



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



**MONDAY, OCTOBER 28, 2019
PENDING APPROVAL**

PRESENT: Eric Combs, Chair
Donald Woodruff, Vice Chair
Terence S. Cooke, Member
Edward R. Fleischman, Member
Rachel Minchew, Member
Mimi Dale Stein, Member

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

The Middleburg Planning Commission held their work session and regular meeting on Monday, October 28, 2019 in the Town Hall Council Chambers, located at 10 W. Marshall Street in Middleburg, Virginia. Chair Combs called the work session to order at 6:30 p.m.

Deputy Town Administrator Moore advised the Commission that the next two items were initial draft zoning text amendments. He reported that there was no pressure on them to act on either; however, if they wished to move them forward, they could make a motion to initiate them. Mr. Moore explained that once they did so, a public hearing would be held and the Commission would make a recommendation to the Council.

Draft Zoning Text Amendment – Penalties & Remedies for Zoning Violations

Deputy Town Administrator Moore reported that the Mayor and Council were supportive of studying the penalties for zoning violations in order to determine whether they should be amended. He noted that currently, there were caps on the fines for the civil penalties that were based upon the enabling legislation at the time they were adopted. Mr. Moore advised that there were also caps on some of the criminal penalties that were available. He explained that since the enabling legislation has been updated, it was recommended that the Town's penalties be increased to match those allowed in the State Code. Mr. Moore noted that he provided a draft ordinance for the Commission's consideration that would do so and would also restructure and reorder the language. He advised that he recommended adopting the State Code penalties; however, he acknowledged that the Town rarely reached the point of imposing penalties as it was successful in addressing zoning violations cooperatively.

In response to an inquiry from the Commission, Deputy Town Administrator Moore explained that the Mayor and Council wanted the staff to have all of the tools that were available in the event they were ever needed. He advised that the Council had hoped to change the enforcement to allow for the immediate imposition of a fine; however, that could not be done. Mr. Moore explained that it was a lengthy process to impose a fine as it required the issuance of a court summons for a hearing.

In response to an inquiry from the Commission, Deputy Town Administrator Moore explained that under the State Code, the Town must set a schedule for civil penalties that would exclude the offender from criminal penalties. He advised that he was not proposing to make any changes to the types of penalties that were prosecuted as civil penalties versus criminal ones.

Commissioner Fleischman noted that he and the Deputy Town Administrator had a discussion prior to the meeting about the house that was demolished at the intersection of Reed Street/Stonewall Avenue without the needed permits. He noted that it was a significant demolition and questioned how the penalties would apply. Mr. Fleischman further questioned whether the Town wanted to send a message about demolishing structures without the proper permits.

Deputy Town Administrator Moore advised the Commission that this was a unique circumstance. He explained that it involved a small house and advised that the owner planned to add a second story to make it a 1.5 story house. Mr. Moore further explained that the house was non-conforming in that it could not be built as close to the property line today. He advised that because it was non-conforming, the changes could not increase the non-conformity; however, the height could be increased. Mr. Moore reported that it could be demolished and rebuilt as long as there were no changes to the footprint. He advised that when the owner removed the roof to add the second story, he discovered that the structure was unsafe and removed it down to the foundation. Mr. Moore reminded the Commission that how he approached a zoning violation was to achieve conformance if possible, without the need to issue a formal notice of violation. He advised that he had not issued a notice of violation in this case. Mr. Moore noted that the owner approached him after he was approached by the County Building Official regarding the removal.

Chair Combs suggested the Commission spend time reviewing the materials in advance of its next meeting and set a schedule to act on the zoning text amendment at that time.

Deputy Town Administrator Moore reminded the Commission that the question was whether they supported increasing the penalties. In response to an inquiry from the Commission, he expressed appreciation that the Council wanted the staff to have all of the tools that were available even though they were rarely employed. Mr. Moore reminded the members that by the time a violation reached this level, he would have given the owner every opportunity to avoid a penalty; therefore, he questioned why the maximum should not be imposed. He noted, however, that this was up to the Commission.

The Commission opined that there was no sense in giving someone a slap on the wrist in that situation and suggested the penalty should be significant.

Draft Zoning Text Amendment – Repeal & Re-enact Sign Ordinance

Deputy Town Administrator Moore reminded the Commission that they previously discussed this item. He noted that the proposed ordinance was based upon the model prepared by local government attorneys, including the Town Attorney, as a result of the Reed vs. Town of Gilbert case. Mr. Moore advised that the biggest departure from the model was that the draft ordinance reduced the amount of time to act on a sign permit from the recommended twenty business days to ten in cases in which a Certificate of Appropriateness (COA) was also required, as they could take time. He noted that the Town Attorney recommended signs be handled administratively; however, the HDRC did not want to allow that in Middleburg. Mr. Moore advised that as drafted, the ordinance would require him to act within ten business days on a sign application unless a COA was required, in which case he would have five business days to take action. He noted that he was contemplating adding additional language that would extend the time for a temporary sign permit while an applicant was awaiting HDRC review of an application.

In response to an inquiry from the Commission, Deputy Town Administrator Moore advised that the HDRC did not interpret the sign ordinance; however, the staff did report on the application's compliance with it. He advised that the HDRC looked at the application from an aesthetic basis. Mr. Moore noted that they typically acted on a COA application during the initial meeting.

In response to an inquiry from the Commission, Deputy Town Administrator Moore confirmed there were issues with the existing ordinance. He noted that he was currently dealing with a sign violation and reported that he was not hopeful for a friendly resolution.

Chair Combs suggested there were a host of issues for the Commission to consider and opined that this could result in discussions on the draft ordinance for months. He asked the members to be prepared for this to occur. Mr. Combs expressed concern about reducing the amount of time for the Town to review a sign application and suggested it should reserve more time in the event it was needed.

Deputy Town Administrator Moore advised that he could see needing more time if Middleburg was a larger jurisdiction; however, once the HDRC review was completed, he knew whether an application met the sign ordinance. He explained that it was then just a matter of signing the permit. Mr. Moore advised the Commission that with the exception of one parcel, all of the commercial properties in Middleburg were located within the Historic District.

The Commission opined that the aim of signage in Middleburg was to advertise a business without being ostentatious or offensive. They expressed hope that this was what would go forward and noted that it meant a lot to the visitors that the signage was appropriate to a country town. The Commission inquired as to how much latitude would be available under the new ordinance in allowing signage that may be appropriate for one building but not another.

Deputy Town Administrator Moore advised that the HDRC would be involved regardless of the sign ordinance and explained that they looked at signage in relation to the building. He reported that the next draft of the ordinance would include a table of signage allotments and advised that he envisioned it would be similar to the existing ordinance.

Chair Combs encouraged the members to wrestle with the draft ordinance and to only advance it when it made sense.

Deputy Town Administrator Moore advised the members that he would have the next version to them in advance of their next meeting. He suggested that if the members had any questions, they forward them to him in advance so he could be prepared to answer them during the meeting.

Chair Combs adjourned the work session and called the regular meeting to order at 7:13 p.m.

Disclosure of Meetings with Applicants

Commissioner Stein reported that her neighbors at 308 East Marshall Street told her of their plans for dealing with their property. She further reported that she just listened and then called the Deputy Town Administrator to report the conversation.

Deputy Town Administrator Moore advised the Commission that the house was deteriorating and noted that the new owners were working on much needed improvements. He reported that they met with the HDRC for a pre-application meeting in October and would appear before them again in November.

The remaining members reported that they had no meetings with applicants.

Approval of Meeting Minutes

Chair Combs noted that he did not cast a vote on the Banberry Cross Reserve Subdivision; however, the minutes reflected that he voted in the affirmative.

Town Clerk North explained that unless a member specifically stated that they were voting “no” or “abstain”, the assumption was that they voted in the affirmative.

Vice Chair Woodruff moved, seconded by Commissioner Fleischman, that the Planning Commission approve the September 23, 2019 meeting minutes as presented.

Vote: Yes – Commissioners Combs, Cooke, Fleischman, Minchew, Stein and Woodruff

No – N/A

Abstain – N/A

Absent – N/A

Discussion Items

Appointment of Council Representative to the Planning Commission

In response to an inquiry from the Planning Commission regarding the appointment of a Council representative, Deputy Town Administrator Moore reported that the Mayor wanted to allow the Council the opportunity to make an interim appointment to the Council before appointing a representative to the Planning Commission. He advised that the Council was scheduled to make the interim appointment during their November 14th meeting. Mr. Moore noted that he would communicate with the Mayor to see if he would appoint a Commission representative during that same meeting.

Comprehensive Plan 2019

Deputy Town Administrator Moore reported that the Council adopted the Comprehensive Plan with no additional revisions. He reminded them of the revisions the Council previously discussed, which mostly related to the County’s Comprehensive Plan to clarify that it had been adopted and to link to some specific items within it. Mr. Moore advised that he planned to start formalizing a work plan for the Commission to proactively address the items within the Comprehensive Plan that could be addressed, such as initiating zoning text amendments or meeting with the Fauquier County Planning Commission.

Chair Combs suggested the need to outline the next steps the Commission should take.

Deputy Town Administrator Moore advised the Commission that he posted the adopted version of the Comp Plan on the Town’s website and asked that the members let him know if they would like a paper copy. The members agreed they did. Commissioner Stein volunteered to bind the paper copies.

The Commission suggested that paper copies be sent to the Middleburg Library and other locations. Deputy Town Administrator Moore noted that by Code, he must provide copies to certain locations. He reiterated that it was available online and advised that the staff was happy to make a paper copy for anyone who wanted it.

Volunteer Appreciation Reception

Town Clerk North reminded the Commission of the Volunteer Appreciation Reception scheduled for October 29th at the Emmanuel Episcopal Church Parish Hall.

Banberry Cross Reserve Subdivision Application

In response to an inquiry from the Commission, Deputy Town Administrator Moore reported that following the Planning Commission's September meeting, he met with the applicant to discuss the issues, to review the Commission's action and to discuss the deficiencies in the application. He noted that they had not yet resubmitted a revised application; however, he anticipated they would. Mr. Moore reminded the Commission that they did not have an active application pending; therefore, if they filed a new one, it would follow the same process as the previous one. He opined that their goal was to address the concerns and make their application tight so when they submitted it, the review would go quicker and there would be fewer issues.

Vice Chair Woodruff thanked Commissioner Fleischman for succinctly summarizing the issues during the last meeting.

Quorum for November Meeting

The Commission held a brief discussion as to whether to move the meeting due to its close proximity to Thanksgiving. They ultimately agreed to leave it as scheduled (November 25th). Commissioner Stein advised that she would not be present.

There being no further business, Chair Combs adjourned the meeting at 7:30 p.m.

RESPECTFULLY SUBMITTED:

Rhonda S. North, MMC, Town Clerk

Middleburg Planning Commission Transcript
October 28, 2019

(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)

Eric Combs: Ok. Why don't we get started with our work session and do a roll call and synchronize the microphones, Rhonda? Shall we start with you?

Rhonda North: Rhonda North, Town Clerk.

Ed Fleischman: Good evening. Ed Fleischman here.

Mimi Stein: Mimi Stein.

Eric Combs: Eric Combs.

Terry Cooke: Terrance Cook.

Rachel Minchew: Rachel Minchew.

Don Woodruff: Don Woodruff.

Will Moore: Will Moore.

Eric Combs: All right. Thank you, everybody. Well, why don't we jump right in? Looks like we have some heavy textual work session items here. Will, thank you for the volumes.

Will Moore: Absolutely. So, to draft text amendments and as I tried to stress in my email when I distributed these, these are very initial at this time. I know based on some recent cases or a recent case that we might have considered, we felt a little pressure by code to act in a certain timeline that we weren't necessarily comfortable with. And I just wanted to stress to you that that is not the case here. These are being proposed to you by staff for your consideration. You would have to at some point in time if you wanted to move forward with these, make a motion to initiate them, which is simply a procedural motion. That means you are starting the process of amending the ordinance. So, these are simply drafts for your consideration. After you made that motion to initiate at a subsequent meeting, you would have to hold a public hearing if you wanted to make a recommendation to council on these. So, no real hurry on these. But we thought it was time to get these ideas before you at least. So, the first one that is pertaining to penalties and remedies for violations. This was spurred on with primarily by some discussions with the mayor and then subsequently with council who are supportive of at least having you study what provisions we have currently for penalties and violations and deciding whether or not we should make some amendments to those. As I outline in my memo, the current provisions that we have include caps for certain fines associated with civil penalties. It also includes some caps of fines could be available in addition to criminal penalties. Those caps are based mainly that is the caps that are in the existing ordinance were essentially based on enabling legislation at the time. That enabling legislation has since changed to allow for in a couple of cases, some fines in greater amounts than was previously authorized. So, what we're suggesting here is and again in discussion with council is that we raise those maximums essentially that are available to us. Should we ever get to that point where we are assessing fines to match what is enabled in the code of Virginia. I am not sure if you've had time to look at these yet. If you have

any specific questions about what we are, what we're proposing. I did include a draft of what that amendment could look like, which is essentially a markup of the existing chapter pertaining to penalties and remedies for violations. It restructures it a little bit, reorders some of the enumerated passages within that chapter. But basically, we're suggesting adopting the penalties and remedies that are enabled. And then I included the relative code sections from the code of Virginia, for you as well. I think the one thing to stress is I do in the recommendation section of my memo is that we rarely, if ever get to this point. We have a history of mostly being successful addressing zoning violations through cooperative means rather than starting out with a formal letter that's sent certified mail. We place a phone call or we knock on the door. And when we talk with people and we try to get people moving voluntarily towards compliance with the ordinance. Occasionally we have to go that next step of issuing the formal letter that would then put them on a timeline to either file an appeal or come into compliance. And essentially always at that step, we have, at least during my tenure here, have achieved compliance. I think I noted in here there was one time where I actually had to draft the civil summons and was prepared to take it to the court to get the summons executed and then served. And over the weekend the person came into compliance. So that's the closest that we have we've ever come to actually issuing a penalty from my time here.

Eric Combs: In light of that well, I'm wondering if there's any other context at council level for the recommendation that we consider the zoning text amendment along these lines. Other than simply bringing our ordinance in line with the enabling legislation.

Will Moore: Right. I think the mayor and subsequent council's goal was to simply make sure that we have every tool available in our toolbox should we ever need to employ these. I do think it started out with the the hope of some elected officials that we might be able to issue fines more swiftly than we do at this point. So, you know, you do something in violation of the ordinance and I just show it to the door and give you a ticket so to say.

Eric Combs: So, a change in the enforcement.

Will Moore: Correct. Correct. So that's not really the way the code is enabled. So, I would equate this to if if you've ever received a moving violation. I'm told not that I would know. But when they give you when when the officer would hand you that ticket, it's actually a summons. So, there is already a court date set for you to appear should you not voluntarily admit guilt. And we have to do the same things with our civil penalties. So, if we were going that route, I can't just write a ticket in the office and give it to you because there's not a standing date and time on the third Thursday of the month that the judge is hearing zoning violations. I actually have to go get the summons executed, get a date, then have it served. So, it's a lengthy process. We certainly want that enabled for us should something ever get to that point. But it's not something. It's not something that this amendment is going to speed up that process. It's.

Don Woodruff: Just looking at. What types of violations might you consider or have you dealt with that would sort of say, this is what we're doing? And when does a civil violation become criminal? Is it a matter of failure to respond?

Will Moore: So, no, that the enabling legislation states that you have to set a schedule for civil penalties, so you have to select which violations in your ordinance would be subject to civil penalties, which would then exclude them from being subject to criminal penalties. So, we had already selected and identified in the ordinance certain types of violations that would be classified for punishment by civil penalty rather than criminal. Those are violations of Article 14 pertaining to signs of uses not permitted in a district. So, say you open up a convenient store in your residential district or something like that. Zoning permits that is moving forward with something without getting a zoning permit. Nonconformance with approved plans. So, you've gotten something approved, but you don't actually proceed in accordance with those approved plans and in violation of permit conditions. Those last two are very similar. Those are already classified for punishment by civil penalty in lieu of criminal in our ordinance. And I was not proposing any change to that. We would propose to keep those same classified as punishable by civil penalty.

Eric Combs: Other questions, comments, insights? Ed, Please.

Ed Fleischman: Hi, Will. Now, we briefly discussed before the meeting the demolition at Reed and Stonewall, which wasn't in conformance with their building permits. So how does this result work with that particular item? I know this is zoning, but does it also refer to a building permit problems and I think it's significant that they demolished the structure without a permit. I mean, does the town want to send a message to other people that, you know, there's a penalty involved for going ahead with the demolition before getting a permit?

Will Moore: So good question. Good question. So, again, there are some unique circumstances about that particular situation.

Ed Fleischman: Excuse me. Why don't you just explain to the other commissioners unless everyone knows the situation.

Will Moore: Certainly so.

Ed Fleischman: Little explanation.

Will Moore: Sure. So what Mr. Fleischman is referring to is at the corner of Reed Street and Stonewall Avenue, there's a there was, I should say, a pretty small home dwelling. I think it was maybe even commercial use it at one point that was located very close to the intersection. This was purchased along with several then vacant lots which were in between that home and the library. Those vacant lots have since been developed. And the same person who purchased those and developed those lots had purchased the corner a lot and had plans to put an additional story on that home, take it from one story to basically a one and a half story. Not a full second story, a unique situation in that obviously it was a non-conforming situation. You could not build that home, build that structure as close to the property lines as it was. Our provisions in the ordinance pertaining to nonconforming uses, it does allow you to enlarge a nonconforming use as long as it doesn't result in a greater non-conformity. And so, what we mean by that is the non-conformity that exist here has to do with the horizontal distances between the structure and the adjoining property line. So, going straight up or straight up and in would not be expanding the non-conformity if you went up and bumped out further towards the property lines. It also allows for in the case of structural issues, for you to take a a non-conforming structure down and reconstruct it again as long as there's no expansion of the non-conformity. So, the case that Mr. Fleischman is referring to the original plan was to take the roof structure off of this existing structure, maybe to reinforce the existing walls, but then to put the second story on top of the existing structure. What happened was when they took the roof structure off, they did their own evaluation and decided it was unsafe and they went and took it all the way down to the foundation. So, both myself and someone from the building official's office had been working with the developer to see if there's a way that they could still do what it is they want to do. We had to do some evaluation and in the end they can. But they need to submit proper permits for the framing of the first floor in order to support the second floor. I would be much more concerned. Had they actually got into the foundation, had they started disconnecting utilities. A lot of those kinds of things that happen in conjunction with demolitions where they could cause some environmental issues, maybe, but in this case, they took it down to the foundation but kept the foundation and are going to going to rebuild. So now how that would apply in a situation like this, again, the way we've typically approached and way council has always endorsed us approaching potential zoning violations. So, in this case, you could say that this is non-conformance with approved plans, but our approach has always been we want to achieve conformance. You know, we want to bring you into conformity, if possible, not at risk of creating a violation of its own. But if we can get you into conformity rather than or I should say, without having to go the route of actually issuing a formal violation, we take those steps and we have we're going that direction with the developer on this. So, we've chosen to this point not to issue a formal notice of

violation. And I believe the same is the same case for the building official. So, I hope that helps answer the question.

Ed Fleischman: Yeah, yeah, definitely helps Will, thank you very much. Thank you. Let me ask another question. When you spoke to the developer, did he say that he made a mistake, he should have gotten a building permit. Did he say that he was ready to go down and get a building permit or did he just blow you off?

Will Moore: Yeah, he did not blow me off. He by the time he talked to me, he had already been approached on site by the person from the building official's office

Ed Fleischman: From the county?

Will Moore: Correct. Correct. And I had notified the county. So that that's what. That's what initiated. Initiated that. Yes. Yes. So, we the building and development and I work together well, we don't work together extremely often. But when we do have issues like this or other issues, we work well together.

Ed Fleischman: Thank you.

Will Moore: Thank you.

Eric Combs: Was the, just out of curiosity here. Was the taking down of the existing walls was that a life safety issue in the moment or was it just simply needed in order to then put the addition the second story or half story or roof back on?

Will Moore: I would be speculating that that has been more I relied on the building official to make that determination, which was really a determination that then helped me make my determination as to whether it could be reconstructed at the same level of non-conformity.

Eric Combs: Ok, thank you. Other questions regarding the proposed text here, Will's memo. Well, it would seem that we perhaps could spend some time with the materials here in advance of our meeting next month. And maybe have an informed discussion on some of the issues that are raised in here. And then set up a schedule for acting. Does that sound?

Will Moore: I think so.

Eric Combs: Was Council looking for any sort of time frame on this?

Will Moore: They were not. They were not. I think and we can discuss this maybe a little more in detail last month. I think some of the re-ordering and the restructuring of the language within here would be a very good idea regardless. The real question I think that to pose to you is regarding the amounts for those corresponding penalties, whether or not you would be supportive of increasing them to match the maximum that's allowed for in the code or whether you would prefer they just remain at the same level since we don't employ them that often. So, if that helps, you may too to narrow what it is you're studying. I think again, the re-ordering some of the changes in language is to match the language in the enabling legislation. It's really those dollar amounts. I think where the decision points really are for you.

Don Woodruff: Do you? How do you feel about the issue of raising the fines?

Will Moore: I greatly appreciate council's desire for us to have the tools available for us. And if a greater penalty, it's a mixed bag, I will say this on one hand, we rarely, if ever, employ those penalties. [off mic] Correct. So, on one hand you might read that as to say, well, why raise them then? But I think the flip side of that is by the time we would issue a penalty, we are going to give somebody every opportunity to avoid

that step. So, once we get to that step, why not have the maximum available to us available at that time? So, I think I would be supportive as drafted. But again, that's a decision for you to make and your recommendation to council.

Don Woodruff: I just see the deterrence factor if people know that you have the authority to impose a substantive fine, one that may it's not certainly back-breaking. But on the other hand, there's no sense when they get to that point of a slap on the wrist. It's time to say you've done something wrong. You must pay a penalty. And it should be significant.

Will Moore: Yes, sir.

Don Woodruff: [off mic]

Eric Combs: Ok, well then unless there any other thoughts on the penalties item we can move on to our next and more substantive zoning text or proposed zoning text amendment having to do with the sign ordinance. We took this up last year. I want to say with the model ordinance, with Martin's guidance and annotations and I think, Will, you had touched it a bit at that time, but we never really got far as a commission on it. I think the our time had been more consumed by comp plan. So here we are back with it looks like some of the same types of things before us, but perhaps not fresh in our minds.

Will Moore: Yes. So, a couple of things that those of you were on the commission the time have seen before are the the memo that the LGA did on the impact of the Reed versus town of Gilbert decision. So, giving that to you again, just to give you some background as to why this is necessary. And then again, the LGAs model ordinance, which they worked on with some annotations that Martin Crim, the town attorney who was a member of the ad hoc committee that came up with this model ordinance. He has added some annotations, which I think are very valuable. So, when you're reading the model ordinance, you can it gives you background as to why certain things are included, why it's important that they're included. And then what you didn't have before, though, is kind of a a rough draft of that model ordinance customized to the town. And it's not a great deal of customization. We're trying to stick as close as possible to that model ordinance. But realizing there there are some things that were they they recognized in the drafting of it that would require customization. And there are some other things that maybe they didn't realize we would try to customize. I've had some discussions and I'll point you in the the draft zoning text amendment, the rough draft, probably the biggest departure that I have proposed from the model ordinance has to do with the time frame on which we are to act on sign permits. And I'm trying to find it in the draft as we speak. Essentially, the model ordinance contemplated a sign permit being issued or acted upon within 20 business days of it being submitted to the locality. I am actually proposing that we trim that to 10 days, 10 business days because that's plenty of time to act upon a sign permit once it's properly received. However, I caveat with that being and it's on page 4 of the draft which is section 196, the highlighted portion, what was not included in there was the contemplation of there needing to be a separate action, in this case a certificate of appropriateness from our historic district review committee, which can throw that timetable off. Discussions with the town attorney he started because with due respect to some of the gentleman in the center of the room, attorneys are very cautious by nature, sometimes very conservative in advising their clients as they should be. So, his starting point was, well, you should make it so signs aren't subject to that bodies review and you should just do them administratively. And there are some larger localities that have done this. Those that experience much more construction in their historic districts have relegated the approval of signs in conformance with their historic district guidelines to an administrative process. I told him I didn't think that would go over well in Middleburg. And I did float that idea by our historic district review committee and they were not supportive of removing that. So, what we've done in here is basically put in a caveat. We will act on a sign permit within 10 business days. However, if it requires a certificate of appropriateness, once that is acted upon, we will act on the sign permit within five business days of that action, which again, we'll probably do it quicker than that. We'll do it next day. But that I think that will will meet his guidelines or his goal in the model ordinance of acting in a reasonable amount of time, but also preserving our desire to

have that aesthetic reviewed by our historic district committee. I am contemplating adding some other language within this draft that I'll be working on this month in conjunction with Estee, who's, by the way, done a tremendous amount of the formatting and everything on this. Thank you. It's been fun, but about maybe adding some language. One of the things that helped Martin kind of come on board with this approach was that that we would allow possibly an extended duration of time for a temporary sign permit while awaiting historic district review. And the idea there is that we will not make somebody go without a sign. You're going to be able to have a sign no matter what. If you have to wait on our historic district committee to review, you will have the opportunity to have a temporary sign up during that time.

Eric Combs: So, what's the timeline for HDRC to issue a certificate of appropriateness?

Will Moore: So, they meet monthly. They but they have to act. I'll have to look that up.

Eric Combs: And are they. I'm just curious. Are they looking at the proposed sign in the context of its HDRC guidelines or are they also interpreting the sign ordinance in their review?

Will Moore: They do not do any interpretation of the sign ordinance. We in our staff reports to them. We will tell them whether or not it complies with the relevant provisions pertaining, in general is pretending to sign area. It may also do have to do with clearance above the sidewalk if it's projecting sign. Things like that. So, we will let them know whether or not it's in compliance with Article 14. But they are looking at the aesthetics, color, shape type of font, how it relates its size to the building. So, you know, a building based solely on Article 14 pertaining to signs gets a maximum allotment of site area but the HDRC can decide that your maximum what allotment might equal X, but they might say, well, that's fine, that's your maximum allotment are per the ordinance. But to make it work from this building, it needs to be X minus 10 square feet because that's just going to overwhelm that particular facade. So, they're not. They're acting not in a manner of interpreting the sign ordinance. And I will get you an answer on their timeline, but typically signs get resolved at the initial meeting. Sometimes that's because the applicant is present if they ask for a small tweak, they can agree to it in person. Rarely, if ever does it go to the subsequent month. But it does occasionally happen.

Eric Combs: Have we, just stepping back a bit, have have you Will at all, in your experience, had any issues or challenges to the existing sign ordinance?

Will Moore: Had you asked me at this time last month, I would say no. I'm currently dealing with a zoning violation pertaining to that and I'm not sure what the disposition is going to be. I'm not hopeful for a from friendly resolution at this point. [off mic] A friendly resolution, not hopeful for one. But we'll see, you know.

Eric Combs: Ed, please.

Ed Fleischman: Will are you at liberty to tell us what the issue is and who it is?

Will Moore: I am not in a public meeting.

Eric Combs: Ok, I'll just note that I'm just having quickly reviewed some of these materials. There are a host of thorny issues for the planning commission to take up. And I think. I mean, this could result in discussions that drag on from month to month to month to month to month. I'm not saying we need to avoid a process like that by any stretch. I just kind of want everybody to be prepared for that. Because of that when I see a decrease in the time allotted for town review of something, sort of the hair on the back of my neck goes up. And and I think, oh, well, given all of the issues that we're contemplating, might we want to reserve ourselves more time, much like. Right. Having more tools in our tool box for penalties, but knowing that our enforcement is going to be less egregious. Might you want to have the opportunity for more time if necessary, but knowing that we'll get through it typically administratively a whole lot

quicker. Things like that, which don't even touch the substance of the issues here. I mean, it just to me it kind of suggests what we're dipping our toes into.

Will Moore: Yeah, I think and to respond to why exactly I did that. I think the LGA group in drafting a model ordinance, it is just that. Here's a try to make a one size fits all. But realize though, there will be customization needed. If we were in a much larger metropolitan area where sign permits were maybe flowing in at a much higher rate, I can see that. And we're talking business days, not even calendar days, 20 that's four weeks. And the other part of that is we've not really touched on this was the second part where we're going to have each see review first if you're in the historic district. And then I have five business days. Well, once that's done, I've had that sign permit for a long time. I know whether it meets those requirements. So, it's just a matter of signing my name, putting a date on the form after that. I think I'm right in saying all of our commercial commercially zoned properties except one or within the historic district. So, they're going to always require that additional review. So, I think I have one commercially zoned property and that's the Middleburg Professional Center on the Plains Road that is just outside of the historic district. So, when they want to do a sign, they won't need to go through that process.

Don Woodruff: Do you think they'll be cooperative in trying to keep within the parameters of what we consider to be appropriate in Middleburg. [off mic] I'm sorry.

Will Moore: I mean, I don't.

Don Woodruff: I would hope so.

Will Moore: I would hope so. Again, had you asked me that question last month I'd say we always have that. But I'm dealing with one situation right now where it might be a little challenging, but that's going to be there with her current ordinance that's going to be there with any revised ordinance that might come out of this process.

Eric Combs: Other general or specific thoughts on the model ordinance. Any of the materials that Will provided regarding that model ordinance or the draft that Will prepared. Lots to take up for sure.

Don Woodruff: Having had this on the plate for several times, I appreciate what Will has said very much. And I think that what we aim for is signage that allows you to advertise what you're doing, but it's not ostentatious or offensive. And that, I think, is what over the last 15 years I've looked at with many different people. And I hope that's what it's going to go forward. I would hope that Will has that tool in his tool box as he goes forward. Because it really means a lot to people when they come into this town to know that this is not going to have flashing neon lights. It's going to be an appropriate signage to a country town that welcomes people and wants them to come back.

Eric Combs: Terry, please.

Terry Cooke: Just picking up on something Don said. You know, it's I know it's touched on in the text of the draft ordinance, but I think what concerns some of us, if not all of us, is there's an aesthetic element to this. And I just wonder how much latitude and I'll have to get deeper into the weeds of this draft and maybe it'll answer my own question. But how much latitude is the new ordinance if adopted going to allow for those kind of aesthetic considerations. Cause one type of sign might be perfectly appropriate on one type of building or one type of use and be completely out of place on another. I dealt with similar issues in a past life in other jurisdictions and I know how phony that can be.

Will Moore: I would say two things. And again, we're going to have plenty of time to to discuss this. So, one thing is the historic district review committee's involvement is going to be there regardless. And they are going to again, because all but one of our commercial properties is within the historic district. I think we can be comforted that that review is going to be there. And a lot of what they do is looking at this

particular sign in relation to this particular property. But what will also be included in this draft rewrite for you next month that is not there this month is kind of this table of those allotments that says and I think one of the basic premises that is in our current ordinance, we are going to propose carrying forward to this ordinance, and that is that your allotment is relative to the size of the building. So, the basic, the most basic, there are all sorts of nuances. But the basic premise for permanent signage in our current ordinance is that you can have up to 1 square foot of sign area per 2 lineal feet of building frontage. Said another way, if your building is 40 feet wide, you can have a maximum of 20 square feet in signage. So that's going to this ordinance is not going to require us to say if you're in a commercial zone, you get up to X amount, up to 20 square feet for your building. It's I envision it as being something similar to what we have now, whether that ratio is the same or not, we can we can talk that through. But so, there will still be something in that table of allotments that's forthcoming that proposes something like that. So, I think between those two, the ACRC review and keeping that same kind of ratio in proportion to size of the building will hopefully help to address some of those real concerns.

Eric Combs: Two good comments. I think they just kind of highlight how important signage can be for the town and should be for the town. So, I would just encourage all of us to wrestle with these things as much as you feel inclined to wrestle with them, because it's all, I think, time well spent. Will, I'm all for adding this to the agenda whenever you think it makes more sense.

Will Moore: Yeah, I think we are going to commit. And when I say we Estee is going to commit to having these tables of allotments ready for you. Well, in advance of your next meeting. So, we're gonna be working on this possibly even possibly even later this week we'll be spending some time with that. And probably in the maybe the first week of November, we'll get a draft to you in advance of your full agenda that has some of those tables plugged in with, again, starting points for the conversation.

Eric Combs: Okay, great. Thank you. Other sign ordinance related comments? [off mic] Well, great.

Will Moore: And if you have if any questions come up in the meantime, in particular, legal questions, things that. And there were a couple just that I had myself and reading the model ordinance. Feel free to shoot me those at any time because I can then communicate those to Martin and maybe we can have answers, answers for you by the time we get to the next meeting.

Eric Combs: Ok. Here you thought you retired.

Don Woodruff: Never.

Eric Combs: All right. [off mic] Well, unless there's anything else work session related, I'd say let's just roll right into a regular meeting and we can start off. Has anyone had any meetings or communications with any applicants or prospective applicants since we last met? Ed, we'll start with you.

Ed Fleischman: No, I haven't had a discussion or communication with applicants.

Will Moore: Good question I think you can you can tell the commission they are applicants now for the HDRC, but not for this body, so it's probably worth mentioning.

Mimi Stein: [off mic] on Marshall Street next door to me. They didn't ask me any questions; they didn't know what committees I was connected to. But we did discuss the property line and the rock wall and a few things that they were hoping to do on the property. And I just listened and I called Will immediately.

Will Moore: So, this is 308 East Marshall Street. You may not be familiar with the property, but it's one that was deteriorating quite a bit. A contributing structure in our historic district. We'd had ongoing communications with the previous owner who didn't really invest in the property at all. So, a new owner is in possession now and has already come to meet with the after talking with the neighbors on all sides

has come to the HDRC to have a conceptual discussion. Already will be before the HDRC again in November to discuss the demolition of some small noncontributing additions to it. So, they're moving forward with some much-needed investment, which we're happy about. [off mic]

Mimi Stein: I'm hoping that they can keep the [inaudible] not going to happen what happened on Main Street. I can see that they're having trouble. You know, every weekend they're there and they're getting more aggravated as they're trying to clean the place out and anyway, I sort of kind of quasi had a discussion, I guess.

Eric Combs: I've had none.

Terry Cooke: I've had no discussions or contact.

Rachel Minchew: I've had no discussions or contacts.

Don Woodruff: No discussions, no discussions at this point. [off mic]

Eric Combs: Thank you all. Well, far cry from our last meeting in terms of the opportunity for us here in public comment. So, I think we can move right on to the draft minutes. Rhonda, thank you for the minutes of our last meeting. That was a fun exercise.

Don Woodruff: [off mic]

Eric Combs: I had one comment on the draft minutes with respect to the vote on the public hearing item, the preliminary plat. I did not cast a vote. I see I'm on record here for having casted an affirmative vote. I did not cast the vote, so I guess that would leave me in the abstaining category.

Rhonda North: So, if you don't specifically say abstain during the meeting, it is assumed that you voted in the affirmative. Yes.

Eric Combs: Ok. Interesting.

Don Woodruff: [off mic]

Eric Combs: That's crazy. Yes. OK.

Rhonda North: And that's why it's important that, you know, when you call for the vote. You not only calls for the you know, yeses and no's, but also abstentions.

Eric Combs: And I could be wrong. I recall in our bylaws where we say something about the officers and their voting, whether it's a may vote or shall vote or something to that effect. Does that sound right?

Rhonda North: You have the option of whether you wish to vote as chair or not.

Eric Combs: OK. And so then just express that as, got it.

Terry Cooke: So, your circumstance is not like that of the mayor who votes only in the event of a tie. You would vote on any matter [inaudible]/

Eric Combs: Ok. Other comments or questions on the minutes?

Don Woodruff: [off mic]

Eric Combs: Second?

Ed Fleischman: I second the motion.

Eric Combs: [off mic] All in favor of the motion.

Everyone: Aye.

Eric Combs: Not abstaining. I am voting. [laughter] OK. [off mic] Yeah, a couple, I guess, things that potentially take up in our discussion items. One, we do not have a a council representative on our planning commission any longer. Is there an update on that front, Will?

Will Moore: So, the mayor's desire has been to get an interim council member appointed to the council first and then to make an appointment to for the representative, the liaison, if you will, to the planning commission. So, the council will make an appointment, an interim appointment, as we understand at their November 14th meeting, which is I think the last possible day at which they can't make that interim appointment. So, I'll have some communications with the mayor between now and then to see if he would be willing to make the commission appointment at that same time.

Eric Combs: Ok. Great. Thank you. While we're on the subject of council. Could you fill the planning commission on on the council's latest discussion or actions regarding that comprehensive plan?

Will Moore: Yes, so the comprehensive plan is adopted. So, I think the last version that I made available to you. I'd sent out the email was a draft dated October 1st. So, they adopted that plan [er that draft, they've made no additional revisions. There were some revisions, obviously, in that draft. And I think they were good additions. I'm not sure if everybody had a chance to.

Eric Combs: I would agree.

Will Moore: Yeah, but, you know, it was part of what what we did was update just references to the counties comp plan is now being adopted because when you took your action to recommend a draft plan, it was either not yet adopted or had just been adopted a few days before. I can't remember the exact timing. So just making that update was a good step. Plus, they had us tie ins and specific actions that are in their adopted plan to our plan, which I think was very good, especially as it pertains to users surrounding the town. So, we simply cited particular actions that are cited in the county's plan and linked them to ours. I think what we will do and probably have some discussions with the chair in between meetings here is start to maybe formulate a work plan for the commission to proactively start addressing some of what we're calling for in the plan. So sometimes you'll adopt the comp plan and you just sit back and you wait for applications to come in. And but I think there are some things in here in our comprehensive plan that we can maybe start work on proactively. So, I think now that the adoption is behind us, we can start having some discussions about maybe doing a work plan and maybe it's initiating some text amendments that would help further some of the objectives. Initiating some contacts with the County Planning Commission some contacts in Fauquier, those kind of things.

Eric Combs: I think that'll be great. There's a lot of, as we all know, great stuff in that document. There's a lot of opportunity for us to work with it. Now, maybe we can all just sort of outline what next steps we as the planning commission might take, particularly with respect to the zoning ordinance and some other outreach items given where Loudoun County is right now. The time is right.

Will Moore: I will say that I just today posted the adopted version of the plan. So again, it's the same as you saw last, but now says adopted instead of a draft date that is posted to the website now. Mr. Fleischman has asked for a print copy, which I'll be happy to provide any other commissioners who want to print copy. Okay. Yeah. Let me know. I'll just. Yeah, we'll have a print copy. It won't be professionally

bound or anything, but we'll get you we'll get you. [off mic] I mean I can have it for you at your next meeting, but if you want it in advance then feel free to stop by.

Mimi Stein: I'll offer to spiral bind them if you guys want because I have a machine that does that at my house.

Will Moore: That would be wonderful. Thank you. Thank you. [off mic] Spiral bind.

Mimi Stein: I have a ton of those like a tiny little spirals binders and a machine that punches the holes. On the long side.

Will Moore: That'd be great.

Don Woodruff: [off mic]

Will Moore: Our budget greatly appreciates that. We were budgeted for and I'm waiting for three bound copies from the consultant. But that was all that we requested.

Mimi Stein: [off mic]

Will Moore: Wonderful. Yes. Excellent. Okay. Well get those printed up and get them to Mimi as soon as possible.

Eric Combs: Thank you.

Will Moore: Thank you. Wonderful.

Ed Fleischman: Will, I'm not sure how what the protocol is for distribution, but it seems like there ought to be a copy sent to the local library and then the county. And there are places in the county, I'm sure.

Will Moore: Right. We have some places by code that we need to provide copies and we'll be doing that as well. Ok. Thanks.

Ed Fleischman: But the local library is also a good place.

Will Moore: Very good. Thank you.

Ed Fleischman: Thank you.

Don Woodruff: What is what would be the ability to make it available to the public online?

Will Moore: Yes. So, again, it is posted online on our web site, but we're happy to make print copies for anybody who wants one.

Don Woodruff: I think we should say that because I've had people ask if we could do that.

Will Moore: Sure. I'll put a caveat on the website.

Don Woodruff: [off mic]

Will Moore: Absolutely.

Don Woodruff: [off mic]

Eric Combs: I'm just sort of wondering whether there have been a lot of people asking to read this document. If so that's great news.

Don Woodruff: [off mic]

Eric Combs: Any other items since we don't have the benefit of Kevin's council report, anything that's going on at council level we all should know about.

Rhonda North: Mr. Chairman just to remind you of the volunteer appreciation reception tomorrow evening.

Eric Combs: Thank you.

Terry Cooke: [off mic]

Rhonda North: Episcopal Church Parish House.

Don Woodruff: [off mic]

Eric Combs: Thank you for that reminder, Rhonda. Any other council items? No. Ok. Unless anybody has any other discussion items they want to take up, we can look at our November calendars.

Ed Fleischman: Before we do that, I do have an item.

Eric Combs: Please, Ed.

Ed Fleischman: Just a question to Will. At the last meeting we had a discussion on the Banbury Limited Liability Group. Did they contact the town or the county? They filed any court papers. What's going on?

Will Moore: I did have a meeting with with the applicant and engineer subsequent to our meeting to discuss some of the issues involved. Went over in detail the the action that was taken. Some of the deficiencies in the application. And we have not received a resubmittal at this point, but I think we can anticipate receiving a resubmittal at some point. Because of the action that you took in denying it we actually don't have an active application at this point in time. So, when they do resubmit, they will be refiling a new application form, a new fee, and we will have to repeat the process. So, you will if they do resubmit. We would again have to schedule a public hearing at some point. I think it's it's fair enough to say that their goal is to work diligently to address all the concerns that came up in the review of the previous application to try to get it as tight as possible before resubmitting so that when they do resubmit, hopefully that review time will be quicker and there will be many fewer issues that you might have to consider when it comes back to you. That would be their goal. But we've not had any subsequent contact with them since that meeting.

Don Woodruff: I'd just like to thank Ed for presenting all that information in those succinct statements of what we're concerned about, at least from this point of view, if not from the public. Thank you, Ed.

Eric Combs: Ok. November meeting date. Looks like the 4th Monday is the 25th. Which might present a conflict for Thanksgiving plans for folks.

Will Moore: So, we've included the possibility of a meeting on the 18th if that if the Monday of the week of Thanksgiving was an issue of the week prior Monday is available for us as well. And staff's happy to do either.

Eric Combs: Okay. How do those dates look for folks? Does anybody have a conflict with one or the other?

Mimi Stein: [off mic]

Don Woodruff: [off mic]

Eric Combs: You can do the 18th, but not the 25th. Ed, either one, you said. Rachel is the opposite. Okay. I don't have a I don't have a issue with either. I think. Is there a preference?

Terry Cooke: [off mic]

Rachel Minchew: [off mic]

Eric Combs: So, yeah. So, you stick with our regular schedule. OK. [off mic] OK, good. Anything else? Thank you, everybody. [off mic]