



**TOWN OF MIDDLEBURG
PLANNING COMMISSION
WORK SESSION & REGULAR MEETING MINUTES**



**MONDAY, JULY 25, 2022
PENDING APPROVAL**

PRESENT: Terence S. Cooke, Chair
Donald Woodruff, Vice Chair (arrived late)
Edward R. Fleischman, 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

ABSENT: Rachel Minchew, Member (excused)
H. H. “Dev” Roszel, Member (excused)

The Middleburg Planning Commission held their work session and regular meeting on Monday, July 25, 2022 in the Town Hall Council Chambers. Chair Cooke called the work session to order at 6:30 p.m. Town Clerk North called the roll.

Discussion Item

Zoning Text Amendment 22-02: Amendment to Chapters II and V Pertaining to Short-Term Rentals

(Vice Chair Woodruff arrived at the meeting at 6:31 p.m.)

Deputy Town Manager Moore reminded the Commission that they were tasked with reviewing the existing regulations related to short-term rentals. He reviewed the history of what had occurred to date and noted that the associated Comprehensive Plan update had been approved by the Council. Mr. Moore further noted that the Commission and Council agreed that a uniform approach was not necessarily appropriate and to look at a tiered approach based on the neighborhoods, with emphasis on the R-2 District. He reviewed the properties that were zoned R-2, which mostly consisted of the older established neighborhoods on the west side of town. Mr. Moore reminded the Commission that they agreed to consider regulations that would address the impacts of short-term rentals on that district and noted that he prepared a draft ordinance that was based on a tiered approach that included regulations specific to applications in the R-2 District; regulations specific to applications outside the R-2 District but that either abut or were in close proximity to it (within 100 feet); and, regulations for those that were not in or close to the R-2 District. Mr. Moore explained that for the first two tiers (R-2 District or in close proximity), the tier was broken down even further to allow for the short-term rental use for a lesser number of days per calendar year. He noted that there was no science in the numbers included in the draft ordinance and suggested that the Commission could change them. Mr. Moore reminded the Commission that the ordinance also included a provision that the property must be used primarily as a residential use for more than half of the year.

Deputy Town Manager Moore reviewed each of the proposed tiers. He explained that under the first tier, which was the strictest, the property could be used as a short-term rental for up to twelve (12) days per calendar year, which equated to one day per month. Mr. Moore advised that as to property in the second tier, which was further away from a dwelling unit, it could be used as a short-term rental for up to twenty-four (24) days a year, unless the property was located greater than fifty feet from another dwelling unit, in which case, it could be

considered for thirty-six (36) days per year. He noted that the number of days would not be guaranteed and would only be the maximum number of days the Commission could consider when considering a special use application. Mr. Moore advised that for properties that were outside of but adjoined or were close to the R-2 District, they could be used as short-term rentals for up to a maximum of forty-eight days if they were located within one hundred feet of another dwelling unit, and for a maximum of seventy-two days (72) if they were greater than one hundred feet from another dwelling unit. He advised that as to the third tier (properties in the R-1 and R-3 Districts that were not close to the R-2 District), the maximum number of days that could be considered would be one hundred forty-four (144) per year, which equated to twelve days per month. Mr. Moore reminded the Commission that the idea behind this agenda item was to show the members the draft regulations and give them time to think about the numbers. He noted that they could tweak them as they desired. Mr. Moore advised that the only other change that was being proposed was to re-title the use to “short-term rentals,” as opposed to “limited residential lodging.”

Deputy Town Manager Moore noted that it had been suggested that the language in the first qualifier, which required single-family dwellings to be used primarily for residential use, was not strong enough and that it should require that it be the primary residence of the property owner. He opined that there would be less of a likelihood of issues if this was the case. Mr. Moore suggested the members think about whether they wished to make that change.

In response to an inquiry from the Commission, Deputy Town Manager Moore advised that the draft was not well informed by what other jurisdictions did, as he had not seen a tiered approach used by others. He explained that the draft was based on previous discussions by the Commission, during the Comprehensive Plan update process, that the Town may want to treat different neighborhoods differently when considering special use permit applications.

Chair Cooke advised that while he was not sure he agreed with the proposed numbers, he was in favor of the alternative language to require the residence be owner occupied. He questioned whether the draft sufficiently addressed the situation of an apartment above a detached garage.

Deputy Town Manager Moore advised the Commission that such a unit would not be allowed to be used as a short-term rental, as the rental must take place in a single-family dwelling unit. He reminded the members that there were not a lot of accessory dwelling units in Middleburg. Mr. Moore noted that accessory dwelling units were a way to address the issue of affordable housing; and, suggested that if the Commission wanted to allow them, they would need to consider amendments to the zoning ordinance.

In response to an inquiry from the Commission, Deputy Town Manager Moore confirmed that if the special use permit only allowed for the short-term rental use for twelve days in a calendar year, once the twelve days occurred, the home could not be rented as a short-term rental for the remainder of the year.

In response to an inquiry from the Commission, Deputy Town Manager Moore advised that as to accessory dwellings over a detached garage, he would have to first determine whether the unit was legal, which it would likely not be. He further advised that it would still not be a single-family detached dwelling unit; therefore, it could not be used for short-term rentals.

In response to an inquiry from the Commission, Deputy Town Manager Moore confirmed that as currently written, if a property owner lived in Florida for six months out of the year and did not rent out the property during that time, it would fulfil the owner-occupancy requirement. He advised that if the draft was amended to require that this be the owner’s primary residence, it may not. Mr. Moore explained that the totality of the circumstances would have to be considered in making a determination.

In response to an inquiry from the Commission regarding the number of property owners that could possibly apply for a special use permit for short-term rental use for one hundred forty-four days, Deputy Town Manager Moore advised that currently, there were less than twelve. He noted, however, that an additional forty-nine would be added with the construction of the homes in the Residences at Salamander. Mr. Moore advised that while no special use permit applications had been filed, Salamander developed the subdivision to meet the

minimum separation requirements so all forty-nine homes could be used as short-term rentals. He noted that there were only a couple of homes in the existing developed area of town that could fall under the mid-tier level. Mr. Moore opined that depending on their location, there were thirty-five homes in the Residences at Salamander that would fall under the “All Other” category as proposed. He advised that he would get firmer numbers for the Commission during their next meeting.

In response to an inquiry from the Commission, Deputy Town Manager Moore advised that the Finance Director/Town Treasurer would be responsible for collecting the business license and transient occupancy taxes from anyone who used their property as a short-term rental.

Commissioner Fleischman noted that it had been six years since the current regulations were put into place. He opined that the Commission was spending time on something that was not an issue.

Chair Cooke opined that what was presented was a well-crafted approach. He further opined that the Town would receive a substantial number of applications and suggested it was better to address the issues before a lot of them were received. Mr. Cooke noted that the draft was not ready to be advanced and suggested the need to address accessory dwelling structures in it.

Deputy Town Manager Moore suggested that if the Commission was comfortable with the tiered concept, they could make a motion to initiate the ordinance, but not advance it to a public hearing. He explained that this would not bind the Commission to anything and would simply be a way of saying they were starting the process.

Councilmember Jacobs moved, seconded by Vice Chair Woodruff, that the Planning Commission initiate Zoning Text Amendment 22-02 pertaining to short-term rentals.

Vote: Yes – Commissioners Woodruff, Fleischman, and Stein and Councilmember Jacobs

No – N/A

Abstain – N/A

Absent – Commissioners Minchew and Roszel

(Chair Cooke only votes in the case of a tie.)

Deputy Town Manager Moore asked the members to think about the proposed numbers and return with their thoughts during their next meeting. He advised that in the meantime, he would develop language related to accessory dwelling units.

Statement of Commissioner Fleischman Related to Boundary Line Adjustment Requests

Commissioner Fleischman noted that during his tenure, he helped the Planning Commission draft the Comprehensive Plan, which he believed was an excellent base document for future planning decisions by the Town Council. He opined that any potential actions by the Council that would affect development needed to be evaluated on how they impacted the Comprehensive Plan. Mr. Fleischman noted the recent discussions by the Council on two proposed boundary line adjustments (BLAs) that could affect growth in Middleburg and advised that the Commission had not been tasked with reviewing the preliminary proposals. He opined, based on his experience, that planning commissions were set up to conduct such reviews and provide guidance to elected officials before decisions were made. Mr. Fleischman further opined that good planning required transparency and that this had not been shown in the discussions of the possible boundary line adjustments by the Council. He requested that an item be placed on the next Planning Commission agenda for the staff to brief the members on the proposals so the Commission could be in a position to provide input to the citizens and Council during their decision-making process.

Deputy Town Manager Moore advised the Commission that the staff could give them a presentation on the information that was available; however, there was nothing available that had not already been publicly released. He reminded the members that they were briefed on the requests in a closed session in January. Mr. Moore confirmed there would be a place for the Planning Commission in the process if the boundary line

adjustments moved forward. He explained that if the land was brought into the Town's corporate limits, it would automatically be zoned AC Agricultural, with any rezoning, subdivision and other plans/applications coming before the Commission. Mr. Moore advised that it was disingenuous to say the Planning Commission was skipped in the process and explained that things have not reached the point where they would be involved.

Commissioner Fleischman noted that there were two other proposed boundary line adjustments that were discussed by the Council; however, the Commission was not notified of them.

Chair Cooke advised that while he respected Commissioner Fleischman's position, his concerns should be directed to the Council, not the Planning Commission.

Councilmember Jacobs advised that while he had no problem making this an agenda item, he took issue with the characterization that there were secret BLAs being discussed outside of the two on which the public had been briefed. He noted that the Council had taken approximately one hundred fifty (150) comments from the public, which they would analyze and capture in broad terms. Mr. Jacobs suggested those comments could be presented to the Commission. He reminded the members that these were not even preliminary proposals at this time, but rather were concepts. Mr. Jacobs explained that the Council planned to provide the information obtained from the public comments to the potential applicants and share with them what may and may not be acceptable to the Town. He advised that it would then be up to those property owners to determine whether they wished to move forward with an actual application. Mr. Jacobs stressed that the Council has been more than transparent by reaching out to the public to see what the residents wanted to happen.

In response to an inquiry from the Commission about whether there had been any other BLA requests, Deputy Town Manager Moore explained that the staff had conversations with people all the time that went nowhere. He noted that the owner of the Mt. Defiance Cidery came to the Town to discuss a possible lodging facility; however, that went nowhere. Mr. Moore further advised that conversations occurred with The Hill School and six adjacent property owners on Landmark School Road about bringing their properties into the Town limits so they could connect to public sewer. He noted that a feasibility study was also conducted. Mr. Moore advised that those discussions were at a standstill; however, even if they resurfaced, they would not involve any new development. He reiterated that neither conversation had gone anywhere.

Chair Cooke noted that there was a State Code procedure for boundary line adjustments and advised that the Commission would follow it. Mr. Cooke opined that there was no purpose to adding this item to the agenda.

Chair Cooke closed the work session at 7:25 p.m. and called the regular meeting to order.

Disclosure of Meetings with Applicants

The members reported that they had no meetings with applicants.

Public Comment

Pam Curran, 800 Blue Ridge Avenue, noted the changes in the setbacks that were being proposed in the Ridgeview area. She expressed an understanding that the purpose was to preserve Middleburg; however, she opined that these changes would have unintended consequences for those who wished to improve their homes and build equity. Ms. Curran asked that the Commission not take away the property owners' rights to improve their homes. She suggested they instead look at urban planning and aesthetics. Ms. Curran further suggested that changes be considered on a case-by-case basis, as opposed to imposing restrictions.

Darlene Weeks, 204 Chestnut Street, questioned whether it would be a problem if she wished to construct a pool on her property and noted that she had land available. She advised that the Commission had allowed people to move into town and build on every inch of their property. Ms. Weeks opined that some homes were constructed taller than the regulations allowed. She suggested the committees "dropped the ball" by allowing giant homes on small properties and were now putting restrictions on the Ridgeview area, which was not fair to others. Ms.

Weeks advised that as to the proposed boundary line adjustments, they were not needed or wanted. She asked that the Commission consider the number of people who were opposed to the changes.

Roxene Hill, 205 Chestnut Street, thanked Commissioner Fleischman for his statement. She advised that she felt like she had not been informed. Ms. Hill further advised that based on the information in a FOIA response, she felt betrayed. She opined that the Planning Commission was supposed to lead and let the community know of any unintended consequences of changes.

Vincent Bataoel, 218 E. Marshall Street, questioned when the Planning Commission and Town Council was supposed to inform the public of a potential boundary line adjustment discussion. He further questioned whether this was discretionary. Mr. Bataoel noted that there were two BLA requests that were not presented to the public and advised that the Town spent money on a feasibility study related to one of them.

The Commission noted that the two boundary line adjustments that were on the table had been well publicized. They noted that until a formal request was received, there was nothing to consider.

Deputy Town Manager Moore confirmed the Council authorized the Town to split the cost of a sewer feasibility study. He explained that the Town's unwritten policy was to not approve utilities to out of town properties; however, the six properties and The Hill School were on Town water because the water line from a Town well crossed their properties. Mr. Moore noted that the Town was working to address wellhead protection issues and advised that one of the key aspects of that was to eliminate septic systems. He advised that the six septic systems associated with these properties were in close proximity to the well. Mr. Moore noted that the study could or could not be linked to a boundary line adjustment. He reiterated that the Town told the property owners that if they wanted public sewer, they would have to have to pursue one as the Town would not extend utilities out of town.

Mr. Bataoel expressed hope that any future boundary line adjustment requests would be presented to the public.

Approval of Minutes

Councilmember Jacobs moved, seconded by Commissioner Fleischman, that the Planning Commission approve the May 23, 2022 regular meeting minutes as presented.

Vote: Yes – Commissioners Woodruff, Fleischman, and Stein and Councilmember Jacobs

No – N/A

Abstain – N/A

Absent – Commissioners Minchew and Roszel

(Chair Cooke only votes in the case of a tie.)

Council Representative Report

Councilmember Jacobs reported that the Piedmont Environmental Council (PEC) recently met to discuss projects that would occur along Route 50. He further reported that the Loudoun County Board of Supervisors approved the PEC's acquisition of their Aldie Assemblage property, for which the PEC would have to fundraise. Mr. Jacobs advised that the two proposed boundary line adjustments in Middleburg were also discussed during their meeting. He encouraged the members of the Planning Commission to attend future PEC meetings.

Councilmember Jacobs noted the pending action before the General Assembly to legalize commercial marijuana sales in Virginia. He further noted that limited possession and consumption had already been legalized. Mr. Jacobs reported that the Virginia Municipal League was pushing for approval of local referendums to determine whether the locality wished to allow commercial sales in their jurisdiction. He noted that it would be up to the Planning Commission to draft an ordinance to address how this would occur if such sales were allowed.

Discussion Items

Status of Zoning Text Amendment 22-01

Deputy Town Manager Moore noted that the proposed zoning text amendments went to Ms. Curran and Ms. Weeks' previous comments. He reminded the Commission that they forwarded the recommended amendments to the Council and noted that they were presented to them during their July 14th meeting. Mr. Moore reported that the Council was scheduled to hold a public hearing on the amendments during their July 28th meeting, which they could adopt at that time. He advised that during their July 14th meeting, the Council reviewed The Berkley Group's report and would discuss in the future whether they wished to initiate any of the interventions the Commission did not advance. Mr. Moore noted that if the Council did initiate any further changes, they would return to the Planning Commission for their recommendation.

Chair Cooke noted that the citizens could address their concerns with the Council during the public hearing. He further noted that the Planning Commission grappled with this as they were developing the recommendations, as they did not want to impinge on the rights of the property owners.

County Zoning Ordinance Rewrite

Chair Cooke advised the Commission that he attended a meeting of the County Board of Supervisors to express his concerns about the poor job the County had done in presenting their proposed zoning ordinance amendments to the public. He further advised that the Supervisors agreed to consider his concerns.

Quorum of August Meeting

Chair Cooke advised that while he did not have a problem with the August meeting date, he would not be available to attend the September meeting. He asked that the members consider moving that meeting up a week.

Those members who were present indicated they would be present for the August 22nd meeting.

There being no further business, Chair Cooke adjourned the meeting at 7:50 p.m.

RESPECTFULLY SUBMITTED:

Rhonda S. North, MMC, Town Clerk

Middleburg Planning Commission Transcript
July 25, 2022

(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: Good evening. We will convene the work session for this July 25, 2022 meeting of the Planning Commission. And our first order of business would be a roll call. Rhonda, would you please do that for us?

Rhonda North: Chair Cooke.

Terry Cooke: Present.

Rhonda North: Vice Chair Woodruff. Absent. Commissioner Fleischman.

Ed Fleischman: Present. Thank you.

Rhonda North: Commissioner Minchew is absent. Commissioner Roszel is absent. Commissioner Stein.

Mimi Stein: I'm here. Thank you.

Rhonda North: Council Member Jacobs.

Bud Jacobs: Present.

Terry Cooke: Thank you all. Our first and only discussion item on the agenda this evening is a motion to initiate Zoning Text Amendment 22-02 an amendment to Chapters 2 and 5 of the Middleburg Zoning Ordinance pertaining to short term rentals. Staff has provided us [multiple speakers].

Don Woodruff: Where's the public?

Terry Cooke: Let the record show that Mr. Woodruff has made a dramatic appearance. [laughter]

Ed Fleischman: A traumatic. [laughter]

Terry Cooke: Welcome Don.

Ed Fleischman: I expected the ranks to be filled after I heard the Mayor on Saturday night.

Terry Cooke: As I was saying, our first order of business is a motion to initiate Zoning Text Amendment 22-02 an amendment to Chapters 2 and 5 of the Middleburg Zoning Ordinance pertaining to short term rentals. Staff has provided us all with a memo just bringing us up to speed on this. But Will, would you like to just sort of make a few comments on that?

Will Moore: Oh, certainly. I won't belabor the point. As you're very familiar with the work you've done over the past several months, particularly the end of last calendar year, beginning of this calendar year, but for the benefit of the public, you were tasked with looking a little bit closer into the regulations that we have pertaining to short term rentals. We currently title that as limited residential lodging and the ordinance that may change with a potential amendment. In your study when we first started looking at it in the November, December time frame of last year, I threw a lot at you at once, which was a potential comprehensive plan amendment along with some potential zoning amendments. And it was, I think, a bit much to digest at that time. So we the Commission decided wisely, I would suggest, to split those and to first concentrate on a comprehensive plan amendment as the plan that was adopted in 2019 was silent on the subject of short-term rentals. So you did prepare and recommend to council a comprehensive plan amendment that was subsequently adopted in late April. I've included the substantive language from that amendment within the staff report. The main takeaway that staff had from that amendment was that the Commission and Council in its adoption agreed that having one uniform approach to short term rentals for the entire town might not necessarily be appropriate. And it might be more appropriate to consider maybe a tiered approach, depending on neighborhoods, particular emphasis on our R-2 zoning district, which we have a large portion of in the west, the Ridgeview Subdivision, mostly Fox Hills as well, which is the north side of Stonewall Avenue. But we also have the Village Hamlet on the east side. We have Lincoln Road neighborhood on the south side of Route 50. So a few different pockets of R-2. R-2 is specifically intended its purpose is for the older established neighborhoods of the town so possibly approaching regulations that address impacts on R-2 with a little more diligence than maybe other areas. So what staff has done in preparing this first draft for your consideration is to give you kind of a tiered approach where and there would be some regulations that are specific to applications that are within the R-2 district, there would be a separate tier that are for outside of the R-2 district which would be R-1 and R-3. Those are the three districts in which the use can be considered. So outside the R-2 district but in close proximity to it. So a property that abuts the R-2 zoning district or is within 100 feet of the R-2 zoning district would be treated as a separate tier. And then a third tier, which would be other R-1 and R-3 district properties which are not within that closer proximity would be a separate tier. So that's the way staff is structured. This first draft for your consideration within those tiers, at least the first two within R-2 and within close proximity to R-2, it's broken down even further wherein a use that is in closer proximity to a neighboring dwelling, may be eligible for fewer days consideration for the use in any given calendar year. But if it's a property that is further separated, it might be eligible for more days within there. And we can look at those numbers. There was not a lot of science that went into the developing of these numbers. We started with the fact that we still have a provision that requires any property that would be considered for this use to be used primarily for residential purposes. Residential purpose once you hit a 30-day rental or longer, it's considered residential. So you would have to use the property for residential purposes for more than half of the year. So more than half of

the year it has to be occupied 30 days at a time or longer. So in developing these recommendations for you to consider, we started with the premise that no property could be eligible for more than six months, which would be a long time in cumulative days even. But we tailored it back so that those that are within the R-2 and then within that district in close proximity to other dwellings would be eligible for the fewest number of days. We have proposed 12 days for that most strict line, which would average to one per month but wouldn't necessarily have to be used one per month. In fact, there's a separate provision that requires any rentals to be at least for two days and nights. So you could only do it a few times each year if you were within the district, the R-2 district, and in close proximity to a neighboring dwelling. If you were a little further away in that second tier, which is more than 35 feet, separation up to 50 feet that number doubled up to 24 days. And then if you were even further than 50 feet apart, an additional 12 days, a total of 36, which is the maximum that could be considered. It doesn't necessarily mean that if somebody comes in and says, I'm 51 feet away from my neighboring residence, I get 36 days per month. That doesn't necessarily work like that. There could be other circumstances that you look at, but that's the maximum number of days that could be considered. Stepping into that second tier, if you will, which are properties that are outside of the R2 district but adjoining or within close proximity to the district we started there are only two tiers of separation from dwelling within there you are either 100 feet or less away in which we've proposed a maximum of 48 days per year. If you're more than 100 feet, we proposed a maximum of 72 days. And again, these are just numbers to consider. The Commission should think about these and recommend changes. If you think maybe some of these numbers are allowing for these to occur too often or not often enough. And then that final tier, which is the R-1 and R-3 district properties that are not really within close proximity to the R-2 district we have proposed a maximum of 144 days per calendar year. That's a lot. That's as many as 12 days per month. So I really want you to think about that number carefully, whether that's appropriate or not. Again, our idea in this first draft was to show you this tiered approach, show you kind of graduated regulations within those tiers, and then to allow you to think about the numbers that are being put out there. And then we can tweak those as you might wish. The really the only other changes within this amendment are the re-titling of the use to short term rentals. I mentioned in the memo limited residential lodging was that term was chosen when we first adopted this because there was a state code amendment at that point in time that was using that terminology and we wanted to be consistent. That amendment went away. So we always refer to them as short-term rentals. So re-titling it from the more confusing I would say term. And then the one other thing that I wanted to throw out at you if that wasn't enough already. In the draft one that's given to you, there's a yellow highlighted section. So currently the first qualifier, if you will, is that and we just talked about this, any such use shall be established in a single family, detached dwelling used primarily for residential use, and that's more than six months a year. It's used primarily for residential use. There have been some people suggesting, the Mayor, for one, that maybe that's not strict enough and maybe it should be tweaked to say that it is used as the primary residence of the owner. That's a very big difference. It's a very big difference to consider. I would suggest and I think a lot of localities across the country have used the basic premise that a property that is owned and occupied by someone but used for short term rentals is that there's generally less likelihood that there will be ongoing issues with the use and that it might be monitored more closely. There's no data to present to you to establish that other than

just anecdotally that and possibly intuitively that seems to be the case. So that's one that I would also like you to think about, whether or not you would want to make that alternative change in the highlight.

Terry Cooke: Thank you, Will. I really appreciate staff's work on this. I think. This is Chair Cooke. I really think that it shows a lot of imagination and some thinking outside the box, so to speak. I wonder, you mentioned other jurisdictions and I know you, I'm sure you've looked at other ordinances on this issue. Have you seen any or have you considered others in drafting a language that use this sort of score sheet in terms of determining how much time could be devoted to short term rentals, depending on how close the use was to another residential use, or is this something new and novel? And if so, you should copyright it. [laughter]

Will Moore: This is, it's not really well informed by other jurisdictions. I did do a lot of research. Most other jurisdictions, you can either do it or you can't. There may be a cap, but I've not seen this kind of tiered approach. But I think this approach again, this was more informed by the discussions during our comprehensive plan amendment process that we might want to treat different neighborhoods differently in considering their applications. So that was kind of the genesis so.

Terry Cooke: Well interesting, I well, again, I applaud the imagination that went into it. I'm not sure I agree with all the numbers in there.

Will Moore: Sure.

Terry Cooke: I'm sure other Commissioners probably have thoughts on that. And we'll get to that in just a moment. I'm going to rattle on for just a second if I may. I wonder, in talking about the single family detached dwellings used primarily for residential use. And by the way, I personally favor the alternative language that you've highlighted in yellow because it emphasizes the need that the property be occupied by the owner as a residence. But I wonder is this sufficiently clear to apply to a situation where we have a home with a detached garage and the owner puts an apartment above that attached garage? The garage obviously is not the owner's residence. But would that fall within the ambit of this ordinance?

Will Moore: I would. I'd need to think carefully about that. My gut reaction is no, that it would not be allowable because the use has to take place in that single family detached dwelling. We only have a few situations like the one that you have mentioned. We don't have a lot of what I would call accessory dwelling units in the town. And I think if we saw more of those and we don't have a lot of provisions that allow for them in town, so we would probably have to evaluate that if that was something that we wanted to consider, A, allowing for more accessory dwelling units. And that is something that could come up as the council moves forward and considering ways to address affordability of housing. That's one way that sometimes communities address housing affordability is allowing denser housing, allowing accessory dwelling units on properties that traditionally have not allowed for them. But I think we're some steps away from there currently.

Terry Cooke: I hear what you're saying, I think. Because I've had some personal experience with this issue. I think it's one we may need to think about a little bit for clarity sake. And my last comment before I turn it over to my colleagues was in looking at the table that you set up, describing the maximum number of days depending on distances between abutting dwellings, that is the number of days, not the number of rentals. Correct? So, for example, an extreme case, a residential in a R-2 district, a residential dwelling 35 feet or less from its neighboring residential property is could be rented for short term rentals for 12 days per year. So if an owner rented to someone for 12 days, that's it. They've used it up.

Will Moore: That's it. Correct. Yes.

Terry Cooke: I just wanted to make sure I understood that was the correct interpretation on that.

Will Moore: Yes, sir.

Terry Cooke: Okay. Thank you. I will invite other Commissioners who wish to comment. Commissioner Woodruff, I think you had something.

Don Woodruff: Yes. Diving back on that. The question asked of me by one of our residents was, could they rent it out? And I said, no, because they're duplexes, they're not single-family dwellings. So then the question became, well, if I had a single-family dwelling and going back to the Chairman's comment and I had a detached garage and which I had an apartment and I rented. Can I. May I, excuse me. May I rent that apartment out under these terms only or is that considered separate and a different issue? In other words, I want to rent that out and I get it out for I don't know, Christmas in Middleburg and a few other events. But I exceed the number of days that would be allowable if I lived in R-2. Is that going to fall under this or I'm living in the main house?

Will Moore: Right. So the first question is, is this a legal accessory dwelling unit?

Don Woodruff: Yes.

Will Moore: Which likely it is not.

Don Woodruff: Okay.

Will Moore: However, if it was, it is still not a single family detached dwelling. It's an accessory dwelling unit. [multiple speakers]

Don Woodruff: That was my interpretation of it all so.

Will Moore: Correct.

Don Woodruff: Residency, does residency mean I am there or does if I don't have it, rented out am I considered the resident? So I was off in Florida for six months, but I didn't rent my house out at all during that period of time. Does that fulfill my residency requirement?

Will Moore: So as the ordinance currently stands, it would likely fulfill it.

Don Woodruff: Okay.

Will Moore: If we changed it to the provision where it has to be used as the owner's primary residence, maybe not. You know, there's a totality of circumstances that would have to be examined. If we change that language for demonstrating that it's that owner's primary residence. [off mic]

Don Woodruff: So, that would be?

Will Moore: Yes sir.

Terry Cooke: Thank you. Council Member Jacobs.

Bud Jacobs: Thank you, Mr. Chairman. A couple of questions, Will, for all other properties in the R-1 and R-3 districts.

Will Moore: Yes.

Bud Jacobs: Do you have an idea? Back of the envelope number of homes that would be 144 day?

Will Moore: Certainly. Yeah. So I'm going to get the audio visual going here for your benefit. But you can also pull up the map that was included. So that's this one here. So anything that you see the green properties are R-1. The orange are the R-3 and only those that have the green dot on them have passed the kind of initial muster of it's on a lot, at least 10,000 square feet in size. And it's from rough measurements on GIS. It's at least 25 feet separated because from a neighboring dwelling, because those are bare minimum standards. If you don't meet those, you're not even eligible. So you're looking at less than a dozen, I would say, existing. However, you're going to add 49 in the Residences at Salamander because they have worked very hard, even though we don't have actual location permits filed for their homes yet, except for a handful, they worked very hard during their planning phase to move houses conceptually on lots so they could maintain that minimum 25-foot separation. Their intent is that all 49 homes could meet those bare minimum standards.

Bud Jacobs: So I'm confused then which tier would they fall under? Okay, you mentioned the Salamander Homes.

Will Moore: That's a good point. And apologies for not being clear about that. Those are simply in totality all of the R-1 and R-3. For the existing developed area of town we only have a couple that are

going to fall in that middle tier, meaning that they are in close proximity to the R-2 district. So you probably have about ten that would fall in the all other. In the residences which we don't currently have mapped here but kind of bring up on screen. So we're looking at this area here. You're going to have 14, roughly 14, basically the south side of Martingale Ridge Drive. These are the ones that are going to be in closer proximity, not directly adjoining, because there's a strip of HOA land here, but they're still within that 100 feet that would put them in that close proximity. And then you're going to have probably three additional of the large lots here that are in close proximity to the R-2 district. So you're still looking at probably about 35 homes within the residences that would be in that all other that's roughly some of that's going to depend on where the actual houses end up located on the lot. But it's likely going to be roughly 35 of the new homes that will be in the all other.

Bud Jacobs: So there will be 15, give or take, that fall under tier two?

Will Moore: Give or take, yes, sir.

Bud Jacobs: That are 100 feet or less from the adjoining R-2 district?

Will Moore: Yes, sir.

Bud Jacobs: Okay.

Will Moore: And I'll work on maybe for next month about getting those numbers tightened up a little bit for you. But that's roughly.

Bud Jacobs: Great. That'd be very helpful. Thanks. [off mic]

Will Moore: Yes sir.

Terry Cooke: Any other questions or comments by other Commissioners? I have one. This is Chair Cooke again, looking at the ordinance of subpart P, which talks about business and occupational licenses and transient occupancy taxes, etc.. Who's going to enforce that? Who's going to collect that?

Will Moore: So that will be our finance director. So just like any other lodging establishment in town, if you are running a short-term rental, if you get approved with the special use permit, you will have to file that BPOL application and then you will have to on a regular basis, whatever that regular occurrence is, remit your transient occupancy taxes.

Terry Cooke: Okay. Thank you. Any other comments before we move on? Yes, Commissioner Fleischman.

Ed Fleischman: Let me just repeat what I said at previous meetings. We have to remember that the regulation for permits for short term rentals was put into effect by the Town of Middleburg a number of years ago. How many years ago Will?

Terry Cooke: 2016.

Will Moore: Late 2016. So going on six years.

Ed Fleischman: So that's 6 years. And no one's applied for a permit. So I think we're spending a lot of time on something that really is not a big issue. That's my comment. Thank you.

Terry Cooke: Thank you. I again applaud staff in their imagination [off mic]. And I think it's a well-crafted approach to this issue. And Commissioner Fleischman is right. I mean, this is not something that we've seen any activity.

Ed Fleischman: But.

Terry Cooke: But I think it's likely we're going to see something, perhaps a substantial amount. And so it's better to have something on the books, so to speak, than trying to deal with this after applications hit us and we don't have any rules to apply. So for that reason, I personally feel it's worth proceeding with. I do have. I do wonder if it's ready for prime time, though. I think the question I raised about accessory uses is one that I'm still not comfortable with that the ordinance sufficiently and clearly addresses it. And as we all know, the devil is in the details on these things. And I think we have to do it right as best we can and try to anticipate the kind of issues that could arise.

Will Moore: Certainly.

Terry Cooke: So I would prefer that we not move forward with a motion at this time, but I will leave it to my colleagues as to whether or not they agree or disagree with that. And call the question, I suppose. [multiple speakers]

Will Moore: And if I may, I, suspected that would likely be the case, especially with these numbers, which I thought would be subject to a good bit of scrutiny. There would be I would suggest, if you are comfortable with the kind of tiered approach, [off mic] it would be okay to make a motion to initiate the amendment. But I would leave out the alternative part that I included where you would want to advertise a hearing. Initiating the amendment does not bind you to the exact contents of it at this time. That's just a signaling that you're starting the process of moving this forward and that you intend to diligently pursue putting it together. But it doesn't put you under any timeline. It's just a signaling that it's basically the localities way of saying, I'm filing an application, I want to file an application to start an amendment process. So that would be okay. You don't need to do that. I think it would be helpful in relaying to Council that you've started the process, but again, especially by not advertising the

hearing, you're not committing yourself to any of the exact contents within. However, if you're not comfortable with the tiered approach, you would not want to initiate it at this time.

Terry Cooke: Thank you. Well, I appreciate the clarification and the explanation I am not uncomfortable with, I personally am uncomfortable with [inaudible] approach. But I do think we need to devote a little more time to the details on this. And I would unless, I would hope one of my Commissioners might make a motion to that effect, and I'll just throw that over. [laughter]

Don Woodruff: [off mic] A lot of things.

Ed Fleischman: Yeah. Yeah. What do you want us to motion on?

Don Woodruff: What are we motioning here?

Terry Cooke: And what I'm suggesting is staff suggested to us that we consider a motion that would adopt. How was this worded Will?

Will Moore: To initiate.

Terry Cooke: We want to initiate. Thank you.

Will Moore: So if you looked at the recommended motion and again, I would suggest reading the first line, but there's apparent a second line in parentheses that I would omit, which has to do with advertising a hearing.

Don Woodruff: Oh yeah.

Bud Jacobs: Mr. Chairman, I can do it. I move the Commission, initiate Zoning Text Amendment 22-02 pertaining to short term rentals.

Don Woodruff: I second that.

Terry Cooke: Motion made and seconded. Any opposition? Rhonda, would you call the roll, please?

Rhonda North: Vice Chair Woodruff.

Don Woodruff: Aye.

Rhonda North: Commissioner Fleischman.

Ed Fleischman: Yes.

Rhonda North: Commissioner Stein.

Mimi Stein: Yes.

Rhonda North: Council Member Jacobs.

Bud Jacobs: Yes.

Terry Cooke: Motion carries. Thank you all very much. And thank you, Will.

Will Moore: Yes, sir. If I may, I think I will endeavor to add some language to the concern mentioned by the Chairman. And if I could simply ask the individual Commissioners between now and next month to put some thought into those numbers of days. Again, those were simply first drafts. And if you can come back next month with maybe some specific thoughts on those numbers, this one is way too many. This doesn't seem like it's enough. And then in a subsequent draft, after next month, I can start to tighten those up. So it's in a little better place. But I think I can come up with some language to help address your concern, Mr. Chairman, about maybe accessory dwelling units, those kind of things.

Terry Cooke: Very good, sir. Thank you. And we will give some thought to that. Commissioner Fleischman.

Ed Fleischman: I'd like to take the floor and make a statement, if I might, Mr. Chairman.

Terry Cooke: Very well. Go ahead.

Ed Fleischman: Mr. Chairman and fellow Commissioners. It's been my privilege to serve on the Middleburg Planning Commission for five years. During that time, the Commission helped draft the Middleburg Comprehensive Plan that was approved by the Middleburg Town Council. I believe and still believe that the plan is an excellent base document for future planning decisions by the Council. In line with this, any potential actions by the Council affecting development in Middleburg need to be evaluated on how they reflect and impact the Comprehensive Plan. Recently, discussions and meetings involving town elected officials and staff have occurred on proposed boundary line adjustments and zoning changes that could affect growth in the Town of Middleburg for generations to come. This Commission has not been tasked with reviewing these preliminary proposals. Communications to the Mayor regarding these proposals date back to at least November 23rd, 2020, and an email from Eric Prince to Mayor Bridge Littleton with CC's to Danny Davis and Will Moore. Through my experience in meetings in the planning profession while working for the federal government, I've been involved in many planning reviews in different sized communities. Planning Commissions are set up to conduct reviews of proposals and provide guidance to local elected officials before decisions are made. Good planning requires transparency. I believe the possible building line adjustments and zoning changes that have been the subject of discussion by members of

the Middleburg Council and town staff have not shown this transparency. I request that an agenda item be set up for the next Planning Commission meeting for the staff to brief the Commission on preliminary proposals for the boundary line adjustments and zoning changes affecting the town. The Commission then would be in a position to provide input to the citizens of Middleburg and to the Middleburg Council in their decision-making process. The Planning Commission should not be a rubber stamp to the Council's presumptive actions. It's like closing the stable door after the horses have run off. Thank you, Mr. Chairman.

Terry Cooke: Thank you, Commissioner Fleischman. [applause]. [off mic]

Terry Cooke: Procedurally, that might have been a more appropriate comment during the discussion period after the regular meeting, but there it is on the record. So. This is up to the Commission to decide whether or not this should be an agenda item for the next meeting or discussion.

Will Moore: I mean, staff can certainly put together a presentation on the information that is already available to you. I don't know that we have anything additional that has not been released to the public at this point. We don't really have any new information. And I would only add that this Commission was briefed before this was rolled out to the general public in closed session in January on the Mayor and Council's discussions. There is a place for the Commission in this process. If a boundary line adjustment moves forward, there's all sorts of opportunities and hard work that would be ahead of this Commission. Any land that is brought into the town via boundary line adjustment is automatically zoned Agricultural Conservancy. So it has to go through a rezoning process. There would be subdivision plans, there would be all sorts of actions for which the Commission would have to weigh in and do diligent study and have to provide advice and recommendations to the Council on the shaping of things. So I would just I would say it's a bit disingenuous to say that the Commission has been skipped over in the process. We've just not reached that process point in the process to this point.

Terry Cooke: Okay, I'm not going to have a debate on the issue. But Commissioner Fleischman.

Ed Fleischman: Will, you're correct that there was some discussion by the Mayor on two boundary line adjustments, but I believe that there are more than two boundary line adjustments that have been discussed by the Council and the Mayor and the staff. And the planning Commission has not been notified about those additional boundary line preliminary proposals. Thank you.

Terry Cooke: I'm going to suggest that Commissioner Fleischman. I don't dispute the sincerity of your position on this, and I respect it. I do think it seems to me that your complaint is one that should be directed to the Council rather than to the Commission. Because if I'm understanding what you're saying, you feel that the Council has been not as forthcoming as you think it should be in terms of the transparency issue in laying all the facts out to your satisfaction. And I would rather than make this an agenda item for the Commission. And frankly, I don't know what we would do with it other than to share in your view or say that we disagree with your view, I think it's more appropriate that you direct

your complaint to the Town Council as you have a right to do at a Council meeting as a member of the public, not speaking for the Commission, but certainly you could identify yourself as a member of the Commission and share your concerns and thoughts on this.

Ed Fleischman: I respect your views, Mr. Chairman. Of course. And you're a friend, and I appreciate your comments, but as a citizen, I'm not talking as a citizen going before the Council. I'm talking about a Planning Commissioner in the Town of Middleburg. And I'm addressing the Planning Commission and say the Planning Commission should be involved in reviewing preliminary proposals. It's not a complaint. It's just a statement of that's how I feel. And I think that we should have a review, provided information and review it as Planning Commissioners, not as citizens, but as Planning Commissioners. Thank you.

Terry Cooke: Thank you. And I. Yes. Council Member Jacobs.

Bud Jacobs: Ed, I respect your concern about these matters. I don't have a problem if the Commission decides they want to make this an agenda item for our next meeting. I do take issue with the accusation that there are secret BLA's being discussed outside the two that everybody has been more than amply briefed on. Quite frankly, I don't know what the hell you're talking about. I can tell you where the Council is right now in this process. We've taken or are taking the 150 or so comments that we've received about both BLA's, including, I think a couple from you. Those are being put into a document and some analysis is going to be done to try to capture in broad terms what the public reaction is to the BLA's. Those will be presented to Council, I don't know if it's next meeting or in August sometime, but in any case, they will be presented to Council. And I frankly don't see why they shouldn't be presented to the Planning Commission as well in a timely fashion. You use the term preliminary proposals for the two BLA's that I'm aware of, the Windy Hill and the Homewood Farm proposals. I have to take issue with that description. They are not proposals, nor are they even preliminary proposals at this point. They are concepts for potential action by Town Council to initiate a BLA. And I believe the way the process is going to unfold is that the Council is going to take due cognizance of whatever the public reaction is to the two proposals and then using those the information contained in the reaction and the analysis to go back to the two potential applicants and tell them what may be acceptable to Middleburg and what definitely would not be acceptable to Middleburg in the case of both proposals. At that point, it'll be up to the potential applicants to decide whether they wish to move forward, or they want to go ahead and pull the plug and not. So I'm with you in spirit. Transparency is a good thing. I think we have been more than transparent in our attempts to reach out to the public and get their view on what these two very important actions might mean for the town and what our residents want to have happen with respect to these two actions.

Terry Cooke: Thank you, Bud. Anyone else have any comments on this?

Don Woodruff: Mr. Chairman.

Terry Cooke: Commissioner Woodruff.

Don Woodruff: Mr. Jacobs, are these are being approached separately. So one might be approved and or might move forward and the other might not. And I don't I'm not penning either one. But in your estimation, from what you've heard, there are no other boundary line adjustments that need to be considered by residents at this time.

Bud Jacobs: I am absolutely unaware of any other boundary line adjustments. Do you know of any?

Will Moore: I'm happy to address conversations that have had. And let me start by saying we have conversations with people, with developers all the time that go absolutely nowhere. And it would be a fool's errand to try to bring every single conversation that has ever brought up to the attention of this Commission, to the attention of the public, because it's obvious sometimes when things are going nowhere. We have had recent conversations with an owner on the east side of town, Mount Defiance Cidery, who has been interested actually ever since he started building his building of the potential of coming into town to maybe have water and sewer service, to maybe have a lodging facility. Those conversations have gone nowhere to this point. We have also had fairly recent conversations with the Hill School and six there are six homes along Landmark School Road, that adjoin Hill School. The Hill School, if you're not familiar with it, they have property that is in essentially three jurisdictions, the Town of Middleburg. They have property between the town limits and the Fauquier Loudoun boundary that is just within Loudoun. And then they have land in Fauquier as well. There's been a global conversation of wouldn't it be nice if we brought these six homes that are along Landmark School Road that currently have town water service but do not have sewer service? Wouldn't it be nice to bring those into town and to bring the remainder of the Hill School campus that is within Loudoun into the town boundary? And there has been some work on behalf of staff and we have briefed Council on this doing a sewer feasibility study for the six homes that are along Landmark School Road.

Don Woodruff: Not all of which are owned by Hill School [off mic]?

Will Moore: Correct. I think three are owned by Hill and three are owned separately. So those discussions have been going on. They have come to a standstill for now. They would not that potential boundary line adjustment if it resurfaced, the idea does not involve any new development. So those are conversations that have been had, but again, not involving any new development in that case, but neither that conversation with Hill School and those individual owners nor the conversation with the owner of the Cidery have gone anywhere to this point. So if that's helpful. So there are discussions that take place like that.

Terry Cooke: Thank you.

Will Moore: Yes sir.

Terry Cooke: Thank you. Anyone else? There is a process involved in the BLA considerations and it is a statutory process as dictated by law. And we will follow that process and to the extent that, that

process involves the Planning Commission at one stage or another, we will participate in that process. And that is the road I think we should follow, and I think we must follow and to suggest otherwise, I don't think is appropriate. And any Commissioner who feels otherwise is certainly welcome and entitled to express their views as this process continues. But to put it in as an agenda item for the Commission, I think does not serve any purpose. And I would not be in favor of doing so. With that said, unless any Commissioner other than Commissioner Fleischman disagrees with me, we will move on. Thank you all. Okay. That concludes our work session, and we will move into the regular meeting of the July 25, 2022 meeting of the Planning Commission. And we will call that meeting to order. First order of business is the disclosure of meetings with applicants. Rhonda, would you call the roll on that question?

Rhonda North: Chair Cooke.

Terry Cooke: I have had no meetings or discussions with anyone having a matter before the Planning Commission.

Rhonda North: Vice Chair Woodruff.

Don Woodruff: I have had no meetings with anyone about any items that might come before the Planning Commission.

Rhonda North: Commissioner Fleischman.

Ed Fleischman: No meetings or discussions with people who have applications before the Planning Commission.

Rhonda North: Commissioner Stein.

Mimi Stein: I've had no meetings or discussions with anyone regarding applicant's no planning applications. [multiple speakers].

Rhonda North: Council Member Jacobs.

Bud Jacobs: I've had no meetings with any applicants who have any matter before this Commission.

Terry Cooke: Thank you all. The next item on the agenda is public comment. We have no public hearings scheduled today, but this is an opportunity for any members of the public to share questions or concerns with the Commission to do so. Is there anyone present in the chambers tonight who wishes to address the Commission? Yes, ma'am. Please come forward. Take your seat at the microphone.

Will Moore: Just to turn it on.

Terry Cooke: Please state your name and address.

Pam Curran: Sure. I'm Pam Curran, and I live at 800 Blue Ridge Avenue. And I just wanted to address the possibility of the change in the setbacks related to homes in Ridgeview on Chestnut. And, you know, I understand what we're trying to do in preserving the what we love about Middleburg and trying to avoid homes being built, you know, to the extent of no setbacks. And but I think the unintended consequence is that those of us that have moved here and love Middleburg, you know, would like to make improvements to their home so that you can build up the equity in your home, which is, you know, a little bit of the American dream. Right. And so what I just want to say is we don't want to get into a situation where you take away that right, I think as a property owner to improve your home. And at the same time, maybe it would be appropriate to have a body really look at urban planning and aesthetics and really look at what people are trying to do. I mean, I might I think at this point, based on the amount of coverage I am not allowed to have, or I have to have, I could build a; I don't see that 3 minutes. I'm used to ticking down. So, but I'll try and stay within it.

Bud Jacobs: We are a little more liberal [off mic].

Pam Curran: I know I feel it. I'm like waiting for that [inaudible] to come up.

Terry Cooke: In Loudoun County, they drag you out.

Pam Curran: Yeah, I don't want that to happen today. So anyway, you know, I mean, I think right now I can have a one. I can have my patio, a one car garage, and maybe I can bump my kitchen out a little bit. But what I couldn't do if I wanted to is build a tennis court or a pickle-ball court or a pool. And so, you know, it comes down to a little bit also of a dictating a lifestyle over on Ridgeview where we live versus, you know, like a minute away where new homes are being built. You know, it's very different. But so I would just like to propose that maybe we look at things on a case by case, you know, related to accessory type things and what people are trying to do and have a Comprehensive Plan for what we want Middleburg. And I think is Ridgeview Ridgecrest? I Just moved here about a, it's Ridgeview, right? Ridgeview, you know, just really, you know, not just saying, you know, we're going to restrict this and we're going to restrict that, but let's really look at what we want it to look like and be fair to the people that moved here to enjoy, you know, long term lifestyle here. Okay, that's it. Thank you.

Terry Cooke: Thank you. Thank you very much.

Pam Curran: Thank you very much.

Terry Cooke: Anyone else in the chambers with a comment?

Darlene Weeks: Yes.

Terry Cooke: Please.

Darlene Weeks: Let's see, it's Darlene Weeks 204 Chestnut Street. We've been in this house for 53 years, and this shouldn't be a problem. If I wanted to put, we have three fourths of an acre. Our house is in the middle. If I want to put in a swimming pool, my yard is completely fenced in with a black iron fence. That should not be a problem, should it? Any questions? [off mic] I mean.

Terry Cooke: It's not for us to answer questions ma'am.

Darlene Weeks: No. Okay. So you're not in a position to answer that. I mean, it's the land is there. It's not going to be near anybody.

Terry Cooke: Well.

Darlene Weeks: So if I wanted to do it down the road, I mean, since I've been here so long, I'm seven generations from this place. You all have allowed all these other people to come, move in here and build up every inch of their space. Every inch. Some of these houses are taller than it was required. No one was watching very closely. We have several homes in this area in Ridgeview that are and your [inaudible] Mayor even pointed it out to me, [inaudible] that some of these houses were much taller than they were required to be. So the ball has been dropped by some of these committees. And now you want to put a restriction on our subdivision. All of a sudden everything's going to go on hold for the ones of us who've been there for a very long time. It's not going to affect me any. But there's new people that are spending an outrageous amount for these little homes. They want to improve it because they're used to better quality homes. But now everyone's putting a hold on it. But you didn't do it to some of these people that have just moved in this town and put gigantic homes on these little pieces of property. So you all should take in consideration that this is not being fair to the ones that have paid outrageous prices and want to live here for the rest of their lives. You are giving a lead way to a lot of people to build up this. You're thinking about two projects here that we don't need, and we don't want. We've all filled out our forms, and I just hope and wish that you all are taking in consideration how many people are against this. That's all I have to say.

Terry Cooke: Thank you. Thank you. Anyone else in the Council Chambers? Anyone online, Rhonda?

Rhonda North: No, we didn't advertise it as an online meeting.

Terry Cooke: Oh, sorry, ma'am.

Roxene Hill: Okay.

Terry Cooke: Yes, please.

Rhonda North: I'm Roxene Hill. I live at 205 Chestnut Street. I'm here to thank Ed Fleischman for making a statement today, because I think my neighbors, in any case, and the people of my street and for several streets over feel abandoned that we really haven't been informed. And when we got the FOIA dump the other day, we felt even worse because we felt like we'd been betrayed. And I understand what you're saying, Mr. Cooke, that you feel like something like this shouldn't be on the agenda, but I believe it should. This is really important to the town, and the Planning Commission is supposed to be there to lead us, to let us know what the unintended consequences could be from this. That's all I've got to say.

Terry Cooke: Thank you, ma'am. Anyone else? Yes, sir.

Vincent Bataoel: Yes, sir. Mr. Chairman, Commission. Vincent Bataoel, 218 East Marshall Street in Middleburg. I just want to ask the question at what point does the Commission or the Council inform the public of any potential boundary line adjustments or any discussions with developers? Is there any kind of objective benchmark that says that this is the point that we inform the public, or is it completely discretionary?

Terry Cooke: As I mentioned a moment ago, sir, we're not here to answer questions. We're here to receive comments or testimony from the public. This is the boundary line adjustment issue has been, in my view well-publicized and.

Vincent Bataoel: Two of them have. But I wonder at what point two of the potential boundary line adjustments have been published and two have not. [multiple speakers]

Terry Cooke: The second reference to secret boundary line adjustments.

Vincent Bataoel: Sir, they're not secret. The Town Planner, Will Moore did disclose the two additional boundary line adjustments potential that have not yet been presented to the public. And my question is simply.

Terry Cooke: They may or may not go anywhere.

Vincent Bataoel: Well, the other two may or may not go anywhere as well. So I do wonder, at what point does the Town Council or the Commission involve the people of Middleburg in discussions about potential boundary line adjustments? Is there some magical point?

Terry Cooke: Vice Chair Woodruff.

Don Woodruff: Thank you. I think these two that are on the table. At least edging on to it have been well discussed. There was a very public presentation at the Community Center put on by the town to let you know, let us know, exactly what was going on, that there were two potential boundary line adjustments that were being proposed not considered at this point. On the other ones, I've been on

this Commission for 16 years. Boundary line adjustments are a plethora. I mean, we've gone east. We've gone west with boundary line adjustments, potential possibilities until Mr. Moore receives a formal request, they are pipe dreams.

Vincent Bataoel: Has there been.

Don Woodruff: They are not really anything that anybody has consideration of. If you know of any, I think you should present them to the Town Council and say you're not doing your job.

Vincent Bataoel: Thank you, sir. Has there been any formal proposal by the two that have been discussed to the public? Disclosed to the public? Has there been a formal application or proposal?

Don Woodruff: No. You know as much as we do.

Vincent Bataoel: No. Well, then wait. So there has not yet been a formal application, [multiple speakers] but Commissioner Woodruff has just said that there has been an application for these boundary line adjustments.

Don Woodruff: I did not say there has been an application. You are twisting words. I said, a consideration.

Vincent Bataoel: Well, are not all four of them under consideration, sir?

Terry Cooke: No.

Bud Jacobs: No.

Vincent Bataoel: Has not there been money spent and feasibility studies for one of them at the Hill School? [off mic] Is that not a consideration?

Terry Cooke: I have no idea whether a property owner has spent money.

Vincent Bataoel: No. The Town of Middleburg, sir. The Town of Middleburg.

Terry Cooke: No.

Terry Cooke: Will?

Will Moore: I'm happy to discuss this. So the Town Council did authorize the town to split the cost of a sewer feasibility study, not necessarily directly linked to a boundary line adjustment request, but because we have an odd situation where we have six out of town water customers, which we don't, we have a general policy that we don't provide utilities to properties that are outside the town. Now at

some point in time in the past, because we have a well, which is way down Landmark School Road outside the town limits and the water main from that well came right by these six homes, those six homes were connected to water. We have.

Don Woodruff: [off mic] BLA?

Will Moore: Right. So there has been discussion about potentially doing a boundary line adjustment. But there's also been efforts by the town, very diligent efforts to address wellhead protection. And one of the key aspects of that is elimination of septic systems in town. These happen to be closely adjoining the town. And the Town Council authorized us to split the cost with the owners of those properties of a sewer feasibility study that could or could not be linked to a potential boundary line adjustment. But the decision was to split the cost on that sewer feasibility study. Again, because we have a hefty effort in trying to address issues of wellhead protection. So that's kind of how that came to be. So I can understand why Mr. Bataoel is linking that to boundary line adjustment discussions. And we have kind of told those owners that, hey, if you really wanted to get on sewer, we would probably have to do a boundary line adjustment because our Council otherwise has this, I think, unwritten policy that we don't provide utility service outside town. But the two would not necessarily be linked. One could happen with maybe not the other. So I hope that's helpful and clarifying.

Terry Cooke: Thank you Will.

Vincent Bataoel: Thank you for the clarification. Yeah. And I would hope that if there are any other feasibility studies for potential boundary line adjustments or any other expenditures by the Town of Middleburg to that effect for boundary line adjustments, that those would be considerable for public input and presented to the Town of Middleburg to the people of the Town of Middleburg. Thank you.

Terry Cooke: Thank you. Thank you all. That concludes the public comment period and that will be closed. Next item is approval of minutes for our June 27 work session and regular meeting. Do we have a motion?

Bud Jacobs: I don't want to make all the motions. Ed, make a motion.

Ed Fleischman: No you do a great job. I'll second it. [laughter]

Bud Jacobs: I move we approve the minutes of the June 27th work session and regular meeting as presented.

Ed Fleischman: I second the motion. This is Commissioner Fleischman.

Terry Cooke: Motion made and seconded. Any discussion? Rhonda call the roll, please.

Rhonda North: Vice Chair Woodruff.

Don Woodruff: Yes.

Rhonda North: Commissioner Fleischman.

Ed Fleischman: I vote yes.

Rhonda North: Commissioner Stein.

Mimi Stein: Yes.

Rhonda North: Council Member Jacobs.

Bud Jacobs: Yes.

Terry Cooke: Thank you. Next item Council Representatives Report. Council Member Jacobs, anything to tell us tonight?

Bud Jacobs: Yes. A couple of quick things. A week or so ago, the Piedmont Environmental Council had a meeting at Buchanan Hall in which they discussed all of the projects and activities that the council is undertaking along Route 50. I attended it. It was not an advocacy meeting. It was more of an informational meeting. But they have a ton of stuff that they're doing starting at Gilberts Corner, Meadow Farms. You've all read, I think, the coverage over the Board of Supervisors decision to move ahead with a contract for the Environmental Council to acquire the so-called Aldie Assemblage. I think the Council is going to have to do some pretty significant fundraising to make that happen if the contract does in fact go through. They discussed in some detail the two Middleburg boundary line adjustments as well as some other activities that they have going as far west on Route 50 as Ashby Gap. So I don't know if it was recorded, but if they offer the same opportunity in the future to get an update on what they're up to, I urge everybody on the Planning Commission to attend. Will, you were there, too, I think, weren't you?

Will Moore: Yes, sir.

Bud Jacobs: Yeah. The other thing I want to draw the Planning Commission's attention to is the pending action in Richmond on the legalization of commercial marijuana sales. You will recall that limited marijuana possession and consumption has been legalized. There's been a significant decriminalization effort attached to this as well to expunge conviction records for nonviolent marijuana offenders in Virginia. That was done in the first round of legislation. The second round of legislation, which will be before the Assembly in its next session, concerns the commercial sales and regulation of marijuana sales within the Commonwealth. Overall, it looks like the State Assembly is doing this pretty smart. However, there is one provision, or I should say the absence of one provision which Middleburg has joined a number of other towns in the Commonwealth and the Virginia Municipal

League to get approval in the legislation for local referenda to allow towns and jurisdictions to determine whether they wish to allow commercial marijuana sales in their jurisdiction. At the moment, it's not in the legislation. It may not actually make it to the legislation. Which brings us back to the Planning Commission. It will be up to us, should that happen, to consider how we apply our ordinances to the issue of commercial sales within town limits.

Terry Cooke: Thank you, Bud.

Don Woodruff: [off mic]

Bud Jacobs: I haven't opened it yet though. [laughter]

Terry Cooke: Next item is discussion items. I notice we have one matter on the agenda. A status update for Zoning Text Amendment 22-01. Will?

Will Moore: Yes, thank you. So this is the amendment, and I'm glad Ms. Curran is here this evening, because I think this goes to some of her comments as well as those of Ms. Weeks who has since left. So that is the amendment which addresses building lot coverage and the new regulation of impervious lot coverage. So and for Ms. Curran's benefit that the Commission has already made a recommendation and sent that forward to the Council. The Council reviewed that at their meeting on July 14th. So a little less than two weeks ago, the public hearing on that is for the Council Meeting this week, July 28. So this Thursday they'll hold the public hearing, and they could potentially adopt the amendment, as you have recommended it. So that has moved forward. I do want to share with the Commission that there has been discussion at the last Council meeting about the Council looking more closely at the R-2 report that was prepared by Berkley and deciding whether or not they want to potentially initiate an amendment themselves that would include additional interventions that you chose not to move forward with at this point in time. So they're looking at those and that will be a discussion item going forward with Council. I don't see a knee jerk reaction that they're going to automatically send something back to you discussing with the Mayor this morning. He wants to have a discussion with Council, though they I think they were impressed by the detail in the Berkley report. And they want to understand a little more about some of the interventions that you chose not to move forward with. So again, there were three levels of interventions. The first had to do with introducing the impervious lot coverage, which you did. The second included three components. It included a maximum lot size, which we didn't exactly move forward with, but we kind of did an alternative. But it also included a proposal to actually reduce the current building lot coverage, which is 30% to reduce that to 25%. We chose not to move forward at this level and then also including potential required tree cover and landscaping requirements and then the third level of intervention was the architectural review district, if you will. So I just wanted to let the Commission know that the Council is going to be reviewing that report and they may decide to initiate something of their own, which would then have to come back to you for review and recommendation.

Terry Cooke: Thank you Will. I'll just say for the benefit of the speaker this evening, I mean, you've heard that this is a matter of a public hearing before the Town Council. Certainly, the concerns expressed here this evening are you have an opportunity to address those directly to the Council. And I would encourage you to do that if that is your want. I will also suggest that the Commission really grappled with this issue. And in deciding to go forward with what we recommended to the Council, one of our principal concerns was that we were concerned with not impinging on the rights of property owners. And so I heard what you said tonight, and I want to assure you that that was one of our concerns. And whether you think we should have gone farther in our reservations about that, that's a matter of opinion. But I will tell you that that was a matter of concern to the Commission. So thank you, Will.

Will Moore: Yes sir.

Terry Cooke: In terms of other discussion items, I would only I'd mention to the Commission that I went to the Board of Supervisors. All of you know this because of an email that Will sent out. But I went to the Board of Supervisors in Loudoun County last week to express on my own behalf, not on behalf of the Commission, but on my own behalf concerns that I had and they were concerns that I discussed with Council Member Jacobs and with the Mayor regarding what I thought was a poor job of presenting to the public the details of a proposed Comprehensive Zoning Text Amendment in Loudoun County. I submitted a letter to the board. I went and spoke and will tell you I hadn't been before the board in a very long time. So it's a two and a half minute time limit. And at two and a half minutes, they almost literally come grab you under the arms and drag you out of the boardroom. So I did not have an opportunity to fully articulate what was in my letter, but the board did agree that they would consider the comments that were in the letter. So I don't have a lot of hope that they're going to carry much weight, but at least we made the effort. So I wanted to at least disclose that to you. The next item on the agenda is the quorum for next month's meeting. Before we get into that. I want to disclose that for the September meeting I will not be available and perhaps if we can move that meeting up one week to the Monday before the scheduled meeting, I can be back. I will be traveling back from the Eastern Shore at that time, but I should be back in time for that. But I absolutely cannot be here for the regularly scheduled meeting in September. So with that being said, I will ask whether or not everyone here tonight would be available for. Oh, also, the other point as, staff pointed out is that in August, we we have five Mondays. So we have an option of having a meeting on the as we regularly do on the fourth Monday of the month or perhaps delaying it to the last Monday of the month. I have no particular preference on that. I don't know whether any of the other Commissioners do. Is everyone okay with the, is it the 24th?

Will Moore: The 22nd?

Terry Cooke: Is everyone okay with the 22nd?

Bud Jacobs: I have no personal life. I'll be here. [laughter]

Terry Cooke: All right. Very good. So we [multiple speakers]

Will Moore: The 22nd?

Terry Cooke: Proceed with the 24th. Thank you all. And with that, ladies, and gentlemen, we are adjourned.

Will Moore: Thank you.

Terry Cooke: Thank you all.