



**TOWN OF MIDDLEBURG
PLANNING COMMISSION
WORK SESSION MINUTES**



**MONDAY, SEPTEMBER 12, 2022
PENDING APPROVAL**

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

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

The Middleburg Planning Commission held a work session on Monday, September 12, 2022 in the Town Hall Council Chambers for the purpose of discussing draft zoning text amendments related to short-term rentals. 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

Chair Cooke opined that there were two questions the Planning Commission needed to address, the first being “whether this is a necessary and appropriate step to take in terms of amending the existing short-term rental ordinance.” He advised that if it was, the next question would be “what form should that amendment take”. Mr. Cooke suggested the Commission decide how to proceed.

Deputy Town Manager Moore advised the Commission that they had the third draft of the ordinance amendment before them and noted that it contained two primary changes. He reminded the members of their desire to require that any dwelling used for short-term use should be the owner’s primary residence. Mr. Moore reported that the federal appeals court recently issued a ruling that struck such provisions; therefore, he removed it from the draft ordinance and reverted the language back to the existing requirement that the dwelling be primarily used for residential purposes. He reminded the Commission of the tier system that was included in previous drafts and advised that this draft removed the sub-tiers.

The Planning Commission suggested they first needed to define their goal, including what they were trying to accomplish, with regard to the ordinance amendment. They noted the need to also determine whether the regulations would be enforceable and suggested this could place a heavy burden on the staff.

In response to an inquiry from the Commission, Deputy Town Manager Moore advised that until a couple of weeks ago, the Town had not received an application for a special use permit for short-term rental use. He reported that during their next meeting, the Commission would hold a public hearing on an application that was recently received. Mr. Moore reminded the members that they were conducting this review at the direction of the Town Council, who expressed a desire for help in evaluating applications, particularly with regard to the question of how often the use should be permitted. He noted that the existing ordinance included criteria that would help address a number of concerns about the use. Mr. Moore reiterated that the open-ended question was whether a property owner could use his home for up to one hundred eighty days per year as a short-term rental.

He reminded the Commission that this was never intended even if all the criteria were met. Mr. Moore reiterated that the Council had asked how it should distinguish which properties would be eligible for the use for more or less days, which was the genesis of these discussions. He noted that the Town also knew the Residences at Salamander was being marketed as having a short-term rental program. Mr. Moore reported that the number of instances of intermittent short-term rentals occurring in Middleburg were up, and that the number of inquiries regarding the use were dramatically up. He further reported that the number one question related to any residential property that had gone on the market over the last two years was whether it could be used as a short-term rental and advised that this was another reason for revisiting the ordinance. Mr. Moore recommended the Commission look at the Comprehensive Plan amendment in order to help provide clarity on the purpose of the zoning ordinance amendment. He reminded the members that when they first began their discussions of this issue, they agreed to bifurcate the Comprehensive Plan amendments and the zoning text amendments. Mr. Moore opined that there was important language in the Comprehensive Plan that should be considered. He reminded the members that it spoke of the introduction of transient uses into the existing, stable residential neighborhoods; transient uses' ability to affect the character of the R -2 District; and the need to address the saturation of this use in new neighborhoods, which could be contrary to the plan that new development be compatible with Middleburg's small-town scale and historic character. Mr. Moore opined that these were two areas that should be weighed as a part of the Commission's deliberations.

Chair Cooke reminded the members that they were trying to discourage corporations from buying homes to turn them into year-round short-term rentals. He questioned whether the requirement that the primary use must be residential was sufficient to ward off having entrepreneurs monetize homes without them being used as a primary residence.

Deputy Town Manager Moore noted that it would be a challenge to enforce the primary use requirement.

Councilmember Jacobs suggested there were issues the Commission had not yet considered. He opined that from a Council perspective, the concerns were mostly related to the R-2 District. Mr. Jacobs suggested this issue could encompass a two-part goal. He noted the need to mitigate the risk of commercial buyers using houses as short-term rentals and changing the character of the established neighborhood in the Ridgeview area. Mr. Jacobs opined that given the large events in the area, the Commission did not want to rule out the ability for people to use their homes as short-term rentals. He suggested the only two goals were to mitigate the risk of commercialization of properties, while still allowing residents the opportunity to engage in some form of short-term rentals for a period of time.

Commissioner Stein opined that the Commission felt comfortable allowing the homes in the Residences at Salamander to be used as short-term rentals, as Salamander would be the management company. She suggested the need for the "right" tenants and "right" oversight if other properties were rented for this use. Ms. Stein questioned whether the Town could engage a management company so this use could be policed. She opined, however, that property owners should also be able to manage them on their own.

Deputy Town Manager Moore reminded the Commission that the existing ordinance required that there be a responsible party to manage the use, which could either be the property owner or a management company; however, the Town could not provide those services.

Commissioner Fleischman noted the lack of agreement in the Commission's previous discussions and opined that it was difficult to identify a rule with which everyone agreed. He reminded the members of a letter they received earlier in the day and opined that it was the goal of the Comprehensive Plan to develop ways to allow young families to purchase homes or aging residents to stay in their homes. Mr. Fleischman opined that older residents may wish to rent a room out to supplement their incomes and that this was a good way to allow them to stay in Middleburg. He suggested the same was true for families and opined that short-term rentals were a good way to make money. Mr. Fleischman opined that anyone living in the R-1 District did not need additional income. He further opined that the draft ordinance allowed people who had a lot of money to do short-term rentals, but not those who needed additional income. Mr. Fleischman suggested that those in the R-2 District should be allowed to do short-term rentals for more days. He further suggested that everyone should be treated equally, with there being no categories.

Commissioner Roszel agreed with Commissioner Fleischman and opined that different rules created problems. He questioned how the short-term rentals would be policed if everyone had them. Mr. Roszel further questioned how the Town would collect the taxes associated with short-term rentals. He questioned what would occur if someone used their property for short-term rental purposes without having the required special use permit. Mr. Roszel opined that there were many things the Commission had not yet figured out. He suggested the goal was to not have a daily turnover of people in the homes. Mr. Roszel noted that the Town could not prohibit people who had money from having the ability to use their property for this use. He opined that the Commission had more work to do. Mr. Roszel further opined that what was being proposed was arbitrary and too difficult to lay out, and that there were too many variables. He suggested the need to be more specific. Mr. Roszel opined that there was a consensus that the Town should not let short-term rentals get out of control; however, he was not sure they were. He suggested this was a deeper issue than what the Commission was addressing.

Commissioner Stein opined that if someone was renting a room out in their home that was a separate type of rental.

Deputy Town Manager Moore noted that some jurisdictions had regulations that treated the use of an entire house for short-term rental purposes differently than a single room. He opined that there would be less issues if someone was in the home during the short-term rental. Mr. Moore reminded the Commission that the nature of zoning was to establish districts and treat each district differently. He opined that the standard of care was different in older, established neighborhoods, such as those in the R-2 District.

Commissioner Roszel opined that the Town was imposing an overlay district for short-term rentals. He further opined that it was hard to say that different things could be done in different districts.

Councilmember Jacobs questioned whether the Commission was only talking about the Residences at Salamander and seven or so properties in the R-2 District. He suggested there were no concerns related to the Residences at Salamander, as the resort would manage those short-term rental units, which meant the concerns were only related to seven or eight properties in town.

Deputy Town Manager Moore confirmed this number was correct if the Residences at Salamander were excluded.

Commissioner Fleischman opined that the existing ordinance was already robust. He cited the special use permit application that was just received as an example of why the existing regulations were good enough. Mr. Fleischman suggested the Commission not change them unless they found they were not working.

Chair Cooke opined that the Commission was conflicted as to whether amendments to the zoning ordinance were necessary. He reminded the members that the Council asked the Commission to review them. Mr. Cooke further reminded the Commission that their role was to determine when further regulations were necessary. He advised that he got the sense that they did not believe they were called for at this time. Mr. Cooke questioned whether the Commission wished for this to be their position or whether they wished to tweak the ordinance.

Deputy Town Manager Moore encouraged the Commission to, at a minimum, pursue: (1) renaming the use from "limited residential lodging" to "short-term rentals"; (2) amending the language to clarify that accessory dwelling units could not be used as short-term rentals; (3) amending the language to require that the property owner must maintain a business license and pay the appropriate taxes related to the use; and, (4) changing the term "days" to "nights". After some discussion, the Commission agreed with this recommendation.

In response to inquiries from the Commission, Deputy Town Manager Moore reminded the Commission that under the existing ordinance, the maximum number of nights an applicant could apply for this use was one hundred eighty. He further reminded them that the house must be a minimum of twenty-five feet from another dwelling unit. Mr. Moore advised that he could clarify that the maximum was one hundred eighty days; however, he advised that not all the properties that qualified to apply were suitable for the one hundred eighty night maximum.

In response to an inquiry from the Commission as to how the number of nights would be enforced, Mr. Moore advised that the business would have to file quarterly lodging tax reports, which would include the number of nights a unit was used. He agreed the Town would not know if someone under reported the usage.

David Mars, General Manager of the Salamander Resort & Spa, questioned whether the requirement that there be twenty-five feet between structures was in the existing ordinance.

Deputy Town Manager Moore confirmed it was. He noted that the planners and architects of the Residences at Salamander were aware of this regulation when they developed the concept plans for the subdivision.

Deputy Town Manager Moore advised the Commission that they could continue to tweak the draft ordinance when they reviewed it at their next meeting. He noted that a public hearing on the amendments must still be advertised. Mr. Moore advised that he would have an updated draft ordinance for the Commission's review in two weeks.

There being no further business, Chair Cooke adjourned the meeting at 7:25 p.m.

RESPECTFULLY SUBMITTED:

Rhonda S. North, MMC, Town Clerk

Middleburg Planning Commission Transcript
September 12, 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, everyone, and thank you to my [inaudible] for making themselves available for a Special Work Session tonight. We have one item that we've been grappling with for a little while, and I thought it was appropriate that we perhaps spend some additional time in a work session format to try to get our hands around this. And I'm speaking obviously, of a possible Zoning Text Amendment to address the subject of short-term rentals here in town. And I guess there are really two questions associated with that. Based upon what I've heard in our past discussions among the Commissions, and one is whether this is in fact, a necessary and appropriate step for us to take at this time in terms of amending the existing short term rental ordinance. And if the decision is that indeed there is, it is appropriate to amend it, what form should that amendment take? So with that stated as the predicate, I'm going to look forward to a lively discussion among the Commission tonight and some thoughts and ideas as how best to proceed on this matter. So I guess with that said, we'll call the work session to order, and I'll ask the Clerk, Rhonda to call the roll, please?

Rhonda North: Chair Cooke.

Terry Cooke: Present.

Rhonda North: Vice Chair Woodruff.

Don Woodruff: Present.

Rhonda North: Commissioner Fleischman.

Ed Fleischman: I'm present. Thank you.

Rhonda North: Commissioner Minchew.

Rachel Minchew: Present.

Rhonda North: Commissioner Roszel.

Dev Roszel: Present.

Rhonda North: Commissioner Stein.

Mimi Stein: Present.

Rhonda North: Council Member Jacobs.

Bud Jacobs: Present.

Terry Cooke: We have before us a memo that staff has provided to us again, just sort of bringing us up to date on where we are at this point. Will Moore is there anything you want to add to that?

Will Moore: So not to read to you, but to just highlight you have a third draft of a possible text amendment, obviously for the purpose of discussion, but to highlight what is stated within the memo. The two primary changes that you'll see in the third draft from the second draft. The second draft included a provision that was based on discussion of the first draft, which would have required the dwelling in which a short-term rental would take place to be the owner's primary residence. There was some discussion of that last month and actually on the day of your meeting last month, there was a federal appeals court decision that basically struck down that provision that you could require it to be the owner's primary residence. That has to do with regulating interstate commerce, basically saying you can't create an out of state owner differently than you would treat an in-state owner. So we have removed that reverted back to the existing language. It still does require the dwelling to be used primarily for residential purposes, but we just can't stipulate it that it has to be the actual owner of the property's residence. So that's one change. And then the second change, the way this draft is structured, has those kind of three different tiers, if you will, which was an approach to the regulation where properties in the R-2 district, which is specifically defined in our ordinance as the older established neighborhoods, which calls for maybe a different method of regulation than other districts. It has those properties in one tier. It has a second tier which are properties outside of R-2 but adjoining or in close proximity to R-2 and then a third tier, which are basically all other properties. Previous drafts had sub tiers within those three that regulated properties based on distances from one another. And based on the discussion last month, it seemed like the consensus to get rid of those sub tiers. We would keep, at least for discussion purposes, for now the three main tiers, but we wouldn't go further to break them down. So that's basically the difference between the draft you saw at your last meeting and the draft that you have in your packet today.

Terry Cooke: Okay. Thank you. I guess we'll just begin by, and I want to keep this as as informal and as free flowing as we can. This is not a public hearing. It's an opportunity for the commission to sort of express their views and suggestions on this. And I'll just open it up to discussion among the Commissioners and ask again any Commissioner who wishes to speak, please address yourself before your comments and wait to be recognized. Vice Chair Woodruff.

Don Woodruff: Don Woodruff here. Thank you, Bud. I need all the help I can get. I guess as I looked at the letter that we all received and went over the material that Will provided and thought back to the discussions that we had, as well as reading the minutes of prior meetings. I was kind of wondering

and I thought maybe we needed to define a goal. What is our goal in what we're trying to accomplish here? And it should be very precise and clear so that people such as this and others have a real clear understanding of not only what we're doing, but why we're doing it.

Terry Cooke: No, I think that's well said, Don. And one of the things that. Will circulated was a white paper that I had turned up in my research on the subject, and as I read through that, what struck me was the emphasis that it put on. The need to decide what it is you're trying to accomplish by this regulation. Not just regulation for the sake of regulation, but what is it that you think is important and should be the focus of what you're trying to accomplish? And is it practical and enforceable in terms of what you're trying to do? Which kind of caused me to step back a little bit and think about where we are on this, particularly on the with respect to enforceability, put a heavy burden on staff in many respects to police this. And I'm not certain how they can best go about that. But I'd like to hear from other Commissioners, any thoughts they have on really whether or not this is a necessary step at this point. And Yes.

Rachel Minchew: Rachel Minchew, I have a question about our previous, the, you know, the regulations that we had. How many people or homeowners actually applied for the rental over the past, say three or four years?

Will Moore: Yeah. And we've touched on this before until a couple of weeks ago we had had zero applications for because in all instances the use requires a special use permit. So we did receive an application a couple of weeks ago, just a few days before your last commission meeting, there will be a public hearing on that application at your meeting in two weeks. So we will be addressing that. So yeah, it's correct that we've not had any applications until recently kind of highlighting maybe going back to the Chairman's and Mr. Woodruff's question and I thought about this a little bit because Mr. Woodruff raised the same question at the end of the last meeting as to what are we trying to accomplish here? So I did go back this general direction came from the Council, and it was about this time last year. It was October of last year when we first started discussing potential revisions. And one of the things that the council was asking for was more help in evaluating applications when they eventually came forward to them. And specifically the area where the most question was, was this idea of how often will you be permitted to do this? So in the discussion at the last meeting, Mr. Fleischman raised excellent points that the current ordinance as it stands, is very specific on a lot of criteria. And just meeting those criteria, I think are very important in addressing a lot of the potential concerns with the use. But kind of the glaring question mark was this kind of open-ended statement that you could use it for this use up to 180 days per year? And actually the way the ordinance is written, it can be considered for that. Having been the principal drafter of this with the Commission at the time when it was adopted in 2016, that provision was never intended to necessarily say anybody who meets these other criteria within will be granted 180 days. It just meant that was the absolute most that you could ask for. And one of the questions that the Council raised was, well, how can we distinguish that? How are we going to know which properties we're looking at should be eligible for fewer days versus more days? So that was kind of the genesis of this revisiting of the ordinance, along with the fact that we knew that the residences at Salamander was going to be coming online.

We knew that it was part of their marketing promotion for the homes that you could enroll in a residential rental, a short-term rental program with them. And then combine that with admittedly anecdotal information that the number of instances that we found of short-term rentals popping up here and there within the town, maybe on an intermittent basis was increasing, and that the number of inquiries that staff was feeling about short-term rentals was dramatically increasing. So it's extremely common if a home goes on the market or any property goes on the market in town, for that to result in calls to come in zoning related calls, real estate agents representing their clients, doing due diligence, asking questions without probably any exception, any residential property that has come on the market within the last two years, where I've fielded a question about that from a real estate agent. One of those questions has always been, could this be used for short term rentals? So just knowing that there was increased interest, that was another part of why it was being revisited. As far as getting clarity on maybe more specifically what you're trying to do, I would recommend you start with the comprehensive plan language that you adopted, because you know that really was thoughtfully done. We started off where I presented comp plan language and potential ordinance amendments to you at the same time. And that was kind of an overload and staff would definitely agree with you. So we decided to bifurcate those. We concentrated on the comp plan language. You spent a couple of meetings very diligently and carefully going over the wording of that language. So I think there's some important language within that Comp Plan Amendment that you should refer back to as you're considering these potential amendments. Specifically, there are statements like the introduction of transient uses into existing stable residential neighborhoods kind of speaking to R-2 may affect the character of these neighborhoods, if not carefully managed through thoughtful conditions on location, frequency and specific manner of such uses. And then likewise, a saturation of such uses in new neighborhoods could be contrary to this plan strategy for new development to be compatible with Middleburg's small-town scale and historic character. So recognizing that there are two maybe different areas to weigh, but I think that's a good place to start when you're considering maybe your charge and what you're trying to accomplish here. I hope that's a lot of words thrown at you at once, but I hope that's helpful somewhat.

Terry Cooke: It is. Thank you. Thank you. Just returning very quickly to an issue that Commissioner Woodruff raised and as to what we're trying to accomplish here, that I think one of the things that we're trying to accomplish is and this is the Chairman speaking. I'm sorry. One of the things we're trying to accomplish is to prevent a situation where corporations come in and buy up a lot of homes and essentially turn them into year-round, short-term rental uses or even six-month short-term rental uses under our current provision. That it seems to me anyway that's not something we as a town want to encourage or facilitate. So is there some way that we can discourage that? I mean, we talked about you mentioned Will the fact that it has to be primarily residential use. Is that sufficient to ward off that sort of Entrepreneurship [laughter] by owners who are looking to monetize the home without actually using it as a principal residence?

Will Moore: Admittedly, that's going to be one of the challenges in enforcement. We can require reporting to us, say, if a use is approved for short term rental to show us how often is being used for that purpose and make sure it doesn't exceed whether it's 180 days or whatever the maximum

number of days that is agreed to. But to otherwise enforce it as being used primarily for residential purposes otherwise is admittedly going to be a challenge.

Terry Cooke: Council Member Jacobs.

Bud Jacobs: Thank you very much for sharing that white paper with us. I found it very helpful in crystallizing some of the things we had thought about or talked about. But there are a number of issues outlined in that paper that, frankly, we haven't paid a lot of attention to. So I found it useful, and I am hoping that we will be able to work through all of them. One of the things the paper asked is that Planning Commissions or other government entities responsible for maintaining rules and regulations for short term rentals was that there be a clear and explicit goal. And if I could add to what Will said from the Council's perspective, and I should say I really am mostly talking about the R-2 district for obvious reasons, but there it's a two-part goal as far as I can recall from our discussions. One part is to mitigate the risk that you just mentioned of hedge funds and other commercial buyers buying properties and using the properties they buy for short term rentals and threatening or changing the character of the neighborhood, the established neighborhood Ridgeview. But with that, there was a secondary goal, which was to recognize that it didn't make sense and it was probably not equitable to simply deny residents, in this case of Ridgeview, the use of their homes for short term rentals, if that's what they wanted to do. We had some discussion, for example, around the fact that there are three or four big events that happen in Middleburg every year for which residents might want to open their homes to short term renters. And I think it's Council's view that we don't want to rule out that ability for homeowners. I don't think most of us on Council have focused very much really on R-2 or R-3. Frankly, most of the discussion has been on what we do in the R-2 district because there seemed to be so much neuralgia surrounding our desire to protect the character of the R-2 zoning district as outlined in the amendments and changes we made in the Comprehensive Plan. I hope that helps, but for me, those would be the two, maybe the only two goals that we have, one to mitigate the risk of commercialization of the property while still allowing residents the opportunity to engage in some form of short-term rentals for some period of time.

Terry Cooke: Thank you, Commissioner Stein.

Mimi Stein: Hi. This is Commissioner Stein. I'm trying to think, I don't want to open up an entire can of worms, but I'm thinking that we all feel somewhat more comfortable with the residences in the Salamander District and are on the larger properties, especially because we know Salamander is the management company overseeing those rental, the rentals if they happen. And I think ultimately, I don't really care if somebody's renting the property next door to me, but I would want it to be the right tenants and the right oversight. And so I did read in somewhere in the white paper, and I don't I didn't read it thoroughly enough. But maybe there's such a thing and I don't know if we can engage in that if the town could say, you know, we'd have a management company if you wanted to do a short-term rental. And it might not be cost effective at that point, but they'd have to go through a management company to alleviate some of the burden on staff for reviewing the intensity of the application and as well as almost being like Salamander, you know, in watching over who comes in, what they're doing

while they're there and being, you know, policing it from that angle on, it seemed like that might be a helpful piece. But I don't know how we would make sure that people did that and I wouldn't want to take, you know, like we were talking about, you know, somebody that just out of the blue decided it would really be helpful and we don't want to and if they could be very responsible landlords to rent, I mean, they should be able to do it on their own as well. I wouldn't want to tell a resident they couldn't, but it might be more helpful and a faster way to make an application if it went through a management company that we trusted.

Will Moore: Yeah. Very, very interesting. So just the way the ordinance is structured now, staff is never kind of acting in that management company function. There does have to be a responsible party provided for in their application materials. So in the case that you're going to review here in two weeks, that is the property owner in combination with one of his relatives. He has a daughter who lives just a couple of miles outside of town. He's actually outside of that 20-mile radius. So you either are managing it yourself and available yourself or you have a responsible party like a management company. So it's kind of baked into our requirements right now, but it's not a requirement that it is an actual management company. It's just a requirement that there's a responsible party identified. So a little bit different from what you're saying, but.

Mimi Stein: Right. Well, thank you. Yes. And I'm thinking it'd be hard for you to determine and staff to determine on a, you know, on each application, if in fact, this is a responsible party.

Will Moore: Right.

Mimi Stein: You know.

Will Moore: Yeah. Right. [inaudible]

Mimi Stein: So I don't know. That was what I was thinking. Okay. Thank you.

Terry Cooke: Thank you. Commissioner Fleischman.

Ed Fleischman: Thank you, Mr. Chairman. This is Edward Fleischman. We've had discussions for a couple of days over the last months on this issue, and I think I've heard a lot of good arguments and suggestions on doing it, not doing it, and different rules. I think it's a very complex situation and it's hard really to come up with a rule or regulation or a law that everyone says, yes, this is what we want. So it's a matter of compromises that we have to deal with. Lately I've been looking at the rule and interestingly, the comment that came in today from one of the residents in Middleburg talks about the goal of town leadership. Well, it's the goal that's in the Comprehensive Plan to develop ways to enable young families to afford to buy and for aging residents to be able to stay in their house as electric bills go up and the real estate taxes go up. So when I looked at it, I said, we have a lot of older residences in the R-2 area and we have some young families, not many young families. Middleburg is not known for young families, but it has some. And I was saying in my mind, well, if you're an older couple and

you wanted to rent one room under the short-term rental. That would be really a good way to supplement your income and be able to stay in Middleburg and continue to be a good resident of Middleburg someone who's been here 20 or 30 years. And the same with young families, not the whole house. But maybe there's a basement room or another room and they could do a short-term rental. So really, it's a way short term rentals, it has to be controlled, but it's a way to enable older folks and younger families to possibly, if they don't have unlimited resources, to do short term rentals and provide some additional income to them. Now I look at R-1 and I say, that's the opposite. The people in R-1 don't need any additional income. So the way this possible ordinance or regulation ordinance, it would seem like it says the people who have a lot of money, they can do short term rentals, but the people who are elderly and might need some supplemental income or a young family that, as has been talked about, could be a policeman or a teacher. They can't, you know, rent out their basement on a short-term basis to supplement it. So I think as we go forth and discuss this, that I think that I would appreciate if the Commissioners think about that, maybe we're taking it the wrong way around that R-2 should have more days than the other sections. However, my feeling is that we should treat everybody equally and there should be one rule and there shouldn't be different categories. Thank you, Mr. Chairman.

Terry Cooke: Thank you Ed. Anyone else with thoughts at this time? Commissioner Roszel.

Dev Roszel: Yeah, Hi this is Dev Roszel. You know, I would agree to a lot of what Ed, as Commissioner Fleischman has said. You know, we do have to be more, we have to be specific. But when you start going down the rabbit hole that we have opened up, there's so many more questions and you end up, in my opinion, becoming arbitrary and how you lay out the rules and the ground games, particularly with you get 24 days here, you can do 72 days here. I think that creates a problem. I also think that how do you police I mean, it's hard for the town if you allow everybody to do this, you know, to have the short-term rentals. How do you have the manpower to police it? How do you collect the taxes on the on the hotel tax or whatever it is for renting your house out? I mean, that's something that you have to check. And what if they don't get the permit to do it, then you know, there's just so many things, I think, that we haven't really figured out how to do. And I believe that, I just don't think it's the more we talk about it, it's not to me, as cut and dried as you know, we've tried to make it. I do believe that our goal is, as everyone has said, is to not have it turn into a, you know, a daily mecca of people coming and going and staying in homes. I'm not sure that whether you're in R-1 or R-2, you can arbitrarily say, well, you have more money, so you shouldn't need to rent it out. I don't think that's I don't think we can apply that across the board. I think we need to be consistent across the board with everything that we do. However, that's a hard thing with this particular issue. I think that's very difficult because the deeper we get into it, the more it sort of it morphs into different levels. I think that a short term, having read the white paper, having read this letter, I think there's a lot of other things that don't make it as black and white as we hoped it would be. So from my perspective, I think we have a lot more homework to do. I'm specifically concerned about the different days for the different districts. I think that that becomes too arbitrary, and it would be hard to convince somebody that's in the R-2 or R-3 that, oh, well, you know, I can have as many days and then the R-2 district says well I can only have 24 or I'm more than 30 feet away from somebody. So you know, I don't think we can apply that. I

think that's very difficult to police and to maybe not to police. I believe it's difficult for us to lay out black and white lines for everybody to understand when you have too many variables within those guidelines. And so I do think we need to research. We need to be a lot more specific. And to Will's point, I guess it was Will's point. I think it's important that I think we have a general consensus of what we want to do with the short-term housing, which is not to let it get out of control, but I'm not convinced that it has gotten out of control. And I'm not convinced that we I just feel like it's a lot deeper, much deeper issue than what we're scratching on the surface. That's all I got to say. Thank you.

Terry Cooke: Thank you. Commissioner Stein.

Mimi Stein: Mimi Stein. I have one more comment to add to what Ed was saying. Maybe it's a whole different thing if someone in residence leases a room or a basement because they have a vested interest in keeping the quality of the renters in line. And if it didn't work out, they wouldn't rent to them again or, you know, they would police it better than anybody else. So that to me is almost a separate type of rental. If someone's in residence and wants to rent a portion. Thank you.

Will Moore: If it's helpful, it's not something that I've proposed to you before. Whether you want to go down this road or not of exploration. But there are places that regulate whole house rentals different from room share rentals. So that is a thing. There's a home share versus a I'm just going to rent you my whole place. Here are the keys and I disappear. Although we require you to be in close proximity. But in both Mr. Fleischman and Ms. Stein make good points, those can potentially be more successful or have less issues because you actually have a person not just in close proximity, but in the home when the rental is taking place. So that is, if that was something that you were interested in exploring, we could explore that. I don't want to insert myself too much. I would just be careful with the use of words like arbitrary. The very nature of zoning is that you treat, you establish districts, and you treat them differently. That's the very nature of the basis of zoning. It started with just residential and commercial. But, you know, that same argument could, you know, if I have an acre property and my property is zoned R-1, well, I can only divide it into four lots, but if the person over here who's in R-2 or R-3, they could get five or six lots. Why are they allowed to do that? There's basis for treating zoning districts differently. Our ordinance specifically has a statement of purpose for the R-2 district that reads very differently than R-1 or R-3 or R-4. And it's specifically that R-2 district is comprising of these older, established neighborhoods that and that implies that there is a maybe a standard of care or preservation for that that might be different from other districts. So just kind of keep that in mind. I get the idea you want to treat people equitably, but also different districts are established for different purposes.

Terry Cooke: Commissioner Roszel.

Dev Roszel: Hi, Commissioner Roszel, I don't argue, Will, your point and you're correct. I guess from my perspective, those different districts are set up differently. But when you apply an overlay for short term rentals across those districts, I think it's hard to set a different standard for one district than it is

for the other. I realize that each district you could have more houses per acre, and you know the zoning is different. But when we overlay the short-term rental for the town of Middleburg, I find it hard. And maybe I can be [inaudible] I find it hard that we can say, R-2 can do this. R-1 and R-3 can't do that. They do this and so from my perspective, those two things aren't quite the same. I get what you're saying, but I feel like there's an overlay there that and maybe I just don't know the law. [laughter] So I strongly think that we are going to run into a problem when we start to differentiate between the districts for something that's not really related to the zoning. We're talking about the zoning, but it's not the same. I don't know. Maybe I'm not articulating it correctly, but I feel like it's hard for us to do that in that instance. Thank you.

Terry Cooke: Council Member Jacobs.

Bud Jacobs: I have a question. Are we talking about Salamander and the, I don't know, seven or other properties in the R-2 or R-3 districts or are we only talking about those seven or so properties? Because I think we've taken note of the fact that with respect to the Salamanders, short term rental programs, many of the concerns we might have in R-2 say don't really exist because Salamander is going to provide fairly robust management of those properties. So the questions of potential nuisances, parking, all of that really don't come into play. If you accept that or if we stipulate that, then what we're really talking about for the R-2 or R-3 is something on the order of seven properties, is that right Will, seven or eight?

Will Moore: R-1 and R-3.

Bud Jacobs: I'm Sorry. Excuse me. Yes.

Will Moore: It's something along that line exclusive of Salamander, correct?

Terry Cooke: Commissioner Fleischman.

Ed Fleischman: Thank you, Mr. Chairman. This is Commissioner Fleischman seems like we have to repeat it. You say Commissioner Fleischman. And then I have to repeat my name. [laughter]

Terry Cooke: If I recognize you, that's on the record.

Ed Fleischman: I just wanted to get back to the discussion at the beginning Will brought up my statement at previous meetings that the existing ordinance is pretty robust as far as short-term rentals go. And, you know, we all should be really knowledgeable of that. And that would help us, I think, help other Commissioners in deciding whether we need to go further. One of the interesting things that the other Commissioners might want to review is the application that's come in for short term rentals on the five and seven Jay Street North property. Mr. and Mrs. Pappas, I don't know if it's Mr. or Mrs., but Michael Pappas and the other lady. [laughter] It's hard to tell relationships. I don't want to assume anything. So it's 17 pages. And this isn't a corporation that's providing the information. But there's a lot

of good stuff that he put in here, I think, and there are a lot of controls. He talks about what's required smoke detectors, fire extinguishers, insurance and where they can be found if there's a problem. And, you know, they're within the 20-mile zone, I believe it is. So I again feel that the existing regulation might be good enough as it stands, unless we find it's not working out. But this is, it's a significant amount of work to apply for this. Will might have a suggestion. Will what are you, are going to review it at the next meeting or can you give us some coming attractions?

Will Moore: I would suggest that future applicants should consider consulting with Mr. Pappas on how to prepare an application. He was very thorough, and I'll leave it to you to judge the merits of the content, of course, when you review it. But he was very thorough. He went basically point by point through a section, I think it is 61 of our ordinance, which has all those specific requirements. And here's the point and here's how I address it. So yeah, yeah.

Ed Fleischman: And just to say that I didn't sneak it in, I printed out off the town website. It's public information.

Terry Cooke: Thank you, Commissioner Fleischman. Anyone else with some thoughts right now? So where do we go from here? [multiple speakers] [laughter]. Well, this is the Chairman speaking, I'm getting a sense that we're still pretty much conflicted about whether or not this is a necessary step. I understand that the Town Council has asked us to take a look at this, and Lord knows we have taken a look at it. But I think one of our roles is to determine when further regulation is necessary and appropriate and when it isn't. And the sense I'm getting from the commission at this point is that this further steps with respect to the short-term rental ordinance are just not called for at this time. Is there a, I'm trying to get to a consensus among the commission here as to whether that should be our position or whether there are things that we think we should tweak in the existing ordinance, perhaps not as comprehensively as the proposed zoning text amendment lays it out. Perhaps we don't have to deal with all of that. Are there are some things in there that we think could improve the existing short term rental ordinance, or are we satisfied, at least for the moment, that it is sufficient and see how things go as to whether or not we need to tighten things down going forward? And I invite any.

Will Moore: If I might make a suggestion before you get the answers to that question. If the consensus happens to be we think the ordinance is in good enough shape already without further meat to it, and I'm not suggesting whether or not that should be your position. I would still encourage you to pursue certain things in here that I don't think are controversial. One would be the renaming of the use to short term rental. Another would be the suggestion that came from the chairman a couple of meetings ago that clarifies that what might happen with an accessory dwelling unit so that an accessory dwelling unit, whether it's inside the primary residence or in a detached structure, that an accessory dwelling unit cannot be used for those purposes. And then finally, one of the last things that was added, just that specifies that if you do get a permit, you have to obtain and maintain a business and occupational license and that you have to file the appropriate taxes. I think those are probably all non-controversial, not really getting it, regulating it too much more. So that would be my only suggestion.

Terry Cooke: I agree. Thank you, Will, for pointing that out. And especially the accessory use structure since the Chairman recommended that, that's a brilliant suggestion. [laughter] No, but seriously, I think those points are well taken. And if we do decide to amend the ordinance in some fashion, I would hope that we would adopt at least those changes. Commissioner Roszel.

Dev Roszel: Thank you. I think Will makes a great point. I think that the original text that we wrote is very strongly worded. It's a good one. I think that we should make some of the changes that Will has commented on and put in the documents. I don't think you can ever account for every possibility that's out there. Somebody is always going to come up with, they're always going to come up with a way to get around something or do something. And then I guess at whatever time you have to decide whether or not it's, you know, how do you deal with those things? Because I don't think you can account for every angle that everybody because you know it's going to happen. Somebody's going to come up. And I think that if we keep the base and you have the base amendment that we've put together and you make the changes Will discussed, I think it's a pretty strong document. And then because otherwise you're getting into the number of days and how far apart and I just think it again, it'll just morph, and you'll never get to the end because there will always be something else there. And I believe that Salamander is a different beast. And I think that you know, we're just going to have to figure out how to make that work within the dynamics of what we have. Thank you.

Terry Cooke: Thank you.

Rachel Minchew: Rachel Minchew.

Terry Cooke: Sorry. Commissioner Minchew.

Rachel Minchew: As you've said and then the application that just came in, I haven't looked at it, but it seems like it's doing what you want it to do. The regulation, it's the owner has presented a proper application, has gone through the process. It's going to all take place before the commission. So I do I agree with what a lot of us are saying is that maybe we're just putting it to overthinking right now for a lot of this. That's it.

Terry Cooke: Thank you. Council Member Jacobs.

Bud Jacobs: One of the things that is pretty clear from the white paper you circulated is that a lot of jurisdictions have taken a cut at this and not gotten it right. So I think more than anything, we've got to do the best we can to get it right. And to that end, Mr. [inaudible] letter had one bullet point in it that really jumped out at me, which was that he said he had looked at some of the regulations of our surrounding jurisdictions, and I at least have not done that and would be very curious. And please don't shoot me, guys, because I want to continue the discussion a little bit longer. I'd be very curious to see what lessons we might draw from regulations of our surrounding jurisdictions. I know you guys have done due diligence and in fact, if there are no such examples we can turn to, then it would be

good to know that. But if there is information, there are data that's contained in what other jurisdictions have done that might help us.

Terry Cooke: Thank you. Any other thoughts among the Commission? Ok. Correct me if I'm wrong. This is the Chairman. But again, what I'm sensing, the sense of the commission, if you will, is that the existing ordinance, at least for the present time, is sufficient with some amendments. Regarding the matters that Mr. Moore outlined a minute ago. And is the draft that is before us and I'm sorry I messed up my screen, but it's the draft before us. Does it include those three provisions that you mentioned?

Will Moore: It does. It includes additional ones, which are specifically in letter H under Section 61. And basically, what I would just recommend at this point, I will make another draft which reverts letter H basically to the existing language. One other.

Terry Cooke: And deletes the other stuff.

Will Moore: Yeah. One other change within letter H, I might suggest we were going to change the word days to nights just to add some. So I would include that.

Dev Roszel: I think we had that [off mic].

Will Moore: Yeah. Yeah. So but essentially the way it reads in our current ordinance is the maximum number of we will now say nights cumulative for consideration of such use during any calendar year shall be 180 days and that will be the end of it. Rather than saying in R-2, here's a number, etc. [off mic]. It was 189, correct? Yes. [off mic] No. No. No. Exactly. Yeah.

Terry Cooke: Council Member Jacobs.

Don Woodruff: Distance between building's 30 feet is that in or out?

Will Moore: It's still in. In order to be considered at all, you have to be at least 25 feet away from a neighboring dwelling, [multiple speakers] Yes. [inaudible] 20. Yes, it's 25. Yes, sir.

Terry Cooke: Council Member Jacobs.

Bud Jacobs: Might it be useful with respect to the 180 days for you to include explicit language along the lines that you described earlier that the intent is not to allow 180 days of consecutive short-term rentals, but that, that would be the cumulative or absolute maximum?

Will Moore: [multiple speakers] I can play around with that language that it's still the ordinance still allows for the same thing but adds a little more clarity to that it's intended to be an absolute maximum for consideration, but maybe not that every application would be suitable for 100. I'll play with the language a little bit for you. Okay. So I have.

Terry Cooke: Commissioner Roszel.

Dev Roszel: And one last question. How do you enforce that? I think it's a good statement to have. But what if he does 181 days or 190 days? How are you going to, you know, have somebody, you know, standing on the corner? Okay, it's the 180th day. I'm just curious. I'm not trying to be.

Will Moore: It's. No. Look, we could go hypothetically into enforcement options all day. You have to expect them to do what they're doing. We do. Part of having that business license and the filing of taxes, there's going to be a reporting that goes along with that during this period. And I can't remember what it is. Our Finance Director is going to shoot me because I just asked her this a few days ago, but they'll have actually Mr. Mars might be able to answer this. Anybody engaging in transient occupancy, they have to file transient occupancy taxes on a recurring period. I think it's once a quarter, it's quarterly. So we'll receive a report from anybody that has a permit. And as part of that, they'll have to declare how many nights they used it for short term rental purposes. So.

Dev Roszel: That's fine. Yeah, I was just curious.

Will Moore: So now if they used it 30 nights during that period and they only report 24 are we going to know? I don't know, you know.

Dev Roszel: Understood. The expectation is that they're going to do what's expected.

Will Moore: Right.

Dev Roszel: There's always going to be an anomaly.

Will Moore: Right.

Dev Roszel: Thank you.

Terry Cooke: Thank you. Anyone else. Ok? Yes, sir. It's not a public hearing. Please understand.

David Mars: Understood. And I respect the fact that you don't wish me to speak.

Terry Cooke: I'm sorry.

David Mars: I respect the fact that you don't wish that I speak. I would just like further clarification on a comment that came up that might be of assistance. Go ahead. Thank you. Good evening, everybody. How are you? I'm David Mars. There was a quick comment about the 25 feet between structures as it relates to being able to rent. Is that correct? I just want to understand that a little bit better. The Residences of Salamander, there will be some residents that will be less than 25 feet

apart. Currently, obviously we were in rooms that are a foot apart. So I just want to better understand how that is. Was that in the current ordinance or is that a new modification to an existing to the new ordinance?

Will Moore: So that is in the current ordinance. The planners and architects who were working on the development plans for the Residences were very aware of this and at least in their concept layout that they included in the construction plans for the development. Every dwelling met that minimum.

David Mars: Okay.

Will Moore: Some were right on it. But I think if you want to just confirm that with the development team, but they were very aware and planning layouts based on that.

David Mars: Very good. That was the only question that I had, and I appreciate you giving me the opportunity to speak.

Will Moore: And for those who have not met him, Mr. Mars is the General Manager of the Resort and Spa.

Terry Cooke: Okay. So I think, Will, I trust you have the marching orders in terms of revisions to the draft? And we will see those.

Will Moore: You will see those at your meeting in two weeks. Now, you will still have a chance to look at that and endorse or tweak. And especially if we're tweaking some language in there that might require a little refinement, that's fine, because we still have to give proper notice of a public hearing if we're going to make any amendments to the ordinance. So we have time. But I will have an updated draft for you at your meeting in two weeks.

Terry Cooke: Okay. Very good. That is the only item on our agenda for this work session. I will invite no others this evening. [laughter] So with that, our meeting is adjourned. Thank you.

Will Moore: Thank you.

David Mars: Thank you, everybody.