



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



**MONDAY, JULY 22, 2019
PENDING APPROVAL**

PRESENT: Eric Combs, Chair
Terence S. Cooke, Member
Edward R. Fleischman, Member
Mimi Dale Stein, Member
Kevin Hazard, Councilmember

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

ABSENT: Donald Woodruff, Vice Chair (unexcused)
Rachel Minchew, Member (excused)

The Middleburg Planning Commission held their work session and regular meeting on Monday, July 22, 2019 in the Town Hall Council Chambers, located at 10 W. Marshall Street in Middleburg, Virginia. Chair Combs called the work session to order at 6:30 p.m.

Revisions to Draft Comprehensive Plan Update

Deputy Town Administrator Moore reminded the Commission that during their public hearing, they received a request to incorporate green energy into the document, to which the members agreed. He further reminded them that Commissioner Fleischman requested clarification between sanitary and storm sewers, as well as the insertion of language related to storm water management. Mr. Moore advised that The Berkley Group drafted language to address the green items and he drafted language related to storm water management, which were disseminated electronically to the members for their review. He reported that other than grammar related comments from the Chair, no comments were received.

Chair Combs opined that the language was well scoped and addressed the comments that were received. He further opined that they were a great addition to the document. Mr. Combs reminded the members that they would take formal action on the draft plan during the regular meeting.

The Commission questioned whether the members of the Town Council have viewed the draft. Deputy Town Administrator Moore confirmed that he kept the Council apprised of the status of the draft plan, including notifying them when it was posted. He noted that many of them attended the Open House. Mr. Moore reported that he had received no comments from the Council to date.

SD 19-02: Preliminary Subdivision Plat – Banbury Cross Reserve

Deputy Town Administrator Moore explained that this item was on the agenda for update purposes. He reported that the plans were officially submitted on June 26th and were forwarded to the review agencies for their comments. Mr. Moore noted that he received the Town Engineer's earlier in the day and opined that they included some good technical comments. He advised that he was awaiting the County's. Mr. Moore reminded the Commission that they must take action on the plat within ninety days of acceptance of the submission.

Deputy Town Administrator Moore reminded the Commission that a portion of the property was located within the subdivision control area, which was why the Town was one of the approving agencies. He advised that the County would approve the portion that was located outside of the control area.

Deputy Town Administrator Moore reminded the Commission that the Town Code required that they conduct a public hearing on the preliminary subdivision plat. He further reminded them that unless the applicant waived the ninety day deadline, they would be required to take action on it during their September meeting. Mr. Moore suggested that if the applicant did not turn the clock off, the Commission would likely need to do a conditional approval, meaning the applicant would be required to address any comments within ninety days. He explained that often it was difficult for an applicant to address them in ninety days; therefore, they stopped the clock. Mr. Moore recommended the Commission schedule the public hearing for their August meeting as it would be helpful to receive any technical concerns from the public early so they could be addressed before the deadline. He advised the Commission that he would have a conversation with the applicant about the possibility of deferring the deadline when he presented them with the first round of review comments. Mr. Moore reminded the members that a preliminary subdivision plat was a ministerial act, meaning they must approve it if it met all of the technical requirements, even if there was public opposition to the subdivision.

It was noted that if the hearing was held in August, some people may not be able to attend as they could be on vacation; and, if it was held in September, the Commission could be forced to act on the plat immediately upon hearing of some technical concerns. The Commission held considerable discussion as to when to schedule the public hearing. They agreed the Deputy Town Administrator should ask the applicant for an extension of the deadline. If he agreed, the public hearing would be deferred; however, if he did not, it would be advertised for the August 26th meeting. It was noted that citizens would still have the opportunity to comment on the plat during the September meeting under the public comments section of the agenda.

The Commission held some discussion regarding the four hundred acres that would remain as open space. They questioned whether the applicant could return to further subdivide it if the County ever changed its subdivision ordinance requirements. Deputy Town Administrator Moore advised that it was his understanding that the applicant could vacate the subdivision at any time up until it was recorded; however, once recorded, the County prohibited further subdivision of open space associated with a clustered subdivision. He noted that he would confirm this was the case.

The Commission inquired as to the minimum lot size required by Loudoun County in the rural area. It was noted that it was just under one acre. Deputy Town Administrator Moore reported that the smallest proposed lot size was two acres.

Chair Combs noted that Commissioner Fleischman had a concern that Note 9 on the plat stated that the engineer represented that the property was not a habitat for any endangered species or geology; however, a later note identified two threatened species. Deputy Town Administrator Moore advised the Commission that the Virginia Department of Conservation & Recreation's review comments referenced threatened species in the downstream area only, assuming they identified the correct site on the map. He reported that the plans would be evaluated with regard to storm water management. Mr. Moore advised that while the applicant had not yet provided it, the Town Code required a review of the E&S plat.

The Commission noted that the homes would be on septic systems. They expressed concern about the possible impact of the development on the Town's wells. Deputy Town Administrator Moore reported that the Virginia Department of Health conducted an analysis and determined the initial plan was acceptable. He advised that during the pre-application meeting, the engineer indicated he had conducted a geo-hydrology study and agreed to provide a copy to the Town. Mr. Moore advised that the Town Engineer and the Wellhead Protection Advisory Committee would review the study once it was received.

The Commission questioned whether the portion of the property that was accessed off Carter Farms Road was outside of their control. Deputy Town Administrator Moore opined that it was; however, he would verify this with the County.

The Commission inquired as to the boundaries of the subdivision control area. Deputy Town Administrator Moore reported that they were established as being one mile from the Town's then corporate boundaries. He further reported that when the Town's boundaries shifted, the boundaries of the subdivision control area did not. Mr. Moore advised that Loudoun County had a map that identified the boundaries.

Chair Combs adjourned the work session and called the regular meeting to order at 7:25 p.m.

Disclosure of Meetings with Applicants

The members reported that they had no meetings with applicants.

Approval of Meeting Minutes

Commissioner Cooke moved, seconded by Commissioner Fleischman, that the Planning Commission approve the June 17, 2019 meeting minutes as submitted.

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

Unfinished Business

Resolution Recommending Approval of Draft Town of Middleburg Comprehensive Plan 2019

Chair Combs asked that the Deputy Town Administrator keep the Commission informed of the Council's schedule related to the draft plan. Deputy Town Administrator Moore encouraged the members to attend the Council meetings when it was considered.

The Planning Commission commended Deputy Town Administrator Moore and Todd Gordon, of The Berkley Group, on the incredible work product they provided. Deputy Town Administrator Moore acknowledged the work of Mr. Gordon, as well as the input that was received from the public.

Commissioner Cooke moved, seconded by Commissioner Fleischman, that the Planning Commission adopt a Resolution to approve and recommend for adoption the draft Town of Middleburg Comprehensive Plan 2019 dated July 15, 2019.

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

Council Representative's Report

Councilmember Hazard reported that during its last meeting, the Council adopted a resolution recognizing the Middleburg Deli on their 25th anniversary and a Resolution of Appreciation for Interim Town Treasurer Tina Staples who was leaving the Town's employ. He noted that the Town was in the process of searching for a new Town Treasurer.

Councilmember Hazard reported that the new Town website was operational and encouraged the members to visit it if they had not done so. He opined that it was really good, had a clean look and was user friendly.

Councilmember Hazard reported that the Town issued a Request For Proposals for the Asbury Church in an effort to find someone to take over the ownership of the property, improve the historic building and put it into a good use.

Councilmember Hazard reported that the Town was in the process of planning an Oktoberfest to occur in September and was working with businesses to get them to stay open late on the fourth Friday of the month to coincide with the National Sporting Library & Museum's Open Late Concert Series.

Councilmember Hazard reported that the Treasurer's preliminary report for FY '19 indicated the Town ended the year with a surplus of approximately \$800,000. He reminded the members that the Town established the Middleburg Strategic Finance Committee, whose mission was to tighten the Town's revenue and expenditure projections. Mr. Hazard advised that the Council wanted to identify some targeted uses if there were excess funds at the end of the fiscal year.

The Commission held some discussion regarding the Oktoberfest event. Deputy Town Administrator Moore advised that it would involve the closure of a block on South Madison Street and a block on West Federal Street. He further advised that it would be held in partnership with the existing Art in the Burg. Mr. Moore noted that while the details were still being worked out, the Town would be a sponsor/partner, with the Old Ox Brewery taking the lead on the beer/wine tastings as this would require an ABC license.

Quorum for August Meeting

Those members who were present confirmed they would be present for the August meeting.

There being no further business, Chair Combs adjourned the meeting at 7:40 p.m.

RESPECTFULLY SUBMITTED:

Rhonda S. North, MMC, Town Clerk

Middleburg Planning Commission Transcript
July 22, 2019

(Note: This is a transcript prepared by a Town contractor based on the video of the meeting. It may not be entirely accurate. For greater accuracy, we encourage you to review the video that is on the Town's website – www.middleburgva.gov)

Eric Combs: Ok, well, Let's get started with the works session and synchronize our microphones first and foremost. Start on this end.

Ed Fleischman: Good evening, Ed Fleischman.

Mimi Stein: Mimi Stein.

Eric Combs: Rhonda, you wanna jump in?

Rhonda North: No, go ahead, I'll finish.

Eric Combs: Eric Combs.

Terry Cooke: Terrance Cooke.

Kevin Hazard: Kevin Hazard,

Will Moore: Will Moore deputy town administrator.

Rhonda North: Ronda North, town clerk.

Eric Combs: Great. Thank you, everybody. First item on our agenda for the work session is the latest revisions to the draft comprehensive plan, which I hope everybody has had a chance to review. Will, you want to just give us a brief intro there on what was sent around and where we are?

Will Moore: Sure. So at your public hearing last month, we did have comments from one member of the public who had suggested some language regarding green energy and the like. And after some discussion, the commission agreed that it would be good to expand a little bit on that topic in the plan. And then the commission, especially Commissioner Fleischman had suggested some language about stormwater management and specifically clarifying storm sewers different from sanitary sewer. So we've we've added some information in there as well. Todd from the Berkeley Group did most of the drafting on the green energy. And then I drafted the stormwater section and then we sent that around to the commission. Those of you who responded did so favorably. We did have some adjustments, basically just grammatical adjustments that the chairman suggested, but otherwise no other comments were received or incorporated. So this these are the affected pages with the highlighted changes. And then later on in your agenda, under the regular meeting, we have the full assembled document, which includes these changes as well.

Eric Combs: Great. Thank you, Will. Any any comments or questions with respect to the revised language we have before us? Great. I'll just add that I thought it was all well scoped, seemed to address all of the things we discussed at the last meeting. And but for a few nits here and there, I thought it was great. Ready to go. So I'm happy to see those additions. I think it adds a lot to what was already a great document, but really does address all those things that were raised.

Will Moore: Agreed and I said it last month and I reiterate this month, I think it was a wise decision to go ahead and incorporate these and forward a clean document to the council. So I do appreciate the commission taking the time and attention to make sure we got this buttoned up before forwarding.

Mimi Stein: Thank you for sending around just the [off mic]

Will Moore: Absolutely. Absolutely. Certainly.

Eric Combs: Ok. Will, so with all of that, we should be ready to take it up in our regular meeting, is there anything else you think we need to address before we do that?

Will Moore: I don't think so. I think we have had a number of discussions back and forth with Todd from the Berkeley Group, and I think we're confident that this is ready to for you to take action. And there is a draft motion, actually you do it in the form of a resolution, but there is a draft motion to adopt that resolution in the staff report under the regular meeting. OK.

Eric Combs: Well, I guess we could take up any and any other issues with that plan during our regular meeting. But before we do, does anybody have any comments on the document that they want to take up in the work session? Ed, please.

Ed Fleischman: Just a question to Will, this is going to the town council. Have they seen a draft? Have you spoken to them about it or what's the status of their review?

Will Moore: Right. So I've kept them apprised of the status of the plan during my monthly reports. I did advise them. I sent an email around when we posted the May 14th draft, which is the one just previous to this one when that was posted. Quite a number of the members of council attended the open house as well. So they have kept up to speed. And to this point, we've received no comments, favorable or unfavorable from members of the council.

Ed Fleischman: Thank you. Thank you.

Eric Combs: Ok. Any other comments on the document or its related context? Great. The next item under our discussion items for the work session is a subdivision plat 19-02 or preliminary plotted subdivision for Banbury Cross Reserve. We've got a memo and a copy of that plat in our materials. But Will we will rely on your introduction yet again.

Will Moore: Certainly. So this is more of an update for you. I did want to get now that we have the plat officially submitted, I wanted to get a copy of that to you so that that is included. Obviously, it's a technical document, but some of you have that kind of expertise of reviewing planned documents. So I wanted to get this to you as soon as possible. In terms of status of review, it was routed once it was officially accepted on June 26th, it was rallied to multiple agencies for review. Just this afternoon, late this afternoon, received our town consulting engineers comments and have been going through those. And he has done a thorough job on that. And so there will be some good comments coming from the town, technical comments on it. We're still awaiting all of the Loudoun County agencies reviews and their head of subdivision did inform me that it would take a considerable amount of time to get there, multiple agencies to get those review comments to us. That being said, we are under a clock somewhat to get comments to them and then to actually take action. So again, at this point in time and I'll be happy to talk any technical comments, if anyone has any at this time. But it was more of an update. Just a refresher, a portion of this is within our subdivision control area, which is why we are the the approving authority, one of the approving authorities, I should say, on the preliminary plat. The county will also be taking action to to approve the same plan said that we do. They will approve after we do. And their approval is essentially for the portion that is outside our control area. Our ordinance, our subdivision ordinance

requires a public hearing to be held on preliminary plats. It is not a state code requirement, but it is something that the locality can impose. So we do need to have a public hearing prior to the commission taking action on the plat. We could be required to take action by your September meeting. I say we could be because the way it reads is that within 90 days of the plat being officially submitted, officially accepted, the commission must take action to approve, conditionally approve or disapprove the preliminary plat. How this usually takes place is that if there are extensive review comments issued on the first iteration of review, the applicant will agree to forego that 90 day approval requirement. In other words, they will agree to take the clock off of us. But should they not voluntarily do that, we would be forced to take action and that would likely come in the form of a conditional approval. And unless there is some outright reason to disapprove and a conditional approval can mean we have a laundry list of comments that still required to be addressed, and then they have 90 days after that to successfully address all those comments. Sometimes that would be difficult to successfully address all of them within 90 days, which is why the applicant will oftentimes just agree to forego the initial 90 day requirement for us taking action. But again, the commission could be required to take action no later than your September meeting. Should the applicant not agree to that. What I suggested in the staff report is a hearing to be conducted at your August meeting to gather public input. It could be helpful if there is good technical input or technical concerns that the public brings forward we can ensure then within that last month between the hearing and when you could potentially be required to act on the plat, that we could make sure those comments are addressed. Commissioner Fleischman did reply to the agenda after I had sent it out and had expressed a concern about an August hearing. August is sometimes when people might be on vacation, things like that. And I don't disagree with that position, but just understand that with a clock ticking, the state code clock in terms of when we have to take action by it doesn't recognize summer vacations or spring break or holidays. The clock ticks no matter what. So it's kind of I think you need to either set your hearing for August or September no matter what. If you set it for September just understand that if the applicant does not agree to forego our 90 day requirement to take action, you could be forced to take action on the plat at the same meeting in which you conduct the hearing. That may or may not be a bad thing. But again, if it gives the public the opportunity to speak at August and then we are able to, instead of on the spot responding to any concerns, give us an additional month to do so. That might be helpful, but we're happy to schedule it either month.

Eric Combs: What is the date we're operating under for their submission or whenever it was officially accepted. Is this June 26th here in your memo?

Will Moore: Correct.

Eric Combs: And has the applicant given any indication as to whether they want to punt or [inaudible].

Will Moore: They have not. Usually we have that conversation at the time that we transmit our first round of review comments. So while I'm still waiting to see how extensive the county's comments are, again, our consulting engineers comments just came in today. I've been assembling my own list of things which generally match up with his although his go beyond into even more technical detail. But yeah. we've not had that conversation yet with the applicant.

Eric Combs: And when do we have to advertise or publish the. If we were to have the public hearing in August, when does that need to be advertised?

Will Moore: We would need to do it probably early August. We only have to advertise it once as opposed to certain other types of hearings. But that advertisement, it needs to be a minimum number of days before your meeting. So it would probably have to be the two weeks before.

Eric Combs: So are you anticipating having that conversation with the applicant regarding consulting comments and your comments this initial round, are you anticipating having that follow up conversation

with them about whether they want to defer the 90 day clock in between now and when we have to advertise the August [inaudible]?

Will Moore: Yes.

Eric Combs: Okay. Wondering if we want to similarly defer our decision on whether to set that hearing based on what new information you might learn in that conversation and whether we still have time to do that. And go ahead with August if you don't get any sense from them that they want to defer that.

Will Moore: Ok. So essentially, if I don't get a response from them on whether they defer or if I do and it's we don't want to defer, should I go ahead and then schedule for August?

Eric Combs: I'm not sure. I'm just trying to get the lay of the land in terms of our operative dates. That would be, I think one approach. Another approach would be to go for it anyway, regardless set it in August or to just set it for September and know that we simultaneously or, you know, immediately thereafter have to act on it. But I would appreciate any other feedback sure. Ed, please.

Ed Fleischman: Yeah. Thank you. First thing, I just want to say that my opinion that the hearing should be delayed and not done in August. It is not a personal reason. I am available on August 26th. Then I think still that August 26th is a very bad time for having a public hearing. And I understand the constraints of doing it the fourth Monday in September, or then it be possible to do it on midway between on September 9th or some dates similar to that?

Will Moore: Yeah, I mean, if you prefer to have a special meeting to conduct the hearing, we could always do that. That's possible.

Eric Combs: Maybe I might take a step back. The purpose of the public hearing here is more to give the public an opportunity to make a comment on something that's ministerial.

Will Moore: Correct. Correct. So again, for I think all the commissioners understand, but if there are any members of the viewing public who don't get the distinction. A subdivision is a ministerial act, essentially, meaning that if all technical requirements that are defined in the associated ordinances, Loudoun County zoning ordinance, their subdivision ordinance, our subdivision ordinance for the portion that's within our extraterritorial subdivision control area, the Loudoun County Facility Standards Manual, which is a technical document. If all requirements are met in all those documents, all those ordinances, department of transportation regulations as well, then the locality is obligated to approve. So that's what we mean by ministerial act. So not all localities elect to have public hearings on subdivisions for for that very reason. But I won't necessarily say it's a bad thing. It's a good thing to alert members of the public that things are happening. Sometimes it gives members of the public a false sense that simple comments in opposition to something without a technical reason could be reason for disapproval, which is not the case for a ministerial act.

Kevin Hazard: So I've got a lead off the wall question. So with these it's in zone 15 acre, correct?

Will Moore: So it's zoned AR2 and that allows for clustering. And if you do the clustering and then you can get a yield of [inaudible]. Correct.

Kevin Hazard: The land, I guess my real question is, so we're going. We're gonna have these smaller lots. We've got this open space and that's per zoning. What happens if Loudoun changes it to three acre sites, can they go back or are they now in perpetuity, that's open space because that's the way it zoned.

Will Moore: So until until a record plat is recorded, there are opportunities to do a vacation of a plat. So if it were up zoned, you know, to something that would allow more dense development, there would

likely be an opportunity. Now, once the record plat is recorded and I would have to confer with Loudoun on this because it's really under their zoning. But my understanding from talking with their chief of their subdivision division is that once you afford yourself of the opportunity to use the clustering option, you cannot further re subdivide then. So but at what point in time that kicks in whether it's once the record plat is recorded, which is my understanding, but I would have to confirm with them once that happens, you cannot re subdivide.

Kevin Hazard: [off mic]

Will Moore: Very much so in a way. Correct.

Eric Combs: Yeah. It's addressed in the Loudoun County zoning ordinance, I believe isn't it? Under that AR2.

Will Moore: It is if I can get some I can I'll follow up with Loudoun on that and have a good answer for you.

Ed Fleischman: Well, just following up on the zoning, I was a little confused last month on what clustering. And so my question would be, is there a minimum lot size in the county, in the rural area? In other words, you can cluster it, but there's still a minimum lot size of two and a half or three acres or they're not.

Will Moore: I'll have to look. I know there is the actually there's a maximum size for one for the clustered lots of four acres. And that's one technical issue is they do have one of those 31 lots is larger than allowable. I can't recall right off the top my head whether there is a an actual minimum. I think these are minimum two acres is what they're providing. But whether or not that is a requirement, I would have to do a little digging.

Kevin Hazard: [off mic]

Mimi Stein: [off mic]

Will Moore: Ok. Forty thousand. So just under [inaudible]. OK.

Eric Combs: I think that's also

Will Moore: that's a good bit small.

Eric Combs: I recall seeing that somewhere what the minimum subdivided cluster lot is. And I can't remember where, but I think it might be in the the zoning ordinance.

Ed Fleischman: Twenty thousand square feet?

Eric Combs: I don't recall what the number is, but it.

Ed Fleischman: Well, this is an official zone. [multiple speakers]

Eric Combs: No, no, it's somewhere I recall seeing it somewhere.

Kevin Hazard: [off mic]

Mimi Stein: [off mic]

Ed Fleischman: The reason why I asked, Will, it because it seems like if we have Loudoun County split into three areas, you know, the suburban, the transition and the rural. I always thought the rural area you had to have, you know, two and a half or three acre lot. I didn't know you could cluster so you end up with almost townhouse development in the rural area.

Will Moore: Well, actually it's so. Yeah. The clustering is an option. If you don't go with the clustering, it is a much larger lot that you have. But correct. So the clustering requires a mix of the smaller clustered lots with accompanying larger lots to go along with it so that there's a good yield of open space in the end as well.

Ed Fleischman: Thank you.

Will Moore: Yes, sir.

Eric Combs: So if it is a minimum lot size of 40,000 square feet, that's less than one acre.

Will Moore: Correct.

Eric Combs: Yeah, it's 0.92 roughly.

Mimi Stein: [off mic]

Will Moore: And they're well, well above that. I think I'm trying to navigate to it here, but I think they're at two acres or above for each of their clustered lots. I'm trying to confirm, though.

Eric Combs: Well, let's circle back to the public hearing scheduling. I'm not opposed to setting it for September and just knowing that we'll have to act, take some action at that meeting immediately after the public hearing. It seems to me that there is a low likelihood at least that any of the public comments will would sway the ministerial decision making with respect to what's before the the town. Is that fair to say?

Will Moore: It will not sway the ministerial decision making, that is correct. Now, whether that any of the public comments highlight any technical issues that we might want to take a closer look at.

Eric Combs: We'll just have to deliberate then and there.

Will Moore: Correct. Correct. And that's always a possibility.

Eric Combs: And could we. Let's just suppose we have to deliberate on a technical issue that might be raised during a public hearing, are we able to still act and act in such a way that it's conditioned on us further resolving whatever the technical issue might be?

Will Moore: It is.

Eric Combs: So we can still satisfy our obligation for it nonetheless. Not shortcut our process.

Will Moore: Correct. So one of the options of conditional approval again, you can have a laundry list of comments that have to be addressed in order to actually go from that conditional approval to an approval that will actually be signed off on.

Eric Combs: So that's sufficient action by the.

Will Moore: It is.

Eric Combs: OK.

Will Moore: It is, yes.

Will Moore: And I just confirmed, sorry to go back that two acres it looks like two lots that are right at 2.00 acres and then all others are slightly larger. So they're at least doubling the minimum lot size for any of the clustered logs.

Eric Combs: Ed, please.

Ed Fleischman: Getting back to the public hearing. I don't think we ought to discuss saying that we don't think there's gonna be any public comments that are going to change the way we vote. I think a public hearing is held to show the public that we're open and we want to listen to them. I think if we sort of don't take our time on this, that the public might criticize the Middleburg Planning Commission for moving ahead too quickly. Even though, you know, we're required to. So I think that we ought to go gingerly here and allow the public as much as many people in the public to become before us. If no one comes, okay, no one comes. But I think we ought to have this opportunity presented to them.

Will Moore: And I 100 percent agree. And just to clarify, that's not what we were saying when Eric specifically asked if comments could sway our ministerial decision making process, they cannot by definition. But but we definitely want to hear from the public. That's why we're having the hearing. And again, it's just the nature of those type of comments. So I'll use the example. If someone comes in and just simply says, I don't think the area should be subdivided. There should not be a development at the corner of Sam Fred and 50. I would understand and respect that opinion, but your decision cannot be swayed by that kind of comment. Your decision can be swayed by comments that raise technical issues that have to be addressed.

Ed Fleischman: But the person will feel better when they came into the room and could say that.

Will Moore: Well, sure. No. And I'm not going to say don't say that. You know, those are the kind of things that, you know, this is a preliminary plat stage and if the pitchforks and torches come out, you those could, you know, potentially sway, you know, a property owners decision down the line to actually go through with a development. So, please, you know, if a member of the public wants to come out and express any opinion regarding the development, I think you should welcome it.

Eric Combs: I would propose that we may be proceed as follows. Let's perhaps see how your conversation with the applicant goes after the first round of comments. But that we aim for a September hearing advertised early so as to get the word out as much as we can and just know that we may have a big meeting in September and may have to deliberate on whatever technical issues might arise during that public hearing. But that we set it for whatever that September date is so as not to deprive anyone of that opportunity by setting it in late August. That would be my suggestion. But I'm again. I'm happy to be convinced otherwise.

Terry Cooke: Yeah. I would only make make this comment. In my experience, many, many planning commissions take the month of August off. That has been my experience anyway in this in this area of Northern Virginia. We don't. So August is a regular work day, so to speak, for us. And that being the case, I personally don't see a good and sufficient reason to bump a public hearing to September. If we have a regular meeting in August, I think we should. I think it would serve the applicant and ourselves well to have that. And that hearing that public hearing in August. Allows sufficient time to address any technical issues that might be raised at the meeting. So I don't want to be a contrarian here, but I don't share what I think is some folks view that because it's August and lots of people take vacations, may take vacations in August we should bump this to September if we have a meeting in August, it should be a meaningful meeting and folks who have something to say at that meeting should should come or submit

written comments, whatever they choose to do if they're not going to be here. But I would favor proceeding in August.

Will Moore: There is another option that may be helpful. You can open a public hearing in August knowing that you're not going to take action. And rather than closing the hearing, you can continue the hearing. Simply meaning that the hearing will remain open until the subsequent meeting, at which time you would still welcome public comments at your September meeting. So it is now typically we would not re advertise that. We would only advertise in advance of the August meeting, but we would continue the meeting and if people called in advance of the August meeting and said, I really want to be there, but I can't, we're on vacation, we could let them know ahead of time that it would be the commission's intent to continue that hearing through to September. In fact, we could even advertise it that way, that it would be continued to September and it would give a couple of options.

Eric Combs: Terry, I'm wondering, is part of your reasoning so as not to short change the Planning Commission's time to address issues that might come up in the hearing to allow us the opportunity to work through them? Is that part of your reason?

Terry Cooke: Yes. Yeah, it is.

Eric Combs: Thank you.

Terry Cooke: I might I just amplify on that I'm a little uncomfortable with having a public hearing in September and then having our backs against the wall to make a decision on the issue. I would prefer a little more time to work through things if things in fact arise.

Eric Combs: Allowing the public hearing to remain open would still then allow for comments to come in in September, which hadn't been raised in August, and similarly sort of cut the process short. It would allow stuff to come in early, but it doesn't preclude that stuff coming in and giving us a time frame. Which is why I wanted to ask about your reasoning there. Ed, you had a comment there. I didn't mean to interject.

Ed Fleischman: I guess I sort of like the compromise position maybe that Will said that have the meeting in August and then keep the record open until September. So preliminary, I like that.

Terry Cooke: And I'm fine with that. I think that's a good compromise position. I'm more comfortable with that.

Kevin Hazard: If we're going to do it in August, we ought to do it in August. I really because then we're not really having and if we're having an August meeting, it's an August meeting. If it's August, September, we still could be back where you don't want to be with our backs against the wall. What happens if you know. Okay, I'm out of town, so I'm bringing the guns in September. We're back at the same situation. Personally, I liked your first way, you know find out, you know, from the applicant whether they would agree to let us slide on the 90 days. And then in that case, we hold it in September. And if they don't, we hold the hearing in August.

Eric Combs: And I also just reraised the point that Ed made earlier, which is to also schedule the hearing at some other time in September. A special September date for the public hearing. Knowing that we have to act by a regularly scheduled meeting later in the month. Which is also an option we might consider. I know, we've done that for other. We've done that in the comp plan context. We've done that for Salamander, I believe, before. I know this is a little different in that the nature of the Planning Commission decision is different here, but in that nature somewhat makes me less inclined to want to schedule a special meeting for it, but I do think there is going to be sufficient public interest in this issue that we should try to accommodate it as much as we can without, again, shorting ourselves on the

opportunity to address the comments, so perhaps that is the option, but again, we may not have to decide, depending on what your conversation is like with. Will, what do you suggest?

Will Moore: I will revert to my recommendation in the memorandum, which was to schedule for August. That was my suggestion. But again, we're happy to do whatever. And there are clearly multiple opinions and multiple concerns to weigh there.

Eric Combs: It seems we are very far from consensus on this tonight. And I'm happy to punt it essentially by saying perhaps we wait to see what the outcome of Will's conversation is with the applicant and then decide if we're gonna get more time than the rest I think our debate here is academic. But I think we should have a fallback in case we don't get that that additional time, in which case what are the thoughts? Ed.

Ed Fleischman: I think a fallback position, again, is that compromise is to have the public hearing on August 26th and then hold the record open for two weeks so that if people want to submit written comments within that two week period, then they're allowed to. And then we'd take action on the September 26^t to [inaudible].

Eric Combs: Oh, that's interesting. Can you leave it open just for the submission of written comments and not to return for in-person public hearing? Or is there then no way to close it out?

Will Moore: Well, so the answer is no. But that doesn't mean the fact that a public hearing, a public hearing is intended for people who are going to come and speak before you. Simply because a public hearing is closed does not mean we won't accept comments of any sort at some point in time. In fact, at your September meeting, you always have a public comment period early on on your regular meeting agenda and that's for things that are not subject to a public hearing. Somebody could still stand up at the public comment period in September and address you about that subdivision. So this is just the we officially have to have a public hearing to give people the opportunity to stand before you and speak regarding that matter. But we would not suppress any other types of comments after that hearing is closed.

Mimi, I hate to put you on the spot, but what are your thoughts?

Mimi Stein: [off mic]

Eric Combs: [multiple speakers] Do we know when Loudoun County schools starts.
[off mic] So school is back in session.

Terry Cooke: It seems to me we're wringing our hands over this because of a concern that if we hold it in August, there will be a lot of people gone who might otherwise be here. It's not necessarily the case. I mean, I'm gonna be gone in September or some part of September. So I'm back to my original thought.

Eric Combs: It's interesting. So August 22nd. I would. I feel like we've come full circle here. My thought is that we set it for August knowing that there's a chance Will comes out of his conversation with the applicant that the 90 days have been deferred to some extent, in which case we delay the public hearing. But we take the position that we're gonna set it for August barring some sort of outcome along those lines.

Mimi Stein: [off mic]

Eric Combs: Yeah. That's my suggestion.

Terry Cooke: Can we proceed with setting it for August and have we'll have this conversation with the applicant and set it for August subject to Will's conversation with the applicant to determine whether they will waive the 90 day rule, in which case we'll cite it for September.

Eric Combs: Exactly. And Will, you had indicated earlier to just to say we're gonna set it for August subject to that. That still does allow sufficient time for us to advertise for the August hearing.

Will Moore: It will.

Eric Combs: In the event that the applicant doesn't want us.

Will Moore: I will either have an answer by then or I won't in which case, well, if the answer is no, we're not going to waive or if I don't have an answer, we'll go ahead and set it for August.

Eric Combs: Ok. Is everybody comfortable with that? There is sufficient number of us to work with that.? [multiple speakers] OK. Thank you, everybody. Good work. Okay. I'd like to now return to the preliminary plat here. Ed had an interesting comment that he submitted via e-mail which references the notes at the beginning of the plat, note 9 in particular where the applicant or the engineer represents that through a search of the Virginia Department of Conservation and Recreation's Natural Heritage Program, dated September 2018. No habitats of rare, threatened or endangered plant and animal species, unique or exemplary natural communities or significant geologic formations exist on site. Ed points out that in the supporting materials at the end of the preliminary plat, the September 2018 correspondence that I believe is referenced in that note not only does not support that representation in number nine, but identifies two species of animals that are in threatened status.

Will Moore: So not exactly. So it's [off mic]. So if you look back at node number 9, the keyword, it is the very last hyphenated word which is onsite. So DCRs review and that review letter references areas that are downstream from the site that have certain species of interest. And they go into very detailed analysis and description of what those species are. But nothing in that letter represents that there is an endangered plant, animal. What they say here on the actual development site itself, it refers to some downstream areas that have species of concern to them. So that's the distinction there.

Eric Combs: Do we know what map they submitted?

Will Moore: I don't.

Eric Combs: To the DCR, because they seem to be in that correspondence from September. They seem to be referencing their analysis of an area captured by whatever the map.

Will Moore: Right. And again, we need to see that so we can square that up. But assuming that they identified the development site correctly on that map, then they're not being disingenuous in saying that none of these endangered species or other areas of concern were identified on site. Again, the DCR letter talks about some areas downstream and then within those certain areas, kind of outfall areas for stormwater there are some species of concern and then it gives certain recommendations as to following, you know, best management practices for stormwater discharge and ENS control, which we will be evaluating technically for in particular once we get to the construction plan phase. This does require. And it's one major technical comment that we'll have is our preliminary plat requirements include at least an initial or preliminary ENS control plan, which was not provided in the preliminary plat set. So that's something we'll be looking for.

Eric Combs: Other comments on the preliminary plat? Ed, you had another comment regarding the individual sewer disposals.

Ed Fleischman: Yeah, my comment was that this subdivision, the homes are gonna be using septic tanks and it's very close to the town boundary. And I think that we have to make sure that there's a technical analysis of the impact or possible impact on our wells in the town. So was any comment you want to make on that Will?

Will Moore: Yes, and very good point. I'll say the Department of Health has already done their own analysis and determined that the initial plan, at least for the individual drain field is acceptable. We have requested when I had a preliminary or I say a pre application meeting a number of months ago, the applicants engineer indicated that they had conducted a hydro geological study and they offered to get us a copy of that study. I have requested that and have not yet received it, but that is something we want. Aside from the Department of Health having done their own analysis, which is important because they are the the agency that has to approve individual well and septic fields. We still want to have our own eyes look at this. So I'm awaiting that hydro geological study and we'll have our town engineer take a look at that. We also have a wellhead protection committee as part of one of the town's appointed committees, and they met just last week. And they've expressed interest in putting their own eyes on that study as well. So once I have that study in hand, I will get it to them. It may require them to do a quick turnover, but we're going to do that analysis.

Ed Fleischman: Good. Thank you.

Will Moore: Thank you.

Eric Combs: Any other comments or questions about the preliminary plat here? Kevin, please.

Kevin Hazard: The preliminary plat it shows where we've got 50, Sam Fred, we've got Carter's. So anything that's on Carter's is completely out of our bailiwick right?

Will Moore: I'd have to go back and look at exactly where the line is. But I think that's accurate.

Kevin Hazard: because it's I mean, they show like the roads coming in, but then they also show an ingress, egress off a Carter's. And so what is what does that mean? How does that work with the streets that they're doing for the subdivision?

Will Moore: Right. And that was, as I recall, when I met with the county's chief of subdivision.

Kevin Hazard: That was one of his questions.

Will Moore: One of his questions was, you know, is there actually going to be a road connection plan where some of these easements are. Our control area does actually, let's see just for you maybe. [off mic] You may be right. Yeah, I think you're correct.

Kevin Hazard: It looks like only that one little leg goes down to Carters. Carter's Farm. You go down there and again, [off mic] but they don't surround any properties. It's pretty much contiguous.

Will Moore: Right. Yeah, I'll I'll have to do a little following up with the county on that. Not seeing it exactly right now. So.

Eric Combs: Will, will the planning commission get the town engineers, a copy of the town engineer comments along with your comments in advance of our next meeting?

Will Moore: Yes. You'll get the collation of all agency comments that we've had. You'll have the benefit of all those.

Eric Combs: Ed, please.

Ed Fleischman: Just another question. On the cover page of the preliminary plat, it shows our large scale map and it shows the subdivision control area. And this is one mile from town. So is it one mile from the center of town or one mile from that piece of town that is very close to the Banbury Cross Reserve Project?

Will Moore: It's neither. So.

Ed Fleischman: I always think I'm giving you a simple question. [laughter]

Will Moore: You do, you think you're throw me softballs and they never are. So the subdivision control area, it was a one mile radius as I understand it, from an edge established edge of town at one point but our edges have shifted slightly in the past. So, for example, on the east side of town, the property where the Middleburg Animal Hospital is, is currently in town, it wasn't a number of years ago, and even though our town boundary moves a little bit to the east, that subdivision control area did not subsequently move with it. It's a fixed area. So actually, the best way to answer that is there is a map that the county has that shows the actual limits of that control area. And that's the driving district line, if you will that defines where that line is. So the one mile limit. I'm not sure where that was originally based upon.

Ed Fleischman: OK. Thank you.

Will Moore: You're welcome.

Eric Combs: Any other questions or comments regarding the preliminary plat or the process with respect to it? Ok. Thank you, everybody. Why don't we roll right into our regular meeting then we'll start with disclosures of any meetings with applicants. Ed, we'll start with you.

Ed Fleischman: I had no meetings with applicants.

Mimi Stein: I've had no meetings with applicants.

Eric Combs: Nor have I.

Terry Cooke: No meeting with applicants.

Kevin Hazard: Nor me.

Eric Combs: Great. Thank you, everybody. Any public comment? OK. We have some draft minutes of our June 17 work session and regular meeting. Rhonda, thank you for our minutes. Does anybody have any comments on the minutes as presented? If not, I'm happy to hear a motion.

Terry Cooke: I move that the minutes of the June 17, 2019 work session and regular meetings of Middleburg planning commission be approved as submitted.

Ed Fleischman: I second the motion.

Eric Combs: All in favor.

Everyone: Aye.

Eric Combs: Excellent. motion approved. Now back to our comp plan. Feels monumental, Will.

Will Moore: I think we're there. And job well done to the commission on this. It's been a long road, obviously. We'll have a few more months to get through council I think just timing wise scheduling a hearing, but very well done.

Eric Combs: And so after we take our action on the comprehensive plan, will you keep us apprised as council sets the comp plan on their agenda?

Will Moore: Absolutely.

Eric Combs: And if any of us can be present for their discussion of it, it might be helpful.

Will Moore: Absolutely. And I would I would encourage you to stay engaged. And if I mean, we obviously occupy one night of your time per month anyway, but if you're available to come, any members of the commission to meetings at which council discusses the plan, I would highly encourage it.

Eric Combs: Great. Yeah. If you could just let us know when those are or perhaps just send us a copy of the agenda maybe when it goes around that'll be great. Okay. I know we took this up in work session, but yet another opportunity for anybody to address any lingering comments, questions, concerns they might possibly have not raised at any point in the last roughly two years. No?

Mimi Stein: [off mic]

Terry Cooke: Mr. Chairman, I'd just like to acknowledge all the good work that Will and Todd from the consultant group has done on this. It's been a slog, no question about it. But they always are. I think it's been a great process and everyone's done a fine job.

Eric Combs: Yeah, I would agree. Thank you, Terry. And I'd just like to add that I think, you know, we had a process in hiring a consultant to help us with this. And Will, I know you had a lot to do with the work product that came out of this, but I do think that you and Todd collectively just gave us some incredible work product all along the way. And just it required just an easy touch from us at the Planning Commission, which I just very much appreciate. So thank you for all your work on this. This was great.

Will Moore: Thank you. And the Berkeley Group was great to work with. Todd in particular was the point person and and a lot of credit to the public as well. So it's been a while since those two sessions we had in May and September of 2017, but the input was valuable. A lot of it was confirmation of what we assumed with certain areas that we wanted to maintain and continue, as is. But there was really strong input future of Federal Street was it was it was a big one, but overall to the public really helped us out as well.

Eric Combs: They did. I'm quite happy with our process and how it participatory it was all along the way. OK. So we have now our final draft, the July 15, 2019 draft comprehensive plan. And if there are no further comments, then it would appear to me that we are prepared to take favorable action on that draft. In which case, who wants to send it up?

Mimi Stein: [off mic]

Terry Cooke: [off mic]

Ed Fleischman: I second the motion.

Kevin Hazard: Do we need to say that we want to adopt the resolution that we have in front of us?

Eric Combs: I was going to ask how much do we need to identify that resolution?

Will Moore: What he did was sufficient. But thank you for asking.

Eric Combs: We had a second, correct? [off mic] Okay. [off mic]. Excellent. Thank you, Ed. All right. All in favor.

Everyone: Aye.

Eric Combs: All right. Thank you, everybody. Job well done. OK. Back to our agenda, Kevin.

Kevin Hazard: [off mic] We had a relatively light meeting at our last meeting. But we also had several resolutions Middleburg Deli, their 25th anniversary in town and and on the. I think it's the 24th it's Tina's last day who was our acting treasurer. She's accepted a position in Hamilton and she gave notice. So the town is in the process of working with the group to find a new treasurer and that's ongoing. So but interesting. Staff reports again from Rhonda that, you know, that the biggest thing going on for the town from the administrative side is we do have the new website up and running. If you haven't been there, I think it's a really, really good and clean look for the town. And it's very easy to use. And it's and that's a I think, a job well done. Economic development. There is an RFP going out for Asbury if it's not already out and it is out? And it's basically what we're looking for is the town is looking for people who, you know, within the confines of our are zoning be able to bring it back, we want it to go back on the public rolls and with somebody with enough financial wherewithal and and even, you know, building wherewithal to bring it back to the historic structure that it is and, you know, to make good use of it. So I don't know how many responses we've got gotten, but it's I think that's finally going to, you know, over the next couple of months that's gonna be put to bed. And there are just economic development. In September, we are going to do in September, we're going to do an Oktoberfest.

Will Moore: Which is when Oktoberfest takes place.

Kevin Hazard: Is it really?

Will Moore: Yes.

Kevin Hazard: I didn't know that. I always thought it was October.

Will Moore: Well, it goes into the first week of October because.

Kevin Hazard: That's a lot of beer being drunk. And so it starts in September. Okay.

Mimi Stein: [off mic]

Will Moore: Well, the question was asked when they first started bating and that around is who is it? Lovettsville? Lovettsville has an existing one. And theirs is gonna be the week after us and we've invited them to advertise here and they're all in favor of us doing it the week before. I think they're glad we're not doing it the week of. But so there is you know, so that's something that the economic development group is putting together to give us another anchor at a different time for an event for the town. And in conjunction with the Sporting Library of, you know, their open late concerts. We're trying to work with some of the town businesses. And that's for this Friday. Correct?

Will Moore: Correct.

Kevin Hazard: And maybe the next month, people stay open late on that. You know, again, just something to give the town some some vibrancy after 5 o'clock. So that was that's a good things going on there. The treasurer's report. If you go to the end of it, and again, this was not a 100 percent there because

a lot of the figures weren't in, but we ended up, you know, instead of balanced about eight hundred thousand dollars to the good for the year. And I don't have the updated figures so I don't know exactly what it is. If you if you look at the charts, it was a very, very good financial year for the town. So that that really helps our reserves. And one of the just talking about that, one of the things that the Bridge, you know, Mayor Bridge Littleton, he's trying to he's put together that economic group and, you know, the financial group. And one of the things he wants to do is tighten up our forecasting. And I think like a lot of small towns or a lot of we go, OK, we did this, this last year. We're going to we're going to make make our revenue projections lower and our you know, our expense is higher so we don't hurt ourselves. But he thinks and I agree with him. We can tighten that process up because and another thing we're going to try and do with have if there is excess money. it's already targeted. So if we we know, for example, Asbury Church, we know we wanted to give somebody help on that. We could say if we get an extra hundred thousand dollars, we'll put it in to Asbury Church or we'll put it into a sinking fund for storm or sanitary. And so that I think that's a really, really good goal for the town to have. And the police report was just fine.

Eric Combs: Thank you, Kevin. The question on the Octoberfest festivities, so that'll be a town sponsored event to occur perhaps on the street contemplating shutting down one of the streets, what.

Will Moore: We are contemplating shutting down both the first block of South Madison in Washington and Federal and then the first block of West Federal between Madison and Pendleton. So having two blocks. And I don't want to speak out of turn because Jamie Gaucher is really running the coordination on the town side here. But as I understand it, this will be partnered with Art in the Burg, which is already scheduled for that time. So they would actually be part of that. So Art in the Burg joins with what's being kind of expanded into this Octoberfest celebration. So kind of a street festival kind of thing, but details are still at work. [multiple speakers] Yeah. So. So really, you know, in whose event it is, is still, the town will be certainly a sponsor and a partner in it. But the brewery is probably going to own at least a portion of the event because they're the ones that have to pull this the ABC permit, which is a little bit complicated for an event. It's maybe not complicated, but detailed. You know, you have to do a lot of planning to have alcohol consumed in kind of in open setting, delineation, all that kind of stuff. They are taking the lead on on that part and then we're providing support as necessary and advertising and trash collection and lots of other details that Jamie's working on with those folks that I'm not, you know, intimate with.

Eric Combs: Look forward to it. Ok. Any need discussion items anybody would like to add to the agenda while we're here. Ok, well then let's look at the August 26th date, determine whether we can achieve a quorum. Any known conflicts at the moment? Okay. Excellent. Good. Well, then we have that set. Okay. Unless anyone has anything else, we're done. Thank you, everybody.