with the Comprehensive Plan recommendations and advised that she was in favor of the request.

Commissioner Roszel moved, seconded by Councilmember Jacobs, that the Planning Commission forward SU 21-01 to Council recommending approval because the request is consistent with the Comprehensive Plan and with the criteria for granting a special use permit. Commissioner Roszel further moved, seconded by Councilmember Jacobs, that the recommendation is subject to general conformance with the exhibit titled "Middleburg Town Hall Site Layout & Geometric Plan" by Timmons Group dated February 8, 2021.

Vote: Yes – Commissioners Woodruff, Minchew, Roszel, Stein and Councilmember Jacobs

No – Commissioner Fleischman

Abstain – N/A

Absent – N/A

(Chair Cooke only votes in the case of a tie.) (By roll call vote)

Commissioner Fleischman acknowledged that a lot of work had gone into the planning for the project and advised that he accepted the vote. He noted that he looked forward to a great Town Hall Project.

New Business

Deputy Town Manager Moore noted that the next three items were subdivision related. He advised that he was only introducing them at this time and that no action was expected to be taken during this meeting.

SD 21-01: Preliminary Plat of Subdivision of 3 Lots – 300 East Washington Street – Bryon Hughey

Deputy Town Manager Moore advised that this was an application for a preliminary plat to subdivide one lot, located at the intersection of Washington and Jay Streets, into three. He noted that it was in the R-3 District, which required a minimum lot size of 7,000 square feet for single-family dwellings. Mr. Moore reported that the application met the minimum requirements for each proposed lot. He advised, however, that the existing lot contained a non-conforming use in that there were two separate structures – the main residential structure that fronted Washington Street and a small residential structure that fronted Jay Street - on one lot. He explained that the non-conforming use could be modified as long as the modification did not increase the non-conformity of the density requirement. Mr. Moore explained that he advised the applicant that he could address this issue by either reducing the number of lots to two, which the applicant did not wish to do, or by demolishing or modifying the smaller structure so it would be an accessory structure as opposed to a residential one. He advised that while a disposition of that issue was not needed at the preliminary plat stage, it was needed before the final plat could be considered. Mr. Moore reported that otherwise, the application was in conformance with the zoning ordinance.

Deputy Town Manager Moore advised that the Town Engineer offered some minor comments that would need to be addressed before the plat could be approved and that VDOT signed off on the subdivision. He opined that this was a good opportunity to address the gravel driveway, which often washed out onto the street and was an unsafe entrance onto Route 50. Mr. Moore explained that the applicant was proposing that the three lots be served through a common driveway off Jay Street. He reminded the Commission that the lots would be located in the Historic District; therefore, the HDRC would review and approve any new construction plans. Mr. Moore noted that if the smaller structure were proposed for demolition, the HDRC would have to approve it. He opined that the applicant was leaning toward modification of the structure. Mr. Moore advised the Commission that a public hearing was required on this application and noted that it would be scheduled for their July meeting. Mr. Moore suggested they may or may not be asked to act on it at that time.

SD 20-01: Final Plat of Subdivision of 38 Lots on Approximately 570.873 acres – Banbury Cross Reserve

Deputy Town Manager Moore reminded the Commission that during the preliminary plat approval, the applicant verbally committed to allowing the Town to monitor the construction plans, which only the County had the authority to approve. He opined that it was important for the Town to be involved in them, as those plans could easily morph. Mr. Moore reported that the layout was unchanged and was in strict conformance with the preliminary plat. He reminded the Commission that a public hearing was not required for the final plat. Mr. Moore opined that the applicant was not going to press the Commission on the timeliness of their consideration of the final subdivision plat and noted that he expected a letter to this effect from him. He advised that the applicant's goal was to have a final plat that was in a fully approvable form before he sought its approval, as he did not want a conditional approval.

Deputy Town Manager Moore reminded the Commission that during the preliminary plat consideration, the applicant also agreed to voluntarily restrict certain commercial uses, particularly on the rural economy lots. He reported that the deed did not contain those restrictions and opined that they would be included in the subdivision's covenants. Mr. Moore noted the need to be assured the list of restrictions would be in a legally binding document before the Planning Commission acted on the final subdivision plat. He advised that the Commission was not being asked to act on the application at this time and noted that he would report on its progress at the next meeting if the plat was not yet in an approvable form.

In response to comments from the Commission, Deputy Town Manager Moore confirmed the Town Attorney would review whatever document contained the list of restrictions. He noted that he would comment on its potential efficacy in achieving what the Commission was seeking.

SD 15-01: Final Plat of Subdivision for 49 Lots on 54.06 Acres – The Residences at Salamander

Deputy Town Manager Moore reported that this was the final subdivision plat for the R-1 and R-3 sections of The Residences at Salamander. He reviewed the history of this item, which began with the preliminary plat approval in 2015. Mr. Moore reported that the latest iteration of the final subdivision plat was in substantial conformance with the preliminary plat. He advised that the subdivision would contain two-way roads, provide for a better topographical layout, and provide for less water and sewer infrastructure to be maintained by the Town. Mr. Moore reported that the plans were close to being in an approvable form.

Deputy Town Manager Moore reminded the Commission that during their last meeting, they acted on a related proffer amendment request. He reviewed the history of the proffers associated with this project. Mr. Moore reported that subsequent to the Planning Commission's recommendation, the applicant revised the proffer amendment request to delete the amendments, with the exception of the one to allow construction traffic to use North Pendleton Street, in addition to Foxcroft Road. He reported that the Council approved that proffer amendment.

Deputy Town Manager Moore reported that the applicant was working out the final details of the construction plans and advised that the only remaining issue was the location of a water line, which was close to being resolved. He reiterated that the final plat was in strict conformance with the construction plans. Mr. Moore advised that the plat's deed of dedication was under review by the Town Attorney. He reiterated that no action was being proposed at this time and noted that the plat would be presented to the Commission once it was in an approvable form.

In response to an inquiry from the Commission, Deputy Town Manager Moore advised that construction could begin as soon as July, but it would likely be August. He noted that the grading permit could be approved before the final plat. Mr. Moore advised that once the final plat was approved, the applicant could convert reservations into actual sales contracts; therefore, they were motivated to get the final plat in an approvable form.

In response to inquiries from the Commission, Deputy Town Manager Moore reported that he had not spoken with Mr. Devadas about how Salamander planned to ensure the construction traffic would use the approved routes. He advised that he was in discussions with Salamander's partner and the project engineers and opined that this would be addressed by a notification of the restrictions in the bid documents and notations on the construction plans. Mr. Moore noted that during the Council meeting, Mr. Devadas also touched on Salamander imposing penalties for violations.

In response to a comment from the Commission, Deputy Town Manager Moore confirmed the Town would place the same construction traffic restrictions on its contractor for the Town Hall Project.

Council Representative's Report

Councilmember Jacobs advised that during its last meeting, it was reported that the Town may only suffer a small loss in revenues due to the COVID pandemic, as the meals tax revenues were coming in higher than expected. He further advised that the Town would also receive \$820,000 in relief funding, which would come in two tranches. Mr. Jacobs reported that the Council approved using that money to provide a \$100 utility credit to the Town's water/sewer customers for their September bill; repaying the Health Center Fund for the loan to cover the cost of the COVID relief programs; and, undetermined water and sewer improvement projects.

Quorum of July Meeting

All the members advised that they would be present for the July 26th meeting.

Deputy Town Manager Moore reminded them that this was the last meeting that could be held remotely, with some limited exceptions, due to the Governor's emergency orders related to the COVID-19 pandemic, as they would expire on June 30th. He suggested the members speak with the Town Clerk if they had any questions about the exceptions.

There being no further business, Chair Cooke adjourned the meeting at 7:59 p.m.

RESPECTFULLY SUBMITTED:

Rhonda S. North, MMC, Town Clerk

Middleburg Planning Commission Transcript
June 28, 2021

(Note: This is a transcript prepared by a Town contractor based on the video of the meeting. It may not be entirely accurate. For greater accuracy, we encourage you to review the video that is on the Town's website – www.middleburgva.gov)

Terry Cooke: All right, everybody. Well, good evening. It's great to see everyone again. It's nice to have some neighbors up here on the dais. I was starting to think it was personal, [laughter] but maybe personal hygiene issue, perhaps. But no, it'll be great to have everybody back again, hopefully by next month. We'll call this work session to order for the June 28th meeting of the Planning Commission. And we will begin with our roll call. Rhonda.

Rhonda North: Rhonda North, Town clerk.

Terry Cooke: Present. [off mic]

Rhonda North: Oh, OK. I'm used to council. We just go down down the roll. OK, so Chairman Cooke.

Terry Cooke: Present.

Rhonda North: Vice Chair Woodruff.

Don Woodruff: Present.

Rhonda North: Commissioner Fleischman.

Ed Fleischman: Present.

Rhonda North: Commissioner Minchew.

Rachel Minchew: Here.

Rhonda North: Commissioner Roszel.

Dev Roszel: Here.

Rhonda North: Commissioner Stein.

Mimi Stein: I'm here.

Rhonda North: Council Member Jacobs.

Bud Jacobs: Present.

Terry Cooke: Very good. Thank you. Rhonda. Well we now come to, I'm sure what is all of our favorite parts of being on the commission and that is the annual officials training and Rhonda I believe you're the teacher tonight. So, we'll sit here in rapt attention.

Rhonda North: Yes. Give me a second. Let me bring that up for you. So the council has adopted as one of its strategic initiatives, good governance. And as a part of that, they have asked that we give appointed officials training to all newly appointed members, as well as a refresher course each year for members of the town's boards, commissions, and committees. I'm going to go through this quickly. The idea is not for you all to become experts, but just sort of to give you a little bit of knowledge about things so that if something comes up, you can say, oh, wait a minute, I think there's a rule or regulation regarding that and I need to contact the staff and ask them about it. So I'm going to go through this fairly quickly. If you have any questions, please feel free to stop me. OK. Why are we not? [off mic]. OK, so there are a number of documents that are associated with the training, there is the ordinance that establishes the committee in this case, that is your zoning ordinance that establishes the planning commission. We have a handbook for appointed officials, the Freedom of Information Act FOIA and the Conflict of Information Act, COIA, as well as the Public Records Act, all apply to the town's boards and committees. The council has adopted a code of ethics and a standards of conduct policy that they expect the members to abide by. They also have adopted an ordinance pertaining to the acceptance of gifts. And then there's an attendance policy as well. So the Virginia Freedom of Information Act, FOIA, is designed to ensure that the people in the Commonwealth of Virginia have free access to public meetings, as well as having access to public records, unless there is an exemption that applies, and we'll get into that a little later. Meetings must be open to the public and records must be available for public inspection. So what is a public meeting under FOIA if three or more members are gathered, it doesn't matter where they are gathered and if they are discussing public business, that is a public meeting. Public notice must be given of the date, time, and location at least three days in advance. So we do that as a part of the monthly calendar that goes out each month. What is not a public meeting under FOIA two members is not a public meeting unless two members represents a quorum in you all's case, that's not the case. If you're at a social function and there are three or more of you, as long as public business is not being conducted, that is not a public business. And FOIA also excludes public candidates' forums as not being public meetings. So under FOIA minutes are required to be taken, you cannot have secret or written ballots, your votes must be taken in open meeting, and you cannot poll members in lieu of a meeting. So you can't say send out an email and poll folks. All of your actions must be taken in a public meeting. Closed

meetings are allowed under FOIA, they're only allowed for certain purposes. In order to go into closed meeting, you have to do a motion. The motion has to cite both the state code section that allows you to go into closed session, as well as the purpose and the subject and the purpose and the subject cannot be the same items. So you have to meet those three requirements in order to legally go into closed session. Most likely reasons for committees to go into closed session, the one that you all most likely would go into would be appointments of the committee. Sometimes you can also go into a closed session for discussion of legal advice by counsel. But for most committees, its appointment to the committee, that's the most likely reason that you're going to go into it. Now, when you go into a closed session, when you come out of it, you have to certify the closed session and you have to certify that only the items you went into closed session for were discussed, that only the matters that what you discussed are matters that are exempted from opening meeting requirements. If there was a deviation from that, you need to let everyone know at the point of certification. That's very important because there are now fines if there was a deviation from the closed session discussion and you did not disclose that during the certification process. So folks have been caught later on and said, well, I really didn't want to say it, even though I knew it. Well, there are now fines for doing that. So it's important that if you do deviate that you speak up. So participating in meetings electronically, what has been going on in the pandemic world in the last year, starting June the 3rd, all that goes out the window. So we're back into real life. Committees can our committee members can participate in meetings electronically and you all have adopted the policy that would allow that. But you have to conform to the procedures in the policy which conform to the state code. There must be a quorum seated in the meeting. You have to have the chairs advanced notice. You can do it for personal reasons, up to twice a year, or you can do it for medical reasons, now an unlimited number of times a year for medical reasons or disability. When you participate electronically, everyone in the room must be able to hear you. And we have to record in the minutes that you're participating electronically the reason you are doing so and the location from what you are doing so. Emails, the Supreme Court has held that emails can constitute a meeting if the responses are simultaneous, they have not defined what simultaneous means. So for that reason, we recommend that when sending emails, folks be blind copied. That way, the response only goes if you respond, it only goes back to whoever originated the email and you don't have everyone, you know, sort of shooting back and forth and risking accidentally creating a public meeting. Anybody have any questions about FOIA? Yes.

Ed Fleischman: Yeah, Rhonda, I didn't understand that last bit. If you blind carbon copy someone, then that's OK? In other words, if you want to speak to two Commissioners, can you put the third one down as a blind carbon copy?

Rhonda North: You shouldn't do that, so like [multiple speakers]

Ed Fleischman: You shouldn't do it, or you cannot do it?

Rhonda North: Well, I mean, you can always do it, but you risk creating a meeting if you start having a conversation, you know, with three parties. So like when the staff sends you all an email, we do it via blind carbon copy. And that way, if all of the members reply, it only goes back to Will or Estee or me, whoever originated it. So you're not having the back-and-forth conversations?

Ed Fleischman: The precise question I have is, can I send an email to Terry the Commissioner chairman.

Rhonda North: Yeah.

Ed Fleischman: And then blind and carbon copy all the commissioners?

Rhonda North: Yes. You can do that because if the other commissioners reply, you're the only one that's going to see it. You and Terry are the only ones that are going to see it.

Ed Fleischman: Ok, thank you for the clarification. I didn't understand that.

Rhonda North: Yes. Yes. Yes.

Ed Fleischman: So you can send an email to all commissioners. Oh, you're going to get a lot of emails from me now. [laughter]

Rhonda North: Yes. [off mic]

Ed Fleischman: Thank you.

Rhonda North: Ok, so public records act. So public records are anything in writing or recording. It doesn't matter whether it's handwritten typewritten, whether it's a printed photograph. If it involves the transaction of public records or public business, it's a public record. Doesn't matter how it's stored. I'm a little slow here tonight. So public records have to be open for public inspection unless an exemption applies and to avoid, you know, again, making your personal emails open to public inspection, what we recommend is that you copy myself or Will let us serve as the archive holder for your emails and your records. Because when that happens, I've kind of got a planning commission folder and I see something I just move it over into that. And our emails system is archived. So if someone makes a FOIA request, then we just go through our emails and are able to pull that out. Of course, your minutes, your agendas, those are things that we keep. If you do take notes during a meeting, those are public records and you do need to figure out a way to maintain those. Probably the easiest thing is if they're handwritten notes to

scan them, shoot them over to me, let me move them over into my Planning Commission file. Some folks will keep a notebook that's just their notes for that committee. And then when they leave, they'll turn that into me, and I'll scan it and keep it electronically. So there are different ways to do that if you like to keep notes during meetings. So public records have to be retained for a certain period of time, the state library has multiple schedules for how long things have to be retained, and then there's a process for destroying public records once they reach the end of the retention schedule. I'm the records officer for the town. So if you do have some public records and you'd like to turn them over to me, we'll look at them, see if they're eligible for destruction. And I can help you through that destruction sequence. It's all done online now. So much easier than it used to be years ago. Emails and social media posts are public records. It doesn't matter whether you are using your personal account as long as it involves the transaction of public business, it is a public record. The town has social media accounts that we do strongly recommend that if you have something that you feel the commission feels needs to be posted, that they let the staff know and do it through our social media accounts because those are archived. And should we get a FOIA request, we can respond to them very easily. So that's public records in a nutshell, real quick. Anybody have any questions.

Dev Roszel: Yes, so if we keep notes during a meeting does that need to be turned over to you?

Rhonda North: You can either turn those over to me or you can retain them yourself? As I say, what I've had a number of folks do is they've kept them in a notebook, or they just keep them in a file folder. And then when they leave, they just bring the folder into me and anything that's eligible for destruction, then I'll go through the process to destroy them. And if it's not, then I scan them, and we retain the electronic file and chunk the paper.

Dev Roszel: OK.

Rhonda North: Yeah, we don't keep paper anymore. OK, so the council has adopted a handbook for board commission and advisory committees. So in some cases, you all are an advisory committee, but you are also a regulatory committee as well. So you guys are sort of a hybrid. For the advisory committees, sort of the function is to increase community input to the council and staff so that they can focus on the community's needs and problems. As I say, you guys sort of have a dual function there. So part of the advisory committees' roles are to recommend new programs or revisions to existing ones to identify any policy decisions that may need to be made to provide your expertise. You are there to encourage communication between the town and the residents and to provide creative sources of ideas. So advisory committees or regulatory committees both elect chairs and officers annually, you should make a report to the council that can be done in either a written form or a verbal form. You all have a Council Member assigned to you and Council Member Jacobs does a good job of reporting to council on

a regular basis as to what the Planning Commission is doing, as does Deputy Town Manager Moore. So members must adhere to state and local rules and regulations. And from an advisory committee standpoint, any actions are subject to the approval of the town council. Again, you guys sort of have a hybrid regulatory advisory committee role. So members are appointed to be part of a group that advises the council on issues, policy making, project development, and implementation. Part of your roles and responsibilities as an appointed member is to know the reason that your committee exists. Most of that can be found in the zoning ordinance that identifies the committee. But if you have any questions, please feel free to ask Mr. Moore. He'll be glad to help you out. You're asked to be aware of the time, energy and commitment that's associated with being an appointed official, to notify me if you are going to be absent. And we'll talk a little later about the attendance policy. To complete any tasks that are assigned. To vote unless you have a conflict of interest to know the legal obligations and to operate within the legal constraints of your appointment and to work in spirit of cooperation and negotiation to reach a consensus. So, as I mentioned, you have a council representative that would be Council Member Jacobs and a staff liaison, which would be Deputy Town Manager Moore assigned to you. So communications, so the chair works with the staff and the council liaison to set up meetings, draft correspondence, do anything of that nature that needs to be done. If there's any questions regarding town or state policy or legislative matters, then you should consult with me. If there's any questions on council positions, then you should consult with the town administrator. And on the rare occasion that you would get any media inquiries, you're asked to please refer those to the town administrator. So as an appointed official, you can contact any member of the council to discuss a committee issue, however it is suggested you start with your council liaison for the committee because they're going to be the most appropriate person and probably will be the one who will be able to respond to your inquiries. If the Planning Commission feels it needs legal advice, then you would let Mr. Moore know who would then talk to the town administrator and they would determine whether to bring the town attorney in. So conflicts of interest, the Virginia has a conflict-of-interest act, part of it applies to the town, part of it does not because of our small population. If you're a part of a group that is presenting before this body, you may have a conflict of interest. In that case, please come see me. We'll look at the state code provisions, determine if you do. If you do, there's a form that you would file. There are actually two forms. One is if you have a conflict and can vote, and one is if you have a conflict and cannot vote, we'll get you to fill out the appropriate form, file it with me. And then if anybody complains that you had a conflict of interest on a matter, I can say no, he or she disclosed it to us. We're aware of it. So it helps to protect you. Any questions on the appointed official's handbook? OK, I think we're good on time. So the council has also adopted a code of ethics and a standards of conduct. They feel that the citizens and the businesses deserve fair, ethical treatment, accountable local government. So to that end, they adopted the code of ethics and standards of conduct. It applies to not only elected but appointed officials. So some of the items that you can find in the code of ethics and standards of conduct are that you're expected to uphold the Constitution, any laws and any regulations, to display the highest

moral principles for the people of Middleburg to expose corruption, misconduct or neglect of duty, to give your full dedication and service to the position of trust that you've been appointed to, to operate efficiently and effectively and economically, to accomplish the task before the committee and to support the rights of the citizenry. You're also asked to avoid discrimination by dispensing special favors to anyone, as we just discussed, if you think you have a conflict of interest because of being a member of an association or a particular group that comes before the committee to identify that, to conduct all public business. And you, again, that's the FOIA. You all don't get confidential information very often. But if you do, you're asked not to disclose it and not to use any public resources for your personal use that are not available otherwise to the public. You're also asked to provide a positive environment for the staff, the citizens and the businesses to not interfere with the functions of the staff or the duties of the staff as they implement their policy the council's policies, to be prepared for each meeting, to be open minded and patient, be concise, to respect the rights of your colleagues to have different opinions, to avoid abusive, threatening or intimidating language, to be courteous and considerate towards everyone, and also to adhere to the attendance policy, which we'll discuss here in just a few minutes. Which we're now at. So our attendance policy is if you have three unexcused absences and the chair determines whether your absence is excused or unexcused, then your appointment to the committee is automatically rescinded. Now, what happens is when you get to your second one, the chairman will send you an email. You'll copy me on it. So I'll forward that to the mayor and council. So they're aware of it and let you know if you miss one more, have one more consecutive unexcused absence, then your appointment is going to be automatically rescinded. And I'll have to send you a note to that effect. In addition, if you miss more than half the meetings within a 12-month period, it doesn't matter whether you're excused or unexcused, then your appointment is automatically rescinded. So, again, I will send you a letter to that effect and let you know what the appeal process is. You can appeal that to the council. Anybody have any questions on the attendance policy? [off mic] Acceptance of gifts and donations, so of course, everyone is prohibited from soliciting gifts for themselves or their family members due to their town positions with the town. There are exceptions. I mean, we recognize that folks are friendly and, you know, they may give each other birthday gifts or Christmas gifts or, you know, things like that. So they're exceptions for things like that. There are also exceptions for participating in conferences because, you know, people go and they have little pins that they hand out, you know, with their names on them, things like that. As long as it's under ten dollars in value, there's not a problem for that. Food and beverage is also something that's frequently given out as long as it's available to everyone, like Christmas time. People will bring food in here. We will put it on the counters and make it available to to everyone, which is what allows us to accept that. So periodically, folks like to make donations to the town quite frequently that's usually associated with something like a national night out event or something like that where they wanted to make a donation. Any donations, whether it's cash, real or personal property or services, has to be approved in advance by the council. Usually for events like National Night Out or Art in the Burg we get a blanket approval for those type of things.

Cash donations that the council has not specifically earmarked for a project go to the general fund. And all donations are public knowledge. People cannot donate anonymously to the town. OK, that's it very quickly, I think we've even got about four minutes to spare. [laughter] Does anybody have any questions regarding the training?

Terry Cooke: No Rhonda that was great [multiple speakers]

Rhonda North: Thank you. And what I'll do is before you all leave this evening, I'll get you all to sign the acknowledgment form that you received, the training that you agreed to abide by it.

Terry Cooke: Have you distributed those forms yet?

Rhonda North: I have not. No, I've got them here. I'll hand them out to you.

Terry Cooke: All right.

Rhonda North: At the end of the evening here.

Bridge Littleton: Is Don asleep?

Don Woodruff: No. Just sitting here at by the lake watching the loons. No, and not you guys the loons on the lake [laughter]

Bridge Littleton: I was going to say you have a mirror [off mic]

Terry Cooke: All right so.

Don Woodruff: Thank you, Rhonda.

Rhonda North: You're welcome, Don.

Terry Cooke: That concludes our work session. We have a couple of minutes, I think, before we convene the regular meeting.

Rhonda North: We have two minutes. Yes, sir. [off mic] OK, Mr. Chair it is 7:00 p.m.

Terry Cooke: Very good. Thank you. Good evening, everyone. We will convene the June 28th meeting of the Middleburg Planning Commission. First order of business is to review among the Commission any disclosures of meetings with the applicant. Rhonda, will you call the roll on that?

Rhonda North: Chair Cooke.

Terry Cooke: No meetings or discussions with any applicants. Thank you.

Rhonda North: Vice Chair Woodruff.

Don Woodruff: No discussions with any potential applicants.

Rhonda North: Commissioner Fleischman.

Ed Fleischman: I had none.

Rhonda North: Commissioner Minchew.

Rachel Minchew: I have not had any either.

Rhonda North: Commissioner Roszel.

Dev Roszel: I've not had any meetings or conversations outside of this.

Rhonda North: Commissioner Stein.

Mimi Stein: No meetings with any applicants, etc.

Rhonda North: Council Member Jacobs.

Bud Jacobs: No meetings or discussions with any applicants.

Terry Cooke: Thank you all. Next item on the agenda is any public comments that are not related to the public hearing. Just to emphasize that this is an opportunity for anyone in attendance or online who wish to address the commission on any matter that is not related to the public hearing, that is coming up later in the agenda. This is your opportunity to do so. Are there any folks who wish to address the commission on any matters? Rhonda, anyone online on this?

Rhonda North: No, sir, only people online are our Commissioners.

Terry Cooke: Hearing none we will close the public comment period. Next item on the agenda is approval of minutes. These are the minutes for the May 24th, 2021 work session and regular

meeting. Assuming everyone has had an opportunity to review those minutes. Does anyone have any comments on them? If not, we will entertain a motion for approval.

Dev Roszel: I'll make a motion to.

Don Woodruff: I move they be approved as presented.

Dev Roszel: I'll second that Don. [laughter]

Terry Cooke: Thank you. Thank you, Don. Rhonda call the roll, please.

Rhonda North: Vice Chair Woodruff.

Don Woodruff: Present. [laughter]

Rhonda North: Commissioner Fleischman.

Ed Fleischman: Yes, I agree.

Terry Cooke: Approving the minutes.

Ed Fleischman: Right, I agree, I approve.

Rhonda North: Commissioner Minchew.

Rachel Minchew: Yes, I approve.

Rhonda North: Commissioner Roszel.

Dev Roszel: I approve.

Rhonda North: Commissioner Stein.

Mimi Stein: I approve.

Rhonda North: Council Member Jacobs.

Bud Jacobs: Aye.

Terry Cooke: Thank you all. That brings us to the public hearing on the matter on our agenda this evening. This is special use 21-01 request of the Town of Middleburg for a special use permit for a front yard greater than thirty feet in the C2 District at 10 West Marshall Street. I will just briefly review the procedures for a public hearing. I'll remind each speaker to clearly state his or her name and address for the record, the purpose of this meeting is to receive comments on the case at hand. Public hearing is not a question-and-answer session. I invite the applicant or the applicant's representative to address the commission. I will then invite any other interested parties to address the commission and I will then offer the applicant or the applicant's representative an opportunity to provide any rebuttal or response to comments made by other interested parties. With that said, I will invite the applicant or the applicant's representative to address the commission on the matter before us. Anyone from the applicant?

Rhonda North: Ok, thank you, Mr. Chairman. As you're aware, we have been at the council's direction, initiated a new project to build a new town hall here in Middleburg. It will be located immediately behind this building. The idea is that once the building is constructed, we'll vacate this structure, move in there and this building will be demolished. The HDRC did approve during their special meeting on the 17th the demolition of the structure and the certificate of appropriateness for the construction of the new building. We are proposing to have a town pocket park off of Marshall Street. With us maintaining occupancy of this building and the pocket park, we will end up having a front yard setback that is greater than 30 feet. Because of that, we have requested a special use permit so that we can have our front of our structure past the 30 foot, you know, setback. And I'm sure Will can talk to any questions that may arise regarding the specifics of that zoning ordinance.

Terry Cooke: Thank you, Rhonda. Do we have any interested parties who wish to speak for or in opposition to the special use permit application? Hearing none.

Bridge Littleton: I'll go.

Terry Cooke: Please. [off mic]

Philip Miller: We're moving your seat outside.

Bridge Littleton: [inaudible] Mr. Chairman, how are you?

Terry Cooke: I'm very well, good to see you. [multiple speakers]

Bridge Littleton: For the record, Bridge Littleton 5 Orange Drive for the moment. I'm kidding. No, I just wanted to address the commission and those at the lake. And thank you all for your time and diligence in reviewing the town's application, not only on the demolition last time. You

know, it's a hard thing to see this building go. It's been such an integral part of the town, but as great as it's been, it's time to have appropriate space for everybody, including everybody who serves the town. But I think the really special add to this, which I'm really proud of it, that the town staff and the different committees have been working on it and bringing it to you is this idea of this pocket park. Not sure I'm crazy about the name. But, you know, one of the things that you all put into the comprehensive plan that was expressed from the residents was more open and green space. And Middleburg is pretty challenged because we're pretty well built out. So being able to find creative and innovative ways to create, you know, more green space for people to use and enhance the beauty of the town, especially as sort of an entry way to our new town hall would be fantastic. And so I really appreciate your all's consideration of the application. And Danny has committed to always keeping it trimmed and mowed and weeded and hedged. So we really appreciate that. But no, you know, at the end of the day, I hope you all look on the application favorably. And I think that's all I had. But I appreciate all you all's diligence in this whole process. It's really appreciated. Thanks.

Terry Cooke: Thank you. Any other interested parties who wish to speak to this matter before we close the public hearing? Yes sir.

Philip Miller: Philip Miller, eight Orange Drive. I appreciate you all looking at this very diligently. We on council have worked very, very hard on this project for over six years. We have gone through every detail over and over and over again with a fine-tooth comb. And this is essentially the only way this project gets done. It's not perfect. Compromises had to be made and that's part of governing and that's part of getting something done on a project on the scale of this size. I think that the tremendous value that this project will bring to the town far outweighs any compromises that were made in the overall project. The addition of the town green and the pocket park being only two of them. And I believe if memory serves me from Will's memo, four of the strategic objectives laid out in the comprehensive plan are actually accomplished through this single project. And that is tremendous, in my opinion. I also think that the additional public amenities that we've been able to incorporate into this, including additional parking downtown, public bathrooms, public meeting spaces, the ability to have continuity of location for our government, all of these things bring tremendous value to this project. And I hope that you support it. Thank you.

Terry Cooke: Thank you.

Cindy Pearson: Hi, I'm Cindy Pearson, and I sit on council. As part of that, I also sit on HDRC, and we think that this pocket park will add a great part to the building and give us a nicer entrance way into it and hope that you all vote favorably for it. Thank you.

Terry Cooke: Thank you, Cindy. Any other speakers who wish to address us on this issue?

Philip Miller: Peer pressure.

J. Kevin Daly: John Kevin Daly, 112 North J Street, Middleburg, Virginia. Proud resident since my retirement from the United States Army. There's a lot of other folk. Are you still awake, Don? Other folks who have served overseas? And my last 10 years, every other year was spent in the desert. I really like green. That was one of my choices to retire here in Middleburg. You can walk everywhere, but there's a lot of concrete down the main street. The idea of having an extra park right behind the Safeway. And I think that does a tribute to the town and that nothing's going to waste the space of a building that has been here for many, many years, it's going to add and enhance to the ambiance of the town of Middleburg. And it makes a beautiful entrance to the new town hall. So I ask each of you to think [inaudible] to thank you. I fully believe that you're going to find that this has absolute merit and will vote to ensure that we do have the pocket park. And I thank you for your time.

Terry Cooke: Thanks Kevin. Any other speakers wish to address this matter? Hearing none, we will close the public hearing and I'll now invite members of the commission who have questions of staff or the applicant or other interested parties to raise those at this time. Please, again, state your name if you choose to speak. Commissioner Fleischman.

Ed Fleischman: Thank you, Mr. Chairman. My name is Edward Fleischman, Planning Commissioner, as an appointed official of the Planning Commission I feel it's my responsibility to give my opinions. I don't take this responsibility lightly. I reviewed this request extensively. I went back through the history of the project. And I appreciate the comments by the mayor and the council people that are here. There are a series of compromises on any project, and nothing is perfect. But the request for a special use permit for the front yard greater than 30 feet is inconsistent with previous actions by this commission. The citizens of Middleburg have signaled time and time again that they are against change in the towns, look and feel. Based upon this view we, as the commission recommended to council to increase the as of right development restrictions in the Ridgeview subdivision, which was recommended to us by council. So we restricted the height in the Ridgeview section, and we also put restrictions on side yard use. These restrictions probably decreased the value of the existing homes and properties in the Ridgeview, and we did it to maintain the town's look and feel. Again, there were compromises, but it was, I think, a hard decision to do that. So that was a decision that was made a few months ago. Now, a proposal is before us to reduce the front yard requirement at the middle town hall site. The proposed action would push the town hall entrance further from the historic core of Middleburg and I believe change the towns look and feel. An alternative exists to build the new town hall, continue to plan, and build the town hall on the current site. But after completion of the new building to tear down the building, this building or reconfigure it and use it and use it as an entrance way into the new town hall behind it, I think it's important to focus the

town hall project on the historic Middleburg. And I'm afraid that there's been too much of a focus on the back on Salamander. That's my opinion on that. And I think there are alternatives. Now, I tried to keep my comments just on the special use permit that's directly before us, but I have 50 years' experience in engineering and construction, project management, and I looked at the project and I just feel it's as it's gone through, you've seen some cost increases in your development. And I know the council has made some very good decisions to cut back on some of the extras in the particular project. You've done a good job in that. But in my experience, any large construction project complicated generally is going to go 20 percent over the construction costs that the engineers proposed in an early stage. So I think that you have to be ready and have some money available for increases in the 20 percent range. So in final, I think the project is overblown. It's more attuned to being in Ashburn than in historic Middleburg. And I plan to vote on recommending to council that we move ahead with the special use permit. Thank you.

Terry Cooke: Thank you. Any other members of the commission wish to speak to this? Mr. Jacobs.

Bud Jacobs: I'll limit my comments and they'll be brief to the special use permit application that's before us. The information that is laid out in Mr. Moore's excellent memorandum explaining the background and the impact of this particular application to me make the case that approving the request because of the benefits that will accrue to the town and to the general atmosphere around our new town hall are self-evident. And taking putting other issues aside, I urge the commission to recommend to town council that we approve this application for special use permit for the pocket park. I guess we're calling it now. Thank you.

Terry Cooke: Thank you Bud. Other members. Is that.

Don Woodruff: Mr. Chairman.

Terry Cooke: Yes. OK, Don. Commissioner Woodruff.

Don Woodruff: Thank you very much. Don Woodruff Vice Chair. I had expressed some of the same concerns, but mostly earlier on the fact that maybe the police should have a presence in the front of the area where the pocket park might be. And I expressed these to Will and to Danny and to other people. And I got wonderful answers that it just didn't work out as well. And they went over clearly that this area would not be an appropriate parking place for police cars etcetera, and that the plan entrance to the new town hall and the parking area behind was in no way a deference to promoting Salamander or anything of that ilk. And so I side with Mr. Jacobs on this that I think we should move forward with it. I understand exactly what Commissioner Fleischman is talking about and that is a concern. But personally, having gone over it with the powers that be, I feel that we should move forward. Thank you.

Terry Cooke: Thank you Don. Commissioner Stein.

Mimi Stein: Can I go, Yeah. Anyway, excuse me my voice. I'm kind of repeating myself, but I'm so excited about the idea of having a pocket park, a green space. I think that it actually forms or can form a very wonderful presentation to the town hall. I don't think that the doorway to the town hall has to be so close to the street. We have needed a very evident, obvious, accessible green space for years. And the shopkeeper in town for over ten years, we had tourists coming through all the time looking for a place they could sort of rest a little bit or meet with other friends and, you know, a town square, which we don't have. And it is very common in old-fashioned towns. And this would finally fill that need. We've had a need for a green space to support events. And I don't know if Cindy Pearson is still in the room, but she and I used to always talk about we would knock the Safeway down if we could [laughter] so that we could have a green space in the center of town. You know, and I just think all there's so many things that this pocket park would provide, all in keeping with the feeling of the town and things that we put into the comprehensive plan I see it in very much in sync with what we're looking to accomplish. So I'm certainly in favor of creating the set back and proceeding like that myself. Thank you.

Terry Cooke: Thank you Mimi. Any other commissioners wish to express their views on this before we move on. OK, hearing none. We will entertain a motion on the matter before us.

Dev Roszel: Mr. Chairman, I'd like to make a motion move the Planning Commission forward the SU21-01 to council recommending approval because the request is consistent with a comprehensive plan and with the criteria for granting a special use permit. The recommendation is subject to general conformance excuse me, with the exhibit titled Middleburg Town Hall Site Layout and Geometric Plan by Timmons Group dated 2-8-21.

Bud Jacobs: Second. [multiple speakers]

Terry Cooke: We have a motion [multiple speakers] Any discussion. We have a motion and a second. Rhonda, would you call roll?

Rhonda North: Vice Chair Woodruff.

Don Woodruff: Yes.

Rhonda North: Commissioner Fleischman.

Ed Fleischman: Against.

Rhonda North: Commissioner Minchew.

Rachel Minchew: Yes, I approve.

Rhonda North: Commissioner Roszel.

Dev Roszel: Approve.

Rhonda North: Commissioner Stein.

Mimi Stein: Approve.

Rhonda North: Council Member Jacobs.

Bud Jacobs: Aye.

Terry Cooke: Very well, thank you. The motion is approved. Commissioner Fleischman.

Ed Fleischman: I just wanted to say that I thought that the motion would pass by that vote, but I felt it was important for me to give my opinions. I have nothing, you know, personally against any of all the planning work that went on, you know, for six years as Commissioner Phil Miller said. So a lot of work went into it. And I go with the flow. It's been voted and I accept it. And I look forward to having a great town hall project.

Terry Cooke: Agree to disagree. Thank you.

Don Woodruff: Here, here.

Terry Cooke: Thank you, Commissioner Fleischman. And thank you for your comments and considerations on this. The next item on the agenda for this evening is our new business, and we have a request by Byron Hughey for approval. I hope I got that pronunciation correctly for approval of the preliminary plat of subdivision for three lots at 300 East Washington Street. And Will would you please set the table on this for us?

Will Moore: Yes. Thank you, Mr. Chairman. We have three new business items all related to subdivision [off mic] tonight as I will go through each none are request for action this evening. But it's an introduction to each of these. The first one is a new request. It involves a preliminary plat for subdivision of an existing twenty-one thousand plus square foot lot at the northeast corner of Washington and J Street to subdivided into three lots. It is zoned R3, which for a single family detached residential use, which is proposed here, requires a minimum of 7000 square

foot per lot. And as noted within my report, those minimum requirements are met in terms of lot area as well as lot width for each proposed lot. The one kind of anomaly with this is, as noted in the report, that the existing property contains a non-conforming use, that is, that you otherwise could not have two separate single family detached structures on one lot in the R3 zoning district, as currently exists today. There is a historic structure at 300 East Washington Street, which I'll refer to as the main structure of the property. And there's a smaller but functional single-family dwelling to its rear at three North Jay Street. And when you have a nonconforming use of certain modifications can be made to the land or to the use, so long as the modifications do not result in what we call an increase in the non-conformity. How do you measure that with a situation like this? Well, we look at it in terms of the density requirements. So unlike counties, which use larger density requirements, X amount of dwelling units per acre because we have smaller lots. We have these minimum requirements for lots and often expressed or always expressed in square feet. So for single family detached residential use in R3 district it is stated that you need at least seven thousand square feet of land area. So if this application involved a reduction in the size of this original lot to no less than 14000 square feet then those two structures could still exist in single family use on that same lot. However, because this proposes reducing that lot that contains these two structures down to seventy-six hundred and fifteen square feet, that means that those that nonconforming use could no longer continue. So I've had discussions with the applicant about different ways that they could address this. And one would be reducing it to only two lots, one of which would be 14,000 square feet or larger, and those two dwellings could remain. However, the owner would prefer to do the three lots subdivision and in conjunction with that would need to either propose for demolition or otherwise modification to that structure to render it uninhabitable as a single-family dwelling. So it could continue to be used for an accessory structure. It could be like a home office kind of use that is an accessory to the principal dwelling. It could be used for storage, things like that. So the actual disposition, whether it would be demolition or modification, would not need to be addressed at the time of the preliminary plat because it's not recorded. But prior to any final plat approval, that disposition would have to have taken place either demolition or subject to inspection by staff that it had been modified so that it will no longer be inhabitable as a single-family dwelling. Otherwise the basics of the preliminary plat are in conformance with the zoning regulations of it's under review by actually, I just got the comments in today from our Town Engineer, some minor comments with some comments that need to be addressed before the preliminary could be considered for approval. VDOT has already signed off on this allocation. I will say, and I stress in my memo that there is good opportunity here and that there is an existing gravel drive in front of the home that connects to Washington Street. It's not the best in terms of the ways defined it washes out often there is a storm structure there and washes gravel out to the road. Plus, it just doesn't have the most safe way to enter and exit off of with direct access [off mic] route [off mic]. This proposal would close off that drive and it would put a common drive access of North Jay Street that would serve the rear of each of these lots. That would be a much preferable situation. And then finally, as I noted here, this is within the

Middleburg historic district, so any new construction would happen on the two new created lots would be subject to review and approval to ensure that the new structures are in keeping with the historic district design guidelines. A very important point, I think, is this is on the main entryway into the town. But you do have that protection for any new construction. If the applicant chose to demolish the second structure on the existing parcel, that would also have to go through an approval with the historic district review committee. It is my understanding, though, that he is leaning toward the idea of the modification of the structure, so it would no longer be [off mic]. This because it is a preliminary plat our audience does require a public hearing on the matter. So that would be scheduled for your meeting in July. And depending on the status of review at that time, it may or may not be appropriate to take action at that time. But we would go ahead and hold the hearing [off mic].

Terry Cooke: Ok, Will, thank you very much. Just one early comment and perhaps others have seen this as well in looking at the preliminary plat, I think it's on page two where there's a note about that existing nonconforming structure. It says it must be rendered inhabitable. That obviously should be uninhabitable. [off mic] OK. [off mic] All right.

Terry Cooke: Yeah. [multiple speakers] Type-O [off mic]. OK. All right. Any other comments or questions by members of the commission?

Mimi Stein: I have a quick question. The little house do you know what year it was built?

Will Moore: I don't have that right in front of me, but I can get that information prior to next month for you.

Mimi Stein: Ok, anyway.

Terry Cooke: It's subject to historic commission review, is it not? Yeah.

Don Woodruff: Right.

Mimi Stein: Well, you know, looking at that property, which is right near my house, I see it all the time. And I suppose something like this was inevitable because it's [inaudible] could be a pocket park. OK, I was just curious that the little house. Somebody is living in there now, though, right?

Will Moore: Oh, yes. Yes, it is inhabited currently.

Mimi Stein: Okay.

Terry Cooke: Thank you Mimi. All right. Any other comments or questions. Very well, we'll see this again next month, I presume.

Will Moore: Yes, sir.

Terry Cooke: OK. All right. Thank you. Next item under new business is the request by Middleburg Land LLC for approval of the Final Plat of Subdivision the 38 lots. And we will again ask Mr. Moore to give us a summary of this.

Will Moore: Yes, thank you, Mr. Chairman. So Banbury Cross Reserve, I think it's probably still fresh enough with all the commission members from your action previously on The Preliminary Plat. So this project has been progressing. As I noted in my report to you. You will recall that the applicant made some verbal statements to you prior to approval of the preliminary plat. Among those included voluntarily, including the town by submission of the construction plans to staff in the construction planning process. And as much as we would continue to monitor the development of the construction plans, although we have no approval authority over the construction plans, that is solely for the county per the ordinances. There are some [off mic] ordinance and ours in addressing our extraterritorial subdivision control, and I think that was an important thing to keep us involved in that. Preliminary plats can often morph to some degree as they go through further development in terms of the technical construction plans and as it evolves to the final plat. We see that with The Residences at Salamander, where the original layout included some one-way loop roads in both of the residential sections there. Those have morphed a little bit. So we wanted to keep an eye on this particular development, especially with the level of public concern that was raised for the potential development of some of the Historic resources that exist on the property that were known, so, you know, if those lot configurations or the street layouts were to morph, we would want to monitor those. Happy to report to you that the layout has not changed whatsoever. Lot lines have not been moved and the engineering has progressed with the layout, with all the appropriate buffers from the surrounding streets, the lot layouts [off mic] it has all progressed in strict conformance, not just general conformance, but strict conformance with the preliminary plat approval. It is currently in its second iteration, that is the construction plans of review with the county. And the applicant has now chosen to file for the final plat consideration of approval. As that moves forward there is no public process at this point in terms of public hearing that goes along with the final plat. However, we want to, and the applicant has expressed in a meeting last week that he is not going to press the commission on timelines for approval. We dealt with this during the preliminary approval. We know that there are some code mandated timelines that require action within a certain length of time after submission. However, an applicant can voluntarily waive those. So I'm expecting that letter to that effect of coming in soon. Certainly before next month, you still would not be obligated to act next month by timeline. But I expect a letter coming in and the goal of the applicant is to get the final plat in an approval form before requesting action. So he would not be, and we would not be

proposing any sort of conditional approval of the final plat. We would make sure that it is in an approval form before it was requested of action by [off mic]. One other thing, going back to the applicant's comments made during the preliminary plat process, he had stated that he was willing to voluntarily restrict certain commercial uses and provided a list of those commercial uses from consideration for use in the project and in particular on the rural economy lots those large lots. The deed of dedication of the subdivision that was submitted with the plat and is under review by the county attorney's office does not contain any of those restrictions. However, those are going to be presented. He's not exactly sure the form where it will be a covenant of some sort, but whether that gets incorporated into the association documents or covenants in a different form, he's not yet worked that out with his attorney. But he is assured [off mic] that that list of commercial restrictions will be incorporated into a legally binding restriction. [inaudible] That would be confirmed before you will be requested to act on the final plat. That being said, I do remind you in the staff report that we have no legal authority to require that of him, but I think it will definitely be a showing of good faith if he actually does follow through with those. And again, he assures us that he is going to do so with those restrictions. So, again, no action requested of you this evening, but I will keep you involved if this is not in an approval form by next month, I will report back to you on the progress on it and we'll keep you informed up until such time as the [off mic] reached out approvable [off mic].

Terry Cooke: Thank you Will. I think everyone on the commission would agree that those concessions by the applicant on the limitations on uses, on the rural economy lots was a big factor in our consideration to allow this matter to proceed. And so I'm hopeful that a binding resolution or process can be achieved on that. I presume the Town Attorney will get involved in reviewing whatever is proposed in that respect.

Will Moore: It is my intent to have our attorney review that document when it was presented. Again the applicant was literally coming from his meeting with me last week to a meeting with his attorney to talk about specifics of how those restrictions can be incorporated into a [inaudible] of some sort.

Terry Cooke: Very good. Thanks. Well we look forward to hearing more about that. [laughter].

Will Moore: Yes sir.

Terry Cooke: OK, any other members of the commission. Council Member Jacobs,

Bud Jacobs: This is really helpful. Will, I appreciate it and thanks for taking the time to walk us through it. Assuming that the applicant does follow through with some written instrument outlining restrictions on future uses, what, in your view, is the best way to memorialize that? Are those restrictions included as part of the final subdivision plat when it's recorded or with the

deed? You mentioned the HOA restrictions and it seems to me, I'm not a lawyer, but it does seem to me that the potential use of the HOA to somehow record those restrictions is a little weak. I at least would prefer to see either restrictions recorded with the deed or with the subdivision plat itself. However, that's best done. And that's my question to you. How do you think it's to protect the interests that we feel strongly about in terms of future uses? What's the best way to go about that?

Will Moore: I think it's a good question and one that I may have thoughts on, but I think it's best answered by the Town Attorney's Office.

Bud Jacobs: Okay.

Will Moore: My plan at this point is to see what is presented to us and then have our Attorney's analysis of that and as to its potential efficacy in achieving what we're looking for.

Bud Jacobs: Fair enough appreciate it.

Will Moore: Yes sir.

Terry Cooke: Thank you, Bud. Any other members of the commission have any thoughts on this? Commissioner Woodruff.

Don Woodruff: Yes, I would just say that, yes, thank you. I totally echo Bud's comments with regard to this. I just hope that it is put in a manner that is clear, precise, and effective in the long term. Thank you.

Terry Cooke: Thank you Commissioner Woodruff. Any other comments on this before we move on? Thank you all. The final discussion item is a request by Middleburg Residential LLC for approval of the final plat of subdivision for 49 lots located in the R3 residential section of Salamander. Mr. Moore.

Will Moore: Thank you. So just one minor correction in the combination of the R1 and R3 sections.

Terry Cooke: I'm sorry. Excuse me.

Will Moore: No, not at all. There's lots of letters and dashes numbers there. So obviously this has been an ongoing process for some time. If you get that from just the application number, beginning with a 15 representing 2015 when it was originally submitted. So just a quick history. The preliminary plat was applied for and approved in 2015. The construction plans were

submitted shortly thereafter in late 2015, following about a month-long review of the first iteration of the plans to return comments to the applicant. And then there was a stalling of the project for several years. At one point in time, we, the Planning Commission deemed the application inactive and then the applicant had to take certain steps to reactivate the application, which was done. It restarted briefly in 2019 with the original project engineer and then again, one iteration of review took place. We return comments and a number of things happened. The applicant brought on a new development partner. So there were some discussions going on there and then ultimately switched project engineers. And after that brief stall, this time it restarted in late 2020. So essentially in November of this past year and we've been going through an iterative process of review of the construction plans ever since. Made reference during the previous application that there's been some evolving of the plan, but still in what has been deemed substantial conformance with the preliminary plat. But the most notable part is the one-way Loop Roads in both the R3 and the R1 sections have been eliminated. And we have two-way roads [off mic] really made for a much more efficient layout, both of roadways in terms of environmental impacts of excess asphalt. And I say that because a two-lane roadway is not twice as wide as a one-way roadway, even though you might think so. But due to emergency access requirements, a one-way roadway often is just a few feet more narrow than [off mic]. Again, better layout and respecting the existing topography with the two-way roadways and then just a more efficient layout of water and sewer infrastructure, less of that infrastructure for us to maintain. So we have one water main running down the center of the road rather than a looped water main that is twice the length. So but that's really been the main evolution in the plans. Those plans are now reaching an approval form. Take a pause for a second and just give you a quick update. You've probably kept up to date, but you know that you had acted at your last meeting on a recommendation to council on a proffer amendment related to the residential portion. And that was the proffer amendment that started with a proposal to eliminate the Reed Street connection. It started with a proposal to revise [off mic] facility layout so that there would only be sidewalk or trail on one side of the development throughout. And it involved the issue was regarding potential construction traffic entering. The way it was currently proffered was construction traffic could only enter on Foxcroft Road. They were proposing to also add North Pendleton Street as an option for construction traffic entrance. Your recommendation to the council was a recommendation for disapproval of the Proffer Amendment based on the Proffer Amendment as of that date when you took the action. Subsequent to your act and let me back up within your recommendation, you cited opposition to the elimination of Reed Street. You cited opposition to the revision of the sidewalk layout. But you did cite support for opening up construction traffic to North Pendleton Street. Subsequent to your recommendation and our initial briefing to council at their second meeting in May, so late May it's actually the same week as your meeting just later that week, subsequent to that meeting, the applicant again revised their proffer statement and they removed the request as it relates to Reed Street, so the Reed Street extension is remaining in the plan as of now. They removed the request for [inaudible] pedestrian facility. So throughout the development, there will now be sidewalk or trail on both

sides of the street. The only substantive request that remained in there was for the construction traffic issue. So the council ultimately approved the proffer amendment. But I'm happy to say it was essentially in conformance with your recommendation on those items that you were opposed to, were removed from it. The only item that remained was the one that you stated support for. So back to that. Now that that issue has been resolved, we are working through the final details of the construction plans of the only real technical requirement that remains at this moment has to do with a water line relocation that and we're working through that and nearing an approvable form for the construction plans. So based on that layout, we have now submitted the final plat for consideration as well. That final plat is in strict conformance with the construction plans that are before us. However, it is going through our technical review just to make sure we don't miss anything and that plat the deed of dedication is with our town attorney for review. And again, this is not a request for action this evening. We would only request that you take action on the final plat once it is deemed to be in an approval form. So we would again, just like with Banbury, we would not present a final plat to you with any conditions attached to it. We want it to be approvable with no issues outstanding before we would request action. But I did want to update you again to the fact that the application has been made and we are going through process of the detailed review now.

Terry Cooke: Great, thank you Will. I just wondered Will in all of your discussions with the applicant, do you have a sense of when they realistically expect to start construction, moving dirt, building roads, pushing Reed Street through, etc.?

Will Moore: Right of moving dirt could happen as soon as next month, but as soon as July. More than likely August. But it could potentially happen. There's a path to getting a grading permit, approval before final construction plan approval that they're pursuing with us. So there may be some dirt being moved very soon, but they are very anxious to get the final plat in an approvable form as soon as possible because then they can record that, create the individual lots, and potentially convert non-binding reservations that they have on many of the lots at this point to actual contracts so then they are very motivated to get that final plat cleaned up.

Terry Cooke: Thank you. Any other members of the commission have any questions or comments? Bud.

Bud Jacobs: Just a quick question, I believe it, if not last council meeting than the one before that, the one that Prem attended, there was discussion about construction traffic and how Salamander plans to ensure that traffic remains limited on the two routes that have been approved. Can I ask if you've had any chance to advance discussions with Salamander on that question?

Will Moore: So I've not had the chance to advance it with Mr. Devadas to this point, which [off mic] Town Manager I want to have that discussion, but I have had discussions with their development partner, as well as their project engineer about things that might be included in some of their potential bid documents. I think that's really where Mr. Devadas is addressing as well, but as well as additional notations [off mic] the construction plans themselves that they will have detail out the routes that should be used for any construction traffic access at this time.

Bud Jacobs: And this presumably would include performance letters with their contractors and subs imposing some form of penalty if a contractor is found to violate the construction routes.

Will Moore: So none of the discussions I've had with development partner, or an engineer have touched on that, but Mr. Devadas has definitely touched on those items when he addressed Council and that's part of what [multiple speakers]

Terry Cooke: Thank you. Other commissioners, any comments?

Ed Fleischman: Yes, so Will, we're going to have to put in the same restrictions that Salamander has on construction traffic on the Town Hall project.

Will Moore: We've already done that, actually.

Ed Fleischman: Good.

Will Moore: Yes sir.

Ed Fleischman: We're going to have a lot of construction simultaneously going on in town.

Will Moore: It may get a little dusty there for a little while. [laughter] [multiple speakers]

Terry Cooke: That's what I was going to say.

Ed Fleischman: Thank you.

Will Moore: We may need some pardon our dust [off mic] in our entryways.

Terry Cooke: Ok, thanks. Thank you all. Moving on, Council Member Jacobs anything to report.

Bud Jacobs: I never know what to share with you guys from the scintillating activities of the Middleburg Town Council. I would say that we've been briefed on the impact of the town's experience with the pandemic over the past year or so. And you may recall that the town went

through three scenarios for its budget, trying to figure out what the various resource hits might be as a result of loss of business and revenue and everything else associated with the pandemic. And the most likely scenario as it was dubbed, foresaw a reduction of revenue on the order of about 20 percent for the fiscal year. And it's not entirely certain. But I'm happy to report that the actual impact may be substantially smaller than 20 percent. The biggest hit we thought would be taken was on our meals tax for obvious reasons, people not going to restaurants and such. And it turns out that actions that council took with respect to helping the restaurants and the food voucher program may have mitigated that a little bit. The receipts for the I forget now which month I guess it was May that we received. Is that right, the meal tax or was it April?

Rhonda North: So we will get. [off mic] We just received May.

Bud Jacobs: Just received May. Those revenues for meals tax reflected in the May receipts are only down about eight percent. So if that holds, it looks like the town is going to emerge from the crisis in somewhat better shape than we all anticipated. In addition, the town has received word that we are going to get about eight hundred and twenty thousand dollars from the COVID relief funding package. And we've had discussions about how we will use those funds. The money will come in two tranches, one fairly soon, and I guess the second one later this year or early next year. One of the things we're going to do is we're going to provide town residents with another hundred-dollar utility credit that will be reflected in your September bills. We're going to be able to repay the money that we took from the Middleburg Foundation, the health care foundation. I think we took 250,000 something like that from them. We borrowed it. We're going to be able to repay that in one gulp. And the bulk of the rest of the money is going to be used for, at this point, undetermined projects for town utilities. So there will be a lot more on that coming. And I think it's probably too early to be congratulating ourselves on a on a decent outcome. God knows anything could happen with the pandemic. But I would say the general message so far appears to be so far, so good.

Terry Cooke: Thank you. Thank you very much. Next item is just to consider a quorum for the next meeting on July 26th. Are all the commission members available for that meeting? Anyone not available?

Don Woodruff: Yes.

Mimi Stein: Yes.

Terry Cooke: Yes, you are available. [laughter]. OK, great.

Will Moore: And just a reminder of Mr. Cooke. This with the expiration of the governor's order and council's own position of our emergency order. This is the last meeting during which remote

participation will be possible except as otherwise permitted under state code for certain emergencies. If you have any question about how those were, contact Rhonda she will be happy to walk you through when you can do that.

Terry Cooke: I look forward to seeing everyone's smiling face in person [off mic].

Bud Jacobs: Rhonda can give you a briefing. [laughter].

Terry Cooke: OK with that, folks, thank you so much. We are adjourned. Rhonda, thank you very much for your tutorial. As always.

Rhonda North: Thank you. [multiple speakers]