



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



**MONDAY, JANUARY 27, 2020
PENDING APPROVAL**

PRESENT: Donald Woodruff, Vice Chair
Terence S. Cooke, Member
Edward R. Fleischman, Member
Rachel Minchew, Member
Morris “Bud” Jacobs, Councilmember

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

ABSENT: Mimi Dale Stein, Member

The Middleburg Planning Commission held their work session and regular meeting on Monday, January 27, 2020 in the Town Hall Council Chambers, located at 10 W. Marshall Street in Middleburg, Virginia. Vice Chair Woodruff called the work session to order at 6:30 p.m.

Discussion Items

Draft Zoning Text Amendment – Sign Ordinance

Deputy Town Administrator Moore reminded the Commission that during their last review, they asked that legal counsel be present for their next one. He reviewed the updates that had occurred since the Commission’s last review.

Page 2 – Section 195 - Definition of Banner: Deputy Town Administrator Moore explained that he deleted the language regarding connections in order to address staff concerns.

Page 3 – Section 195 - Temporary Signs: Deputy Town Administrator Moore noted that the model sign ordinance offered two options and reported that the Town Attorney recommended including the one that covered political candidate or political cause signs as a temporary sign.

In response to inquiries from the Commission, Assistant Town Attorney Simmons reminded the Commission that they could regulate the size of temporary signs; however, they could not regulate the content.

Page 5 – Section 197 – Permit Not Required: Deputy Town Administrator Moore reported that the Town Attorney recommended the removal of the language related to duration as it would be too difficult to track the duration of a temporary sign on residential property that did not require a permit. He advised that he also capped the height of freestanding signs at ten feet, which was a foot taller than currently allowed.

Page 8 – Section 201 – General Requirements: Deputy Town Administrator Moore noted that he corrected a grammar error in the section regarding illuminated signs. He further noted that he also added the phrase “except as otherwise required by law” at the suggestion of the Town Attorney.

Page 9 – Section 205 – Residential District & Agricultural/Conservancy District Signs: Deputy Town Administrator Moore noted that these were the sign allotment tables. He advised that the Town Attorney suggested there be a maximum cap on flags associated with residential uses in the agricultural and residential districts. Mr. Moore noted that he suggested sixty-four square feet, which would allow for up to four 3x5 foot flags on a property. He questioned whether the Commission wanted to include a limit and, if so, whether what he proposed was acceptable. Mr. Moore suggested the members think about that and noted that a decision was not needed at this time.

Deputy Town Administrator Moore suggested the Commission initiate the zoning text amendment process during their next meeting and hold the public hearing in March. He noted that this would give the members two more months to think about the draft ordinance.

In response to an inquiry from the Commission, Deputy Town Administrator Moore confirmed that if an individual put up multiple flags, they must comply with the size limit regardless of the type of flag displayed.

Page 10 - Section 205 – Residential District & Agricultural/Conservancy District Signs: Deputy Town Administrator Moore reported that he changed the headers and provided an example for clarification purposes. In response to an inquiry from the Commission, he reminded them of the signage allotment allowed under the current ordinance for two-story buildings and opined that the language was not user friendly. He explained that his goal was to make sure the business community did not see the proposed allotments as a reduction, while also trying to adhere to the court case that was prompting the amendments. Mr. Moore reminded the members that based on the current signage, no one was close to the maximum allotment, with the exception of a few corner lot buildings that were at or above it.

In response to an inquiry from the Commission regarding the temporary banner at the National Sporting Library & Museum, Mr. Moore noted that the ordinance currently gave the HDRC flexibility in looking at signage. He advised that they could vary from the base regulations under an exception; however, he was not comfortable with that as it was not clear as to whom they made their recommendation. Mr. Moore reported that he put the HDRC on hold from using that provision while the sign ordinance was being rewritten. He advised that the banner would become non-conforming and could be refaced.

In response to an inquiry from the Commission, Deputy Town Administrator Moore advised that the Foxes on the Fence were art displays; however, the banner announcing the event was a temporary sign. He advised that a duration was included in the ordinance for how long a temporary sign could be up. Mr. Moore advised that a limit was also included as to the number of types of signs allowed on a property. He further advised that the language regarding off-site signage was removed as the Town did not allow it.

Page 9 - Section 205 – Residential District & Agricultural/Conservancy District Signs: The Commission opined that the table related to signs permitted as an accessory to non-residential uses did not include a limit on the size of the flags. Concern was expressed that an extremely large flag or a Confederate flag could be flown.

Deputy Town Administrator Moore confirmed there was a limit in the draft ordinance of ninety-six square feet for signs/flags for non-residential uses in the agricultural or residential districts. He advised that this would apply to Salamander, the Charter School, churches, etc. and noted that they usually involved larger areas of land. Mr. Moore further noted that this limit was open to discussion and modification. He advised the Commission that all flags must be treated the same, regardless of content.

The Commission opined that the heading in Section 205B included an exclusion for flags with commercial advertising. Deputy Town Administrator Moore noted the need to address this.

In response to a inquiries from the Commission, Assistant Town Attorney Simmons confirmed the HDRC could not talk about whether content was appropriate. He advised that he was not aware of any jurisdictions that have adopted an ordinance banning the Confederate flag; and, opined that if they had, they had not yet been challenged. Deputy Town Administrator Moore noted that some localities had simply banned their own use of the Confederate flag.

Page 8 – Section 201 – General Requirements: The Commission suggested wording changes to Section 201C regarding the landscaping requirement around temporary signs and opined that the proposed language would create a lot of non-conforming situations. Deputy Town Administrator Moore agreed.

The Commission suggested that rather than requiring a sign to be replaced with a blank face within sixty days of cessation of a business that it be removed or replaced. They also suggested a limit on the number of successive temporary sign permits and noted that sometimes you could see going-out-of-business signs for a long period of time. Deputy Town Administrator Moore agreed to work on those changes.

In response to an inquiry from the Commission, Deputy Town Administrator Moore explained that the applications for a Certificate of Appropriateness (COA) and for a sign were reviewed concurrently by the HDRC and himself. He further explained that he could not approve the sign permit until the HDRC approved the COA application.

The Commission opined that based on their meeting minutes, the HDRC’s review was tougher than the ordinance allowed. Deputy Town Administrator Moore advised that the HDRC’s review was strictly based on aesthetics, whereas the ordinance was technical in nature.

Deputy Town Administrator Moore advised the Commission that he would confer with the Town Attorney and would return with a new draft ordinance next month. He recommended the Commission initiate the amendments at that time. Mr. Moore reminded the Commission of the zoning text amendments related to penalties that he was holding so both amendments could be handled in the same public hearing notice.

In response to an inquiry from the Commission, Deputy Town Administrator Moore reminded the members that the sign ordinance amendments were being proposed as the result of a U.S. Supreme Court decision. He explained that the basic premise was that localities could not treat signs differently based on content. Assistant Town Attorney Simmons advised that content-based regulations were unconstitutional unless they were narrowly tailored to a compelling government interest, such as public health and welfare. He acknowledged that some communities may have content-based regulations; however, he opined that they would have a problem in court if they were challenged.

Vice Chair Woodruff adjourned the work session and called the regular meeting to order at 7:16 p.m.

Nomination & Election of Officers

Commissioner Fleischman moved, seconded by Councilmember Jacobs, that the Planning Commission nominate Terry Cooke as its Chairman. No other nominations were offered.

Vote: Yes – Commissioners Cooke, Fleischman, Minchew, Woodruff and Councilmember Jacobs
No – N/A
Abstain – N/A
Absent – Commissioner Stein

Chair Cooke thanked the members and advised that while he was willing to accept the nomination, he would probably be moving to South Carolina within the next year.

Councilmember Jacobs moved, seconded by Commissioner Fleischman, to nominate Don Woodruff as Vice Chair. No other nominations were offered.

Vote: Yes – Commissioners Cooke, Fleischman, Minchew and Councilmember Jacobs

No – N/A

Abstain – Vice Chair Woodruff

Absent – Commissioner Stein

Disclosure of Meetings with Applicants

The members reported that they had no meetings with applicants.

Discussion Items

Status Updates – The Residences at Salamander and Banbury Cross Reserve

Deputy Town Administrator Moore reported that the subdivision application for Banbury Cross Reserve had been refiled. He advised that Councilmember Jacobs asked that he provide the members with information regarding the Planning Commission’s obligations under the subdivision process and noted that he provided an excerpt from Albemarle County’s Land Use Handbook, which provided a good explanation of it. Mr. Moore reminded the Commission that subdivisions were ministerial acts, meaning their approval was not discretionary. He noted that during the original submission, the Commission was forced to hold the public hearing and act on the application on the same night. Mr. Moore reminded them that they had sixty days to act on the application from the time of acceptance unless the applicant waived the deadline.

Assistant Town Attorney Simmons recommended the waiver be obtained in writing.

Deputy Town Administrator Moore opined that the applicant learned his lesson about not waiving the deadline after the initial submission was denied. He asked that if the members had any questions on the application, they send them to him so they could be discussed during the next meeting. Mr. Moore suggested the Commission consider bifurcating the public hearing and their action. He noted that if the applicant did not waive the deadline, they could schedule the public hearing for their February meeting and take action during the March one.

Deputy Town Administrator Moore acknowledged that the applicant had months to address the review agencies’ comments from the previous submission. He reported that their resubmission had been transmitted to Loudoun County for their review and advised that they assured him they would do their best to get their comments to the Town quicker than the last time.

In response to an inquiry from the Commission, Deputy Town Administrator Moore reported that the Army Corp of Engineers issued a preliminary determination of jurisdiction over the wetlands, which the applicant accepted. He explained that this meant that an Army Corp permit would be needed if some areas of land were disturbed. The Commission noted the need to determine who would enforce this.

The Commission asked that the application be forwarded to them immediately so they could begin to review it. They suggested the public hearing for this item be moved to another venue as they expected a

large crowd. Deputy Town Administrator Moore noted that the staff was discussing the up- and down-sides of moving the meeting from the Town Office.

Councilmember Jacobs noted that the Commission's latitude was limited and suggested the need to think about educating the public as to their role. He opined that holding a public hearing created an expectation that what the public said would affect the outcome of the application even though it would not. It was noted that even though the former Chair explained this during the last public hearing, it was difficult for the public to understand. The Commission noted that the explanation may need to be repeated and suggested it be done in lay terms.

Deputy Town Administrator Moore reported that the construction plans had been resubmitted for the Residences at Salamander. He reminded the members that it had been four years since they last saw them. Mr. Moore advised that they were under agency review and noted that there was no deadline associated with this application. In response to an inquiry from the Commission, he explained that because this property was located in the Town limits, the review agencies were different. He reported that the Town Engineer was conducting the majority of the review. (Assistant Town Attorney Simmons left the meeting at 7:43 p.m.)

Approval of Meeting Minutes

Vice Chair Woodruff moved, seconded by Commissioner Fleischman, that the Planning Commission approve the December 16, 2019 minutes as presented.

Vote: Yes – Commissioners Cooke, Fleischman, Minchew, Woodruff and Councilmember Jacobs

No – N/A

Abstain – N/A

Absent – Commissioner Stein

Council Representative's Report

Councilmember Jacobs reported that the Council held a retreat to examine and revise their strategic initiatives for the next three years and noted that twelve were identified. He opined that the two that were of the greatest interest to the Commission were to engage with the County and other stakeholders on the question of cluster development and reconciling the Town's zoning ordinances with the new Comprehensive Plan.

Discussion Items (continued)

Commission Orientation

Deputy Town Administrator Moore advised the members that the purpose of this discussion was to orient them on the major aspects of their jobs. He suggested it be supplemented with Certified Planning Commissioners Training.

Deputy Town Administrator Moore reminded the members that the Planning Commission consisted of seven voting members, including a Council representative, who were appointed by the Town Council. He further reminded them that they were charged with preparing and updating the Comprehensive Plan and advising the Council on land use issues.

Deputy Town Administrator Moore reviewed the types of cases the Planning Commission would be asked to consider, which included: zoning and subdivision ordinance amendments, which could be initiated by either the Council or the Planning Commission; preliminary, construction and final

subdivision plats; site plans; zoning map amendments, which could also be initiated by the Planning Commission; and special exception permits, which were reviewed on a case-by-case basis for recommendation to the Council.

Deputy Town Administrator Moore reviewed the Town's zoning ordinance. He reminded the members that the Town had four residential zoning districts, three commercial districts and an agricultural/conservancy zoning district. He explained that the zoning ordinance identified the purpose of each district, the by-right and special exception uses allowed in each and the minimum standards required in each district. Mr. Moore noted that the zoning ordinance also contained other provisions, such as the sign and parking regulations. He reviewed how the ordinance was enforced and explained non-conforming situations. Mr. Moore noted that the latter section may need to be revised based on the proposed sign ordinance amendments.

Deputy Town Administrator Moore reviewed the subdivision and site plan ordinance. He noted that in this case, the Planning Commission was the approving authority. Mr. Moore reviewed the extraterritorial subdivision area, which generally consisted of a one-mile radius around Middleburg in Loudoun County. He noted that in those cases, the Town only approved the subdivision, as the County's zoning applied.

Deputy Town Administrator Moore displayed a copy of the zoning map, which not only identified the zoning of parcels, but also overlay districts and any parcels that contained conditional zoning/proffers.

Deputy Town Administrator Moore displayed a map of the current Historic District boundaries and noted that the HDRC would be examining them soon. He advised that if they recommended the boundaries be changed, this would be considered to be a rezoning, which the Planning Commission must initiate and recommend to the Council. Mr. Moore noted that a COA from the HDRC was required for any exterior modifications to buildings. He advised that the HDRC would also be reviewing and recommending amendments to the Historic District Guidelines; however, the Planning Commission would not be involved in those as they were approved by the Council.

Deputy Town Administrator Moore explained that a zoning map amendment, which allowed for a change of use of land, could occur with or without proffers. He reminded the members that the Comprehensive Plan recommendations were not zoning designations. Mr. Moore advised that conditional zoning involved the offering of voluntary proffers to mitigate the impacts of a development on the community. He expressed hope that the Town would not have to address a conditional zoning until the State legislature addressed the proffer issues that were created due to changes in the State Code.

Deputy Town Administrator Moore reminded the Commission that special exception uses were not by-right and were site specific, meaning they went with the land. He explained that in these cases, the Commission would make a recommendation to the Council and advised that they could impose conditions on the permit to mitigate the impacts of the use.

Deputy Town Administrator Moore reminded the Commission that they were required to review the Comprehensive Plan once every five years and noted that they just did so. He advised that the next project was to implement the recommendations in the revised plan.

Deputy Town Administrator Moore reviewed the functions of the Planning staff, which were to support the appointed bodies; issue permits; coordinate studies/plans; coordinate with other agencies as needed; zoning administration; code enforcement; and to provide customer service. He noted that the key staff for the Planning Commission included himself, the Planning & Project Coordinator and the Town Clerk/FOIA Officer.

Closed Session – Appointment to Planning Commission

Councilmember Jacobs moved, seconded by Vice Chair Woodruff, that the Planning Commission go into closed session as allowed under the Virginia Freedom of Information Act Section 2.2-3711(A)(1) for the discussion, consideration or interviews of prospective candidates for appointment to the Planning Commission. Councilmember Jacobs further moved, seconded by Vice Chair Woodruff, that in addition to the Commission, the following individuals be present during the closed session: Will Moore, Rhonda North, Estee LaClare and Olaun Simmons. Councilmember Jacobs further moved, seconded by Vice Chair Woodruff, that the Commission thereafter reconvene in open session for action as appropriate.

It was noted that Ms. LaClare and Mr. Simmons had left the meeting; therefore, they would not be present for the closed session.

Vote: Yes – Commissioners Cooke, Fleischman, Minchew, Woodruff and Councilmember Jacobs

No – N/A

Abstain – N/A

Absent – Commissioner Stein

Chair Cooke asked that the Commission certify that to the best of each member’s knowledge (1) only public business matters lawfully exempted from open meeting requirements under the Virginia Freedom of Information Act and (2) only such public business matters as were identified in the motion by which the closed meeting was convened were heard, discussed or considered in the closed meeting, which each member so did. He reminded those present for the closed session that any discussion that occurred within it should be treated as confidential.

Discussion Items (continued)

Banbury Cross Reserve Application

The Commission agreed to hold the public hearing during their February meeting and to take action during their March meeting, unless the applicant agreed to waive the timeline requirements. They opined that from a public perspective, there was value to having the various agencies’ review comments. The Commission agreed to hold a special meeting, if needed, in order to bifurcate the hearing and the action.

It was noted that the agency reviews were conducted by the professionals and that the Commission had to rely upon their expertise. The question was raised as to what would happen if a member of the public raised an issue during the public hearing that indicated something was not considered during the agency review. Deputy Town Administrator Moore advised that it was difficult to respond to a hypothetical. He opined that if the Town could obtain a timeline waiver from the applicant, it would allow such issues to be addressed in an iterative manner. Mr. Moore referred the Commission to the materials he provided and noted that they recommended commissions consider issuing a conditional approval when appropriate. He suggested the Commission could go into a closed session for legal advice from counsel if needed during their review.

The Commission suggested the need to handle this correctly and to protect the Town from legal exposure. Deputy Town Administrator Moore advised the Commission that the courts have found that the only party with legal standing to appeal a planning commission’s decision to approve a subdivision was the applicant.

There being no further business, Chair Cooke adjourned the meeting at 9:08 p.m.

RESPECTFULLY SUBMITTED:

Rhonda S. North, MMC, Town Clerk

Middleburg Planning Commission Transcript
January 27, 2020

(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)

Don Woodruff: Now, 7:30, call this work session to order. Roll call. It was sort of on your side Ed.

Ed Fleischman: Good afternoon Ed Fleischman here.

Terry Cooke: Terry Cooke present.

Rachel Minchew: Rachel Minchew present.

Bud Jacobs: Bud Jacobs present.

Don Woodruff: Don Woodruff present.

Will Moore: Will Moore, deputy town administrator.

Rhonda North: Rhonda North, town clerk.

Olaun Simmons: Olaun Simmons, Assistant Town Attorney.

Ed Fleischman: [off mic]

Don Woodruff: Sorry, [off mic] Under the discussion item's draft zoning text amendment to repeal and reenact Article 14 pertaining to sign memo draft ZTA sign rewrite 2020/01 PDF. Turning it over to you sir on this. So what would you perceive?

Will Moore: Thank you, Mr. Woodruff. So as the commissions where we've been looking at this draft for the past couple of months. And at your request, you ask for the benefit of counsel to attend a meeting just in case you had questions, legal questions regarding some of the implications or even possibly some of the reasons for having to do this dating back to the Supreme Court decision. So Mr. Simmons is here for that purpose. I will highlight that the draft that you have is updated from the one that you saw last month. I've included some notes in the draft and maybe it would be most beneficial if we just do a quick run through of the draft amendment in terms of the differences from the previous version that you saw. So in the document, which is the draft three dated 1-16-20, if you scroll to page two, the definition of banner I had altered the definition that was in the model ordinance. So the definition that was in the model ordinance omitted the word typically. And after talking with Mr. Simmons and Mr. Crim, the insertion of the word typically was a little bit problematic. I found the definition that said with attachments at each or at each of the four corners to be a bit problematic because I've seen banners that only have two attachments at the top two corners, for example. So we just decided to omit the rest of that and put a hard stop right after the word material. And I think that

addressed both their concerns as well as mine there. On page three, I got a little bit of chuckle out of this was that the model ordinance gave us basically two definitions to choose from. We picked one and Martin said, no, no, you don't want don't want that. But with sound reasoning. So it's elaborated on in the comment that you see in blue there, which really if we had adopted this one, it would not have covered political candidate signs or political cause signs, possibly. So we wanted that. We wanted the definition that we chose to still be able to include those as defined as a sign. So what you see in letter double A there, beginning with any device, parentheses, writing, letter work, et cetera. That was the other option that was included in the model ordinance.

Don Woodruff: Well, question does a political sign need to come to you ahead of time for an application?

Will Moore: It would not under the proposal here. [off mic] It's just it would not include. It would not be included. I'm just scrolling to make sure I'm being correct here.

Don Woodruff: I think from reading it you are.

Will Moore: I think so. Required, permit not required.

Bud Jacobs: Under Reed, wouldn't that be regulating content if you tried to regulate political signs.

Olaun Simmons: [off mic] It would be if you're trying to regulate the content of the sign. But if you're regulating the sign for purposes of the size of it, that would be content neutral. So that would fall within the Reed provision.

Will Moore: So we don't we don't have we don't specifically address that type of sign based on its content as to whether a permit is required or not. But if you look under the permit not required section, which is Section 197, beginning at the bottom of page four, continuing on to page 5, you'll see that certain temporary signs do not require a permit and they would be falling in that area. Yes. So on that same page, page 5 that I just referred to, there was a little bit of this was after discussion with Mr. Simmons and Mr. Crim, where you see D4 which talks about temporary signs on residential property. The attorneys suggestion was to remove the duration from there due to difficulty with especially with a sign that does not require a permit. So it could go up essentially at any time or you do start that clock. When I first see it, I just made some difficulty in monitoring enforcement. So it was their suggestion that we simply remove that. So for temporary signs on residential property, we're not going to be strictly tracking duration. The other comment that you see on that page was already there. I left that in simply because I think it's worth noting that the model ordinance was envisioning, I think a larger jurisdiction that had more predominance of taller freestanding signs where we wanted the freestanding signs that we would allow for to be shorter ones. So rather than a maximum of 25 feet that was in the model ordinance, we kept that capped at 10, which is actually a foot taller than the structure would be allowed today. The comments that you see highlighted on page 6 were in the previous version. So I don't think we need to reiterate those. Scrolling to page eight. And I'm not sure I put that word 'be' in the best location here, but at the very top letter B illumination we left out part of the verb, so it should be all permitted signs may be indirectly lighted. So I'll flip those two words. And then the insertion of the except as where otherwise required by law. That was the suggestion of the town attorney's office. This has to do with lighting. And in particular here we

were going to say that if the flag code requires a, you know, an American flag to be illuminated, if it's flying at night, we would allow for that. That's essentially why that was inserted.

Don Woodruff: That would be on public as well as private property.

Will Moore: Absolutely. And then continuing on to page nine. Once we get into the allotment tables. So again, these were place holders that that Estee and I came up with in terms of the actual allotments. Town attorney did suggest that in Section 205 A. So this has to do with residential uses on residentially zoned property or agriculturally zoned property. We had had a max total aggregate of sixteen square feet for signs and many attorneys suggested that that we should consider maybe even getting rid of a max aggregate area. We suggested that maybe as a compromise we allow for greater aggregate area. So sixteen square feet if you think of that, the typical flag that you see behind you or the ones well I shouldn't say typical but the ones flying in front of the town office, for example. Those are three-by-five. So that's fifteen square foot. You would only be allowed one that size total if you wanted additional quantity of flags, you would have to have smaller ones in order to stay within that max aggregate area. So again, we're talking about residential uses though on residentially zoned property and AC zoned property. I think it would be helpful to have a max aggregate area here. I think it was Mr. Fleischman pointed out that in our last meeting that there's a residential property that has many flags located on now. And maybe that's maybe that's OK. Maybe there should be a max cap on it. So, again, the town attorney's gut reaction was let's go with no aggregate limit. Mine is maybe there should be one to prevent really large accumulations. I suggested that 64 square feet that would essentially allow for four of the three by fives. If they went with a four by six flag, they wouldn't be able to get as many. But those are, that's up for debate. The question is, do you want an aggregate limit there? And if so, what should that be?

Don Woodruff: [off mic]

Will Moore: It would not you would fall actually under 205 B, because that is non-residential uses in residential or in your case, the AC zoned. So there is no aggregate limit.

Ed Fleischman: [off mic]

Will Moore: Most of their land is, most of the structures and developed area is not. [off mic] So really maybe reframing the question you should be envisioning a residential property. And do you think there should be a total aggregate area limit on flags in terms of their area? You can think about that. Again, we don't have to. We're not making a decision tonight. I think maybe if we step back for a second in terms of process, I think we're getting much closer on this. What I might suggest to you, absent you having any open ended questions that Mr. Simmons is not able to adequately answer for you here tonight or if there are other open ended ones what I would suggest is you start the formal process of this amendment, which is just a motion to initiate it, which would be next month. And then we would schedule a public hearing for the following month, which is March, which would be the earliest time that you could forward this to council with recommendations. So we still would have at least two more months to answer that question that we're asking you now. If that's something you want to think about. But I think that's definitely a piece that we need to address. If you unless you have any questions with the other allotments that are proposed there on page 9, I would suggest just scrolling forward to the final page. OK. Yes, sir.

Don Woodruff: Mr. Simmons and Will, I'm interested to see whether if someone decides to put up two three-by-five flags or 3, the state of Virginia, the Commonwealth of Virginia. Excuse me. And maybe they are of mixed lineage and they want to put up a Canadian flag. They would have to fall under this limitation. In other words, it wouldn't be just carte blanche Freedom of speech under the First Amendment.

Olaun Simmons: Right, they'll be subjected to limitations so if you all set the 64 square foot or the 16 square foot, they'd have to comply with that square footage limitation. Even if they're posting those types of flags you mentioned.

Don Woodruff: Thank you. [off mic]

Will Moore: No, not at all. So scrolling forward to the following page, page 10 made just a couple of clarifying marks in the way this table is laid out at the suggestion of the town attorney. So we put the header of permanent signs above the free-standing projecting and other and for other we further clarified that that certain types of products that are allowable here that we better define those so gave examples. What's falling under other can be wall signs, window signs, awning signs. Those are typical signs that we see in our commercial district. And then we put the parenthetical includes all permanent signs in with the maximum total aggregate. We wanted to make it clear or clearer that that one cell which spans below free-standing projecting and other that it applies to the total of all three of those. So that's inserted that at the suggestion of the town attorney.

Terry Cooke: You know, I'm curious, Will on page 10, subpart A in the criteria listed there, I'm kind of scratching my head about one thing max total area aggregate 1.5 square foot per 2 lineal feet [inaudible] And that's a suggested increase from the current one square foot. That's such a modest change. I'm wondering what's driving that? Is there an issue?

Will Moore: Right. So and this was the subject of a little bit of discussion last month. So the the current ordinance allows for one square foot per 2 lineal feet of building frontage. So said a different way. If you have a 20 foot wide storefront, you could get up to 10 square feet of signage in aggregate. However, the current ordinance also allows for an additional allotment for any second floor occupancies, which is and it's written in a not the most user-friendly way, which a lot of ordinances are probably including the way this one may eventually turn out, but it allows for basically one fourth of the ground floor allotment. Again, on top of the ground floor allotment if you have second storey occupancies. One of the goals that I had that we had at a staff level when we set out with this rewrite was we didn't want this to be seen by our business community as possibly reducing sign allotment. What we're really trying to achieve here is compliance with the Reed decision and cleaning up some things that just need to be cleaned up. But we were trying to avoid any possible perception that this rewrite would result in a reduction of allotments. So we felt that the language giving the second storey allotment is so it's very problematic and it's really hard to envision. But if we stuck with simply saying one square foot per two lineal feet, it could be argued that, well, certain select buildings had that second floor occupancy and you've taken that away from what was there. So this, again, was this was just a starting point for the discussion. I think what we found out last month, Estee had compiled all those photographic examples and of signs throughout the district. And what we found was the vast majority of those that we looked at were nowhere near their maximum allotment as it is. We do have a couple of examples in town that are above that allotment generally just barely or right at it. Those typically not in all cases, but typically have been at the corner lots. And the reason they have

approached that maximum allotment is because you get two frontages that give you that. But there's still this maximum of currently 30 square feet that even if you're a corner lot, even if you're taking advantage of that additional frontage, you're still capped at 30 feet. So those, Northwest Federal Credit Union is a good example. They have a projecting sign. They have a wall sign and they have a sign on the awning above their ATM. And they're just under their maximum allotment of 30 square feet by like half a square foot or something.

Bud Jacobs: Will, where do you plug in the rather large, I guess it's a temporary banner hanging on the east side of the National Sporting Museum.

Will Moore: Yes. So that's an interesting case. So our current ordinance has some language that gives the historic district review committee some flexibility in looking at signage and deciding whether there could be a variation from what is [inaudible] base regulations here and the zoning ordinance. And these regulations are irrespective of whether you're in the historic district or not. So that has essentially been approved as a sign using an exception. I'm not comfortable with that exception. I'm not comfortable with the way the exception is worded in the ordinance. It basically says they can recommend approval of signs that they deem appropriate for a building that vary in what otherwise in terms of quantity of signs. Maximum area of signs. It doesn't say who they make that recommendation to. It's unclear. Are they recommending that to the council who on one hand, I would say if there's going to be any deviation from an ordinance requirement, the council would need to have enabled that somehow. But otherwise, I am the approver of a sign permit administratively or are they recommending that to me? So I've basically put them on hold with being able to use that provision of the ordinance. I'm not really presenting that to them as an option while we're going through this process and I see that going away now that that banner and its periodic replacement would become a nonconforming use. Just as if and with that one exception, I think we're not going to see many, if any, at all. non-conformity is created by an adoption, the new re-write, which would be good not to do that, but because that was approved it would be able to remain and to be re faced with a new banner as their exhibits change.

Don Woodruff: How does that pertain to foxes on the fence?

Will Moore: Yeah. So Fox is on the fence. It's really more of an artwork display. So we've not treated those as temporary signs. What we have treated as a temporary sign and asked for a sign permit from the garden club that was the initiator was the not the individual foxes, but the banner itself that talks about foxes on the fence we have approved that as as a temporary sign.

Don Woodruff: And when they ask you for a temporary sign or a permit to put up a temporary sign, do you give them an end date?

Will Moore: We do. So there's a certain duration that's available and yeah. So otherwise in this table, one other area where you see some red lettering is the maximum number of other types of signs. We previously did not have a maximum in there and the town attorney's office suggested that we had a maximum of one per tenant. Other signs can sometimes if you go small enough in their size, they could proliferate with five signs. So this was a suggestion to avoid having in addition to a freestanding and or projecting sign to have even two or three others pop up for just one tenant. So we removed the no limitation that was previously proposed there and simply inserted one per tenant. And then the last thing on this page, letter C you will see we have struck through. This had to do with off-site signs and commercial uses of limited

durations. So I was a little confused by the intent here. After talking with Martin and Olaun, it was more so for like if you have a Christmas tree stand. But this would allow for that to be advertised not on the lot where the stand is taken place, but elsewhere, like a directional sign or a sign on a lot down the street pointing you in that direction. And we otherwise have said we do not want off-site signs. So if there is a sign it should be on the premises where the user activity is taking place.

Don Woodruff: So directional signs such as those at the junction of Washington and Madison indicating all the different schools?.

Will Moore: Ok, so those are exempted as those are government signs or department transportation signs. And so that's a little different. This is more for a use. Yeah. [off mic] That would prohibit you from. Actually, this was for limited duration and you're permanently there.

Terry Cooke: Just one question and one comment I think on page 9, again, looking at the table B which relates to signs permitted as accessory to non residential uses. Again, going back to flags. There is no limit. I take it on the size of a flag that can be flown under those circumstances. Is that consistent with the current ordinance?

Will Moore: The current ordinance. I will have to look.

Terry Cooke: Well, an extreme example. And I'm sure we've probably all seen McDonald's restaurants and I guess some other fast food restaurants have a pension for flying an American flag that is twice the size of a king sized bed. And I know we don't have any of those kind of restaurants here in Middleburg but they are big flags. And I just wonder, would that be permitted under this circumstance.

Will Moore: Right. So. So I think the key here is. So the quick answer is there is a maximum area each and it's 96 square feet, which is a really big flag. However, those can be on this section. This table B is for non-residential uses in a residential district or an AC district. So what are we talking about here? We're talking about Salamander Resort. We're talking about the community charter school. The polo club's outside the town. And so, you know, we're talking about if a church were ever to be built on a residential zone property. So we're talking about more limited circumstances that are usually going to involve larger areas of land, which is why we suggested the 96 square foot maximum limit for one and no limit on the aggregate. Again, we were just thinking context there. Now, again, like any of the allotments here, these are open for discussion and it's good to ask that question. And if you think we should make some modification to that I'd be absolutely open to that.

Don Woodruff: Bud.

Bud Jacobs: I've been assuming in this section and in others, when we talk about flags, we're talking about governmental flags in some way, state flag, our national flag. And I guess that's not correct, right. For example, I don't think we have any in town, but a lot of institutions that fly the U.S. flag, for example, will frequently also flag fly the Black POW MIA flag. Those would be treated the same under our scheme here. Right.

Will Moore: Correct. So flag is defined in this section. And again, this goes back in all on. Don't let me say something I shouldn't say or correct me if I do. But this goes back to is it content

based? So we can't really treat that flag differently than if it were a flag that had a commercial insignia on it.

Bud Jacobs: I'm sorry, say that again.

Will Moore: We couldn't treat a governmental flag differently than if it were a flag with, say, a commercial insignia on it. That would be regulating by content.

Bud Jacobs: I'm sorry, in subsection B on page 9 in non-residential uses in residential and AC districts, flags not containing any commercial advertising. I inferred from that that we could regulate the size of flags containing commercial advertising.

Will Moore: Can you give me that citation again?

Bud Jacobs: I'm sorry, it's page 9.

Estee LaClare: It's in the parentheses

Bud Jacobs: 205B the second chart in the header flags perens not containing any commercial advertising close perens And I'm a little confused as to what the implications of that might be.

Will Moore: I think, Mr. Simmons. We might have to confer on that. So, yeah.

Olaun Simmons: I'm thinking this could be this could prove to be problematic going forward because it is addressing a certain type of flag with certain type of message. So maybe you have to. You may have to look at that and make some adjustments to that particular Perens. I think you're right about that.

Will Moore: That's a good point. [off mic]

Bud Jacobs: [off mic]

Don Woodruff: Okay. Does the does the historic district review committee get to talk about what a flag contains as being appropriate. I mean, immediately I'm thinking of do we want a bunch of Confederate flags flying in Middleburg? I mean, personally, I don't, but do we have say over that or are we impeding their First Amendment rights?

Terry Cooke: Talk about content based. I mean, you're walking right into that place.

Olaun Simmons: Yeah, that that would be content restrictive. Right. So you can't point out a certain flag as being a flag that's prohibited within the town because any regulating content and that's a problem from [Inaudible] versus Reed perspective. So I think we need to steer clear of that.

Don Woodruff: [off mic]

Olaun Simmons: Exactly.

Terry Cooke: Leave that to neighborhood enforcement. [off mic]

Ed Fleischman: Regarding the Confederate flag, isn't it true that some towns and some areas have gotten rid of Confederate flags and passed ordinance saying they can't fly?

Olaun Simmons: Not that I'm aware of, but I'd be happy to look at the ordinances that you're referring to. And they may have those orders on the book, but they haven't been tested and challenged in court. Could be.

Will Moore: There have been some localities that have eliminated by ordinance there or by resolution their own use of the Confederate flag. It's a little different. [off mic] Yeah. [off mic] Right.

Bud Jacobs: Well, but she didn't prohibit the display of the flag. She just moved it to elsewhere on the state capitol grounds.

Don Woodruff: [off mic]

Terry Cooke: Now, if I may have a couple of suggested wording changes, maybe these are significant, maybe not, but. Excuse me, give me a minute. Well, one thing I noticed. I'm looking at page 8. This would be Section 201C, landscaping, all temporary freestanding or monument signs shall be installed with a minimum surround of three feet of regularly maintained landscaping in every direction. We've got a lot of non conformance on this one. And I just a heads up. There are a lot of those signs that don't have any or certainly that kind of landscaping.

Will Moore: That's you know, that's a good point. And I think that's one that we included from the model. And I don't think we put a lot of thought into that one.

Terry Cooke: I don't see that it adds a lot.

Estee LaClare: That's something you might want to discuss, too and look around.

Terry Cooke: May want to think about that one a little bit. Before we codify it.

Will Moore: Absolutely.

Terry Cooke: Again, the wording nit picking Section 200, sub part D, which talks about within 60 days of the cessation or use of business operation, replace the sign face with a blank face until such time as a user business has resumed operating on the property. Why don't we say remove or replace the sign face.

Will Moore: Agreed. [off mic] Thank you.

Terry Cooke: One last flyspeck section 196 B application for permit. The last sentence an application for a temporary sign shall state the dates intended for the erection and removal of the sign. Should we consider anything that would limit success of temporary signs. I can foresee a sharp practice where someone applies and obtains a temporary permit, has the sign up for 30 days. Takes it down. On day 32 comes in and says I want to put it back again. And this could go

on ad nauseum. Going out of business sales, I see that a lot. There going out of business and they're going out of business.

Estee LaClare: For a year. [off mic]

Terry Cooke: I just wonder, you know, should we think about whether we can put some sort of limit on that? I mean, I suggested successive temporary periods shall not be permitted for temporary signs, but maybe there's better language, but something that you know, so we avoid the situation with one temporary sign after another.

Will Moore: I think we could work on that and come up with something.

Terry Cooke: Thank you.

Will Moore: Yes, sir.

Estee LaClare: Thank you, good suggestions.

Don Woodruff: So are you saying in that if I have a property and I have a temporary sign up then I can keep going or without coming back to you?

Terry Cooke: No, I think you'd still have to go big when the temporary permit is issued it has a duration. [multiple speakers] 30, 60 days, whatever. But. So you run through your permitted period, 30 days and you come back in on, 32 and reapply. And this goes on ad nauseum.

Don Woodruff: Any further commentary on the first item? Oh, Ed.

Ed Fleischman: So Will by getting a sign approval in the historic district, which includes almost all of the commercial areas. It's gonna be a two step process. First, they go to the [inaudible] and get a sign that's conforming to these regulations. And then they take that sign to the historic district group and then they get to look at it again.

Will Moore: They are. And this is not a change from the way signs are processed today. They apply for those at the same time. So the review is concurrent. So the application is made. I do a review based on this section notwithstanding HDRC design guidelines. I do a review on this section and will advise the applicant if they're sign, if their application meets all requirements within this. And I can't I still can't approve the sign until HDRC reviews it, assuming that it meets all of the requirements here in the HDRC reviews the sign if they approve, I sign both permits the COA, which is their action and the sign permit at the same time.

Ed Fleischman: So Will, looking at the minutes of the Historic Review Committee, it seems like they're much tougher than this ordinance.

Will Moore: Tougher. I don't know, I'd use the word tougher. They have different criteria that they were considering. Theirs is purely aesthetic, whereas this is more technical.

Ed Fleischman: Yeah, well, it's easier to satisfy the technical requirements.

Will Moore: It is. I think that's fair. That's fair.

Ed Fleischman: Okay. Thank you.

Don Woodruff: Any further discussion of this item? What's next Will?

Will Moore: Well, I think we have some direction to make some edits, to look at some things or do a little more conferring with Olaun pertaining to the non-commercial flag languages within. And then we would return with a new draft next month. And I think assuming we come to a comfort level in our discussions, we may propose that you make that motion to initiate the amendment still knowing that there is time to make additional revisions. But we would probably propose you could initiate it next month and we would also actually we had another oh, we have another zoning amendment that we'd reviewed a few months ago. We've not talked about in a couple of months. It pertained to violations and penalties, just bringing up what's available to us to meet state code. We didn't really have any issues outstanding with that. We had been holding off on that one until this one is ready. So we could, quite frankly, save some advertising costs for the public hearing them put them both in one ad rather than running two. [off mic]

Don Woodruff: [off mic] Can you tell us a little bit about the impact [inaudible] of what we're looking at. I read it but I'm not sure I got all the jist of it.

Will Moore: Yeah. I mean, I think the. And then I'll say this really quickly and I'll turn it over to Olaun to expand on it. But the, there's a lot of nuance within. But the basic premise is that the basic thing that came out that localities have to address is not treating signs differently based on content. That was really the genesis of the Reed case. I believe it was a church that was putting up temporary signs and their type of temporary sign was limited to whether it was a certain size or certain duration, whereas other types of temporary signs were treated different. And we have some things like that in our current ordinance. A temporary sign for one type of use may be allowed to be four square feet in size, but another type of temporary sign may be twelve square feet in size and it's purely content based. So that's why we need to finally get some revisions here.

Olaun Simmons: I think the language in Reed that you should take away with you. Understanding what the holding was, was this content content based regulations are unconstitutional unless they're narrowly tailored to serve a compelling government interest. Content based regulations are unconstitutional unless they are narrowly tailored to serve a compelling government interest. And the compelling government interest that localities need to focus on when they're making these decisions about science is looking at public health and welfare. If you're making decisions based on those things, then I think it'll stand up under the strict scrutiny that the signs are going to be subjected to by courts. It's got to be narrowly tailored to serve that particular government interest, which is public health and safety.

Don Woodruff: Any other business for the work session?

Ed Fleischman: Question.

Don Woodruff: Oh, I'm sorry Ed. Go ahead.

Ed Fleischman: Yeah. I'm interested in the signs, what you can put on a sign. And if you follow The Washington Post, there's a lot of arguments about what signs can be in the Washington

Metropolitan Transit Agency's subway system. And they've refused some signs. How do they operate are they operating in the same way we would operate here?

Olaun Simmons: Well, if they refusing signs based on content after a challenge, they may be in trouble in a court of law. I don't know the specific signs you're referring to, but if they're picking out signs and certain messages on those signs and has nothing to do with public health and safety, then they're going to run into a problem potentially.

Terry Cooke: [Inaudible] is doing the same thing with respect to advertising on buses and subway cars. And it's clearly content based.

Olaun Simmons: They may have another basis on which to deny those signs that I'm just not aware of. I'd have to look at that particular situation. But in most cases, if you [inaudible] content and that's the basis of your regulation, you're gonna run into a problem.

Terry Cooke: Well, I think what they're suggesting is that certain messages would tend to inflame public sentiment one way or another and that they're doing it as a health and safety issue. I think that's very problematic, but I think that's their excuse.

Don Woodruff: Ok. Do we, everybody want to just forge forward? All right. Let's call the regular meeting to order. Nomination and election of officers.

Ed Fleischman: I nominate Terrence Cook for chairman.

Bud Jacobs: Second.

Don Woodruff: All those in favor.

Will Moore: If I may Mr. Woodruff, would you maybe first ask if there were any other nominations.

Don Woodruff: Are there any other nominations? All right. [laughter] Based upon the lack of response. All those in favor of Mr. Cooke say aye please.

Everyone: Aye.

Don Woodruff: Those opposed. Very good.

Terry Cooke: If I may. First of all, thank you to my fellow commissioners. Appreciate your confidence. But I do want to do what everybody perhaps doesn't know this to know that, while I'm willing to accept the nomination, that I'm compelled to let you know that there is a possibility that within a year's time I may be my wife and I may be relocating to South Carolina. So with that as a disclosure and a caveat. I'm very happy to accept the nomination.

Don Woodruff: It's your ballgame now, Mr. Cooke.

Terry Cooke: We'll call the regular meeting of the Planning Commission to order. And our first ask for disclosure among the commissioners as to any meetings or discussions they've had with any applicants with matters before the before the commission.

Will Moore: If I may first, Mr. Chairman. We also need a nomination for the position of vice chair.

Terry Cooke: Yes, we do. Thank you Will.

Will Moore: Yes, sir.

Terry Cooke: We will now entertain a nomination for vice chair for the planning commission. Do I hear any nominations. [off mic]

Will Moore: Yes. Yes, you have. [off mic] Oh, yes. And if I may remind the commission, your current vice chair is Mr. Woodruff.

Bud Jacobs: Well, I'd like to nominate Mr. Woodruff as our vice chair.

Ed Fleischman: I second it.

Terry Cooke: Are there any other nominations for vice chair? [off mic]

Ed Fleischman: I vote yes.

Rachel Minchew: I vote yes.

Bud Jacobs: Aye.

Terry Cooke: Aye. Chairman vote ayes.

Don Woodruff: I'll abstain. [laugheter] Thank you.

Terry Cooke: Thank you. [off mic]

Don Woodruff: I've had none, but I think we need to look for some.

Bud Jacobs: Bud Jacobs, I've had none.

Rachel Minchew: Rachel Minchew I have had none.

Terry Cooke: Terry Cooke. I've had none.

Ed Fleischman: Ed Fleischman, I have had none this month.

Terry Cooke: Will, as an aside, sir, I very much appreciate Olaun's attendance does he need to stay on board for the rest of the meeting or can he be?

Will Moore: I think it's up to him if he would like to.

Terry Cooke: I have no objection to it.

Will Moore: Yeah. I think we [multiple speakers]

Terry Cooke: The answer depends on whether he's had dinner yet. [laughter]

Will Moore: I will say and maybe you would consider going out of order of the agenda here, Mr. Jacobs contacted me earlier and requested just some information, knowing that the Banbury Cross subdivision application is coming back to us and it has indeed been refiled. Now, he just requested some information regarding our obligations under processing subdivision. So I have given you a handout here. If you want to jump ahead to that and I'll put Olaun on the spot. I think he's well versed enough in land use law that he can handle this. This is actually this is an excerpt from Albemarle County, which has developed a land use law handbook. Some of the content within, but very little is specifically tailored to Albemarle County when it talks about their process maybe for conducting a pre application review and things like that. But the majority of this is just good solid background information on subdivisions in the Commonwealth, processing of subdivisions. As you recall, when we dealt with Banbury Cross previously, there was a lot of emphasis on subdivisions being ministerial X, not discretionary. Things like that so Bud had asked that I get you some information and I thought this was a good document to put before you. The highlights within are solely my own, but there are things that for the majority of my purpose in highlighting, I thought were helpful for you to keep in context with regard to Banbury Cross when that comes back before us this time. It's an open ended question, but having gone through that process previously, I know that the commission probably felt very much put on the spot. The meeting that you had to both hold a public hearing in and then you were forced by a time clock to make a decision. Some of that reasoning is within here in terms of what the Code of Virginia states in terms of having to make a decision within a certain time frame of a plat being filed. One thing I think you may see of the applicant this time around, and this is something that maybe Mr. Simmons could weigh in on, it is typically been the practice of localities that while there is a timeframe mandated that you must act on the plat within 60 days or if involves a state agency review. And that takes a little longer than it's extended to 90 days, that we are safe generally not taking action during that time frame if the applicant specifically waives that, that is if the applicant comes forward and says I'm okay if you take longer than 90 days if we get that in writing. I think that generally would cover us. Is that correct?

Olaun Simmons: I think you're right. The waiver is valid, but you want to get that in writing for sure.

Will Moore: Right. Right. So the last time around, the applicant did not request that. You were forced to make a decision in that timeframe. I think that may that may be a lesson learned. So but we will see what happens as the review moves along with this new application that's now been filed. Again, though, this is something that you might be better suited taking some time with, looking through and then maybe coming back with some questions next month, if you have any, or even better if you see some questions between now and your meeting next month. If you could send those to me in advance, maybe I can get those questions answered by Olaun and then we can answer those all.

Terry Cooke: I think I understood you say that they have refiled their application.

Will Moore: That is correct.

Terry Cooke: So are we. Is a clock ticking right now?

Will Moore: A clock is ticking.

Terry Cooke: And that clock is how many days long?

Will Moore: It's 60 days from this time that started clicking and that can be extended to 90 depending on state agency review. But VDOT has already flipped it back, so we're not going to get the benefit of those extra 30 days.

Terry Cooke: I certainly would prefer to be able to take time and read through this and come back in February with any questions or clarifications we want. That would be roughly 30 days hence, we'll be there for further into the process.

Will Moore: Right. And what I might add, this is something that you can think about and it might be good to have an answer tonight. It would definitely be good to have an answer in the next week or so is whether you would want to potentially bifurcate the public hearing and your action, meaning we could go ahead and we know we have to do a public hearing. Our ordinance requires a public hearing. And that's another discussion is as we look at updating ordinances this year, do we want to continue to require a public hearing because it's not mandated by the state code. But coming back to that, we currently do require a public hearing. So we could potentially schedule that hearing for your meeting next month. Get all the public comments while review is still going on. And then the earliest you would be required to act on it would be your March meeting. So there's question whether or not there's value in bifurcating those to have the public hearing at a meeting when you're not going to take action. So you can have time to hear the public comments. But maybe that gives you a little more separation, which I think was understandably difficult last time, was that of this thing of us having a public hearing on a non discretionary action. It's a little confusing for, I think, both the commission and as well as those who come to speak.

Don Woodruff: And the emotion involved made it even more difficult.

Terry Cooke: But I take it. If we were to follow that course. Any we would have the public hearing and then we would defer a decision until would be our next scheduled meeting. But. Any discussion among the commissioners following that public hearing as to what our collective decision might be would have to be done in public.

Will Moore: It would. It would, yeah. Yeah. As long as you're doing it in in a meeting. Yeah.

Terry Cooke: So we could do that though prior to taking a vote on the matter at the March meeting. Get our cards on the table. Get our questions answered.

Will Moore: Absolutely. Absolutely. Yeah. The closing of the hearing does not prohibit your deliberation.

Bud Jacobs: The 60 day clock. How much time has already told on the clock.

Will Moore: It's roughly a week. We will have the flexibility to extend to the March meeting.

Bud Jacobs: And do you plan to seek a waiver on the clock from the applicant?

Will Moore: I don't know that I would use that verb to seek. I think what we're going to do is see how speedily the review comments come in from the multiple referral agencies. And it will be more of a consultation and kind of advising the applicant, this is where we are. Here are the extent of the review comments. There may be some technical deficiencies in those review comments. There may not be. And depending on what comes in with those referral comments, it may be suggested to the applicant that they might be in better shape if they requested to waive the 60 day clock. But I think that's it's a little bit ahead of ourselves. They have had they've had the benefit of a number of months to address a lot of things. You know, there were extensive comments that came out of the previous application and their intent was to tidy this up in such a way that they were hoping that this could potentially be an approvable form when it was read. But we'll see. It's odd that applications like this that had so many technical requirements don't have three or four iterations before they're in an actual approval form.

Bud Jacobs: And do we have a sense of where the county is on responding to the resubmitted plat to the issues that the county had raised?

Will Moore: With the formal resubmission? No, we I mean, we've transmitted to them. Now I've had a number of discussions with their division manager about the need for review comments to come in quicker than the last iteration if possible. And he has assured me that he will do his best to accommodate that. I will tell you that I do know that the applicant had meetings with all of the different commenting agencies subsequent to this commission's disapproval of the first application. They still met with all of these different commenting agencies to try to work through in person the best way to address some of those comments that came out.

Bud Jacobs: One of the issues that was raised. I can't remember if it was in the submission itself or in the public comments we had was whether the Corps of Engineers had decided to exercise its jurisdiction over wetlands on the property. And as I understand it, the Corps did decide one way or the other. What was their decision? Do we know?

Wil Moore: So they issued what's called a preliminary jurisdictional determination. And that put the ball back in the court of the applicant where they could accept that preliminary determination or they could request a reconsideration. And their response is that they've accepted the preliminary jurisdictional determination.

Bud Jacobs: And what is the practical effect of that? If the corps has decided to assert temporary, is that the term jurisdiction or a

Wil Moore: Preliminary.

Bud Jacobs: Preliminary jurisdiction. What does that mean in effect? Will the Corps. I don't know. Perhaps tell the applicant? No, actually, this part of your plan won't work. We need to worry about this particular section of wetlands.

Wil Moore: Right. So and I I will say that's a little bit outside of my expertise that generally it would be an engineer commenting on that exactly. But my understanding is that's simply their assertion of jurisdictional determination means there are some areas in the land that's involved in the overall subdivision that if there were to be disturbance or activities and they would have to issue a corps permit. If there are no my understanding, again, is if there's no disturbance happening in any of those areas, then they would not have to issue a permit.

Bud Jacobs: That implies, though, in some fashion that a representative of the corps would have to have eyes on the actual terrain and make a determination as to whether there had been disturbance or there was a risk of disturbance.

Will Moore: I'll have to get an answer for you on that from the town engineer. I think that's the best way to respond, just to push off a response for now. But I'll confer with the town engineer.

Bud Jacobs I am asking this because the corps is famous, some would say infamous for being very, very, very stingy with any kind of flexibility having to do with wetlands in the United States. And I think that if, think we sort of need to know what that determination is by the Corps if they don't care. That's one thing. However, if there are requirements, who's going to enforce compliance and so on, so forth, would seem to me we'd want to know that.

Ed Fleischman: Two items. One, if the clock is starting to move forward now, I think it would be good if you could forward to members of the commission the application. I'm assuming it's in electronic form.

Will Moore: It is. I will get a document to you that will. A couple the files are very large format files. I think what I would suggest that I could do is to send a document that will actually read like one of your electronic agendas that you could then click on to open up the documents in a web environment.

Ed Fleischman: However you know is the best way that you feel to send that, please do that.

Will Moore: Absolutely.

Ed Fleischman: OK. On the second item. For this commission I have had two meetings in the last year, year and a half, which we had overflow crowds in attendance. One for the comprehensive plan draft and the other was for this development. Given the articles in the newspapers, there may be a sense that we might have another overflow crowd. Is there any way we could move to a larger venue like the Middleburg Community Center or the Hill School?

Will Moore: We've been having some discussion about that. Councilmember Jacobs and Town Clerk and I were talking about it, I think over the weekend retreat a little bit. Yes, there is. There is a possibility.

Don Woodruff: [off mic]

Will Moore: So thank you. So one thing we're struggling with right now is the benefit of having it in here is that it is livestreamed, it is recorded and available for view by people who might not be able to attend. The downside is the people who actually do attend in person can't all get in here at once. And so I think what we're doing right now is seeing if there's a way we can effectively record it and then upload that in the aftermath so that people who weren't able to attend in person could then later. But then we also don't get the benefit of the transcription service.

Rhonda North: Yes. Which is part of what helps us maintain our ADA compliance. Right. So there are issues.

Will Moore: But the question is, is it possible? The answer is yes. But we'll I think we'll have some further discussion on how best to handle that.

Don Woodruff: From what I hear in round town, last crowd was minimal compared to what's planning to come forward this time. So we know it's going to take some clever work, somehow.

Terry Cooke: [off mic]

Bud Jacobs: Not a question, but a comment. Everybody realizes, I think, that this one is going to continue to burn pretty hot. And I'm not an attorney, but I've started reading this material. It's very useful. Thank you very much. It seems pretty clear to me that our latitude is going to be fairly limited in the decision we take as part of this ministerial process. And the only thing that we might think about and I don't know that we need to talk about it this evening, but I would ask everybody to start thinking about it is what our role might be in explaining or educating people about what this is all about. When you have a public hearing, as we did, you create the expectation that what people say and their perspectives on this development will actually influence the outcome in terms of the decision. And eventually it won't. And we might be thinking about ways to explain the material that we've got here so that people understand what our role is and what it's not. Yeah, I don't like to think about it that way, but we need to make that case it seems to me.

Terry Cooke: Now and my recollection is, is that prior to the public hearing that's already occurred on this issue, our former chairman did, I think, a pretty good job in trying to explain that the issues are fairly narrow in this and it's not so much. Do you like what's going to be put there is. Is the plat sufficient to support what they want to put there? And that's that's a difficult thing for a lot of folks to to distinguish. But you're right. I mean, we have to try to lay that out at the outset so that people understand that our decision, whatever it may be, is confined to the parameters of the criteria we have to consider.

Bud Jacobs: If I may, we may find ourselves in a situation with respect to how we engage the public on this of telling them what we're going to tell them then telling them what we have to tell them and then repeating what we've just told them. I've had this conversation with four or five people who were at the meeting and I tried to explain that. It's wonderful to have the opportunity to put your point of view forward here. But you understand this is and I made a mistake. This is administrative decision. And of course, eyes glaze over. No one really knows or cares necessarily what you're trying to what you're trying to explain.

Terry Cooke: You're right. Thank you.

Rachel Minchew: I think in fairness, it just needs to be in very layman terms because there are people that really thought we stopped the whole thing and we didn't.

Terry Cooke: Any other comments on Banbury Cross tonight? Do you want to conclude this item by saying a few things about the status of the residences at Salamander?

Will Moore: Certainly we can do that. They are in the construction plan phase. So again, we have an essentially a three part process for land subdivision. The preliminary plat, which is the phase Banbury is and now. Construction plan phase, which is when all the detailed engineering is really done. These are construction documents. And then the final record plat where the plat

is adjusted generally minimally, but to operate all of the easements and such that come out of the construction plan. So the residences has resubmitted now. So we've not seen construction planning documents in four years from them, but we have a resubmission now. So that is now out and in the process of being reviewed. We don't necessarily have a clock ticking on us here. This will be an iterative process. But I will get when I send that document out that Ed requested with the Banbury Cross. I'll send a copy of the residences, the construction plans out as well.

Terry Cooke: Any questions regarding Salamander?

Ed Fleischman: The agencies, they get to review the Salamander proposal, are they the same agencies that review Banbury Cross, is there any difference between the two reviews?

Will Moore: There's some difference with it being solely in the jurisdiction of the town of Middleburg. We are doing the majority of the engineering review except for one office which does stormwater management will be reviewing that. But there's a lot of crossover as well. So there are agencies that will be reviewing both of those applications.

Terry Cooke: [off mic]

Will Moore: And if I may, Mr. Chairman, I think we're probably good Olaun. Unless you want to stick around for an orientation session on how planning commissions operate.

Olaun Simmons: [off mic]

Terry Cook: Ok. No comment from the public tonight. We'll move on to approval of the minutes. Do we have a motion on the minutes?

Don Woodruff: [off mic]

Ed Fleischman: I second the motion to approve.

Terry Cooke: All in favor.

Everyone: Aye.

Terry Cooke: Thank you and thank you, Rhonda. [off mic]

Bud Jacobs: I can be very brief, the council and staff completed this week a very interesting exercise, a retreat to examine and revise council's strategic priorities for the next three years or so. And we came up with a list after some winnowing of, I believe, 10 or 11, 11, I think it was 12. Oh, it is now 12. See, it grows after the retreat is over. The two probably that are of greatest interest to this commission. One of the highest priorities is for the town it to engage with the county and other stakeholders such as the coalition of Loudoun Towns on the question of cluster development and that's going to be moving forward, I think fairly quickly over the coming several months. And there may be moments in that process where we are asked to have some input into what we're saying, most importantly, what our mayor is saying to his counterparts and colleagues and to the new chairman of the Loudoun County Planning Commission, who will have an important role, but also the other commissioners as well. The second one is and Will manage to save us from ourselves and get this on the list of strategic priorities. And that, of

course, is the reconciling our ordinances, planning ordinances and zoning, so forth with the new comprehensive plan. And if I understand your intent correctly, that's going to be the major part of the work that we're going to be undertaking for the next for the next several months. I don't know how close we are to finalizing the minutes of our retreat and the council assignments among the twelve priorities. But when we have them we'll of course be sharing them and you'll have the opportunity to see what we came up with.

Rhonda North: So those will be on the. Our hope is that they will be on the February 13th council agenda so that you can formally adopt what was discussed.

Bud Jacobs: Questions?

Terry Cooke: Thank you, Bud. [Off mic]. Will, or who is going to lead us through that?

Will Moore: I think I'll. I may have Estee tag team in at some point in time. So we talked about this and that was I think something that was missing from this body was really, you know, just a good baseline orientation as to what your job is. Now, some people like Don have been doing it for this many years. He may get a little sleepy during this, but I hope you. This is going to be this this is a pretty high level, but we'll try to run through kind of the major aspects of what it is the commission does. This can certainly be supplemented by the certified planning commissioner training, which I know Terry has been through. Bud will be attending a session. It's a two part session, beginning one is late February. Ed has signed up to attend with his first session in late June, I believe. I know Rachel has expressed some interest so getting her some more information. A good course. A better course. I know Terry and I went through this at the same time. There was the two part session took place in Purcellville a couple of years ago. And I think there have been some changes in the program. And it sounds like it's it's even improved upon from when we went through it. Estee attended herself. September and December sessions in Richmond. So some good information. Of the attachments that you see under here, I'm going to focus on the pdf that's the PC orientation one. The others are particularly the 15.2-2210, which is enabling legislation from the state. It's really just there for reference. The excerpt from the zoning ordinance and along with your bylaws, those are really just for your reference, didn't really intend on getting into discussing those tonight and unless you wanted to. The best practices pdf. This is excerpted material from the current program that Estee chose. She thought maybe this what you have in here was just a taste of what is covered in that program. And you don't need to receive this information to program. I think there are just good hints.

Estee LaClare: Just good hints for your every activity you do and when the cases are presented to you and following and proceeding to them. So the one good thing I wanted to mention with the changes in the planning commission, certified planning commissioner. They have taken to heart a lot of the group that I attended with our changes we had suggested. There's a couple of books that are quite outdated and I think they're going to be eliminating those and trying to get more current publications to deal with some of today's issues as opposed to 40 years ago.

Will Moore: OK. So we can get through these 20 slides, I think fairly, fairly quickly. One thing I will suggest you do on the first slide, if you navigate under where we have the the Web site. If you want to click on that, it should hopefully bring it up in a new window. If it brings up in the same window, you can just navigate using the back arrow back to the pdf. But I think it's helpful to just see our Web site and I might refer to that a couple of times during the session. Yes. Were you able to get the website open as well as the presentation? Okay. Excellent. Okay. So again, a kind of a high level on slide two. This is you. It's not the most updated picture we'll get a new one. But our commission, it consists of seven voting members. The state code mandates a minimum of five members, a maximum of fifteen. Seven is a number that our council has been comfortable with. A couple of years ago, when we had a little bit of a difficulty filling a seat for a number of months, we kind of discussed the idea. Would we want to pare it down to five? The

council wasn't really in favor that, felt like seven was was a good number. So that's where we are. Appointed by the council. And just a very high level prepare and update the comprehensive plan is really a meat, the meat of what the planning commission does. And then that happens less frequently. But then the other part is advising the Council on land use issues. On Slide 3, this just gives you some of the enabling legislation. And again, these are in the separate handouts. So 15.2- 2210 of the state code will just give you again the very basics of why it is that the commission is established and what your responsibilities are. And then you're additionally governed by that excerpt from the zoning ordinance that's in your packet as well as your own bylaws. Our bylaws were last revised in 2018 and I think are in pretty solid condition. So should be good on those. Slide 4 talks about the types of cases that you may be asked to consider. So what is it that's going to come before you for consideration? Text amendments and in parentheses there, that's shorthand for the zoning ordinance as well as our subdivision and site plan ordinance. So those are your big land development ordinances. This talks about the zoning regulations and also talks about the procedures for subdividing land, developing land. So the types of cases that you would deal with would be amendments to those which would either be initiated by you or would be initiated by the council. The council can initiate amendments to these ordinances and you may initiate them as well. I may bring you proposals. I brought you a draft sign rewrite. I highly encourage us to move forward with that. But if and until you initiate it or the council does, it's not going anywhere. You're not obligated to act on that just because I brought it to you. Subdivision of land. We've been talking a good bit about that. The preliminary plat construction plans and final plat, those are for what I will. The term isn't really used, but I'll use the term major subdivisions, what is referred to as minor subdivisions and boundary line adjustments. Those are administrative action. So those, I am designated the subdivision agent for those types of actions. A minor subdivision in Middleburg consists of dividing one lot into two. There are other jurisdictions that say a minor subdivision is up to three lots, dividing one lot into up to three. Ours is much more narrowly tailored. In addition to being one lot divided into two, there are other criteria that have to be involved. So the total area of land cannot be more than an acre. It can't involve a new street or extension of a new street to serve in. That would automatically kick it into being what I termed a major subdivision. But this is if you have essentially an over sized lot and there's a way to divide it to create two lots that still conform with existing regulations and it's already fronting on a public street, then that's what I could do. And a boundary line adjustment is moving a line in between two lots or relocating lines. Again, as long as the resultant parcels are conforming with all of our regulations, those are approved administratively. Site plans. This is generally going to be for commercial development. It could also be for residential development if it includes like a townhouse type development. So site plans are separate from subdivision, but it's essentially, if you look at the subdivision process, the construction plan phase of a subdivision is very similar to what a site plan is. It involves all the technical aspects. How's the land going to be graded? How are things going to be sited? How are you going to get utilities to serve it, those kinds of things. The zoning map amendments also referred to as rezonings. These are another item that you would you can potentially initiate these and you again are recommending authority. This is where you make recommendations to the council. Is this proposal to rezone land to change the zoning classification from a residential classification to a commercial one or an agricultural one to a residential one? Is that in conformance with our comprehensive plan? And do you recommend that going forward? And then special exception uses. This is where I might suggest you navigate back to the Web site. And if you hover over the government tab, you should get a drop-down menu that appears so back up to the top of the page here where it says government. So once you hover over that or click on it, there should be department listing. And if you navigate to planning and zoning and click on that, that should take you to our planning and zoning home page. [Off mic]. OK. And then for planning and zoning, I would suggest going over to the left hand column. And there is a link to the zoning ordinance. So now this will bring up a page that has the complete ordinance in one document. If you wanted to navigate it that way or it has each individual district or chapter listed separately. It also has a copy of our zoning map there. I'm going to suggest you click on at the top of the second column, Article 10, the residential districts. And the first page of that will say R1 single family residential, and I bring you to this just so you get a little bit of the structure of the way the district regulations are laid out. But on this one, I would say scroll down toward

where it says you'll see Section 109, which talks about permitted uses. So in R1, you basically have two uses we're going to call "by right". Single family detached dwelling or a public park. But two sections down, section 111, you see special exception uses. So this is another type of case that you will deal with. You're going to see the structure in our residential district article. You'll see it in our commercial district article. You'll also see it in our agricultural conservancy district article. The special exception uses are uses that may be appropriate for land in that zoning district. But it's not guaranteed. They're viewed on a case by case basis, whereas the permitted uses that you saw above, in this case, the single family detached dwelling or public park, those are what we refer to as by right uses that if you're meeting all the other ordinance requirements there might be off street parking required, you might have to have setbacks if you're building a home from adjoining property lines. But if you meet those requirements, you can do it. Special exception uses, you might be able to do it. And we'll talk a little bit more about those. But again, the special exception uses you again you are making a recommendation to the council on whether or not the special use permit should be granted. So, again, just recapping text amendments is a type of case you will deal with. Subdivisions you will deal with unless they are of that minor nature that they're designated for administrative approval. Site plans, which are generally going to be probably commercial properties or residential properties other than single family detached dwellings, the zoning map amendments or rezoning of land and then the special exception uses. The next slide 5, this goes back to what we were just essentially looking at in terms of our zoning ordinance. In your general districts and if you navigate back to that window, if you still have it open. The one with, well it's all right. We can see it here. What you're going to see with our residential districts and we have four of them, our commercial districts, we have three of them. And our agricultural conservancy district, it's always going to start with a statement of purpose, which is going to tell you and it may be a short one sentence like in the R1, it may be a little longer in some of the others. But it's going to say generally this is why this district exists. And for R1 which is our largest lot of single family residential, it is designed to accommodate single family residential or single family detached residential uses at low densities as designated in the comp plan. And everything that follows after that should essentially support that purpose. Now, again, there are special exceptions that might be considered, which is why they're not by right uses. But any other change that you make within that article should support that statement of purpose. If you start looking at making changes within a district in terms of the types of uses that are allowable, always refer back to the purpose. If it doesn't support the purpose, then either the change shouldn't be made or maybe you need to rethink the purpose of the district. Maybe that statement should change to allow for something else. But that's that's that's a good way as we look at cases that may come before you and I always encourage you to not just read my staff report, although I try to give you as good of background information as I can when I prepare a staff report for you. I think it's always helpful if you're looking at an application that's taking place in a certain district, go to the zoning ordinance and look at what that district says and start thinking. Is that purpose supported by what is being put before us here? Yes, sir.

Terry Cooke: So on this AC zoning district. How does the Salamander resort buildings fit into that?

Will Moore: Certainly. So if you're in the AC district regulations, they are a special exception. So they weren't a by right use. So if you look on page 2 of that document, Section 104, special exception uses. And then you scroll actually to the next page to letter S, which is rural resort, so they they have a special exception as a rural resort. Now, the AC district is a little more complicated in its regulations than your commercial and your residential district. So as you scroll further within this this document, you will see that there are certain requirements that apply to essentially all uses, certain design standards. You'll see that beginning on page 7. It is Section 107, which talk about design standards, but that's for all users. And then if you scroll even further, there are certain design standards that are specific for a rural resort. So it really starts to tailor. You can't just call something a rural resort and come out with an application that there are some very specific guidelines and a very specific framework within the ordinance that has to be

observed. Good question. This is a this is a lengthy and pretty complicated chapter of our ordinance here.

Bud Jacobs: Will, so some of this was added on May 12th, 2006. Was that in anticipation of Salamander that day?

Will Moore: It was, it was. Their final rezoning to zone the land was approved in 2007. Rhonda's first meeting, I believe.

Rhonda North: August 9, 2007 [Laughter].

Will Moore: Yeah. And then subsequent to that, there was a special exception, or a special use permit approved for them. Yes. Very good question, though. So back to that slide, which is slide 5. The zoning ordinance. It will include these districts we've been talking about. But there are lots of other provisions within it. It talks about sign regulations, which you've been looking at, parking provisions, which pair with district regulations that say if you're going to have this type of use, you need to provide X amount of parking spaces per square feet of the building area or there are many different parking provisions that are provided for. That's gonna be a fun one when we get to looking at updating our zoning ordinance on how to deal with some parking provisions, and that will, like our sign ordinance. It will probably be months long discussion when we're talking about that. It has permitting requirements. What I mean by that is it tells people when they have to come and apply to the town for a permit. Oftentimes that's a two part process if it involves getting a building permit. We don't issue building permits here in the town. The county covers building permitting for us, but the county requires a zoning permit first. So the county is not interpreting our zoning ordinance to say, well, this person wants to do a renovation of their structure. They rely on me to say, OK, they're renovating their home to add an additional bathroom. They're not renovating their home to add a commercial space. I do the zoning review and then they they review it simply on the building code provisions. And then finally in the zoning ordinance, you'll find a chapter which is devoted to non-conforming situations. And again, that's something that we might have to tweak and add to your sign rewrite because our sign rewrite addresses what happens with signs that become non-conforming as a result of the sign ordinance. We want to make sure that that doesn't create any conflict with what's in the separate chapter on non-conforming situations. Going to the next slide of the subdivision and site plan ordinance. I won't have you necessarily navigate to that on the web site. Just know that you can find it there in very similar fashion as the zoning ordinance. And this like the zoning ordinance talks about zoning provisions. This talks about the processes for subdividing land and for that subdivision portion, as well as for site development, which is the site plan portion. Going on to the next page, which is a continuation of the subdivision and site plan ordinance. This is the one area where I think about I think it was the first or second slide we looked at where it said that you advise the council on land use decisions. This is the one area where you are the approving authority with that is with subdivisions. So the council has designated you as such. The state code allows for the legislative body to be the approver for subdivisions. They allow the legislative body to designate planning commission. They also the state code also allows for the legislative body to approve a subdivision agent. So essentially a staff person that could they take themselves out of the process and they take the commission out of the process as well. So this is what Loudoun County does, that there is a staff member who will approve if and when, for example, Banbury Cross preliminary plat reaches an approvable stage. Again, I say if and when you would be approving, but then a staff person at Loudoun would also be approving because it takes place in a geographical area where we have to both jurisdictions have to approve. And that's where we refer to finally the extra-territorial subdivision control area. It's generally one mile from the corporate limits of the town, although it's designated on a map that was adopted a number of years ago. We've done a couple of small boundary line adjustments with the county to bring in land that was previously in the county that line in conjunction with those boundary line adjustments, that line did bump out further away from the town, it's remained in a static area. But that's why I say it's generally one mile from the town, only within Loudoun County. We don't have that jurisdiction, even though we are very close to Fauquier and extend. You know, if we

drew a one mile radius, true one, we would have area in Fauquier. We don't have that control in Fauquier. And just finally, we say the town is the approval authority in this area. It's using our ordinance, subdivision ordinance in terms of process, which is why we have to hold a public hearing even if it's in the extra-territorial area. But it's using Loudoun's zoning. We don't substitute our own zoning. Next page, this just gives you an excerpt of the zoning map that I randomly kind of zoomed in on that same page on the Web site that has the listing of all the articles of the zoning ordinance. It also has a link to the full zoning map. What it says here. It gives parcel designation. It talks about underlying districts. We're just going to say these are your main zoning districts. The residential ones, which we have four, the commercial ones, which we have three. And the A.C. district. It also has what we call overlay districts. This is the historic district and our floodplain. The asterisk is that the flood plain is actually not shown on our map. It's shown on maps maintained by FEMA. And we just have to look at both of those in connection with each other when deciding if floodplain encumbers an area. But the overlay concept, what that means is the historic district is overlaid on top of the underlying district. So if you're in the town office property here, for example, we're zoned C2. We're also within the historic district. That doesn't mean we're not in C2. It just means historic district regulations are overlaid on top of those and they must be looked at together. And then finally, where it says conditional zoning, if you look on that example that shown on the slide in the top left corner, you'll see a blue area with bunch of little triangles in it and you see those triangles again up in the top right hand corner that indicates that the zoning involves proffers, that at some point in time when that zone was established, it was rezoned with conditional zoning, which means there were proffers associated with it. What you see in the top left corner is a portion of the M.U.V. area that is on the Salamander property. So there are proffers associated with that. And what that does for an administrator like myself, what it does for a potential developer who's looking at a zoning map. It means they're not just going to look at that blue color means it's MUV, I'm going to go to the zoning ordinance and only look at the MUV regulations. It means it's an alert to them that there are some proffers that might affect what is allowable there. So proffers may mean there is some deviation from what's allowed in the zoning district as listed in the ordinance. It may mean there's more specific development standards. It may mean there's some cash involved if you want to want to develop there, depending on when those proffers were offered and approved. But it's just it's a notation on the map. It has to appear on the map to let you know that there's there's more to it than what you see on that underlying color. The next slide, Slide 9, shows the current boundaries of the Middleburg historic district. So on this one, I've taken away all the underlying district color so you can see the boundary a little better. This district is interesting in its boundaries and it's something that our historic district review committee is going to be examining in the coming months. If you look on the wall behind Ed, you'll see an old map of kind of the the original grid of Middleburg. This historic district was essentially created by using that grid and someone said, let's go out. I think it's three hundred feet in all four directions from that original rectangle. And we'll draw the line there. Now, that didn't work perfectly on the eastern end of town because 300 feet would have gone a little bit outside of town had we done that. But but if you look at where these boundaries are, some of them aren't necessarily what I would say are intuitive boundaries. They cut through neighborhoods. They grab a part of a property here. They exclude a property. The historic district review committee is going to be examining the boundaries. This is a locally established district. We had some survey work done a few years ago on the National Register of Historic District. And I don't want to confuse you too much, but those are two different things. Our local district and the National Register district are two different animals. There is a lot of overlap, but they don't coincide perfectly. The survey we had done in 2016 recommended some changes to those boundaries. So we're gonna be using that survey to see if we can help to inform some changes to our boundaries of our local district that would just make it a little more intuitive, make a little more sense, cleaning it up so there's less question about what happens if the line goes through the middle of my property. So that's something when I say the HDRC will be reviewing that, if they decide to recommend that there's some changes made that would then come to you because it would be effectively a rezoning of land if we change the boundaries because again, that's an overlay zoning district. So if there are changes made to boundaries, it has to be made through a process of a zoning map amendment where you would have to initiate it, you would

have to make a recommendation to council, and then council would have to decide if they ultimately wanted to make those changes.

Bud Jacobs: If we see an issue with what they may propose, may we send it back to them?

Will Moore: Certainly, certainly. Yeah, absolutely. So, again, you would have to formally initiate that amendment. And until you did, there's definitely room for discussion. And in fact, it may even be something that is would be a good example of a time where you might do like a joint work session, where the members of the HDRC come here and sit down with you. And or maybe it's the chairman or maybe a couple of representatives and just talk through this on on a I was gonna say pre-application, it's not really an application, but before it became initiated, just have discussions with you about what they're thinking. The next page continues with HDRC. Oh, I'm sorry, with the historic Middleburg district. Again, we say that that is our locally defined district. The implications are that if you have property within that district and you're making exterior modifications, that you need to first obtain what's called a certificate of appropriateness design guidelines. So the issue HDRC uses adopted design guidelines to inform the decisions they make on applications and they are going to be initiating an update to those design guidelines. That is not part of the zoning ordinance. So that's not something that you would be involved with. But that is something that council would have to adopt a change to the design guidelines if something were made there. Going onto the next page, again, we're back to different types of cases. Zoning map amendments. It's a change in the district on the zoning map to allow different use of land. If you think about the comprehensive plan update we just went through, you made a couple of different recommendations within. One was designating a large part of the Federal Street corridor for potential for mixed use. Comprehensive plan designations are not zoning district designations. It's more the types of uses you want to see there. So although it says mixed use for a good part of the federal street corridor, that doesn't necessarily mean the mixed use village zoning district that we have in our ordinance. It just means a use to allow for mix of uses. There's some narrative in the comp plan that better talks about that. But that designation could support in the comp plan could support a rezoning of that land or it could support an amendment of the zoning ordinance to allow for a mix of uses in the current zoning district that designated there, just to see how those are kind of related. You also did a couple of small changes, the property where Asbury Church is located on North Jay Street. You changed that to a potential commercial designation in the comp plan. That doesn't guarantee that it would be rezoned to C2, which is what is in downtown Middleburg and could allow for a restaurant that doesn't have to provide any parking. It just simply means that you're open to other things that might happen there. And then two types of rezoning that can happen. What I call the conventional rezoning, which somebody says I want to change from this designation to this designation and there's nothing offered in return. There might be some discussion about what they may envision doing there. But in the end, they're asking it to be changed. That would allow for anything that's allowable in that district in the ordinance. The conditional rezoning is one where there are proffers that are voluntarily offered which have to mitigate impacts on the community, meaning that the impacts that they're mitigating have to be related to the rezoning taking place. We're we're still kind of in a holding pattern when it comes in Virginia, when it comes to conditional zoning. There were some legislation a few years ago that that caused a lot of localities to step back from conditional zoning because it opened open them up to a lot of legal exposure that if you were to accept proffers and it was later questioned whether they were related to impacts that are directly attributable to the rezoning. If the proffers were actually not voluntary, you basically told you need to do this or we're not going to approve it. Those kind of things. So there were some changes to that legislation, but it's still it's still a little bit of a mixed bag. And in short, I'm hoping we don't have to deal with any conditional rezoning applications until there's some more clarity offered by the General Assembly. But we may and we would navigate that if and when we had to. Special exception uses. We talked a little bit about this before. Again, this is a use that may be allowed in zoning district, but is not one of those by right uses. It's site specific and goes with the land. That means a couple of things. It means looking parcel by parcel. There's a lot of question that comes up in land use decision making. Are we setting a precedent sometimes when an application becomes comes

before you? I think it's good to ask that question sometimes, but with special exception uses, my answer is always it is okay to look site specific as long as you are evaluating the application based on that site and its immediate surroundings, you can make a decision that applies to that parcel that doesn't apply to a parcel two properties down if the conditions are different. Yes sir.

Bud Jacobs: Do those the sites the special exemption uses, do those run with the property once they've been given?

Will Moore: Yes. So and again, that's the reason the parenthetical goes with the land. So with special exception uses, when you are making a recommendation and when council is approving and this goes to the last bullet on this page, not only can you make a recommendation to approve, the council can approve. You can also impose conditions to mitigate impacts that maybe aren't already addressed in the order. These can be things like maybe hours of operation. Let's say somebody wanted to put in, and this is very hypothetical. There's no reality here at all. But somebody want to put a convenience store type of thing in the Asbury Church on Jay, which is right around the corner from Bud. Maybe that's not the best idea. Maybe that's OK. But we're gonna tell them they have to close at 5:00 p.m. every day. So there's no impact. So there's less impact on residents. Again, that's a very kind of flippant example. But you can do that. You can impose hours of operation. You can impose additional standards for buffering and screening that may not already that may exceed what's already in the ordinance for certain types of uses. So with special exception uses, you can impose or you could recommend imposition council can impose those types of conditions. But yes, the approval that runs with the land. So you have to be you have to be very cautious when you're entertaining these types of uses that your recommendation for an approval is not wholly dependent on one applicant who's sitting before you. You know, that applicant may have a long history of running successful and low impact type businesses, but if they decide two years from now to walk away and somebody wants to come in with a similar business that meets all of the imposed conditions, that that permit is still valid as long as they're meeting all the imposed conditions. That's why you have to be very deliberate about what those conditions are. And sometimes you may impose them, even though you don't think that applicant sitting there would ever think about violating one. You have to think a little further down the road. What if that property transfers? [Off mic]. And then on the next page 13. Comprehensive plan. We've just been through this. So, you know, I modeled this off of a orientation program I did in another jurisdiction. I don't think we need to go into great detail having just updated the comprehensive plan. But again, you as a commission are mandated with preparation of the plan and periodic review of the plan. You have to review it every five years. It does not necessarily mean a wholesale review. It just means you have to be looking at it and contemplating and talking about it at least once every five years and I think we will easily exceed that in how frequently we will refer to it. Page 14, this talks about the current plan that was just adopted and just gives four very brief bullets about what what I think are some of the of the highlights that came out of this. Page 15, just this is the vision statement that you adopted in the comprehensive plan. Thought it was worth just repeating here. And then page 16 is excerpt from it. Again, you have just adopted this, but this is a key thing that you're going that a developer is going to look for when they open up your comprehensive plan, they're going to zero in on the land use map. Land use policy map is what we call it. Some people call it the future land use map. This is showing what you envision in the future. Again, these designations that you see in the key, even though they may seem similar in nature to zoning district chapters that we have, they're not exactly the same. So. You know, we have three different ranges of densities for residential uses on this map. But our zoning ordinance has actually four residential zoning districts. So, you know, if you're in that medium, you might be if something is designated medium here, it might be R2 it might be R3, there might be flexibility on what you're looking at there. But this just gives the snapshot view of what the community is envisioning in terms of uses of land in the future. Next page, page 17 and we're getting close here, talks about implementing the plan. And this is where we're going to have some work ahead of us, I think, in the coming year or more. The zoning ordinance is a major factor that is used to implement the comp plan. So we need to look closely at the zoning ordinance in relation to the current plan and see are there places we need to make changes to our regulations? You know, we can say

that we want to be mindful of recharge of groundwater. We might want to look carefully at our regulations when it comes to lot coverage. So if somebody is building on a on a lot, how much of that lot can they cover with impervious area? And that's a that's a very real, real example I think that we'll be looking at. Currently what we define as lot coverage only applies to areas under roof, but it doesn't apply to other areas of that may be impervious on a lot. So you could pave driveways, those kind of things. It doesn't really address that. So it doesn't address large, impervious, concrete patios, things like that, which might prevent groundwater from seeping in, those kind of things. The zoning map, again, that's something that you use to implement the plan, subdivision site plan ordinance, town code on a lesser extent, development policies, budget, CIP. All these things are things that can influence the comp plan. Your main focus, those top three bullets. To a lesser extent, probably the CIP at the very, very end. We've just within the last couple of years as a town finally adopted what I would term maybe a proper capital improvements plan. It's something that we had not really been planning well on for the future of the town. That program always looks out five years and is renewed annually. And my guess is you'll be seeing an update to that. Danny, the town administrator, Danny Davis, will likely be coming to you in the coming months with a draft of the CIP, because technically the planning commission is supposed to review the CIP before the council would adopt. Next page just talks a little bit about staff functions. What it is we do. I split it over a couple pages because I didn't want to make the typeface so small, but we do a little bit. We, you know, one of the main things we do is, is what we're doing here this evening. That's providing support to you is an appointed body to the elected body. Planning and zoning staff along with Ronda's the clerk. These are some of the main ones that we deal with. Council commission, HDRC, the Board of Zoning Appeals, which meets very infrequently but is a very important body to have in place, streetscape committee and any others as needed. We deal with routine permit processing, review and approval. Those are the zoning permits I referred to. I might have to approve that before sending somebody who wants to do a residential edition or commercial addition to the county for a building permit. It's also sign permits, it's fences, it's garden sheds, all these types of things that require permits. We will recommend and sometimes initiate different studies and plans. Do coordination with outside agencies, very important for especially a small town like Middleburg. We rely on other agencies for support and for services. Loudon again provides building permit inspections. They provide stormwater management review for development. VDOT maintains our streets. They maintain a lot of our sidewalks, not all. The brick sidewalks we maintain ourselves, but a lot of maintenance there, a lot of coordination that has to happen there. And then we take on special projects as needed. Some of the infill sidewalk work that was done up and down Marshall Street last year. It's not really a planning and zoning function, but we have to wear multiple hats. We work in a small town. You have limited staff. It's one of the reasons that Estee was brought on to help with special projects and just provide additional planning support as well. And that's working out really well with some code enforcement issues that we'll talk about here coming up. The zoning administration. So that's inspection and enforcement. This is if somebody didn't get that permit for the fence. A, you have to come in for a permit for your fence. We really hope the way you put it up will be OK. But if there are adjustments needed, we do that. Interpretation, meaning interpretation of the ordinance. You can't write a zoning ordinance that clearly black and white covers all possible circumstances. And that's why the state code mandates that any locality that has zoning has an appointed zoning administrator. And one of the charges is making interpretations of the ordinance. So that falls on me. And then there's always an avenue for appeal for that which is why the board of Zoning Appeals is there. Some applicant doesn't like my interpretation, thinks that it can be interpreted interpreted in a different way. There's an avenue for appeal. And then map and ordinance maintenance. That just means that if you make a change to one of those documents, we have to make sure that it actually gets into the published form. Code enforcement. Again, that's not typically a planning and zoning function, but we don't have separate code enforcement officers again because we're a small, small town. So that's one area that we're trying to do a little better in. This may be during the summertime, somebody that's just letting their tall weeds and grass grow maybe due to absentee landlord, property maintenance. We have a few hot button issues in town with some buildings that have not been well-maintained. And this is kind of trying to eliminate what we call demolition by neglect. So proactively requiring maintenance of

property. So that's one of the big efforts that Estee has taken on. She and my maintenance supervisor have been doing some surveys of property just called these windshield surveys. They're not going onto people's property. It's all from public space. But, you know, areas where we see windowsills are starting to rot out, which could lead to further deterioration. Missing roof shingles or holes in metal roofs. Things like that that we want to do a little better proactive job on ensuring that we don't again get that demolition by neglect. Information services, that just means we answer questions from the public. Where do I find this information? It may be pointing them in the direction. It may be getting information for them. You know, what's the population of Middleburg? Well, it depends who you ask. There are some official sources that we can refer to. And then just general customer service. I think we pride ourselves here in Middleburg on being as customer friendly as we can. Some larger jurisdictions. And I think it's use an excuse because you're a larger jurisdiction. But larger governmental jurisdictions sometimes just have a bad reputation of not being customer friendly. Yeah. Have you ever heard? It's probably a cheap shot. I'm sure they're good ones. Have you ever heard anything good about the staff at a DMV? It's always something that's, you know, we pride ourselves on being the opposite of that. We want to be the people that are going to greet you and help you the best we can. We may not always give you the answer that you were hoping for, but we're going to deliver it in the best possible way. Something we strive for, at least here. And then final page, you know us. These are just some titles that we hold amongst others, I'm sure there are others here. But Rhonda will probably be giving you some updated training in coming months on FoIA and CoIA and all that fun stuff that we that we love. It's important stuff, important things that we have to keep up with. But and again, there's a link here. Familiarize yourself with our Web site if you haven't previously. A lot of time was spent on this. A lot of it. Rhonda managed this project. And I think we came out with a really great product in the end. If you looked at our old website and compared to this one, it's miles and miles and above. But we're always looking for room for improvement, too. We don't want to. We don't want to just post it once and be done with it. We want to make sure it stays current. And if there are holes in there, if information that we think is navigated to on an intuitive basis. But maybe we're thinking that because we're used to this, maybe sometimes it's hard for us to step outside ourselves and see navigating a Web site from the general public standpoint. So if you spend some time and you see some things, feel free to always give us comments on how we might be able to improve that. And that is what I have for you, essentially. I hope this is helpful somewhat as an overview, if nothing else, I hope it's something that you could refer back to if you needed to as well.

Terry Cooke: Will, thank you so much. That was very thorough. And I, for one, can certainly attest to the customer service aspects of staff's performance and personal experiences from Danny Davis right down, down through through everyone in this building. It's been great. So thank you for that. And keep up the good work.

Will Moore: Excellent. And again, I would refer you to just spend some time looking over the other document that Estee included that best practices. I think that's just a good thing just to kind of look over and, you know, good things to be thinking about.

Terry Cooke: Absolutely. Thank you again.

Will Moore: Yes.

Terry Cooke: [Off mic].

Will Moore: Yes, sir.

Terry Cooke: Is there a motion?

Will Moore: Yes, sir. There is a document along with that on that agenda item. And if you open that up, there is a motion that if we could ask somebody to read.

Bud Jacobs: I'll read it. I got it up, Mr. Chairman.

Terry Cooke: [Off mic].

Bud Jacobs: I move that the commission go into closed session as allowed under the Virginia Freedom of Information Act section 2.2-3711, subparagraph A1 for the discussion, consideration or interviews of prospective candidates for appointment to the Planning Commission. I further move that in addition to the commission, the following individuals be present during the closed session. Will Moore, Rhonda North, Estee LaClare and Olaun Simmons. I further move that the commission thereafter reconvene in open session for action as appropriate.

Terry Cooke: I would just send a minor amendment to the motion, noting that Estee LeClare and Olaun Simmons are no longer in attendance. With that, do we have a second to the motion.

Ed Fleischman: Second.

Terry Cooke: All in favor.

All: Aye.

Terry Cooke: Thank you.

Rhonda North: There you go. Now you're on.

Terry Cooke: I ask that the commission certify that to the best of each member's knowledge, one, only public business matters lawfully exempted from open meeting requirements under the Virginia Freedom of Information Act and two, only such business matters as were identified in the motion by which the closed meeting was convened were heard, discussed, or considered in the closed meeting. I would like to remind those present for the closed session that any discussion that occurred within it should be treated as confidential. May I have an affirmation on that from the members?

Ed Fleischman: Affirm.

Rachel Minchew: Yes, agreed. Affirm.

Bud Jacobs: Yes.

Don Woodruff: Yes.

Terry Cooke: Yes. Thank you. And we have to consider whether we'll have a quorum at the next meeting of February 24. [Off mic].

Bud Jacobs: Don't we have to vote on [Inaudible].

Don Woodruff: He's an appointment by you.

Rhonda North: The appointment is by the council.

Terry Cooke: Does anyone have a conflict with.

Ed Fleischman: Mr. Chairman? Just a question. In our previous discussion on Banbury Cross Reserve. Are we saying the staff is going to try to set up a public hearing at the next meeting?

Will Moore: I think there's going to be some discussion about that. I'll be conferring with Mr. Jacobs on that. I don't know that we got a strong direction. Not that I was asking for strong direction from the commission, but I did ask the question whether you thought there was maybe some value in separating the hearing from the meeting during which you would take action.

Ed Fleischman: I thought the statement for the committee members was, yes, we wanted to do that. Is that correct?

Terry Cooke: Well, I speak for myself, but yes, I would prefer to do it that way.

Will Moore: Okay. Okay.

Ed Fleischman: So that would mean that in order to get within the time frame, we'd have a public hearing next month.

Will Moore: That would be correct. Yes. The only exception to that would be if prior to the deadline for us placing the ad for the hearing, if the applicant were to come to us and indicate that he would be willing to waive the timeline requirement for action. If that were to happen, we could potentially push it off another month or so. And I only offer that because there may be value from the public's perspective in having referral comments received by the time we do the public hearing. I hope that makes a little bit of sense. So, you know, I think I think there is value in separating the hearing from the action. But I also think there's value that if we're going to invite the public to come address you, they might also have the benefit of seeing what that first round of referral comments say when they they address you. So but unless we were to get that waiver from the applicant by the deadline that would be required for and Rhonda and I will figure out what that deadline is for posting legal advertising before the hearing absent that waiver request, then we would scheduled for February.

Bud Jacobs: [Off mic].

Will Moore: Yes. We'll have some further discussion about that and we might invite you in on that discussion.

Terry Cooke: So I'm sorry, but I'm not exactly clear on where we go from here. Is it our intent to ask the applicant if if the applicant would be willing to waive the time limitation and if he is willing to to waive that limitation, we will then proceed with having a public hearing or delay the public hearing.

Will Moore: I think if we were to receive the waiver, we would delay the hearing in order to give more time for the first round of referral comments. That would be my suggestion, but only if we were to receive a waiver.

Don Woodruff: You will ask that.

Will Moore: I will have that discussion with the applicant, right. Correct.

Terry Cooke: Okay. Thank you.

Bud Jacobs: And the referral comments or the comments from Loudoun county?

Will Moore: They are from multiple Loudoun County agencies. They are from VDOT. They are from town consulting engineer as well.

Terry Cooke: As I recall from the last public hearing on this, many of the comments from from the folks who appeared and testified had to do with their contrary views to some of the some of the comments from the reviewing agencies, and I just wonder if if they don't have the benefit of

the counties review. It seems to me they're shooting in the dark a little bit. And that worries me because that's an important aspect of this. I mean, as we've discussed, our review is going to be constrained, so it is confined, I believe, largely to whether or not the preliminary site plan meets all the necessary requirements and criteria. And that is that is a function of the county review as to whether it does or does not. So I am reluctant to have a public hearing without the public having the benefit of that county review.

Will Moore: Right. And so that's where the slight quandary is. I think there's some value in, again, bifurcating the hearing from your action. But at the same time, if we don't have comments by the time of the hearing, maybe it's for that very reason. Maybe it's better that if we're still forced on a time line, we could put them together. If that timeline becomes waived, that might become a non-issue because we might be able to push both of them, both of them being the hearing and the action out another month, another two months where they could still be separated. But those referral comments could be received, could be digested, could be looked at so that everybody's comments and decisions are informed.

Terry Cooke: First order of business, then is to ask the applicant whether they're amenable to waiving that timeline.

Ed Fleischman: Mr. Chairman, Will. if we do have a public hearing and there was a time constraint, couldn't we not wait a month for a vote? Can't we have a special meeting a week later?

Will Moore: That is always an option.

Ed Fleischman: That would be helpful to the process.

Will Moore: OK.

Bud Jacobs: Terry raises a good point, Will, and I don't understand where or don't know where we go with it. If members of the public have substantive objections to the various agency's technical reviews, how does that how do those substantive objections get fed into the process?

Will Moore: That's that's a very difficult question to answer. The the agencies doing these reviews are the agencies that are designated to do those reviews. The question as to whether there's an objection to the review that was done by the professionals that is assigned to do that is is a very difficult one for me to wrap around. So, for example, the Health Department review during the first iteration, the Hydro Geological Report had been reviewed and accepted by the Health Department. There were questions raised that shouldn't something else be looked at? Shouldn't there be additional information about it? I think it was the effects of draw down that that's not something that is evidently considered in that review by and I understand. Trust me, I understand that point. But if that's not something that can be considered in it, then we have to rely on the professionals who are doing their individual reviews to to make those determinations.

Bud Jacobs: We could have a member of the public who is, by training and profession, a land use attorney, who is also an expert in these matters. And let me posit that he or she raises objections to some part of the plat that on their face seem valid. Is it our. Do we have the right to take those objections on the basis of our public hearing and send them back to the county? Can they form the basis of a decision to defer approval of the plat? I just I'm not sure how this all lashes together.

Will Moore: It's a very, it's a very difficult question to answer hypothetically. I think what I will say is that if we are to obtain a waiver in the timeline that can make all the difference for us to address in an iterative manner those kinds of items. I would encourage everyone to spend some time with this document. I will include when I send I will include an electronic copy of this for you as well, if that's helpful when I send out the application materials which were previously

requested. There's some really I think good information in here to digest. One of the statements, and I was going to say I don't have it verbatim, but I do have verbatim because it's in here somewhere. And I will refer you to page 22-10. There is a paragraph which is mostly highlighted of the final sentence of the highlighted portion is in lieu of disapproving the preliminary plat, the agent should always consider approving it with conditions requiring that the required corrections be addressed with the final plat. Again, this goes back to the. And there's more information in here about subsequent stages being where the technical the engineering requirements are all are all addressed, that a preliminary plat is a schematic representation. We may not have all the answers at that at this stage, and that's okay. I think we will probably somewhere along the process of review, again, have the benefit of council present for us when we're considering this, and we may even consider doing a closed session to answer some of these kinds of questions under the guise of legal advice from the town attorney. So that's something we'll talk about as we move along in the process.

Terry Cooke: Yeah, I agree with that. I think that might be appropriate under here because one of the difficulties I have with this sort of ill-defined role that we have in this process of looking at a preliminary site plan in an extra-judicial jurisdiction. There are certain very specific requirements that must be met on the site plan. And it goes through the county review. And the county review stated very simplistically says, yes, we're satisfied that they've met all the requirements. And yet you have one or more folks who show up at a public hearing and say the county blew it. They didn't do this correctly. They didn't interpret this correctly. There's an alternative interpretation that they should have applied. We're not in a position to make a determination on that. All we have is the review of the reviewing agency that is tasked with this responsibility. They say it's OK. If we deny the plan under those circumstances to address concerns expressed by some of the public, are we acting beyond the scope of our authority? I mean, I think we all have a fiduciary responsibility to protect the town as best we can from legal exposures. Getting involved in a lawsuit. And something that's deemed as an unsubstantiated denial of a plat that has all the necessary approvals is likely to lead to a lawsuit. So. That's just the reality of it. And I think that's something we all have to keep in mind as we consider this.

Will Moore: And there's some good information in this document about potential exposure. And it talks a good bit about who has the ability to challenge in the case of the disapproval and who has or does not have the case to challenge in the case of approval. You know, who can take a locality to court for having approved. Interesting side note. One of the. I was talking to Mr. Jacobs about this earlier. One of the the the cases that's cited is one particular case law was called Barton v. town of Middleburg, which had to do with a a third party challenging in the courts the town's approval of subdivision land and the finding and the case law that came out of it was that the third party did not have, under certain sections of the state code, did not have the ability to challenge the town on that basis, and that they were attempting to create an appeals process for which there is not one enabled by the state. Had to do with Fox Run subdivision, if you're familiar with that at the east end of Marshall Street.

Ed Fleischman: I just wanted to respond to the statement saying that we have a responsibility to worry about legal complications to the town of Middleburg. We do, but we also have a responsibility that if a particular project might affect the town of Middleburg, say, because of the development and the septic tanks, it might affect in some future time the well water in the town of Middleburg, not knowing what will happen as far as climate change and dry spells and the water table going down and septic coming in, or there'll be some traffic that might affect the town of Middleburg, that's our responsibility also. So I think we have to look at both. And that's important. And I think also when I read the requirements of disapproval or preliminary plat, I don't know what the application has in it. I don't know what environmental groups might submit based upon their review and other outside agencies, not just the county. But there are a number of different state agencies, I believe, that also review it. So I have an open mind. But if I feel that there are some significant issues that were brought up by the reviewers and by my own and our review of the documents, I think we have a responsibility to say we want it modified or the

questions answered. And I would see no problem in sending it back for disapproval for specific reasons that they should address.

Terry Cooke: Yeah, that process is what a conditional approval, as I recall.

Will Moore: Well. So that's. Yes. So there is a conditional approval process. The last time you elected to disapprove, which is a little different. And that's where we start walking a finer line. The conditional approval process that we have available to us I think is very good, which means that if you have to take action at a certain time. But the comments before you and there may be some technical comments, but they may be comments that the reviewer says move this line a little bit this way and you're done with it, if they are of that nature, then I would highly suggest a conditional approval, which means it goes into an iterative process until all the comments are completely resolved. And then it's done. It's a much safer process if it's in otherwise good technical shape.

Bud Jacobs: I wasn't trying to positive scenario in which we were responding to the "not in my backyard" reaction that people have to this, but rather to the possibility at least that there may be legitimate expert opinions that should be taken into account by the county as this process moves forward. And I had not read the conditional approval paragraph that you pointed out to us, Will, but it seems to me that's the answer that we can approve. But you need to answer these questions that have been raised. By whom? The public in our public comment section, it seems to me that that's perfectly legitimate and indeed, as Ed points out, may be part of our mission. And there appears to be a mechanism to do it. So I think we're I think we're in pretty good shape, actually.

Terry Cooke: Any further comments? There being no further business to come before the commission this evening, we are adjourned. Thank you all.