

TOWN OF MIDDLEBOROUGH
NOTICE OF MEETINGS OF TOWN DEPARTMENTS AND ALL TOWN BOARDS
As required by Chapter 39 M.G.L.
PLEASE TYPE OR PRINT LEGIBLY

NAME OF DEPT. OR BOARD BOARD OF SELECTMEN

DATE OF MEETING: Monday 1/24/11 TIME: 7:00 PM PLACE: Town Hall

Date and time received by Town Clerk

Clerk/Board member posting notice

MEETING CANCELLED: _____ DATE & TIME CANCELLED: _____

CLERK/BOARD MEMBER CANCELLING THE MEETING: _____

AGENDA

1. Pledge of Allegiance

2. Announcements & Recognitions:

3. Minutes: 1/10/11 Regular (1/10/11 & 1/11/11 E.S. to be voted 1/31)

4. New Business - 7:05 PM

1. Vote to resubmit Statement of Interest to MA School Building Authority
2. Vote One-day Liquor license for Muckey's Liquor for 1/28/11
3. Vote One-day Liquor license for Bartending Service of N.E. for 1/29/11
4. Authorize Chairman to sign B.O.H. Mini-grant application
5. Town Hall parking lot request - Soule Homestead Education Ctr for 4/16/11
6. Town Hall rental request - Stacey Ann LeRoy Foundation for 3/26/11
7. Vote Amendment to IMA with Lakeville for Health Services

5. Hearings - Meetings - Licenses

7:30 PM Rent Control Hearing - Edgeway Mobile Home Park

6. Bills

7. Unfinished Business

8. Town Manager's Report

9. Correspondence

10. Other

11. Executive Session

12. Adjourn

**Middleborough Board of Selectmen
Meeting Minutes**

January 24, 2011

Chairwoman Brunelle opened meeting at 7 PM by inviting those in attendance to join in the Pledge of Allegiance.

In attendance were Selectmen A. Rullo, M. Duphily, S. McKinnon, S. Spataro and M. Brunelle, Town Manager C. Cristello and Confidential Secretary J. Shanley.

ANNOUNCEMENTS

Chairwoman announced that the meeting was being taped by Comcast and being aired live by Comcast and Verizon.

Chairwoman asked for those in attendance to observe a moment of silence in memory of former Police Chief Arnold Salley.

Chairwoman noted it was Selectwoman Duphily's birthday.

Chairwoman announced that the Board is still seeking members at large to serve on CPA Committee. For those interested, please send in letter of interest. Chairwoman requested a reminder be sent to Boards & Committees to submit recommendations

MINUTES

Upon motion by Selectman Spataro and seconded by Selectman McKinnon, Board voted to approve 1/10/11 meeting minutes. M. Brunelle abstained.

NEW BUSINESS

Upon motion by Selectman Spataro and seconded by Selectman Rullo, Board resolved: "Having convened in an open meeting on January 24, 2011, the Board of Selectmen of Middleborough, in accordance with its charter, by-laws, and ordinances, has voted to authorize the Superintendent to submit to the Massachusetts School Building Authority the Statement of Interest dated January 25, 2011 for the Middleborough High School located at 71 East Grove Street which describes and explains the following deficiencies and the priority category(s) for which Middleborough may be invited to apply to the Massachusetts School Building Authority in the future

Priority #2 - Elimination of existing overcrowding. Our current facility restricts our ability to fulfill our mission. Constraints involve space, equipment and technology.

Priority #3 - Prevention of the loss of accreditation. A Commission visit in June 2007 prompted the New England Association of Secondary Schools and Colleges to place Middleborough High School on warning status for facility based issues.

Priority #5 - Replacement renovation or modernization of the heating system in a schoolhouse to increase energy conservation and decrease energy related costs in the schoolhouse. The present boiler system is original equipment that was installed when the schoolhouse opened in 1971. Despite on-going maintenance to maintain the current system, a modernization of this nearly 40 years' old technology will result in significant efficiencies.

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Priority #7 - Replacement of an addition to absolute buildings in order to provide for a full range of programs consistent with state and approved local requirements.

~~Our accreditation warning includes concerns with antiquated science labs, high-class sizes and inadequate space for health, conferences with parents and storage. An addition will provide for immediate remediation to present problems and provide for future educational needs and potential growth.~~

and hereby further specifically acknowledges that by submitting this Statement of Interest, the Massachusetts School Building Authority in no way guarantees the acceptance or the approval of an application, the awarding of a grant or any other funding commitment from the Massachusetts School Building Authority, or commits the Town of Middleborough to filing an application for funding with the Massachusetts School Building Authority.”

Unanimous vote.

Upon motion by Selectman Spataro and seconded by Selectman McKinnon, Board voted to approve a One-day Wines & Malt beverages liquor license for the Bartending Service of New England, LLC for 1/29/11 from 6 PM to 11 PM at the Alley Theatre, 133 Center Street. Four in favor. M. Brunelle abstained.

Upon motion by Selectman Spataro and seconded by Selectwoman Duphily, Board voted unanimously to approve Board of Health Mini-grant application. Health Officer Jeanne Spalding explained that this grant will help pay for Tobacco compliance checks.

Upon motion by Selectman Spataro and seconded by Selectman McKinnon, Board voted unanimously to approve request by Soule Homestead Education Center to use the Town Hall parking lot on Saturday, April 16, 2011 for an electronics and appliance recycling event from 10 a.m. until 2 p.m. Chairwoman requested that the information provided be posted to website.

Upon motion by Selectman Spataro and seconded by Selectman McKinnon, Board voted unanimously to approve Town Hall rental request by the Stacey Ann LeRoy Foundation on 3/26/11 from 10 a.m. to 1 a.m.

Upon motion by Selectman Spataro and seconded by Selectman McKinnon, Board voted unanimously to approve amendment to IMA with Lakeville for Health Services. Health Officer Jeanne Spalding reported that they did not run into any complications this year. The state is going to bring in an electronic reporting system, which all Towns will be required to use, making it more efficient.

TOWN MANAGER'S REPORT

Town Manager summarized budget process and explained that it will be much like last year.

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Town Manager attended the MMA Annual Trade Show last week. He reported that the Governor gave out some numbers that will most likely appear in his budget this Wednesday. ~~There may be some federal money unexpended in Middleboro, but we will~~ know more after Wednesday.

Selectman McKinnon noted that the Governor had declared a state of emergency for the last two storms and asked Town Manager if we were able to get any state aid to help defray the expenses associated with same. Town Manager responded that it is only if the federal government declares storms a disaster. Selectman McKinnon asked if we can apply. Town Manager offered to look into.

Selectwoman Duphily requested that the Town Manager's Report be put on the website. Town Manager agreed that it would be.

Town Manager informed Board that he was asked to join MIIA Trust Board. He explained that he thinks it will be beneficial to the Town if he joins and not a big time commitment as they meet quarterly.

CORRESPONDENCE

- #9 Selectwoman Duphily offered that she was surprised by letter of retirement from Town Clerk Eileen Gates. Chairwoman asked to put matter on future agenda to start seeking replacement.

- #7 Selectman Rullo wants to make sure that the Board allows time on the agenda to discuss the Rockland Industries Site as well as the state budget when the legislative delegation comes in.

Selectman Rullo noted that he had mentioned before that the Capital Planning Committee had given its nod on the proposed financial policies and he would like to have on as future agenda item so Board can adopt those policies. Chairwoman asked to put on for 1/31/11.

HEARINGS, MEETINGS, LICENSES

Town Counsel Daniel Murray joined Rent Control Board at its conference table. Board's Confidential Secretary J. Shanley read aloud public hearing notice as presented on the **attached**, opening the public hearing being held by the Rent Board re Edgeway Mobile Home Park at 7:30 PM. Chairwoman explained the manner in which the hearing would be conducted. The Board would limit the hearing to 75 minutes, and if the hearing requires further time, the hearing would be continued.

Chairwoman read aloud the list of exhibits to be presented by the Rent Board. Chairwoman asked to swear in witnesses. Attorney Marsan indicated that he had none. Attorney Eldredge asked to swear in his witnesses after opening remarks. Edgeway Mobile Home Park owner Cori Farcus was sworn in by Chairwoman.

Opening Remarks – Attorney Marsan

Attorney Gerard S. Marsan of South Easton, MA representing Edgeway Mobile Home Park offered the following opening remarks: ~~Edgeway Park exists by way of special~~ permit issued by the Middleborough Planning Board in 1985. In 1985, Middleboro was working through a special act of the legislature, allowing the Town to regulate rates of Mobile Home Parks. The next Town Meeting established that this Board would sit as the Rent Board. Edgeway began constructing. Between 1996 and 2003, this Board, acting as the Board of Health issued licenses to Edgeway under Chapter 140, Section 32b, which is the license to operate the park. The Board never did establish base rent for Edgeway. It would appear that no request was made by the tenants or park owner at that time to establish rents. In 2006 a petition was made and the action was that Edgeway was not to increase the rent without the Board's action. He referenced documents from the Board's former Secretary D. Henault, former Selectman Wayne Perkins, and Town Counsel Dan Murray indicating not to increase the rents. He understands that the rents were set in 2006, but not to be increased going forward. The Board has since declined to act on Mr. Williams request to increase rent. Wayne Williams died in October of 2006. His son Cori was appointed Administrator of the Estate and Trustee of Edgeway. Mr. Farcas did not violate the order of the Board in 2006. He has not increased the rents since 2006. The Board hadn't exercised its jurisdiction over Rent Control. It would not be appropriate to go back in time. It would be unfair and prejudicial to go back before 2006. It would be devastating and unfair. The only proper way would be to have individual hearings for individual homes. The Town's bylaw and Rules & Regulations allow for consideration of increases/decreases. It would be harmful to go back in time. The rents have been frozen all this time. Everybody knows the situation with Edgeway. These rents are inadequate presently. Oak Point allows them to achieve market rents without coming before the Board, and in most rent control areas, this is how it works. After a lease runs out, there should be opportunity to increase rent. Do rents have to be the same across the board? No. Your own Rules and Regulations say so. He respectfully requests that the Board postures this hearing so we aren't going to go back before 2006 so that evidence is limited from 2006 going forward. He requests Board take that position now, and state for the record, indicating so. If we go back to items in Mr. Bond's letter, we will have to find out who handed who a file and who saw this happen, etc.

Opening Remarks – Attorney Eldredge

Attorney David Eldredge of Middleboro, MA representing the Homeowners Tenant Association for Edgeway Mobile Home Park offered the following opening remarks: His clients have had a long struggle living in Edgeway Mobile Park. He too would like to forget anything prior to 2006 as owner Wayne Williams created a long history of how he treated his tenants. Attorney Marsan objected.

Chairwoman noted that the Board wanted to keep remarks relative to rent. Attorney Eldredge continued: In 1985 an act was created. The act said there was a serious public emergency relative to establishing rents. It said the Town "shall regulate rents" and they "may" make rules and regulations. The order in 2006 froze rents, but if you go back to

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minutes of 1/23/06 (read aloud) – provided as Exhibit “Tenant #1”. There was never a minimum rent taken from this park. The Rent Board could regulate, but it hadn’t. Mr. Williams advertised and informed tenants that he was going to impose rent increase. He only came here because he was requested to. Attorney Marsan interjected to ask if Board is going to consider his earlier request to only consider 2006 forward. Chairwoman responded that the Board would hear all testimony and consider later. Attorney Marsan requested his objection be noted on the record. Attorney Eldredge continued: Wayne Williams was offered a special permit to run a mobile home park with special conditions that he was required to meet. Attorney Marsan objected. Chairwoman offered that they were only going to discuss rent. Attorney Eldridge continued: Wayne Williams is the cause for the havoc these people have had to live with. Attorney Marsan objected. Chairwoman noted his objection. Attorney Eldredge continued: Edgeway didn’t change owners it changed trustees. Attorney Eldredge continued: the decisions Wayne made (END of comment) Attorney Marsan interjected his objection. Chairwoman noted objection.

Attorney Eldridge continued: Exhibit B6 – he talked about rent increases and offered as Exhibit “Tenant #2” – information on the registration that Mr. Marsan sent, just taken in different context. He reviewed this document. At end of 2003 the highest rent was \$320. On 1/1/04 the Board of Selectmen sitting as the Board of Health declined to issue a license to Edgeway Park. Attorney Marsan interjected and pointed to Board’s exhibit “Rent Role” for 2010, and in his opinion, the owner has answered the question. Chairwoman explained he would have his chance to speak, but noted that Attorney Eldredge was still making his opening remarks. Attorney Eldredge continued: Tenant Exhibit #3 12/15/03 Selectmen minutes, which indicate Wayne Williams was found to have code violations. Chairwoman asked what this had to do with rents. He responded by noting that his point comes down to the fact that they were unlicensed at time and should not have been conducting business without a license. Attorney Marsan objected indicating that this was outside of the scope of the hearing. Attorney Eldredge suggested going back to at least 2004 when Edgeway did not have a license. If there was a freeze it should go back to when the park was no longer a licensed entity. Our position: #1 rents were not established at \$280 as they were never established, #2 the 2006 letter written by Attorney Murray, he would suggest that there was no finding by the Board and our position is that rents should have been frozen the day Edgeway lost its license. He submitted an affidavit from John Tramontana along with several letters that transpired and 1/24 letter from Wayne Perkins, letter from Dianne Henault and letter from Attorney Murray. He presented Board with Tenant Exhibit #4 (attached). Attorney Marsan objected noting that the hearing notice specified “Rules and Regulations”. Attorney Marsan: There is no foundation set as to why this is appropriate at this time, it’s prejudicial and unwarranted. Chairwoman responded that he is entitled to introduce his exhibits, whether or not the Board will use them to make its determination. Attorney Marsan requested that his objection be noted for the record that these exhibits not be entertained or heard at all.

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Attorney Eldredge pointed to 1st document as Tenant Exhibit #4 – letter from Tramontana with note that he was resubmitting two checks which Wayne Williams refused to cash. ~~Attorney Marsan objected noting that the issue is what is stated in the public hearing notice.~~ Attorney Marsan: The man (Tramontana) didn't pay any more (increase) and that's the issue.

Attorney Eldredge presented and answered the following question. Has Edgeway ever attempted to charge higher rents? Answer: Yes they have. Attorney Marsan indicated it would be a dis-service to go back in time. Attorney Eldredge: It would be a dis-service for the tenants to live in an unlicensed park. Attorney Marsan objected. Chairwoman reminded Attorney Eldredge to stay on the rent issue. Attorney Eldredge indicated that he has finished opening statement if he can't finish.

Attorney Eldredge called on the following witnesses:

1. Anne McGann
2. Charles Jeans
3. Louisa Brown
4. Margo King
5. Georgette "Kiki" Gorman

Witnesses were sworn in by the Chairwoman.

**Ann McGann – 1st Witness
17 Lyn Lane**

Testified: In response to questions by Attorney Eldredge: She moved into Edgeway on 9/30/05 at about 1 PM. Before moving in she spoke with Wayne William's wife. She was told she would pay \$320/month and that it was rent control, and I didn't know the rules. I should have been paying the same as the tenants before me, which was \$290.00. They had not shown her anything indicating what the prior tenant had paid. When the Tramontanas moved in, she found out she should only be paying \$290. so she spoke to Cori Farcus and he told her if it was wrong they would fix it. Nothing happened so she went back and spoke to Cori's mother, Heidi Belbin and she told me to get information at the Town Hall, which she did and gave it to Heidi and copies of her cancelled checks. Heidi told her that they would give her a credit, which she did, but then she took it back. Heidi told her that Mr. Murray had set the rents and that she had just missed the deadline so she was to pay \$320 even though the prior tenant paid \$290. She has continued to pay only \$290 per month and Heidi has cashed all of her checks and has sent her threatening notices saying pay immediately as it's up to \$2,600 now. Mr. Marsan also sent me several eviction notices. He has never acted on those notices and he had in fact, told her daughter that they weren't really going to do anything about it. So she saw that as intimidation and harassment. There was never a hearing in front of the Rent Board. She hired an attorney and they backed off. They were going to let it sit and Heidi was not to send her anymore demanding notices, but she has. She was told she would receive the

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following services: trash pickup, snow removal, streets. Septic was never mentioned. She has several sinkholes in her driveway.

~~Cross Examined by Attorney Marsan: Testified: Attorney Marsan presented her with~~ document and asked if she could identify it. She responded that it was an illegal lease she signed not knowing. He asked her what date was on the lease. She said that the date was wrong. She signed lease on 9/30/05. This document says October 2005. Attorney Marsan: On that day you agreed to pay \$320? Answer: Yes, not knowing any differently. Attorney Marsan: And you paid \$320 per month for approximately one year correct? Answ: Yes. Attorney Marsan: Didn't Edgeway give you money back? Answ: They gave me a credit and took it off my rent. Attorney Marsan: Then you're rent went back to \$290/mth? Answ: Yes. Attorney Marsan: And through the credits you've been given back the money you paid to the \$320 level correct? Answ: She's been sending me bills for that amount. Attorney Marsan: Isn't Adam Bond your attorney? Answ: Yes. Attorney Marsan: And didn't Adam Bond and I talk and I told him I would not take any action although we claim the right to say that that's the proper rent? Answ: No. I will not say that \$320 is the proper rent. Marsan: No. What I'm saying is that Edgeway reserved the right to say that that is not the proper rent. Marsan: Edgeway never agreed that \$290 was the proper rent. Response: She did agree that \$290 was the proper rent. Marsan: Until she found the lease you had signed indicating \$320. Answer: No that wasn't the reason. That's not what she told me. She told me Mr. Murray's letter is what prompted her to go back to \$320. Marsan: Well she told me something different. My understanding of the facts is slightly different. You're paying \$290 and what happened is before January 2006, you took occupancy and Mr. Williams changed the rent from the prior tenant to you correct? Answ: Yes. Attorney Marsan: Your rent has not changed since you moved in other than it going down after you brought it to the attention of the park? Answ: I pay \$290 now. Marsan: You've received all your credits and money? Answ: Not exactly. She manipulates the invoices she sends me to make it look like the late charge she is charging me and the \$30 she puts it towards the rent so it looks like I am not paying all of my rent. Marsan: Are you paying \$290 presently? Answer: Yes. Attorney Marsan offered as Owner Exhibit #1 the lease of Anne McGann. Attorney Eldredge: When you signed lease, did they indicate that they did not have a license? Answer: No. Attorney Marsan objected. Chairwoman noted. Attorney Eldredge: Does your rent indicate that it's \$290? Answ: No. There is a demand on those bills. Attorney Eldredge: When did you move in and what did prior tenant pay? Answ: 9/30/05. Prior tenant paid \$290 and moved into Edgeway in 2001. Attorney Marsan: The owner shows higher rent in bookkeeping, but no one has taken you to court correct? Answer: I get harassed every month through demand letters. Marsan: You get invoice which shows Edgeway reserves the right to state that the correct rent is \$320? Answ: Yes.

Charles Jeans - 2nd witness

46 Lyn Lane

Testified: In response to questions by Attorney Eldredge: He moved into Edgeway in 2001. He was president of the Homeowners Association for two years. In that capacity

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did you have any conversations with the Attorney General's office (A.G.) or the Rent Control Board in regards to the rent? Answ: both. Attorney Marsan: Objected.

~~Chairwoman: Relevant. Attorney Eldridge: Did you see letter sent to AG from~~
Tramontana – yes. Have meetings with A.G about that? Answ: Telephone conversations and ragging back and forth. Attorney Eldredge: Can you tell me what those conversations were about? Attorney Marsan objected stating that we should have documentation to support that. Chairwoman responded that the testimony was going to continue. This is an informal hearing to gather as much information as possible to determine a ruling.

Attorney Eldredge: Can you tell me about your conversations with the A.G.? Answ: I asked A.G. for clarification of the issue with rent and had forwarded some letters sent to me from Attorney Murray as well as some of the resident's letters. She did respond primarily, the latest one was from Rachel Beech and she did respond in phone conversation with me and I reiterated my understanding of phone conversations and an email back to her and she did confirm what had been said. Attorney Eldredge: And that was that he charged rents higher than he should have? Answ: That was her understanding of the situation, yes. Attorney Eldredge: And did you have conversations with the Rent Control Board in regards to the rent that was being charged to Tramontana? Answ: I sent copies of all of that documentation to the Rent Control Board and asked for its opinion. They did forwarded one of them onto Attorney Murray for his opinion.

Attorney Eldredge: And it was Attorney Murray's opinion that those rents were illegal correct? Answ: Yes. Attorney Marsan: Do you have the letters you are talking about with you tonight? Answ: I do at home. I have a complete file of them at home. Attorney Marsan: Did your Attorney ask you to bring them? Answ: No. Attorney Marsan: Do you think they are important? Answ: If this were a legal hearing, yes. Attorney Marsan: And you think that this Board and I ought to be entitled to see this correspondence? Answ: The Board has seen them in past. Attorney Marsan: Would you have any objection in substituting those letters for your testimony tonight? Answ: To back up my testimony? Attorney Marsan: To substitute your testimony. Would it be clearer if we saw what the letter said or what you said tonight? Answ: No. Attorney Marsan: Wouldn't the letter contain a clear statement of what the issue was and what you were asking the A.G. to do or give an opinion on? Answ: It is a letter that I would be willing to provide. Attorney Marsan: And the letter from the A.G. would be a response to your question? Answ: Yes. Attorney Marsan: That would be the best evidence to present to this Board as to what that conversation or issue was? Answ: I don't feel I'm in a position to decide what is the best evidence. Selectman Rullo: When did you speak with A.G.? Answ: I had more than one conversation. Selectman Rullo: Over what period of time? Answ: From 2006 to 2008. Selectman McKinnon: These conversations were all predicated to the A.G. from other tenants, not necessarily from your situation – you were representing other tenants? Answ: Yes on behalf of the tenants from the tenant's association.

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Louisa Brown – 3rd Witness

162 Wesley Circle

Testified: In response to questions by Attorney Eldredge: She moved in August 2009. She did not know they were not licensed when moved in. She didn't know lease was illegal until Mr. Tramontana approached her. Tenant that owned her place, Stanley Gould, told her that when she went to see management to fill out the applications, she should say that she understood that Mr. Gould was paying \$290 so she should be paying the same. She pays \$290, but it originally started at \$280. She is very disappointed that they are not licensed. She feels very intimidated by the whole process. Attorney Eldredge: Is there any condition of you land that you didn't know prior to moving in?

Answ: Yes. Mr. Gould said something to make sure whatever you do, have them take the plastic out because it can be dangerous. I've had cancer twice so I'm very paranoid. I want to make sure nothing happens. So, the two gentlemen that work there as maintenance men removed the plastic. When it rains, my grass is very sappy, but the water is very...it's poor drainage and when you go into my driveway the water just sits there and then goes down to the street and there's a big puddle. I contacted Heidi and she brought the two gentlemen that work for her. I told her I was concerned about the way this is. If it ever freezes, who would be responsible for this? She looked at me and that was it. So I still have that problem. Chairwoman: That doesn't go to the rent.

Attorney Marsan Redirect:

Gave her document and asked her to read across board. Witness read across as asked.

Attorney Marsan: So this says you have a five year lease that began in 2009 and is valid through 2014? Answ: Yes, but it's not a legal lease. Attorney Marsan: You agree rent is \$290? Answ: It's \$290 but it started at \$280. Attorney Marsan: And you agree that the rent is \$290 and that is what you agreed to pay for. And what did prior tenant pay?

Answ: \$290. Attorney Marsan: And when did the prior tenant move in if you know?

Answ: 2002. Attorney Marsan: You're not complaining that your rent was increased after January 2006 because you don't know correct? Answ: Are you trying to trick me? And I will contact Mr. Gould because it's my understanding that the other ten dollars may be for his water, which in essence I already paid \$100 for my sprinkler system.

Attorney Marsan: You're not saying you're paying a higher rent, but that you are unhappy with the rent you are paying? Answ: No. I'm saying it started at \$280, but that the ten dollars may be for the sprinkler system and not part of the rent. What I'm upset about is that I signed a lease that is illegal. They don't have a license. There's a problem with that water and a lot of these issues are a problem. Attorney Marsan: What we're talking about is whether the level of rents are appropriate or not. Marsan offered "Rent Rule" dated 1/18/11 as Owner Exhibit #2.

Selectwoman Duphily asked Attorney Marsan to explain various rents as they don't make much sense to her. Attorney Marsan: I can't explain how all changes happened over time. I don't think the fact that there are different rents for different units is the issue.

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We don't contest that. We haven't violated the Board's order of 2006. It's clear Mr. Williams adjusted rents between tenants. Selectwoman Duphily: How can you say he didn't increase the rents if it went up to \$312 in 2007? Attorney Marsan: That's what the prior tenant paid. Selectwoman Duphily: Do you have documentation to show that what prior tenant was paying in 2006, that this is now what she's being charged in 2007, 2008, and 2009? Attorney Marsan: There isn't anyone who is going to testify. There's only two that are going to testify and I believe one is Mr. Tramontana and he said an attempt was made, but he didn't pay it. That was post January 2006, but it was before November 2006 when Cori Farcus came to be here. Selectwoman Duphily: So, can you explain how #139 Wesley Circle stay at \$280? Attorney Marsan: I don't know. That's why I said at the very beginning, each home site has its own story. They may have gone through a rent increase with Wayne Williams. It's possible they didn't. Chairwoman: Do you have all the rent records for the park? Attorney Marsan: We have all the records since Corey Farcus took over in November 2006. It's been explained to me that the current files are by address and separate file for original owner. As a tenant leaves or changes, an active file on the tenant who's there closes and gets filed. So, that's a third possible file. I don't think this is unique to Edgeway. All of these parks have a method of increasing on turnover in order to bring to market because a lot of them are straight five-year leases. You can't go back in time without doing a complete analysis home site by home site. Selectwoman Duphily: Right, so why wasn't that done? Why didn't you give us that information? I don't understand what you're doing. It's not clear here. Attorney Marsan: I'm following your order. Everything says that the order of the Board in 2006 established the rents. The rents were established as of January 2006. The Board could have, but didn't. The tenants could have, but didn't. No one has come to the Board and said establish the rents. Chairwoman: Can we get copies of the records of what you do have available from 2006 forward. Attorney Marsan: I can produce a current tenant – record showing what the current tenant is paying. Selectwoman Duphily: With some history so we know what they've been paying. Chairwoman: If we need more information, we can go back and get it. Town Manager: I think what you want is the immediate previous tenant and what that tenant was paying. Chairwoman: Exactly. Attorney Marsan: I know I can provide as of November of 2006, which may be an invoice or rent record that Mr. Williams had in the file as to what the current is. I can't represent how complete they are. Record keeping wasn't (inaudible) forte. Chairwoman: If we could get that at least at a minimum, what's currently being paid and what was previously being paid, it would be a start. Selectman Rullo: Asked Mrs. Brown if her unit was a new unit or if there had been a previous tenant. Answ: There was a previous tenant, Mr. Gould. We need rent control for all. They are operating illegally. She was contacted within two months of living there and began feeling intimidated by things such as receiving calls telling her she didn't have to join tenants association. Attorney Eldridge: Where are the records? They have a duty to keep the records. They are not two separate entities. It's the same ownership. We are only talking 1999.

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~~Margo King – 4th Witness~~

64 Lyn Lane

Testified: In response to questions by Attorney Eldredge: She has lived in Edgeway since April 2001. Her rent is \$280. Attorney Eldredge: Did you receive any notice they were not licensed? Answ: No. She believes she is a Tenant at Will because lease expired. Attorney Eldredge: Have you been offered another lease? Answ: Chuck Jeans saw something with leases, but she wasn't offered a lease. She had received a flyer at end of 2000 from Century 21 Gold advertising a 5 year lease for \$280 with various things included as listed on flyer (Exhibit B5). Attorney Marsan: Since your lease expired have you asked the park for a new one? Answ: No. I was told by the MFN – a state organization for manufactured homes who meet with the A.G. once per month, that anyone who lives in a rent control park, is not required to sign a lease because it is rent controlled. Selectman McKinnon: What was your rent in 2001? Answ: \$280. Mr. Jeans rent in July of same year was \$290. Selectwoman Duphily: Mr. Marsan do you recognize the flyer? Attorney Marsan: No. The first I saw it was when I received notice of hearing. I don't know that agent or that flyer. Selectwoman Duphily: Is there anything in Mr. Farcas/William's records showing he had real estate agent from Century 21? Attorney Marsan: I believe he had an agent from Century 21. Mr. Farcas: I don't have that flyer. I never saw it before tonight. Selectman Rullo: Asked Attorney Marsan if it is the parks practice now to offer new lease as it seems most tenants are Tenants at Will now. Attorney Marsan: No. He engaged Mr. Jeans and his attorney a couple years ago and suggested new leases should be brought up to market? The only thing a lease gives you is a five year term fixed rent, but its rent controlled already. A lease keeps you from having to continually go before the Rent Board.

Georgette "Kiki" Gorman – 5th Witness

100 Wesley Circle

Testified: In response to questions by Attorney Eldredge: She has been living there eight years and is going into 9th year. She was told her rent would be \$290, but after she bought it, was told it went up to \$320. They had sold their home and had nowhere to go. The park never told her it had no license. She has had problems with sand & water. Her home is sitting on blocks. Attorney Eldredge presented her with a photograph and she identified the blocks that her home is sitting on. You can see where the water has washed away everything and it's tipping. It is caused by water. There is no drain in the land itself. The water just runs down the hill and under the houses. The park is aware of it. When Wayne was there two surveyors came in and told him French drains were needed to correct problem. Attorney Eldredge wanted to submit photograph as an exhibit. Chairwoman offered that he could submit it as part of his brief as it did not go to rent. Chairwoman: Are you the original owner of unit? Answ: Yes. Attorney Marsan: You moved in 2002? Answ: Yes. Attorney Marsan: A new home from Wayne Williams? Answ: Yes from Wayne Williams through Larry Costa. Attorney Marsan: At the time he

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told you what he wanted for rent for that unit correct? Answ: Yes. Chairwoman: And what did he tell you the rent was going to be? Answ: He told us originally before we purchased the house, the rent was \$290 and when we went to sign he said it went up to \$320. Attorney Marsan: Did you complain to this Board? Answ: No. We didn't know the Board was here at that point.

Cori Farcus called upon to testify by Chairwoman.

Chairwoman: What is actually included/covered in the various rents? Answ: septic, cleaning of the roads/repair/snow plowing, trash pick up, water utilities which is different from the sprinkler system. There is a well on site, which is maintained by Edgeway. Is the licensing fee included in the rent? Answ: I believe so. Yes. It is a specific amount from each unit plugged right into it. Selectman Rullo: Do you include lighting for general safety? Answ: Not in Edgeway because it's not finished. Do you intend to put it in? Answ: Yes, when the park is finished with all of the units. We are still under construction. Chairwoman: Why wouldn't you put in public lighting before you started selling units? We are still under construction. Selectman Rullo – the special permit required you to put in lighting did you know that? Answ: Correct. Selectwoman Dumphily: Should we check what his original orders were? Attorney Marsan: That would affect the occupancy permit. He's never been cited for a violation. Selectman Rullo: is sprinkler system optional? Answ: Yes. It is \$100 annual fee outside of the base rent. We discussed it before this Board. Chairwoman: you provide only water as a utility? Answ: Yes. Do you have a copy of your rules & regulations that you give your tenants when they move in? Answ: Yes. Can you give a copy to the Board? Yes we can. Chairwoman: you have nothing you would identify as a rental housing agreement other than your rental leases? Answ: Yes. Chairwoman: Based on what you gave us tonight and what we have originally, from that can we determine what rents have increased since 2006? Answ: We are maintaining that we have not increased any rents since 2006. Selectman Rullo: even for new tenants? Answ: Yes. Marsan: we have not increased rents since Corey came on board in 2006. Chairwoman: asked Mr. Marsan if they have increased rent on new owners since 2006. Marsan Answ: No. Witness in audience gave name of individual from #133 Wesley Circle (name of which was inaudible) saying his rent has been increased. Attorney Marsan: we have not changed rents since Corey Farcus came on board in 2006.

Attorney Eldridge asked Corey Farcus questions:

Who is owner of #68 Wesley Circle is? Answ: It is vacant. How can you attach a rent of \$350 if it is empty? Has it ever been sold? Answ: I would have to look at the details. Attorney Eldredge: In August of 2006 you attach a rent of \$350 to a house that has no occupancy permit? Answ: I would have to look at the details. I believe that is a house without an occupancy permit. Are you the manager of Edgeway? Answ: I am the Trustee of Edgeway. Do you work there? Yes. Do others? Yes. How long have they worked there for? The people that work there now? Attorney: yes. Farcus: We aren't actually employed by Edgeway. We are employed by a leasing company that leases

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employees out to the different companies and entities. Attorney: Do you have documentation that they are not employees from you? Farcus: We do. If I could please clarify. Does Heidi Belbin work for you, Edgeway Realty Trust? Farcus: Yes in a matter of speaking, but she is employed officially by I.S.M. Leasing and ISM Leasing leases out the employees. Attorney: What about her assistant? Farcus: Sarah Reid? Attorney: Yes. Farcus: Correct. She works in the office. We'll use it as working in the office. Attorney: How is she paid? Farcus: How is who paid, which one? Attorney: Both of them. Through the leasing company? Farcus: Yes. Attorney: And what about Michael the maintenance guy? Farcus: Michael the maintenance manager is again officially an employee of I.S.M. He is leased out to the various entities under the Estate of Wayne Williams, one of which is Edgeway Realty Trust. Attorney: So he uses Edgeway trucks to plow? Farcus: No. The truck is owned by I.S.M. Leasing. Chairwoman asked for clarification of initials of leasing company. Farcus: I.S.M. Chairwoman: Where are they located? Farcus: In Middleborough.

Selectwoman Duphily: Who are they? Is it you? Farcus: It's within us. Selectwoman Duphily: It is a corporation of Wayne Williams? Farcus: Correct. Attorney Eldredge: And where is it located? Farcus: 17 Wesley Circle. Attorney Eldredge: So you're running another business within your mobile home park? Farcus: Do we operate the business of I.S.M. Leasing out of 17? That the address to where the mail comes in. Attorney: Do you operate a business out of there? Attorney: I want to show you a picture. Can you identify the two vehicles that are in that picture? Farcus: There's more than two vehicles. Which one would you like? Attorney: The big one with the pallets on the back that looks like some sort of (inaudible). Chairwoman: Mr. Eldredge I'm going to stop you there. This is totally off the point. Attorney Eldredge: How they use their space affects their rent. Chairwoman: You can incorporate into your brief. Attorney Eldredge: I would request we have documents come in to see exactly who Heidi Belbin and Sara Reid work for because I have affidavits that say that they are managers of Edgeway Realty Trust that were in Court documents. I also would present his Workman's Comp application that suggested a sole proprietor with no employees.

Attorney Marsan: Objection. This is way outside the scope. Chairwoman: It is. Attorney Eldredge: It goes to credibility. When we say we need to bring records in this is exactly the history that this park has shown. Chairwoman: We are looking for history as to owners and what rents were charged. Attorney Eldredge: But he's saying stopping at 2006. I think we should bring them back to the park for 99. I motion to the Board To ask for 99 going forward comes in. Chairwoman: Well we asked for the previous owner information and the current owner information and if we need more information, we can certainly request it. Do you have any other questions of Mr. Farcas Mr. Eldredge? Pertaining to the rents. Attorney Eldredge: Your Trust hasn't had a license to operate a mobile home park in Middleborough since 2004? Attorney Marsan: Objection. He's going back and (inaudible) Attorney Eldredge: It does have to (inaudible).

Chairwoman: I am going to allow the question. Can you answer that please? Farcus: That is correct. We have not had a license since 2004 as issued by this Board.

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Chairwoman asked if Board members had any other questions. Chairwoman informed Mr. Farcus that this ends his testimony.

SUMMARY – Attorney Marsan

Attorney Marsan introduced for record Edgeway Trust Rules & Regulations 2005 for the park as Owner Exhibit # 3 and testified they are same as what was submitted to Board on 2/23/10. Mark for record Sections 2A and 2B of Rent Board's Rules and Regulations as Owner Exhibit #4 and Oak Point Owner Site Agreement as Owner Exhibit #5. Attorney Eldredge objected. Chairwoman allowed. It's a big jump here from what happened in 2006 when the Board chose to take jurisdiction over this project and issued an order establishing the rents. There's no question that this could have come before the Board anytime before 2006 and it didn't which is a strong indication people weren't complaining. You did not exercise your jurisdiction. Thinks \$350 would be minimal reasonable going rate and not being able to have that keeps them from having funds to make some of the improvements mentioned. Attorney Eldridge objected – speculative. Chairwoman noted objection. Don't think you should roll back beyond 2006. The fact that Board never exercised its own jurisdiction should not penalize park owner. The fact that we have these issues is reality. If you're going to complain, do it when issues are relatively fresh and people are still around. It would have been clearer to have documents from Mr. Jeans from his discussions with the Attorney General a few years ago. He is asking the Board to focus on the issue and that is what has happened since we took jurisdiction and issued our order. You took jurisdiction and issued an order. I will get the files requested by the Board. It's clear the rents changed, but it's not clear it's a violation. Are you doing folks a favor if you can't offer a fair return? Who wants to own this park, or buy this park? What is going to be the impact of any action we take? I think we are on a slippery slope. It would be foolish to come to the Board and ask for market rent. The issue is "what's the rent and does it violate our rules and regulations?" He asks the Board to focus on the January date, the letters of Town Counsel and limit analysis as a fair analysis by way of using January 2006 to date. My objection is on record not to go back in time. He also asks for adequate period of time to prepare a brief or significant findings and documents requested by the Board. He would suggest 2/18. Chair: I indicated in the beginning of hearing it would be two weeks. Marsan: I'm asking you to modify it.

Board agreed to 2/18 for all documentation and briefs to be submitted.

SUMMARY – Attorney Eldredge

Mr. Marsan keeps referring to market establishes as if he ever came in to establish what a market was. You took a time where there was a meeting in regards to a wrongful, illegal request for rent and it came in to being frozen rent no matter what they were. They were arbitrary. You probably never even look at them as being a Board, but they were frozen in 2006 because that's the day someone stood before the Rent Control Board. We don't want to use the day he lost his license to operate, to conduct business, either directly or

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indirectly and I would suggest that raising rents is conducting business. I would indicate that there was testimony that came in that said that rents were increased. I would suggest the Tramontana incident like Mr. Marsan making threats that if we have to roll these back then we are putting the life of the trailer park in jeopardy and he'd have to close. How do we know where he is financially when you haven't seen him? He's had six years at least to come in with documents to tell you where he is and he hasn't been back since. If he's so desperate for money and all he had to do was show documents, where are they? That's all we want. My clients aren't against paying rent. But he indicates we could complete the issues at the park. The issues at Edgeway aren't the tenants responsibilities. Rent shouldn't be paying for their responsibilities. Rent shouldn't be paying for another business being in that trailer park. They need to complete the issues with their own money. They're the ones who chopped the trees in the buffer zone, not my clients. They're the ones with health code violations, not my clients. Why should my clients have to pay to have the monies fixed? I know it's fairer to have the rents being back where he lost his license based on the activities of their (unintelligible) than it is to take an arbitrary day where somebody came in for something illegal and say good we're gonna fix you. One of the fix you did on that day was a \$350 rent and we don't even know if that \$350 is on that day because at that time it was \$290. There's another unit in there that he indicated they might have charged \$350 in rent for something that's never been sold and it's vacant. How do you attach a rent and not have anybody there? The bigger issue we are going to have is downward adjustments. The Board didn't establish rents in 2006 it only established that rents can't be increased w/out order of Board. Suspending his license meant absolutely nothing because the Town relieved him of his \$100 daily fine, which to date would have been approximately \$200k that the Town could have had. Rent Control is about leveling the field. We have seen nothing in regards to their books of what a fair net income could possibly be. We know that there's a lot of bills out there that need to be paid for things that the tenants didn't create. All they want is to have their rent adjusted correctly. The tenants are paying \$15k to this facility per month and nothings been corrected. There's no money for roads, to create the buffer zone, or fix some of the drainage. There's no money for anything, but \$15k per month is coming in there. It's about time we find out where that \$15k is going and then apply a rent that's fairly proportioned to the people in this Town. That's what we need.

Chairwoman thanked everyone for attending and announced Board is taking the matter under advisement and will issue a written decision. Briefs will be due 2/18/11.

***NOTE: In accordance with 801 CMR 1.02 (attached), the Presiding Officer shall arrange for verbatim transcripts of the proceedings to be supplied at cost to any party upon request, at the party's own expense. All evidence and testimony at the hearing shall be recorded either stenographically, or by Electronic Medium.**

At 10:36 PM Chairwoman announced Board would take a two minutes recess.

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OTHER

Selectwoman Duphily:

~~Leilani Dalpe had a gathering at her home on Saturday with Representative Calter and he~~
spoke about having civil discord without being uncivilized. Selectwoman Duphily would like to see individuals be more civilized even when having different views or in disagreement with others.

She had called a meeting on Friday at the Town Hall Annex with a group of individuals to try and do something about more of a sense of community. They are also working on the Christmas decorations for downtown for next year so that they don't get left out again like this year. The group will work on different events in Town so that there will be a better sense of community. Anyone who is interested, would like to attend a meeting, or has suggestions, may contact Selectwoman Duphily or Anna Nalevanko. Selectwoman Duphily would like to see some live bodies because it would be nice to see more than just the ordinary people working on these projects.

Selectman McKinnon:

As the Board's representative to SRPEDD, he will attend a meeting Wednesday night to discuss the Memorandum of Understanding relating to the Comprehensive Continuing Cooperative Transportation Planning Process for the Southeastern Massachusetts Metropolitan Planning Organization. Most of it involves a name change and cleaning up language within. He noted that the state and local interest section bothers him. It talks about SMNPO. It bothers him that the state is removing certain language and he would like to vote against it. Upon motion by Selectman Spataro and seconded by Selectman Rullo, Board voted unanimously to support his position in having language eliminated. Selectwoman Duphily suggested a letter by the Town Manager might be helpful. Selectman McKinnon indicated that he doesn't need a letter. As long as the Board members are in agreement with him, he will make the case.

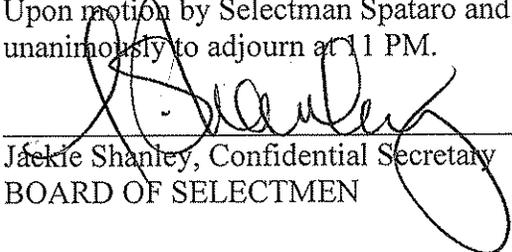
Allin Frawley requested that proposed financial policies be posted to Town's website. Chairwoman explained that this information will go out with the meeting packets. He also offered that the CPA Committee needs to be formed because there is a lot of work to be done. Chairwoman noted that she had announced at beginning of meeting that the Board is sending a reminder to Boards & Committees to submit recommendations and is also accepting letters of interest. Town Manager is to spearhead getting this going.

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Mr. Frawley asked if SRPEDD meetings are a public meeting and if they offer a snow date incase weather interferes with scheduled meetings. Selectman McKinnon offered that they would most likely move it to the following week, but also offered to email Mr. Frawley if this week's meeting is postponed.

Upon motion by Selectman Spataro and seconded by Selectman Rullo, Board voted unanimously to adjourn at 11 PM.



Jackie Shanley, Confidential Secretary
BOARD OF SELECTMEN

NOTICE OF HEARING

Please take notice that the Town of Middleborough Rent Board, ("Rent Board") will hold a hearing on Monday, January 24, 2011 at 7:30 p.m. in the Selectmen's Meeting Room at the Middleborough Town Hall in Middleborough, MA. The hearing will be conducted pursuant to the authority under the Rent Board's "Rules and Regulations For Mobile Home Park Accommodations, Rents And Evictions" and Chapter 703 of the Acts of 1985 to consider the amount of rents paid by tenants of Edgeway Mobile Home Park (the "Park"). Hearing procedures will be governed by the Informal/Fair Hearing Rules pursuant to 801 CMR 1.02. The Park Owner and the tenants shall each have the right to participate in the hearing and have the right to be represented at the hearing by an authorized representative or attorney. They or their representatives/attorneys shall have the right to prepare and present relevant evidence and argument at the hearing.

The issues involved in the hearing include:

- Whether the Park Owner increased rents to a rate higher than \$280/month for tenants who were already subject to a rent agreement at the rate of \$280/month.
- Whether rent may exceed \$280/month for any tenant in the Park.
- Whether the Rent Board in January 2006 made an order to the Park Owner not to increase rents until new rent was approved by the Rent Board.
- Whether the Park Owner increased rents for tenants after January 2006 in violation of the Rent Board's order of January, 2006.
- Whether the Park Owner set initial rents for any tenant(s) at a rate greater than \$280/month.
- Whether rents for all tenants in the Park must be the same amount.
- Whether the rents paid by tenants in the Park will be reduced and/or adjusted, prospectively or retroactively.

TOWN OF MIDDLEBOROUGH RENT BOARD
Marsha L. Brunelle
Alfred P. Rullo, Jr.
Muriel C. Duphily
Stephen J. McKinnon
Steven P. Spataro

Publish: December 23, 2010

Please bill the Town of Middleborough Board of Selectmen's office.