

**Middleborough Board of Selectmen
Meeting Minutes**

July 11, 2016

Chairman opened meeting at 7:00 PM by inviting those in attendance to join in the Pledge of Allegiance.

In attendance were: Selectmen D. Stewart, S. McKinnon, J. Knowlton, L. Dalpe and A. Frawley; Town Manager R. Nunes and Executive Assistant J. Shanley.

The meeting was broadcast live by MCCAM and recorded by MCCAM and Verizon.

UNANTICIPATED

Selectman Dalpe provided an update re the Oliver House.

ANNOUNCEMENTS & RECOGNITIONS

Board made various announcements and recognitions.

MINUTES

To be voted on 7/25/16.

WARRANTS

Upon motion by Selectman Dalpe and seconded by Selectman Frawley, Board voted unanimously to authorize the Chairman, or her designee, to sign warrants for weeks ending 7/16 & 7/23/16.

NEW BUSINESS

Board discussed raising the Handicapped Parking fine with the Commission on Disability. Commission Chairman Carolyn Gravelin addressed the Board and reviewed Disability Rights Laws in MA as contained within the Massachusetts Office on Disability (M.O.D.).

Wayne Perkins and Amanda Heroux of Middleborough On The Move addressed the Board to announce plans for Krazy Days scheduled for Friday, August 5th and Saturday, August 6th. They requested permission to close the roads and extra fifteen minutes earlier, specifically from 7:45 a.m. until 8 pm. Upon motion made by Selectman Frawley and seconded by Selectman Dalpe, the Board voted unanimously to approve the road closure for Krazy Days from 7:45 AM until 7PM on August 5th and 6th on the following roads: Clifford St at Wareham St; Pierce St at N. Main St; School St at Centre St; and Nickerson Ave. at S. Main St..

Upon motion by Selectman Frawley and seconded by Selectman Dalpe, Board voted unanimously to forward petition for Street Acceptance by the residents of Brookside Drive and Fidelity Lane to the Planning Board and to schedule the discussion for August 8, 2016 at 8 PM.

The Town Manager offered that Chris Peck will be reaching out to the BETA Group. Selectman McKinnon asked why we have to re-engineer what has already been built, if what was designed would have worked if the proper materials were put in the first place. This is a new design since what was there now has failed. It was suggested that the Board would normally vote to also set a hearing date. Upon motion made by Selectman Dalpe and seconded by Selectman Frawley to hold a Roadway Acceptance hearing for Brookside Drive and Fidelity Lane on August 8, 2016 at 8 PM.

Upon motion by Selectman Dalpe and seconded by Selectman Frawley, Board voted unanimously to authorize Chairman to sign the Resolution regarding a Closed-end Motor Vehicle lease.

Upon motion by Selectman Dalpe and seconded by Selectman McKinnon, Board voted unanimously to sign the Certificate of Authority granting the Town Manager, as the representative on the leases, for the electric vehicles.

Patricia Cassidy, Conservation Agent, addressed the Board. Upon motion by Selectman Frawley and seconded by Selectman McKinnon, Board voted unanimously to authorize the Chairman to sign letter of support for the Conservation Commission application for a LAND grant for the Lion's Head property.

Upon motion made by Selectman Dalpe and seconded by Selectman McKinnon, Board voted unanimously to authorize the Chairman to sign the contract and to sign a letter of non-opposition for the Mass Department of Public Health for the Seven Point of Massachusetts Marijuana Dispensary and to be located in Middleborough.

Upon motion made by Selectman Dalpe and seconded by Selectman McKinnon, Board voted unanimously to authorize the Chairman to sign a letter of acceptance for the MPPF grant award for the Oliver House.

Upon motion made by Selectman McKinnon and seconded by Selectman Dalpe, Board voted unanimously to approve the payment of two bills totaling \$250 to be paid to Russ Frade for Porta Jon rental services at the Oliver House for the months of April & June 2016 to be paid from the Oliver Estate Revolving Fund.

Health Officer Robert Buker addressed the Board and offered that he is unaware if there are any restrictions to Ohm Land Security Vape to be located on Centre Street at the address previously leased by Kool Moose Café. The owners addressed the Board and asked for permission to allow their customers to use their products indoors. The law allows vaping inside of the shop. They are all for making the Town smoke free. It is detrimental to their business, if customers can't try the products inside the shop. It's not about vaping. It's about quitting smoking.

Mr. Buker offered that the reasons for concern in allowing vaping inside the store. He doesn't have any concrete evidence to say that it is unsafe, nor does he have any evidence to say that it is safe. Chairman asked if he had any reason as to why the Board should not allow the indoor use. He responded that, as a Health Officer, he would not, but again, he doesn't have any concrete evidence as to why it shouldn't be allowed.

Selectman Knowlton stated that he appreciates all that the owners presented, but he agrees with Mr. Buker, and would want more information before approving indoor use. Selectman Frawley asked if vaping is allowed in public, such as here tonight. It was offered that it is legal to publicly vape unless posted otherwise. Selectmen Frawley explained that he doesn't understand why we wouldn't allow vaping in a vape shop if it's allowed in public places. He also doesn't want to see a gathering of people hanging out on the sidewalk vaping nor does he want it to become a lounge. The owners reiterated that they are just asking to be able to do what is allowed right now and if the laws change or any issues arise, they are happy to work with the Town. They do not wish to cause anyone harm. Selectman McKinnon confirmed that they will not sell to anyone under the age of nineteen. Mr.

Buker offered that he didn't want to be the person to have to make this call. He suggested giving the public a few weeks to come forward with any concerns and maybe the owners could gather some additional information, to which they agreed. Mr. Buker further offered that he feels too ignorant on the subject to start regulating it. He thinks it's likely to be prohibited as indoor use on a state level.

Selectman McKinnon asked if vape shops are included in tobacco stings, to which Mr. Buker responded, yes. Upon motion made by Selectman Knowlton and seconded by Selectman Dalpe, Board voted one in favor, four against to continue the current policy not allowing the indoor use of vaping. Motion does not carry.

Selectman McKinnon asked the Chair and she asked Mr. Buker to look into laws or further information. Mr. Buker offered that he has and when more information becomes available he will inform the Board.

Upon motion made by Selectman Dalpe and seconded by Selectman McKinnon, Board voted unanimously, to appoint Scott McDaniel as Auxiliary/Special Police Officer.

HEARINGS, MEETINGS, LICENSES

AT 8:28 PM Chairman opened public hearing on Earth Removal Permit Application filed by D&D Harju Cranberries, LLC Purchase Street, Map 063, Lot 3453 and Map 062, Lot 2411 by reading aloud the public hearing notice.

Chairman Stewart began by announcing that complaints have been received relative to the proposed site, up to and including work being conducted on the site. The Town Manager offered that there have been a number of issues and noted that one of the abutters is present. Chairman Stewart offered that she is reluctant to conduct the hearing prior to addressing the outstanding issues. Selectman Dalpe offered that Chris Peck, DPW, indicated that there is currently an outstanding permit and until it is resolved, another is not allowed to be issued. Selectman Frawley feels that this Board has been taken advantage of, after meeting with the applicant prior, trying to work with them and that these matters must be cleared up before he is comfortable issuing another permit. Selectman Knowlton agreed with Selectman Frawley.

Selectman McKinnon offered that he received an email last Friday, which he forwarded to the Board and was not certain if it was forwarded to the applicant. The applicant responded that they did not receive it. Town Manager offered that Town Counsel is researching if the Town Manager or the Board is the appropriate authority to issue a Cease & Desist.

Mr. Derek Harju addressed the Board. Chairman Stewart asked him if he is aware of Mr. Peck's concerns about this site. He responded no. Dana Harju offered that Mr. Peck only had concerns about trees being moved. He offered that, within the Earth Removal bylaws, you are allowed to move trees if you are a cranberry grower. Selectman Frawley offered that our inspector has used the words "gone rogue" in referencing the activity at this site.

Mr. Derek Harju offered that they are allowed to move sand on their own property. The Engineer offered that they are at a disadvantage with not having seen the emails and asked to receive them. Selectman Dalpe offered that there are a couple of outstanding permits that were never certified complete and need to be resolved. The Engineer requested to see those as well. The question was

asked as to why these permits have not been followed through to the Certificate of Completion. Mr. Derek Harju offered that he was unaware of those and that Mr. Peck never mentioned them. He understood it to mean that he could not conduct further work as the permit expired. The Board's Executive Assistant offered that she has had multiple conversations with Dana Harju about the incomplete permits.

Upon motion made by Selectman Frawley and seconded by Selectman Dalpe, Board voted unanimously to continue the hearing for Earth Removal Permit application filed by D&D Harju Cranberries, LLC to 7/25/16 at 7:30 pm.

Abutter Martin Cole offered that the bylaws allow for normal maintenance of the bogs. The excavation of earth does not qualify. He offered that the previous reservoir was never completed and another one that may not be completed is going to continue to devalue the homes of the abutters.

Chairman Stewart reviewed that the Board is going to continue the hearing.

A resident of 183 Rocky Meadow Street offered that he has no complaints. The Harju's do beautiful work and farming is the backbone of this country. He finds it a shame that people make it hard for them to do their work.

A resident of 22 Purchase Street resident offered that he has had no problem with the way they've operated. He abuts their property on the back.

A resident of 265 Purchase Street, Elaine Santos, asked if they will be allowed to continue their work over the next two weeks. Mr. Dana Harju offered that they will stop work for the next two weeks. Mr. Derek Harju offers that he takes pride in what he does and he would like people to know there will be work out there and there will be a sand pit. Neighbors with concerns are welcome to contact him. He will make it as easy as possible on them.

Chairman asked Mr. Harju to offer his number to concerned abutters. He responded that he will do that.

At 9 pm Chairman opened public hearing on application made by Dharmesh D. Patel, President of Maruti Mini Mart for the Transfer by reading aloud the public hearing notice. The Applicant's Attorney Greg DeMakis addressed the Board. Mr. Patel will be the Manager. They will run a first class operation. Chairman asked what system they will use to check the age of a customer. Mr. Patel offered that they do not have a machine, but they will get one. They will I.D. anyone who looks younger than age 35. Selectman McKinnon noted that the Town takes the sale of tobacco to underage people very seriously. Chairman declared hearing closed.

Upon motion made by Selectman McKinnon and seconded by Selectman Dalpe to approve the transfer of a Wine & Malt Beverages Package Goods Store liquor license from The Convenience Store, Inc., dba Joe's to Maruti Mini Mart, Inc., dba Lucky Mini Mart, 26 High Street.

Soule Homestead Annual Report

Meghan Connolly Riley provided presentation of the Homestead's annual activities.

Costello Earth Removal Permit Hearing

Upon motion by Selectman Dalpe and seconded by Selectman McKinnon, Board voted unanimously to continue the Costello Earth Removal Permit hearing to 7/25/16 at 8 PM.

Selectman Frawley recused himself and left the meeting at 9:22 pm.

Discussion on 88 River Street

Selectman McKinnon noted a document he received today and asked if Town Counsel has reviewed it. Chairman responded that he has not. Chairman further responded that it was sent to Town Counsel today.

Selectman Knowlton offered that he is not willing to wait if it means not taking action tonight. Ron High's attorney asked for a copy of the document, which the Chairman provided. Samantha Turgeon offered that she thinks Diane being an attorney and the Board understands its authority, she hopes that a decision is made tonight. Jamie Meserve addressed the Board and reiterated Ms. Turgeon's perspective. Selectman Knowlton asked for clarification. Selectman McKinnon responded that it is his intent in his motion that the document presented should be reviewed by Town Counsel, prior to voting to agree to it. Judy Tracy understands Selectman McKinnon's position but feels they've waited long enough

Upon motion made by Selectman McKinnon and seconded by Selectman Dalpe to wait on taking action until reviewed by Town Counsel. Motion does not carry. 1-3-0

The Board discusses the timeline. Selectman Knowlton expressed concern with the timeline of next February and questions why we would allow them seven months. Selectman McKinnon explained DEP is trying to resolve it through a process. The timeline in the proposed document follows that timeline. Selectman Knowlton explained that he does not see how 7 months gives any of the residents any relief. He feels September or October is more realistic. Selectman McKinnon offered that the Town shouldn't be trumping the DEP timeline and he doesn't want it to create a problem that comes to the Town. The process is to get rid of the material and that takes time. The odor will diminish as the process takes place.

Upon motion made by Selectman Dalpe and seconded by Selectman Knowlton, Board unanimously voted to find that a nuisance was created at the 88 River Street property and to continue the discussion on the Order to 7/25/16 at 7:25 PM.

Ron High's attorney addressed the Board and asked to confirm that there are no further matters for A Plus Waste this evening. Chairman responded that there are no further matters this evening.

TOWN MANAGER'S REPORT

Town Manager noted his appointments to the Commission on Disability. Commission Chairman Carolyn Gravelin addressed the Board. Upon motion by Selectman McKinnon and seconded by Selectman Dalpe, Board voted three in favor, one abstained (Chairman Stewart Abstained) to ratify the appointments presented by the Town manager for the Commission on Disability.

Town Manager gave synopsis of the FY17 Strategic Plan. There is a bill presented in the amount of \$94.00 for CGI Consulting. Upon motion made by Selectman McKinnon and seconded by Selectman Knowlton, Board voted unanimously to pay the bill in the amount of \$94 for CGI.

CORRESPONDENCE

#1 - Selectman McKinnon referenced the Comcast Letter

#2 - Selectman Knowlton spoke on the unwritten policy to not respond to un-authored correspondence.

ADJOURN

Upon motion made by Selectman McKinnon and seconded by Selectman Dalpe, Board voted unanimously to adjourn at 9:54 PM.