TOWN OF MIDDLEBURG
PLANNING COMMISSION
WORK SESSION AND REGULAR MEETING MINUTES

MONDAY, JUNE 22, 2026
PENDING APPROVAL

PRESENT: Morris "Bud" Jacobs, Chair
Donald Woodruff, Vice Chair
Carolyn Hersh, Member
Paul "Drew" MacMahon, Member
Michael Rocconi, Member
Christopher Hersh, Councilmember

STAFF: William M. Moore, Deputy Town Manager
Rhonda S. North, MMC, Town Clerk
Amy Rogers, Planner

ABSENT: Kim Basinger, Member

The Middleburg Planning Commission held their work session and regular monthly meeting on Monday, June 22, 2026 in the Town Hall Council Chambers. Chair Jacobs called the work session to order at 6:30 p.m. Town Clerk North called the roll.

Outdoor/Rooftop Dining

Chair Jacobs advised that the Commission was going to have an important discussion on rooftop dining and noted that there was a project in town that opened up the possibility of this, which made the Town realize it lacked regulations to cover this particular item. He advised that the Commission was asked by the Council to make a recommendation on what the regulations may look like regarding it and other outdoor dining facilities. Mr. Jacobs noted that present for this meeting were Vickie Bendure, Chair of the Economic Development Advisory Committee (EDAC) and Tim Clites, Chair of the Historic District Review Committee (HDRC). He noted that the HDRC had reviewed the current application.

Planner Rogers reported that the Town Council adopted this as one of its strategic initiatives, as there were concerns about outdoor dining, in particular rooftop dining. She noted that the staff memo separated the outdoor dining discussion from the rooftop dining one. Ms. Rogers reported that there were currently thirteen restaurants that offered outdoor dining in town and advised that there had been no complaints about them from a zoning perspective. She reminded the Commission that during their last meeting, they were asked to look at these outdoor dining establishments to determine whether they saw any issues or things they would want to regulate. Ms. Rogers noted that due to COVID, there was a big upsurge in outdoor dining that many localities were not prepared for. She advised that they initially adopted emergency ordinances and later adopted ordinances to make them a permanent situation. Ms. Rogers reported that this was regulated through the zoning permit process in Middleburg. She advised that the business must provide a sketch plan of the seating and the Health and ABC Departments must weigh in before the zoning permit was issued. Ms. Rogers suggested they may or may not need a building permit, depending on whether they were doing anything structural.

Planner Rogers advised that the HDRC looked at the elements associated with the outdoor dining spaces, such as umbrellas and chairs. She noted that she developed a summary table that included information for four jurisdictions that allow outdoor dining and rooftop dining. Ms. Rogers reviewed the details for each jurisdiction. She explained that based on her research, she identified some questions for the Commission that would help identify how they wished to proceed. Ms. Rogers questioned how the Commission wished to proceed. She further questioned whether they

wanted to allow something that was above the maximum building height and opined that this was not the case. Ms. Rogers reminded the Commission that there were other agencies that would have to review rooftop dining spaces to ensure they complied with the building code, health department, ABC and fire regulations. She questioned whether the Commission wanted to allow rooftop dining by right or special use permit and whether they wanted to apply any kind of standards.

In response to an inquiry from the Commission, Deputy Town Manager Moore reported that the current applicant who wished to have rooftop dining presented his plans before the HDRC. He advised that EDAC was briefed on his plans by the Town staff.

Vickie Bendure, Chair of EDAC, reported that they were recommending the Planning Commission allow rooftop dining to be looked at on a case-by-case basis, as they did not want to stop business. She noted that this assumed the architecture, lighting, sound and hours of operation were confined by regulation. Ms. Bendure reported that as to other outdoor dining, their recommendation was to consider it. She noted how expensive it was to create rooftop dining and how difficult it would be for the servers to run up and down the stairs and opined that this would eliminate a lot of potential rooftop dining uses.

Tim Clites, Chair of the HDRC, reported that the Committee did not feel they had any authority to comment on the use; therefore, they kept their comments to what they had purview of, which was appropriateness of location, the buildings involved, and the Historic District. He advised that interestingly enough, there was not a unanimous agreement on whether to ask the applicant to remove the pergola from the application, which was a rare occurrence. Mr. Clites reported that after a couple of reviews of the application, the Committee concluded that if the rooftop dining was set back far enough from the street that when people were seated, nothing could be seen that made it apparent from the street that this was an active space, they felt it would be appropriate. He summarized that the thought was that basically, it could not be seen. Mr. Clites suggested it would be better if this discussion was broadened to include all outdoor uses that could occur on rooftops and noted that someone could propose a rooftop swimming pool, pickle ball court or other intense use that the Town could have difficulty regulating. He advised that the Joint Architectural Review Board met earlier in the day to review project nominations for awards with the member's respective jurisdictions and noted that following it, he asked how rooftop dining was going in Leesburg. Mr. Clites reported that he was told that once the first application was received, many applications came in quickly. He further reported that they said the hardest thing to regulate was the sound. Mr. Clites opined that sound was virtually impossible to regulate. He advised that the Committee frequently questioned what it meant to be a village from a historic and experience perspective and opined that Middleburg would not feel like the same town if in twenty years there were multiple places where people were above looking down during events such as Christmas in Middleburg. Mr. Clites opined that that would be an urban feel and suggested it would be more urban than Middleburg would want to feel in the long term. He noted that he was just talking about appropriateness, not zoning.

Councilmember Cindy Pearson, a member of the HDRC, noted that she was one of the ones who believed there should be rooftop dining options, but only if they were required under a special use permit and if there were really good restrictions that would apply. She acknowledged that a special exemption would open the door to other requests. Ms. Pearson further acknowledged that it could open the door to people wanting to have something else on the rooftops. She opined that special use permits would control the issues. In response to an inquiry from the Commission, she opined that swimming pools and pickle ball courts on a roof would not be acceptable. She further opined that there were a lot of uses that would not work. Ms. Pearson noted that when looking at the proposed rooftop dining application, it was possible to see too much, in particular the pergola and high-top tables, from further down the street. She advised that it would not set well if people on the roof had the ability to look down on people on the street. Ms. Pearson suggested there were a lot of details that needed to be worked through and acknowledged it would not be easy.

Chair Jacobs suggested the question was whether the Commission wanted this to be reviewed on a case-by-case basis or whether they wanted to put together enough regulations to create a one-size-fits-all option. He questioned whether this use was one that would be consonant with the town, its values and appearance and advised that he was not convinced it was. Mr. Jacobs advised that he viewed three large rooftop dining facilities in Warrenton recently. He opined that they were well regulated and not noisy; however, he questioned whether this use would fit in Middleburg. Mr. Jacobs opined that the Commissioners would all agree this was a relevant consideration.

In response to an inquiry from the Commission, Deputy Town Manager Moore advised that the Town could ban amplified sound on rooftops and suggested there were a couple of ways to do so. He advised that the Town could introduce performance standards that would apply to the use, regardless of whether the use was by-right or under a special use permit. Mr. Moore explained that the standards would automatically apply with any approval. He noted that they could also address items like hours of operation.

Commissioner Hersh expressed a desire for more economic development; however, she suggested the need to look at each application on a case-by-case basis. She opined that how the HDRC handled the most recent application was well done and noted that it would not be seen from the street. Ms. Hersh advised that she was impressed with how well it seemed to fit, especially with the surrounding buildings. She opined that the HDRC was a tool to help manage this and that the Commission could put enough criteria in place to help regulate it. Ms. Hersh suggested it was worth allowing the option, with the Town regulating it tightly.

Commissioner MacMahon agreed that applications for this use should be looked at individually. He opined that given the variation in outdoor dining facilities, a special use permit was appropriate so the Town could look at the details of the use. Mr. MacMahon advised that he leaned toward allowing the use by special use permit.

Chair Jacobs advised that he was concerned that Middleburg would face the same challenge that Leesburg did.

Planner Rogers questioned how the Commission felt about other outdoor dining. She further questioned whether it should be allowed by-right or under a special use permit.

Deputy Town Manager Moore clarified that this referred to ground level or first floor/porch level dining. In response to inquiries from the Commission, he advised that there was currently no specific restriction regarding outdoor music at dining establishments. Mr. Moore noted that the Town had a noise ordinance, which would be applicable, and advised that the police were responsible for enforcing it.

Planner Rogers suggested that if noise was a concern, the other outdoor dining use could remain a by-right use; however, standards could be imposed that would prohibit outdoor amplified music. She noted that hours of operation could also be added if that was a concern.

In response to inquiries from the Commission, Deputy Town Manager Moore confirmed the private club element did not play a role in these discussions. He further confirmed it was still a restaurant use even if it was through private admission. Mr. Moore confirmed the Police Department was a 24/7 operation that could handle overnight activity that this use could potentially bring.

Chair Jacobs opined that thus far, noise violations were focused on the resort. He suggested that they were addressed as soon as the police asked them to tone it down.

Deputy Town Manager Moore agreed. He noted that the Red Horse Tavern occasionally had live music inside; however, he was not aware of any complaints that had been generated. In response to an inquiry from the Commission, Mr. Moore confirmed there were no permitting requirements for indoor music and advised that there was nothing to prohibit them from having music on their patio except for the likelihood it would exceed the noise ordinance.

Commissioner MacMahon opined that there could be two competing entities with noise at the same time.

Chair Clites noted that years ago, he served on both the Planning Commission and HDRC. He advised that there was a distinct difference between how each body applied its regulations and opined that some support in the form of a zoning ordinance that supported the HDRC's more subjective component would be a good thing. He asked that the Commission consider providing input on the Historic District Guidelines and how they could be updated to support whatever the Commission was trying to achieve. Mr. Clites suggested the need for an applicant to have some idea as to what they could expect from the process.

In response to an inquiry from the Commission, Deputy Town Manager Moore confirmed the HDRC held some discussion on amending their guidelines, as they did not currently address outdoor dining elements in general. He reported that they had been working on guidelines specific to that and were now incorporating rooftop dining guidelines as well. Mr. Moore advised that following the last discussion, they left it at that they did not want to see it. He noted that this was similar to how they addressed solar panels in that they were fine as long as they could not be seen from a public way. Mr. Moore reiterated that from the HDRC's point of view, they did not want to see any element of rooftop dining. He noted that they would be discussing this again during their July meeting.

Planner Rogers opined that the Commission was okay with other outdoor dining; however, it may want to apply some standards related to noise and possibly lighting. She suggested the staff provide a set of standards. Ms. Rogers opined that the Commission wanted to allow rooftop dining as a special permit use and suggested there be standards for that.

The Commission agreed with this approach.

Planner Rogers advised that she would draft some language for their consideration at the next meeting, including a resolution directing it to a public hearing in the event they felt it looked good. She explained that the Commission could then adopt the resolution to get the process moving. Ms. Rogers noted that if they did not feel it looked good, they could table it for discussion during another meeting.

In response to an inquiry from the Commission regarding the current application, Deputy Town Manager Moore confirmed there would be a barrier interior to the exterior walls of the roof. He further confirmed there would be a fence that would prohibit anyone from getting to the edge of the building.

Commissioner Hersh asked that the Commission be provided with copies of the application the HDRC reviewed for the former Fun Shop property. She opined that it would provide a visual understanding of what the Committee felt was reasonable and out of sight. Ms. Hersh noted that the two issues were being separated and questioned whether they would be brought to the Commission separately.

Deputy Town Manager Moore explained that they would be handled in one proposed amendment that would have elements that applied only to ground level and elevated porch level dining and elements that applied to rooftop dining. He noted that there would be definitions for each. Mr. Moore confirmed the rooftop dining would be allowed by special use permit only.

Chair Jacobs closed the work session and called the regular meeting to order. The roll was called at 7:06 p.m.

Disclosure of Meetings with Applicants

No meetings were reported with applicants.

Public Comment

Jane Covington appeared before the Commission to request their assistance in securing a crosswalk at the intersection of Federal and South Pendleton Streets. She noted that this was the location of a pedestrian connection between the town and The Hill School. Ms. Covington advised that it was not only used by students, but by the community and guests. She noted that she had spoken with Deputy Town Manager Moore about this and he reminded her that this was a VDOT decision. Ms. Covington explained that she was asking the Commission to advocate on the citizens' behalf for this safety feature. She noted that she read an article on the impact of a car on the human body that was struck at 20 MPH and advised that it was startling.

Linda Taylor appeared before the Commission representing the Middleburg United Methodist Church. She advised that Howard Armfield and Reggie Dawson were also present. Ms. Taylor noted that for many years, the Town leased their parking lot and reported that effective July 1st, the church was taking it back over. She advised that they have discovered that although they were allowed to lease to businesses when they were not using it, they could not use it for

short-term parking under the zoning ordinance. Ms. Taylor opined that short-term parking was needed on the weekends. She suggested that if they could not use it for this purpose, the town would experience a strain, as it was a well-liked parking lot. Ms. Taylor asked that the zoning ordinance be changed to allow them to offer short-term parking. She advised that if they were not allowed to do so, they would have to prohibit parking, as they could not afford the liability or maintenance costs for that use. Ms. Taylor explained that if approved, they would offer paid parking through a parking company. She expressed hope that the zoning ordinance could be changed; otherwise, the lot would be closed on the weekends.

Deputy Town Manager Moore explained that in the C-2 District, in which the church's property was located, a municipal parking lot was a permitted use, as was a parking lot for the use on the site and their tenants. He further explained that the zoning ordinance identified a parking lot facility as a separate use and advised that this was either a standalone parking lot that was not associated with any use or the additional use of a parking lot during its off hours for paid parking. Mr. Moore noted that this use was currently only allowed in the C-3 District by special permit. He confirmed the lot had been used as an hourly lot by the town as a municipal parking lot; however, the regulations were different if a private entity wanted to do this. Mr. Moore advised that to accommodate this use, the ordinance would have to be amended to allow for a parking lot facility in the C-2 District. He noted that if the Commission was amenable to doing so, they would have to decide whether it would be a by-right or a special permit use as required in the C-3 District. In response to inquiries from the Commission, he advised that the special use permit application process generally took three months, depending on the timing of the filing of the application. Mr. Moore explained that it needed to be reviewed by the Commission, including holding a public hearing, and then again by the Council, who must also hold a public hearing, during the special use permit application. He advised that if the decision was made to initiate a zoning text amendment, the special use permit application could run concurrent with the text amendment, which would potentially shorten the timeline for the application. Mr. Moore advised that the cost for a special use permit application was $2,000. He confirmed the only way to address this was through a zoning text amendment. He noted that there was no requirement that it be established as a special use permit. Mr. Moore suggested the need to determine if there would be any unintended consequences if it was a by-right use. He advised that there could be a potential for the development of paid parking lots or for existing parking lots, such as Safeway's, to be metered for overnight parking. Mr. Moore opined that the likelihood of this would not be high; however, it would open the door to any owner. He suggested, based on the Town's records, that in the 2000s, there was an application to construct a large surface parking lot on the south side of Federal Street, which may explain the history of the current zoning regulations. Mr. Moore suggested that if the Commission looked at the regulations, they look at them holistically. He opined that it would be a good idea to require a special use permit to avoid having someone construct a standalone parking lot that was not associated with a use. Mr. Moore suggested the idea of having a secondary use during off hours for a parking lot that was primarily being used for the owners use, could be a by-right use.

By consensus, the Commission asked the Town staff to explore ways to address this in the simplest, cheapest, most expeditious manner. They suggested it be discussed at the next meeting.

Megan Gallagher, 214 East Marshall Street, noted the Commission's previous discussions related to the Comprehensive Plan and expressed hope that they would move forward with the identification of a new zoning district for public and civic uses in the future land use map. She advised that she also supported the staff's recommendation to change the future land use designation for the historic residential properties on East Marshall Street from commercial to residential. Ms. Gallagher opined that otherwise, they would be ripe for tear down and redevelopment. She advised that as to outdoor dining, there were currently three hundred sixty-three seats in eighteen restaurants, which did not count the new outdoor dining seating that would come from the four new restaurants. Ms. Gallagher opined that the outdoor dining at street level and on first level porches were a part of what made Middleburg so great and advised that she fully supported allowing those by-right with some simple performance standards. She advised, however, that she disagreed with the Commission that the Town needed to accommodate rooftop dining and opined that it was an urban fad that did not belong in rural villages, especially ones with Middleburg's incredible intact fabric and sense of community. Ms. Gallagher suggested that even if it could not be seen, it would be heard. She noted that she was present for the Council's discussion and advised that prohibition was an option.

Chair Jacobs noted that General Billy Mitchell, who used to live where Boxwood Winery was now located, used to fly his biplane over Middleburg and take pictures. He advised that one could readily identify Middleburg from those pictures today, as not much had changed. Mr. Jacobs suggested this was something that needed to be taken into consideration and advised that the town could be suddenly deluged with applications that would change its character.

Nancy Gardner, 11 North Hamilton Street, agreed with Ms. Gallagher regarding the need to identify the future land use of the historic houses as residential. She noted that she lived in one such house and advised that there was already an illegal building next to her that was built in the 1980s when no one was paying attention. Ms. Gardner noted that as a result, the lot was much busier than it was when she moved into her home. She asked that the future land use designation be residential.

Approval of Meeting Minutes

Vice Chair Woodruff moved, seconded by Councilmember Hersh, that the Planning Commission approve the May 18, 2026 Work Session & Regular Meeting Minutes as presented.

Vote: Yes – Commissioners Hersh, MacMahon, Rocconi and Woodruff and Councilmember Hersh
No – N/A
Abstain – N/A
Absent – Commissioner Basinger
(Chair Jacobs only votes in the case of a tie.)

New Business

Site Plan 26-01: 115 W. Washington Street – Kevin Ash

Deputy Town Manager Moore noted that this was an informational item. He reminded the Commission that they must meet certain timelines when it came to review of site plans; therefore, he wanted to alert them to one that had been submitted. Mr. Moore explained that a site plan had been submitted; however, because the reviewing agencies found multiple deficiencies, it was not worth going into a lot of detail based on what was currently depicted. He reported that the property was accessed from the rear of West Federal Street. Mr. Moore noted an existing driveway next to a small home that was situated on the same property and advised that the owner's proposal was to widen the driveway a bit on both sides so he could use it to provide a line of parallel parking spaces adjacent to the property line between the former Fun Shop property and the post office property. He advised that he was also proposing to provide some additional parking to meet the use requirement and explained that it would tee off the main driveway that led to the rear of the commercial space. Mr. Moore reported that there were multiple dimensional issues associated with this and that it did not meet the requirements for getting fire apparatus to the rear of the property. He noted that there were also comments from the Fire Marshall's Office regarding hydrant coverage that the applicant must address. Mr. Moore reported that there were also multiple pages of comments from the Town Engineer that should have been addressed in the first submission. He reiterated that this agenda item was for informational purposes. Mr. Moore advised that the applicant did not have to provide additional off-street parking, aside from that already provided, for the conversion of the retail space to a restaurant use. He opined that the owner was given a generous interpretation by the Zoning Administrator that they already had three existing spaces on site, which must be maintained. Mr. Moore reported that the owner must park the proposed residential component and advised that he had revised his plans so the residential component consisted of three three-bedroom apartments, each of which would be required to have two parking spaces, for a total of six spaces for the residential component, plus the existing three spaces. He reported that he would like to have a total of nine spaces on site, one of which must be handicapped accessible. Mr. Moore advised that the size of the parking spaces the applicant proposed was compact ones, which were not permitted when there were so few parking spaces on the site. He reiterated that this was just provided for informational purposes to let the Commission know it was coming, possibly as soon as next month, unless the applicant voluntarily waived the required timeline under which the Commission must act. In response to an inquiry from the Commission as to whether it was possible for the applicant to lease spaces from the Methodist Church to meet his parking requirements, Mr. Moore advised that he offered to make that connection; however, the church declined to be connected with this user.

Council Representative Report

Councilmember Hersh reported that during its last meeting, the Council appointed Amy Rogers as the Deputy Zoning Administrator and congratulated her on her new role. He reported that during public input, two citizens raised concerns about the Middleburg Manor project, which would be located where the Middleburg Barn used to be. Mr. Hersh advised that the property was zoned R-2 and reported that the proposal was to construct a forty-room inn and a one-hundred-seat restaurant. He advised that based on a two-room occupancy rate, the water use for this property would be 6,000-18,000 gallons of water per day, which equated to twenty-five to thirty-five three-bedroom houses. Mr. Hersh questioned whether this water draw was sustainable. He acknowledged that the project was outside of Middleburg's purview; however, he expressed concern about it given the water issues the area was experiencing.

Deputy Town Manager Moore noted that the Mayor & Council had the habit of involving themselves in matters outside of the Town's corporate limits, with good reason. He cited as an example, the Mickie Gordon Park and noted that the special use permit for its renovation had been refiled. Mr. Moore opined that the revised plans were in conformance with what came out of the public meetings as the preferred concept. He reminded the Commission that he and Ms. Rogers were not permitted to interpret another locality's ordinances; however, he could look at the proposal submitted to the County for Middleburg Manor. Mr. Moore advised that currently, it was a zoning interpretation question as to whether their proposal fit with the zoning; whether it was a by-right use; or whether it would require a special use permit. He opined that the applicant was carving out something that would be by-right, which meant there would be no action for the Board of Supervisors to take. Mr. Moore suggested the County Board needed to be aware that this kind of very intense use was allowed by-right in a quiet, passive, scenic rural area and that this was something they needed to look into. He reported that he and the Mayor were drafting a letter to the Board of Supervisors, in which they would highlight issues such as water and wastewater. Mr. Moore opined that providing a septic field for that kind of use would be difficult and would be tight on the thirty-five acres. He noted that under the current zoning ordinance, the same use could occur on a parcel as small as twenty acres. Mr. Moore advised that because this was outside of the Town's jurisdiction, the Town's influence was limited; however, the Mayor and Council were still engaging with the County. In response to inquiries from the Commission, he confirmed this situation was not similar to the Banbury Cross Project, as the Town's involvement was limited to matters of subdivision, not land use, within the one-mile radius of the town. Mr. Moore reported that the Middleburg Manor property was a mile and half outside the Town's corporate limits.

Councilmember Hersh opined that in terms of natural resources, this project raised the importance of stressing the water aspect to show the Town was concerned about the surrounding area.

In response to inquiries from the Council, Deputy Town Manager Moore advised that he was not sure a letter from the Planning Commission would be of any use; however, he would discuss it with the Mayor. He noted that they were meeting later in the week to finalize the letter. Mr. Moore confirmed that if the use was determined to be a by-right one, the Board of Supervisors could not get involved from the standpoint of allowing the use to go forward; however, they could communicate to the reviewing agencies, through the County Administrator, about the need to be extremely diligent in their reviews. He noted that the Health Department would review the geotechnical report that was needed to demonstrate the water and wastewater disposal systems would be adequate. Mr. Moore reiterated that in terms of interfering with the use, the County Board would not play a role. He advised that the proposal also included an events venue for up to one hundred attendees daily. Mr. Moore noted that they could exceed that number up to twenty times a year, with no cap on the number of attendees. He advised that they could also have outdoor music up to midnight, seven days a week with no limitation. Mr. Moore noted that his comments were based on a layperson's reading of the County ordinances and were not an interpretation. He advised that the use was definitely being marketed on the applicant's website as a major events venue.

Discussion Item

Review of Comprehensive Plan Chapters II, III and IV

Planner Rogers reported that there were very few changes proposed to the Natural Resources or Historical chapters. She noted that a couple of the photographs were switched out. Ms. Rogers advised that the major changes were in the Population & Housing Chapter. She reported that the demographics were updated and were based on the most current data. Ms. Rogers advised that references were also added related to the R-2 amendments that were done and the references to Salamander's sixty units in the MUV District were removed from the population count, as there was discussion about that parcel becoming rural due to Salamander's current management indicating they may not desire to move forward with the MUV plans. She reminded the Commission that if Salamander chose to move forward with those plans, even if the Comp Plan changed, they could still do the MUV development. Ms. Rogers noted, however, that if Salamander wanted to change those plans in the future, they would have to address the Comp Plan. She advised that the biggest change aside from the demographics was to the short-term rental paragraph. Ms. Rogers reminded the Commission that language related to short-term rentals was added in 2022; however, that Comp Plan language had been strengthened more due to the recent litigation to stress the number of nights that would be appropriate, the number of short-term rentals and the neighborhoods in which they should be located.

Deputy Town Manager Moore suggested it was important for the Commission to do a detailed review of the draft language regarding short-term rentals. He noted that it was a first draft from the staff and advised that he was happy to make changes as necessary. Mr. Moore suggested the Commission start with the other chapters first and questioned whether there was anything the members wanted to discuss. He reminded them that they previously reviewed them; however, because it had been long enough, he wanted to get their input on them in the formatted version.

Commissioner Hersh noted the Natural Resources Chapter. She advised that it appeared the surrounding area had gone from having nine hundred wells to over 18,000, all taking water from the same aquifer. Ms. Hersh reminded the Commission that water was a real issue, which concerned her from the perspective of how the Town moved forward. She suggested the need to include the importance of water in the Comp Plan and expressed hope that an assessment of water use for any significant development in the surrounding area would occur. Ms. Hersh noted that if the Town ran out of water, it would be in a bad situation. She opined that it was on that path currently.

Deputy Town Manager Moore agreed this was a good point. He opined that the language in the Natural & Environmental Resources Chapter could be beefed up regarding water resources. Mr. Moore noted the Public Facilities Chapter, which included a second reference related to the municipal water and wastewater services and suggested that would also be a good place to insert language. He advised the Commission that he was soliciting input from the Town's Utility Committee to help strengthen that language. Mr. Moore opined that regardless of what was done in that chapter, more could be done in the Natural & Environmental Resources Chapter. He advised that he would look at that as he was putting together the draft of the other chapter.

Chair Jacobs suggested a reference be included about the work that was going on in the county related to water issues.

Deputy Town Manager Moore noted that something has been started and advised that he would look at where that stood. In response to an inquiry from the Commission, he confirmed there was nothing on the legislative front that would be helpful.

Deputy Town Manager Moore displayed the proposed language related to short-term rentals, which included the existing three paragraphs and a new proposed paragraph that would add additional clarity. He reminded the Commission of the short-term rental ordinance that stated that the most amount of nights that could be considered in an application was one hundred eighty per year. Mr. Moore advised that through the review of the first applications, the Town learned the Council was unlikely to ever approve one for that many nights again. He noted that the very first application, which was for a really small cottage on North Jay Street, was approved without limitation on the number of nights other than what was in the ordinance; however, the Council realized they would likely never do that again. Mr. Moore advised that he would love to revise the ordinance; however, the General Assembly adopted legislation a couple of years ago that allowed ordinances that were in place at that time to remain but stated that if a locality did not

have a short-term rental ordinance, it must allow them in a certain manner. He explained that the Town Attorney interpreted that State legislation as such that Middleburg's ordinance must remain untouched because if it was amended, it would be a re-adoption, which would create a new ordinance that could be negated in its entirety. Mr. Moore explained that this put the Town in a difficult position because there were areas of the ordinance it would like to add clarity to and others where it would like to change the numbers, such as reducing the maximum number of nights to sixty. He opined that in hindsight, the Town should never have set the number as high as it did. Mr. Moore advised that because the use required a special use permit in all instances, the special use application had to be in compliance with the Comp Plan. He suggested guiding language be added to the Comp Plan that would not necessarily be regulatory, but if an application was way off, it could be addressed. Mr. Moore advised that the proposed fourth paragraph would address the lack of clarity. He reminded the Commission that the ordinance stated that the short-term rental use had to be secondary to the use of the dwelling as a residence and advised that there had been an argument made as to what that meant. Mr. Moore further advised that the argument was made that a residential dwelling, whether it was occupied or not, was still in use as a residence. He clarified that the Council's intent was that no dwelling would be used primarily or exclusively for short-term rental use. Mr. Moore explained that even if the number of nights were capped at a certain number, this did not mean it could be vacant the remainder of the year, nor did it mean it could be used sporadically on weekends. He acknowledged that someone could build a home and only use it on occasion; however, he advised that they did not get the benefit of applying for a special exception to have other transient uses introduced into the neighborhood. Mr. Moore noted that this was the intent of the ordinance and advised that he was trying to make it clear in the Comp Plan in case there were future challenges to what the language meant. He opined that Council's intent was clear in its initial adoption of the regulations related to short-term rentals in 2016 that no home would be permitted to be used either exclusively or primarily for short-term rental use. Mr. Moore advised that to that extent, the ordinance only allowed the short-term rental use to be considered when it was a secondary use to a home that was otherwise used and occupied as someone's home for more than half a year. He reiterated that homes that were vacant for more than half the year or occupied intermittently for periods totaling fewer than 183 days in a calendar year, were not eligible to benefit from the special exception to be used as a short-term rental. Mr. Moore explained that the proposed language in the Comp Plan was trying to get around the arguments that have been presented. He advised that it was questionable as to whether this would assist with the current case that had been remanded back to the Council; however, it would protect the Town in future applications. Mr. Moore reiterated his desire for the Commission's input on the proposed additional language.

Planner Rogers suggested the need to look at the language in conjunction with Strategy #5, which stated that no more than 25% of the eligible occupied homes in any given neighborhood should be used as short-term rentals and that new short-term rentals should be limited to sixty or fewer nights per calendar year.

Chair Jacobs questioned whether it would be useful to spell out the history of short-term rentals; that the Town had come to the realization that it had overshot the mark with regard to the upper limit on the number of nights; and, that with the one exception, the Council had not approved anything longer than ninety days.

Deputy Town Manager Moore agreed this was worthy of consideration. He noted that he had not yet shared the draft language with the Town Attorney and opined that it was important to get his input. Mr. Moore advised that he would share those thoughts when he shared the draft language with him. He suggested this may clarify for the reader why the ordinance said one thing, but the Comp Plan said something else, particularly since the number was being reduced so much. Mr. Moore noted that sixty nights was a first attempt and was not set in stone.

Chair Jacobs suggested the inclusion of a reference to the State legislation with a notation that if the Town were not constrained by it, it would impose even more strenuous limitations. He questioned whether the court said anything with regard to the plaintiff's definition of residence or occupied residence.

Deputy Town Manager Moore confirmed he did not. He advised that the judge was very clear in his deliberations that he was not going to get into the interpretation of those words directly, which was something the plaintiff requested the court intervene on. He reported that the judge denied the Town's motion to dismiss and instead remanded the application back to the Council on Count One, which had to do with the Town's interpretation of "residential use" and how it applied in this situation. Mr. Moore advised that the court did not opine as to whether there had been any potential mistakes made but rather just remanded it back to the Council and said, "take another look at this". He

opined that the judge was not happy with either party and chastised both for spending the court's time on this. Mr. Moore advised that the judge was not willing to spend the court's time to get into the 1,700 pages of the legislative record and just remanded it back to the Council for reconsideration. He confirmed that Judge Plowman was the judge.

Commissioner Rocconi advised that he liked Strategy #5 and opined that short of being able to change the zoning ordinance, it was the appropriate thing to do. He questioned whether the last paragraph was saying the home needed to be the applicant's primary residence. Mr. Rocconi further questioned why this common term was not used.

Deputy Town Manager Moore confirmed the Town was not saying it had to be anyone's primary residence and advised that the staff was very intentional when it drafted the regulations. He explained that there was an opinion of the Fourth Circuit Court of Appeals that stated that such a clause would violate the Dormant Commerce Clause by discriminating against out of state commerce. Mr. Moore further explained that if someone lived out of state and owned property, it would discriminate against them to require that the property be used as their primary residence. He advised that the ordinance stated that the residence had to be used primarily for and occupied for one hundred eighty-three days as a residence. Mr. Moore reminded the Commission that it could be used as a long-term residence, which was thirty days or more per year. He stressed that it did not have to be the owner's primary residence or anybody's primary residence for the entire year but rather could be rented on a long-term basis by multiple people. Mr. Moore advised that the Town had been very clear on that. He noted that the plaintiff made an argument that the Town was violating the Dormant Commerce Clause by saying that Ms. Johnson had to live in her house; however, the Town never said that. In response to an inquiry from the Commission, Mr. Moore confirmed it was possible to have a long-term rental for one hundred eighty-three days and then multiple short-term rentals for the remainder if the special use permit was approved for up to one hundred eighty days.

Councilmember Hersh suggested that language be added to the Comp Plan in terms of the sixty-day limit that talked about the village feel and that the community aspect was more consistent with sixty days than one hundred eighty.

In response to an inquiry from the Commission, Deputy Town Manager Moore advised that he was not sure when the Council would take action on the remanded complaint. He noted that the Council would discuss the case with the Town Attorney in closed session later in the week.

Chair Jacobs noted that he liked Strategy #5. He further noted the suggestion to make sure the language in it and the paragraphs related to short-term rentals did not conflict. Mr. Jacobs asked that staff pay close attention to that and make sure the Town Attorney did as well.

In response to an inquiry from the Commission, Deputy Town Manager Moore advised that the next step was to bring additional chapters to the Commission next month. He reminded them that they had not yet looked at the Economics Chapter. Mr. Moore advised that he and Ms. Rogers were waiting for information from the Town Treasurer on the most recent business license renewals so they could provide the most up-to-date information. He noted that they now had it and just needed to plug it in, so they could bring that chapter to the Commission. Mr. Moore advised that he would look through his notes to see if there were any other chapters that were previously reviewed that needed tweaking. He opined that the draft plan was at the point where it could be presented to the public in August or September.

Quorum for July Meeting

Those members of the Commission who were present confirmed they would be present for the July 27th meeting.

There being no further business, Chair Jacobs adjourned the meeting at 8:16 p.m.

RESPECTFULLY SUBMITTED:

_____
Rhonda S. North, MMC, Town Clerk

Middleburg Planning Commission Transcript
June 22, 2026

(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)

Bud Jacobs: Okay, I've called to order. We're going to have a fairly important discussion about rooftop dining. As many people probably know that there's a project in town that opens a possibility, I guess, for there to be rooftop dining on a restaurant. This has kind of made us realize that we lack any kind of ordinance to cover that particular contingency. And we also have a lot of rooftop dining elsewhere in town, and we have been asked by Town Council to kind of come to grips with this and maybe make a couple of recommendations as to what and maybe even a draft ordinance as to what this might look like, taking into account the interests of other outside dining facilities and places in town and the needs of the well, I guess he's not an applicant yet. But is he an applicant?

Will Moore: He is an applicant.

Bud Jacobs: He is an applicant. Okay, we'll call him an applicant then. To that end, we have the applicant has already briefed two of our volunteer committees. One of the nice things about this town is that the citizens step up and take part in a meaningful way in the governance of the town. And this is evidenced by the presence tonight of Vicki Bendure, who is the head of the what do you guys call yourselves these days? [off mic] There's no strategy anymore, no strategy as a committee. And the Historic District Review Committee, which is headed up by Tom Steitz and has probably as much skin in this game as any other entity in town. So, what I'd like to do to kick off the discussion is ask Will or Amy to kind of give us a brief update, and then we'll ask you guys to present your ideas or attitudes and maybe have a discussion. We'll see.

Amy Rogers: Thank you. So, you all have the memo that was provided with the information that's on the website. There's a little bit of background and may you all discuss this. The Town Council has made this a Strategic Planning Initiative for the town to get this done. There are concerns with also existing outdoor spaces, especially rooftop. The memo has been tailored to break it out into outdoor dining as we see it today. We currently have about 13 places, I believe that have outdoor dining within the town limits that appear to be operating, you know, in a nice manner that we haven't heard complaints about from a zoning standpoint. Don't know if anybody has heard any complaints about that. During the May meeting, we had asked that maybe you take a stroll around, look at these places, and see if anything jumped out at you as being problematic, or we may want to regulate because of Covid, there was a big upsurge in outdoor dining. Many towns and localities weren't prepared for it. And so, they did emergency ordinances during Covid to allow it after Covid was over, they actually enacted ordinances to be able to make this a permanent situation. So currently we do regulate it, we regulate it through a zoning permit process. We regulate it with a sketch plan where they show us where it's going to be, how many seats and also require A, B, C, or health department to weigh in before we issue a zoning permit. They may or may not need building. Typically, a building permit would be required. Because if they were doing anything structural and just maybe to ensure that they had sufficient bathrooms for additional seats, something like that. So, our HDRC also looks at outdoor elements associated with these outdoor dining spaces. So, umbrellas or chairs or items like that, they would look at as part of our report, we put together a table that had four jurisdictions on it. It was a little bit strategic in how I put those together. Starting with the Town of Round Hill, which is a similar population to ours, but they don't have a Historic Review Committee. So, when they put together their ordinance, they focused on umbrellas, orientation, awnings, canopies, and things that our HDRC would look at as part of their application process. City of Fairfax does have a Historic Review and they do. The Historic Review does review those same

elements that our HDRC looks at. So, they're focused on location items where it could be what their hours were, things that are more zoning related. Herndon has Historic Review. However, their Historic Review is either exempted for these kind of outdoor spaces or its staff review doesn't go in front of a committee. So, Herndon added those elements into their zoning ordinance to assist staff in how to review the process. And Leesburg was brought up during the last meeting, so I went ahead and include Leesburg's. Leesburg in the first paragraph under applicability existing eating establishments to permit temporary outdoor for which no zoning permit has been issued. So, if it has a zoning permit was shown on a site plan, they don't need a temporary outdoor dining permit because it's covered under zoning permit kind of how we do it here. And if they're not, then they have a list of standards that apply to that. So, I put this together for you and Fairfax, Herndon, and Leesburg were all of course historic towns that while their population, Fairfax Herndon isn't like ours, it's just, it's similar. So that's how we went with that. And as part of that, you know, I have a series of questions. I don't know if you want to go over those now or go ahead and go over the rooftop part of it and then ask for comments. So, it's up to you all how you'd like to proceed from here.

Bud Jacobs: Anybody feel strongly one way or the other, how we go? I think it might be useful to go ahead and have your part of the discussion and then hear from these folks. Also, that allows me to keep you here longer. So, which is good doing. Thank you.

Amy Rogers: Yes sir. Okay. So then on the rooftop. So again, we separated out rooftop there was really only one jurisdiction that had a special use I could find for rooftop. And that was I believe it was Arlington County. Anything above the first story in certain districts would require a special use. All the other jurisdictions, if it was below the required height in the zoning district, it was by right when they wanted to go above the height, for example we can say Leesburg because our current applicant that's in Leesburg had to go through a special use for his rooftop dining because he was adding restrooms in the elevator penthouse and that became habitable space to the Town of Leesburg. And it was above the height, the maximum height in the district. So, they did a special recently, a text amendment for a Special Use Permit to allow you to use rooftop spaces above the building height. And the examples here do the same thing as if it were above the height that's allowed in the district. It became a special use. If it was below the height, it's typically permitted just as a use on the building or in the building. So, I'm not sure what direction we would like to go here, I don't believe. Well, I guess I can ask the question whether you'd want to do something above the maximum height. I don't believe that would be the case. In any of these the same thing occurs with the rooftop use. There are other state and local agencies that would have review over rooftop spaces being again building code, health department a, b, c because they're looking at access you know, you don't want people to fall off the roofs, there's certain distances back that they'd have to have barriers and things like that. Fire marshal would come into play with any kind of rooftop uses. So, this is kind of what we're looking at when looking at the rooftop. One do we want it at all. If we want it, is it by right or is it special use? And then from there, where do we want to go with any kind of regulation beyond just it being a special use, whether you want standards that apply to that or just leave that up to the Town Council or reviewing the Special Use Permit, what types of things they want to look at on a case-by-case basis. Any questions about any of that? No.

Bud Jacobs: Will comment. Anything? Alrighty. As I mentioned, the applicant has already spoken before the Economic Development Committee.

Will Moore: Sorry. Correction. He has presented to the Historic District Review Committee, but not to EDAC. Oh, okay. He was only briefed by staff.

Bud Jacobs: Okay. Well, I'm still going to ask Vicki to come first if that's okay.

Vicki Bendure: So, the Economic Development Committee met today and discussed and their recommendation this whole thing, the recommendation is that the Planning Commission not shut this down

and that you take this you look at this on a case-by-case basis. We felt like we didn't want to stop business. And that is long assuming that the architectural, the lighting, the sound and the hours are all within a confined thing regulation anyway for patios and outdoor spaces that our recommendation was to consider it. It was also a discussion to that. I'm sure you've taken into account on how expensive it is to have rooftop space and how difficult it is if you're a server to run up and down stairs. If you can't afford, you know, most buildings don't have elevators. They're too old to put elevators in. And how it it's probably on its own going to eliminate a lot of the potential for this anyway, so.

Bud Jacobs: Thank you very much. Any questions for Vicki? No. Mr. Steitz?

Tim Clites: Tim Clites. I've been called worse. [laughter] It's okay. Clites. It's all right. Well. Thank you. I didn't realize I was coming tonight, so I don't have prepared comments, but I guess I'll go a little bit from memory and a little bit from what we just heard. So, I believe staff would have updated you. When we got the application that we reviewed we discussed the use on the rooftop and felt like as an HDRC, we really didn't have any authority over commenting about the use. So instead, as a committee, we kept our comments to the overview that the HDRC has, which is on appropriateness to its location, the building or buildings that are involved and the Historic District I'll say it was interesting that when we came down to the last vote and this rarely happens at HDRC, there actually wasn't unanimous agreement about whether we should approve or ask the applicant to remove a pergola that was proposed on this in this case, an outdoor dining area. Just to talk about that briefly, the outdoor dining area are. And maybe you read our notes, but our discussion concluded after a couple of reviews of it, that if it was as if it was set back far enough from the street that when people were seated, you couldn't see them and that there was nothing either a pergola, umbrellas, rooftop, anything kind of that made it apparent from the main street that that was an active space. We felt it. Well, the majority of our committee felt it was we had to deem it appropriate. In other words, we basically couldn't see it. New before you as the discussion of outdoor dining, and I think, although I'm not sure, but I'll just pose that I think it's better to broaden that to all outdoor uses on this plane that like you've just heard could be at the maximum building height or below the maximum building height, because it does open up. And I always like to kind of take my mind to the extreme that I think if I were coming before you, I would never want to say how I'm proposing, but someone could propose a swimming pool or a pickle ball court or other very intense uses that we'd then have difficulty regulating we being the overall community. So just as an anecdotal comment today, coincidentally, I was at the Joint Architectural Review Board Committee's annual first meeting for nominations for projects that had been completed within the last year or so in each of our respective Historic Districts. And we have an award ceremony in September to recognize people that have done a good job. I think the Hersh's were there last year, maybe the year before as an example. And after that discussion we, I ask how was the rooftop outdoor dining, outdoor spaces going in Leesburg and anecdotally the comment was that after the first application, many applications came more quickly and that the hardest thing to regulate was the sound. And as we all know, that's virtually impossible to regulate and Mr. Moore can go into that in more detail. So, for me, I'll just speak for myself. I don't think it's so much dining or any other use. I think it's this question of, and the term that we used a lot as a committee was, what does it mean to be a village, from a historic and experience perspective? And, you know, like, I think about what are our big days in town and it just doesn't feel to me like the same town if in 20 or 30 years on Christmas in Middleburg there are multiple places where people are above us looking down that feels urban to me, or more urban than I think the town would want in its long term. So again, I'm talking about appropriateness, not about the actual zoning, but I think that mostly covers our comments or my comments. Cindy's actually here. I don't want to put her on the spot, but she listened to all. And is part of this [inaudible], you know, our HDRC. And so, she was involved in all of those discussions as well. And I'll stay for a while. If you have any questions.

Bud Jacobs: Please do stay. Yeah. Cindy, you want to add anything else?

Cindy Pearson: Of course, as you know, I can. I did not agree. I was one of those that did not agree with that. There shouldn't be. I thought there should be rooftop dining options, but only if it was put into special use and to have really good restrictions on that. I do understand, as with anything, a special exemption then opens the door and there are lots of different places that people could want to have something on their rooftop. But I think once again, if you're with a Special Use Permits, sorry, I'll get the right language that would control it a whole lot more.

Bud Jacobs: Thank you. What are some of the requirements you have in mind? Stipulations that you would enforce.

Cindy Pearson: I would think Specific Uses would be that you know, like a pool of course on an old building would not be acceptable. What was the, what was it? Not ping. I'm thinking ping pong, pickleball. Thank you. And I can't really see that, you know, they're going to be chasing a lot of balls if they put something on a roof. Because then again, you would have to have a high siding on the building. So, there's a lot of things I don't think would work at all. I do like when Tim and them, you know, went down the street, and looked up to see what you see on the roof and that the pergola was too close. You know, you saw too much of it or the high-top tables. You know, you would see the people up there just kind of looking down on everyone and that doesn't settle real well. So, there's a lot to be worked through on this. I don't think it's going to be easy. Of course I don't think anything's easy anymore. [laughter] but you know, there could be a lot of work that goes into it.

Bud Jacobs: Fortunately, we can task Mr. Moore and Amy with a lot of the work, so I'm not too bothered by that. You and Tim do bring one important issue out, though, which is and Will and Amy wrote a little bit about this. The issue, one question we're going to have to face is whether we want to do something on a case-by-case basis, or whether we want to try to put together a one size fits all sum, I guess. And I don't know, on the question of whether the use is something that is consonant with the town and its outlook and values and appearance. I'm not convinced it is.

Cindy Pearson: Right.

Bud Jacobs: And I did, I went over to Warrenton a few days ago and looked at the, I guess there are two, maybe three establishments that have big rooftop dining facilities. And looking at it, it's well regulated. It's not noisy. I don't know if they do music there, but they certainly have dining. And even with that, I'm just not sure it's something that fits in Middleburg. And I believe we would all agree that that is a relevant consideration for this discussion. Okay, cool. Comments, please.

Cindy Pearson: Thank you.

Bud Jacobs: It's a lively group.

Chris Hersh: Mr. Chairman.

Bud Jacobs: Please.

Chris Hersh: Will and Amy, is it possible that you could have no amplified music where you basically it could be like an acoustic on a rooftop, but no amplified sound?

Will Moore: Yeah, absolutely. And there are a couple of ways to address that. We could introduce what we would call performance standards that go with the use, whether it is by right or whether it's a special use that these standards are automatically applied with any approval. So those could have to do with hours of

operation types if any of music that could be allowed, you know, whether it's just music over a loudspeaker or whether it's a performer. So, there are ways to accomplish that. Absolutely.

Bud Jacobs: Please.

Carol Hersh: My hope is I guess a little bit more economic development is going in that we at least look at each submission case by case. I hate to shut; I hate to shut things down. What HDRC did with the final, at least the most recent one you all came up with, I thought was well done. You can't see it from the street. I was really impressed with how it seems to fit, especially with the other the building behind it. We do have HDRC as a way to manage part of it. We can put in enough criteria. I think it's worth giving the option and then regulating it as tightly as we want to.

Bud Jacobs: Will, any other thoughts for us. I'm sorry. Go ahead.

Drew MacMahon: No, I was just going to agree. I also feel like these things deserve to be looked at individually. I think there's probably enough variation in even outdoor dining that the Special Use Permit might be appropriate so that we could take a look at the details. You know whether there's going to be live music, what you can see from the street, those sorts of things. So, I would lean also towards the Special Use Permit.

Bud Jacobs: Leesburg is, of course, larger than we are, and I don't know that anybody over there would was surprised by new applicants or new applications following the approval of the application for the hotel/restaurant. I'm a little discombobulated, I guess, by the notion that we might down the road face the same challenge and I don't know. I honestly don't know whether that would be a good or a bad thing, frankly. Anything for us, more. Any more for us, really?

Amy Rogers: So, if I can summarize and maybe go back to outdoor dining for a minute. How does the Commission feel about outdoor dining as it is today? Are they okay with how it is as a by right use that we are approving with a special use or I'm sorry, with just a zoning permit or do you think it should be a special use so we can start formulating something for you? Okay.

Will Moore: And specifically, the ground level or maybe on a porch or first level porch just.

Carol Hersh: Okay, clarifying that down to we're talking about outdoor dining at floor level or patio kind of [multiple speakers].

Will Moore: Correct.

Carol Hersh: Okay.

Bud Jacobs: No.

Don Woodruff: Will, currently is there any restriction on outdoor dining and outdoor music at dining establishments?

Will Moore: There is not a specific restriction on it. We do have a noise ordinance in town which is applicable so.

Don Woodruff: Thank you.

Drew MacMahon: Whose responsibility is it for the noise ordinance to respond? Is that strictly police?

Will Moore: Correct.

Amy Rogers: So, if noise is a concern we had talked about making things again, still leave it by right. But adding standards so we can add a standard that again no outdoor amplified music. We can add hours of operation or hours that they can have music to try and alleviate if that's a concern.

Bud Jacobs: Does the private club element come into play here in any way?

Will Moore: No. We would currently treat that. It's still a restaurant use. Even if it's private admission.

Drew MacMahon: Is the Middleburg Police Department staffed to handle overnight activity increases like this potentially?

Will Moore: We are a 24/7 Operation. Yes.

Bud Jacobs: I think experience with our noise ordinance so far has mostly focused on the resort. And I don't know that we've had any compliance issues. I know the police have gone and asked them to tone down a couple of times, but not a big deal.

Will Moore: I think that's accurate. Even for a couple of the establishments here. I believe Red Horse Tavern occasionally has some live music inside which is a tight space, but we've during my time here, never received a complaint about live music other than like you mentioned, the rare occasions at the resort. And those are handled very quickly.

Bud Jacobs: With respect to the Red Horse, I think it's safe to say it's only really noisy if the Mayor is there. [laughter]

Will Moore: That seems like a fair assessment.

Drew MacMahon: And the Red Horse is only authorized for indoor music currently, right?

Will Moore: Well, so there is no permitting or authorization required. So, there's nothing that would prohibit them from having music on their patio currently, except for the likelihood that it would exceed our noise ordinance.

Drew MacMahon: So, in a world, we could have two competing entities with noise at the same time.

Will Moore: You could.

Bud Jacobs: I think they do most of their concerts or performances on the upper deck, so. Well, where do we go with this, Will? Oh. I'm sorry. Excuse me. Oh, hi, Mr. Steitz. Sorry.

Tim Clites: I don't mean to interrupt, but just to add, I think years ago I was a Planning Commission member. Not that that matters, but I remember being on both Planning and Historic. And you all know there's a distinct difference in how the historic is able to somewhat subjectively apply its regulations or its guidelines. They're not really regulations that's much more stringent and structured with you all. And so having just gone through this once as a historic committee, I think most of the committee would agree that regardless of what the outcome, some support in the zoning ordinance from a special use or a structured

component that goes with our more subjective component would be a good thing. And the only thing I would add to that is if you were to take that on, giving some feedback around how our guidelines might also need to be updated to support whatever it is that you're doing, so that at the end of this, an applicant has at least some idea of what they should expect process wise, I think would be a good thing.

Bud Jacobs: That's an excellent idea. As a general rule, we're all about not being arbitrary and capricious in zoning decisions, ordinances, or anything else. So, this one.

Tim Clites: Are we capricious? No, I don't even know what that word means. But it's big and it doesn't sound good. [laughter]

Will Moore: I didn't, I didn't interpret that as shots fired at the HDRC, but maybe.

Bud Jacobs: I'm sorry. Next steps. Will, if there's no further discussion, anything.

Chris Hersh: Tim, has HDRC started discussing at all what from a historic standpoint, setting criteria for? Okay.

Will Moore: Well, I think I think there has been some discussion. They had been working on, so their set of design guidelines currently don't address outdoor dining elements in general. So, they had been working on some guidelines specific to that and we've rolled in some ideas about incorporating rooftop dining guidelines as well. Where we left it, the last time was essentially that they don't want to see it, which, you know, I liken it to the way they address solar panels in the Historic District. They're perfectly fine if you can't see them from a public street or a public way, which is their jurisdiction is what can be seen from a public way. So again, stepping them back from the use standpoint. It's what you can see. And they're basically saying you can, from their point of view, from their jurisdiction we don't want to see any elements of the rooftop dining. So that was where it was left. Most recently, we've not formally proposed those, but we will be talking about that again at the July meeting.

Bud Jacobs: You want to walk us through some of the possible benchmarks for how we proceed? By the way, to answer your questions, Amy, I don't know. I don't know what makes better sense for us at this point.

Amy Rogers: So, reading body language, [laughter] I get the feeling that you're okay with the outdoor ground level as it is, but you may want some standards about noise, possibly lighting things that could become a problem is does that sound kind of what? Okay.

Bud Jacobs: Does that capture what people's reaction is? I guess the only thing I would add is that those standards, of course, would be applied across the board with everyone.

Amy Rogers: So again, I'm talking about ground level.

Bud Jacobs: Yeah.

Amy Rogers: And first, so we would give those a set of standards and it's sounding like rooftop is a Special Use Permit. And we would probably have the same standards plus more for rooftop to make you feel comfortable about that.

Bud Jacobs: That makes a great deal of sense to me. How about the rest of you guys? Is that a formula we can sort of put together and start to follow?

Amy Rogers: Yes. [multiple speakers]

Bud Jacobs: Yeah. You guys any comments?

Amy Rogers: So, we'll go ahead and draft up some language for the next meeting. And we'll go ahead. And in case it looks good, draft up a resolution to for the public hearing. With at the same time. So, if it looks good, we can go ahead and adopt that and get the process moving. And if it's not, we can table it for another meeting. How does that sound?

Carol Hersh: Mr. Chairman.

Don Woodruff: Have you been up on that roof, Will?

Will Moore: I have not.

Don Woodruff: Okay. Because somebody raised an issue a question to me was, are they going to erect some kind of barrier or fence or something up on the top that would restrain any shall we say, inebriated activities such as throwing things or whatever.

Will Moore: The. Yes. So, there will be a barrier interior to the exterior walls of the roof. There will be a fenced in area where nobody can get to the edge of the edge of the building. Yeah.

Don Woodruff: So, walls don't talk [off mic].

Will Moore: Let's we'll save pickleball for another time. An outright prohibition on that anywhere in the vicinity of the Commonwealth would not bother me, but yeah.

Bud Jacobs: I think you are going to be sorry you used that as an example. [laughter] Any other comments?

Carol Hersh: Yes.

Bud Jacobs: Please. Please Ms. Hersh.

Carol Hersh: Thank you. Is it possible to get everybody the copies of what HDRC came up with, at least on planning. So, we've got at least their suggestions and all the drawings.

Will Moore: Are we talking about for the Fun Shop property? What was approved?

Carol Hersh: For the Fun Shop for the rooftop dining.

Will Moore: I can get you a copy of what they approved if that's helpful. Just so you can see the kind of.

Carol Hersh: Just so there's some visual as to what you all came up with as reasonable and out of sight.

Will Moore: Yes, yes, we can certainly do that. Yeah, absolutely.

Carol Hersh: Second question. So, we're going to separate these two issues. And you're going to bring us next time both issues as separate pieces. I'm just clarifying.

Will Moore: Yes. So, there will be it'll be one proposed amendment. And again, this is just a first draft, but it will have elements that apply only to the ground level and maybe the like, the elevated porch level we will find language to clarify that. And then there will be a separate component that applies to on rooftop. And we'll have definitions so that that's.

Carol Hersh: Special use.

Will Moore: Correct.

Carol Hersh: Great.

Bud Jacobs: Are we good? Will, Amy, are we good? Anyone. Anyone. All right. The informal session is concluded and I'm going to as soon as I talk to Rhonda, call in. Call our regular meeting into order. I blew up my computer.

Don Woodruff: Bud?

Bud Jacobs: Yeah. [off mic] There we go. Well, I'm going to call the June 22nd meeting to order and ask Rhonda to read the roll, please.

Rhonda North: Council Member Jacobs or Chair Jacobs.

Bud Jacobs: Here. [laughter]

Rhonda North: Vice Chair Woodruff.

Don Woodruff: Present.

Rhonda North: Commissioner Basinger is absent. Commissioner Hersh.

Carol Hersh: Present.

Rhonda North: Commissioner MacMahon.

Drew MacMahon: Here.

Rhonda North: Commissioner Rocconi.

Michael Rocconi: Here.

Rhonda North: Council Member Hersh.

Chris Hersh: Here.

Bud Jacobs: Thank you very much. We will now disclose any meetings we may have had with applicants. Who wants to start?

Chris Hersh: I've had no meetings with applicants pertinent to business before the Commission. I likewise have had no such meetings with applicants.

Bud Jacobs: I've had no meetings with any applicants with any matters before this board.

Carol Hersh: I have also not had any meetings with applicants.

Drew MacMahon: I've had no such meetings.

Michael Rocconi: I've had no meetings with applicants.

Bud Jacobs: Thanks. We're going to open the public comment session. I assume we have some folks here to make some comments. I see one at least I know. How do you want to do this, Rhonda?

Rhonda North: So usually you just let them, you know, raise their hand, you recognize them and have them come forward.

Bud Jacobs: And give us your name and address. We could make you fight it out.

Jane Covington: No, Megan allowed me to go first. So, we didn't even fight. So Good evening. My name is Jane Covington, and I own the building that was the former Popcorn Monkey that now houses Bedford Lee. And I met with Cindy Pearson last week, and she encouraged me to come speak to you tonight, and I am following up on a small talk that Trevor Lord gave to the Town Council at the beginning of June, where he formally asked for a sidewalk at the intersection of West Federal and South Pendleton. And that, as you know, that is the pedestrian connection between the Town and Hills School. And it's used not only by the students, but also by the community going to the beautiful outdoor space at Hill or by guests who park at Hill and walk over for Christmas in Middleburg or other special events. So, I've also spoken with Will Moore about this, and as usual, Will is always so helpful. And Will reminded me as I know, because I've spoken with VDOT, that VDOT makes these decisions of sidewalks, crosswalks, stop signs, but I as a citizen, I'm asking the town to advocate on our behalf for this safety feature. So, thank you. And just out of coincidence, while I was listening to this wonderful conversation on rooftop dining, I was reading the New York Times, and they have a rather startling article on the size of the American car and the impact on pedestrian safety. So, you might want to read it because they talk about what happens to the human body when it's struck by the average car at 20mph. And they also talk about what happens to the human body if it's smaller, such as a child. So, it's just it was a little startling to read because I was so excited when the town reduced speed limits to 20mph, and I was thinking how wonderfully safe things are. And this article kind of shook me. But anyhow, that's separate. I asked for the sidewalk before I even read the article. So, thank you so much.

Bud Jacobs: Thank you Jane. [inaudible]. Please. You have to stand at the podium, and you have to turn the light on. Turn your microphone on.

Rhonda North: She just needs to give her name.

Linda Taylor: My name is Linda Taylor. And I'm here representing the Methodist Church, and so is Howard Armfield and Reggie Dawson. We are taking over our parking lot from the town as of July 1st. The town has leased it for a number of years. Like so many, that I think Howard may be the only person in existence that knows how long. Yeah. So, it's been a parking lot for a long time. It's going to stay a parking lot for a long time. However, because of the growth in the town there has, we have really lost the ability to use it ourselves the way we used to have under the lease. And there's also a lot of wear and tear on it. If you are here on a weekend, you can see it's full most afternoons. On weekdays it's full because of all the businesses that use it. Seven Loaves is starting to have a lot of trouble finding enough space for their distributions, etc. so in order to control it better than we were having experience with the town doing we are taking it over as of July 1st. Well, then we discovered that although we are allowed to use it to for leasing to

businesses in the area during the times we're not using it. We cannot apparently according to zoning, use it for short-term parking, which is really what's needed on weekends. And as a result, if we're not able to use it's going to create, I think a real strain on the town because it's a very well-liked parking lot, to say the least. I don't know why this occurred. The town itself did have a short-term paid parking lot there for many years with meters, and it's in the zoning that a municipal lot can exist there. But I assume it was an oversight that the owner of the lot themselves can't do what the town can do. So, we are asking you to please change the zoning so that we are allowed to do the short-term parking. We are going we are allowed to do leasing, which mostly occurs during the week and which there is a considerable interest in doing. But on weekends, we are going to have to tell an awful lot of people if we don't get short, you know, aren't allowed to do paid short term parking because the church, quite frankly, cannot afford to either the liability or the cost of maintaining that pavement with the use it's been getting. So, if you have any questions, I'd be glad to answer them. The methodology for doing this is to have someone such as Park Mobile, whom Leesburg uses who you simply go to a sign you either on your phone look at the queue take a picture of the QR code and it leads you to the website, or you can put it in the website and you put in your credit card and you're off. It's pretty simple. It's what has been going on in the lot before us, but with meters before we have taken it over. So, there's no change in the use going on. Parking I think is a pretty well accepted use for parking lots. So, we are hopeful that you will change the zoning to allow us to do the short-term parking. Otherwise, the lot is going to get closed on weekends. That's all there is to it. So, thank you very much.

Bud Jacobs: Thank you very much. Will, Amy.

Will Moore: Sure. So, Miss Taylor gave a pretty accurate read on it. So, in the C-2 zoning district in which their property is located, a municipal parking lot is a permitted use, obviously a parking lot that is being used by the use on site and their tenants is allowable. There is a separate use identified in our zoning ordinance called a parking lot facility. And this is when addressing the type of use that they would want to do either a standalone parking lot that's not associated with any use or an additional use of a parking lot when it's off hours for paid hourly parking, something like that, that's a use identified in our ordinance. Currently it is only allowed in the C3 district by special use. So, it is accurate that the town used to have paid parking. We used to have meters on the street. There was a decision years ago to go away from that model. But it is accurate that it's been used for call it hourly parking turnover, parking by the town as a municipal parking lot. But for whatever reason, the regulations are established differently if a private entity other than the municipality wants to do that. So, in order to accommodate that, under our ordinance, the ordinance regulations would have to be amended to allow for a parking lot facility in the C-2 district. And if you were amenable to that, you would have to make a decision whether that would be a by right use in C-2 or whether it would be a special use as it is in C-3. But those are a couple of the different paths that could be forward to allowing the church to use the lot in that manner.

Bud Jacobs: Does anyone have any concerns with this request? Any questions?

Chris Hersh: Yeah, Will, what say if it was a special use and allowed in C-2? What's the process and the timeline that would have to be taken in order to make that occur?

Will Moore: Yeah. So, a Special Use Permit application generally takes around three months or so. It could be a little bit shorter, sometimes it's a little bit longer depending on the timing of the filing. And that's because that has to be reviewed by the Commission including a public hearing. Then you have to forward the request to the Council, which then in turn must schedule its own public hearing on a Special Use Permit. So, it's a somewhat lengthy process. If a decision was made to initiate a text amendment a text amendment is a similar timeline. But it is possible to file a Special Use Permit application concurrent with a text amendment that's in process, so it could potentially shorten the timeline for the application. If you were relatively supportive of that and signaled that that could happen, that it could move forward a little more quickly.

Bud Jacobs: I have forgotten how much do we charge, Special Use applicants.

Will Moore: Special Use Permit application is $2,000.

Bud Jacobs: $2,000? Yeah. If it is correct, Will that this is maybe a language tweak that we need to make? There's no other way to do this than either zoning text amendment, or zoning amendment. It seems to me it would be very simple to simply correct our oversight and move forward that way.

Will Moore: I mean, there could be a way to do it. It still would require a zoning amendment to correct language, but there's no requirement to establish the use as a special use. For example, you could simply say that that is an allowable use in C-2, and that would remove the necessity for special use. You just have to determine if there are any unintended consequences with that.

Bud Jacobs: Please.

Carol Hersh: Will what might be unintended consequences? Does that?

Will Moore: You know, it's.

Carol Hersh: We know where the church is but are there other lots where something.

Will Moore: I don't, you know, we talked a little bit about this you know, the most prominent lots are the lot that is accessed from West Marshall Street that serves like the coffee shop and some of the surrounding businesses there. Again, it's there's potential there. There's potential maybe even Safeway could do it. Safeway could say, you know, after hours, we're going to, you know, have paid parking. And if there are residents downtown that want to park in our lot overnight, they can do it, but they have to feed a meter or something like that. The likelihood of that happening. I don't have a way to gauge. I don't think it would be highly likely, but it just open up that door where it could be done by any owner if you make it a by radius.

Carol Hersh: Okay. Thank you.

Bud Jacobs: Any comments, questions, discussion.

Chris Hersh: I may be wrong, but at one point was there a parking garage consideration? And maybe that was why C-2 was blocked out from the C-3.

Will Moore: At one point in time from our records, I can see that a parking lot. So, on West Federal Street there's a gravel lot that what's the name of the bank Atlantic Union Bank owned? So, they have their paved lot in between Washington and Federal. But on the south side of Federal Street, there's a gravel lot that Atlantic Union now Atlantic Union Bank owns. There was a point in time in the early 2000 well before my time here where there was an application to construct a large surface lot there. And I think this amendment was adopted around that time because it was going to be just a standalone parking lot and potentially for hourly parking there. That's the best guess at the history.

Bud Jacobs: Anyone else? Hi.

Michael Rocconi: Well, you said that the C-3 district requires a Special Use Permit for this. Is there a good reason why C-2 and C-3 should be different? I mean, one not requiring and the other requiring a special use.

Will Moore: Yeah. I think if we look at these regulations, we might look at them holistically and make some adjustments. Otherwise there, I think it probably would still be a good idea to require a special use if someone were to construct a standalone parking lot that is not associated with a use whatsoever. But the idea of having a secondary use of a lot like the church would propose here, where they're primarily using it for their services when they have services. They also have a tenant.

Bud Jacobs: And Seven Loaves.

Will Moore: They say they have a tenant there as well. But there are a lot of off hours where the lot is not being utilized. And if it's a secondary use like that, you're not, you know, kind of what's the harm is maybe the reaction there. So maybe that's a by right use. But if somebody wanted to just flat out build a parking lot with no other use associated with it, that might be a special use.

Bud Jacobs: I appreciate the way you think about these things, Will. If everyone agrees, and if you don't agree, please speak up. I'd like to ask you Will to explore ways to fix this in the simplest, cheapest, most cost-effective, expeditious manner. And maybe we can discuss it at our next meeting and figure out a solution and hope we can. Fair enough. Thank you.

Rhonda North: Mr. Chair. You may want to finish the public comment because I think we have at least one more of.

Bud Jacobs: Do we have more? Okay.

Rhonda North: Of the audience who wants to speak?

Bud Jacobs: Sorry. Oh, it was Megan, I wasn't going to let her speak. [laughter]

Megan Gallagher: Thank you. My name is Megan Gallagher. I live at 214 East Marshall Street. And again, it's great to see Chairman Jacobs on the dais again. I've got three things to cover with you all. Mostly pulled from the minutes. And they were all great ideas from Will Moore. The first was your proposal for the new zoning district for public and civic uses, for what I call our Town Treasurers, which is the community center Hill school, charter school, sporting library, the big nonprofit institutions. And it allows, it would allow zoning that recognize their uses are very different from perhaps some other commercial one or residential one and reduce the burden. So, it's in the pile of things I gather for your Comp Plan update, and I hope that goes forward. Secondly, I'd really like to support his recommendation that on East Marshall between Hamilton, sorry, Hamilton and J getting that right. Yes. That you recognize the residential when you look at the maps, there are embedded. My friend lives in one residential historic properties surrounding the beautiful Boyd B&B. So, we're all in [inaudible] there. The C-1 district was meant as a transition. It is on the doorstep of the dense, most densely populated neighborhood, and it just makes sense to carve out those historic gems. Otherwise, they are ripe for tear down or redevelopment. And that would be sad. But the most important thing was I wanted to give you my perspective on your efforts with outdoor dining. And I, you know, I'm just the sort of person who would go around and count that. There are currently 363 seats in that many. It's like 18 places. Not all of them are sit down. The winners, of course, are Red Horse with 57 seats and Common Grounds and Nomad following up with 41. We have not yet seen what equestrian club, the old Salamander Market, Loudoun Market and Nature Compost will bring around, but we're going to end up with 400 or more seats outdoors. Before you go above, I would say every one of those cafes at street level and porches are part of a community commons that makes Middleburg so great, whether you're a visitor or a resident. The people watching, the greeting your friends, it's an amazing thing. So, I fully support having those be by right and just simple performance standards, not costly SUP. I deeply disagree with you that we need to accommodate rooftop dining. I think this is an urban fad that does not belong in communities, rural

villages, especially ones with our incredibly intact fabric and our sense of community. It is another. You're trying to push it away so you don't see it, but you could hear it. It just isn't right. The Council I was there for their discussion. Prohibiting them is an option. Thank you.

Bud Jacobs: Thank you very much. When? Oh. I'm sorry. I just wanted to make a quick comment. When General Billy Mitchell lived where Boxwood Winery now is. He kept his biplane there and a one day or maybe over the course of a few days, he flew his plane up and down Middleburg streets and took some fascinating pictures. The point I am making in raising this is that if you look at those pictures today, there's very little that would prevent you from readily identifying this as our Town as Middleburg just hasn't changed that much in the grand scheme of things. And that's a factor we need to, I think, bear in mind, if we are suddenly deluged with applications to, in my view, change the character by having such things as rooftop dining facilities so.

Nancy Gardner: Nancy Gardner. I live at 11 North Hamilton. Just to echo what Megan was saying about as you consider new regs for the different sections of town, the different types of business, please hang on to the residential. I live in one of those old houses. The records say it was sold to the original owners by the original Boyd property people in 1820, and the house was there by 1822. So, there's already one illegal building next to me. It was built way back in the 80s when nobody was paying attention. Parking lots illegal. The building is, and it's really a lot busier now than it was when I moved in. They now have a UPS drop off and a lot of other stuff. So, it really encroaches really very quickly. So, keep the residential, residential. Thank you.

Bud Jacobs: Thank you. Other comments. Colleagues any comments discussions Will. You got what you need?

Will Moore: Yes, sir.

Bud Jacobs: We now need a motion and a vote on approving the minutes from our last meeting. Would anyone care to make a motion?

Don Woodruff: I would move that these minutes be accepted or approved as presented.

Chris Hersh: Second.

Bud Jacobs: Any discussion? Bye, guys. All those in favor, say aye.

All of Commission: Aye.

Bud Jacobs: Nay. Okay. We're good. Let us go to the issue of the hour, which is new business and the request of Kevin Ash for site approval for his restaurant. Who's going to lead us off? Well.

Will Moore: So, this is really just an information item at this point. I gave you a memo as I highlighted in there. This was our first review of the plan. But we by our ordinance must meet certain timelines when it comes to review. So, we wanted to at least alert the Commission that a site plan had been submitted and reviewed. Let me advance one more sheet here. So, the plan that submitted was submitted as I note in my memo the reviewing agencies found multiple deficiencies for. So, it's really not worth going into a lot of detail on what is currently depicted on the plan, but just to give you a brief orientation and hopefully you'll be able to see my cursor on screen. So, the property is accessed from the rear from West Federal Street. So, in this area, there's an existing driveway next to a small home that is situated on the same property there. His proposal is to use that same drive to widen it a little bit on both sides to provide additional width to actually

provide a line of parallel parking adjacent to the property line that separates the Fun Shop or, sorry, the former Fun Shop property from the post office property. And then to provide some additional parking to meet the use requirement kind of teed off of that main drive that leads up to the rear of the commercial space. There were a number of, dimensional issues with this, with the in particular not meeting requirements from the fire marshal office to get fire apparatus access to the rear of the property. There were also some comments from the fire marshal's office regarding hydrant coverage that the applicant's going to have to address multiple pages of comments from the town engineer that are very basic things that the professional engineer preparing this plan should have addressed in their first submission anyway. But again, just this is really more for informational purposes at this point. He does have to provide off street parking with the conversion of the retail space to restaurant. He does not have to provide any additional parking other than what was already provided. He was given a I would say generous interpretation by the zoning administrator that they had three existing spaces on site. And I say it was generous because more vehicles than that could park behind the building, but they would have to stack so, so that they were obstructing one another. So, I basically said, you have three existing spaces on site, so you have to maintain those three. But he does have to park for the proposed residential component that is included here. He has revised his plans to this point such that the residential component consists of three, three-bedroom apartments. So those each require two spaces, so six spaces for the residential component plus the three. He would have to provide a total of nine spaces on site is what he's trying to fit in there. One of those spaces does have to be handicap accessible, so it has to meet requirements for accessibility that was not included in the initial iteration of the plan. The sizing of the spaces, they were sized as compact spaces, which is not permitted when you have so few spaces on site, you can do a certain percentage of compact spaces, but only when you have more than ten spaces provided on site. So again, this is really just informational purposes to let you know that this will be coming back probably as soon as next month, unless the applicant voluntarily waives the required timeline that we have in order to act on the plan. But happy to answer any questions, but there's not a lot more detail to provide at this point in time.

Bud Jacobs: Thank you very much. Does anyone have anything to add, questions, discussion, please?

Chris Hersh: In terms of the residential parking, can he possibly lease spots from the church in order to fulfill that requirement?

Will Moore: We have offered to the church to make that connection. And yes, because there you can provide parking off site as long as it's in a certain proximity and their location would meet that proximity. We offered to the church to make that connection. They have declined to this point to be connected with that user.

Bud Jacobs: Anyone else? Any other comments? Thank you very much. We'll hold our breaths and see how this unfolds. And now we come to that point in the evening where we hear from our distinguished Councilman.

Chris Hersh: You're kind. Thank you. First at the last meeting Amy was appointed as a Deputy Zoning Commissioner to help out or Administrator to help out Will. So, I think it's important to acknowledge that and to congratulate and welcome her in that role. Then the other thing that I thought was important to bring up was that the Middleburg Manor, which is where the Middleburg Barn used to be, was brought up at the last meeting by two different citizens who were adjacent to it. And it's in an R-2 district. There the proposal initially seems to be a 40-room inn with a 100-seat restaurant and kind of going down the rabbit hole, and a room at an inn is 130 gallons per room per day, assuming two room occupancy. So that's 5200 gallons per day. And a restaurant is roughly 50 gallons per seat. So that's 5000 gallons. So, you're talking about 10,200 with a range of low usage being 6,000 and high 18,000. So, if you equate that to households, that's 25 to 35, three-bedroom houses. That would from a water use standpoint, that would be going in, in that area. And

that's based on the Virginia design sewage flow criteria. So, and then the other question is water draw when it's dry, is it sustainable? But I realize that's out of the purview of Middleburg. But yet with water issues something to be aware of and concerned about. Those were kind of the main things I wanted to hit upon. Anything else Will that you think I need to?

Will Moore: Yeah, it's an interesting situation. You know, the Mayor and Council here have made a habit of involving themselves in matters outside of our corporate limits, I think with good reason many times think of the proposal at Mickie Gordon Park to renovate and by the way, that Special Use Permit application has now been refiled for Mickie Gordon Memorial Park, but it's very much in conformance with what came out of those public meetings and what was ultimately adopted as a preferred concept. So, it's an interesting situation. As Amy can well tell you, we are not permitted to really interpret someone else's ordinance. So, but I can look at the proposal that has been submitted to the county for Middleburg Manor. And at this point in time, all it is, is a request for basically a zoning interpretation. They're outlining what it is they intend to do, and they're asking zoning to respond with any comments. Does this generally fit prior to an actual formal application for development? Does this fit the zoning? Does it fit by right? Does it require a special use? And it informally appears to me that they're carving something in that is probably by right. So, it becomes an interesting situation. You know, if zoning issues a determination that says it's by right, there's really no action for the board to take. But the board also needs to be aware that these kind of, I would say very intense uses are allowed by right in your kind of quiet, passive, scenic rural areas. And maybe that's something that they need to be looking at. So, the Mayor in conjunction with myself is drafting a letter to the Board of Supervisors. So, we'll be addressing some of those things in there probably also highlighting the issues surrounding water and even wastewater. You know, a septic field to meet that kind of use is tough. And this property is about 35 acres in size, but they could also do the same use on as small as a 20-acre parcel, which is getting really, really tight. Especially if you're going to provide, you know, a drain field to meet that, that kind of use. So that's being drafted now. But you know, as with most things outside of our jurisdiction, our influence is limited. But the Mayor and Council are engaging with the county on that.

Bud Jacobs: Thank you. I'm glad they are engaging. Is this a situation that's similar to Banbury Cross? In other words, will a decision or an opportunity to comment come to us for as a purely ministerial function?

Will Moore: No.

Bud Jacobs: No.

Will Moore: So, our involvement is only in matters of subdivision of land, not in use of land. So, this is simply a use of land. So, and it's actually outside of that one-mile radius as well that we have.

Bud Jacobs: It is outside.

Will Moore: It's about a mile and a half straight line. Okay.

Bud Jacobs: Fair enough. Please.

Chris Hersh: But to me, it raises in our Comp Plan the importance of, in terms of natural resources, of stressing the water aspect to really show that we're concerned about the surrounding area because it's one aquifer or multiple cracks in one aquifer, so to speak, so.

Bud Jacobs: Would it would a letter from us seconding Council's concerns have any use, do you think?

Will Moore: I'm not sure, but I'd be happy to run that idea by the Mayor.

Bud Jacobs: Would you?

Will Moore: I think I'm going to meet with him this week to finalize that letter, so I'd be happy to raise that.

Bud Jacobs: Yeah.

Michael Rocconi: Mr. Chairman.

Bud Jacobs: Please.

Michael Rocconi: Will, if the county staff deems this to be by right, can the Board of Supervisors still get involved and step in if they see any reason to or not?

Will Moore: They probably could not from allowing the use to go forward standpoint, but they could still communicate through the county administrator to the various parties that will have to review the application, the need to be extremely diligent in review. And in particular from a health department standpoint, when they're reviewing the geotechnical report or whatever they're going to require to demonstrate that the water provided will be adequate and the wastewater disposal will be adequate for it. They can certainly stress down through the channels the importance of looking carefully at it. But in terms of maybe interfering with the use, there's not a role that the board will play.

Bud Jacobs: We'll see what happens with this. A lot of other concerns. Obviously, traffic is going to be one. I assume this is probably going to be a wedding venue, events venue kind of operation.

Will Moore: It's definitely an events venue of sorts. So just to not belabor the point, but it's not only a 40-room inn. A restaurant that seats more than 100 people has to go through a minor special exception process with the county. If you're at 100 or fewer, it's by right. So, they've specifically chosen to not require that legislative path. But the, what the ordinance refers to as private party accessory kind of to this country inn use it allows for on a daily basis events for up to 100 attendees. And then it also allows for up to 20 times per year events that exceed that limitation with no cap put there. So, 20 times a year, you can have a really big event. But every single night, if you had the business, you could have up to 100 attendees. You can also have outdoor music up to 12:00 midnight, seven days a week, without further limitation. Again, that's in my layperson's read of their zoning ordinance. Not interpreting it, but these are all things that could go along with it. So, it is definitely being marketed on their own website that's marketing the future use as a major event venue.

Bud Jacobs: Great. Comments, questions, discussion. And you'll talk to the Mayor.

Will Moore: Yes.

Bud Jacobs: Thank you. And now I assume Amy is going to walk us through the beautiful editing that's been done on the Comprehensive Plan sections, chapters, natural resources, historic resources, and population and housing. I looked rather closely at the really spiffy pages and had a hard time deciphering what was new and what was old, so I think so. I think it's good, I like it.

Amy Rogers: We're giggling because Will wrote this, but I could take it over. [laughter] So there are very few changes to the natural resources and the historical chapter. It was just some minor things in there. We did switch out pictures, just a couple of them. Not many. The big work was done in chapter four of population and housing. We did update the demographics from I guess it was spring of last year or maybe

the summer of last year when we went through it to the 2024 demographics. So that's been updated and is most current. Also adds references to the R-2 amendments that were done and remove the Salamander 60 units in our population count because there was discussion talking about the Salamander that that's now going to become rural because there's maybe not a desire by the current Salamander management to move forward with that. So, we've kind of taken the number out of our population estimate. And as we spoke before, if they choose to go forward with that plan, even though the Comp Plan is changing, they can still do it. But if they do change their plan, they will have to address the Comp Plan in the future. And then the biggest change, I think in this chapter, besides the demographics, was the short-term rental paragraph. There was one added in 2022 when short term rentals were first addressed. It has been strengthened a bit more because of the recent litigation to stress in the Comp Plan, the number of nights that would be appropriate and the number and in the neighborhoods. And if Will's got anything else to add, that's what my recollection of the changes.

Will Moore: Yeah. I think I think the draft language in here regarding short-term rentals is going to be very important to get your detailed review on. And please treat it as just a first draft from staff and happy to make changes, as necessary. But maybe if you wanted to start with any of the other items first, if there were any items other than the short-term rentals in any of these chapters that you wanted to discuss, that might be the best starting point. Again, these are chapters that had been reviewed previously but had been long enough that we wanted to bring it back to you in this formatted version and get your inputs.

Bud Jacobs: Thank you. Any comments please?

Carol Hersh: I think my one comment is about the natural resources and potentially it appears what we've gone from 900 wells taking out of the aquifer in our area to 18,000. Water is a real issue, and I know Chris worked on sort of details. He shared a lot with me, and it concerns me a lot how we go forward. And at least potentially putting in the Comp Plan, the importance of water and hopefully beginning to assess water use on anything significant that even happens around here, just so that it is at least acknowledged. Because if we run out of water, we're in a really bad situation, right? And we're definitely on that path right now.

Will Moore: Yeah. I think that's a very good point. There's the Natural and Environmental Resources chapter. And I do think it could be we could probably beef up the language in there regarding water resources. We also have part of our, I think our public facilities chapter. There's a section related to our municipal water and wastewater services. And I think that's going to be a good place. There's a lot of language in there. I'm soliciting input from our utility committee on to help strengthen the language there. I didn't really think until I was sending this out about maybe strengthening the language in this chapter. I think it regardless of what we do in the other chapter, I think we could maybe do a little more here. So, what I'll look at those two kind of together as I'm putting the draft together of the other chapter. Once I have the input from the utility committee and see how to pair those two together. But that's an excellent point.

Carol Hersh: Thank you for doing that. And it just makes it more in the Comp Plan.

Will Moore: Absolutely.

Carol Hersh: If needed in the future.

Bud Jacobs: We could also, I suppose, reference some of the work that's going on in the county, I believe, on water issues. Did they not constitute there? I don't know what they're calling it, their advisory commission, or their water resources.

Will Moore: Something has been started. I'll have to look at exactly where that stands right now. But we could reference that as well. Yes.

Bud Jacobs: Okay. And there's nothing on the legislative front that would be helpful. Senator Perry, Mr. McLaughlin haven't done anything with this so far.

Will Moore: I don't believe so.

Bud Jacobs: Okay. Okay. Other comments? Questions, please. I have to tell you, I read it. I didn't find a single thing to correct. And for me, that's rather unusual. So, kudos, kudos to you and Amy. Also, it's real purdy. [laughter]

Will Moore: That part is all Amy. The formatting here. So, yes.

Amy Rogers: Great.

Bud Jacobs: Will.

Will Moore: So related to short-term rentals.

Bud Jacobs: I was going to try to close this.

Will Moore: Oh no.

Carol Hersh: Can you clarify? It sounds like there's something that's 30 days and under, and then there's that 180. What is 189 days? [off mic] Where did I read, was I?

Will Moore: Okay. So, on screen is kind of the proposed language not on screen yet because I'm not plugged in and Amy is correcting me on that. Coming to a screen near you. [laughter] So, this is the proposed language. Essentially the first three paragraphs are as they stand today. The last paragraph is something that has been added to hopefully provide a little additional clarity. And let me back up for a second before we get into this. So, we have a short-term rental ordinance adopted. There is some language in there that if we had a chance to add some clarity to, we would right now it says the something along the lines of the most amount of days or nights that can be considered in an application for a short-term rental is 180 nights per year. We've learned through the review of the first number of applications, that Council is unlikely to ever approve one with that many nights again. Actually, the very first one they approved for Mr. Pappas on North Jay Street, who has the really small cottage, was approved without limitation on the number of nights other than what's in the ordinance. But we've realized they would likely never do that again. I would love to go in the ordinance and just lower that number. However, the General Assembly adopted legislation a couple of years ago that essentially said if you already have an ordinance in place regulating short term rentals, you're good to go, but if you don't, you have to allow them in a certain manner. And the way we have interpreted that, the way the Town Attorney has interpreted that is that the ordinance has to remain untouched. Because if you amend the ordinance, you're readopting. And then that would be a new ordinance. So, it could negate the entire ordinance if we go in to tweak it. So that puts us in a difficult position because there are a couple of areas, again, where we would like to maybe add a little clarity and a couple of areas where we would just like to change numbers. For example, the maximum number of nights that can be considered. We'll just put a maximum of 60. That could be considered. So, we won't have to deal with an application seeking that maximum, which hindsight being 2020, we should have never set it that high to begin with. But so, one way to approach that though is because the use requires a Special Use Permit in all instances in town is a special use application also has to be in conformance with the Comp Plan. So, you can

add language into the Comp Plan, guiding language. It's not necessarily regulatory, but if you're way, way off from what's in the Comp Plan, and that's one way to attack it. So, within this fourth paragraph that you see on screen, we're dealing more with the lack of clarity, if you will. So, there's been some arguments made that for example, one of the things says it has, the use a short-term rental has to be secondary to the use of the dwelling as a residence. So, arguments have been made as to what that means. Arguments have been made that a residential dwelling or a dwelling or a building that was constructed to be a dwelling, whether it's occupied or not, is still in use as a residence. There's so I want to make it clear what Council's intent was, and that was that no dwelling would be used primarily for or exclusively for short term rental use. So even if you are capped at X amount of nights per year, that doesn't mean it can be vacant the entire rest of the year. It also doesn't mean it can only be used a weekend here or weekend there or weekend. You know it's okay to do that if you want to build a home and only use it on occasion, that's fine, that's your business. But you don't get the benefit of being able to apply for this special exception to then have other transient uses introduced into the neighborhood. So that was the intent in the adoption of the ordinance. And we're trying to make it clear in the Comp Plan in case there are future challenges to what our language is intended to mean. So just reading. I hate to read to you, but I think it's important to get all the words in here. Council's intent was clear in its initial adoption of the regulations related to short term rentals in 2016, no home would be permitted to be used either exclusively for or primarily for short term rental use. To that extent, the ordinance only allows the short-term rental to be considered when it is a secondary use to a home that is otherwise used and occupied as someone's residence for more than half the year. Homes that are vacant more often than not, or homes that are occupied for intermittent periods totaling fewer than 183 days in a calendar year, are not eligible to benefit from special exceptions to be used as short term rentals. So, one of the things that this is trying to get around is arguments have been made that well, if I live in the home seven months out of the year well, that means the 183 days. Sure, it does. And then the question is, well, what if I go away for the weekend? Or what if I go on vacation for a week or two? And the answer is, if that is your residence for seven months, we're not going to get in the business of, you know, you going away for the weekend or taking a three-day weekend or going on a three-week vacation to Europe. We're not getting we're not getting in that business. But if the home is always vacant, except for a three-day weekend here, a three-day weekend there, maybe a two-week span during the summer. But cumulatively it adds up to 60 days and or fewer or something like that during the year. Then no, you're not going to be able to benefit from a special exception to have that then used on a transient basis by people as a short-term rental. So that's where we're trying to provide clarity in here. Whether this assist us with the current case that is actually has been now remanded back to Town Council by the court for reconsideration. And we'll be updating the Council on that at their meeting later this week, whether that has any influence over that it probably won't, but this could help protect us in future applications by providing some additional clarity. But I am happy to get your input on this too because I don't want this to be Will's short-term rental, of treatise here. I definitely want your input, your wordsmithing. I don't want to presume that this is by any means a finished product as it stands.

Amy Rogers: And if I could add, you need to look at it in companion with strategy number five that says the limit to short term rentals. No more than 25% of the eligible occupied homes in any given neighborhood and limit all new short-term rentals no more than 60 nights or fewer per calendar year. So, looking at them together to come up with, is that correct?

Bud Jacobs: Well, what would be wrong, Will in explaining our discomfort with the 130 day 183-day mark. Would it be useful to just spell out the history there that we've now come to the realization that to remain true to the ordinance intention anyway. We I don't know how you put this, Will we overshot the mark with our upper end limit and maybe point out that with one exception, Town Council has not approved anything longer than I think 90 days. Does that sound right? Is there a way to is there a way to wordsmith that and go into more detail than perhaps we would anywhere else, just to make it very clear what we're talking about?

Will Moore: I think that's worthy of consideration. I will share with you; I've not shared this draft with our Town Attorney yet. I think it's important to get his input on that. But I will share this draft, and I will offer that as well. I think that might help clarify to a reader why the ordinance says one thing, but our Comp Plan is saying something else, especially if that number is ratcheted down that far. Again, the no more than 60 or the yeah, 60 nights or fewer per calendar year. That's a first attempt. That number is not set in stone by any means, but.

Bud Jacobs: Well, I'd even be willing to include some reference to the state legislation and suggest that if we were not constrained by that, we would be imposing even more strenuous limitations. There's I'm just trying to get at what's missing there. The other part that I'm not sure I understand with respect to the court's action; did they say anything about the plaintiff's definition of residence or occupied residence?

Will Moore: No. The judge was very clear that in his deliberations, in my read, having been in the courtroom, that he was not going to get into the interpretation of those words directly, which was something that the plaintiff was requesting the court to intervene on. So, no the order is very, very short. It was it denied our motion to have it dismissed. And it remanded it back to Council on count one, which had to do with our interpretation of Residential use and how it applies in this situation, but it didn't. The court didn't opine as to where any potential mistake was. It just remanded it back to Council and said, take another look at this.

Bud Jacobs: As in, I don't want to deal with this. You guys fix it.

Will Moore: I mean, quite honestly the judge was not happy with either party and chastised both parties for spending the court's time on this issue openly chastised. And I can see his point, but he was not going to get into the how many 1700 pages or however much the legislative record was he was not willing to spend the court's time on that at this point and just remanded it back for Council to reconsider.

Bud Jacobs: Was this Judge Plowman?

Will Moore: It was.

Bud Jacobs: Yeah. Please.

Michael Rocconi: I like what you added as strategy number five. Short of being able to change our zoning reg, I think that's appropriate to do. The other question I have is in the last paragraph of the short-term rental section, are we basically defining or saying that it has to be your primary residence? And if so, why are we not using that commonly known term?

Will Moore: So, we're not.

Michael Rocconi: Okay.

Will Moore: And we're not saying that it has to be anyone's primary residence and we're very intentional in doing that. There was an opinion made in the, I think the Fourth Circuit Court of Appeal that if you tried to put a requirement that in particular it had to be the owner's primary residence that you were then violating the Dormant Commerce Clause by discriminating against out of state commerce. So, if somebody lives out of state and owns the property, then you're discriminating against them by requiring it to be their primary residence. So, it's an interesting argument. What we say is it has to be used primarily for used and occupied 183 days per year as a residence. So, what is a residence? So, the opposite of a short-term rental is a long-term rental. So, once you hit 30 days or more of rental, that's no longer a short-term rental. So, it doesn't have to be the owner's primary residence. It doesn't have to be anybody's primary residence for the entire year

necessarily. We do have a transient is not the word, but we do have a community here where there's a portion of it that disappears to Florida for the winter months because the horse racing goes away. So, you know, somebody who wanted to rent something on a long-term basis would it be the primary residence? Maybe, maybe if it was the flip side, somebody who only came here for summer months or winter months and stayed for three months and rented a property for three months, it was in residential use for that chunk of time. And that could be combined with somebody else's tenancy for a longer period of time. So, it doesn't have to be any one person's primary residence. And we've been clear on that. And that was an argument that was made by the plaintiff as well, was that we were violating the Dormant Commerce Clause, saying that Mrs. Johnson had to live in her house and was like, we absolutely never said that. We've been very clear that it's not the case.

Chris Hersh: So, Will does that? Mr. Chairman, if it's okay. Does that mean it's possible to have a long-term rental for the 183 days and then do multiple short-term rentals on the other 8 to 880 days.

Will Moore: Theoretically, if it was approved for up to 180 days. Yes. Theoretically, yes. Yes. Yes.

Chris Hersh: The only other thing I would add would be in terms of the language with the 60-day aspect would be kind of along the lines of where we talk about the village feel and the community aspect of it, that it's more consistent with that at 60 days than it is at 180 days.

Bud Jacobs: This is a tough one. When is Council taking action on the remanded complaint or suit?

Will Moore: We're not sure yet. The Town Attorney and possibly the attorney that represented us in that case will be talking with the Town Council in closed session on Thursday night. So, I'm not sure what direction will come from that at this point.

Bud Jacobs: Alrighty.

Chris Hersh: Maybe it ends up back at planning initially before it comes to Council. [laughter]

Bud Jacobs: God help us. This.

Carol Hersh: Yeah.

Bud Jacobs: I like somebody referenced strategy or objective number five. And I think the suggestion was made to try to make sure the language in number five and this paragraph don't cause us any problems, any conflicts. Could I ask you guys to pay particularly close attention to that and maybe Martin too, would be a good idea?

Will Moore: Yeah, absolutely.

Bud Jacobs: Thank you. Anyone else? You sure bring us a lot of fun stuff, Will. What are we going to do with the Comprehensive Plan? Where are we Will, what do you want us to, what's our next step?

Will Moore: So, our next step is to bring you additional chapters next month. So, you've not yet looked at the transportation chapter, I don't believe. So, I've spent some time updating those maps. Did we? Oh, you did look at the transportation chapter, I think. Oh, it's economics. That's right. Economics. The economics chapter. We do we were waiting on information from our treasurer with the most recent business license renewals. So, we could have the most up to date information. We do have that info now, so we need to plug that in. And bring that chapter back. And then we'll just look back through our notes and see if there are any

other others that you've previously reviewed that require any tweaking from comments you have previously made? But we're moving to a point where potentially as soon as August worst case, probably September, we could go to the public with draft plan. If we keep up the momentum that we have right now, which I think we will.

Bud Jacobs: That'd be great. That'd be great. I don't have anything else. Anybody else have anything else? No other than my new grandson, I have no news. So, if. Everybody, what are we looking at for our next meeting?

Rhonda North: July 27th.

Bud Jacobs: July 27th. I know it's impossible to know, but is this a date that people are going to be able to make for our next meeting?

Carol Hersh: Yes, as far as I know.

Don Woodruff: Probably.

Bud Jacobs: Quorum, I guess for everybody it's probably, yeah sure. Okay. July 27th. And what else? That's it. Right?

Will Moore: Yes, sir.

Bud Jacobs: We are hereby adjourned.