



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



**MONDAY, AUGUST 10, 2020  
PENDING APPROVAL**

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

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

The Middleburg Planning Commission held a special meeting on Monday, August 10, 2020 to consider a preliminary subdivision plat application. 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of governmental operations, the Commission would hold its meetings via remote access until such time as the Governor rescinded his executive orders.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 was utilized for the remote meetings. He called the work session to order.

Town Clerk North called the roll at 5:00 p.m.

**Closed Session** – Consultation with Legal Counsel

*Commissioner Roszel moved, seconded by Vice Chair Woodruff, that the Planning Commission go into closed session as allowed under the Virginia Freedom of Information Act Section 2.2-3711 (A) (8) for consultation with legal counsel employed or retained by the Town regarding the Commission’s pending consideration of the Banbury Cross Reserve preliminary plat of subdivision. Commissioner Roszel further moved, seconded by Vice Chair Woodruff, that in addition to the Commission, representatives of the Town Attorney’s office and Town Administration be present during the closed session. Commissioner Roszel further moved, seconded by Vice Chair Woodruff, that the Commission thereafter reconvene in open session for action as appropriate.*

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

No – N/A

Abstain – N/A

Absent – N/A

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

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

**Unfinished Business**

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

Deputy Town Manager Moore reminded the Commission that during their last meeting, they tabled consideration of the application so they could have a dialogue with the applicant in order to receive some clarifying information. He reported that this had occurred and noted that there were documents in the agenda packet related to those conversations. Mr. Moore advised that the applicant has voluntarily agreed to limit out approximately thirty uses on the property and explained that this would be done in the form of restrictive covenants that would run with the land. He further explained that this would occur during the final plat and in the deed. Mr. Moore suggested the list could evolve between the preliminary and final plat processes. He reminded the Commission that they would approve the final subdivision plat; therefore, they would see the final version of the restrictive covenants. He reminded the members that the review agencies have confirmed all the necessary preliminary plat requirements have been met. Mr. Moore suggested the preliminary plat was in an approvable form and reiterated that it met all the applicable requirements.

Vice Chair Woodruff noted the concerns expressed during the public hearing regarding the threat of the development to Middleburg’s water supply. He expressed an understanding that this was not an issue at the present time and noted that the applicant was willing to rectify this for the Town if it became a problem in the future. Mr. Woodruff questioned whether this also applied to the neighboring properties.

Andrew Hertneky, Manager Partner of Middleburg Land One LLC, reminded the Commission that their engineer indicated there was excess water on the property and advised that they have offered the Town the opportunity to drill a well there if it had a water emergency. He noted that the experts indicated a well could produce 10,000 gallons/day, which was more than some of the Town’s current wells produced. Mr. Hertneky advised that if the neighbors could show the development affected their wells, they would rectify that for them. He stressed that they did not believe this would happen; however, they wanted to be good neighbors.

In response to an inquiry from Deputy Town Manager Moore, Mr. Hertneky confirmed that if the Town had a water problem of any nature, they would allow the Town to drill a well. He reiterated that they wanted to be a good neighbor. Mr. Hertneky further reiterated that they did not believe the development would affect the Town’s water supply.

Commissioner Roszel opined that the Commission and those opposed to the development needed to look forward. He suggested they contact the Loudoun County Board of Supervisors to prevent this type of development in the future. Mr. Roszel thanked everyone who participated in the application process, including the applicant.

Commissioner Stein thanked the applicants for their willingness to help anyone who may experience water issues in the future caused by their development.

Councilmember Jacobs thanked the applicant, as well as the opponents, for participating in the process. He opined that his questions had been answered and his concerns assuaged.

Chair Cooke echoed the comments of his colleagues and expressed appreciation for the applicant's responsiveness to the concerns that were raised and for giving the Commission additional time to deliberate.

Commissioner Fleischman reminded the Commission of the motion he made during the last meeting to deny the application. He further reminded them that they worked for over a year on the Town's Comprehensive Plan update, which looked out for a thirty-year period. Mr. Fleischman expressed concern about moving forward with this subdivision and opined that it would set a precedent for other subdivision submissions within the one-mile extraterritorial area. He suggested that no one could prove the subdivision would not have an adverse impact on the water resources.

*Based on the adverse effect of the development on the Town of Middleburg's water supply, Commissioner Fleischman moved, seconded by Vice Chair Woodruff, that the Middleburg Planning Commission disapprove the request of Middleburg Land One, LLC for approval of the preliminary plat of subdivision for 38 lots on approximately 570.873 acres of land consisting of Parcels 503-46-4523, 502-28-1672 and 502-39-8957 currently zoned Agricultural Rural-2.*

Commissioner Fleischman noted that he presented his motion to the Town staff last week and asked them to strengthen it to make it more defensible; however, he did not receive a response.

Commissioner Roszel noted that he anticipated making a motion. The Commission held some discussion as to which motion took precedence. It was agreed that Commissioner's Fleischman's motion should be considered, with the Commission proceeding depending on the outcome of the vote.

Councilmember Jacobs expressed appreciation for Commissioner Fleischman's hard work. He noted, however, that this was a by-right subdivision and the fact that its approval would set a precedent was not a relevant consideration. Mr. Jacobs reminded the Commission that there was a court decision that a preliminary plat's noncompliance with the comprehensive plan was not grounds for denial if the plat met the technical requirements set by the jurisdiction. He advised that while he did not like it, there was no way around it.

Chair Cooke noted that he would only vote to create or break a tie; however, he was not in favor of the current motion. He reminded the Commission that the applicant had been very responsive to their concerns and that the application met all the requirements necessary for a preliminary subdivision plat. Mr. Cooke opined that there was no legitimate basis for a denial. He reminded the members that their role was pre-circumscribed in that it was to determine whether the application met the requirements. Mr. Cooke advised that speculation as to the future was not a legitimate basis for denial. He further advised that the application must be considered on its own merit.

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

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Commissioner Fleischman noted that he respected the decision of the Commission. He opined that the staff did a good job in presenting the options and the technical information.

*Commissioner Roszel moved, seconded by Commissioner Minchew, that the Middleburg Planning Commission conditionally approve the request of Middleburg Land One LLC for approval of the preliminary plat of subdivision for 38 lots on approximately 570.873 acres of land consisting of Parcels 503-46-4523, 502-28-1672 and 502-39-8957 zoned Agricultural Rural-2 subject to the applicant satisfactorily addressing the following three conditions contained in the June 26 notification from Loudoun County: (1) In concert with the comment letter from Loudoun County dated June 22, 2020, the accompanying construction plans and profiles shall fully comply with FSM Section 2.330.A by providing the required fire tanks. Tanks shall be depicted on the construction plans and profiles, the cost shall be included in the bond estimate, and locations and design shall be approved by the Fire Marshal's Office prior to approval of the construction plans and profiles; (2) prior to approval of the accompanying construction plans and profiles, the applicant shall comply with all requirements contained within the referral memo written by Dr. Steve Thompson, Loudoun County Department of Planning and Zoning, dated June 3, 2020; and, (3) prior to the approval of the accompanying construction plans and profiles, the applicant shall record the offsite ingress/egress easement identified as Highland Estate Lane that crosses PIN #502-48-6535 currently owned by Traveler's Rest, LLC - "satisfactorily" meaning to the reasonable satisfaction of the locality or department submitting the comment.*

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

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### **Quorum of August Meetings**

After some discussion, the Commission agreed to cancel their August 24<sup>th</sup> meeting. It was noted that the next meeting would occur on September 28<sup>th</sup>.

Deputy Town Manager Moore noted that he had some information to share with the Commission related to items that would come before them in the near future; however, he would email it to them.

There being no further business, Chair Cooke adjourned the meeting at 6:11 p.m.

RESPECTFULLY SUBMITTED:

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Rhonda S. North, MMC, Town Clerk

**Middleburg Planning Commission Transcript**  
**August 10, 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](http://www.middleburgva.gov))**

***NOTE: Due to technical issues, the beginning of the meeting during which the remote meeting announcement was made and the motion/vote to go into closed session occurred, did not record. As such, there is no transcript for that portion of the meeting.***

**Terry Cooke:** All right, ladies and gentlemen, I ask that the commission certify that to the best of each member's knowledge, one only public and business matters lawfully exempted from open meeting requirements under the Virginia Freedom of Information Act and two only such public business matters as were identified in the motion by which the court session was convened were heard, discussed or considered in the closed session. I would like to remind those present for the closed session that any discussion that occurred within it should be treated as confidential. We will now take a roll call vote to seek your affirmation on the certification I just read.

**Rhonda North:** Vice Chair Woodruff.

**Don Woodruff:** Yea.

**Rhonda North:** Commissioner Fleischman.

**Ed Fleischman:** Yes, it's fine.

**Rhonda North:** Commissioner Minchew.

**Rachel Minchew:** Yes.

**Rhonda North:** Commissioner Roszel.

**Dev Roszel:** Yes.

**Rhonda North:** Commissioner Stein.

**Mimi Stein:** Yes, I agree.

**Rhonda North:** Council Member Jacobs.

**Bud Jacobs:** Aye.

**Terry Cooke:** Thank you all. We now turn to unfinished business, that being the commission's continuing and presumably final deliberations on the pending application for approval of the preliminary plan of subdivision for the property we have been referring to as Banbury Cross Reserve. I would now ask Mr. Moore to bring us up to date on that matter before we enter into discussions.

**Will Moore:** Thank you, Mr. Chairman. I will attempt not to repeat a lot of information that has been provided in previous reports, really focus on bringing you up to date on the interactions that have occurred since your last meeting during which the public hearing was held at this time. So subsequent to

your public hearing and initial deliberations, you did table the application for these two weeks, and the intent was to have some dialog with the applicant to receive some clarifying information. And a good bit of that has occurred during this interim. There are some attachments to the agenda that document some of that interaction. Among those, the preparer of the Hydro Geological Report submitted two different documents to you. One was maybe a more of layperson's type summation of the findings of the report that I think the commission found very helpful. And then the second was in response to a query from the chairman as to the perceived adequacy of the county's requirements for this report. So I hope the commissioners have had a chance to review those. Also, during this interim, the applicant himself reached out and in response to, I think, some concerns that maybe the commission stated in the previous meeting pertaining to future uses that could occur on the properties the applicant is voluntarily offering to limit some of those future uses. And he provided a list of 30 plus uses that are allowed in the AR2 district that at least for preliminary consideration, he is considering imposing restrictive covenants on the property that would then run with the land that would prevent those users from taking place on the land in the future. Those would be memorialized at the time of the final plat and would be included in the associated deed. So there is some time between now and when the final plat stage would occur that that list could evolve. But the commission, I remind you, is also an approver of the final plat. So you would see the final version of what those restrictive covenants may look like at the end of the process. That really brings us up to date on what has happened between the last meeting and now. As stated at the last meeting, and I think worth reiterating at this point, is that all reviewing agencies, which include multiple agencies within Loudoun County, includes town staff, town's consulting engineer and the Virginia Department of Transportation. All of those agencies of previous review comments have been successfully addressed and resolved. And we respectfully suggest that the preliminary plat is in an approvable form and meets all applicable requirements at this time.

**Terry Cooke:** Thank you, Will. Again, we'll invite each individual commissioner to make any comments or ask any questions, and if you have questions for the applicant, I presume the applicant is online and is available to respond. So we'll begin again with Vice Chair Woodruff.

**Don Woodruff:** Thank you, Mr. Chairman. There's been some allusion in today's comment, but a great, great deal of concern on the part of those who spoke at a public hearing about the potential damage or threat to the water supply of Middleburg. And I understand that at the present time that is not an issue. But there was a comment made that the applicant was willing to make an agreement that if there was a problem in the future, that they would be involved and rectify that situation as it pertains to Middleburg. Does that also pertain to water issues for neighbors who seem to be greatly concerned about this?

**Terry Cooke:** I will invite the applicant to to speak to that.

**Andy Hertneky:** This is Andy Hertneky, can you all hear me?

**Terry Cooke:** Please go ahead.

**Andy Hertneky:** Ok. Hi. What we've offered to the to the town was since our engineers said that we had multiples in excess of what we need for that development for water.

**Terry Cooke:** Excuse me for just a moment. Would you please identify yourself for the record?

**Andy Hertneky:** Yes, it is Andy Hertneky. I am the managing partner of ML1.

**Terry Cooke:** All right, thank you, sir.

**Andy Hertneky:** So On the water front, again, our engineers have stated to us, and we have done multiple studies that there is well in excess of what we need on that property. So what I had offered to the town was in the event that there was any types of emergencies in Middleburg water, we had pristine water

over where we are, we would offer the town an opportunity to drill well there. I don't know, again, the exact number of gallons that could be taken. Our water experts said 10,000 gallons a day would be absolutely no problem, which I think is bigger than some of the wells that Middleburg actually has. And we can you know, I'm certainly open to going to see if there's more than that available. I don't know at this point. As far as neighbors, if anybody can show anything happening on our property is directly affecting them, we certainly would be willing to work with them to rectify that situation. We absolutely don't believe that will happen. Our engineers don't believe that will happen. In the event that it would. And it can be shown that what's going on, on our property is affecting a neighbor, we want to be good neighbors. We would certainly do all we can do to help them.

**Don Woodruff:** Thank you.

**Will Moore:** And Mr. Hertneky, this is Will, just just to be clear from the commissioner's statement, your offer to allow the town to build a well on your site was not in the event that your site and the use on thereon caused a problem for the town. It was simply if the town had a problem at all with water supply, that we could have that opportunity. Is that correct?

**Andy Hertneky:** Yes, sir, that is correct. And we've even done, you know, additional well test to absolutely, you know, prove that any way that we can, that there will be effect on the town. So the point wasn't if we effect the town, we would help the town. The point was simply to be good neighbors and as much as the town has problems, we would help the town with the water situation. It had nothing to do with us affecting the town's water.

**Will Moore:** Thank you, sir.

**Terry Cooke:** Anything further, Commissioner Woodruff.

**Don Woodruff:** No, thank you, Mr. Chairman.

**Terry Cooke:** Commissioner Fleischman.

**Ed Fleischman:** Thank you, Mr. Chairman. I've read a lot of papers and I think that I'm fine right now. Thank you.

**Terry Cooke:** Commissioner Minchew.

**Rachel Minchew:** No, I did not have any further questions. Thank you.

**Terry Cooke:** Commissioner Roszel.

**Dev Roszel:** Yes, thank you, Mr. Chairman. Mr. Hertneky, I appreciate you coming and talking to us once again. You know, we've all heard what the public has to say, and we certainly appreciate the input and the concerns that everyone has. And I am and I really do appreciate that. It's a decision that has to be made. And I believe that Mr. Hertneky is is come in a very in looking to come up with solutions, not really with problems. And I think that is the planning commission. You know, what we need to be doing is looking forward. And for the people that are against this, what we need to be doing is looking to our supervisors and making sure that these types of things don't happen again. So but I do want to thank everybody for participating, because I think that's super important for what we have going on here. And I appreciate Mr. Hertneky for coming again to this commission and listening to what we had to say. And that's all I have. Thank you.

**Terry Cooke:** Thank you, Dev. Commissioner Stein.

**Mimi Stein:** I really don't have any more questions, but I am, Mr. Hertneky, I thank you for your comments about being willing to help any of these adjacent property owners if they have issues down the road caused by any of the developments. Other than that I'm fine, thank you.

**Terry Cooke:** And Council Member Jacobs, please.

**Bud Jacobs:** Thank you, Mr. Chairman. I also want to add my thanks to Andy Hertneky for his willingness to do everything that he possibly can do to answer our questions, to ensure that requirements for approval of his application are met and certainly for his expressions of goodwill and hope that we can all be part of one community. I also want to thank the opponents of Banbury Cross reserve. As you know from my public declarations, I've met with several of them several times, had exchanges of numerous emails and phone conversations. They, too, have tried to answer my questions and concerns, and they too have expended a lot of energy to address the issues raised by this application because of the diligence of the commission itself and certainly the diligence of town ably led by our deputy town manager, Will Moore. Pretty much all of my questions have been answered. My concerns have been, I guess the word is assuaged and I don't have any further comments to make, Mr. Chairman.

**Terry Cooke:** So thank you, Bud. This is the chairman. I will just echo, I guess, what some of the commissioners said. I am very appreciative of the the applicant's extraordinary responsiveness to the questions posed to it by the commission. Those questions largely stemmed from our hope to address some of the concerns expressed by the many folks who who spoke at the public hearing. I believe the applicant has, as I said, been very responsive and forthcoming in all respects and and especially in allowing us this additional two-week period to deliberate a little more calmly and thoroughly on the application. And I think I think it works to the benefit of all involved. So thank you again. With that being said, we have now come to the point where we will entertain any motion by the commission on the applicants.

**Ed Fleischman:** Mr. Chairman. Before any new motions are put forward, I'd like to bring up my motion that was tabled at the meeting two weeks ago and ask for a minute of time and then a vote on that motion.

**Terry Cooke:** Very good. I mean, that's we're looking for a motion on this application.

**Dev Roszel:** This is Commissioner Roszel. What is if you can just, I was going to make a motion myself prior to Ed. What is the motion he two weeks ago? My mind is not quite.

**Ed Fleischman:** I didn't expect people to remember it. But just as a preface to the motion, we as commissioners spent the last year or two working on a comprehensive plan for the town of Middleburg. And we looked out 20, 25, 30 years as we should as commissioners, and we developed that plan. And now we have a subdivision plan proposal before us. And when I'm looking at it, there are a couple of concerns that I have that I discussed before. And I just mentioned that we should be wary of moving ahead here quickly without realizing that this sets a precedent for other developments that might occur within the subdivision area, one mile between ground boundaries. So it could be on the south to the east or more on the west. So I think it sets a precedent and we as commissioners, we look far in the future should be considering that. So therefore, what I had a motion last time, which I'm going to bring back on the table, is that no one could. And some of the geologists and other technical people, and I consider myself a technical person, having civil engineering background and being involved in a review of applications for numerous projects around the country that they could not prove that there was no potential adverse effect on the town's water supply. So therefore, based upon the potential adverse effect of the development of the town of Middleburg's water supply, I move that the Middleburg Planning Commission disapprove the request of the Middleburg Land One LLC for approval of the preliminary plat subdivision for 38 lots and approximately 570 acres of land consisting of parcels 503 46 4523, 502 28 1672 and 502 39 89 57 zoned currently agricultural rural two. So I'd like to bring that back on the floor. Thank you.



**Terry Cooke:** We have a motion, is there a second? Is there a second?

**Don Woodruff:** I second the motion.

**Terry Cooke:** We'll have a roll call vote.

**Will Moore:** You can have a discussion on the motion if you would like.

**Terry Cooke:** Any commissioners wish to speak on the motion.

**Ed Fleischman:** I'd like to, this is Ed Fleischman, commissioner. Mr. Chairman. I'd just like to mention that I sent an email to the town and I presented a motion to them last week again. And I asked them to take a look at it and let me see what I said. I said that I still have the motion on the table as an alternative to approval if the town or the town's attorney would strengthen the motion to make it more defensible, please do so. And I didn't get a response from it. So I'm assuming that there was no additional comment on the motion and I just wanted to bring that to the attention of the other commissioners. Thank you.

**Dev Roszel:** Mr. Chairman. This is Commission Roszel.

**Terry Cooke:** Yes, sir.

**Dev Roszel:** It would be my expectation that because we tabled that motion at the time, we did not take a vote on that motion. I'm not I'm not in the know on how this works, but I believe that because that was tabled, that motion should not take preference over what we're doing today. That's just my personal thought process. I don't I don't know how it all goes down. Will, you can educate me. And if I'm wrong, that that's fine. But that motion was put on the table and then was was floated and then tabled, which in my opinion means there was no action taken on that that recommended that motion. So the motion today should be what our expectation is today. And I have an expectation to make a motion for what we're doing today, not what we did two weeks ago. Thank you.

**Will Moore:** If I may, I think you're correct that there's no preference given to that. But a motion has been made now by Mr. Fleischman to disapprove, and it did receive a proper second. So it would be proper to discuss that motion and then to take a vote on that motion to disapprove and of the commissioners can vote how they like on that. And depending on the result of that vote, then you would proceed.

**Terry Cooke:** Do other commissioners have any comments on the motion?

**Bud Jacobs:** This is Bud Jacobs. I have a couple of brief comments, Mr. Chairman.

**Terry Cooke:** Go ahead, Bud.

**Bud Jacobs:** I appreciate the work that Ed has done in putting together his motion and on its key point, the future impact of the decision we are going to take today on our community and the possible precedent that it may set for future by right development around Middleburg. I believe that is absolutely right. Unfortunately, my analysis indicates that for lots of reasons, historical and monetary, the card, the deck is stacked in favor of development. And because of the way the review of by right applications such as this one are conducted in Loudoun County, the potential precedent that we may be setting with an approval of this preliminary subdivision plat is in fact not a relevant consideration under the ordinances and procedures. With respect to the comprehensive plan, we have Virginia court decision indicating that a preliminary subdivision plat's non-conformance for conflict with a jurisdiction comprehensive plan is not a grounds to deny approval for a preliminary subdivision plan that otherwise meets the technical

requirements set by the relevant jurisdiction. Now, I don't like either of those facts, but those are the facts, and I don't see a way around them. That's all I have to say, Mr. Chairman.

**Terry Cooke:** Thank you. I have a comment or two. This is the chairman. And I as I said in the past, under our bylaws as chairman, I don't vote on motions unless I choose to create a tie to break a tie, but I will state that I do not favor the current motion. I believe that, as I alluded to a few moments ago, the applicant has taken extraordinary steps, I believe, to be responsive to the questions and concerns that this commission has put to it, it is abundantly clear to me that the applicant has met all of the county and town requirements. For its subdivision preliminary subdivision plat. And I see no legitimate basis on which to deny approval. I very much respect Ed and his his technical abilities and his concerns, but on this one, I strongly disagree with the motion because I feel that our role in this process, as we all knew going into it, was pretty circumscribed. Does the application meet the requirements of the preliminary subdivision plat as stated in the subdivision ordinance of the town in the county, it clearly does. The applicant has provided ample evidence with regard to concerns about the water issues. And I don't believe that pure speculation as to what might happen years down the road is a legitimate basis for denying this application. Any new application will go through this same process and will be vetted in the same way that this one was. But this application has to be considered on its own merits, and I believe that is the basis on which we should go forward today. I'll invite any other commissioners to share their views at this time if they choose to, or we will call for a vote on the motion. We have a motion, we have a second. Rhonda, will you do a roll call, please?

**Will Moore:** And to be clear, this is a motion to disapprove.

**Rhonda North:** Vice Chair Woodruff.

**Don Woodruff:** I abstain.

**Rhonda North:** Commissioner Fleischman.

**Ed Fleischman:** I vote to disapprove.

**Rhonda North:** Commissioner Minchew.

**Rachel Minchew:** I oppose the motion that's been presented before us.

**Rhonda North:** Commissioner Roszel.

**Dev Roszel:** I oppose the motion that's been presented.

**Rhonda North:** Commissioner Stein.

**Mimi Stein:** I oppose the motion that's on the table.

**Rhonda North:** Council Member Jacobs.

**Bud Jacobs:** I oppose the motion.

**Terry Cooke:** Motion fails.

**Ed Fleischman:** Mr. Chairman. This is Commissioner Fleischman; can I just say a few words? I respect the decision of the Planning Commission. We are all independent and we all have our views and the views are vetted and we vote on them. And I respect everybody's decision that we just made. I just felt that I had to put the motion forward and vote the way I voted. But I respect the decision of the other

planning commissioners. And I also thought the staff of the town of Middleburg did a good job of presenting options and technical information. So I want to thank everybody. Thank you, Mr. Chairman.

**Terry Cooke:** Thank you, Ed. We will now entertain an alternative motion if anyone cares to make one.

**Dev Roszel:** Yes, Mr. Chairman, I make a motion. This is Commissioner Roszel. I move that the Middleburg planning commission conditionally approve the request of Middleburg Land One LLC for approval of the preliminary plat of subdivision for 38 lots on approximately 570.873 acres of land consisting of parcels 503-46-4523, 502-28-1672 and 502-39-8957 zoned agricultural rural 2 subject to the applicant satisfactorily addressing the following three conditions contained in the June 26 notification from Loudoun County. One. In concert with comment letter from Loudoun County dated June 22, 2020, accompanying construction plans and profiles shall fully comply with FSM Section 2.330.A by providing the required fire tanks. Tanks shall be depicted on the construction plans and profiles. The cost shall be included in the bond estimate and locations and design shall be approved by the fire marshal's office prior to approval of the construction plans and profiles. Two. Prior to approval of the accompanying construction plans and profiles, the applicant should comply with all requirements contained within the referral memo written by Dr. Steve Thompson, Loudoun County Department of Planning and Zoning dated June 3rd, 2020. And three. Prior to the approval of the accompanying construction plans and profiles, the applicant shall record the offsite ingress egress easement identified as Highland Estate Lane that crosses PIN number 502-48-6535 currently owned by Travelers Rest LLC. Satisfactory meets the reasonable satisfaction of the locality of for departments submitting to comment. End of motion.

**Terry Cooke:** We have a motion. Do we have a second?

**Rachel Minchew:** This is Rachel Minchew. I second the motion on the table.

**Terry Cooke:** Thank you. We have a motion and a second, would you please do a roll call.

**Rhonda North:** Vice Chair Woodruff.

**Don Woodruff:** Yea. [inaudible].

**Terry Cooke:** Was that an affirmative?

**Don Woodruff:** Yea. Yes.

**Rhonda North:** Commissioner Fleischman.

**Ed Fleischman:** I vote to disapprove.

**Rhonda North:** Commissioner Minchew.

**Rachel Minchew:** Vote to approve the motion on the table.

**Rhonda North:** Commissioner Roszel.

**Dev Roszel:** I voted to approve the motion on the table.

**Rhonda North:** Commissioner Stein.

**Mimi Stein:** I vote to approve.

**Rhonda North:** Council Member Jacobs.

**Bud Jacobs:** I vote to approve.

**Terry Cooke:** Thank you all commissioners. The motion carries. The preliminary plat is approved. Now, continue on for the remainder of our agenda, and I think the only thing remaining is to determine whether we'll have a quorum for our next regular meeting, which is just just two weeks from today. I can hardly wait to do this again, folks. Is everyone available for the meeting on the 24th?

**Ed Fleischman:** Mr. Chairman. If there's nothing looming at that meeting, I'm exhausted from all these meetings on the Banbury Cross and if nothing is significant happening, I would like to cancel a meeting myself, but maybe.

**Terry Cooke:** I think we'll have to defer to staff on that one.

**Will Moore:** I do think we will we will have some some interesting items upcoming for you in the very near future. We may be able to handle that just by disseminating information if the commissioners are in favor of canceling your August 24 regular meeting and defer the next meeting until September. But we may have some homework for you in between if that's helpful.

**Bud Jacobs:** Mr. Chairman, this is Bud Jacobs. I'm willing to do Will's homework assignment, but I certainly second Ed's recommendation that we cancel the August 24 meeting.

**Terry Cooke:** Well, that sounds good to me, folks. [Multiple speakers]. What was that?

**Mimi Stein:** It was Mimi. I was just saying kind of used to doing Will's homework, so.

**Will Moore:** Yeah. Yes. So the next regular scheduled meeting would be on Monday, September 23.

**Terry Cooke:** Is anyone not available meeting on the 28th of September? Very good. OK, we'll proceed on that basis. We'll see what kind of homework assignments come our way in the next few weeks. And with that, ladies, and gentlemen, I believe we are adjourned.

**Will Moore:** Thank you, everyone, for your hard work.

**Ed Fleischman:** [Multiple speakers]. Thank you, Mr. Chairman, and staff.