



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



**MONDAY, JULY 27, 2020
PENDING APPROVAL**

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

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

ABSENT: Mimi Dale Stein, Member (excused)

The Middleburg Planning Commission held their work session and regular meeting on Monday, July 27, 2020. Due to Governor Northam's executive order requiring that people social distance, the meeting was held remotely with most members of the Commission participating from their respective homes/offices.

Chair Cooke explained for the viewing audience that it was the Commission's responsibility to conduct essential public business despite the COVID-19 pandemic; however, it recognized the need to do so safely, not only for its members but also for the Town staff and members of the public. He further explained that to that end, in accordance with the Council's resolution declaring a local emergency and ordinance implementing emergency procedures and effectuating temporary changes to address the continuity of governmental operations, the Commission would hold its meetings via remote access until such time as the Governor rescinded his executive orders. Mr. Cooke advised the viewing audience that copies of the agendas were available on the Town's website and that the meetings would be livestreamed and recorded for viewing on the website. He explained that anyone wishing to participate in the meetings during the public comment periods or the public hearings, if applicable, could do so by dialing (540) 339-6355. Mr. Cooke reviewed the process that would be utilized for the remote meetings. He called the work session to order.

Town Clerk North called the roll at 6:30 p.m.

Discussion Item

Status Report - SD 20-01: Banbury Cross Reserve Subdivision Preliminary Plat

Deputy Town Manager Moore reminded the members that the review agencies have stated that all the requirements have been fulfilled. He further reminded them that they previously asked for a detailed response from the County regarding AquaFusion's comments on the applicant's hydrogeological study, which the County declined to provide. Mr. Moore advised that because he felt this was so important, the Town hired an engineer to look at it and reported that he confirmed the study met the FSM requirements, aside from some missing maps. He noted that those maps were subsequently provided; thus, all the requirements have been fulfilled.

Chair Cooke acknowledged the number of people waiting to offer comment during the public hearing and advised that he would move the non-public hearing related items on the agenda until after the hearing. He asked the members to limit their back and forth discussion and any questions they may have until after the conclusion of the public hearing. Mr. Cooke suggested the members only ask speakers questions for clarification purposes.

Commissioner Roszel noted the emails that were received regarding this application. He questioned whether there would be a prelude to the public hearing so the public would understand that there were some issues over which the Planning Commission had no authority.

Deputy Town Manager Moore confirmed he would explain what was under consideration during his staff report, including that this was not a discretionary item, but rather was one that must be reviewed on its merits. He advised that if the application met the established guidelines, the Commission had no discretion in the approval process. Mr. Moore noted that there was value in the public's comments on this type of development, as they could be provided to the County as they considered their cluster subdivision regulations.

Councilmember Jacobs advised that the Virginia Department of Environmental Quality had a reporting requirement for the withdrawal of more than one million gallons of water within a month period for agricultural land. He further advised that there was an investigation ongoing as to whether the adjacent landowner had under-reported his withdrawal. Councilmember Jacobs reported that he was also in possession of two memos from the County's Department of Building Development – one of which noted that the hydrogeological study met the FMS requirements; however, it noted that there could possibly be dry or low yielding wells at the site. He advised that the second memo included a recommendation that a contingency plan be developed to supply water to lots with dry or inadequate yields. Mr. Jacobs opined that the County had concerns regarding the availability of water. He advised that a lawsuit had also been filed earlier in the day by a prior owner questioning the ownership of the property.

Chair Cooke reminded the Commission that the County had indicated it was prepared to conditionally approve the preliminary subdivision. He noted that none of the conditions they mentioned spoke to the issues raised by Councilmember Jacobs.

Vice Chair Woodruff noted that during the last meeting, concerns were raised during the public comment period about water availability. He further noted that this subdivision would add a lot of wells. Mr. Woodruff questioned how this would not impact the Town. He noted that the Town had suffered from droughts in the past, as well as well deficiencies. Mr. Woodruff opined that Loudoun County did not take Middleburg into consideration when it said there was an adequate supply of water.

Chair Cooke noted that the Town consultant's report, dated July 24, 2020, stated there were no concerns about the effect of this subdivision on the Town's wells and that there was an adequate supply of water.

Chair Cooke adjourned the work session and called the regular meeting to order at 7:00 p.m.

Disclosure of Meetings with Applicants

Commissioner Fleischman reported that he was contacted on July 4th by a group in opposition to the Banbury Cross Reserve subdivision; however, he declined to meet with them outside of the Planning Commission meeting process. Vice Chair Woodruff reported that people also called him; however, he referred them to Deputy Town Manager Moore. Chair Cooke and Commissioners Minchew and Roszel reported no meetings. Councilmember Jacobs reported that he also received calls and had meetings with Eva Smithwick, Dan Haney, John Lovegrove and David Buss.

Approval of Meeting Minutes

Councilmember Jacobs moved, seconded by Commissioner Fleischman, that the Planning Commission approve the June 29, 2020 meeting minutes.

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

No – N/A

Abstain – N/A

Absent – Commissioner Stein

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

Public Hearing - SD 20-01: Preliminary Plat of Subdivision for 38 Lots – Middleburg Land One, LLC

Deputy Town Manager Moore provided a synopsis of the application. He reported that all the requirements had been met.

Chair Cooke reviewed the rules related to public hearings. He noted that this was not an opportunity to challenge the by-right use of the property. Mr. Cooke advised that the Planning Commission’s role was only to decide whether the proposal satisfied the requirements for a preliminary plat.

Nick Albu, an attorney with Reed Smith; Ryan Connor, an engineer with Urban Engineering; and, Andy Hertneky of Middleburg Land One, LLC, appeared before the Commission representing the application. Mr. Albu reminded the Commission that this was a ministerial review of a by-right subdivision. He opined that all the requirements had been met as stated by the Town and County staff and suggested the application should be approved as a matter of law. Mr. Albu opined that the lawsuit that had been filed was irrelevant to the application before the Commission.

Mr. Connor advised the Commission that the proposed home sites made the most sense, given the constraints of the requirements they needed to address. He advised that the open space provided, the minimum cluster lot sizes and the perimeter setback minimums all exceeded the requirements. Mr. Connor stressed that 483 of the 570 acres would be developed with large, rural lots or would remain as open space. He advised that as to the cluster lots, they would be located in a format that would ensure the least amount of impervious acreage was created. Mr. Connor further advised that the impervious areas would be located as far away as possible from the environmental areas. He noted that the location would also avoid tree removal and would preserve a large number of mature trees. Mr. Connor advised that they provided an extensive hydrogeological report, which was reviewed by the County, as well as a consultant hired by the Town. He opined that there were no outstanding jurisdictional comments on the application.

Councilmember Jacobs questioned whether the applicants planned to change the use of any of the rural economy lots from residential to commercial purposes.

Mr. Connor advised that it was his understanding that the lots were required to be residential. He confirmed there were no plans for commercial use.

Mayor Littleton noted that the rural economy lots could be converted to commercial uses, such as a brewery; and, questioned whether there were any plans to convert them to a non-residential use. He expressed concern regarding the subdivision from the perspective of water availability and its location on the gateway to Middleburg. Mr. Littleton suggested this could be the start of a bigger problem of cluster development in the County and opined that cluster development in the AR-1 District would lead to the demise of Western Loudoun as it was known. He thanked the members of the Commission for their public service and expressed confidence that they would perform their duties within their scope of authority.

Jennifer Moore, President of the Virginia Piedmont Heritage Area Association, expressed concern that the proposed development would destroy the rural setting and historic viewshed of the gateway to Middleburg. She further expressed concern that it would not protect the two Civil War battlefield sites or the historic structures in this area. Ms. Moore urged the Commission to deny the application, which she opined was incomplete.

Kevin Ramundo expressed concern that the proposed subdivision would pose a serious risk to the Town's water supply, as well as to those of the nearby homes and farms. He advised that he was a member of a citizen's group that was opposed to this development and reported that their hydrogeologist concluded the hydrogeological study was technically flawed, the plat did not meet some of the County's minimum requirements and the development had the potential to adversely impact water quantity and quality. Mr. Ramundo reported that there were two versions of a memorandum from the consultant of the County Health Department, one of which recommended a contingency water supply plan be developed as the wells may not provide enough water. He opined that the water situation could worsen if the developer later decided to put commercial uses on the rural economy lots. Mr. Ramundo asked that the Commission reject the application to protect the Town's water supply.

Daniel Haney, 34572 Welbourn Road, noted that he was a member of the concerned citizens group that was opposed to the Banbury Cross Reserve subdivision. He reminded the Commission that full compliance with the Town's subdivision ordinance, County zoning ordinance and Facilities Standards Manual was critical to ensure the development adhered to the regulations that governed it. Mr. Haney suggested the denial of inappropriate development applications would reinforce the prioritization of open space and protect the Town's water supply; and, noted that the Commission had done this in the past. He opined that there were technical deficiencies in the application and asked that the Commission protect the Town's interests.

Slade Thorpe offered a cautionary tale of a similar development in his hometown in South Carolina and asked that the Commission deny the application.

David Blanchard, of Carter's Farm Lane, voiced opposition to the request. He cited concerns around water, traffic safety and the infringement of the development on the open space. Mr. Blanchard noted that his and his neighbor's agricultural property depended on water. He advised that Carter's Farm Lane was not a paved street, while the subdivision would be, and suggested this would imply a different level of community engagement. Mr. Blanchard expressed concern about adding traffic to the intersection of Route 50 and Sam Fred Road, which was already dangerous.

John Lovegrove, of Save Rural Loudoun, expressed opposition to the development. He reminded the Commission of the County Board of Supervisor's initiative to preserve agricultural land in Loudoun County. Mr. Lovegrove advised that the County had lost over a third of its agricultural land and noted that this development would remove 2.5% of prime farmland. He reiterated that the County Board made the preservation of agricultural land the highest priority with regard to amendments to its zoning ordinance; however, he acknowledged that this would not apply to this property. Mr. Lovegrove asked that the Commission take this under consideration. He noted the lawsuit previously referenced and opined that clear title was a requirement of the application. Mr. Lovegrove noted that the rural economy lots could be used for some commercial uses by-right and suggested the allowed uses were not in general fitting with the character of Middleburg.

Jean Perin opined that the property needed to be preserved. She expressed concern about the development's impact on water and suggested that with the commercial uses that would be allowed, it would turn into a community. Ms. Perin asked that the Commission stand against it.

Eugene Scheel noted that he was a professional historian and advised that he wrote Middleburg's bicentennial history in 1987. He reviewed that history. Mr. Scheel advised that the soil in this area was highly suitable for agricultural uses.

Jane Covington, of Foggy Bottom Lane in Bloomfield, expressed concern that the application had too many unanswered questions for immediate approval. She questioned whether Middleburg's water supply was properly protected. Ms. Covington also questioned whether the Town's sewage treatment plant would be protected. She expressed concern about the impact of the development on neighboring wells and suggested that monitoring processes needed to be put into place. Ms. Covington asked that the Commission deny the request until the questions could be answered.

Bundles Murdock, 609 Blue Ridge Avenue, advised that she had many objections to the development, the most pressing of which was the water supply. She suggested that the best planning protection was to expand within the town in order to keep the farms and landscape open and opined that this application went against that. Ms. Murdock noted that Middleburg's visitors were searching for a small-town feel and suggested the need to fight to maintain that feel. She reminded the Commission that land that was built on was land that was lost forever.

John Denegre, 22277 Sam Fred Road, advised that his family opposed the Banbury Cross development for many reasons, the least of which was that it would devastate why people came to visit and live in this area. He expressed concern regarding its impact on the water resources and advised that in recent years, he had two wells run dry. Mr. Denegre opined that this subdivision would push the water supply issues from bad to critical. He expressed concern that this could morph into something even bigger if the rural economy lots were developed with commercial uses. Mr. Denegre suggested the application should be denied based upon recent water studies.

Evan McCarthy, of Cedar Bluff Court in Round Hill, appeared before the Commission representing the Piedmont Environmental Council. He expressed concern that the application could affect Middleburg's water and opined that it did not ensure groundwater protection. Mr. McCarthy opined that the hydrogeological report did not discuss the potential impact on water resources caused by withdraws from the proposed wells. He advised that the County consultant recommended a contingency plan be developed for the site to address how water would be supplied in the event of inadequate well yields. Mr. McCarthy advised that the PEC supported the need for the Planning Commission to have the necessary information to assess how the subdivision could negatively impact the Town's water supply.

Jem Bengol, of 1508 Shields Terrace in Leesburg, advised that she was the Land Use Policy staff for the PEC. She stressed the need for the application to meet the County's regulations, as well as the Town's subdivision requirements, prior to approval. Ms. Bengol suggested the need for a contingency water supply plan due to the potential for the ten rural economy lots to be developed with commercial uses, which could be water intensive. She advised that Virginia law did not protect neighboring landowners from harm and suggested the Town must be careful in its deliberations. Ms. Bengol suggested the need for the Town and County to strengthen their ordinances to protect the water resources, as inadequate data and insufficient ordinances posed a threat to groundwater protection. She noted the need to assure the residents of an adequate and safe drinking water supply. Ms. Bengol encouraged the Commission to defend the Town's interests and ensure its subdivision requirements were met. She also recommended stronger laws be implemented going forward.

Roger Smithwick, of Sam Fred Road, questioned why the people who were opposed to the land's development did not buy it. He also questioned why the Town did not extend public water and sewer to the property if there were concerns about the possible detriment of the development on the ground water. Mr. Smithwick suggested the need for affordable housing.

Jim Nichols, of 22064 Sam Fred Road, expressed concern regarding the safety of the intersection at Sam Fred Road and Route 50.

Brad Bondi opined that the Commission had the proper basis for denying the application, as it did not meet the Town's subdivision ordinance. He further opined that there was not a sufficient layout for the collection and discharge of surface drainage. Mr. Bondi suggested there were no approved well sites for the project. He further suggested the hydrogeological report was flawed and the archaeological report was deficient. Mr. Bondi noted the need to identify the slave dwellings and graves.

Michelle Watson, of 39499 Snickersville Turnpike, appeared before the Commission in opposition to the development because of the water resource issue. She cited as an example, a neighbor who had difficulty in getting water to his property.

Mrs. Edward Wright, of 37298 John Mosby Highway, expressed concern that the proposed subdivision would negatively affect the use of her home, as well as the animals on her farm. She expressed concern about the possible loss of water. Mrs. Wright noted that the land in this area was zoned AR1, which was for agricultural uses.

John Rizik, of 23165 Carters Farm Lane, advised that a pump currently pumped water for the polo field and noted that it was loud and prevented him from peacefully sitting on his front porch. He opined that in developing the polo field, the owners showed disrespect for the County and State regulations and the neighbors. Mr. Rizik advised that in 2018, speakers were installed at the polo field that were very loud, which also prevented his peaceful enjoyment of his property. He noted that he heard rumors that the rural economy lots could be used for additional polo fields and expressed concern about the impact of the operation of a commercial business on land designed for agricultural use. Mr. Rizik requested the Commission reject the application.

Jane Page Gunnell Thompson, 22959 Carters Farm Lane, asked that the Planning Commission vote to table action on this item until the courts could determine whether a lawful transaction had occurred with regard to the transfer of title to the property and whether the applicant had the authority to submit the application. She noted that she was a contributor to the Gunnell Family Dynasty Trust and advised that she had no knowledge of the application until it was brought to her attention.

Audrey Wilde, of Carters Farm Lane, advised the Commission that she supported the development, as the Town and surrounding area were in need of housing. She suggested the proposed development would provide it, while still preserving and unifying the land. Ms. Wilde reminded the Commission that this was a by-right land development application and suggested it guaranteed that the majority of the land would remain free, open and rural. She opined that the development would improve the water situation. Ms. Wilde encouraged the Commission to approve the application.

Eileen Tognini, of 22959 Carters Farm Lane, advised the Commission that she supported the development. She opined that it embraced the mandates for cluster development of the Piedmont Environmental Council and of Save Rural Loudoun by augmenting existing villages as opposed to creating sprawl development. Ms. Tognini noted the clustering would limit the amount of land consumed by the development and would preserve the viewshed and watershed and protect the wildlife habitat. She opined that four different experts have verified the wells could produce thirty gallons/minute; therefore, there was no water issue. Ms. Tognini advised that the only crop that had been produced on this land for the past fifty years was hay and noted that it would continue to be produced there.

Paul Lawrence, of 37163 Mountville Road, appeared before the Commission as the Chair of the Goose Creek Association. He expressed their opposition to the proposal for the same reasons as stated by previous speakers. Mr. Lawrence asked the Commission to consider any flaws in the application and to deny it on that basis no matter how technical the flaw may be.

Patricia Sweeney, of 22309 Watson Road, expressed support for the Banbury Cross Reserve development. She advised that she had lived in this area for thirty years and had not experienced well draw down or contamination. Ms. Sweeney noted that new wells must be constructed to very stringent standards.

Paul Cronin, of 704 Stonewall Avenue, suggested the need to explore the water issue thoroughly and to preserve the agricultural land surrounding Middleburg, which was an important attraction to visitors. He advised that for these reasons, he was opposed to the development.

Eva Smithwick, of Sunnybank Farm on Sam Fred Road, appeared before the Commission representing her family. She advised that her property bordered the Banbury Cross property for nearly a mile. Ms. Smithwick opined that the size of the proposed development warranted concern about possible negative impacts to their area. She reminded the Commission that they hired experts to analyze the preliminary plat to determine the impact of the development on the community and advised that the Commission would hear concerns from their experts related to the hydrogeological report. Ms. Smithwick noted that the County recommended a contingency plan be developed in the event of low yielding or dry wells. She advised that the only recourse for the neighbors if their wells went dry was to file a lawsuit and noted that they would then have to find water for their animals. Ms. Smithwick asked that the Commission deny the application.

David Buss, of AquaFusion, reported that he was hired to review the hydrogeological study of Emory Garrett. He noted that the County's consultant who reviewed the study recommended a contingency plan in the event of low yielding or dry wells. Mr. Buss opined that there were technically deficient analyzes included in the study because some key assumptions were not followed, or the type of analysis was not considered. He further opined that the report reviewers did not bring up things such as impacts of the development on the Town's water supply. Mr. Buss opined that the study failed to meet the FSM requirements and reviewed the areas where he believed the failures had occurred. He acknowledged the study did meet the FSM requirements for making calculations, as the manual did not require a particular model be applied when calculating the drawdown of water. Mr. Buss suggested there was too much uncertainty about the development's impact on the Town's water supply and treatment system, as well as the lack of a contingency plan, to let the plan be approved.

Stephen Price, an attorney with McClandish & Lillard, appeared before the Commission representing Smithwick Farm, LLC. He opined that the application omitted two items that were required by the Town's subdivision ordinance, specifically that there be provisions for collecting and discharging surface drainage and the identification of the approved well sites. Mr. Price noted that he was reading from a written statement and advised that he would email a copy to the Planning Commission.

Matthew Berg, of 35148 Rosecroft Lane, advised the Commission that he opposed the Banbury Cross subdivision.

William Nate Chambers advised the Commission that he opposed the Middleburg Land One Development application. He noted that he was a developer and advised that this stage of the process was critical, as whenever a project was stopped at this phase, it never went any further. Mr. Chambers opined that cluster development did not fit within the community and advised that approving it would set a precedent. He acknowledged that the Commission was only being asked to approve the preliminary plat; however, he opined that there would be no turning back once that occurred. Mr. Chambers asked that the Commission table action until the pending litigation involving the property title was resolved.

Amanda Tandy, 43607 McDowell Square in Leesburg, appeared before the Commission as the Vice President of the Loudoun Branch of the NAACP. She urged the Commission to require the applicant to perform a survey of the entire parcel to determine whether there were any graves or homes of enslaved

people so their legacy could be honored. Ms. Tandy opined that the subdivision could have a negative effect on historical, archeological or architectural resources as a substantial portion of the site was once known as the Mount Airy Plantation. She suggested the proposed septic field could be cited on or near cemeteries and dwellings of the enslaved. Ms. Tandy asked that the graves and dwellings be located before moving ahead with this project.

Don Skelly, of 37318 John Mosby Highway, noted that there was a potential for a farm brewery in this area, which could place an even further strain on the water supply.

Jane Bishop, of The Plains, advised that she was opposed to the project.

Devin Dubrovios, of 38315 Snickersville Turnpike, expressed his opposition to the development on the basis that there were significant failures to comply with the Town's requirements and due to the lawsuit regarding the property title that was filed earlier in the day. He expressed concern regarding its impact on the surrounding wells and of cluster development on the agricultural land. Mr. Dubrovios urged the Commission to oppose the project.

Judith LaFleur, of 15212 Cider Mill Road in Purcellville, advised the Commission that their obligation was not to rubber stamp the application, but rather was to the Town and its residents. She suggested the need to look at Middleburg's zoning ordinance and to protect the farmland. Ms. LaFleur advised the Commission that they had an obligation to look at subdivision requests, particularly their impact on the water and rural agricultural resources, and at the cost of housing. She opined that the increased traffic would dry up the wealth in Middleburg and cause increased taxes to support the infrastructure needs. Ms. LaFleur suggested the development would change the character of Middleburg. She advised that she was in opposition to the development.

Brianna Gunnel, 22959 Carters Farm Lane, advised the Commission that she supported the development. She noted the need for more housing in the area. Ms. Gunnel opined that the application met all the applicable regulations and noted that it was by-right. She advised that it was a cluster development, which was encouraged in the rural areas of Loudoun County. Ms. Gunnel opined that the studies proved there were no water issues. She asked that the Commission approve the request.

Ned Quinn, of 23596 Whitehorse Court, asked that the Commission deny the request on the legal and technical merits.

Jayasridhar Acharya, of 22144 Sam Fred Road, advised that she was in opposition to the development. She noted that she lived on the other side of Sam Fred Road and had tested for water twice; however, she did not find any.

Jane Gunnell, 22959 Carters Farm Lane, advised the Commission that she would like to reiterate what Brianna Gunnell said. She further advised that they were not trying to do anything that would jeopardize the beauty and quality of life for those living in and around Middleburg.

Mr. Albu reminded the Commission that this was not a referendum on the cluster subdivision policy. He advised that it was not an application for polo fields or other rumored uses as suggested by some of the speakers. Mr. Albu further advised that the Planning Commission's decision was not to be based on the Comprehensive Plan, a County Board of Supervisor's initiative, the referenced lawsuit or any previous applications. He reminded the Commission that their responsibility was to confirm the subdivision, which was by-right, met the requirements and noted that all the professionals agreed it did. Mr. Albu advised that this was an administrative application that met the requirements and asked for the Commission's approval of it.

In response to an inquiry from the Commission, Mr. Connor confirmed the applicant had no plans for the rural economy lots other than to sell them as residential lots.

Chair Cooke noted that those speakers who spoke in favor of the application felt the subdivision would preserve the rural character of the area. He expressed concern about whether this would occur if commercial uses occurred.

There being no further comment, Chair Cooke closed the public hearing.

In response to an inquiry from the Commission, Assistant Town Attorney Simmons explained that the lawsuit that was filed earlier in the day was a challenge to the title of the property. He advised that clear title was not required for a preliminary subdivision plat; therefore, it would not affect the Commission's deliberations.

Chair Cooke noted that under the Commission's by-laws, he could not vote unless it was to create a tie or to break one; therefore, he may or may not vote.

Vice Chair Woodruff expressed concern regarding the potential for this subdivision to drain Middleburg's water supply. He also expressed concern regarding the lawsuit. Mr. Woodruff suggested that conditions of approval include the applicant's response to concerns related to surface drainage, the approved wells, the water situation and the lawsuit.

Commissioner Fleischman noted that he reviewed the application and reports and listened to the comments. He further noted that he had a background in engineering. Mr. Fleischman acknowledged that if the plat met the requirements, the Planning Commission was obligated to approve it. He advised that droughts were unpredictable and could draw down on the aquifer used by the Town. Mr. Fleischman expressed concern that the septage from the subdivision could flow into the aquifer, which would adversely affect the water supply. He opined that the Commission needed to be concerned for the future quality of the Town's wells. Mr. Fleischman suggested that approving the proposed development could result in other developments.

Commissioner Fleischman moved that the Planning Commission disapprove the request for the approval of the preliminary plat.

Chair Cooke asked that Commissioner Fleischman defer his motion in order to allow the other members to make their comments, to which Commissioner Fleischman agreed.

Commissioner Minchew expressed concern regarding the water and the lawsuit. She suggested the need for more information.

Commissioner Roszel advised that he was not in favor of approving the subdivision and suggested that just because it met the criteria, this did not mean it was what was best for the community. He noted, however, that the Commission was obligated to follow the rules. Mr. Roszel acknowledged that the plat met the requirements of Loudoun County. He reiterated his reservations about approving the plat and cited the concerns regarding surface water drainage and the approved well locations offered by Mr. Price. Mr. Roszel questioned whether the timeline would allow the Commission the opportunity to table consideration of the application so it could determine whether there were failures related to the surface drainage and approved well locations.

Deputy Town Manager Moore reminded the Commission that they previously consulted with legal counsel on that issue. He further reminded the members that if they wished to deny the request, they must cite the express requirement that was not met and what modification was necessary to fulfil it. Mr. Moore advised that the staff could not provide any express requirement that was not met for the preliminary plat.

He further advised that as to the storm drainage and approved well concerns cited by Mr. Price, his interpretation was inaccurate. Mr. Moore reminded the Commission that it was he who interpreted these items and advised that after a review and discussion with the Town's consulting engineer, his interpretation was that the requirements had been fully met. In response to an inquiry from the Commission, he suggested that if they must, the Commission could table consideration of the application; however, he noted that there was exposure in doing so. Mr. Moore opined that it was, however, better to table it than to deny the application without identifying express requirements that had not been met.

Commissioner Roszel reminded the members that the Deputy Town Manager reported no comments on the proposed subdivision at this time. He further reminded them that they must look at the facts and what they were charged to do. Mr. Roszel advised that if the requirements were met, the Commission should conditionally approve the application.

Councilmember Jacobs opined that once the Commission acted, it would end its oversight and suggested there was no reason to be optimistic that they would be able to engage with the County staff for the remainder of the process. He advised that he was pleased that citizens spoke in favor of the request and opined that there were good comments from those opposed that should be taken seriously.

In response to an inquiry from the Chair, Commissioner Roszel suggested it was in both parties' interest to understand what the Commission wanted to do. He reiterated that the Commission had an obligation to fulfill their duties. Mr. Roszel reminded the members that Loudoun County was ready to approve the plat. He suggested the community needed to get the County Board of Supervisors to make significant changes to the regulations. Mr. Roszel opined that it was too late for this application.

Commissioner Roszel moved that the Commission table the conversation for approval of the Banbury Cross Reserve application until they had time to have further discussion.

In response to the Chair's inquiry as to whether the applicant was willing to accept a tabling of the application, Mr. Hertneky noted that they had experts available to answer any questions the Commission may have. He advised that to table consideration for one month was too much as each day's delay was costly. Mr. Hertneky further advised that they would be open to tabling it for one week or to talk about meeting to discuss the commercial uses. He expressed a desire to be a responsible community and advised that they were open to identifying a list of approved commercial uses.

In response to an inquiry from the Chair, Mr. Hertneky agreed to a two-week tabling of the application, provided the Commission provide him with any concerns it felt needed to be addressed so he could present the facts regarding them.

Vice Chair Woodruff suggested the need to proffer out some commercial uses.

Mr. Hertneky reminded the Commission of the need for more stables in this area and opined that this was in character with Middleburg. He confirmed any commercial uses would be equine related.

Vice Chair Woodruff suggested the applicant provide the Commission with a list of potential commercial uses that it would envision for the property. He noted that he had heard that polo fields could be developed at this location. Mr. Woodruff inquired as to what other uses would be considered.

Mr. Albu suggested the need for he and the Town Attorney to discuss proffers and noted that there were laws regarding the application of proffers. He advised that they were willing to table the application for two weeks, conditioned upon their having the ability to submit facts to address the Planning Commission's concerns.

Vice Chair Woodruff seconded the motion to table the application for two weeks.

Deputy Town Manager Moore advised that this would be until Monday, August 10th.

Vote: Yes – Commissioners Fleischman, Minchew, Roszel and Woodruff and Councilmember Jacobs
No – N/A
Abstain – N/A
Absent – Commissioner Stein
(Chair Cooke only votes in the case of a tie.)

Council Representative’s Report

Councilmember Jacobs reported that during its last meeting, the Council voted to send a letter identifying concerns over transparency of the applicant and the potential effect of the project on the neighbors and water supply to the ABC Board related to the proposed brewery on Route 50.

Councilmember Jacobs noted that the Banbury Cross Reserve applicant pointed out that many of the issues raised by the speakers did not fall under the Planning Commission’s jurisdiction. He suggested the need to work with the Loudoun County Board of Supervisors to change the County’s regulations regarding land use/zoning. Mr. Jacobs noted that some of the Town Council’s strategic initiatives were to attack cluster development and to protect the greenbelt around Middleburg. He reported that Mayor Littleton was leading those efforts.

Quorum of August Meetings

Chair Cooke noted that there were five Mondays in August; therefore, the Commission could consider moving their meeting if needed. He advised, however, that he would prefer to leave it scheduled for August 24th. The remaining members agreed.

Deputy Town Manager Moore advised the members that he would check on their availability dates for a special meeting, which needed to be held by August 10th at the latest. He asked the members to articulate any requirements they felt had not been met so he could communicate them to the applicant.

Chair Cooke reminded the members that if there was a motion to conditionally approve the application, they must articulate the conditions.

There being no further business, Chair Cooke adjourned the meeting at 10:50 p.m.

RESPECTFULLY SUBMITTED:

Rhonda S. North, MMC, Town Clerk

Middleburg Planning Commission Transcript
July 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)

Terry Cooke: Well, it is 6:30 and being 6:30, we will convene our work session, as we always do, preceding our regular meetings and I will call our work session to order. Having done that, I am required to share with you an announcement regarding our remote meeting practices. It is the Planning Commission's responsibility to conduct essential public business despite the COVID-19 pandemic. However, it recognizes the need to do so safely for not only its membership but also for the town staff and members of the public. To that end, in accordance with the resolution confirming the declaration of a local emergency and the ordinance to implement emergency procedures and effectuate temporary changes to address continuity of governmental operations during COVID-19 as adopted by the Middleburg Town Council, the Planning Commission will hold its meetings via remote access until such time as the governor rescinds his emergency order mandating social distancing. Copies of the previously referenced documents are available on the town's website. For those who wish to view them, the town will continue to live stream and record its public meetings, which are available for viewing along with the meeting agenda. packet on our Web site at www.Middleburgva.gov. Members of the public who wish to participate in the Planning Commission meeting during the public comment period and or public hearings if applicable, and or applicants who are speaking on behalf of their application may do so by dialing 540 339 6355. You will be placed on mute until such time as the public comment or public hearing is open or your application is heard to ensure trust in the process. The town clerk will do a roll call of the Planning Commission members at the beginning of the meeting and at least once an hour. In addition, I will ask each member by name if they have any comments or questions related to each item. As we proceed. When anyone speaks, he or she is asked to first state his or her name for the benefit of the viewing audience. All votes of the Planning Commission will be taken by Roll Call. The town clerk will announce the member's name with the individual, then stating how they are voting. Thank you. Rhonda. Would you do the roll call, please?

Rhonda North: Chairman Cooke.

Terry Cooke: Present.

Rhonda North: Vice Chair Woodruff.

Don Woodruff: Present.

Rhonda North: Commissioner Fleischman.

Ed Fleischman: I'm here. Thank you.

Rhonda North: Commissioner Minchew.

Rachel Minchew: I'm here. Thank you.

Rhonda North: Commissioner Roszel.

Dev Roszel: I'm here. Thank you.

Rhonda North: Commissioner Stein is absent. Council Member Jacobs.

Bud Jacobs: Here.

Terry Cooke: I'll just note that Commissioner Stein did contact me a day or so ago explaining that she has a business matter that requires her attention during the same period that we'll be conducting this meeting and very much regrets that she could not be here this evening. But hers, I've determined, is an excused absence. Number 4 is our discussion items. And with that, I will ask Mr. Moore to review the status of the Banbury Cross preliminary plat application. Will?

Will Moore: Thank you, Mr. Chairman. Members of the commission. We wanted to have this time during the work session to have any last minute discussion of any requirements that you may have questions on that of the reviewing agencies to this point have indicated have been fulfilled. And I also will highlight that since the publication of the package, we did receive a response from our consulting engineer, and that is in regards to the mapping that was provided last Wednesday by the applicant. And that was through the applicant prepared by the hydrogeologist firm EGGI that did the original hydrogeologic study. So as you recall, the town had held our own independent review of the hydrogeologic study, and in particular some questions that had been raised about it by an outside firm that a private citizen had contracted with. We were unable to get a detailed response to some of the concerns that were raised there in from the county as a result of in the interest of the public good and ensuring that we did our due diligence, the town contracted through our consulting engineer with a separate firm to do an independent review of the report. That independent review found that three points raised in that report that were questioned by the outside party were actually found to be in compliance with the facility standards manual requirements. And it should be noted that those three points were the ones that were related most directly to the methodology that was used in gathering the data that was relevant to that report. Our independent reviewer did find two instances where it could be argued that the FSM requirements were not met, and that was in regards to some mapping that was intended to be provided of the applicant. And the applicant's original preparer of the report had already submitted a response explaining why they did not include those two instances of mapping. And the county. It's worth noting, had already accepted and approved the hydrogeologist study. However, in the interest of kind of closing the loop and ensuring that there were no questions, EGGI, the original report preparer, did in fact submit this mapping that had been noted as missing. So as of the publication of the staff report, we had received that. But I had yet to be able to confer with our consulting engineer as to whether or not that mapping that had been provided indeed then fulfilled the FSM requirements. So I sent some communication out to the commission on Friday documenting my consultation with our consulting engineer and indeed indicating that the requirements of our independent review had now been fulfilled. So as that was not previously available in the agenda packet to you, I just wanted to run over that really quickly in case the commission had any questions about those findings or did any other findings that reviewing agencies had made during the course of reviewing the preliminary plat.

Terry Cooke: Thank you very much, Will. And I want to just take a moment to thank Will and the town staff for the amazing amount of work they put into this matter. We have all as commissioners, I'm sure spent many hours thinking about this and analyzing it, but not nearly so many hours, I'm sure, as Will and town staff have put on it. So, Will. Thank you very much. Ok, that concludes, I think, our work session agenda. I will I will just state for the benefit of the commissioners when we get into the regular meeting. I'm going to exercise my prerogative and defer the public comment section. This is the section where folks who have things to say, that have nothing to do with the Banbury Cross Reserve application. We have so many folks lined up to speak this evening and I think we all would hope to be able to get out of here before we say good morning to one another on Tuesday. So we're going to defer those those nonpublic hearing related matters until later in the agenda. Thank you. And with that, we have a good 20 minutes or so. 15 minutes.

Will Moore: If I might suggest, Mr. Chairman, if you wanted to go around and call on each commissioner before adjourning the work session, just in case they had questions regarding the reports to this point, we could use this time to delve into those matters, at your discretion.

Terry Cooke: Great idea. Great idea. Thank you, Will. All right. Well, you heard Will's suggestion, so I'm going to take him up on that. And let's give everybody an opportunity to ask any questions or make any comments they choose to before we get into the public hearing. I will say as as after we get into the public hearing and I'll make this announcement at that time, we're going to try to limit the back and forth Q&A between the commission and staff as much as we can until we get to the deliberation stage. So if if commissioners have questions of the staff before we start taking a public comment, I'd very much appreciate it if you could hold your hold your fire until we get to the deliberation period on that. If you have questions of individual speakers as they present their testimony and you feel it's something you need clarification on you, you should feel free to ask that question of the speaker at that time. Because I presume that many of these speakers, after they conclude their remarks, may not stay to the bitter end of the evening. So just an FYI and heads up on that one. All right. Let's start with Commissioner Fleischman. Ed, any any questions or comments at this point?

Ed Fleischman: Thank you, Mr. Chairman. I don't have any specific question or comments at this time, and I look forward to the public hearing. Thank you.

Terry Cooke: Thank you. Commissioner Minchew.

Rachel Minchew: [inaudible]. Sorry, I was on mute. No, I do not have any questions at this point.

Terry Cooke: Ok. Commissioner Roszel.

Dev Roszel: Thank you, Mr. Chairman, Will and everyone. I do have a question. And Will this may pertain more to you from my information is will there be some preliminary talk about what the requirements of the town and the commission are so that, you know, some of the back and forth might get testy because I went through the one hundred some emails Will that you forwarded. And obviously the general consensus is the same throughout all but two of them. And, you know, I just want to know if there will be some prelude to the to the meeting so that people understand that it's not that we don't agree with them, but there are some black and white issues that the commission has no choice over. Or maybe we're not going to say that we just go ahead and do it. I was just curious how that plays out. Thank you.

Will Moore: Thank you, Commissioner Roszel. The way our procedures work is the chairman will announce the item by title before opening the actual hearing. He will first call on staff to give a brief report. And I will attempt to the best I can during that brief report to announce to the public some of the considerations that are before the commission and including highlighting the fact that subdivision approval is is not a discretionary action, it is a ministerial action that is, we will be reviewing and the commission and its deliberations should be reviewing the application on its merits as to the manner in which it successfully meets the established regulatory guidelines. And so there is there's no room for discretion on the matter. So I will try to attempt to address that the best I can so that the public hears that. I anticipate that you will still hear comments that are discretionary in nature. And I would suggest that there is still value in receiving comments of that nature. While they may not be actionable in regards to the preliminary plat, we will be able to continue to amass this record of public. Comments on this development and more broadly on this type of development and as the county reviews its regulations, as it applies to cluster subdivisions, which is something that they are starting to undertake at this very moment, we will be able to provide to them some record of public comment, some record as to how at least the public in this general vicinity feels about the existing regulations.

Dev Roszel: Ok, that's great. Thank you very much, Will.

Terry Cooke: Let's see, Commissioner Stein is absent. Council Member Jacobs, any thoughts or comments?

Bud Jacobs: I have a couple of comments I wanted to make you all aware of a couple of things. I've learned that as part of the Virginia Department of Environmental Quality Water Supply Planning Program, which, if you're not familiar with it, leveed certain reporting requirements about water usage on agricultural users, golf courses, that sort of thing. And I'm getting a little crossfeed. Can you guys hear me OK? As part of this DEQ program, withdrawals of more than one million gallons of water in a single month must be reported to DEQ, and there is currently an investigation into possible under reporting of water usage at King's Landing, which, as you all know, is directly adjacent to the Banbury Cross Reserve property. I just want everybody to be aware of that as we listen to public comment and make our deliberations this evening. The second thing I have, which I'd like to share, I've come into possession of two memos from the Department of Building and Development in Loudoun County. The memos are dated March 5th. They are from the Natural Resources Program manager in Loudoun County to the director of the Loudoun County Health Department. One memo discusses it's just a brief paragraph discusses the Emory and Garrett Groundwater hydrogeological study and confirmed that the study does meet Loudoun County facility standards manual requirements. However, the memo notes that the reported testing and data indicate that the possibility does exist for there to be dry or low yielding wells at the site of this development. The second memo has basically the same first paragraph. They're virtually identical, but it adds a recommendation. And the recommendation says that since there are indications that there could be dry or low yielding wells that I'm reading this here, staff recommends that a contingency plan be developed, presumably by the developer for the site to address how water will be supplied to lots with dry or inadequate well yield. I don't know which memo came first, and I don't know why there are two versions of the same memo. I do know that the shorter memo was provided to Dr. Buck in a personal meeting he held with Loudoun County Natural Resources Program Manager while the second memo was provided concerned citizens in response to a FOIA request. I mentioned these memos because whatever Loudoun County has determined with respect to the compliance of the Hydro Geological Study with the FSM, obviously the county itself has sufficient concern about the availability of water in the wells proposed to be drawn drilled excuse me, to recommend that there be a contingency plan developed for how the developer handles dry or low yielding well. The third thing I would just note for the record is, of course, the complaint that was filed today in Loudoun County Courthouse about the again, I tried to wade through the 120 page complaint. I'm not a lawyer, but it appears to be calling into question how various inheritances and land titles were handled, I guess, prior to the acquisition of the property by Middleburg One LLC. And those are the three points that I just wanted to make you guys aware of. And that's that's all I have for the moment.

Terry Cooke: Thanks, Bud. You say that these two memos that that, this is the chairman, the two memos that you came into possession of were prepared. Did you say back in March?

Bud Jacobs: Yes, they're dated March 5th 2019, Mr. Chairman, but they were prepared a year ago March.

Terry Cooke: OK, a year ago. Oh, OK. But nonetheless, the county, the county at least has indicated that they are prepared to conditionally approve the application, subject to three conditions. And as I recall, none of those conditions speak to speak to those issues. Is that correct, is that your recollection?

Bud Jacobs: That's my understanding. And of course, none of the conditions, none of the three conditions in their approval mentioned the requirement of a contingency plan for dry or low yielding wells.

Terry Cooke: Exactly. OK, thank you, Bud.

Dev Roszel: Mr. Chairman, this is Commissioner Roszel. Will, correct me if I'm wrong, but the [inaudible] letter that you submitted to addresses those issues. Dated July 17, 2020.

Will Moore: I'm not sure that it directly addressed this issue of Mr. Roszel. The [inaudible] Review indicated what is included in the the original report, and that is that there were 11 test wells done and that that was sufficient in terms of doing that number of test wells for this site. It indicated that as of the test wells that were dug, all of them are met or I should say all of them exceeded the gallons per minute flow that was required by the health department. Some of those exponentially exceeded it, but there was a wide variety in the yields for those 11 test wells. I can't speak directly to the memo in question, but what I would say is that there is always a chance when you drill a well on an individual lot, depending on the depth that you go to and many other factors that that well may or may not yield successfully. So this is I think probably the nature of that memo has to do with fractured bedrock being a little more difficult to predict as to the yields. And that came out in the concerns raised by aquafusion, as well as those by our independent reviewer. So it's not surprising that there is made mention of the possibility of low yielding wells. But in terms of conditioning, the approval on a contingency plan, that is something that the county would need to decide whether it was necessary based on their review as our ordinance defers to the county for the review and approval of the hydrogeologic plan.

Dev Roszel: Right. Well, I know that in the 17 documents that you sent out, because I made notes on it, there was a discussion about a contingency plan from ECS and that there were drawing low yielding wells. And I think that it was addressed. But out of all the documents, I can't really find it. And I know that in the end, it was determined that they [inaudible]. I think that if Commissioner Jacobs has these memos, I believe they were addressed in some form in all of the documents that you said. That would be interesting to get that information. I mean, if it's something that someone's concerned about, we should at least be able to look at that. Thank you.

Bud Jacobs: This is Bud again. Yes, I don't pretend to believe that the recommendations contained in what I'll call version two of this memo is in any way controlling the county obviously and given conditional approval without making mention of these things. I want you to be aware of the memos going forth only because, one, it's rather interesting that there are two versions of the same memo that may reflect the drafting changes that are involved in internal coordination over there. We don't know. And as I say, I don't know which memo came first [inaudible]. But I also mention this because it suggests that at least in March of 2019, there was some concern about the viability of some of the wells that would be drilled at this site. That's all I think it would. I think it adds to our knowledge. However, we however we view the process and its likely outcome.

Dev Roszel: Agreed.

Terry Cooke: Thank you. Anything further before we move on to the public? [off mic]

Don Woodruff: I have a comment.

Terry Cooke: Yes, sir. Commissioner Woodruff.

Don Woodruff: Inherent in all of the comment or much of the commentary from citizens concerned as well as behind the scenes sort of in what Will has presented to it and certainly in the aquafusion investigation and our own investigation is an implication. And I use that word implication that there are potentially various water supply concerns for the town of Middleburg and if we had two more [inaudible] and 36 houses, I mean, that's going to be a bundle of wells. And then you talk about the whatever they are, I've forgotten the terminology, the other units I don't see how this is not going to impact [inaudible] that is over the past 25 years that I've lived here, suffered under many water deficits. And we've had aspects of our aquifer that are going almost dry. And if you add all of this material to it, I don't think that Loudoun County or EGGI have really taken into concern the citizens, the 800 citizens of Middleburg and

the businesses of Middleburg when they made their comments with regard to their being adequate supply. Sure. Adequate supply for the applicants and their development. But it seems to be an absolute rejection of the responsibility for the citizens of Middleburg. Thank you.

Terry Cooke: Thank you. I would only comment in response to that, Don, and others, is that, among others, we do have a Bowman report dated a Bowman group report dated July 24 that says, and I quote, The applicant's mapping now fulfills the SFM requirements. We do not believe that the town should have any concerns that this new subdivision will adversely affect the town's wells. It goes on to say there is ample evidence to support the conclusion that there is ample water available to easily meet the needs of the 38 lots and the lack of impact draw down on surrounding properties and wells. That is from our group that we asked to take a look at this.

Don Woodruff: Mr. Chairman, I don't think that they have looked at the needs of Middleburg. I think they've looked at the farms that may be adjacent to [Inaudible] and to Banbury Cross, but I don't think they've looked broadly enough. Thank you very much.

Ed Fleischman: Mr. Chairman.

Terry Cooke: Yes, Ed.

Ed Fleischman: Commissioner Fleischman.

Terry Cooke: Yes, Ed, go ahead.

Ed Fleischman: I think that some of this conversation is premature. I think that public hearing is upon us and we should move on to the public hearing and then continue conversations after we get additional input from the public. Thank you.

Terry Cooke: Excellent suggestion. We are at that that hour of seven. So with that, we will adjourn the work session and move into the public hearing. I will now call to order the regular meeting of the Middleburg Planning Commission for July 27, 2020. Our first order of business will be to ask the commissioners if any of them or ask them to disclose any meetings that they may have had with applicants who have matters coming before or currently before the commission. We'll start with Commissioner Fleischman.

Ed Fleischman: Mr. Chairman, as I previously reported to you on July 4th, I was contacted by a member of a group in opposition to the Banbury Cross Reserve proposed development. They inquired if I was available to meet by Zoom over a cup of coffee with a few of their members to go over some details and findings prior to the public hearing process. I sent back in response that I was not available to discuss the Banbury Cross Reserve Project outside of the normal Planning Commission process. I encouraged them to submit written material to the Planning Commission and share their opinions publicly at the public hearing. Thank you.

Don Woodruff: Thank you. Commissioner Woodruff. Any contacts, Don?

Don Woodruff: No, no, I haven't. Oh, I've had contacts with people calling me about Banbury Cross and I reiterated exactly what I heard from Ed and that [inaudible] contact Mr [Inaudible] and present their materials appropriately. But I had no meeting.

Terry Cooke: Thank you. As the chair, I will disclose that I have had no contacts with anyone having a matter before the for the commission. Commissioner Minchew.

Rachel Minchew: Hi, I have not had any contact with anybody either.

Terry Cooke: Commissioner Roszel is absent. Excuse me, Commissioner Roszel. Forgive me.

Dev Roszel: Oh, I wish. [laughter] I have not had any contact with anyone that has anything any business before this commission. Thank you.

Terry Cooke: Thank you Dev. Commissioner Stein is absent. Forgive me. And Council Member Jacobs.

Bud Jacobs: Yes, Mr. Chairman. I have had telephonic discussions or meetings with the following individuals. [Inaudible], an adjacent property owner, Daniel Haney, one of the leaders, I guess, of the whatever the organization is called, Citizens in opposition to Banbury Cross. By telephone with John Lovegrove, who I believe is also associated with the opposition group and with the aqua fusion geologist, Dr David [Inaudible] I've had no others. That's it.

Terry Cooke: Thank you. Our agenda calls at this time for inviting public comments of a non public hearing related issue, as I explained in the work session, we're going to defer that matter until the until we're past the public hearing. Next item on the agenda is approval of meeting minutes, minutes of June 29, 2020. Work session and regular meeting. Would like to have a motion on that.

Bud Jacobs: This is Bud Jacobs, I move that we approve the minutes of the work session and regular meeting on June 29th, 2020.

Terry Cooke: Is there a second?

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

Terry Cooke: Commissioner Fleischman seconds. All those in favor of the motion please individually indicate.

Rhonda North: Council Member Woodruff.

Terry Cooke: The town clerk will call the roll.

Don Woodruff: Vice Chair Woodruff.

Don Woodruff: Present and approve.

Rhonda North: Commissioner Fleischman.

Ed Fleischman: I approve the motion.

Rhonda North: Commissioner Minchew.

Rachel Minchew: I approve the motion.

Rhonda North: Commissioner Roszel.

Dev Roszel: I approve the motion.

Rhonda North: Council Member Jacobs.

Bud Jacobs: Aye.

Terry Cooke: Commissioner Stein is absent. Thank you. The motion carries. We will now move on to the public hearing. How are we going to handle this? Are we going to invite people in or.

Will Moore: We will after the briefing and then when we open the hearing, we will first go to the applicant per your procedures. And then Rhonda has a list of those who are preregistered and she will invite those to speak via telephone first.

Terry Cooke: OK, thank you, Will. We're going to move on to the public hearing portion of tonight's meeting, and I am going to invite staff to provide us with a synopsis of the matter that is before us this evening.

Will Moore: Thank you, Mr. Chairman. Members of the commission, you have the complete staff report in your packet. I will note that since the publication of the packet, I have provided you with correspondence from our consulting engineer related to the hydrogeologist study. And we will touch on that shortly. I have also submitted to you three additional batches of public comments that have been received via email or otherwise in writing since the packet was published. I will attempt to keep this report somewhat brief while providing an overview of the application so that you may then move on to the hearing. I will, of course, be available to answer any questions once you move into your deliberation. As stated, the application under consideration is a preliminary plat of subdivision for 38 lots on 570 plus acres of land to the east of town. The proposal consists of 28 cluster lots and 10 rural economy lots as permitted in the Loudoun County AR-2 zoning district using the by right cluster subdivision option. As a portion of this land is within the town's extraterritorial subdivision control area and a portion is outside of it. Both the town and county are approving authorities on the preliminary plat. I believe it's worth noting at this point that subdivision approval actually takes place in three stages, the first of which is this preliminary plat that is under consideration. A preliminary plat does not authorize the construction of improvements within the subdivision. It does not authorize the recording of the division of land with the clerk of the court. The preliminary plat is simply a schematic representation that allows the locality to do an initial review of the proposal for compliance with applicable regulations before the subdivider has all of the necessary engineering work performed. That engineering work is included in the subsequent stages, which are the construction plan and profile drawings and the final or record plat. Some questions that the public has raised are not able to be answered at the preliminary plat stage. For example, a number of comments received have noted concerns about how traffic will be impacted by the additional residences. The details in the preliminary plat are sufficient for the Virginia Department of Transportation at this stage, however, I'll note that VDOT commented that a more detailed review would be done at these subsequent construction plan and profile stage. Just a few general notes about the zoning requirements for AR-2 cluster subdivision option as these are county regulations and not the towns. For the cluster lots in such a development, they require a minimum lot size of 40000 square feet or just under an acre, and they have a maximum lot size of 4 acres. Of the 28 lots proposed within this cluster, they range in size from two acres to 3.9 Acres, with an average of 3.0 Acres for each of the cluster, lots for the rural economy, lots a minimum lot size of 25 acres is required. There is no maximum. The ten rural economy, lots proposed range in size from 25.2 to 69.5 acres. When opting to use a cluster option, a minimum of seventy percent of the gross land area in the development must be comprised of rural economy lots or a combination of these lots and common open space. The proposal exceeds this requirement by providing for 84.8 percent of the gross land area between the 10 rural economy lots and a 69 acre open of space parcel. As noted in the staff report, Loudoun County has already indicated that it is prepared to approve the preliminary plat, subject to three limited conditions that would be addressed prior to approval of the construction plan and profile drawings. Again, that is the next stage in the subdivision process. Those limited conditions are outlined in the staff report. Staff would suggest that there are two areas related to this application that have been studied in depth at the preliminary plat stage and are worth highlighting. The first is associated with the Phase one cultural resources report. The initial application for this preliminary plat last calendar year that is in 2019 included a report that was rejected by the county as to meeting the requirements for a Phase one cultural resources report. The January 2020 resubmission included a report prepared by a different firm, and that report was overall very well received by the

county archaeologist. A second iteration of this Phase one report was submitted in April in response to comments provided by the county archaeologist. And this April version resolved nearly all of the previous comments, with just three minor recommendations remaining to which the county will condition its approval as needing to be resolved in the construction plan phase. Staff would suggest that the county has been extremely thorough in its requirements for and review of the Phase one cultural resources report. Another issue worth highlighting is that of the hydrogeologic study. As the commission recalls, an initial study was prepared by EGGI and it was submitted by the applicant and it has been accepted and approved by the county. You will also recall that a private citizen contracted with an outside firm to conduct a review of that study. That review by the firm Aqua Fusion raised some questions as to the methodology and contents of the study. Staff previously reached out to the county regarding the Aqua Fusion questions that were raised, and the county gave a cursory response that the report was, quote, prepared by a certified professional and reviewed by a third party certified professional. It was found to be compliant within the parameters established in the Loudoun County Facility Standards Manual, unquote. Subsequent to your June 29th meeting, during which members of the commission expressed a desire to have a more detailed response as to the questions that had been raised by Aqua Fusion staff again reached out to the county. The county declined to give a more detailed response and reiterated its previous statement that the report was determined by third party experts to meet all requirements. Given this response, town staff then worked through our own consulting engineer to commission an independent review of the Hydrogeologic Study. While awaiting this review, EGGI, who prepared the original study, submitted its own response to the concerns that were raised by Aqua Fusion. The review that was commissioned by the town came in a couple of days later and found that three of the 5 points raised by Aqua Fusion and these are three that related to the methodology behind the study, were found to actually meet the requirements of the facility's standards manual. Again, that is the town's own independently commissioned review. The independent review did find two other points that did not completely, in our reviewers opinion, meet the FSM requirements of and those were requirements for providing certain mapping within the study. In the response that EGGI had prepared it did explain why they had declined to provide that mapping in the original study. However, subsequent to our independent review results, the applicant again conferred with EGGI and prepared and submitted an addendum to the report, which now upon review by our consulting engineer completely satisfies the FSM requirements, as noted in the staff report, the findings of the EGGI study are very clear as to the availability of water to easily meet the needs of the 38 lots and of the lack of impacts and draw down on surrounding properties and wells. Again, the report is very clear as to those findings. The pertinent question that was being raised was, as it was, as to whether the methodology that was used to gather the relevant data to support these findings was appropriate. And in particular, was it appropriate per the established requirements of the FSM. Our independent review confirms that these findings were appropriate. And finally, I will reiterate to the commission that when you go into deliberation, following the public hearing, that your consideration of the preliminary subdivision plat is not a discretionary action and it is not a land use policy decision. It is instead a ministerial action. What that means is if the applicant application is found by the appropriate reviewing authorities to be in accordance with the established requirements in the governing regulations, then it must be approved. The commission may not insert its own discretion in its findings are actually found. So at this point, in addition to the county's indication of intent to approve, subject to three limited condition staff notes again that all previous review comments from town staff, the town's consulting engineer and the Virginia Department of Transportation have been addressed and resolved. And again, that is resolved to the requirements at the preliminary plat stage. With that, Mr. Chairman, I conclude my briefing.

Terry Cooke: Thank you very much, Mr. Moore, for their very thorough review. Because of the significance of this issue, I'm just going to make a couple of comments amplifying on what Will just shared with us and remind everyone that this public hearing is for the sole purpose of receiving comments on the applicant's request for approval of his preliminary plat. It is not for the purpose of challenging the applicant's right to use its property for the purpose of developing lots under Loudoun County's cluster zoning provision. That development is permitted by right under Loudoun's zoning ordinance. Rather, our role as the planning commission of the town of Middleburg is to determine whether the preliminary plan satisfies the criteria set out in the county and town ordinances in the county's facility standards manual.

That said, we will now look forward to receiving the comments of all who wish to be heard on this application. I have just a couple of preliminary remarks regarding the procedure of this public hearing. We have many, many folks who have expressed an interest in addressing us this evening. I am going to ask that individual speaking on their personal behalf, limit their remarks to no more than three minutes. Those individuals who are representing an organization and speaking on behalf of that organization shall be allocated 5 minutes to offer their remarks. We shall offer also allow 5 minutes to the applicant or the applicant's representative for any opening statement that they care to make. The order of speakers that we will hear from this evening will be first the applicants rep for any opening statement. Second, any elected officials who are present in person or who have pre identified themselves as elected officials on the phone will be invited to address the commission. Third, those folks on the phone who registered to speak in advance will have the opportunity to address the commission. Fourth, those who appear here in the council chambers in person will be allowed to address the commission. Fifth, those on the phone who did not register in advance but wish to address the commission will be allowed to do so at that time. And finally, sixth, the applicant or the applicants rep if they choose to make a closing statement or rebuttal will be allowed to do so at that at that time prior to the close of the public hearing. With that said, Rhonda, I think we are prepared to proceed.

Rhonda North: Mr. Chairman, we will unmute the applicant.

Terry Cooke: We will invite the applicant or the applicant representative, whether they be here in person or on the phone to address the commission at this time.

Nick Albu: Good evening. This is Nick Albu from Reed Smith on behalf of Middleburg Land 1, LLC. Can you hear me?

Terry Cooke: Yes, sir.

Nick Albu: Thank you, Mr. Chairman. Before I begin, just a procedural question. Is there a time limit for these opening remarks on behalf of the applicant?

Terry Cooke: We'd prefer you keep it to 5 minutes.

Nick Albu: Mr. Chairman, I again, Nick Albu, I will try to keep it to 5 minutes with the caveat that I might ask at the end if you might hear some comments from our engineer. But I will go ahead [inaudible].

Terry Cooke: Do the best you can.

Nick Albu: Again, members of the commission. This is Nick Albu. I am a land use attorney and litigator from Reed Smith. I'm here on behalf of Middleburg Land 1, LLC, and for the record, I'm joined by Ryan Connor. Mr. Connor is a certified professional engineer with Urban. He is the engineer of record for this application. I am also joined by phone by Mr. James Emery. Mr. Emery goes by Jamie. He is a certified professional geologist with Emery and Garrett. I'm also joined here in the room by Mr. Andy Hertneky. He is the representative of Middleburg Land One LLC, the applicant. And I'd like to note, just for the record, members of the commission that Mr. Hertneky, he is the representative of the applicant, the applicant itself, the owners are actually two long standing Middleburg families with deep roots in the community who are, by all accounts, excellent stewards of their land and in connection with this application are in fact exercising their by right existing real property rights to develop on their land was, objectively speaking, is a extraordinarily thoughtful application project that we can all be proud of. In the spirit of keeping this short, I will distill my remarks down to one fundamental point. And this is a point that the applicant is in full agreement on with Loudoun County professional staff and administration and the office of the town attorney and that fundamental question that is before the commission this evening is what type of application is the [inaudible]? And that fundamental question underlies everything that the commission needs to do this evening. And the answer to that question is simple, and it's really not

debated. The answer to that question is that this is a by right preliminary subdivision plat, subject only to administrative and ministerial review by the commission. And what is what does that mean? Well, number one, we were talking about a broad application. This is something that we cannot allow to do expressly as a matter of right in this zoning district. And what else does that mean? Well, sometimes it helps to answer questions like that by explaining what it doesn't mean. As you heard from Mr. Moore and we are in full agreement. This is not a legislative decision involving commission discretion. It is certainly not a policy referendum on cluster subdivision regulations. The simple question is, does this application meet all relevant comments and have the relevant comments been addressed and resolved? If the answer to that question is yes, as a matter of law, the application must be approved. That is the standard. And that standard is there's no disagreement between the applicant and Loudoun County and town professionals [inaudible]. On top of that, the answer to the question of whether all comments have been addressed is also on dispute. You don't have to take my word for it. Again, as I disclosed at the beginning, I am counsel for the application, you can expect that I'm going to argue that all requirements have been met. But as you heard from Mr. Moore, as you've seen and staff report, all comments have been satisfied. That's what Loudoun County has said. They have indicated they are ready to issue conditional approval of this application. And that is exactly what town professional staff said as well, you know, unlike some applications that come before this body, you have the benefit of knowing with certainty in this application that all of the relevant professionals that have been charged with ensuring compliance agreed that this application meets applicable requirement and should be approved as a matter of law. I would just say to respond to a couple of suggestions that have been made before this public hearing, the fact that some litigation might have been filed, which I'll disclose the applicant is certainly not aware of by a private party concerning matters outside regulatory requirements is completely irrelevant to the questions before the commission tonight. As are critiques or criticisms by what at least appear to us based on [inaudible] public record by an individual who is, I'm sure, a perfect gentleman, but appears to be an uncertified hydrogeologist, are completely irrelevant for purposes of the commission's review of this application. For all the reasons that the professional staff of the town support approval of this application, we ask the commission tonight to likewise approve this application. And as I promised, I will at the end and I'll take that answer at face value. But again, I'm joined by Mr. Ryan Connor the engineer of record, he knows his application inside and out. And if the commission is so inclined, I would ask for an extra 5 minutes for Mr. Connor to provide just a general overview of this project and everything that the application [inaudible].

Terry Cooke: Well, and as much as Mr. Connor is the applicant in this matter, we will allow him 5 minutes to address the commission. Thank you.

Nick Albu: Thank you.

Ryan Connor: Thank you again. My name is Ryan Connor with Urban Engineering. I just want to take a few minutes to briefly discuss where we've been, how far we've come and some of the beneficial design elements, which may not be clear to all the stakeholders. Beginning in early 2018, we began evaluating the by right development of this property. Early on, there was a great focus on locating lots in the least disruptive area creating [inaudible] house sites based on deep buffering from the existing perimeter roads, Route 50 and Sam Fred, avoiding tree loss and avoiding wetlands. Honoring flood plains, avoiding steep slopes and locating and avoiding the historic sites, avoiding [inaudible] and limiting new impervious cover. The owner and consultant walked the property on multiple occasions and worked diligently to locate the home sites that made the most sense given the previously mentioned constraints and goals. A number of layouts were evaluated and ultimately one presented here tonight was determined to have the best combination of meeting those constraints and goals while also meeting the ordinance requirements of the jurisdictions. As you already know, this is a by right subdivision and that's required to follow the established Loudoun County zoning ordinance regulations. The layout because of those regulations and then some. As the town staff eloquently stated earlier, we are far exceeding the open space percentages. We are exceeding our cluster lot size minimum. We are exceeding our perimeter set back minimums. We have proposed 483 of the 570 acres in large, rural lot and dedicated open spaces exceeding the minimum,

substantially. Exceeding minimums was not required of us. Extra perimeter setbacks was not required of us. Larger, more complimentary locks were not required of us. All these beneficial design elements were the voluntary and thoughtful choice of the development team to make the best of this development. Of the location of the home site in a clustering format ensures the least amount of impervious acreages are created by shortening road lane, reducing cul de sacs and shortening driveways. The layout locates impervious area furthest away from environmental areas such as wetlands and floodplains, which in turn allows for us to treat the [inaudible] as required by code and extend the lanes of travel for water quality and benefit. It also avoids tree removal by working within the confines of the existing pastures, which significantly reduces tree loss, preserves tremendous amounts of mature trees, and keeps the natural buffering and screening inherent to the existing hedgerows. Over the last 17 months, beginning in early 2019, we have worked diligently with the jurisdictions, both the county and the town, to work through any and all comments and concerns provided by the jurisdictions during their respective review. We have brought in licensed experts in their respective fields with significant decade long experience and with expertise specific to Loudoun County. We provided documentation and supplemental documentation meeting all requests. Our licensed professional geologists, has prepared and certified an extensive hydro geologic report which was reviewed not only by the county but by the county's hired certified professional consultant. The town staff and the town's hired certified professional consultant. And at this point in time, there are no comment on that and everything has been completely satisfied, as stated by towns, that the county has also on multiple occasions reiterated its approval upon inquiries by the town and others. All [inaudible] concerns provided by the town were immediately and adequately responded to as evidence in the town staff report and subsequent correspondence from town staff. As a result of all these aforementioned efforts, we are here tonight with no outstanding jurisdictional comment on this application with a recommendation for approval. Thank you for your time and attention to this matter. I'll hand it back over to Mr. Albu.

Nick Albu: Thank you, members of the commission. That is the applicants opening statement, of course, throughout this public hearing our I am, as well as Mr. Connor as well as anyone on our team, is we are happy to answer any questions or address any concerns that you may have. Thank you again.

Terry Cooke: Thank you. And as I mentioned earlier, the applicant representative, will have an opportunity at the end of the public hearing comments to offer any closing remarks or rebuttal. Thank you.

Bud Jacobs: Mr. Chairman?

Terry Cooke: Yes, who's that?

Bud Jacobs: This is Council Member Jacobs. I have a quick question, if you will permit it.

Terry Cooke: Yes, go ahead Bud.

Bud Jacobs: I got a question for the applicant and I guess the engineer. Does Middleburg 1 LLC have any plans or have there been any discussion to change the use of one or more of the rural economy lots from residential to commercial purposes? I ask this because, as you know, we're a small town and there are rumors all over the place about what may be in the cards in the future for the development at Banbury Cross Reserve [inaudible].

Ryan Connor: This is Ryan Connor, [inaudible] the question is, will the applicant be converting any of these lots to commercial use?

Bud Jacobs: Yeah, such as, I don't know, a brewery or a spa, that kind of thing.

Ryan Connor: As we understand it, this subdivision is required to be residential and that is the plan at this time for all lots to remain residential type of the the open spaces that would have limitations as required by the zoning ordinance, as would be the law. So at this time, there's certainly no plans for it. I'm not even certain that would be allowed.

Terry Cooke: Thank you, Rhonda. Shall we move on to the next speaker? That would be any elected officials, I believe, who care to address the commission.

Rhonda North: So the next speaker is Mayor Littleton.

Terry Cooke: Mr. Mayor, good evening.

Bridge Littleton: Good evening, Terry. How are you? Can you hear me all right?

Terry Cooke: Yes, we can.

Bridge Littleton: The joys of the joys of technology. Thank you so much. Well, before I begin real quickly, I just want to expound on something that Bud I think the concern is and I'm not sure if the applicant actually addressed this, so they can think about it when they come back at the end. We're not talking about the residential lots. We're talking about the 10 rural economy lots which can be converted to certain commercial economic issues such as a brewery. So the question is, in the rural economy lots which are 10 acres or more is there an intent at all to convert those to any non residential use. I'll say it again, any non residential use. But real quickly, I just want to thank everybody for participating tonight, the members of the commission and all the participants on the phone as they are at the town hall expressing your views. This is what we do as Americans, as an open format for respectful debate and discussion is what makes us who we are. Given the challenges of COVID I want to thank the town staff very much for working as hard as they have to accommodate the ability of the citizens and the conditions to meet as safely as possible. I think you guys have done an absolute wonderful job at making sure we maintain the safety that we need. I am very concerned at where this development is going. I'm very concerned about it from a from the perspective of our water. I'm very concerned about it from the perspective of our gateway to Middleburg and I'm very concerned about it in what it what it is the start of a much bigger problem around Loudoun County with cluster development, you know, being executed in a way today, which was not originally intended. So this is the first example. Well, not the first, but the first for us, an example of how cluster development in western Loudoun in AR-1 and AR-1 is failing us as a county and will ultimately, you know, in my opinion, lead to the demise of Western Loudoun as we know it. That being said, the planning commission, you guys have a very, very important duty tonight. And I want to say thank you very much for your public service. I know you get paid handsomely for the work that you do, but for taking all the time and all the diligence you have in exploring all the issues and all the complexities around this application and how important it is to our town and the scope under which you have the ability to review it. I want you all to know that I know and the council knows that you're going to execute your duties as faithful, dutiful citizens of our town to the best of your ability within the scope of the authority that you have. And no matter what you decide, the town council will be there for you. We appreciate all that you do and that we appreciate all that you provide to us and to us as a citizenry. And, you know, I'm concerned with certain implications made earlier in the week, excuse me last week around action that might be taken depending on your situation or whatever your decision is. And I feel it's inappropriate, but, you know, know that we are there for you. And with that, Mr. Chairman, again, thank you all very much. Thank you for everybody calling in and for those bearing the heat to make sure your voices are heard. Have a good evening.

Terry Cooke: Thank you, Bridge. Rhonda, any other elected officials who have indicated to wish to speak.

Rhonda North: No, we have no other elected officials. Mr. Chairman, I will note for Vice Chairman Woodruff, we were having some feedback from your line as some of the folks have spoken. I did mute you during their speech so that everyone could hear them clearly. And and I'll continue to do that as is as we need to if it looks like we're getting some interference. [inaudible] So the next person on the line, let me find her. Our next speaker is Jennifer Moore.

Terry Cooke: Ms. Moore.

Jennifer Moore: Yes, can you hear me?

Terry Cooke: Yes, we can. Thank you.

Jennifer Moore: Thank you. I'm Jennifer Moore, president of the [inaudible] Association, located in Middleburg. We are seriously concerned about the proposed Banbury Cross Development because of [inaudible] that affects nine hundred of the [inaudible] county zoning ordinance addressing Village Conservancy Area Section 4-900 recognizes protecting open space around the village entrance as a critical contributor to the historic resource. This development would destroy the rural setting and historic view shed of the gateway to Middleburg, considered to be the capital of hunt country which draws significant numbers of tourists. We're also very concerned that the proposed development does not adequately address protecting two civil war battlefields, both part of the prelude to Gettysburg screening movements of 1863. The applicant should conform the media to our guidelines to properly delineate the battlefield area from both the Battle of Middleburg and the Battle of [Inaudible] that should be taken beyond the initial phase one study. These resources are invaluable for the study of Loudoun's few Civil War battlefield, and they should be thoroughly addressed before the development is considered. The property also houses the historic [Inaudible] Church [inaudible], which has been eligible for national register of historic places. The structure needs to be properly researched and preserved, but the application is not yet addressed this. There is also evidence of an early woodland period occupation that should be meticulously researched and recorded before an informed decision can be made on this proposal. We urge the Planning Commission to deny approval of this incomplete application, which does not adequately address or protect the historic resources. Thank you very much.

Terry Cooke: Thank you, next speaker.

Rhonda North: Does someone have why some one member of the Planning Commission watching this on the website? If so, could you please mute it? We're getting a feedback.

Terry Cooke: Thank you. That's better.

Rhonda North: Our next speaker is Kevin Ramundo.

Terry Cooke: Mr. Ramundo.

Kevin Ramundo: Good evening and thank you for the opportunity to speak. I hope you can hear me OK.

Terry Cooke: So far, so good.

Kevin Ramundo: Good. I am opposed to Banbury Cross Reserve. It poses serious risk to the water supply of the town of Middleburg and to nearby homes and farms. [Inaudible] citizens group opposed to development. Our group of technical experts, including David [Inaudible], a licensed hydrogeologist with over 40 years experience to review the Hydro Geological Study submitted by the developer. Our experts concluded that the development study was technically flawed, did not meet some of the county's minimum requirements and that the development has potential to adversely impact water quantity and quality. Loudoun County staff also reported that the development could cause water supply problems. A

March 5th 2019 memo written by William Kane to the County Health Department, stated that the development's wells might not provide enough water and recommended that a contingency water supply plan be developed. It's interesting that there were two nearly identical versions of this Kane memo. One made reference to the need for contingency water supply. The second version, which was only obtained through a Freedom of Information Act request [inaudible] was recommend the contingency plan. I don't know why there were two versions, but I do know that if the development goes ahead and actual well water problems occur, the developer will be long gone and the town and others will be left with a huge problem. The water situation could even become worse if the subdivision is approved the developer could decide later by right to put event centers, wineries or breweries [inaudible] rural economy lots. Such changes would increase water demand and water supply risk. And this is not an unrealistic scenario. Earlier plans for this property include what had been known as Banbury Cross [inaudible] Resort Hotel, Clubhouse and Spa. I understand that county officials believe they must approve this application. That said, many believe the Planning Commission has the authority and responsibility to reject the application based on the water supply concerns and the deficiencies of the developer's hydro geology report. On a related note the developer hired a major law firm, Reed Smith, and the firm sent a letter less than two weeks ago to the town threatening a lawsuit if the town does not approve the development. I hope that the threat of a lawsuit doesn't influence your vote this evening. The future of the town could be at risk. I hope you'll decide to reject the application to protect the water supply of the town [inaudible] development. Thank you.

Terry Cooke: Thank you, sir. Next speaker.

Rhonda North: The next speaker is Daniel Haney.

Terry Cooke: Mr. Haney.

Daniel Haney: Yes, hi, this is Daniel. Can you hear me OK?

Terry Cooke: Yes, we can.

Daniel Haney: Ok, great. My name is Daniel and I live at 34572 Welbourn Road and my parents moved here in 1972. I'm a proud member of the Concerned Citizens and opposition to Banbury Cross Development, and we are a grassroots organization made up of locals and landowners who are opposed to the development because of the historic resources and long term water concerns that would be directly impacted by this application. I want to first take a minute and thank you as the Planning Commission for your service and all your hard work over the years. You took an oath to the town and you committed yourselves to making the tough decisions. I also want to thank all the citizens who have supported our grassroots effort. These loyal people proudly displayed signs at their gatepost donated to our cause to the Goose Creek Association, wrote many letters and emails to you as a town, for example, over 1200 people have signed our petition. Now undue pressure from the applicant's law firm. Pressure from the county and scare tactics must not sway your vote. The concerned citizens and opposition to Banbury development remind that Middleburg Planning Commission that full compliance with the town's subdivision ordinance, County Zoning Ordinances and Facilities Standards Manual, the FSM prior to signing off on applications, is critical to ensuring the development proposals adhere strictly to the regulations that govern them. This office strengthens the 2019 comprehensive plan. Denying inappropriate development applications, reinforces the prioritization of open space landscapes and protecting the town's water supply. This is a vital part of Loudoun's attraction, our heritage, our environmental health and our quality, our quality of life. Middleburg is a historic crossroads that Jen Moore mentioned protected under Section 4-900 of the current round zoning ordinance addressing village services. This section recognizes protecting open space around the village entrance is a critical contributor to the historic resource. In the past, you have denied large development application to senior assisted living development comes to mind. And tonight we are going to present clear technical deficiencies in this application provided by our legal counsel and our hydro experts who are speaking later tonight. It's important to note that the town hired a third party firm

they named [inaudible] for a technical analysis of the hydro of this hydro report, and they agreed with some of our findings.

Terry Cooke: Mr. Haney, I'm going to ask that you please do your best to wrap up your comments. Thank you.

Daniel Haney: We ask you to push aside the undue pressure research our expert testimony, protect the town's best interest and make the tough decisions. And please vote no. Thank you.

Terry Cooke: Thank you, sir. Next speaker.

Rhonda North: Our next speaker is Slade Thorpe.

Terry Cooke: Mr. Thorpe.

Slade Thorpe: Hi. Yes, this is Mayor Slade Thorpe. I just wanted to say thank you very much for letting me speak. I do not offer any of the technical or expertise that many of the gentlemen and ladies who have already spoken can provide. But I just offer a cautionary tale from the town I grew up in, in [Inaudible] South Carolina, where a very similar development was put in [inaudible] respect the local zoning. That development did not respect the zoning. And I thought for that it's cautionary for what may happen here. So thank you very much heartily for the committee to vote against this. Thank you.

Terry Cooke: Thank you, sir. Next speaker.

Rhonda North: Our next speaker is David Blanchard.

Terry Cooke: Mr. Blanchard.

David Blanchard: Good evening. Thank you. My name is David Blanchard. I'm a resident of Carters Farm Lane, and I appreciate your time and allowing me to voice my opposition to this request. Thank you, Mr. Chairman and commissioners and the staff of the town of Middleburg. My predominant concerns are around the water traffic safety and open spaces that this development will infringe upon great opposition to this, the risk of my water for an agricultural property and my neighbors to also have agricultural property depending upon the water that is under our feet, this development will greatly diminished that access, regardless of what some of these studies have said. Secondly, the traffic implication that I'm sure will be addressed in further discussions is hugely worrisome to me and my family. These are rural roads. Both Sam Fred and Carters Farm Lane. Carters Farm is not a paved road or suggestions that the development will actually be a paved community, which implies a different level of community engagement and connection to the land itself simply through pavement. Sam Fred Road and the entrance that comes into Middleburg is dangerous as it is, and the addition of significant new traffic worries me from a safety standpoint with the equestrian community, joggers, pedestrians and cyclists, and certainly with the aspect of the open land zoning requirement of our county, we need to respect that. In addition to the comments about the overall safety, I think these rural economy lots, if there is any kind of worry about the potential future development, the developer should be very confident in his desire to be respectful to our community and immediately place those in perpetual conservation easement. If they're not interested in perpetuating that conservation in the open space, then they're not interested in our community either. Thank you for your time. Appreciate it.

Terry Cooke: Thank you, sir. Next speaker, please.

Rhonda North: So the next speaker that I had on the list was Jean Perin. However, I do not see her on the line, so we'll move to John Lovegrove.

Terry Cooke: So what was the name again?

Rhonda North: John Lovegrove.

Terry Cooke: Mr. Lovegrove.

John Lovegrove: Yes, sir. This is John Lovegrove. A point of order. I'd like to ask if I represent [inaudible] I'll have 5 minutes of my remarks or the regular three minutes.

Terry Cooke: 5 minutes? Yes, sir. Go ahead.

John Lovegrove: Ok, thank you. I really appreciate it. The members of the council. Mr. Chairman, I represent the Save Rural Loudoun organization. We very much oppose this development for a number of reasons. I'm also a member of the FSM committee that maintains the manual at the county level. So I know a little bit about that manual as well. What I want to first speak about the recent board member initiative that the supervisors passed to preserve agricultural land in Loudoun County. As you may know, we've lost over a third of the agricultural land of Loudoun County in the last 10 years. There's approximately two hundred and twenty thousand acres remaining. This development alone will remove two and a half percent of the prime farmland in our county, that type 1 soil, which is the highest quality soil. And once it's removed, we can never go back. We can never recreate those farms. There's increasing concern about the ability to support ourselves with local agriculture, given the effects of climate change on our country's traditional producing land such as the Great Plains and the valleys out in California, the salination of the water supply out there and some of [inaudible] the concern about can we feed ourselves in the next 20 years? I'd like to point that out as an important thing that we need to think about this development as well as the engineer of record pointed out, has chosen to site the clustering to 28 houses on ninety nine acres on the prime soil in this property on the type one soil. The best soil in Loudoun County, because precisely the reason the engineer sited. These are easy to develop there. You know, there there's no [inaudible]soil, there's no rock. There's no. Impediments to building out, but it's also eliminating that land in Loudoun County for agriculture, and that's a problem with our current regulations. The board has chosen to make that the highest priority for the zoning rewrite. I have instructed staff to make that the first thing they address in the upcoming zoning ordinance rewrite. I understand that doesn't apply to this property yet, but I'd like you to take it under advisement, among other things, that need to be considered in the holistic view of this package, not just what the lawyers tell you you have to approve, but really what's right to do for the town. And I think that it's important to note a couple of things that we found out tonight. One is this lawsuit that the Smith attorney dismissed so frivolously is going to cloud the title of this property. And the one of the requirement of the submission for the preliminary plat is that there is clear title, but there is no longer clear title to this property. And I think that's something that's on its own will eliminate this plat for consideration. And until that title is clear, this plat shouldn't be resubmitted. Secondly, I think the by right uses that are allowed under the Loudoun County zoning ordinance really need to be explained. Those 10 rural economy lots can be used for things like portable dwelling, trailer construction, manufactured housing. They can be used for an animal hospital. They can be used for winery's. They can be used for a sawmill. I'm sorry, sawmill is not by right use, but a restaurant is. So we can have restaurants on all of those lots I mean, the list goes on. These are not uses that are in general fitting in with the character of Middleburg, but these are by right uses if you choose to divide this property and create this subdivision and despite what everyone says, this is our one and only time to reject this proposal. Once this thing goes to a preliminary plat, it's a subdivision. It is recorded as a subdivision. Later on, you can have all the comments you want, but it will still be a subdivision. So I'd like to close with the fact that.

Terry Cooke: Please proceed with your closing.

John Lovegrove: Thank you very much for your time and attention, gentlemen and ladies. I appreciate it.

Terry Cooke: Thank you, sir. Next speaker.

Rhonda North: Next speaker is Jean Perin.

Terry Cooke: Ms. Perin.

Jean Perin: Yes, yes, I'm on. Can you hear me?

Terry Cooke: Yes, we can. Please proceed.

Jean Perin: Thank you, first of all my name is Jean Perin. I want to thank the Planning Commission for what they do because I was on the Planning Commission for many years during the 1990s when I was a resident of Middleburg from 1990 to 2004. So my heart goes out to I thank you. And I know all of us who are opposing this prospect of a development support you and the hard work you do. And we know you're going to make the right decision. It's very much under duress. So we preserve it for many decades. We in the community have preserved it. I'm speaking as a private citizen and then others will come to take advantage of it and profit. And I can guarantee you that not only will also [inaudible] withdraw on incredible water supply that is not there, plus other eco agricultural use as the brewery or wineries, et cetera, they'll make a community out of it. And we have to stand up against this. I thank you for your support and my heart goes out to you. Thank you.

Terry Cooke: Thank you, next speaker.

Rhonda North: The next speaker is Eugene Scheel. [off mic] Scheel. S C H E E L.

Terry Cooke: The next speaker is, I'm sorry, it's either Mr. or Ms. Scheel.

Rhonda North: Eugene.

Terry Cooke: Oh, Eugene, please. Please go ahead.

Eugene Scheel: Are you referring to Eugene Scheel?

Terry Cooke: Yes. Yes, yes. Go ahead.

Eugene Scheel: Eugene Scheel 39264 [inaudible] district water. I'm a professional historian and also make a very detailed map in 1985 I was contracted by the town of Middleburg to write its bicentennial history, came out in 1987. The [inaudible] of my remarks is that the intent of the Middleburg [inaudible]. To begin with on the July 3rd, 1961 two citizens of Middleburg [inaudible] quote that all the land in the vicinity of the town of Middleburg end quote be rezoned for residential to agricultural use. This request was before the Loudoun County Board of Supervisors, there were no objections. Supervisor Joshua [Inaudible] made the motion. He was [inaudible] supervisor and the board granted the rezoning. You may read that on page one hundred and seventy five of my History of Middleburg [inaudible]. [inaudible] the resource management plan Loudoun County on page thirteen. That was the first map in the history of Loudoun County on one sheet showing the [inaudible] agriculture of the land in the Middleburg area, including all the land on this development proposed [inaudible]. It has a high [inaudible] for agriculture. I moved [inaudible] to January of 2000. The official document proposed purchase of development rights program by the [inaudible] State Advisory Committee. There are a whole series of that, beginning with [inaudible].

Terry Cooke: Speaker, please do your best to wrap up your comments. Thank you.

Eugene Scheel: The purpose of the maps [inaudible] a very high soil suitability for agriculture. Thank you.

Terry Cooke: Thank you. Next speaker.

Rhonda North: Our next speaker is Jane Covington.

Terry Cooke: Ms. Covington.

Jane Covington: Yes, hello.

Terry Cooke: Hello. Please proceed.

Jane Covington: Thank you for your time and allowing citizens to [inaudible] their opinion. I worry that the Banbury Cross housing development has too many unanswered questions for immediate approval.

Terry Cooke: Ms. Covington. Excuse me. Excuse me. I've been remiss. I should remind each speaker as they introduce themselves to please state their address for the record, I've been remiss in not.

Jane Covington: Can you repeat what you said?

Terry Cooke: I'd like you and any other speakers who address us this evening when they introduce themselves. Please provide us with your address as well.

Jane Covington: Yes, sir. I live on Foggy Bottom Lane in the village of Bloomfield, and I'm a property owner in the town of Middleburg.

Terry Cooke: Thank you. I was sorry to interrupt, but please proceed.

Jane Covington: Oh, no, sir. Thank you. I worried that the Banbury Cross housing development has too many unanswered questions for immediate approval. In September, the application was denied and I wonder if at nine months later, we're in the same position with still too many unanswered questions. My first question is, is Middleburg's water supply properly protected. In the [inaudible] it's not clear if there's sufficient water supply both the federal housing development and the town's existing and future needs. The town of Middleburg has commissioned a well-head protection study, which is not yet complete. The study should be completed before such plan approval. Second, is Middleburg's sewage treatment plant protected. The impact of the Banbury Cross housing development to the sewage plant is not yet known. Any significant reduction in groundwater discharge to the [inaudible] will reduce the capacity of the town's sewage treatment plant. A more rigorous analysis of the potential for reduction in stream flow should be performed before approval of the Banbury Cross housing development. Third, are existing wells of neighboring farms protected. Hydrological conditions indicate that the Banbury Cross housing development may not have adequate water resources to supply the 38 new home without impacting neighboring farms. Monitoring procedures should be put into place for planned approval. Finally, with everything handled properly during the review process of this, the middle of Banbury Cross housing development, there are too many unanswered questions. Please vote no until all of these questions are answered. And thank you for your time.

Terry Cooke: Thank you. Next speaker.

Rhonda North: Our next speaker is Bundles Murdock.

Terry Cooke: Ms. Murdock, welcome.

Bundles Murdock: Good evening. I am Bundles Murdock of 609 Blue Ridge Avenue in Middleburg. As some of you may know, I served on the Planning Commission several terms before I was elected to town council. I therefore appreciate and thank you for the work you're doing. And I echo Mayor Littleton thanks to you, because I know how hard it is. I have many objections to the proposed Banbury Cross development, but the most pressing concerns pertain to development and water. While on the town council, we talked about water almost every time we met. We must do everything we can to protect our wells and groundwater resources. More development will not help our town's water situation in the future. And water is so very precious. Years ago, when I was learning about planning and the rural countryside, I was taught it was the best practice to expand within town in order to keep farms and landscape open. This is very much the case with Middleburg as we protect the area we treasure, the Banbury Cross development goes completely against that theory. As it is, our little town is crowded every weekend with visitors. Most of them are coming from subdivisions to our east. They are searching for that small town feeling something we have and must fight to maintain. Please voice the citizens concern and opposition now and in future discussions with the county. And let me finish with a thought that has been said by another speaker that cannot be said too much. Land built on is land lost forever. We can never get it back. Thank you.

Terry Cooke: Thank you, Ms. Murdock. Next speaker.

Rhonda North: John Denegre.

Terry Cooke: Mr. Denegre.

John Denegre: This is John Denegre. Can you hear me?

Terry Cooke: Yes, we can, sir.

John Denegre: Yes, I live 22277 Sam Fred Road, just outside of Middleburg. I just first want to commend the Planning Commission, for taking the time to hear the concerns of our community and for holding up so well under all the pressure from the county. And for the last 35 years, my family has lived on a farm bordering Sam Fred Road Within a quarter mile of Banbury Cross. We oppose the Banbury Cross development for many reasons, least of which is how it will devastate why people come to visit and to live in our area. And as someone said at the last hearing, no one comes to Middleburg to see more Fairfax. And if the allure of our town is eroded, you don't need a fancy computer app to know what that's going to do to the town's finances. But my focus here is water resources for the town and our area. Our property, as I mentioned, is less than a quarter mile from Banbury Cross. And in recent years we've had two wells run dry and our neighbors have had similar water shortage problems. And the trend really appears to be worsening. And more new and deeper wells are becoming the new norm. Banbury Cross looks like the perfect storm to push our water supply problems from bad to critical. Critical for our neighborhood, critical for the town. And frankly, with no water, we're all up the creek missing far more than just a paddle. And so, therefore, I implore you to continue carefully assessing Banbury's damage potential for our local water resources. And as you look at the application, just keep asking what everything handled properly per the county requirement would the development affect town well yields and would it affect the flow in the [inaudible] creek and thus create problems for the sewer plant? And you know what's really scary about this application and several people have mentioned it, is that this development can later morph into an even bigger water sucking machine. And of course, I'm referring to those 10 rural economy lots that can later be repurposed into commercial ventures that might consume far more water than private homes. And to me, it sure sounds like a trick to get the camel's nose under the edge of the tent. I know you're going to continue with your due diligence, but from what I've seen of the local water situation in the last 35 years and from results of recent studies, Banbury Cross looks to be a very clear vote of no for the town of Middleburg. And I want to sincerely thank you for all your hard work on this challenging project. And here's hoping the county truly listens to its citizens. Thank you for listening.

Terry Cooke: Thank you. Thank you, sir. Next speaker.

Rhonda North: Evan McCarthy.

Terry Cooke: Mr. McCarthy.

Evan McCarthy: Hi. Good evening, Commissioners. Can you hear me?

Terry Cooke: We can.

Evan McCarthy: Hi, my name is Evan McCarthy and I live on Cedar Bluff Court in Round Hill. And I'm speaking tonight on behalf of the Piedmont Environmental Council. I'd like to take this opportunity to share a few concerns about the Banbury Cross application and how it may affect Middleburg's most valuable natural resource, water. A fundamental purpose of zoning is to protect human health, safety and welfare and adequate and safe water supplies is the most basic human need. Ensuring that the town's wastewater discharge does not exceed the limits of its Virginia pollution discharge elimination system permit is critical to the town, [inaudible] health and the local environment. Middleburg and Loudoun's rural areas are extremely dependent on groundwater quantity and quality to remain viable in the long term without extending essential utility lines across the county and fundamentally changing Western Loudoun. The proposed application does not ensure groundwater protection, the applicant only recently provided the necessary post development groundwater map contours. County regulations require the application to evaluate the change in groundwater flow direction and to include a map showing this evaluation with little time to assess the recently submitted maps, this commission may have difficulty assessing the change in groundwater flow, post development and the associated impacts to existing surface waters. Furthermore, the applicant's Hydrology Report does not discuss the potential impacts to water resources caused by the overall estimated water withdrawal from the proposed wells. The applicant's consultant use a proxy well in the center of the 570 acre parcel to evaluate impacts to water resources instead of distributing the pumping at each proposed lots well, the proxy well location does not accurately represent the public distribution from the proposed lots post development. Unfortunately, the proxy well location supports the data that assumes that future groundwater extraction will be focused at one location, given the groundwater will be extracted from multiple wells, creating a large area this commission may not have adequate information to address anticipated water level declination. I'd also like to add that at the town's request, [inaudible] submitted a review and in that review contained comments of the applicant's hydrology report dated a more detailed modeling approach in sensitivity analysis could have provided greater insight into the uncertainty associated with the modeling calculation. Lastly, in their review the Applicant Hydrology Report, the county's consultant mentioned that the possibility does exist for dry or low yielding wells to be drilled at the site, given this possibility. The county consultant recommended that a contingency plan be developed for the site to address how water will be supplied to [inaudible] dry or inadequate well yields. PEC supports the county's consultant's recommendations that this commission may have all the necessary information to further assess how Banbury Cross can negatively impact Middleburg existing water supply. Thank you.

Terry Cooke: Thank you, sir. Next speaker.

Rhonda North: Jem Bengol.

Terry Cooke: Mr. Bengol, welcome.

Jem Bengol: Hello this is Jem Bengol.

Terry Cooke: Excuse me. Ms. Bengol.

Jem Bengol: 1508 Shields Terrace in Leesburg and I am also Land-Use and policy staff with PEC. I stress that Banbury Cross Reserve application must meet both county regulations and town subdivision requirements before approval. Much of the attention has been paid to county regulations, but all existing requirements for preliminary plats in the subdivision ordinance must also be met. To follow on to my colleague's comments regarding county regulations and the need for contingency water supply plan we think it's a critical point, particularly because of the potential future uses on the 10 rural economy lot. Unless county regulations change or is otherwise prohibited, future owners may develop with water intensive uses that are permitted like farm breweries or event centers. Groundwater usage with this type of use may far exceed what might be expected with houses alone and further highlights the importance of a contingency water supply plan. The unfortunate truth is that Virginia law does not protect neighboring landowners from harm, whether they are large or small farms or towns. Therefore, Middleburg must be particularly careful in its deliberations on this application. Looking forward, both the town and Loudoun County need to strengthen their ordinances to protect a critical water resources. The town's source water protection plan calls for more analysis, but not additional subdivision ordinance requirements. Middleburg ordinance should be upgraded to shield the town from impacts in the source water protection area, which generally corresponds with the subdivision control area. Groundwater and surface water and streams are directly connected, so impacts to town wells may occur from beyond the source water protection area, depending on underlying factors groundwater flow and geology. The town ordinance does not require studies to show adequate streamflow for the sewage treatment plant. This kind of detail is important in helping the town evaluate and take steps to protect its utility infrastructure. Inadequate data from the well studies and insufficiencies in Loudoun's ordinance pose a threat to the town's county regulations need that are well and groundwater protection. More data on groundwater levels and stream flow and a comprehensive analysis of well data available in a public database will inform decision makers about these relationships for long term planning. Residents of our towns, villages and countryside need assurance that an adequate and safe supply of drinking water is a primary outcome of regulatory decisions. For all of the reasons above, we encourage the Planning Commission to defend town interests, ensure that all subdivision requirements are met, and recommend stronger laws going forward. And thank you for your service.

Terry Cooke: Thank you very much. Next speaker.

Rhonda North: Jim Nichols.

Terry Cooke: Speaker Nichols.

Rhonda North: Jim Nichols. Ok. And we'll try the next one, which would be Michelle Watson.

Terry Cooke: Ms. Watson.

Rhonda North: Michelle Watson.

Terry Cooke: Let's move on.

Rhonda North: And the next one, Roger Smithwick.

Terry Cooke: Roger Smithwick.

Roger Smithwick: Hi, my name is Alfred Roger Smithwick, I'm the great grandson of Sam Fred. My grandfather was [inaudible]. My mom was [inaudible]. But for some reason, my name seems to be left out of the Banbury Cross development controversy.

Terry Cooke: Excuse me, sir, could you please provide your address? Please provide your address.

Roger Smithwick: [inaudible] Sam Fred Road, Middleburg, Virginia, 20117.

Terry Cooke: Thank you.

Roger Smithwick: I've always believed that I'd rather be part of the solution than the problem. What I don't understand is why if the people of Middleburg don't want the land development, why don't they just buy it by the property? When my mother died. I was already committed to my father's farm in Maryland. I knew I had no possibility of being able to pay the taxes. I made it clear to anyone asking I needed to make a move fast. [Inaudible] was the first person to put money in my hands which I desperately needed. [inaudible] the organization paid for the bill, the taxes on the property etc., which allowed me to make an attempt to preserve the land. I don't understand the [inaudible] refusing to [inaudible] the land. To my knowledge, nothing can stop them from hunting other than the ignorance. My sister in law speaks of her family putting land into easement, which is a lie. My mother, who is no relation to her, is the one who with my brother and I approving put the land in to easement. My nieces may have also been involved. But by no stretch of anybody's imagination did Eva have anything to do with it. The biggest protest that I hear people saying is the possible detriment to existing wells and ground water, why not allow town sewer and water? But forgive me for offering a solution rather than a problem. I desperately need affordable housing for my employees, etc. but the town refuses to give town water to a house on the corner of Route 50 and Sam Fred Road. Why is this when the house across the road from it has town sewer and water? If I could get town sewer and water, I might stand a chance of keeping this house as a personal residence. However, I still need permission from the town to build or tear down the existing structure. Then I can build something I could afford. Estimate to redo this house I have received exceeds two hundred and fifty thousand, which I do not have. I also think the town of Middleburg would benefit from not having this dwelling so close to Route 50. Then I could put a fruit stand on the corner and try to raise produce to sell maybe some type of farmer's market. Thank you.

Terry Cooke: Thank you, sir.

Jim Nichols: This is Jim Nichols.

Terry Cooke: Oh OK. Please proceed, sir.

Jim Nichols: I apologize for the disconnect. The technology on [inaudible] has a lot to be desired I guess. But my name is Colonial retired Jim Nichols. 22064 Sam Fred Road. My family and I have lived here [inaudible] years. [Inaudible] over twenty years. I mention these things just because I am familiar with working in the bureaucracy having been in the military as long as I was. I am familiar with the uniqueness of Middleburg which brought us here years and years ago. I have gone before you before. And while I support the position that has been delineated particularly over water concerns, one of the principal concern is safety and people's lives at the intersection of Same Fred and Round 50. Years ago, I the [inaudible] fortunate to watch what went on at Log Mill Road off the ground fifteen when they were allowed to put in high dollar homes in the access off of Log Mill with the winding roads similar to the way Route 50 is if you have no business, you couldn't see oncoming traffic. The end result is over a ten year period of time teenagers died because of the design of everything. And I've been told the VDOT has said that the trips that will now be increased [inaudible] or something that is not require further study. I would challenge the bureaucrat that made that decision to come look at it go out onto Route 50 from Sam Fred at 6 a.m. in the morning with a 6 horse trailer or maybe in a school bus, pull out onto Route 50 as the day is winding down. It is dangerous indeed. The turning lane. It needs a roundabout, it needs a traffic light you choose. I'd like to the mayor of the good town of Middleburg go to the Board of Supervisors chairman for Loudoun and say we've still got a pending problem and if we don't act, we'll be like Prince William and people will die at some point in time and all that could have been avoided by our thinking ahead. And that's my concern. To be honest with you, I thank you for your time tonight. And I appreciate you letting me get involved in the discussion. And I pray that you make a good decision and have a good night.

Terry Cooke: Thank you, sir. Next speaker.

Rhonda North: Michelle Watson.

Terry Cooke: Ms. Watson. Are you with us? All right.

Rhonda North: Let's go to the next one. Is Mrs. Edward Wright.

Terry Cooke: Mr. Wright.

Rhonda North: Mrs.

Terry Cooke: Mrs. Excuse me. Wright. Mrs. Wright. Move on.

Rhonda North: Brad Bondi.

Terry Cooke: Mr. Bondi. Mr. Bondi.

Brad Bondi: Yes, hi, good evening. Members of the Planning Commission. My name's Brad Bondi and I live on [Inaudible] Road. I'm a resident of the area and a conservationist. As Mr. Ramundo said in his remarks, the planning commission received a threatening letter from the applicant lawyers. The letter states, quote, A disapproval of the application by the Planning Commission without a proper basis would be, by definition, arbitrary and capricious and in violation of Virginia code. The key language there is without the proper basis. Ladies and gentlemen, you have more than a proper basis. You have several proper basis by which you should not only disapprove, but you must disapprove in accordance with your duties and obligations. First and importantly and I anticipate you'll hear more from Steve Price shortly. The application does not comply with the Middleburg subdivision ordinance, which absolutely, unequivocally applies here. Section 1.3.A of the Middleburg ordinance provides that the provisions of this ordinance relating to the subdivision of land shall be applicable in Loudoun County within the one mile extraterritorial jurisdiction area granted to the town. By my count and by all means, please confirm there are 28 [inaudible] lots and two larger blocks proposed that are clearly within this one mile area and therefore squarely fall within the ordinance. Well, importantly, the ordinance says that it is to protect the public health and safety, general welfare, and that responsibility is directly charged to you the planning commission because you have a specific duty to, quote, review and either approve conditionally approve or disapprove a preliminary plat application in accordance with all with excuse me, with the requirements of this ordinance. The ordinance requires 26 different specific items. And by my count, item thirteen and twenty one are missing from this preliminary plat as you'll hear more, Steve Moore. It's important because item thirteen, for instance, talked about the requirement for the preliminary layout of provisions for collecting and discharging surface drainage. There's no preliminary layout provided that's sufficient to do that. It's deficient and should be rejected for that reason. Item twenty one talked about the location of approved well site, if applicable. I don't see any approved wells in this as required from that application. The second issue is you've heard that the hydrological report is fundamentally flawed. It's deficient. You'll hear more in a few minutes from Mr. Buss and it's deficient and fails to meet the FSM requirements. Third, and most importantly to me personally is the applications archaeological report is grossly deficient. It wasn't well received by the county archaeologist as Mr. Moore claims it glosses over a historically important but very dark and horrific [inaudible]. The subject property was owned by slaveholders in the eighteen hundreds. It's an awful part of Middleburg's plat but one that the archaeological report provides short shrift. Don't take my word. Look at the June 3rd 2020 report from the county. It talks about finally the staff notes at the top of page 4 that the revised Phase one plan report has been expanded to include additional historical background incorporating information on the neighboring African-American community.

Terry Cooke: Mr. Bondi, excuse me, please try to conclude your remarks.

Brad Bondi: Sure. It goes on to say no discussion, however, is provided of the neighboring property. But importantly here, it states in footnote one of that report, both that there were two slave houses, both of which have been located within the current subject property and there's possibly slave graves. You cannot let this go through without identifying the location of the slave dwellings and the slave graves here. There are 12 lots of which there are drained field above the archaeological site.

Rachel Harshman: What does this have to do with Banbury Cross?

Terry Cooke: Thank you, Mr. Bondi. Thank you. Next speaker.

Rhonda North: Let's try Mrs. Edward Wright again.

Michelle Watson: This is Michelle Watson. May I speak?

Rachel Harshman: The slave graves have nothing to do with Banbury Cross.

Michelle Watson: Hello?

Terry Cooke: Ms. Watson? Ms. Watson? Is that Ms. Watson? Would you please state your address?

Michelle Watson: This is Michelle Watson, may I speak?

Rachel Harshman: Stick to the topic.

Terry Cooke: Ms. Watson, would you please state your address before your remarks? Ms. Watson?

Rhonda North: No, it's Mrs. Edward Wright.

Michelle Watson: My address is 39499 Snickersville Turnpike.

Terry Cooke: Is that Ms. Watson or Mrs. Wright?

Michelle Watson: Someone keeps muting me. This is Michelle Watson, may I please speak?

Terry Cooke: Yes, please.

Rhonda North: It's not it's not her time. It's Mrs. Watkin's time right now. Watson's.

Terry Cooke: We are hearing remarks from Mrs. Watson right now.

Rhonda North: Mrs. Wright.

703 972 6677: I'm a representative of Ms. Watson, can she speak?

Rhonda North: Oh, she's a representative.

Will Moore: If we can wait one moment, we'll sort this out.

Terry Cooke: Give us one moment, speakers. Hold on, please.

Danny Davis: [inaudible] And she keeps repeating herself as well. OK, so Ms. Watson is the one who was supposed to come after Mr. Nichols. Ask Mrs. Wright to wait if she can. OK, ask Mrs. Wright to wait.

Rhonda North: Mrs. Wright. We're going to ask you to wait for a moment.

Terry Cooke: Everyone who wishes to speak will be heard. OK, but right now we are receiving remarks from Ms. Watson.

Michelle Watson: Thank you. Thank you. This is Michelle Watson. Can you hear me?

Terry Cooke: I can. Please state your address again, please.

Michelle Watson: Thank you. It is 39499 Snickersville turnpike. I have a small farm that is in the frontage of Snickersville turnpike and it backs up to Sam Fred. Thank you for allowing me the chance to speak today. I am against the Banbury Cross development primarily because of the water resources issue. Specifically, I have a recent next door neighbor example of why this is a great concern to me. A new landowner purchased a tract of property about 20 plus acres, the back of my property and going toward Sam Fred and between basically his property is between mine and the proposed Banbury Cross development. Long story, very short. He tried to get water, he wanted to have his house close to Sam Fred, but he was unable to get water to the well. Several, I think, attempts or studies was not possible. And therefore, now they're looking at bringing water down from closer to my area, from my farm, my well area, my water table close to the Snickersville turnpike. So my concern is, whatever the studies say, that this is not going to have a detrimental effect on the water resources in the area.

Rachel Harshman: You can have water but he can't have water? Really?

Terry Cooke: Please do not interrupt the speaker. Ms. Watson. Continue.

Michelle Watson: My point is that whatever is said, the reality [inaudible]. He's a brand new landowner, he's trying to get water for the well that he wants towards Sam Fred and now he is coming towards this area. That that's all I need to say. That's all I want to say.

Rachel Harshman: You're an idiot.

Terry Cooke: Thank you, Ms. Watson. We'll now hear from.

Michelle Watson: I don't think anyone else should be making personal slurs like that. I don't think it's necessary. And I think it's beneath this body to talk to people in that way. Thank you very much.

Terry Cooke: Thank you. Next speaker.

Rhonda North: Is Mrs. Edward Wright.

Mrs. Edward Wright: Hello?

Terry Cooke: Yes, welcome.

Mrs. Edward Wright: Yes, this is Mrs. Edward Wright, and I'm calling on behalf of my husband, Edward Wright.

Terry Cooke: Please state your address.

Mrs. Edward Wright: [inaudible] the Middleburg community and we live exactly one mile east of Middleburg on route 50.

Terry Cooke: Could you please state your address?

Mrs. Edward Wright: One mile east of Middleburg on Route 50. 37298 [inaudible] John Mosby Highway.

Terry Cooke: Thank you.

Mrs. Edward Wright: All right. I am very impressed with how our town has rallied in defense for our village people to come here and they come here wanting something that we have and they destroy it as soon as they come. So I'm writing and reading a little bit more of the future. And I'm an older person as my husband and I'm speaking from the past. And what I'm saying is that that we have free parcels of property, which [inaudible] the proposed subdivision and the lost [inaudible] would not only affect the use of our home, but also the livestock and the animals on the farm. We have 4 fields of cattle grazing and we have a working stall with horses when they are on site. We have been threatened into submission of the town and the council and the questioning. And we are concerned that we possibly, with the loss of water to the farm could lose our home in addition to the farm. The agriculture. It was AR1 at one point. I'm not so sure exactly where it is now, but we are directly aligned with the Banbury Cross and we are fearful for the future if this continues. You are fighting a good fight and I do hope people rally with all this information. All [inaudible] all the numbers, all the information that they have to win this fight. Because you are right, if we lose the land, we will never get it back and we will lose something that no one will ever be able to retrace. Thank you very much for your time and continuing to wait for me on the call.

Terry Cooke: Thank you, ma'am.

Mrs. Edward Wright: And I'm proud of you. I've never been more proud of the Middleburg. You're doing such a good job. Keep up the fight. Thank you.

Terry Cooke: Thank you again. Next speaker.

Rhonda North: Is John Rizik. John Rizik?

Terry Cooke: Mr. Rizik?

John Rizik: 23165 Carters Farm Lane. Can you hear me?

Terry Cooke: Yes, we can.

John Rizik: Thank you for the opportunity to let me speak. My family owns this farm since 1968 and after 28 years on the street in law enforcement, I've retired and live full time here in Middleburg, hoping to get into the peaceful rural community. There's been a lot of talk about the war on this phone call. And the irrigation system currently in use is actually in progress right now at the polo field, which supports this proposed development is in progress and if you'd like to see it yourself, it's a tremendous volume of water. In the event you come out here to look at it and you can hear how loud the diesel pump is that pumps the water to the field, which prevents me from peacefully sitting on my porch and having dinner because of the noise. I'm located. I'm a direct neighbor of this proposed development with the development being directly west of me, Banbury Cross Farm is directly north of me, all of which supports this development is across Carters Farm Lane from me. It is my opinion that in the development of this polo field, they show a total disrespect for county and state regulations. In addition, very disrespectful and complete lack of consideration for the neighbors. On May 9th, 2018, large speakers mounted

approximately 20 feet in the air were installed at the polo field. The amount of noise coming from the polo field is as loud as a college football stadium. It can be heard inside my residence with the doors and windows closed. The amplified electronic sound from the P.A. system prevents the peaceful enjoyment of my property. This is developed into a nuisance violation. In addition, with the 10 proposed rural economy lots, I've heard rumors of there being additional polo fields, which is going to have the same concerns with the irrigation and the use of water. The polo field that has been operating here so far is open to the public. They serve food and alcohol and this is a commercial business being operated on land that's designed for agricultural use. I respectfully request that you reject the development proposal. Thank you.

Terry Cooke: Thank you, sir. Other speakers.

Rhonda North: Jane Page Thompson.

Terry Cooke: Ms. Thompson?

Jane Page-Thompson: Hello. I'm here. Can you hear me?

Terry Cooke: Yes, we can.

Jane Page-Thompson: So my name is Jane Page Gunnell Thompson. I am a capital contributor of the Gunnell Family Dynasty Trust, located at 22959 Carters Farm Lane. I am domiciled at 240 Knox Avenue in Aiken, South Carolina. I appreciate greatly all of the comments tonight and everyone's time. The question before the Planning Commission tonight is about whether or not this application and administrative and ministerial level of approval and one of those levels is the land development application certification standard of the county of Loudoun. And one of those things is that the trustee has sole authority and that the title is clear in order for an applicant to present an application before both the county and thereby the town of Middleburg. And as of today, there is a lawsuit filed that requesting the trustees authority and the trust administration of using [inaudible] the applicant approval to ask for this preliminary plat. So my request to you all tonight, in light of the subdivision regulations of Loudoun county, the requirements of municipalities and counties within the state of Virginia, is I ask you, when you vote tonight to vote to table any decision until the court of Loudoun County can determine whether or not there is a lawful transaction that has occurred relating to this parcel and whether or not the authority to make this application of this preliminary plat rests with Mr. [inaudible]. And I ask that as a capital contributor to the Gunnell Family Dynasty Trust of which I am a beneficiary and I knew nothing of this application until it was brought to my attention by others in the public, not by the trustee. I respectfully thank you for your time today, and I urge you to vote to table this decision until the courts in Loudoun County can determine who has the authority to present this application for preliminary plat. Thank you.

Terry Cooke: Thank you. Next speaker.

Rhonda North: Audrey Wilde.

Terry Cooke: Ms. Wilde.

Audrey Wilde: Good evening, can you hear me?

Terry Cooke: Yes, we can.

Audrey Wilde: Hello, good evening. Thank you for letting me speak. I am a resident on Carter's Farm Lane and as a long term resident, I firmly support the development of Banbury consider. The town and surrounding area has long been in need of housing, and this project is going to bring in new and current residents that will bring in as much as possible, but still preserving and unifying the land. I mean, not only is it going to be a very strong economic boost, but are going to actually allow the land be maintained for

many years to come. Loudoun County is growing and we can't stop that. This by right land development is a guaranteed way to keep the majority of the land free and open and rural. And cluster developments are also known as conservation developments, because they preserve open spaces, wildlife habitat. A 2006 study published in the journal Science, which is a very reputable magazine, found a strong correlation between these cluster type development and the increased preservation of wildlife habitat and biodiversity with more than 20 percent increase. And this cluster development is a land development design tool that provides the means of both preserving open space and scenic views, especially this particular development. [inaudible] to be directed away from natural and agricultural resources considered important for protection by the municipality. This preservation of open space allows existing green space to continue to provide ecosystem services such as air purification, stormwater management and treatment, soil retention. From my understanding, this development is actually going to improve the water. So I'm very confused about these water issues that everybody keeps bringing up. Preserving the land [inaudible] development ensures that it is protected forever. This is exactly why cluster communities are encouraged by Loudoun County in rural areas such as this one. So I encourage you to keep Banbury Cross Preserve. Thank you so much.

Terry Cooke: Thank you. Next speaker.

Rhonda North: Eileen Tognini.

Eileen Tognini: Hello.

Terry Cooke: Hello. Welcome.

Eileen Tognini: Thank you so much for giving me an opportunity to speak. I'm a semiannual residence in 22959 Carter's Farm Lane. I've been in commercial and residential property owner, horse owner and resident of Middleburg since 2007. I'm deeply involved polo community and the equestrian culture that significantly defines our town. I'd like to express my enthusiastic support for the very sensitive and harmonious cluster development for the Banbury Cross Property. This plan embraces the mandates of the Piedmont Environmental Council and, ironically, of the Save Rural Loudoun's Group for Cluster Development that augments existing villages as an alternative to sprawl development. Quote, Clustering can limit the amount of land consumed by development, by concentrating buildings on a small percentage of the property leaving the rest as open space. Clustering does not limit the total number of development rights, so the development will result in the same impacts on water supplies, roads and public services. However, when done well, clustering can help maintain usable tracts of land for agriculture or forestry, preserve viewshed and watersheds, and protect wildlife habitat end quote. That's from the PEC website. This plan preserves the beautifully open space uses, animal habitats, watersheds, agriculturally and most importantly, the equestrian character of the 570 acres immediately east of the town center. The large open spaces in this cluster plan will also serve as a permanent buffer against the creeping sprawl development coming from the east. For example, like the [inaudible] project, the families who own this property are the third generation of dedicated equestrian by designing a sensitive and thoughtful cluster development in accordance with the PEC recommendations. These families have demonstrated their sincere commitment to the preservation of open spaces and the fortification of the equestrian character of the property. The families rejected early proposals to maximize return, also known as highest and best use plans that would have sought zoning to carve up postage stamp type parcels as a typical sprawl development for a much higher economic return. Instead, the families chose to sacrifice more than 40 percent of the total economic return on their land in order to preserve the large open spaces and equestrian character. The community objection site water resources and farming soils. The property has verified through 4 different experts in hydro studies that there are deep, well, multiple wells that produce over 30 gallons per minute. There simply is no water issue. The only crop use of the subject property for the past 50 years has been, hay, that crop will continue to be produced in the same manner and accepting approximately 80 acres of the southwest portion where one to 4 acre cluster lots are clustered.

Terry Cooke: Ma'am, I'm going to ask you to please wrap up your remarks.

Eileen Tognini: As an attorney who is a lifelong environmentalist and conservation supporter, I've studied with enthusiasm the jurisprudence of conservation easement. I've also had the honor of working closely with Georgia Herbert, the godmother of my youngest son, the Virginia Outdoors Foundation, the PEC, the Orange County [inaudible] and many Northern Virginia conservation minded land, or the late, great Billy Backer, a dear friend and highly respected philanthropist and conservation activist, spent many hours with me discussing in depth the legal pitfalls of blind conservation easements. Rather than look at all development is evil, it is in the best interests of our community and our country to consider the positive aspects of a sensitive development plan that embraces the middle road between absolute conservation that may be unsustainable on one extreme and the horrible sprawl on the other. Thank you very much.

Terry Cooke: Thank you. Next speaker.

Rhonda North: Paul Lawrence.

Paul Lawrence: Yes. Can you hear me?

Terry Cooke: Yes, we can.

Paul Lawrence: All right. My address is 37163 Mountville Road Middleburg 20117. I'm the Loudoun County chair of the Goose Creek Association. And on behalf of our organization, we want to express our strong opposition to this proposal. I'm not going to repeat the reasons which I think have been eloquently provided by other speakers. I would just like to say that I think almost all the speakers tonight have been in opposition to this proposal and for good reason. It will change forever the character of the Middleburg area. So I would like to ask the commission to consider carefully any possible flaw in the application and then deny it on that basis, no matter how technical that flaw might be. The right thing for the commission to do is to deny this application and it can be justified if there is any flaw, which I'm sure others will continue to point out this evening. So sometimes we're required to take actions that that call upon us to do something for the general good and and not be bound up in the legalistic ideas about our duties. And I think that's what the commission is presented with tonight. To heck with the lawsuits that they want to sue you. They can spend several years in court over the matter. And in the meantime, this land will be protected in our Middleburg area. Thank you, gentlemen.

Terry Cooke: Thank you, sir. Next speaker.

Rhonda North: And the next speaker who is registered is Mark Monroe. I do not see Mr. Monroe on the line. He indicated he may not be able to hold on for the entire time. So we'll go to Patricia Sweeney. Patricia Sweeney?

Patricia Sweeney: Yes, hello. My address is 22309 Watson Road. I'm a retired consulting engineer and my specialty is civil engineer. I've been here 30 years and I emphatically support the Banbury Cross Preserve development. I agree with a lot of the things that Tognini brought up. My personal experience. I'm on a shallow well, about eighty 5 feet. A large development was constructed starting in 1998. Little River Estates 26 unit subdivision starting starting about a thousand feet away from me. I have experienced no well draw down whatsoever. I have experienced no well contamination whatsoever. And that's because the modern county and state requirements for constructing drain fields are very stringent as well. Newer wells must also be constructed very stringently for safety. I guess that's it. Thank you very much.

Terry Cooke: Thank you, ma'am. Next speaker.

Rhonda North: The next speaker that I have on the list is Susan Hensley. But I am not seeing Mrs. Hensley on the line. So the next one after that is [inaudible]. She was there earlier.

Terry Cooke: Bear with us, folks, as we review our list. Back to you very shortly.

Rhonda North: I don't see her on the list. And let's go to the next speaker.

Perhaps tell people they have to hit star twice to unmute.

Rhonda North: John Govin. John Govin.

Terry Cooke: John Dobbyn, are you there?

Rhonda North: Mr. Govin. Mr. Govin, are you there?

Terry Cooke: We'll move to the next speaker.

Rhonda North: Paul Cronin.

Paul Cronin: Paul Cronin here. Can you hear me?

Terry Cooke: Hello, welcome.

Paul Cronin: Paul Cronin. I live at 704 Stonewall Avenue. Relatively new and very ordinary residents of the town. The water issue must be explored thoroughly [inaudible]. In addition, I believe that it's vitally important to preserve agricultural land and open like Banbury Cross surrounding the town of Middleburg. Middleburg is special. You can drive through the surrounding countryside, it's an important attraction for residents like myself and also visitors coming to shop and dine in town. For these and other reasons expressed, I'm opposed to this Banbury Cross Development. Thank you.

Terry Cooke: Thank you, sir. Next speaker.

Rhonda North: And we'll try John Govin one more time, Mr. Govin. Ok, that concludes those registered to speak by phone. We're now up to the in-person list and the first one is Eva Smithwick.

Terry Cooke: We'll now move on to those speakers who have appeared in person.

Eva Smithwick: Good evening. My name is Eva Smithwick and my family's residence is Sunnybank Farm on Sam Fred Road. A portion of our property is within the one mile radius for the town's jurisdiction over subdivisions. Our property borders the Banbury Cross development for nearly one mile. I signed up to speak tonight not only on behalf of my family, but also on behalf of town residents, business owners, fellow citizens and our neighbors. We are all so fortunate to be a part of this community with its unique atmosphere of a small village surrounded by some of the most beautiful open space in the area. The size of this proposed development warrants concerns about any possible negative impacts to our community. Our group has worked diligently hiring experts to analyze the preliminary plat in order to find what impacts the development would have on this community. As citizens of the town and of the county, we have the same rights to be served by our government as the applicant. You, as the Planning Commission for Middleburg, have the authority to make an independent decision about this development based on what is best for the town and its citizens. We recognize excuse me, we recognize this is a difficult and complicated situation and that is why we have given you information based not on emotion, but on facts, legalities and science, which you will hear again from our experts tonight. Of most concern are items in their hydro report that do not meet certain standards in the FSM, and that the impact on the [inaudible] and therefore the town water treatment plant have not been properly assessed in regards to

surface water. Also, the county staff has stated in a memo that there is a probability of low yielding or dry wells and a recommendation was made to have a contingency plan. There is no such plan in place. And I was told by Mr. Kane in the building and development that the only recourse neighbors have if their wells go dry is through a civil suit. In the meantime, we, along with our neighbors, will have to find water for horses and cattle in all of our other livestock and animals. In closing, I ask that you disapprove this application and require the applicant to address the shortcomings in regards to the well being of the town in the neighborhood. Thank you for your time and your consideration. Greatly appreciated.

Terry Cooke: Thank you very much.

Rhonda North: David Buss.

Terry Cooke: Welcome our next in person speaker. Hello.

David Buss: Good evening, I'm David Buss, I'm a consulting hydrogeologist and I practice out of Oakton, Virginia. I was retained by the citizens group in late January 2020 to review this study by Emory Garrett. And you've certainly heard a lot about that study since with all the different testimonies, despite trying to be in part because I'm not a certified geologist in Virginia, I'm not required to have that to practice for the citizens group. I received a Ph.D. from Penn State in geology and hydro geology, and I've got over 40 years of experience. I've done a lot of work in the Piedmont groundwater setting, which we have here, and completed projects in 35 states for private citizens, businesses and industry. And I've also done my duty to the state of the Commonwealth of Virginia. For the past 15 years, I've served served as an advisor on the Geologic Mapping Advisory Committee for the Division of Mines, Minerals and Energy. Now, you have heard that the county, both the Loudoun County Health Department and the building and development people have reviewed the report and they say that the report meets the requirements of the FSM. However, their third party reviewer ECS did state that site Hydrogeologist conditions lend themselves to drilling a dry and low yielding wells. And you've heard some testimony from citizens that have experienced that in the area. The other thing that ECS pointed out was the fact that there have been as many as 7 dry wells drilled within 2000 feet of the proposed development subdivision. And as a result, they recommended a contingency plan. And what that contingency plan is, would be how are you going to get water to the proposed lots that have dry or low yielding wells? Now, our review really has three levels of, let me say, comments or technical analysis. There were factually missing items and your consultant Cardno pointed those out and they were missing up until today. I understand that there has been a submission. There are also technically deficient analyzes because certain key assumptions weren't followed or type of analysis was not considered. Like, for example, they didn't consider the naturally occurring fracture systems when they analyzed the drawdown impact. They didn't do a recovery analysis with their pumping data. They didn't discuss the impacts of surface water. Then there are other technical issues. The third level is the fact of certain things that the county and the report reviewers did not bring up things like impact on the town water supply. So I'm going to go ahead and read what my conclusions are and then I'll go back and discuss them as the time is required.

Terry Cooke: Be mindful of the time.

David Buss: Yes, sir. The report fails to meet all the facility Standard manual requirements. It fails to analyze the impact of pumping it on the surface water of [inaudible] Creek, which is important to the wastewater treatment plant it fails to address. The impact of development will have on Middleburg sole source groundwater aquifer. It doesn't propose a recommended contingency plan that was recommended by the county reviewers. It applies a flawed modeling analysis to evaluate the drawdown, and it's flawed from two to two standpoints. It didn't include the fracture system. It put uniform conditions in the model. And also it did not represent in their model all the 28 wells that are proposed to be developed. It fails to make use for use of the water level data that was collected during pumping test best management practices. When you do draw down test, you also have a recovery. Now they monitored draw down and they monitored recovery, but they didn't do any analysis with the recovery data. Best management

practices would be that you would do that. And lastly, it fails to address the potential impacts of the 28 single family septic systems. On the ground, water and surface water in the area, I think if you read your consultant's Cardno's letter, they actually generally concur with all of the items that were in my March 3rd letter. Now, they did say that the EGGI did meet the requirements of making a calculation, and it does because the FSM requirements do not require a certain particular model to be applied. It just says you must make a calculation of the drawdown. And I guess that would be the last bell, but certainly what I'll just wrap up and say, there's been a lot of uncertainty in your Cardno people brought it up, that there's uncertainty in the analysis that have been done and that there could have been things done by EGGI such as sensitivity analysis, variation of parameters to assess the uncertainty. There's also uncertainty about the the impact on the stream. There's uncertainty about the wells around the area. So it really comes down to the council and the commission. What how much uncertainty are you willing to accept to vote this in? It seems like to me that the town water supply, the possible impact on the water treatment system and the lack of the contingency plan is too much uncertainty to not to allow it to go through. Appreciate your time.

Terry Cooke: Thank you. Next speaker.

Rhonda North: Stephen Price.

Stephan Price: Good evening. I'm Stephen Price with the law firm of McClandish and Lillard, and I'm here to speak on behalf of my client, Smithwick Farm, LLC, which owns one thousand one hundred and thirty eight plus acre farm across directly across the road from Sam Fred on Sam Fred Road from the proposed Banbury Cross Reserve subdivision. As I alluded to, I believe, by Mr. Bondi who who spoke earlier, I believe there are that the application has two fatal omissions as required by the Middleburg subdivision ordinance. So we're absolutely clear Loudoun County zoning applies to this entire subdivision. However, the Loudoun County subdivision ordinance only applies to that portion of the proposed subdivision that's outside the one mile limit within the one mile limit. It's the town's subdivision ordinance that applies. And as we know, the purpose of the town's subdivision ordinance is to protect the public health, safety and general welfare. And the Planning Commission, not town staff, is charged with the duty to review and either approve, conditionally approve or disapprove preliminary plat applications in accordance with the requirements of this ordinance. And I'm reading from the Middleburg subdivision ordinance section 1.2b and 3.2b. As I indicated, the town's subdivision ordinance applies for that portion of this proposed project within the one mile and Section 4.24a of the Middleburg subdivision ordinance states that the preliminary plat shall provide all facts necessary to show conformance with this ordinance and subsection B of that Section 4.2.4b contains the preliminary plats subdivision requirements specifying that all preliminary plats shall contain 26 different enumerated items. Unfortunately for the applicant, the preliminary subdivision plat for Banbury Cross Reserve lacks required items 13 and 21. 13 requires that there be a preliminary layout of provisions for collecting and discharging surface drainage. And with respect to this missing requirement, note 4 on the plat says that stormwater management requirements will be achieved through a combination of open space conservation, SWM stormwater management ponds, BMP best management practice devices and other means during the construction plan phase of development. This will not do because the town's subdivision or in its provides that all preliminary plats shall contain a preliminary layout. While the plan shows several proposed culverts under the interior roads, nothing is shown about open space conservation. Nothing is shown about stormwater management ponds. Nothing is shown by best management practice devices. Simply stating how the applicant proposes to go about designing a layout does not meet the requirement to furnish one, and therefore this requirement has not been met. The town's wastewater management, as we've heard, is discharged into [inaudible] Creek, which is just east, is just to the west of the proposed subdivision. And before deciding on whether or not to approve the Banbury Cross Reserve subdivision application, you should know the applicants plan for collecting and discharging surface drainage and whether it will have an adverse impact on the ability of the creek to handle the town's wastewater discharge. So having failed to provide the necessary preliminary layout, the preliminary subdivision plan should be disapproved. The other missing requirement of under your subdivision ordinance is that the applicant is to serve is to show the approved

well sites for all lots within the one mile control area and this is this is requirement 21, which requires that the plat to show the location of approved well sites, if applicable and if applicable, means if you're going to be served by wells as opposed to town water. And the applicant proposes to serve the subdivision lots with private wells, as note 23 on the plat says. And as we know, 7 Section 7.3.1 of the Middleburg subdivision ordinance provides that subdivisions in the one mile. Extraterritorial jurisdiction area shall be served by individual wells approved by the Loudoun County Health Department. The plat fails to locate approved wells for all lots within the Middleburg subdivision control area. There are there are 30 lots that come with within the Middleburg control area. Now, if you I think I was going to be given 5 minutes as the representative. That was 5. OK, I have I have my secretary emailed a copy of my memo from which I'm reading tonight to the Planning Commission. I'd ask that be distributed. I have attached to it a copy of the maps showing the location of the of the test wells. And there's nine of them that are located on these 30 lots. So the proposal is to use nine of these, but the other 21 lots do not have a approved wells that they plan on using. They're not shown on the plats. So therefore the application should be should not be approved. Thank you.

Terry Cooke: Thank you, Mr. Price. Do we have another speaker? Please.

Mathew Berg: Good evening, gentlemen. My name is Mathew Berg. My address is 35148 Rosecroft Lane, Middleburg, Virginia. And I'm just here to speak on the behalf of all of my friends. We strongly oppose Banbury Cross Reserve. Unfortunately, they can't be here because of the governor's ridiculous pandemic rules. And I just want to end on something in Latin. Estro nil sacre. Is nothing Latin or it's nothing sacred. Sorry.

Terry Cooke: Thank you. Any more speakers?

Rhonda North: Chairman, we have another number of folks who are on the line who have not registered, if you'd like to go through that list.

Terry Cooke: Yes, let's do that. We'll now hear from those folks who did not register in advance to address us by phone, but who are lined up on the line to do so. So, Rhonda.

Rhonda North: The first number is 703-623-9031. Do you wish to make comment?

[inaudible].

Terry Cooke: Ok, you want us to defer your comments until the end? All right. Thank you. Thank you. Next speaker.

Rhonda North: Nate Chambers, do you wish to speak?

Terry Cooke: Mr. Chambers.

Terry Cooke: Nate Chambers? Hello, Mr. Chambers?

William Nate Chambers: Yes, can you hear me all right?

Terry Cooke: We can hear you fine. Please state your address.

William Nate Chambers: Perfect. For the record, my name is William N Chambers or Nate Chambers for most of you that know me and I live at 3175 [inaudible] road. I've been a resident for the Middleburg area for about 15 years and I do oppose the Middleburg land one development [inaudible]. Now there are many people on the call, like Mr. Bondi, who can more eloquently and accurately speak to the legalities of the Banbury Cross preserve development. So I will leave the technicalities to them. My comment is

that I'd like to give the committee and the town staff some perspective. [inaudible]. I myself am a real estate developer and I'm just like the members of Middleburg Land LLC. I have been in their shoes before and I understand their position. With that said, I can tell you that the current stage approval is critical. Every time I've gotten past the current point that the Banbury Cross preserve development is, I've basically been able to see every project through to completion. Now, on the flip side, every time my development has been stopped at this stage, they really haven't gone any further. Point that I stress that much must not be mitigated is that the cluster not be downplayed. Every time I as a developer go to get a town, a town or a town or county approval for a project that town or county inevitably [inaudible] as right now the cluster does not fit within the current community. However, this cluster is approved a precedent has been set for the future when future developers go to get approval for projects like this cluster. They will then be able to point to the Banbury preserve cluster, and thus have the percent to go up. To the members of the committee and town council, I know town staff is telling you that tonight does not mean you approve the development and they simply are approving the preliminary plan. Technically, they are correct. However, logistically speaking, if you approve the preliminary plan this evening, there's no turning back. Once the preliminary plan is approved, there is no turning back and the Banbury Preserve development, will inevitably be approved going forward. Finally, I'm not an attorney, but I'd be willing to bet that my attorney would recommend you table or deny the project apparently this morning pending litigation involving the property in question. Unless there is not clean titles to the property in question. Without the clean and clear title, no such approval should be granted. Thank you all very much for your time.

Terry Cooke: Thank you, sir.

Rhonda North: The next individual we have on the line is telephone number, excuse me, 208 891 5027. Would you like to make a comment?

Amanda Candy: Oh, yes, I would. Can you hear me?

Rhonda North: Yes.

Amanda Tandy: My name's Amanda Tandy. I'm the vice president of the NAACP. Loudoun Branch. And I'd like to thank. My address. 43607 McDowell Square, Leesburg, Virginia 20176. I'd like to thank the Planning Commission for holding this session. I'm not going to add anything to the technical expertise offered previously, but urge the commission to require the applicant to perform a survey of the entire five hundred and seventy eight foot parcel. And that is to find that is to find the potential graves and homes of enslaved people and honor their legacy. Banbury Cross can negatively affect important historical, archeological and architectural resources. A substantial portion of the site was once known as Mount Airy plantations prior to the Civil War. Residences and cemeteries possibly remain on site. The 1850 and 1860 federal census showed at least 25 enslaved persons on the property. We believe there is more to learn about African-American history at this site. It is possible that the septic field for the development could be cited on or near the cemeteries and dwellings of the enslaved, which is an unimaginable insult to injury. Continued research site survey is needed to ensure all historical resources are located excuse me before site work commences. We're asking that the graves and dwellings for the enslaved if they remain be located before moving ahead with this project. To echo what has previously been said, I would hope that the Planning Commission would take this and further research can be done. Thank you.

Terry Cooke: Thank you. Next speaker.

Rhonda North: Don Skelly, would you like to speak?

Don Skelly: Yes, I think my greatest concern. By the way, I'm an adjoining neighbor. My address is 37318 John Mosby Highway. I think a lot of people have spoken to the threat of the water supply. I'd like to also just add on that there is potential for a farm brewery located a few doors down from us, a so-called

fuel farm brewery, which would place even further strain on the water supply. [inaudible] to take that into consideration when weighing the input of the water. Thank you.

Terry Cooke: Thank you, sir. Any other folks on the line?

Rhonda North: Oh, yes. We have lots of folks on the line. 540 592 3464. Would you like to speak? 540 592 3464. Would you like to speak? Hello? Ok, they hung up. They're all over the place on me here.

Terry Cooke: One moment, please.

Rhonda North: 687 1311, would you like to speak? 687 1311.

Terry Cooke: Yes. Welcome. Please state your name and address.

Jane Bishop: Hello. Hello?

Terry Cooke: Yes, welcome. Please state your name and address.

Jane Bishop: Jane Bishop. 2426 [inaudible]. Plains, Virginia.

Terry Cooke: Very good. Proceed.

Jane Bishop: I'm sorry?

Terry Cooke: Do you have any comments you'd like to offer at this time?

Jane Bishop: No, I do not. I was calling to listen in, but I'm vehemently opposed to the project.

Terry Cooke: Ok, thank you.

Jane Bishop: This is the number I was given to listen in to the meeting. Maybe I got it wrong.

Terry Cooke: Thank you. No worries. Thank you.

Rhonda North: 202 550 2784, would you like to speak? 202 550 2784? Guess not. 801 791 5837, would you like to speak? 801 791 5837? guess not. Cricket Wittner, would you like to speak? Cricket Wittner.

Terry Cooke: Cricket Wittner, are you there?

Rhonda North: 540 287 2035.

(540) 287-2035: Yes.

Terry Cooke: Yes, good evening. Please state your name and address, please.

(540) 287-2035: Hi, this is Devin [inaudible]. I'm at 38315 Snickersville Turnpike. I was calling to voice my opposition because it's Banbury Cross development on the basis that there are significant failures to comply with the Town Planning Commission requirements. And of course, the evidence of the lawsuit that was filed this morning, or it appears it was filed this morning that has clouded the title to it, which should be an automatic stop to this project. There has been a multitude of speakers who have already come before you all to give testimony regarding their concerns with the water in the area. I also have concerns that and have many friends who are on Sam Fred, or surrounding properties who have already had significant issues with their wells. Also, as others have said, the impact of the cluster development

being on the prime agricultural land. I understand the benefits of cluster development, but per the PEC recommendations, unlike the speaker is directly in line with this. This project is not because of the placement of the cluster on those prime soil. The Planning Commission, its number one job is to work to preserve the health, safety and welfare of the town of Middleburg. And this project is very much in its current stage, not showing that it is in line with that duty. And on those bases, and in line with the comments and recommendations of speakers before me, I would like to strongly urge you to oppose this project in its current stage. I would also like to give a sincere thank you to the commission for listening, listening to us all give our positions on this topic. And I would also like to thank all those listening who were, almost all of those listening, who were so respectful for the other people giving their opinions whether they might not have agreed with them or not. So, again, thank you so much for listening to me. And I would again like to ask you to oppose this project. Thank you.

Terry Cooke: Thank you. Other speakers.

Rhonda North: 502 741 1394. 502 741 1394. 801 791 5837. 801 791 5837.

That's us. Go the [expletive] away.

Terry Cooke: If that's your phone number and you care to address the commission, please do now.

We don't.

Terry Cooke: You don't care to make comments. Ok, thank you.

Rhonda North: 540 270 4174. 540 270 4174. 646 467 4878. 646 467 4878. 703 727 2684. 540 687 5953. John Gobin. John Gobin. 571 344 0140.

(571) 344-0140: Hi, my name is [inaudible]. Can you hear me?

Terry Cooke: Yes, we can. Please state your name again and your address.

(571) 344-0140: [inaudible] My address is one, two, one, two other world and also on the property of Fourth Street in Middleburg. My husband and I moved to the area about 15 years ago with a small farm, take advantage of the historic equestrian rural recreational assets in this county. And we go down to Middleburg very, very, very frequently because we own property there and also because we enjoy the equestrian community down there. I would like to point out that I, as a retired commander in the United States Navy Reserve and as a retired lawyer for the Department of Justice, I have done a service to my to the federal government for over 30 years. So I understand the difficulty that you have doing your service to the county. However, your obligation is not to rubberstamp an application. Your obligation is to the town and the residents. And by virtue of your position, you have a public trust which is an obligation to protect the land, the residents and the character of Middleburg. So you don't just have to meet all the requirements that you rubber-stamp it. You have to look at the zoning ordinance of Middleburg Article one, Section two, which is a general provision that requires you to protect the character of the community, the resources that the residents will be safe and secure a future. As you all know, things have changed with the pandemic. The pandemic has demonstrated that a close many of the use of our rural land is demand that we really need to protect our farmland for our local provision. The national and international transportation systems can't do that during the pandemic [inaudible] think might happen in the future. Therefore, somebody's interrupting me. Can I have a couple of two seconds to say?

Terry Cooke: Yes, go ahead.

(571) 344-0140: Because of the interruptions. Thank you. Yes. It's critical that particularly at this time, you have an even greater obligation to review such subdivision requests. And given the impact on the

water resources and which are clear and given the impact on the rural agricultural resources, which are also clear from the cost of housing and also clear from the economic loss, you have an obligation to look at those and say, well, you know what are we going to do for Middleburg residents in the future when they dry up the wealth when they create increased traffic and they create these infrastructure needs that are going to increase the taxes in order to support all that and change the character of Middleburg as a community, we moved to this area for my retirement and wanted to enjoy it as it is. Now we realize that things change, but it has to be smart change. It can't be just uncontrolled growth And your job right there is to protect us from uncontrolled growth to that Middleburg can retain its culture, historic values and also the resources that support it. So obviously I'm under opposition to the development as it is [inaudible] for Banbury Cross [inaudible] of basically pristine farmland. [inaudible]. I've have been interrupted again.

Terry Cooke: Yes, please. We have we have extend your time. Please try to wrap up?

(571) 344-0140: Ok. Very, very good, thank you. So I encourage you to look at the general [inaudible] of your ordinances that [inaudible] and try to make [inaudible] public that you have been dealt with, given your position to protect this region and protect the character of the town and look to the future, especially in light of this pandemic. And thank you very much for giving me the time, considering my comments. So I'm in opposition to the development and approval of it at this point. And thank you very much again.

Terry Cooke: Thank you.

(571) 344-0140: Thank you.

Rhonda North: 571 328-3969. Would you like to speak.

571 328-3969: I did not sign up to speak thank you thank you.

Rhonda North: 540 680-0610. Would you like to speak?

Brianna Gunnel: Yes, I would. My name is Brianna Gunnel and I reside at 22959 Carters Farm Lane in Middleburg, Virginia. The properties adjacent to the proposed development. I was born and raised in Middleburg, Virginia. I attended all the elementary and Foxcroft. I have Loved growing up in this area and I am deeply involved in the polo and fox hunting community. I 100 percent support and encourage you to vote yes for Banbury Cross Reserve development. Number one, we need more housing. The town and surrounding area have long been in need of housing. Banbury Cross would be able to support new residents that will bring in much needed capital for the town of Middleburg. Banbury Cross Reserve meets all of Loudoun County's regulations and town requirements. It is by right development. It is a cluster development that is encouraged by Loudoun County and rural areas such as Middleburg. The hydro studies have shown that there are no issues with the water in and surrounding the development. The Banbury Cross opposition group is grasping trying to make up issues to stop this development from being approved. I ask that you ignore the crowd, do the right thing and vote yes for the Banbury Cross Reserve development. 10 years from now, we will all look back and see how beneficial this development was for our town. Thank you for letting me speak.

Terry Cooke: Thank you, ma'am. Any other speakers?

Rhonda North: Oh yes. 703 657-9328. Would you like to speak. 703 657-9328. Would you like to speak. Rachel Harshman, would you like to speak? Rachel Harshman, would you like to speak? 687-4027, would you like to speak? 687-4027, would you like to speak? 571-274-0839, would you like to speak?

Ned Quinn: Yes, this is Ned Quinn, 23596 Whitehorse Court in Middleburg, Virginia. And many people before have numerated the reasons I don't need to go back through them, but specifically on the legal and technical merits, I think you should deny this application. Thank you.

Terry Cooke: Thank you.

Rhonda North: 571-274-0839, would you like, sorry, we just had you. 571-271-4177. 571-271-4177, would you like to speak? 703-801-5084, would you like to speak? 703-801-5084. Would you like to speak? Hello?

Jia: Hello, can you hear me? My name is Jia [Inaudible].

Terry Cooke: Yes, sir, we do hear you. Please state your address.

Jayasridhar Acharya: Ok, I have a property. This is Jayasriahar Achayra and I have a property in Middleburg 22144 Same Fred Road. I live on the other side of the Sam Ford Road. I have a property on the other side of the Sam Fred Road. I oppose this development. I have tested for water. I have tested two times and I am not finding any water. I oppose this. I'm not going to go into technical details that has been already provided by many folks. And thank you for giving me an opportunity and thank you for listening to my comments and as well as my views.

Terry Cooke: Thank you, sir.

Rhonda North: Billy Benton, would you like to speak.

Billy Benton: Hello this is Billy Benton I'd like to introduce Jane Gunnel for you.

Terry Cooke: Yes, please go ahead. Please state your address. [inaudible].

Jane Gunnel: Am I unmuted now, can you hear me now.

Rhonda North: Billy Benton, Would you like to speak?

Billy Benton: Yes, I would like to speak, I'd like to introduce Jane Gunnel. Here she is.

Jane Gunnel: Hi, this is Jane Gunnel. Banbury Cross Farm 22959 Carters Farm Lane. I am [inaudible] I am. But I've been there in Middleburg for a number of generations and I'm almost 80 years old now myself. We are an equestrian family that have long had horse, relations [inaudible] what Brianna Gunnel said about about things. And I certainly would like to reiterate what she said. But I'd also like to tell you that we have no hidden agenda. We did not sell out to any developer and and go to the Bahamas. We're trying very hard to keep our farm a lovely place and to share it with a few people that also love Middleburg. And and that's what we would like to do, because it's [inaudible] financial situations and an increase in family support situations. And that's what we were about. We are not. We're not. We love Middleburg. We love all of you all. We know many of you all. We grew up with many of you all. And we are not trying to do anything to jeopardize the beauty and the quality of the of living in and around Middleburg, Virginia. And I thank you very much for your time. And if you liked to ask me any questions, I'd be glad to try to answer.

Terry Cooke: No questions here, ma'am, thank you very much for your comments.

Jane Gunnel: Thank you very much. Goodbye.

Terry Cooke: Bye bye.

Rhonda North: 571-457-9076. Would you like to speak? 571-457-9076. 703-945-9565, would you like to speak? 703-945-9565. 540-454-9083, would you like to speak? OK, I think they hung up. ok. 540-454-9083. Would you like to speak? Hello? Mr. Chairman, I think that's everyone.

Terry Cooke: Well, ladies and gentlemen, that seems to conclude our list of speakers. We move on. As I said at the outset, the applicant will now have an opportunity to make any closing or rebuttal to the comments received tonight.

Nick Albu: Commissioners Nick Albu on behalf of the applicant. I'll keep our closing remarks short.

Terry Cooke: Please.

Nick Albu: Members of the commission, I think it is wise, after hearing the comments from the public to focus on what the commission's responsibility tonight is not. The commission's responsibility tonight is not a referendum on cluster subdivision policy, not a decision on a supposed application for a polo field or some other quote unquote, rumored uses. Not a decision on whether any use other than that which is depicted on the application is or should be or should not be permitted. Not a decision about the Comprehensive Plan. It's not a decision on a Loudoun County Board initiative that is two years off, not a decision on a lawsuit that is, according to public comments, has been filed and apparently an effort to cloud title and delay this by right application, on investigation into what appear to be boilerplate comment from county reviewers that preceded county approval by nearly a year. Also, not a decision on whether the thoughts of a admitted uncertified hydrologist hired by an opposition group has any relevance or merit. The commission's responsibility is to simply confirm whether this application by right application checks all the boxes. The bottom line is this applicant, this applicant has engaged the best of the best to ensure that all relevant requirements have been met. Loudoun County staff, professional staff agrees, Loudoun County professional staff who is charged with ensuring compliance agrees. Town professional staff. Experts agree that this application meets all of the applicable requirements. Now it's obvious several individuals who spoke tonight, both local and abroad, some who don't live anywhere near this area, disagree. But regardless of whether you are sympathetic to any of the comments, it's OK if you are. But regardless of that, respectfully you must remember that this is an administrative application. Hydro meets the requisite requirements or does not, and it obviously does. You've heard of reported concerns, archeological concerns, reported water supply concerns, reported hydrology concerns, reported technical compliance concerns with respect to subsurface drainage inside of wells. All of these issues have been thoroughly vetted, not not only by the applicant's professionals that is retained over the last two years, but by county staff and town professional staff. And I would like to emphasize, I'm just a lawyer. I am here presenting on behalf of the applicant. Again, Mr. Ryan Connor, the engineer of Record, and Mr. James Emery, the hydrologist, are here to answer any concerns. To the extent the commission would like to ask any questions about the purported concerns have been raised. We are here to answer any questions and address any concerns that you have. And I say that with confidence because, again, this application has been thoroughly vetted and the conclusion is unanimous by all of those charged with vetting this, that it must be approved. One other note that I'd like to mention. I on behalf of my client, the applicant did provide a letter to Mr. Moore. I assume it made its way to the commission and the letter was respectfully set out exactly what the town staff town administrator has set out in making sure the commission is aware of the scope of the review tonight. There is a mention of what is likely to come out of this if the application is approved. And that's unfortunately litigation. I just want to address this. That is absolutely by no means a threat. And I hope it's not taken as a threat. That's certainly not intended purpose. But I will say that in the event that this application is disapproved, that would be the unfortunate reality and it would be the unfortunate reality, because over the last two years, the applicant has done absolutely everything in its power to work in good faith with professional county and town staff to ensure compliance and avoid litigation and to instead process this administrative application through any normal course, there was a point in time, as this commissioner remembers, where litigation was was an option. That is not what the applicant chose to do. Rather, the applicant chose to make sure that the county and the town were perfect.

Well, in the words of the county administrator, completely satisfied with this application. And we tonight have the town's position through its professional staff and county professional staff is completely satisfied that this application meets all of the requisite requirements. And for those reasons, we would respectfully ask the commission to approve the application. I thank you for your time. And again, our experts are on the call right now to address any questions or concern that members of the commission might have. And on behalf of the applicant, I thank you for your time.

Terry Cooke: Thank you, Mr. Albu. This is the chairman. I'm going to take you up on your offer for a question. And I'm going to go back to, I think, a very direct question that was posed by Middleburg's mayor at the very beginning of the public comment period when he asked and I suspect this is a question more for Mr. Connor than for you as to whether there are any plans on the part of the applicant to make a commercial uses of the of any of the rural economy lots. Do you have a response to that?

Ryan Connor: Yes, this is Mr. Connor responding, and I'm speaking here with the applicant as well. And the applicant has no plans for anything but selling these as residential lot. We did look at the zoning ordinance and it is true that there are other permitted uses on those rural economy lot. But the applicant at the time has no other plans than residential sales.

Terry Cooke: Well, there have been there have been comments by several of the speakers who spoke in favor of this application to suggest that one of the reasons they they support the application is they feel that it will work to preserve much of the rural character of the property. And I think it's a legitimate concern as to whether that, in fact, is going to occur or whether there's going to be commercial uses of one intensity or another that that come in the future on that land. So that is a concern and I think that is legitimate. I will now close the public hearing and open our session up to deliberation by the commission during that period commissioners are welcome to ask questions of staff and the applicant or other interested parties. I'm going to assert my privilege to go first on this. And is the town attorney on the line still?

Olaun Simmons: Yes, sir, I am.

Terry Cooke: Yes, I can. Thank you. Thank you for hanging in with us this evening.

Olaun Simmons: Absolutely. My pleasure.

Terry Cooke: There have been a number of comments regarding this last minute lawsuit that was filed apparently today challenging the identity of ownership of some or all of this land. Do you have a thought on the relevance of that lawsuit as far as the commission's deliberations go on this approval of the preliminary plat?

Olaun Simmons: I think what's happening is this. Obviously, someone is challenging the title to the property itself. As I'm looking at the requirements for a preliminary plat subdivisions it does not require the applicant to provide clear title at this point of the process. They have to provide a deed reference tax map and parcel number. The [inaudible] plat was drawn, dates of any revisions, general information regarding the name and address of the owner of record and the subdivider. You have a situation now where someone's claiming to be the owner of the property and they have not filed a lawsuit that will play out however it will, but it should not affect your deliberations this evening. You have an applicant before you whose filed the requisite documentation. He has shown you that he is the owner, even though he's being that's being challenged at this point the information before the commission is that he's the owner. And so the commission should proceed with approval, disapproval or conditional approval at this point.

Terry Cooke: Thank you. Before we open it up to questions and comments by the commission, I just want to state for the record, for the benefit of anyone who is who remains on the line, that as chairman of the commission, our commission bylaws provide that I do not vote on motions made by our commission

members unless a vote by me would serve to create a tie, vote on a motion or to break a tie on a motion. So I just want everybody to understand that I may or may not vote when the time comes. But those are those are the bylaws. And those are those will determine my participation. Having said that, let's invite our commission members to speak their minds on this. And we'll begin with Vice Chair Woodruff.

Don Woodruff: But, yes, thank you very much. I still remained concerned about the water situation, and I don't think that was answered. I mean, there was a lot of experts say this, experts say that. But they're still, from what you hear and what you find from residents in the area a pretty significant potential drain on the water supply and that will affect Middleburg. And there's no contingency plan presented which would suggest that not only for the residents of Banbury Cross, but I think it could also pertain to what about the town of Middleburg if that aquifer that is the only water supply that Middleburg really has anymore is impaired by drain from 30 some wells, and then potentially and more, I just I worry about it. After 25 years I've been in Middleburg while there have been drought and the water supply, water and the quality of the water has been detrimental, or the situation is detrimental to the quality of water and has been virtually undrinkable water remains an issue. And I feel lurking in the background is [inaudible] comment that she has filed a lawsuit challenging the validity of the ownership by the applicant. At this point that I would say my thinking would be along the lines of a conditional situation and the conditions would be to respond to those 2 items 13 and 21, the water situation and the potential lawsuit. Thank you.

Terry Cooke: Thank you, Don. Commissioner Fleischman.

Ed Fleischman: Thank you, Mr. Chairman. This is Edward Fleischman, I reviewed the preliminary plat subdivision application for Banbury Cross. I reviewed the report and the comments submitted in writing. And I listen to the comments at the public hearing on the application. I use my engineering background to assist me in my review. To the benefit of those commissioners who joined the commission after I was interviewed and appointed. I just wanted to mention my background. I received a Bachelor of Engineering degree in civil engineering where I took courses in geology, water resources and environmental engineering. I went on and received a master of science and civil engineering from Purdue University, majoring in urban transportation, planning and engineering. At Purdue I authored a thesis on the impact of a highway improvement on a small city, and I worked at the college as an engineer for the New York City Department of Water Supply. I then work for the Department of Transportation For 30 years, we've worked for post transportation projects, recommending approval or disapproval and prepared technical reports, reviewed technical reports supervised the preparation of reviews of technical reports. For the last 10 years, I've worked for an engineering firm in New York City providing oversight of design, engineering and construction of transportation projects. So based upon my review of the application I offer the following. The Middleburg Planning Commission has the responsibility to review applications for preliminary plats of subdivision that are located within the Loudoun County subdivision control area of the town of Middleburg. If an applicant submits a preliminary plat that meets the applicable requirements or the regulations of the town of Middleburg and the county of Loudoun, the Planning Commission should approve such a project. However, the evaluation of technical evidence to determine if an application meets the requirements is the responsibility of this Planning Commission. Analysis and forecast by technical consultants. Government officials must not be taken as the gospel flood maps have determined can be wrong been revised government agency change Water Quality Requirements [inaudible]. Droughts are unpredictable. Major changes in what citizens want and expect. The [inaudible] Banbury Cross Reserve development would be located on property partially within the Loudoun County subdivision control area of the town of Middleburg, we the Middleburg Planning Commission are reviewing the application and the technical comments submitted by review agencies. The town of Middleburg planning staff has spent numerous hours on the review process, and a number of residents proposed to be built on the site would be located in the subdivision control area of the town in close proximity to the town of Middleburg well that draws drinking water to town residents and commercial establishments. The proposed subdivision would draw down water in the fractured bedrock aquifer used by the town. In addition, the proposed subdivision would discharge wastewater and it could flow into the aquifer. Reports of an issue stated that the proposed development would not adversely affect

the water in the aquifer. However, due to the limitations of drawdown prediction modeling in times of future severe drought conditions, the proposed development on the water quality and water level of the aquifer cannot be positively determined and could adversely affect the aquifer. Thus, the development could potentially have an adverse effect on the water supply used by the town residents and commercial establishments. The applicant of the development has submitted reports to support their view that the [inaudible] project would meet the current requirements of the facility standard manual. However, the commissioners of the Middleburg Planning Commission have an important duty to review the application to ensure that technical evidence submitted supports this review. The Middleburg planning commission must be concerned about the future water quality of the town wells. By approving one development in the town's subdivision control area other developments could follow siting the first approval issued by the Middleburg Planning Commission. Therefore, based upon the location of the proposed development within the one mile subdivision control area and the developments potential adverse effect on the development of the development on the town of Middleburg's water supply. I move that the Planning Commission disapproves the request for the approval of preliminary plat. Thank you for your consideration of this motion.

Terry Cooke: Commissioner Fleischman, might I ask if you defer your motion for just a little while until we conclude our review among the other commission members?

Ed Fleischman: Yes, Mr. Chairman, I agree with that. Thank you. I didn't mean to cut off further debate. Thank you.

Terry Cooke: Thank you. Commissioner Minchew. Any thoughts or questions?

Rachel Minchew: I thank you very much. I appreciate every bodies comment regarding the development. And I do have the same concerns with the water as well as the lawsuit that was filed, I guess today. And I do think at this point, whether the conventional or I. Yeah, I think that we still need more information that needs to come out regarding all of our water as well as the lawsuit.

Terry Cooke: Thank you. Thank you, Commissioner Roszel.

Dev Roszel: Thank you, Mr. Chairman, and I appreciate everybody's input on this. There is a lot of stuff going on here. And, you know, I from my perspective, I'm not sure that I'm in favor of what's going on. But, you know, from the owners perspective, just because it meets all the legal criteria and you're a local resident doesn't necessarily mean that what's best for the community. You know, there's traffic, there's water issues. There's a lot of things that we've had three hydro geologic records out there. You know, everybody's had all their input. And, you know, basically we have an obligation to follow the rules that we've been, you know, faced with doing. Did they meet all the requirements of Loudoun County? Well, yeah, they did. But, you know, I have some reservations. And I thought about this for a while. Mr. Steve Price brought up some very valid points for me. And that was the fact that, you know, under the articles, the number thirteen and twenty one, which was failure to fulfill the runoff for those lots, I don't know whether or not that was actually taken into effect because that wasn't part of any of the information that I read in all of these documents. So for me, Will, I have a question for you? What's our timeline for taking a vote for this, do we have any time to table this and discuss it a little further and find out whether or not those failures on Article 13 and 21 are actually legit? Or are we obligated to take care of this vote this evening?

Will Moore: Oh, well, thank you, Commissioner Roszel the commission previously had consultation with counsel on whether or not action would be required at this meeting. If you do not take action, I would strongly suggest that you, rather than deny without citing an express requirement of the ordinance that is not been met, because that is the standard established in case law. If you are to deny, you must cite express requirements of the ordinances that have not been met and you must direct the applicant as to what modifications to the plat would be necessary to then fulfill those expressed requirements. Staff

cannot provide you with any express requirements that have not been met for the preliminary plat.[inaudible] But I think it's important to answer the question as to points thirteen and twenty one Mr. Price brought up, because those are his interpretation of those is entirely inaccurate. I appreciate his position. He is counsel for an opponent of the subdivision and he is trying to point out a fault. And that's perfectly fine that that is what attorneys do. They vigorously represent their clients. He is making interpretations of the ordinance which are charged to be interpreted by its administrator, which is myself. So I reviewed the plat for compliance with both of those components, and I discussed both of those components with our consulting engineer and both of those requirements again subsection thirteen, which has to do with a preliminary layout for surface drainage, not a fully engineered layout, but a preliminary layout and then requirement twenty one, which has to do with identifying all approved wells. It does not require you show approved sites for proposed wells. It shows it requires approved wells on the site have to be identified. Those requirements are fully met. Again, I appreciate Mr. Price's position, but I would caution the commission not to accept at face value claims from the public that requirements have not been met without at least consulting. So if you were to make a motion other than to approve or conditionally approve, I would strongly suggest that it be a motion to table so that I can answer questions for you until your next meeting. That would be my recommendation.

Terry Cooke: Do you have do we have sufficient time to allow for that?

Will Moore: I think there would be some exposure if we were to make a motion to table. But I think it would be a better result than a motion to deny if you were unable to cite an express requirement of the ordinance that was not that met.

Terry Cooke: Thank you Will, OK.

Dev Roszel: I would like to just finish up, Mr. Chairman. You know, Will, for the amount of massive income he makes from the town does an incredibly good job in understanding both sides of this. And I certainly appreciate the input. You know, I find it interesting because on the far side of that, we are told that there is no commercial. Nothing's going to happen on those lots at this time. So, I mean, it's only as good as the word at this point in time. I do believe that, you know, unfortunately, based on the fact that we have to look at the black and white fact did they meet the development, the regulations of the county, unfortunately. I mean, I think we're going to have to look at those issues, not just on personal, but what are we charged to do if everything has been met? You know, we have we have an obligation to fulfill the planning commission seat that we've been put on and unfortunately, you know, I don't have a [inaudible] I agree with Don Woodruff, with Commissioner Woodruff. I think that we should look at this as a conditional approval and to meet certain requirements that we as a commission want to do. I'm not suggesting that we approve it carte blanche across the board. I think there's still a lot of things out there. Will, I appreciate the input that you just gave me, and that's where I am on this. I think that we should conditionally approve it, that's all.

Terry Cooke: Thank you, Commissioner Roszel. And we'll come back to any motions after we conclude our review of the commissioner's comments. Commissioner Stein is absent this evening. It's an excused absence. We'll move on to Council Member Jacobs.

Bud Jacobs: Thank you, Mr. Chairman. I want to echo comments that have been made about the outstanding work that has been done by Middleburg professional staff on this application. There have been hints of criticism from the public at large about the performance of professional staff with respect to this application. Those criticisms are unfair and inaccurate and in my view, unacceptable. I want to thank you, Will, for all the work you've done and commend you for your objectivity and your thoroughness. With respect to where I am on this particular application, I want to associate myself with Ed's analysis and his comments. I would add that we bear in mind the implications of what we're doing here, apart from the potential litigation that has been rather bluntly threatened by the applicant's attorney. One implication of our decision tonight is that should we approve the preliminary subdivision application, we end our

involvement in determining what happens down the road with Banbury Cross. In normal circumstances, perhaps that would not be much of a concern. However, there is excuse me, that wouldn't be much of a concern. And we would expect to be able to work in a collaborative manner with professional staff at Loudoun County. Sadly, as far as I can see, there's no reason to be optimistic that such cooperation or collaboration will occur. Our planner and our deputy town manager has made repeated efforts to engage in discussion with Loudoun county professional staff about this application. In most instances, he has been greeted or met by a stone wall on their part and take it or leave it mindset on their part does not lead me to conclude that it should, for example, the rural use lots or some of them be switched to a commercial versus residential use at some point down the road that we will be met with any interest or sympathy by Loudoun County planners about concerns we may have or would like to raise about those potential uses. I don't want to go on and on. Everybody heard what people have to say tonight. I was very pleased that there were citizens who were willing to speak out in favor of Banbury Cross Reserve. I think the groundswell of opposition to this proposal is very telling and one that we should take very seriously and in this connection, Mr. Chairman, I want to thank you for the extremely professional manner in which you conducted this this hearing tonight. I think it reflects the best on our town and on our people and on you personally. So I thank you. So I associate myself with Ed's comments and am willing to go ahead and move to the next stage of our deliberations tonight.

Terry Cooke: Thank you, Bud. Well, the next stage of our deliberations tonight would be a motion. Before we move to that. Let me ask Commissioner Roszel because, Dev, you raised a question about our ability to table this, but then later you suggested you might be prepared to vote conditional approval. Are you still open to the idea of tabling this for further consideration?

Dev Roszel: Oh, absolutely, yes. This is Commissioner Roszel. I mean, I'm open for more communication because I think that really is the best interest of both parties, is to understand more clearly what it is we want to do. Ultimately, we need if we as a community are opposed again, we have a black and white issue as a commission of what we need to do. I understand that people. I don't like it either, but we have an obligation to fulfill what we have been asked to do with the commission. And it doesn't meet the requirements, regardless of whether or not the Loudoun County didn't do whatever. They've approved it, we have an obligation to do what we're supposed to do. What we as a commission need to do is or excuse me, what we as a community need to do is to get with our supervisors in Loudoun county and change the way the, you know, the policies and regulations are put in place. So to that point, that's what we need to do to make a significant change in the county, that's water under the bridge, because this has already happened. We need to do that going forward. I am not opposed to tabling this to have further discussion to make sure we are on the same page, but we understand what we're approving and what we're doing. So, yes, Mr. Chairman, I am open and willing to table this for discussion and whether it's tomorrow or another day, if there is time to do that.

Don Woodruff: Yes, let's not do it tomorrow.

Terry Cooke: All right. I'm going to the reason I ask that question is, Commissioner Fleischman sort of tipped his hand as to how he wishes to proceed on this. I would prefer if we're going to have a motion to table that, we have that motion first before we we proceed with Commissioner Fleischman's motion. So, Mr. Roszel, if you would be willing to make that motion, we can consider it at this time.

Dev Roszel: Ok, yes, I would move we make a motion to table this conversation of the approval of the Banbury Cross Reserve. I don't know how much you want me to go into this, but I would suggest that we table this until we have time to have further discussion regarding this.

Terry Cooke: Before there's a second on that motion, I will ask whether the applicant if he would be willing to consent to a one month extension.

Andy Hertneky: Ok, hello, this is this is the applicant, and I thank you for asking that question. Just one thing I would like to say is we still do have the experts on the line in particular around any of the water issues. This is somebody that's been quite the most noted expert in Loudoun County, helped write the FSM rules, and he is available to answer any specific questions that somebody has around any of those water issues. So if you want to have that extra information, you know, take the opportunity to do that. As far as actually tabling this, I think a month really is too long. You know, it's costly every day that goes by for us and for us. Time is a big deal. I'd certainly be open to a couple of two things. One is to tabling this maybe for a week. And a second thing would I be open to would be talking to people about limiting commercial uses, if that's an issue for people. Going forward, we're truly trying to make this a, you know, a community that people will like and respect going forward. I'm not a developer. I don't own any of this. You heard from two of the families that do own it. They simply need to develop this. They have no choice. I'm here simply to help them out. And given their desires for this to be a well respected community within the broader Middleburg community, I'm sure that we we can be open to saying here would be a list of, you know, approved commercial uses and if need be.

Terry Cooke: Well, I appreciate your concerns. I'm going to press you a little bit, Mr. Connor, on the on the time that you might be willing to allow us to deliberate further. Would you agree to two weeks?

Andy Hertneky: We would agree to two weeks, we would hope that in that two weeks, any specific concerns that you have, if you would agree to this, we will agree to the two weeks. Any specific concerns that you have to let us have a chance to just present the facts to you. That's all we would ask.

Terry Cooke: That's very fair. And this is this is this this additional time will allow us to do that. Yes. I'm sorry. Somebody wanted to speak. Yes. Is that Mr. Woodruff? Yeah. Go ahead, Don.

Don Woodruff: The applicant just approved commercial uses. We're looking for a proffer that these additional lots will not be used for commercial purposes. And that would be I mean, that's the waffling that really hurts. You're looking for a statement that this will not happen or at least for 30 years or something. I'm looking for the applicant to make a statement and make it a proper through application that there will not be commercial uses in this property.

Andy Hertneky: I would yeah, I would give you an example. And we you know, we can talk about this over the next two weeks. An example would be there is a need for more stabling right here. that would be potentially considered a commercial use. But I think it would be very much in character with the Middleburg to have somebody build an additional stable where we're doing deed restricted equine trials to make this an equine community. That's really our design. So that would be an example of something that we would say, hey, this is, you know, something that we would like people to understand that could go forward.

Don Woodruff: Well, could you provide us with a list of those potential to be considered commercial uses that that you might could vision occurring on the additional property. You've just given us two. We've heard that there are proposed polo fields to be added here. Certainly the area does not need more polo fields, but what other commercial might you consider being with the tenor of what you have said, which is we want this to be something Middleburg will be proud of. And at the moment I find that difficult. Thank you.

Nick Albu: Mr. Commissioner, this is Nick Albu, on behalf of the applicant. Make it clear for the record, you know, I would think that it's probably wise for the applicant and myself and probably town attorney to speak with respect to proffers as they're being suggested here. You know, there are certainly laws concerning the applicability of proffers in connections with with applications of this nature. I just want to make that clear for the record. But you were actually speaking with Mr. Hertneky, not Mr. Connor. And again, I think Mr. Hertneky made clear that the applicant is is willing to have this table for two weeks on

the on the condition that the applicant is is permitted to present facts in relation to the specific concerns that are raised by the commission. Thank you.

Terry Cooke: Thank you, sir. Any further comments by the commissioners before we move on to Mr. Roszel's motion to take off?

Dev Roszel: Yes, Mr. Chairman, this is Commissioner Roszel. I do think that that's a good idea. I think it's a good midway point. I think that it's important that we be able to come to an agreement or at least an understanding of what the long term impact is going to be, as Commissioner Woodruff pointed out. So I appreciate both sides, that's what negotiations are all about. So let's understand what it is that we're all getting into. And, you know, let's move forward on a more positive basis, not fighting each other. So anyway, I appreciate the attorney's comments. I think everybody has had probably plenty of this conversation. So I appreciate the input, that's all.

Terry Cooke: Thank you. All right. We do have a motion. I'm sorry?

Don Woodruff: I second Mr. Roszel's motion.

Terry Cooke: That's a second to Mr. Roszel's motion to table the commission's consideration of approval of the proposed preliminary plat for a period of two weeks from this date. What is that date? Will, do you know?

Will Moore: That would be Monday, August 10.

Terry Cooke: Until Monday, August 10. And we have a second on that motion. But I believe it was Commissioner Woodruff, all in favor, we will go. We'll call on each commissioner to express their vote. Rhonda.

Rhonda North: Vice Chair Woodruff.

Don Woodruff: Yes

Rhonda North: Commissioner Fleischman.

Ed Fleischman: Yes, in favor.

Rhonda North: Commissioner Minchew.

Rachel Minchew: Yes, in favor.

Rhonda North: Commissioner Roszel.

Dev Roszel: Yes, in favor.

Rhonda North: Council Member Jacobs.

Bud Jacobs: Aye.

Terry Cooke: All right. The ayes have it. The motion carries, the commission will work over the next couple of weeks. Certainly we expect that we will have questions directed to the applicant. The objective here, I think, is to give ourselves on the commission as full and understanding as we can possibly have as to as to what this proposed development will include. We appreciate the the applicant's willingness to work with us on that by agreeing to this couple of weeks extension. I think it's going to work. I hope it

will work for the benefit of both the applicant and the and the commission and that we can make a deliberate and well-informed judgment a couple of weeks from today. So thank you all very much. It's been a long evening. We have a few more agenda items to go through. Anyone who is on the line is welcome to ride along with us as we go through those. But this concludes our discussion of the of the public hearing and we'll move along with the remainder of our agenda. Thank you all. At the outset of our meeting tonight, I deferred public comment on nonpublic hearing related matters. If there's anyone who has been holding on and wishes to address the commission on any manner other than that considered in the public hearing, this is your opportunity to do so. And everybody anybody signed up?

Rhonda North: Well I'm unmuting everyone so we can see.

Terry Cooke: Bear with us.

Rhonda North: Ok, you can ask again.

Terry Cooke: OK, apparently we have no one signed up to to speak in the public comment period. Our next agenda item is approval of the minutes of June 29, 2020, work session and regular meeting. Oh, I'm sorry, we did that. Oh, yes, we did. Thank you. It's been a long night. Ok, Mr. Jacobs, we come to the council representative report.

Bud Jacobs: Thank you, Mr. Chairman. I've only got about 20 or perhaps 30 minutes of remarks.

Terry Cooke: Excellent. Excellent. [Laughter].

Bud Jacobs: I had I want to point out a couple of things that you may not be aware of, and then I'll be quiet. One of the public comments this evening mentioned the brewery that is contemplated on Route 50 east of town. That's not very far from the proposed development. You should be aware that the town council voted to send a letter of concern to the Virginia Alcoholic Beverages Commission against approval of a license for the brewery. This was motivated in part by concerns over the transparency of the application. Well, not an application, a transparency of a briefing we received from the folks who would like to build this brewery. And it was also motivated in great part of our concern about its potential effect on the neighbors and on our water. Secondly. I believe Dev has rightly pointed out that many of the issues that we've heard discussed this evening really are not going to be resolved by any decisions we may take, but rather are going to require some hard work with the county, with the board of supervisors at political level to perhaps try to change how the county goes about its business with respect to land use and zoning. And I would point out to you that the town's own action plan, which we put together in January, just before the pandemic calls upon us, on the town council to, quote, aggressively attack cluster zoning, unquote. And to ensure compliance with county and town comprehensive plans to protect the green belt around Middleburg. You should know that our mayor is leading these efforts right now, working very hard, building constituencies and making the case that there needs to be some changes. As I mentioned earlier in the way Loudoun County does business with respect to land use. And that is my report, ladies and gentlemen.

Terry Cooke: Thank you for the brevity. We will now turn to any discussion items, if there are any manners, any matters that any of the commissioners want to bring to the commission's attention. This is your opportunity to do so or forever hold your peace. Moving along there being no discussion items. We have a meeting. Our next regular meeting date is August 24. August happens to be one of those months where we have 5 Mondays. So we we have the option of deferring a meeting until August 31st. My preference would be to proceed with August 24. Does everyone have, would everyone be available on that date? [inaudible] What was that I mean?

Don Woodruff: I assume these are Zoom meetings?

Terry Cooke: Yes, yes, we're still social distancing and the way things are going in Virginia, I wouldn't be surprised if this continues for a while. But, yes, this will be another remote meeting.

Don Woodruff: Ok, thank you.

Rachel Minchew: August 24th works for me, that's fine.

Dev Roszel: This is Dev. I think what we need to do first off is set up or maybe Will is going to set up something, discussion for our two week deadline on this. So we'll obviously be meeting at some point in time based on that. Yes. I have no opposition to the 24th or the 31st or whatever time you want to do. I'm open both those weeks.

Terry Cooke: Right. 24th would be would be our regular meeting. You're right. We'll probably have a special meeting or.

Will Moore: Yeah. Thank you, Mr. Chairman. I would anticipate we would have to schedule a special meeting. In fact, we would if we were to to act on the application. We've committed to tabling it to no longer than August 10th. So I will send out some communication to the commission tomorrow asking for time and availability for that meeting. And then I will probably very shortly thereafter or in conjunction with that email, send a plea to you to start submitting specific comments and requests for information that could then inform discussions with the applicant and the applicant's experts over the next two weeks. It's going to be very important that we progress in being able to articulate where it is we feel they have not met the express requirements during this two week period rather than making kind of speculative concerns about outstanding issues with the water report. So we're going to have to work together to drill down into your specific concerns. So I will send out again a communication to you tomorrow asking for your availability on August 10th and maybe a couple of days late in the prior week, just in case August 10th becomes problematic. And I will be requesting some additional information from you in that same correspondence tomorrow.

Terry Cooke: Thank you, Will. Absolutely. We need to we need to let Will know exactly what our individual concerns or questions are regarding the plat. Because when we next consider this issue, that's the drop dead date. We have to we're going to have to make a decision. I would only suggest that we keep in mind that if there is a motion of motion for conditional approval, we have a recommended motion that Will has already provided for us that references the three conditions that Loudoun County wants to see. If there are other conditions that the commissioner that the commission wants, now is the time to think about them because they'll have to be articulated in any in any motion to approve conditionally. So we will have our next regular meeting on August 24 if there's nothing else to come before the commission. Thank you all for hanging in.

Dev Roszel: Mr. Chairman, I would like. This is Commissioner Roszel. I want to reiterate what you just said, that having that unfortunately for our meeting, I think will allow us to really better understand our responsibilities to the commission and the town and really be able to for me personally, to make a decision today after listening to all this, I need some time to disseminate it. So I think it's really good that you're allowing us to have this time to you know, we need to talk as a commission to really make sure we're on the same page that the town wants us to do. Plus, we have some basic black and white issues. Are we you know, do we have to make certain decisions based on certain things or are we able to pump it and go further out with the conditional approval? So I appreciate everybody's input into it. And hopefully you're not too irritated that I extended it. I think it's important for us to be able to have this conversation, that's all.

Terry Cooke: Absolutely. And I want to I want to I want to commend the commissioners, Fleischman and Jacobs and Roszel. They stated I think they're very articulate in stating their their thoughts on this. And I think I think it will help us move things along. Anyone else?

Don Woodruff: May I offer my thanks to Ed for his professional approach to this issue, but also to Dev my personal belief is that our responsibility is not to this land company and it's not to the county office. Our responsibility is the people of Middleburg and that we are providing them with close to as possible what they want and feel is best for them. Thank you, gentlemen.

Terry Cooke: Thank you all. We are adjourned.