



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



**MONDAY, NOVEMBER 22, 2021  
PENDING APPROVAL**

**PRESENT:** Terence S. Cooke, Chair  
Donald Woodruff, Vice Chair  
Edward R. Fleischman, Member  
Rachel Minchew, Member  
H. H. "Dev" Roszel, Member

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

**ABSENT:** Mimi Dale Stein, Member (excused)  
Morris "Bud" Jacobs, Councilmember

The Middleburg Planning Commission held their regular meeting on Monday, November 22, 2021 in the Town Hall Council Chambers. Chair Cooke called the work session to order at 6:36 p.m. Town Clerk North called the roll.

On behalf of the Mayor and Council, Town Manager Davis thanked the members of the Commission for their service over the past year. He explained that in lieu of the Annual Volunteer Appreciation Reception, the Council was distributing a small gift to the appointed officials. Mr. Davis noted that the Council also wanted to give special recognition for the Commission's hard work to update the Comprehensive Plan and distributed candy dishes engraved with the Middleburg marketing logo.

**Discussion Items**

**Short-term Rentals**

Deputy Town Manager Moore reminded the Commission that the Council asked them to develop a policy recommendation related to short-term rentals. He further reminded them that an ordinance was adopted five years ago that allowed them by special use permit (SUP) in the R-1, R-2, and R-3 Districts. Mr. Moore reviewed the performance standards that were included in the ordinance and that must be met for a special use permit to be granted. He reminded the Commission that the primary use of the house must be for residential purposes for more than half of the year.

In response to an inquiry from the Commission regarding homeowners' association (HOA) prohibitions for the Meadowbrook Subdivision, Deputy Town Manager Moore advised that that area was not eligible for consideration for use for short-term rentals, as one of the zoning ordinance requirements was that the home must be a detached single-family dwelling. He reminded the Commission that he, as the Zoning Administrator, would enforce the Town's zoning regulations and an HOA would enforce its own standards. Mr. Moore opined that in general, if an HOA board appeared during the public hearing on a SUP application and stated that their rules did not allow such a use, it was likely the SUP would not be approved.

Deputy Town Manager Moore reminded the Commission that no applications had been received for a SUP for a short-term rental in five years; however, the staff had received inquiries regarding them. He noted that a pending residential development was marketing this as a potential use for their homes, which the entity would manage. Mr. Moore advised that while they believed the performance standards were good, the Council was interested in developing directives for how applications should be evaluated. He noted that they were also interested in determining whether limits should be imposed on the number of short-term rental units allowed to avoid the saturation of a geographic area; and, whether limits should be imposed on the frequency of this use. Mr. Moore explained that to address Council's concerns, he was proposing language that would require separation between units approved for this use to address the saturation issue and guidelines for evaluating the frequency of the use. He noted that his initial draft included potential statements that could be added to the Comprehensive Plan that would link to statements already found throughout the plan regarding the need to preserve Middleburg's character; that would talk about the affect of saturation of the use on a neighborhood; and, that would talk about the impact of the use on neighboring properties. Mr. Moore advised that accompanying this statement would be text amendments that would revise the standards in the zoning ordinance to require a certain amount of separation between the uses. He noted that if this were added, it would create a first-in situation in that the first person to receive a SUP in an area would be the only one eligible to have one. Mr. Moore advised that he had spoken with the Town Attorney regarding this and had not been told not to pursue this option. He noted that he was also proposing to replace the language limiting the use to one hundred eighty days per year with a scaled chart. Mr. Moore advised that he had not yet developed a recommendation for what those numbers should be as that would require more study. He noted that he was proposing a three-tier approach to this limit, although it could be a two tier one. Mr. Moore explained that the reason for this was that there were a few homes in some areas that were isolated from a neighboring dwelling; therefore, the Town may wish to allow them to be used for short-term rentals for a greater number of days. He stressed that these were his initial thoughts on this matter and requested the Commission's feedback. Mr. Moore advised that if his recommendations were acceptable to the Commission, he would return with a more detailed recommendation for discussion during their next meeting.

Chair Cooke agreed with the recommended approach. He opined that the separation of the uses was important. Mr. Cooke noted that, based on his research of other jurisdictions' regulations, allowing the use for one hundred eighty days per year was generous. He opined that it should be a shorter duration. Mr. Cooke suggested the Commission focus on duration, proximity, and concentration of the uses.

In response to an inquiry from the Commission regarding whether the Town was trying to prohibit the use through regulation, Deputy Town Manager Moore advised that the Town must make an accommodation for the use even if it was only in one zoning district. He confirmed that the Council was not trying to prohibit the use and stressed that there was nothing in the ordinance that would do so, nor was there anything in his proposed recommendations that would do so. Mr. Moore explained that the purpose of these changes was to protect the character and feel of the neighborhoods. He recommended the rules be structured so the use would not occur frequently or be on top of each other in a neighborhood.

In response to an inquiry from the Commission as to whether the Council was trying to address Salamander's plans, Deputy Town Manager Moore confirmed this was not directed exclusively at their residential development. He reminded the Commission of the concerns about changes to the character of the Ridgeview area and advised that part of that was the fear of introducing new uses into the neighborhood. Mr. Moore explained that the Council was trying to get ahead of any applications.

Commissioner Fleischman opined that as currently written, the requirements regarding property management made it difficult for an individual to comply with the ordinance. He further opined that it was trying to prevent the use. Mr. Fleischman suggested that Salamander's attorneys proposed the regulations and questioned whether the Town wanted to restrict the use to the Salamander housing development.

Deputy Town Manager Moore reiterated that the Council wanted to get ahead of the applications regardless of who the applicant was. He advised that Salamander's attorneys were not involved in the development of the regulations. In response to an inquiry from the Commission, Mr. Moore advised that each property owner must apply for a special use permit and go through a public hearing process before both the Planning Commission and the Town Council. He confirmed there could not be one application for a group of homes; however, he noted that multiple applications could be submitted at once. Mr. Moore advised that it was not uncommon for a property owner to be represented by someone during the application process. He reminded the Commission that there were lots of models for short-term rentals, some of which involved the property owner being on-site and others which did not. Mr. Moore explained that the reason for the property management requirements was not to make it difficult for anyone to apply but rather was so there would be a responsible party in the near vicinity to address any problems that may arise.

Chair Cooke opined that it was good planning to develop regulations before there was an issue. He advised that it was not uncommon for one of the tools to be a special use permit. Mr. Cooke reminded the members that no public comments were received during the public hearing when the existing regulations were proposed. He opined that this was not directed at Salamander but rather was a case of the Town being pro-active in dealing with a situation should it arise.

In response to inquiries from the Commission, Deputy Town Manager Moore advised that any use that was found that did not have a special use permit was subject to a potential zoning violation. He noted that he first tried to address the issue with friendly outreach; however, if that did not work or the property owner lived out of town, he would issue a formal notice. Mr. Moore advised that if the property owner did not comply, the Town could impose civil penalties or request the circuit court address the violation. He noted that he had been able to get these matters resolved before reaching that point in the past. Mr. Moore advised that enforcement was driven by a combination of complaints and the Planning & Project Associate pro-actively monitoring short-term rental sites. He reported that as of the last check, none were found in Middleburg.

In response to inquiries from the Commission, Deputy Town Manager Moore advised that he would confer with the Town Attorney to determine whether an expiration date could be attached to a special use permit and would return with a response. He advised that the ordinance required the payment of transient occupancy taxes (aka lodging taxes) for such uses; however, he suggested the need for that requirement to be more visible, as it was currently in the definitions.

Commissioner Fleischman suggested that the term "sewer" be changed to "sanitary sewer" in Section J regarding the requirement that a home be connected to the public system.

Deputy Town Manager Moore advised the Commission that he would propose some numbers next month for their consideration regarding frequency of the use. He asked that in the meantime, the members review the draft Comp Plan language and provide their recommendations for changes. Mr. Moore noted that he would continue to discuss this with the Town Attorney and get his recommendations.

The Commission noted that the regulations must be enforceable. With regard to the separation issue, they noted the need to address the question of whether buildings such as garages would be included in determining the amount of separation if it were measured between buildings.

Chair Cooke adjourned the work session and called the regular meeting to order at 7:21 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 October 25, 2021 Regular Meeting Minutes as presented.*

Vote: Yes – Commissioners Woodruff, Fleischman, Minchew and Roszel

No – N/A

Abstain – N/A

Absent – Commissioner Stein and Councilmember Jacobs

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

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**Discussion Item**

In response to inquiries regarding the status of the R-2 zoning ordinance updates, Deputy Town Manager Moore reported that he was responding to questions and providing information to The Berkley Group for their analysis. He further reported that they planned to return to the Commission in February with a recommendation. Mr. Moore advised that he would check with them to see if they needed any guidance from the Commission in the interim to refine their list of suggested amendments.

In response to an inquiry from the Commission, Deputy Town Manager Moore confirmed that Salamander was initially promoting the option of managing any short-term rentals of the homes in their development; however, he was unsure of whether they continued to do so. The Commission asked that the Town staff check with Salamander’s marketing staff to see what they were telling perspective home buyers.

**Quorum of December Meeting**

In response to an inquiry from the Commission as to whether a meeting was needed in December, Deputy Town Manager Moore advised that he was planning for one in case it was needed to discuss the short-term rental recommendations, the R-2 District zoning text amendments or the Banbury Cross Reserve subdivision plat. He noted that the applicant was working through the review comments with regard to the latter item. Mr. Moore advised that as the date got closer, if there were no items ready for discussion, he would talk with the Chair about cancelling the December meeting.

In response to an inquiry from the Commission, Deputy Town Manager Moore confirmed another public hearing was not required for the Banbury Cross Reserve item. The Commission noted that they must vote to approve the plat as long as it met all the zoning requirements.

In response to an inquiry from the Commission, Deputy Town Manager Moore advised that the property owner put the property at the intersection of East Washington/Jay Streets, which was originally proposed for subdivision into three lots, up for sale and had taken no action to move the final subdivision plat forward. He further advised that the owner did reach out to him to ask about the process for subdividing it into two lots, which would only require administrative approval. Mr. Moore advised that the owner was contemplating his next steps.

Those members who were present confirmed they would be present for the December 20<sup>th</sup> meeting if it were needed.

There being no further business, Chair Cooke adjourned the meeting at 7:31 p.m.

RESPECTFULLY SUBMITTED:

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Rhonda S. North, MMC, Town Clerk

**Middleburg Planning Commission Transcript  
November 22, 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](http://www.middleburgva.gov))**

**Terry Cooke:** Ok. Good evening, everyone, and welcome, we will commence the Planning Commission's work session for November 22, 2021 and we will begin with our roll call, Rhonda please.

**Rhonda North:** Chair 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:** Present.

**Rhonda North:** Commissioner Roszel.

**Dev Roszel:** Present.

**Rhonda North:** Commissioner Stein is absent, and Council Member Jacobs is absent.

**Terry Cooke:** I understand we have some introductory comments from Council Member Jacobs, but apparently, he's.

**Rhonda North:** We'll let Danny.

**Terry Cooke:** Is he? Oh, I'm Sorry.

**Danny Davis:** Mind if I.

**Terry Cooke:** Ok, we'll recognize Danny Davis. Thank you, Danny.

**Danny Davis:** Thank you, sir. Commissioners, thank you for having me here this evening and on behalf of the Town Council just an opportunity to say thank you for your continued service and your dedicated hours to the town and for all the hard work you continue to do. Normally, we would gather at a large event at the Parish House, and we'd have a nice time together and celebrate and honor and be able to recognize various volunteers, but again, due to COVID and the concern about all being too close together the council this year decided to thank you in the form of little gifts. And so we wanted to recognize you at your meetings, but also then hand these out to you and then you have a special. There's an extra thing too, right? [off mic] We got those up front. Oh, OK.

**Rhonda North:** [off mic] Box here.

**Danny Davis:** That's the hundred-dollar bill. [laughter] As she's doing that. But I will say, take your time. Thank you for your efforts, especially as it related. We really never got to formally recognize the hard work on the comprehensive plan. All the hours put into that effort and all of the obviously the efforts you've been doing with Salamander was another large one under review. So Banbury was again a hard time, a lot of meetings. [multiple speakers] So all the work that you all done. Thank you so much. So again, not to speak for council, but just to say from them to you thank you so much for all your work and your continued volunteerism.

**Rhonda North:** This one goes to Rachel.

**Terry Cooke:** Thank you, Danny.

Have all these gone through x-rays? [multiple speakers] [laughter] Dunk them in water before you open them.

**Dev Roszel:** Thank you.

**Rhonda North:** That one is Terry's.

**Danny Davis:** Thank You, sir.

**Rhonda North:** And this one would be Ed's.

**Danny Davis:** And thank you Ed.

**Ed Fleischman:** Thank you, Danny.

And if of course what.

**Don Woodruff:** Thank you Middleburg.

**Danny Davis:** Of course, what we see in town, the way it's built out, the way it's planned and the reviews you do, it makes a lasting difference. It really does. And so from all of us to you, thank you for the time you put into it. We do appreciate it.

**Terry Cooke:** Well, thank you. And I think I can speak for all the commissioners when I say it's been our privilege and enjoyable for the most part. [laughter] So thank you to the council. Thank you very much.

**Danny Davis:** Yes, thank you.

**Don Woodruff:** Here, here.

**Terry Cooke:** We will now proceed to our discussion items. We have no action items on the agenda this evening, but we do have what I indicated last month, I think, an interesting matter for consideration and we're going to at least begin discussion of that tonight in a little more substantive manner. And I'll invite Will Moore to introduce the subject for us and then we'll get into it, Will.

**Will Moore:** Well, thank you, Mr. Chairman. As the commission is aware from my brief introduction last month, the council has asked that the commission do some study and help with some additional policy formulation as it relates to the subject of short-term rentals. I don't want to read my memo to you, but as

most of you are aware, a little over five years ago, the council adopted regulations pertaining to short term rentals in town. It was framed that they would be allowable for consideration in three of our residential zoning districts R-1, R-2, and R-3 not allowable for consideration in any other zoning district. In all cases within those three districts, the use would require a special use permit to be applied for and issued and then accompanying that within the ordinance there are a number of what I refer to as performance standards. So certain minimum standards that must be met for the use to even be considered to apply for a special use permit. A couple of those are it has to be on a lot that's at least ten thousand square feet in size, which eliminates a number of lots within those districts. Even if your lot is ten thousand square feet in size, if the dwelling in which that use would occur is not separated by at least 25 feet from a neighboring dwelling, it could not be considered. And then there's a number of other standards that go along. You have to provide off street parking. You have to provide certain life safety requirements. There is a requirement that the use has to be a secondary use. That is, the primary use of the dwelling in which it would occur has to be for residential purposes. That means it's a residence occupied more throughout the year for residential purposes than for any other use. So more than half of the year, it has to be occupied for residential purposes.

**Don Woodruff:** Have to be occupied for what?

**Will Moore:** For residential purposes. So it's a primary residence for more than half of the year.

**Don Woodruff:** So Mr. Moore I have a question which comes from some of my associates in Meadowbrook. Does a homeowners association prohibition of short-term rentals have any impact at all? In other words, all the people who live there have agreed to a set of documents that say no short-term rentals, so it has to be six months or more.

**Will Moore:** Sure. So I'll answer that in a few ways. So the first is very specific to Meadowbrook, no home within that development could be considered because another of the standards is that it has to be in a single family detached dwelling.

**Don Woodruff:** Right so those are not detached.

**Will Moore:** Correct. However, theoretically, the answer generally is that zoning operates independent of private associations.

**Don Woodruff:** Okay.

**Will Moore:** So an example is there might be a zoning regulation that says in a certain yard, in a certain zoning district, you can have a fence that is as high as a six feet fence, six feet high and that it could be a privacy fence. But an association may have a rule that says no we only allow fences that are four feet high, and it has to be a white wood picket fence. Those two would operate independently. That means that a zoning official would have to issue a permit that meets the zoning ordinance standards, but an association could use their own private enforcement mechanisms if somebody installed something that didn't meet their standards. Now I think the third way I would answer that is that if this were occurring within an area that was governed by an association and this use was not permitted by association rules because this is a discretionary action that is the issuance of a special use permit and it's subject to a public process if there is always a public hearing for a special use permit. And if members of the association or the association Board came out and said to the issuing authority, which is the council, hey, by the way, this is our community has already decided in our association rules of which the applicant is governed by that this is not allowed. I would hazard a guess that the chances of it receiving approval from the legislative body would be very thin.

**Don Woodruff:** Thank you that answers the question. And I also note that there must be in the periphery of the town, a number of short-term rentals as someone we talked to just recently said they lived in the



town, but they were having a short-term rental so they could bring their whole family in, in Marshall. And that they could get a short-term rental there. And I said, Well, I don't think that pertains to Middleburg.

**Danny Davis:** Correct. Correct.

**Don Woodruff:** Thank you very much, Mr. Moore.

**Will Moore:** Sure. So in the five years since the regulations have been adopted, we have issued no special use permits for the use. We've received no applications for special use permits for the use. We have throughout that period on a regular basis received inquiries about short term rentals and are they allowed in certain locations and what the process is. We also know that we have some pending new residential development that is forthcoming and that at least at one point part of the marketing tools for that development involved the potential for short term rentals and management of those. So the council is interested in, even though I think it's fair to say and council has stated agreement that the performance standards, if you will, that we already have in place are good. They don't necessarily give quite enough direction, maybe to the commission and to the council as to how to evaluate a particular permit. And in particular, they are interested in whether or not there should be provisions put in place that would limit, say, a saturation of these uses in a certain geographical area. So whether that be a a separation requirement between the uses, which is one of the things that I'm proposing for at least initial consideration, as well as a way to evaluate how frequently the use could occur if a special use permit were granted. Right now, our standards say, and it's a really wide range is that it could be considered for no more than one hundred and eighty days per any calendar year. That's a long time.

**Don Woodruff:** That's a long time.

**Will Moore:** And that simply came from if you did it any longer than that, it would be for more than half of the year so it wouldn't be used primarily for residential purposes. So the best that I have been able to garner out of council's concerns is that maybe addressing those two facets again, the potential saturation of the use, assuring that there's some separation between them, as well as some guidance as to evaluate how frequently the use could be considered to happen, might be a good idea to consider, including. So what I've done in this initial draft and please, I can't state this forcefully enough. It is just that, it's an initial draft. I don't pretend that this is by any means in a form that is ready for you to consider adopting. But I have included a potential statement that could be added to the comprehensive plan that generally addresses short term rentals. It links it to statements that are throughout the plan and throughout every chapter in the plan they constantly refer to preservation of Middleburg's character and with some linking to potential concerns of the effects on Middleburg character if there were a saturation of these types of uses. And then we also talk about just potential impacts on neighboring properties if uses are transient in nature and they're occurring really frequently. So the comp plan just kind of addresses those at a higher level. And then what I have included is to accompany that again, just an initial draft for your consideration is a markup of again what I call the Performance Standards Section, that's which is section 61 in the zoning ordinance where we might consider revising some of those standards. One of those would be that to add what is in the markup red letter E that there would have to be a separation between any such uses. And I will tell you, this gets a little tricky and I have been talking with the town attorney and as this maybe gets fleshed out a little better in the coming month or two, we'll probably be hearing a little more directly from him. But understand that if you put in this minimum separation requirement, it does kind of create a first in winner situation. So if somebody in the middle of a block somewhere comes in and they are issued a special use permit and we have a minimum separation requirement that by default might take out everybody who's within that separation area that's defined so.

**Don Woodruff:** So we make it very plain and obvious.

**Will Moore:** Right, so that would be something to consider, and we would get certainly the town attorney's advice on that if we had a draft. But I've not been told to this point to not pursue that direction.

And the other initial thing that I've proposed including is striking that provision that you could be considered for a maximum of 180 days for the use and instead replacing that with some sort of scalable chart here, which I have not included any numbers in yet. But and I proposed three tiers. Maybe it's two tiers, maybe it's five tiers, I don't know, again, we would have to put some more study into that. But essentially what we're saying is if you meet the bare minimum twenty-five-foot separation from a neighboring dwelling, and then we put that in a range up to so many additional feet, you could be considered for a maximum number of days that would be X, and that's probably that's on the lower end. And then if maybe there's an additional tier that if you were further separated and you're in that further separation tier, maybe you can be considered for more days than in that initial tier. And maybe we come up with three tiers. We have a few homes, there aren't many but that lie in these different districts that because of the way they are currently situated, they're isolated by neighboring properties from maybe as much as one hundred feet from a neighboring dwelling. So maybe, those are eligible for more days of rental per year. Because they have that natural buffering there's less likelihood that a transient nature in one of those might be disruptive to neighboring properties, then one that's meeting that minimum twenty-five-foot separation requirement. So that's a lot of me talking, but that is those were my initial thoughts as to how to potentially approach this and address some of council's concerns. I wanted to throw this out to you for your initial feedback. If generally you're okay with this method of attack over the next month before your December meeting, we would put some more work into maybe framing up some of these tiers of separation and what those numbers of days per year could be for a first draft of those for you to consider. But just kind of wanted to get your initial feedback as to this maybe method of approach before we went any further into that study.

**Terry Cooke:** Thank you, Will. I will just say, and this is the Chairman speaking. I'll just say that I agree with your initial approach to this. I think the objective, as you indicated, is to avoid a concentration of short-term rentals uses in a neighborhood and to limit the duration of availability of homes for short term rentals. I think the numbers are things we can all talk about and debate. I think the separation of uses is important. I personally would lean toward greater separation than lesser separation. I think that although the ordinance, I believe, allows for up to 180 days, eligibility for short term rental, that may be generous. I've done and perhaps other commissioners have as well done some research on the internet about how other communities are dealing with this issue, and I have frankly not found one that's 180 days. I'm sure there are, but as I say, that's on the more generous side. So that's something that I will be looking at. And my inclination at this point is that it should be a shorter eligibility period. But I think those are the things that I'm interested in focusing on is duration and proximity or concentration of uses. And with that being said, I'll invite comments by my colleagues.

**Don Woodruff:** [inaudible] On your plan.

**Terry Cooke:** Mr. Roszel. [multiple speakers]

**Dev Roszel:** Thank you. Thanks, Mr. Chairman. This is Commissioner Roszel Will [multiple speakers] one of the things that I think we discussed in 2016. I mean, when the comp plan, when all this came about, maybe this was, I'm sure it was discussed. And so I'm making the assumption that a blanket can't do it is not on the table. And if that's the case, are we just trying to make it so restrictive that we get to that point by having the restrictions, I'm not opposed to the restrictions, I'm just curious. Can we just say there are no Airbnbs within the town of Middleburg and or do we have to say, Yeah, you can do it, but we're going to make it so difficult for you to get there that it's really like saying there's no Airbnbs in the Town of Middleburg? And I'm not opposed to it, I just would like to understand.

**Will Moore:** Yeah, I don't think certainly saying you absolutely can't do it there are legal issues with doing that? And that's been tested, that idea that, you know, if there is a use, you have to make some accommodation for its consideration. Now you can do that and make it eligible in only one district requires special use permit. And if you have the intent behind you to effectively make it so you can't do it there are localities that have probably done that. That's not what we're trying to accomplish. That's not,

I've not heard anybody on the council say that they want to accomplish that. Aside from the fact that it does require a special use permit, I don't think there's anything currently in our ordinance that is geared toward that end trying to dissuade people. And I don't think there's anything in our proposed changes either. I just think, you know, for those reasons that protecting the character of Middleburg what transient nature can do to the character of the neighborhood and the feel of the neighborhood. There are really powerful reasons to consider structuring the rules around it so that it doesn't become a saturation, they're not right on top of one another, it's not happening so frequently. But I don't think anybody, nobody that I've heard from on the council to this point has just said we don't want them, period.

**Dev Roszel:** Ok, fair enough. [multiple speakers]

**Terry Cooke:** Commissioner Fleischman. Thanks.

**Ed Fleischman:** Will, good job putting this together and presenting things that we can think about here on the commission. I just had a couple of comments and questions. I sort of look at this as a solution looking for a problem. The town put this ordinance or section 61 in, and no one's applied for five years. So at first glance, then you'd say well, it doesn't seem like there's a problem, maybe if you know, we get one or two people that applied and it didn't work out and we had complaints from the citizens they need [inaudible] want to go further. So that was my first thought. But then I looked at it and I said is the council, are you trying to get at Salamander here, is that why this is being put forward? Because Salamander has some plans and I'm just trying to figure out if that's what you or the council are trying to address? That's the question now.

**Will Moore:** It's not exclusively aimed at the pending development on Salamander. It is, there are concerns. And of course, the commission is well aware with this of changing character in particularly in the Ridgeview subdivision when it comes to the character of the physical form of redevelopment. I think there is some fear that with some of what has happened there, it might also introduce new uses that haven't been pursued. So I think the council is trying to get ahead of any applications that may be pending. The Salamander situation factors into that, but it's not the sole reason.

**Ed Fleischman:** So I'm very familiar with this section and I've stayed at Airbnbs around the world. The way it's written now and put in effect five years ago makes it very difficult for a single individual to rent as an Airbnb Short Term Rental. The restriction of the property management plan it really is a big deal for a single person or family to produce that. And the other thing that's really hard to do is to get a property management firm or have the owner on premises within 20 miles. So I thought the existing when I first read it five years ago, I looked at it and I said, this is pretty restrictive. It's going to prevent anyone who's a property owner in the town from really doing it unless they really pushed it forward. But then I said, and I really thought this at the time that maybe the Salamander lawyers had sat down with the Middleburg Council and come up with this because the property management plan and requiring a responsible party or management owner within 20 miles would be easy for Salamander to do. So this really, as it's written now, it really, I think, restricts a single entity, single owner because of the complications of hearing and other things. But it really leaves it open for the Salamander Corporate to set this up and provide a handbook for each property owner and say that they'll provide the management entity. And so that's what it opens up on. And so the question is do we want to restrict Salamander or do we not? I mean, what's the root reason for this?

**Will Moore:** I think I have laid out the reasons as clearly as I can. Again, the council is wanting to get ahead of any applications that may be pending, whether they're from new residential development at Salamander or development within any applications that don't exist. I do feel the need to respond. There were no attorneys from Salamander involved in the drafting of the original regulations. This was very much a staff driven and then framed and with the input of the commission when we went through the the text amendment process. But there were no attorneys involved from any outside source on that.

**Ed Fleischman:** Right, I didn't think they were I just thought it looked like it from the outside, but let's not get involved in that. So my question now is something you said for each house that wants to get this type of arrangement. Did you say that they would have to apply separately and have a public hearing before the commission?

**Will Moore:** Before the commission and before the council, correct.

**Ed Fleischman:** So each time a house wanted to do it, there would have to be a public hearing.

**Will Moore:** Yes.

**Ed Fleischman:** And there wouldn't be any kind of group like Salamander as a group would come up with a plan and a management entity and then present that, that wouldn't work?

**Will Moore:** Every property, now that's not to say that you couldn't get a group of applications filed for consideration the same month, but each application would be subject to separate hearing and consideration based on the factors around that particular property.

**Don Woodruff:** Right.

**Terry Cooke:** Yeah.

**Dev Roszel:** Well, because each of the houses at Salamander would be individually owned. They're not. I mean, Salamander is not going to be representing if I spend \$3 million on a house, Salamander is not going to be representing me. I would have to still come to the planning commission and the council in order to present my request. Now, Salamander, may manage it once the town has provided that permit. But what you're saying is it has to be the homeowner that has to be the one that comes before the board. [multiple speakers]

**Will Moore:** No, not saying that. It's not uncommon. Let me strike that. It's probably uncommon here in the town where you don't get a lot of special use permit requests, period. But it's not uncommon in the world of planning and zoning for an owner of a property to have someone represent them in an application. [off mic] So, you know, it could be a property management firm. It could be an attorney they hire, a land use attorney. It can be in all sorts of form, an engineering company as long as the owner is executing all the required application forms and documents that goes along with that.

**Ed Fleischman:** Ok, thank you Will. You know they were just thoughts that popped into my mind you know, there's I'm not sure what I want to do with this, but I just wanted to present some thoughts.

**Will Moore:** Right. I would add that I think like Commissioner Fleischman, I have stayed in short term rentals in a number of different locations as well. There are lots of different models of ways that these run. You don't always rent an entire premise to yourself. Sometimes you're renting a room in an occupied premise and the owner is there. Sometimes you're renting a room, one of five rooms in a premise that's not occupied by the owner. And it's there are all sorts of different ways that those could work. So again, our regulations were not intended to prevent or make it difficult for a homeowner to go through the process, but rather it was intended to ensure that there was a responsible party, whether it's the owner or whether it's a property management firm in the near vicinity, so that it just wasn't somebody showing up who had no idea what to do if the toilet clogged or the power went out or things like that, that there was always somebody within close proximity that could respond if there were an issue.

**Terry Cooke:** If I may, the Chairman again, just to follow up on Ed's comments and Will's response. I echo Will's response. I think all of us were on the commission when this zoning ordinance was passed five years ago.

**Ed Fleischman:** I was not.

**Terry Cooke:** Oh, you were not. Okay, I stand corrected. But in any event, this was the impetus for this, as I recall, was yes, we were aware that the Salamander community five years ago was still in a very much a developmental stage. But I think the wisest way to handle issues like this is to get in front of them and to recognize if something becomes an issue, it's better to have regulations in place before it becomes an issue. Because once it becomes an issue and you have no regulations, your hands are pretty much tied as to what you do and anything you do, do that is contrary to what a petitioner or an applicant may do is going to be deemed discretionary or arbitrary. So I think it was good planning practice to recognize this as a possibility and to develop reasonable regulations to deal with it if and when it ever becomes an issue. And I will tell you that it is not at all uncommon for one of the tools in the localities tool belt, so to speak, in regulating short term rentals is some sort of commission permit use permit. It's typical, it's not unusual. And whether anyone feels that the regulations or requirements regarding this particular special use permit are too onerous. As I recall, there was no public comment on this matter 5 years ago, certainly none from Salamander. And in no way was Salamander, you know, advocating one way or another on this subject. So I just want to sort of clear the air on that issue and this is not a matter that is directed at Salamander pro or con. It is simply in a means to proactively deal with a situation that perhaps will never arise, but most likely at some point will. And I just want to get that on the record. Rachel, I believe you had a comment and then I'll turn to Don.

**Rachel Minchew:** I did have a question as to how is it enforced? How is this enforced? How do you know? Because I mean, I know that people have looked at Airbnb's here in town and they say that there are Airbnb's in town. So I guess unless somebody says, Oh, there's something going on next door.

**Don Woodruff:** Blows the whistle.

**Rachel Minchew:** How are you to know? And then if it is reported, what are the consequences of that? I mean, is that something that needs to be addressed as well?

**Will Moore:** Sure. Great questions. I'll start with the consequences in that any use that is operating without the requisite permit is subject to potential zoning ordinance violation. So we typically go through a more congenial method here in town. Where if the owner is here in town, we'll go knock on the door or we'll give a call or we'll send a letter that's not a violation letter, but just saying to make that outreach at first. But if we're unable to reach that person in that manner, or if it's an out-of-town owner, which sometimes we deal with, we will send a notice of violation, which is another it's a more formal step. And then there are potential consequences if there's not compliance. We can issue civil penalties, perhaps if the use continues. If we're essentially blown off, we can then go to the circuit court and request it to be addressed in that manner. We've not had to go that step in my seven years here. We generally reach a resolution before then. The first part is to how do you know? With zoning issues oftentimes it's driven by complaints or concerns that are directed at us. We do try to do a good job of doing some proactive type of enforcement here in town. Estee, sitting back in the corner there, regularly monitors various sites where these types of uses are offered and checks up on them. And occasionally one pops up and we occasionally reach out to the owner, or it pops up and it disappears as quickly as it appeared. So as of the last check, we didn't have any operating on any of those sites here in town, but we continue to monitor that, yeah.

**Terry Cooke:** Commissioner Woodruff.

**Don Woodruff:** Yes. Don Woodruff. One of the things that prompted this was years ago, several years ago, and I think it was about the time you arrived Will, we had a potential buyer of one of the houses in Meadowbrook who came up and asked if it was allowable to have an Airbnb there. And after having talked to the town, we all talked to the town, he withdrew his offer to buy a house because he was buying it strictly as an Airbnb. And I think Will made it very clear to them that there were going to be restrictions

with regard to how long you could do it and whether or not a house in Middleburg and Meadowbrook would fit in with the proposed regulations at that time. So I think it was being proactive rather than reactive, and the end result was an amicable parting and it's over now. [laughter] And these new regulations make all those eight dwellings unacceptable for Airbnb.

**Terry Cooke:** Thank you, Don. I got a question, Will. Is our special use permits, or may special use permits be limited in duration? Or are they open ended? I mean, once one is granted, is it to go forever?

**Will Moore:** I'm going to confer with the town attorney on that question and come back with an answer for you. I have seen answers from separate municipal attorneys that do not match each other on those questions. So I think it's important that I consult with our current town attorney to get you an answer. So I'm not trying to necessarily avoid, but I want to make sure I give you the right answer.

**Terry Cooke:** Thank you. I'll be interested in the follow up on that. My other question has to do with in reviewing the current regulations in the ordinance. And I may have missed it, but I didn't see anything about a permittee special permit applicant having to pay anything in the way of transit occupancy taxes. Is that in the ordinance or was it we did not include that?

**Will Moore:** It is, it is not in the excerpt that I have included, but the the actual definition for the use, Limited residential lodging, which is in the definition section of the ordinance, includes language to that effect. We may take a look at that if there is a zoning ordinance amendment that comes forward and see if there's a better way to structure that. But it is included right now.

**Terry Cooke:** Thank you. Any other questions or comments by commissioners?

**Ed Fleischman:** I did.

**Terry Cooke:** Commissioner Fleischman.

**Ed Fleischman:** Just the detail. Will when you're looking at it in Section J, I had a word here. It says that the dwelling shall be connected to public order sewer. I would just say and sanitary sewer.

**Will Moore:** Sure, that's an easy.

**Terry Cooke:** Good point. Thanks Ed.

**Terry Cooke:** I'm thinking.

**Will Moore:** If I might make a request while you're thinking, Mr. Chairman. I think as I stated in the zoning amendment section of my draft, if you will, I'll come up with some initial numbers for you to consider. Again, with the caveat that they're going to be just that they're going to be preliminary. I'll talk with you about those next month. But where I would ask the commission's greatest assistance between now and next month is in the comp plan language section that I've given you. I'm sure that could use some good wordsmithing. So if the commissioners might care to look over those three short paragraphs and offer any suggestions. Tweaks, I would greatly appreciate that because I definitely want this to be a product that if it's not completely yours, it's one that you've thoroughly vetted and made your mark on.

**Terry Cooke:** Congratulations on reading my mind. I was trying to think of is that, you know, the examples you gave us had a lot of excess fill in the blanks sort of thing. And I was just hoping to get a little guidance on the parameters of what we might consider. But we can all come back to you. [multiple speakers]

**Will Moore:** Yeah, I mean, we could, you know, one of my initial discussions with the town attorney was, should we say there's no more than one per block? Well, what's a block.

**Terry Cooke:** Exactly.

**Will Moore:** And block distances are different from here to there. So then it's like, OK, well, maybe no more than one per block. But in any case, there has to be a physical separation.

**Don Woodruff:** Yes.

**Will Moore:** To get an effective block so you don't have one on a corner with an intervening street and another on the corner. And then it's like, well, why are we including block at all? Why don't we just come up with a distance that makes sense? [multiple speakers] So we'll need to figure out what that distance is and how exactly it's measured. So I'll spend some time.

**Terry Cooke:** As Commissioner Minchew suggested, I think whatever we come up has to be clear, it has to be reasonable, and it has to be enforceable. Yes, I think enforceability is going to be, could be something of a challenge. We don't have 20 people on the staff to go out and check on these things, so it has to be almost self-policing to the extent we can make it that way. So again, thank you. Commissioner Fleischman.

**Ed Fleischman:** Another item hit me when I was reading this. When you look at this, Will, you ought to look at do we want to talk about separation from a neighborhood dwelling, meaning the actual building rather than the property line.

**Will Moore:** Right.

**Ed Fleischman:** And is the garage part of a dwelling? I mean, there's a whole bunch of different things, so you can think about that. Thank you.

**Terry Cooke:** Yeah, I think the most sensible one is lot line, but that's something we'll think about. [multiple speakers]

**Ed Fleischman:** Big lots and small houses.

**Terry Cooke:** All the better. Ok, thank you. All right. That concludes that discussion item and that concludes our work session. And with that we'll move into the regular meeting from November 22. And we'll call that meeting to order. And the first order of business would be disclosure by commission members of any meetings with applicants. Rhonda, would you call the roll on that, please?

**Rhonda North:** Yes. Chair Cooke.

**Terry Cooke:** No meetings or discussions?

**Rhonda North:** Vice Chair Woodruff.

**Don Woodruff:** No meetings or discussions.

**Danny Davis:** Commissioner Fleischman.

**Ed Fleischman:** I had no contact with proposed applicants.

**Rhonda North:** Commissioner Minchew.

**Rachel Minchew:** No meetings or discussions.

**Rhonda North:** Commissioner Roszel.

**Dev Roszel:** No meetings or discussions. Thank you.

**Terry Cooke:** Thank you all. We have no public hearings scheduled for this evening, but there is an opportunity for members of the public who wish to bring matters of concern to the commission's attention. Is there anyone perhaps on the line? We have no one here in person.

**Rhonda North:** It's not [multiple speakers]

**Terry Cooke:** Hearing none. We will close the comment at the public comment period and move on to approval of the minutes for the commissions October 25 work session and regular meeting. Do we have a motion?

**Don Woodruff:** So moved.

**Terry Cooke:** A second, please.

**Dev Roszel:** I'll second.

**Terry Cooke:** We have a motion and a second. Any discussion? Call the roll Rhonda please.

**Rhonda North:** Vice Chair Woodruff

**Don Woodruff:** Yes.

**Rhonda North:** Commissioner Fleischman.

**Ed Fleischman:** I vote to approve.

**Rhonda North:** Commissioner Minchew.

**Rachel Minchew:** I approve.

**Rhonda North:** Commissioner Roszel.

**Dev Roszel:** I approve.

**Terry Cooke:** Thank you all the minutes are approved. Next item on the agenda is Council Representative Report our council designee Mr. Jacobs is not with us this evening, so we will move on. And next item is discussion items, and this is an opportunity for the commission members. If you have any matters, you wish to raise at this time for discussion. I would only as Chairman I would only ask Mr. Moore where things are with respect to our consultant's work on the R2 zoning amendments? Are working towards something on that?

**Will Moore:** We are, I've been in contact with them a number of times to just answer some basic questions of give them sources for and or provide directly to them some data, some GIS data that they're using in some of their analysis, things like that. So they are moving forward. Again, the planned briefing returned to the commission as of right now would be during your February meeting. But if we have any



intervening reports during December and January, we'll certainly let you know, but they are moving forward.

**Terry Cooke:** I just I recall from our meeting last month that there were we basically concluded that there were roughly half a dozen issues that warranted consideration for ordinance amendments. Some, frankly, were more, I think, significant than others. Should we wait until later to try to refine that list or wait until we have the entire list and go through it and decide which ones, we think warrant serious consideration?

**Will Moore:** Yeah, it's a good question, I can certainly circle back with them and see if they're seeking any additional guidance at this point in time and can certainly maybe have them give an intervening report as to if they're leaning certain directions for certain proposals and certainly let you know.

**Terry Cooke:** Ok. Yeah.

**Will Moore:** Yeah.

**Terry Cooke:** I think that's good.

**Will Moore:** Ok.

**Terry Cooke:** All right. Thank you. Next item on the agenda is a quorum for our December meeting. Yes.

**Ed Fleischman:** Just discussion item question.

**Terry Cooke:** Ok. You almost missed it. [laughter] Go ahead, Ed.

**Ed Fleischman:** Will, this Ed Fleischman. I have a question. I thought I heard you when we're talking about Salamander. We talked about their initial promotional material, talked about they would handle short term rentals for people. And you sort of did I hear wrong? You said they're not promoting that anymore?

**Will Moore:** I did not say that. I'm not sure if they are or not. I just was aware of reports that at least with some of their initial marketing, they were promoting that the resort or some entity falling under the Salamander umbrella would offer kind of as an add on management of rental of the property for owners that it was kind of an a la carte option. They could pick from, I think. So I'm not sure if they're continuing to market that or not.

**Ed Fleischman:** Okay. When we consider this further, you know, you might send Estee to check their marketing location, to see what they're saying, because that might be some good input for the next meeting on what they're telling people now what their promotional material, says.

**Terry Cooke:** Commissioner Woodruff.

**Don Woodruff:** No, I'm just flexing my hand. It was getting stiff.

**Ed Fleischman:** Thank you, that's it.

**Terry Cooke:** All right to resume our discussion of the quorum for next month's meeting. Is there anyone who will not be available? [off mic]

**Ed Fleischman:** Well, just before, as part of the discussion on the quorum, do we need a meeting in December? Sometimes we have not had a meeting in December. [multiple speakers]

**Will Moore:** I am plugging it in just in case we need to make some additional headway on the short-term rentals and also in case there is a report back on the R-2 amendments. Additionally, we also have the final plat for Banbury Cross, which is still outstanding, so that's working its way through the administrative review. They've just today completed their second full iteration of review, so I think it's best to keep it on the schedule for now. And if we get closer and we don't have anything substantive to address, we can, you know, the Chairman and I can certainly confer on that. And you know, he can make that call as to whether.

**Ed Fleischman:** Will Ed Fleischman again for the recording. I thought we got finished with Banbury. I mean, we have to vote again?

**Will Moore:** You have to vote again. [off mic] [multiple speakers]

**Don Woodruff:** Should we vote now?

**Dev Roszel:** Clearly, it's an administrative vote. [off mic]

Yeah, this won't be another public hearing.

**Will Moore:** Correct. There will be no public hearing associated with this.

**Dev Roszel:** As long as they meet the requirements that the county has set out. [off mic] strictly is administrative.

**Terry Cooke:** It's not discretionary, right?

**Will Moore:** Yeah. Well, that's correct. [multiple speakers] That applied to the preliminary plat as well. And for good reasons I think the commission struggled with that concept because I mean, it's, you know, a big action and it's not easy being told that something that so many community members are expressing opposition to you has to be approved because it checks all the boxes. [multiple speakers] So. But I yeah. So certainly not being flippant in saying that. But you know, the final plat will come back to you. It does not involve a public hearing, but you will have to take action.

**Dev Roszel:** We have to do our job [off mic] what we need to do. [multiple speakers]

**Will Moore:** Yes. It's not discretionary, that's correct.

**Terry Cooke:** Very good.

**Dev Roszel:** I do have one question about the house across from the Exxon station, is that still on for subdividing into three lots?

**Terry Cooke:** It's up for sale.

**Will Moore:** Yeah. So the subsequent to the preliminary plat being approved, the owner has put it on the market. There's a lot of interest in it. There has been no action taken to move forward with the construction plans or final plat at this point, I don't want to speculate too much. But it could be you know, sometimes getting that preliminary plat is as far as the current owner wants to take it. They know that that can add certain value. But I will share with you that the owner has reached out to me and asked about what the process is for simply dividing into two lots, which would mean that is an administrative process,

one that would not involve the commission for a minor subdivision. Assuming it meets all the other ordinance requirements for being a minor subdivision, but so there he is at least contemplating whether or not to abandon the preliminary approval and revert to a simple division of two lots rather than three. So yet to be seen what will happen with that particular property?

**Dev Roszel:** Thank you.

**Terry Cooke:** Just to conclude the discussion on the quorum, assuming we do have a December meeting, I'm inviting and encouraging all my commission colleagues to wear their ugliest Christmas sweaters to the meeting in December. [laughter]

**Will Moore:** Oh ugly sweater.

**Terry Cooke:** Since we're only a couple of days before Christmas, when that occurs.

**Don Woodruff:** I'll just wear my hat [multiple speakers]

**Will Moore:** I was going to say? Do you have a sweater to match that? [multiple speakers]

**Terry Cooke:** When we're talking ugly, that'll do it. [laughter]

**Don Woodruff:** I won't tell my granddaughter, you said that?

**Terry Cooke:** Ok. Ladies and gentlemen, with that, we are adjourned. Thank you all.

**Ed Fleischman:** Do we have a quorum we didn't?