

**SPECIAL TOWN MEETING
OCTOBER 7, 2013**

Special Town Meeting was called to order at 7:19 PM by Town Moderator, Wayne C. Perkins, who declared a quorum present in the Middleborough High School Auditorium.

The Moderator invited the Reverend Father John Sheridan, Pastor of the Sacred Heart Church to offer the invocation. The Moderator then introduced the Veteran's Council who led the meeting in the Pledge of Allegiance and Selectwoman Leilani Dalpe who sang the National Anthem.

The Moderator introduced the Student Council members from the Middleborough High School who would be acting as Pagers or Counters for the Town Meeting. He thanked them all for participating.

The Moderator made an announcement that the Town Clerk was not present at the Special Town Meeting due to illness, and as a result in compliance with Chapter 41 of Section 19 of the Massachusetts General Laws the Assistant Town Clerk shall, in the absence of the clerk, perform his duties and have powers and be subject to the requirements and penalties applicable to him, in this case her. Elizabeth Gazerro is our Assistant Town Clerk, she was officially appointed on July 1, 2012 and she is with us tonight to take care of those duties.

Voted unanimously to allow as necessary the following non-resident individuals to address the Special Town Meeting: Charles Cristello, Town Manager; Steven Dooney, Town Accountant; Lance Benjamino, Fire Chief; Joseph Silva, Water Superintendent; Christopher Peck, DPW Director; Roseli Weiss, Superintendent of Schools; Kathleen Piatelli, School Department Business Manager, Ellen Driscoll, I.T. Director, Jane Kudcey, Director of Economic and Community Development; and Ruth Geoffroy, Town Planner; and further for taking a voice vote first on those votes requiring a super majority.

Before any action was taken, the Moderator asked if everyone had a copy of the articles and motions. He noted the articles and motions would be projected on the screen for Town Meeting. He reminded those in attendance to turn off all cell phones and pagers; a motion to amend must be in writing for the record allowing time for those to write out the amendment if needed; anyone who would like to address the meeting to use the microphone stating their name and address to be recognized by the Moderator; debate and questions are healthy but to maintain order should be directed through the Moderator and as always maintain civility.

The Moderator certified that the warrant had been posted, served and returned in a proper fashion by Police Chief Bruce D. Gates.

The following act on was taken:

ARTICLE 1: The following was voted unanimously:

The Town raise and appropriate from taxation the sum of \$46,567 to supplement the following budgets and account numbers for Fiscal Year 2014:

DEPARTMENT		ACCOUNT LINE-ITEM		
AMOUNT				
Selectmen	122	511101	Reg. Pay Clerical	\$ 1,567
Police Department	210	511126	Reg. Pay Officers	\$20,000
Council on Aging	541	549100	Perishables	\$15,000
Employee Benefits	919	517400	Health Ins.	
			Wellness Challenge	\$ 5,000
Unclassified	950	574100	Reedy's Lease)	\$ 5,000

The Town transfer from Free Cash the sum of \$150,000 to supplement department 422 DPW Highway Snow Removal, account number 15293;

The Town transfer from Free Cash the sum of \$50,000 to supplement department 543 Veterans' Services Medical and Cash Aid, account number 577000;

The Town transfer the sum of \$36,792 from the Trash Disposal Enterprise Unreserved/Retained Earnings account to supplement department 433 Trash Disposal Health and Life Insurance account number 517400.

ARTICLE 2. Voted unanimously to postpone this article indefinitely.

ARTICLE 3. Voted by majority vote to transfer the sum of \$91,442 from Free Cash to fund sick leave buy-backs in the following departments:

Police Department	#519700	\$35,136
Fire Department	#519700	\$48,885
Council on Aging	#519700	\$ 7,421

Finance Committee Recommended Favorable Action

ARTICLE 4. Voted unanimously to postpone this article indefinitely.

ARTICLE 5. Voted unanimously to transfer the sum of \$200,000 from Free Cash to the Other Post-Employment Benefits Liability Trust Fund.

Finance Committee Recommended Favorable Action

ARTICLE 6. Voted by majority vote to appropriate \$113,828 of which \$54,706 is from taxation and \$59,122 is from Free Cash to the appropriate line items in FY 2014 budgets as established by the Town Accountant to fund the following collective bargaining agreements:

General Municipal Employees Group	\$37,103
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Middleborough Clerical/COA Union	\$22,019
Middleborough Professional Firefighters' Assn.	\$54,706

Further voted by majority vote to appropriate \$9,596 of which \$4,419 is from the Wastewater Enterprise Unreserved/Retained Earnings account, \$4,172 is from the Water Enterprise Unreserved/Retained Earnings account, and \$1,005 is from the Trash Disposal Enterprise Unreserved/Retained Earnings account, to the appropriate line items in FY 2014 budgets as established by the Town Accountant to fund the following collective bargaining agreements:

General Municipal Employees Group	\$ 6,650
Middleborough Clerical/COA Union	\$ 2,946

ARTICLE 7. Voted unanimously to raise and appropriate \$48,336.00 from taxation for the purpose of reimbursing retired Town employees and other persons enrolled in the Town's Medicare health insurance plans for some of the health insurance premiums and co-payments paid by said retirees and other persons after Fiscal Year 2012, and to pay any related costs.

Finance Committee Recommended Favorable Action

ARTICLE 8. Voted unanimously to transfer the sum of \$16,742 from Free Cash to purchase new firearms for the Police Department.

Finance Committee Recommended Favorable Action

ARTICLE 9. Voted unanimously to transfer the sum of \$45,000 from Free Cash to purchase a 20/30 passenger special needs school bus for the School Department.

Finance Committee Recommended Favorable Action

ARTICLE 10. Voted unanimously to postpone this article indefinitely.

ARTICLE 11. Voted unanimously to transfer the sum of \$70,263 from Free Cash to purchase computers, servers, monitors, printers, and related hardware and software for various Town departments.

Finance Committee Recommended Favorable Action

ARTICLE 12. Voted unanimously to postpone this article indefinitely.

ARTICLE 13. Voted unanimously to postpone this article indefinitely.

ARTICLE 14. Voted unanimously to transfer \$14,787 from the receipts reserved for the Water Pollution Abatement Trust Loan Repayment Account in order to meet the Town's obligation for payment of the Water Pollution Trust Loan.

Finance Committee Recommended Favorable Action

ARTICLE 15. Voted unanimously to include water main replacements on Mitchell, Sachem, Park, Sproat, and Vine Streets to the water system improvements project voted under Article 12 of the warrant for the September 23, 2002 Special Town meeting.

Finance Committee Recommended Favorable Action

ARTICLE 16. Voted by counted vote of yes 225, and no 18 to appropriate \$29,811 from the Historic Resources Reserve of the Community Preservation Fund to fund climate control measures at the Middleborough Historical Museum for preservation of two museum buildings, historic town records and artifacts contained in the two buildings; said funds to be expended under the direction of the Community Preservation Committee.

Board of Selectmen Recommended Favorable Action

Finance Committee Recommended Favorable Action

ARTICLE 17. Voted unanimously to appropriate \$68,509 from the Community Preservation Fund Balance Reserve to begin Phase 2 of the Town's Historic & Vital Records Preservation which will include establishing a computerized retrieval system; said funds to be expended under the direction of the Community Preservation Committee.

Board of Selectmen Recommended Favorable Action

Finance Committee Recommended Favorable Action

ARTICLE 18. Voted unanimously to appropriate \$15,000 from the Community Preservation Fund Balance Reserve to fund a study by the Historical Commission to determine the overall condition of the estate and the value of a conservation restriction and a historic preservation restriction on the Oliver Homestead located on Plymouth Street on the Nemasket River; said funds to be expended under the direction of the Community Preservation Committee.

Board of Selectmen Recommended Favorable Action

Finance Committee Recommended Favorable Action

ARTICLE 19. Voted unanimously to postpone this article indefinitely.

ARTICLE 20. Voted unanimously to postpone this article indefinitely.

ARTICLE 21. Voted unanimously to postpone this article indefinitely.

Prior to moving Article 22, the following statement was read by Michael J. Labonte, Chairman of the Middleborough Planning Board:

REPORT OF THE PLANNING BOARD

On September 24, 2013, the Middleborough Planning Board voted unanimously to recommend favorable action on Article #22 Registered Marijuana Dispensary; and to recommend amendment of said article as follows:

Amend the Zoning Bylaw by adding a new use to the Table of Uses in Section 3.1 Principal Uses, Subsection D, Commercial Uses – Registered Marijuana Dispensary, is permitted in both the General Use and the General Use X Districts, by special permit from the Zoning Board of Appeals, but not otherwise and is prohibited in all other districts.

ARTICLE 22. Voted unanimously Town vote to amend its Zoning By-laws for the purpose of regulating the locations of registered marijuana dispensaries by adding a new use to the TABLE OF USES in Section 3.1, Subsection D – COMMERCIAL USES so that the new use is permitted in the General Use (GU) and General Use X (GUX) Districts by special permit from the Board of Appeals but not otherwise and that the by-laws read as follows:

TABLE OF USES									
PRINCIPAL USE	RA	RB	RR	B	I	GU	GUX	GUA	CD
D. COMMERCIAL USES									
34. Registered Marijuana Dispensary	N	N	N	N	N	ZBA	ZBA	N	N

Board of Selectmen Recommended Favorable Action

ARTICLE 23. Voted unanimously to accept M.G.L. Chapter 59, Section 5L. Upon acceptance of this section by a municipality and notwithstanding any other provision of this chapter to the contrary, any taxes due under this chapter by a member or a dependent of a member of the Massachusetts National Guard or a reservist shall be deferred while that member is on active service outside the commonwealth for the next 180 days after that service. No interest or penalties shall be assessed for any period before the expiration of those 180 days.

Board of Selectmen Recommended Favorable Action
Finance Committee Recommended Favorable Action

ARTICLE 24. Voted unanimously to amend the existing Town by-law Regulation of Sewer Use to comply with changes mandated by the United States Environmental Protection Agency, as noted in the letter dated June 17, 2013. The Regulation/Sewer Use by-law being on file with the Town Clerk.

ARTICLE 25. Voted unanimously to adopt the following by-law as published in the warrant:

Discharges to the Municipal Storm Drainage System

Section 1. Purpose

Increased and contaminated stormwater runoff is a major cause of: impairment of water quality and flow in lakes, ponds, streams, rivers, wetlands and groundwater; contamination of drinking water supplies; alteration or destruction of aquatic and wildlife habitat; and flooding.

Regulation of illicit connections and discharges to the municipal storm drain system is necessary for the protection of the Town of Middleborough's water bodies and groundwater, and to safeguard the public health, safety, welfare and the environment.

The objectives of this By-Law are:

1. to prevent Pollutants, as defined herein, from entering the Town of Middleborough's municipal separate storm sewer system (hereinafter, the "MS4");
2. to prohibit illicit connections and unauthorized discharges to the MS4 to the maximum extent practicable;
3. to require the removal of all such illicit connections;
4. to comply with state and federal statutes and regulations relating to stormwater discharges;
5. to establish the legal authority to ensure compliance with the provisions of this By-Law through inspection, monitoring, and enforcement.

Section 2. Definitions

For the purposes of this By-Law, the following shall mean:

AUTHORIZED ENFORCEMENT AGENCY: The Town of Middleborough Board of Selectmen [the Board]), its employees or agents designated to enforce this By-Law.

BEST MANAGEMENT PRACTICE ("BMP"): An activity, procedure, restraint, or structural improvement that helps to reduce the quantity or improve the quality of stormwater runoff.

CLEAN WATER ACT: The Federal Water Pollution Control Act (33 U.S.C. § 1251 *et seq.*) as hereafter amended.

DISCHARGE OF POLLUTANTS: The addition from any source of any pollutant or combination of pollutants into the municipal storm drain system or into the waters of the United States or Commonwealth from any source.

GROUNDWATER: Water beneath the surface of the ground.

ILLCIT CONNECTION: A surface or subsurface drain or conveyance, which allows an unauthorized discharge of pollutants into the municipal storm drain system, including without limitation sewage, process wastewater, or wash water; and any connections from indoor drains, sinks, or toilets, regardless of whether said connection was previously allowed, permitted, or approved before the effective date of this By-Law.

ILLCIT DISCHARGE: Direct or indirect discharge to the municipal storm drain system that is not composed entirely of stormwater, except as exempted in Section 7. The term does not include a discharge in compliance with an NPDES Storm Water Discharge Permit or a Surface Water Discharge Permit, or resulting from firefighting activities exempted pursuant to Section 7, of this By-Law.

IMPERVIOUS SURFACE: Any material or structure on or above the ground that prevents water infiltrating the underlying soil. Impervious surface includes, without limitation, roads, paved parking lots, sidewalks, tennis/sports courts and rooftops.

MUNICIPAL SEPARATE STORM SEWER SYSTEM (MS4) or MUNICIPAL STORM DRAIN SYSTEM: The system of conveyances designed or used for collecting or conveying stormwater, including any road with a drainage system, street, gutter, curb, inlet, piped storm drain, pumping facility, retention or detention basin, natural or man-made or altered drainage channel, reservoir, and other drainage structure that together comprise the storm drainage system owned or operated by the Town of Middleborough.

NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES) STORM WATER DISCHARGE PERMIT: A permit issued by United States Environmental Protection Agency or jointly with the State that authorizes the discharge of pollutants to waters of the United States.

NON-STORMWATER DISCHARGE: Discharge to the municipal storm drain system not composed entirely of stormwater.

PERSON: An individual, partnership, association, firm, company, trust, corporation, agency, unincorporated entity, business enterprise, authority, department or political subdivision of the Commonwealth or the federal government, to the extent permitted by law, and any officer, employee, or agent of such person.

POLLUTANT: Any element or property of sewage, agricultural, industrial or commercial waste, runoff, leachate, heated effluent, or other matter whether originating at a point or nonpoint source, that is or may be introduced into any sewage treatment works or waters of the Commonwealth. Pollutants shall include without limitation:

- (1) paints, varnishes, and solvents;
- (2) oil and other automotive fluids;

- (3) yard wastes;
- (4) refuse, rubbish, garbage, litter, or other discarded or abandoned objects;
- (5) pesticides, herbicides, and fertilizers, unless applied in accordance with manufacturer's instructions;
- (6) hazardous materials and wastes; sewage, fecal coliform and pathogens;
- (7) dissolved and particulate metals above EPA's ambient water quality criteria;
- (8) animal wastes;
- (9) rock, sand, salt, soils unless applied for the purpose of public safety;

PROCESS WASTEWATER: Water which, during manufacturing or processing, comes into direct contact with or results from the production or use of any material, intermediate product, finished product, or waste product.

RECHARGE: The process by which groundwater is replenished by precipitation through the percolation of runoff and surface water through the soil.

STORMWATER: Storm water runoff, snow melt runoff, and surface water runoff and drainage.

SURFACE WATER DISCHARGE PERMIT. A permit issued by the Department of Environmental Protection (DEP) pursuant to 314 CMR 3.00 that authorizes the discharge of pollutants to waters of the Commonwealth of Massachusetts.

TOXIC OR HAZARDOUS MATERIAL or WASTE: Any material, which because of its quantity, concentration, chemical, corrosive, flammable, reactive, toxic, infectious or radioactive characteristics, either separately or in combination with any substance or substances, constitutes a present or potential threat to human health, safety, welfare, or to the environment. Toxic or hazardous materials include any synthetic organic chemical, petroleum product, heavy metal, radioactive or infectious waste, acid and alkali, and any substance defined as Toxic or Hazardous under M.G.L. Ch.21C and Ch.21E, and the regulations at 310 CMR 30.000 and 310 CMR 40.0000.

WATERCOURSE: A natural or man-made channel through which water flows or a stream of water, including a river, brook or underground stream.

WATERS OF THE COMMONWEALTH: All waters within the jurisdiction of the Commonwealth, including, without limitation, rivers, streams, lakes, ponds, springs, impoundments, estuaries, wetlands, coastal waters, and groundwater.

WASTEWATER: Any sanitary waste, sludge, or septic tank or cesspool overflow, and water that during manufacturing, cleaning or processing, comes into direct contact with or results from the production or use of any raw material, intermediate product, finished product, byproduct or waste product.

Section 3. Applicability

This By-Law shall apply to flows entering the municipally owned storm drainage system.

Section 4. Authority

This By-Law is adopted under the authority granted by the Home Rule Amendment of the Massachusetts Constitution and the Home Rule Procedures Act, and pursuant to the regulations of the federal Clean Water Act found at 40 CFR 122.34.

Section 5. Responsibility for Administration

The Board shall administer, implement and enforce this By-Law. Any powers granted to or duties imposed upon the Board may be delegated in writing by the Board to agents of the Board.

Section 6. Prohibited Activities

Illicit Discharges. No person shall dump, discharge, cause or allow to be discharged any Pollutant or non-stormwater discharge into the municipal separate storm sewer system (MS4), into a watercourse, or into the waters of the Commonwealth.

Obstruction of Municipal Storm Drain System. No person shall obstruct or interfere with the normal flow of stormwater into or out of the municipal storm drain system without prior written approval from the Board.

Section 7. Exemptions

The following activities shall be exempt from the prohibitions under Section 6:

Discharge or flow resulting from firefighting activities.

Discharge or flow resulting from DPW ice and snow control operations

The following non-stormwater discharges or flows are exempt from the prohibition of non-stormwaters provided that the source is not a significant contributor of a pollutant to the municipal storm drain system:

- (1) Waterline flushing;
- (2) Flow from potable water sources;
- (3) Springs;

- (4) Natural flow from riparian habitats and wetlands;
- (5) Diverted stream flow;
- (6) Rising groundwater;
- (7) Uncontaminated groundwater infiltration as defined in 40 CFR 35.2005(20), or uncontaminated pumped groundwater;
- (8) Water from exterior foundation drains, footing drains (not including active groundwater dewatering systems), crawl space pumps, or air conditioning condensation;
- (9) Discharge from landscape irrigation or lawn watering;
- (10) Water from individual residential car washing and temporary fundraising car wash events;
- (11) Discharge from dechlorinated swimming pool water (less than one ppm chlorine) provided the water is allowed to stand for one week prior to draining and the pool is drained in such a way as not to cause a nuisance;
- (12) Discharge from street sweeping;
- (13) Dye testing, provided verbal notification is given to the Board or its duly authorized agent prior to the time of the test;
- (14) Non-stormwater discharge permitted under an NPDES permit or a Surface Water Discharge Permit, waiver, or waste discharge order administered under the authority of the United States Environmental Protection Agency or the Massachusetts Department of Environmental Protection, provided that the discharge is in full compliance with the requirements of the permit, waiver, or order and applicable laws and regulations;
- (15) Discharge for which advanced written approval is received from the Board or its agent as necessary to protect public health, safety, welfare or the environment; and
- (16) Discharge allowed under a Planning Board-issued special permit/subdivision approval or under a Conservation Commission-issued Order of Conditions

Section 8. Sump Pumps

All sump pumps tied into the MS4 shall be registered with the Authorized Enforcement Agency. If, for reasons of protecting public health or the environment, the Authorized Enforcement Agency deems it necessary, disconnection of sump pump(s) or pretreatment of discharge may be required.

Section 9. Emergency Suspension of Storm Drainage Access

The Board may suspend MS4 access to any person or property without prior written notice when such suspension is necessary to stop an actual or threatened discharge of pollutants that presents imminent risk of harm to the public health, safety, welfare or the environment. In the event any person fails to comply with an emergency suspension order, the Board may take all reasonable steps to prevent or minimize harm to the public health, safety, welfare or the environment.

Section 10. Notification of Spills

Notwithstanding other requirements of local, state or federal law, as soon as a person responsible for a facility or operation, or responsible for emergency response for a facility or operation has information of or suspects a release of materials at that facility or operation resulting in, or which may result in, discharge of pollutants to the MS4 or waters of the Commonwealth, the person shall take all necessary steps to ensure containment, and cleanup of the release. In the event of a release of oil or hazardous materials, the person shall immediately notify the Middleborough Fire and Police Departments. In the event of a release of non-hazardous material, the person shall notify the Authorized Enforcement Agency no later than the next business day. The person shall provide to the Authorized Enforcement Agency written confirmation of all telephone, facsimile or in-person notifications within three business days thereafter. If the discharge of prohibited materials is from a commercial or industrial facility, the facility owner or operator of the facility shall retain on-site a written record of the discharge and the actions taken to prevent its recurrence. Such records shall be retained for at least three years.

Section 11. Enforcement

The Board or an authorized agent of the Board shall enforce this By-Law, regulations, orders, violation notices, and enforcement orders, and may pursue all criminal remedies for such violations.

Orders. The Board or an authorized agent of the Board may issue a written order to enforce the provisions of this By-Law or the regulations thereunder, which may include: (a) elimination of illicit connections or discharges to the MS4; (b) performance of monitoring, analyses, and reporting; (c) that unlawful discharges, practices, or operations shall cease and desist; and (d) remediation of contamination in connection therewith.

If the enforcing person determines that abatement or remediation of contamination is required, the order shall set forth a deadline by which such abatement or remediation must be completed.

Remedies Not Exclusive. The remedies listed in these regulations are not exclusive of any other remedies available under any applicable federal, state or local law.

If the property owner violates more than one provision of this By-Law, each provision so violated shall constitute a separate offense.

Entry to Perform Duties Under this By-Law. To the extent permitted by state law, or if authorized by the owner or other party in control of the property, the Board, its agents, officers, and employees may enter upon privately owned property for the purpose of performing their duties under this By-Law and regulations and may make or cause to be made such examinations, surveys or sampling as the Board deems reasonably necessary.

Section 12. Severability

Any person that violates any provision of these regulations may be punished by fines of not more than \$300. Each day or portion thereof during which a violation continues shall constitute a separate offense. The Board or its duly authorized agent is an authorized officer to impose such fines.

The provisions of this By-Law are hereby declared to be severable. If any provision, paragraph, sentence, or clause, of this By-Law or the application thereof to any person, establishment, or circumstances shall be held invalid by a court of competent jurisdiction, such invalidity shall not affect the other provisions or application of this By-Law.

Section 13. Transitional Provisions

Property owners shall have 30 days from the effective date of the By-Law to comply with its provisions provided good cause is shown for the failure to comply with the By-Law during that period, or act anything thereon.

ARTICLE 26. Voted unanimously to postpone this article indefinitely.

Prior to moving Article 27, the following statement was read by Michael J. Labonte, Chairman of the Middleborough Planning Board:

REPORT OF THE PLANNING BOARD

The Planning Board, at their regularly scheduled meeting held on September 10, 2013, voted to recommend layout and acceptance of Veronica Lane by the Town of Middleborough on the condition that the road will be completed by the Town, in conformance with the construction standards of the Middleborough Subdivision Rules and Regulations; said completion work to be funded by a combination of subdivision surety and the assessment of betterments.

Veronica Lane, located off of Wood Street, was permitted and approved by the Planning Board under the Subdivision Control Law on February 7, 1989. Unfortunately, the developer, Bar-Joe, Inc., (Joseph Abbanato and Barry Oliveira), has defaulted on completing road construction as required by the Middleborough Planning Board's Definitive Subdivision Approval and Form H Covenant. As a result, the subdivision has not been certified complete.

ARTICLE 27. Voted by counted vote of yes 217, and no 1 to accept Veronica Lane as a Town way as laid out by the Board of Selectmen and to authorize the Selectmen to acquire by eminent domain or by gift the fee in the way as shown on the road layout plan, on file with the Town Clerk entitled “As-Built-Street Acceptance Plan – Veronica Lane – Acorn Ridge Subdivision, Middleborough, Mass” dated February 2, 1993, revised August 28, 2013, prepared by Michael J. Koska & Associates, Inc., and any related easements, to authorize the Board to complete construction of the way and related easements, to raise and appropriate \$58,000 by borrowing for the cost of construction, and to meet this appropriation to authorize the Treasurer, with the approval of the Board of Selectmen, to borrow \$58,000 under General Laws, Chapter 44 and to authorize the Board of Selectmen to assess betterments for the cost of construction under General Laws, Chapter 80.

Board of Selectmen Recommended Favorable Action

Finance Committee Recommended Favorable Action

Prior to moving Article 28, the following statement was read by Adam Carbone of the Middleborough Planning Board:

REPORT OF THE PLANNING BOARD

The Planning Board, at their regularly scheduled meeting held September 10, 2013, voted to recommend favorable action on the layout and acceptance of Tall Oak Drive by the Town of Middleborough.

Tall Oak Drive, located off of Vernon Street, was permitted and approved under the Subdivision Control Law on November 15, 1990 and certified complete by the Planning Board on November 12, 1996.

Unfortunately, the developer chose not to submit the subdivision for public layout and acceptance at that time and since 1996, the subdivision infrastructure deteriorated and showed signs of pavement failure.

The Planning Board has been advised that the developer has completed the necessary repair work on Tall Oak Drive to the satisfaction of the Middleborough Department of Public Works.

ARTICLE 28. Voted unanimously to accept Tall Oak Drive as a Town way as laid out by the Board of Selectmen and to authorize the Selectmen to acquire by eminent domain, or by gift, the fee in the way and related easements as shown on the road layout plan, on file with the Town Clerk entitled “As-Built Acceptance Plan, Tall Oak Drive” dated October 21, 1994 and revised on September 8, 1995, By James E. Miller P.E., and any related easements.

Board of Selectmen Recommended Favorable Action

Prior to moving Article 29, the following statement was read by Adam Carbone of the Middleborough Planning Board:

REPORT OF THE PLANNING BOARD

The Planning Board, at their regularly scheduled meeting held September 10, 2013, voted to recommend favorable action on the layout and acceptance of Dona Drive by the Town of Middleborough.

On August 20, 2013, the Planning Board issued a Certificate of Completion for “Dona Estates” after finding that the construction of Dona Drive and the installation of municipal services were complete and built in compliance with the approved Definitive Subdivision Plan and the Town of Middleborough Subdivision Rules and Regulations.

ARTICLE 29. Voted unanimously to accept Dona Drive as a Town way as laid out by the Board of Selectmen and to authorize the Selectmen to acquire by eminent domain, or by gift, the fee in the way and related easements as shown on the road layout plan, on file with the Town Clerk entitled “Roadway As-Built in Middleborough, MA, Dona Estates Subdivision, Dona Drive” dated 7/24/2013, prepared by AZOR Land Sciences, Inc., and any related easements.

Board of Selectmen Recommended Favorable Action

ARTICLE 30. Voted unanimously to transfer the care, custody, management and control of certain real estate on the northerly side of Wareham Street and being part of Lot 872 on Assessors Map 58D and being sometimes known as Thomas Memorial Park from the Municipal Light Board (Gas & Electric Commission) to the Board of Selectmen for the same purpose as the real estate is currently used for, such real estate consisting of 2.69 acres of land more or less and being bounded southerly by Wareham Street, westerly by a chain link fence located easterly of the main building at the Wareham Street Electric Station, northerly by Lot 828 on Assessors Map 58D and easterly in part by the Nemasket River and in part by land shown as Lot 1638 on Assessors Map 58D.

ARTICLE 31. Voted unanimously to authorize the Municipal Light Board (Gas & Electric Commission) to acquire by gift on behalf of the Town easements for the transmission of gas and electric services in private ways off North Street known as Peirce Lane and Weston Avenue.

*A motion made and seconded to **amend Article 32** to indefinitely postpone the article **failed** by majority vote.*

ARTICLE 32. Voted by counted vote of yes 228, and no 10 to authorize the Board of Selectmen to accept conveyance for the Town from the Plymouth County Commissioners of a portion of the Taunton Avenue County highway layout which is to be discontinued and which contains a cross located in an island part of the layout and to accept conveyance for

the Town from the Commonwealth of Massachusetts of a portion of the State highway layout for Route 28 (West Grove Street) which is to be discontinued, such portion being located adjacent to the aforesaid portion of the County highway layout, to discontinue as a Town way the said portion of the State highway layout to be effective when the Commonwealth discontinues that portion as a State highway, to transfer the care, custody, management and control of said portions of the County and State highway layouts to the Board of Selectmen for the purpose of sale, and to authorize the Board of Selectmen to sell and convey the said portions of the County and State highway layouts on such terms and conditions determined by the Board.

Prior to moving Article 33, the following statement was read by Michael J. Labonte, Chairman of the Middleborough Planning Board:

REPORT OF THE PLANNING BOARD

On August 6, 2013, the Middleborough Planning Board called in \$210,000.00 in subdivision surety for Fernway Estates because the developer had defaulted on completion of the subdivision in the required period of time, December 14, 2007; and, the additional time that the Board had given him, August 1, 2013, had come to an end without completion.

The Planning Board believes that the subdivision roadways, known as Fernway and Look Out Circle, need to have binder course fully repaired prior to this winter with all work being completed by June 2013, or pavement degradation will be so great as to preclude the Town from interceding using these available surety funds.

The Subdivision Control Law, M.G.L. Chapter 41 Section 81U, requires that expenditure of subdivision surety that exceeds \$100,000, by a Town's Planning Board, requires that Town Meeting appropriate said funds for Planning Board expenditure to meet the cost and expenses for completing the work as specified in the approved subdivision plan.

The Planning Board has put completion of the Fernway Estates subdivision out to public bid; has received an acceptable bid to complete the work, within the anticipated budget; has issued a Notice of Award pending a favorable vote by this Town Meeting; and, said award has been accepted by the Contractor.

We request that Town Meeting act favorably on this article so that the Contract for this work can be signed at the Planning Board's next meeting, and the necessary pavement repairs and road completion may commence.

ARTICLE 33. Voted unanimously to appropriate the sum of \$210,000 from the proceeds of surety pursuant to the Subdivision Control Law, MGL Chapter 41 Section 81U, from the subdivision known as Fernway Estates which is in default of completion, to be made available to the Planning Board for expenditure to meet the cost and expenses for completing the work as specified in the approved subdivision plan.

Board of Selectmen Recommended Favorable Action
Finance Committee Recommended Favorable Action

ARTICLE 34. Voted by majority vote to authorize the Board of Selectmen to amend the Intermunicipal Agreement with the Town of Lakeville, which permits Middleborough to provide water services to existing Lakeville customers, by adding a new residential customer located at 37 Bridge Street.

Voted unanimously to dissolve the meeting at 8:48 PM.

A true copy, attest:


ELIZABETH D. GAZERRO
Assistant Town Clerk