

MINUTES

For approval at the 11-7-11 meeting

**Middleborough Board of Selectmen
Meeting Minutes****October 24, 2011**

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

In attendance were: Selectmen A. Rullo, S. McKinnon, S. Spataro, A. Frawley, and B. Quelle, Town Manager C. Cristello and Confidential Secretary J. Shanley.

UNANTICIPATED

Upon motion by Selectman Spataro and seconded by Selectman McKinnon, Board voted unanimously to approve request from Buddy's Pizza Pub, Inc. to change its hours to serve alcoholic beverages on Friday and Saturday evenings from ending at 10 PM to 12 midnight instead.

Upon motion by Selectman Spataro and seconded by Selectman McKinnon, Board voted unanimously to approve request from Middleborough Youth Advocates to place a banner on the Town Hall lawn advertising the candle light vigil on 10/30/11 from 6-7 PM.

Selectman McKinnon extended thanks to all who have offered well wishes to his wife.

A Middleborough resident addressed Board with concerns re the proposed Solar Panel Farm in Carver. Town Manager responded that the Town of Carver has hired a consultant, who will be paid for by the applicant of the project, to hear and address the concerns of residents from Carver and Middleboro. Chairman did advise residents to keep the Board informed, and if they feel that they are not being heard, or are not receiving response from Carver, to please let the Middleborough Selectmen know, and they will try to assist in rectifying the communication.

ANNOUNCEMENTS

Selectman Spataro extended thanks to DPW Director A. Bagas for holding the Bulky Items Collection day this past Saturday. It was beneficial and convenient for residents.

Chairman attended the recent library gala event and noted that it was terrific.

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Upon motion by Selectman Spataro and seconded by Selectman Quelle, Board voted to approve 10/17/11 meeting minutes. Three in favor. S. McKinnon abstained.

Upon motion by Selectman Spataro and seconded by Selectman Quelle, Board voted to approve 10/17/11 Executive Session meeting minutes. Three in favor. S. McKinnon abstained.

NEW BUSINESS

Upon motion by Selectman Spataro and seconded by Selectman Quelle, Board voted unanimously to approve appointment of Michelle L. McClellan as a member of the Commission on Disability, filling the vacancy caused by the resignation of Melissa Oddi-Morrison.

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Town Clerk Allison Ferreira addressed Board to explain the proposed Resolution in Support of House Bill No. 10972 "An Act Regulating Election Primaries". She is in support of the proposed resolution. Upon motion by Selectman McKinnon and seconded by Selectman Quelle, Board voted unanimously to consider the matter at its meeting on 11/7/11 and will provide the Town Clerk with any questions ahead of time so that she may provide answers.

Upon motion by Selectman McKinnon and seconded by Selectman Spataro, Board voted unanimously to approve request from Soule Homestead Education Center to use the Town Hall parking lot for a recycling fundraiser on 11/12/11 from 10 a.m. to 2 p.m..

Upon motion by Selectman Spataro and seconded by Selectman Quelle, Board voted unanimously to appoint Eleanor DeAngelis to the Cultural Council.

Upon motion by Selectman Spataro and seconded by Selectman Quelle, Board voted to approve meeting room rental request by Woodslake Proprietors on 11/16/11. Town Manager realized that the Board may need the Selectmen's Hearing room on that date. The applicant will be offered another meeting room.

Police Chief addressed Board explained that the reason he is asking for commendations for some of his police officers is because they did a lot of work, communicated in an excellent manner, and performed excellent surveillance during a recent investigation that lead to the arrest of an individual suspected of breaking and entering into a number of homes in Middleborough . Three officers ended up in the hospital, but are back to work. Upon motion by Selectman Spataro and seconded by Selectman McKinnon, Board voted unanimously to send letters of commendation to: Detectives Robert Lake and Simonne Ryder, and Police Officers Alan Cunningham, Kristopher Dees, Terry Meleski, and Brett Collins. Chairman read aloud letter addressed to Board from Police Chief Gates dated 10-12-11 re request for commendations for Police Officers.

Upon motion by Selectman Spataro and seconded by Selectman McKinnon, Board voted unanimously to approve Betterment Agreement for Donald and Susan Jonah, 7 Shaw Street in the amount of \$15,000.

Upon motion by Selectman Spataro and seconded by Selectman Quelle, Board voted unanimously to approve Betterment Agreement for Leslie A. Corsini-Herbert, A. Irene Corsini, and Glenn Hebert, 267 Wareham Street in the amount of \$18,301.21.

Upon motion by Selectman Spataro and seconded by Selectman Quelle, Board voted unanimously to approve Earth Removal Certificate of Completion for Ryan Vlaco.

HEARINGS, MEETINGS, LICENSES

Chairman opened public hearing at 7:30 PM on petition filed by Middleborough Gas & Electric and Verizon New England, Inc., by reading aloud public hearing notice. Applicants requesting to place one new guy stub pole 49 ½ S to be added to support pole 49 ½ on Wood Street when

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lines are reconfigured to accommodate the new feed arrangement to Ocean Spray and Northeast Refrigeration. Chairman asked to hearing comments from those in attendance. Hearing none, Chairman declared hearing closed. Upon motion by Selectman Spataro and seconded by Selectman McKinnon, Board voted unanimously to approve petition.

Board met jointly with the CPA Statutory members to vote the terms of the recently appointed Citizen at Large members.

Upon motion by Selectman McKinnon, and seconded by Selectman Quelle, the CPA Statutory members and the Board voted unanimously to appoint **Mark Belanger** to a **one-year term**.

Upon motion by Selectman McKinnon, and seconded by Selectman Quelle, the CPA Statutory members and the Board voted unanimously to appoint **Maureen Franco** to a **one-year term**.

Upon motion by Selectman McKinnon, and seconded by Selectman Quelle, the CPA Statutory members and the Board voted unanimously to appoint **Ted Eayrs** to a **two-year term**.

Upon motion by Selectman McKinnon, and seconded by Selectman Quelle, the CPA Statutory members and the Board voted unanimously to appoint **Mike Maddigan** to a **two-year term**.

Veterans' Services Officer Paul Provencher addressed Board to present the 2011 Veterans' Day activities. Upon motion by Selectman Spataro and seconded by Selectman McKinnon, Board voted unanimously to approve the activities as presented.

UNFINISHED BUSINESS

Edgeway Mobile Home Park

Town Manager commended Bill Taylor of MG&E for his assistance with Edgeway Mobile Home Park lighting. The lights were on as of Friday. Selectman Quelle offered that the Chairman of the Homeowner's Association indicated that the tenants are pleased with the lights in the park, but not the poles. Selectman Quelle posed question re cable to Town Manager. Town Manager explained they are waiting for vendor to get the cost to the Park Operator. Selectman Quelle attended the recent Homeowner's Association meeting at the library and came out with a number of questions.

1. Residents wondered if they had gutter systems that were not functioning properly, would they also be replaced.
2. Will Attorney Marsan's office participate in the workshop on 10/26/11? Town Manager responded they will not.

A contractor has been identified. Town Manager spoke with Jeanne Spalding re notifying residents as to dates for work. It was addressed with Attorney Marsan to have information on what's going to happen and when, in order to notify residents ahead of time.

TOWN MANAGER'S REPORT

Town Manager updated Board re School Superintendent interview process.

Town Manager noted letter he sent to Wegman's Food Markets on 10/20/11, noting that he brought to Wegman's attention, the positives in considering Middleborough as a site location for its business.

Town Manager noted Major Disaster Declaration Expansion Announcement, advising the Town that FEMA has approved the Governor's request to add five counties to the existing Major Disaster Declaration for Tropical Storm Irene, including Plymouth County. Fire Chief Benjamino will attend applicant briefing to gather further information.

Upon motion by Selectman McKinnon and seconded by Selectman Quelle, Board voted unanimously that it does not object to Mass Development Finance Agency issuing a revenue bond on behalf of Ocean Spray Cranberries, Inc.

CORRESPONDENCE

#5 Selectman McKinnon asked to be brought up-to-speed on the Solar Panel Farm issue. Chairman filled him in. Town Manager noted that some Carver residents have similar concerns as those from Middleborough. Residents and Carver officials will keep Board updated.

Selectman McKinnon raised issue re re-districting. Discussion ensued, including questioning whether if having one State Representative instead of three would be more beneficial. Motion made by Selectman Spataro and seconded by Selectman Quelle, to write to Committee that any representatives having multiple precincts are not to have any more than one State Representative. Motion did not carry.

Selectman McKinnon noted the time and money spent on the unresolved Rotary matter. Town Manager offered that the project is still ongoing and that we haven't stopped advocating for it. He further noted that Senator Pacheco encouraged us to get our businesses involved in advocating for improvements. Motion made by Selectman Spataro and seconded by Selectman McKinnon, Board voted unanimously to withdraw previous motion and table until 11/7/11 meeting.

Upon motion by Selectman McKinnon and seconded by Selectman Spataro, Board voted unanimously to adjourn at 8:27 PM.

Jackie Shanley, Confidential Secretary
BOARD OF SELECTMEN

Rent Control Workshop

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

In attendance were Selectmen A. Rullo, S. McKinnon, S. Spataro, A. Frawley, and B. Quelle, Town Manager Cristello, Town Counsel D. Murray, and Attorney J. Talerman.

Chairman Rullo announced that he would recuse himself based on Town Counsel's advice. Selectman Quelle also consulted with Town Counsel, but was advised that he did not have any conflict and would not be recusing himself. Chairman Rullo left the meeting table and Vice Chairman McKinnon ran the meeting in his place. Selectman McKinnon announced that the proceeding tonight would be focused on the Town's Rent Control Rules and Regulations. Town Manager introduced Mr. Jason Talerman. Mr. Talerman gave a brief summation of his experience with rent control and as special counsel to a number of towns. He also discussed what he has observed recently in the universe of rent control regulations. He discussed his memo to the Board including his recommendations for some improvements to the Town's regulations. He also reviewed his answers to questions raised by the Selectmen.

- a. *Did the Rent Control Board make any errors in the decision of April 2011?* In short, the answer is no. It is my opinion that the decision was thorough and well reasoned, as well as fair.
- b. *Do rents in Edgeway Park have to be all the same?* In short, the answer is no. Rent Control in Middleborough is covered by your Special Act and I see nothing that requires all rents to be the same. Nor do I see anything in the various statutes that requires all rents to be the same. In fact, there is statutory support for the notion that sites that have different attributes can have different rents, subject to restrictions on rent increases under the Act.
- c. *Is our definition of Fair Net Operating Income, which is essentially mortgage rates, in compliance with state regulations?* I see no overt legal flaw in this definition. However, it is my opinion that the regulation is perhaps overly complex. I would generally prefer a definition that allows the Board to consider a wide range of factors that may shift in time. In this vein, the provision can be simplified and broadened to allow more discretion (see below).
- d. *Is our definition of maximum rents in compliance with State regulations?* In short yes. Again, you are governed by a Special Act which is the sole source of authority, absent a State Statute that is direct conflict. I am not aware of any such conflict. Further, I believe this provision is fair, logical and easily understood.

Selectman Frawley asked whether rents could be raised without an operator coming before the Board. Mr. Talerman responded that the regulations as written, allow for that. The Board could choose to be more restrictive if it wanted, but it is not required. Selectman Quelle asked whether the Board could treat different parks differently with respect to rents based on their performance as operators. Mr. Talerman replied that as long as the Board treated the operator

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fairly and without bias, that the Board could do things differently, park by park. Selectman McKinnon asked if the Board could decrease rents if a park did not have a license. Mr. Talerman responded that the Board could include in its regulations a provision that would deny rent increase if there is one or more violations of the regulations.

Selectman Frawley asked about language if the Attorney General's guide. Mr. Talerman noted that the Town's Special Act prevails. The Attorney General's guide is meant to summarize what is generally the case throughout the Commonwealth, but it is perhaps misleading since it cannot capture all of the variations in all of the Special Acts. Selectman Quelle asked why our regulations would allow increases with the change of tenants. Town Manager responded that the regulations respected the Board's previous action from 1999 at the request of Oak Point, as they adjust rents upon the sale of units. Mr. Talerman suggested that the Board add even more flexibility to its regulations to take into account any injustices that occur within these parks.

Mr. Martinez asked whether any residents could vote out rent control. Mr. Talerman said that it could be voted at Town Meeting to petition the legislature for such action. Mr. Martinez stated it would be better if the Town closely followed the state regulations and state statute and not deviate from them.

Town Manager asked Mr. Talerman whether the opinion of Town Counsel regarding initial rents at Edgeway was correct. Mr. Talerman said it was. Selectman Quelle asked whether the rents could be rolled back to \$280, which is what the tenants are requesting. Mr. Talerman said that the Board could not issue restitution, but if it felt a fair net operating income could be provided at \$280, the Board could roll back rents based on evidence.

Margo King again raised the question of whether the state law trumped the Town's Special Act. Mr. Talerman again stated that the Special Act adopted by the Town has the same force and effect of a state law as long as it is not inconsistent with state law. Mrs. King also asked about the presumption language in Chapter 140, Section 32L(2). Mr. Talerman replied that the Town maximum rent rule applied to all units so it could not be deemed to be unfair. Mr. Talerman suggested that the presumption language may have been written to prevent abuses by Park owners who might attempt to retaliate against individual residents.

Mr. Lerner stated that Oak Point has been very consistent in setting rents. He questioned whether since Social Security has not gone up, but rents have gone up by 3-4% a year, should Oak Point be reviewed by the Rent Board to justify its method of doing its increases. Louisa Brown asked why rents can increase with the change of ownership. Town Manager responded that the Board's decision prevents that now at Edgeway. An Oak Point resident pointed out that depending on the month someone purchases their unit, the CPI calculation is for the preceding 12 months. It is not the same increase for everyone during the course of the year.

Mr. Martinez asked if the Board was going to take any action this evening. Selectman McKinnon said no, that this evening was a workshop. Mr. Martinez asked when the Board

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would consider changes to its regulations. Selectman McKinnon did not offer a date explaining that the Board also had other business to attend to. He said that the Board would return to this discussion at a future meeting.

Upon motion by Selectman Spataro and seconded by Selectman Quelle, Board voted unanimously to adjourn at 10:10 PM.

Jackie Shanley, Confidential Secretary
BOARD OF SELECTMEN