

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/RENT BOARD

DATE OF MEETING: Wednesday 8/31/11

TIME: 7:00 PM

PLACE: Town Hall

8/29/11 @ 12:30pm JB  
Date and time received by Town Clerk

Robert Leary, Clerk  
Clerk/Board member posting notice

MEETING CANCELLED: \_\_\_\_\_ DATE & TIME CANCELLED: \_\_\_\_\_

CLERK/BOARD MEMBER CANCELLING THE MEETING: \_\_\_\_\_

**AGENDA**

1. **Pledge of Allegiance**
2. **Hearings - Meetings - Licenses**
  - 7:00 PM Vote to continue Edgeway Rent Board matter from 8/31/11 to 9/26/11 @ 8 PM.
  - 7:05 PM Discussion of Edgeway Mobile Home Park rents.
  - 7:30 PM Vote to Accept Easements for Nemasket River Drainage Project
  - 7:35 PM Vote to Approve Memorandum of Understanding with Fire Union
  - 7:40 PM Vote to Award Bid for Town Hall Cupola Project
3. **Executive Session - Pending Litigation and Collective Bargaining**
4. **Adjourn**

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*335 Years of Progress*



CRANBERRY CAPITAL  
OF THE WORLD



**Town of Middleborough**  
**Massachusetts**

*[Signature]*  
Town Manager

508-947-0928  
FAX 508-946-2320

MEMORANDUM

TO: Board of Selectmen  
FROM: Charles Cristello, Town Manager *CC*  
RE: Edgeway Rent Control Decision  
DATE: August 29, 2011  
Cc: Daniel Murray, Esq.

At your last meeting you decided to discuss the issue of rents at Edgeway at your next meeting. I want to bring to your attention that the Board of Selectmen/Rent Board held hearings and decided this issue this past spring. I have enclosed the hearing notice and decision for your review.

I do not think it would be productive to re-open this matter at the very time we are trying to settle the outstanding issues before us in the current rent control proceeding.

## 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.

COMMONWEALTH OF MASSACHUSETTS

Town of Middleborough  
Rent Board Case No. 2010-001

\_\_\_\_\_  
In Re: EDGEWAY )  
          MOBILE HOME PARK )  
\_\_\_\_\_ )

MEMORANDUM OF DECISION

The Town of Middleborough Rent Board (the "Board") received a complaint from an attorney on behalf of the Edgeway Park Homeowners' Association, an organization of tenants who reside in Edgeway Mobile Home Park (the "Park"). The membership of the tenants organization contains a large majority of the Park's residents.

The complaint letter (Exhibit B-4) alleged that the Park had set rents originally in 1999 at \$280.00/month and starting in 2001 raised the rent of the homeowners in violation of a regulation of the Attorney General (940 CMR 10.02(7)). Also, the claim is that rental increases constituted a fraud because of a promotional flyer indicated that any (rent) increases need to be approved by the Board. The claim also asserted that the rents in the Park are in violation of an order by the Board that rent for a home which was sold by a tenant to new tenant should be the same as the rent paid by the seller of the home until a new rent was approved by the Board. The complaint did not mention or assert that the condition of the Park or the lack of a Chapter 140 park license warranted a general downward adjustment in the rent at the Park. The complaint letter requested a determination of a downward adjustment of rent if appropriate and whether the homeowners have been overcharged.

The Board determined to hold a hearing regarding the matters contained in the complaint letter, that is, whether the rents at the Park are illegal and/or otherwise

excessive to the extent that rents exceed \$280.00/month. The focus and purpose of the hearing was to examine and receive evidence regarding the matters set forth in the complaint letter. The hearing was not for the purpose of considering a general adjustment or regulation of the rent in the Park based on factors contained in Section 3 of Chapter 703 of the Acts of 1985 (the "Rent/Eviction Law") or matters contained in Section 4-C of the Board's Rules and Regulations For Mobile Home Park Accommodations. Consequently, evidence regarding the physical condition of the Park and its infrastructure, alleged violations by the Park owner of the State Sanitary Code and other alleged violations of local by-laws and permits were not relevant to the issues considered at the hearing.

The Board proceeded to schedule a hearing. Notice of the hearing was published and notice was given to the Edgeway Park owner and the Edgeway Park Homeowners' Association and their attorneys. The hearing was held on January 24, 2011. The issues involved in the hearing included:

1. 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.
2. Whether rent may exceed \$280/month for any tenant in the Park.
3. 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.
4. Whether the Park Owner increased rents for tenants after January 2006 in violation of the Rent Board's order or January 2006.
5. Whether the Park Owner set initial rents for any tenant(s) at a rate greater than \$280/month.
6. Whether rents for all tenants in the Park must be the same amount.
7. Whether the rents paid by tenants in the Park will be reduced and/or adjusted, prospectively or retroactively.

Two parties filed appearances through their attorneys and participated in the hearing. Attorney Gerard S. Marsan appeared for Corey Farcas, Trustee of Edgeway Realty Trust, the Park owner. Attorney David W. Eldredge appeared for the Edgeway Park Homeowners' Association, Inc., the organization of Park tenants.

At the hearing the Board heard testimony from Anne McGann, Charles Jeans, Louisa Brown, Margo King and Georgette Gorman on behalf of the Homeowners Association. The Board also heard testimony from Corey Farcas, Trustee of Edgeway Trust, the Park owner. In addition the Board introduced exhibits, and both parties introduced various exhibits during the course of the hearing. Both parties submitted additional exhibits with their post hearing briefs, including an affidavit by Heidi Balben with related rental documents.

Witness Ann McGann testified that she moved to her home at 17 Lyn Lane in the Park on September 30, 2005. Her monthly rent was set at \$320.00 by a lease. The tenants who sold the home to the witness had been paying rent at the rate of \$290.00 per month. Sometime in 2006, about a year after entering into residency in the Park in late September 2005, or October 2006 the witness complained to Park management that her monthly rent should be \$290.00, not \$320.00. The witness has been paying rent of \$290.00 per month since she complained to management. The Park gave the witness a credit on her rent bill for the difference between \$320.00 and \$290.00/month. The Park although accepting rent payments of \$290.00 takes the position that the rent should be \$320.00/month.

Witness Charles Jeans testified he moved to the Park in 2001 and that he was President of the Homeowners Association for two years. He stated that he had had conversations and correspondence with the Attorney General during 2006 to 2008 regarding rent paid for certain residents in the Park including the Tramontanas.

Witness Louisa Brown testified she moved to the Park in August 2009. Her rent is \$290.00/month, the amount which the prior owner of her home paid.

Witness Margo King testified she moved to the Park in April 2001. Her rent is \$280.00/month. Her rent has not changed. She testified she saw a promotional flyer advertising the Park (Board Exhibit B-5). She received the flyer at the end of 2000 from Century 21 Gold.

Witness Georgette Gorman testified she moved to the Park in 2002. Before she purchased her home, she was told her rent would be \$290.00/month. After she purchased, the rent was \$320.00/month. She also testified to problems she had with sand and water affecting her home related to drainage.

Corey Farcas, the Park owner and operator testified what was included in the rents at the Park. The monthly licensing fee is included in the rent. The witness stated that the Park's position is that rents have not increased in the Park since the Fall of 2006 when he became involved with Park management.

#### FINDINGS OF FACT

Based on the credible evidence presented and accepted at the hearing and the reasonable inferences drawn from that evidence, the following facts:

1. The Rent Board was and is constituted pursuant to the Rent/Eviction Law.

2. The Rent/Eviction Law applies to mobile home park accommodations in Middleborough.

3. The Park provides mobile home park accommodations in Middleborough and is subject to the jurisdiction of the Board pursuant to the Rent/Eviction Law.

4. The Park owner, Wayne Williams, Trustee of Edgeway Trust, in January 2006 met with the Board regarding a proposed rent increase for Park tenants. The Park owner at that time did not hold a license for operation of the Park pursuant to General Laws Chapter 140.

5. The Board in January 2006 made an order to the Park owner in writing that there was to be no rent increase in the Park until the Board approved the increase.

6. Some of the original tenants in the Park, before purchasing a home and renting in the Park, received or saw a promotional flyer advertising the Park reciting a Park fee of \$280.00/month and that the Park was under rent control with any increases to be approved by the Board.

7. The Board did not exercise its power to regulate rents in the Park under the Rent/Eviction Law until it made an order in January 2006 not to increase rents in the Park until the Board approved.

8. There are fifty-one (51) homes occupied by tenants in the Park.

9. The monthly rents in the Park range from \$275.00 to \$350.00. Monthly rents include one at \$275.00, some at \$280.00, and some at \$290.00, \$312.00, \$320.00 and \$350.00.

10. There are thirty-seven (37) homes in the Park occupied by original tenants who purchased new homes from the Park. About 60% of the tenants in the Park are original tenants in the Park.

11. About 40% of the tenants in the Park own homes previously owned by former tenants.

12. The Park owner prior to January 2006 set the monthly rent for new tenants who purchased a home from a former tenant at a rate higher than that which the former tenant paid.

13. Rents were established for some original tenants who purchased a new home at a rate greater than \$280.00/month.

14. Thirty-seven homes in the Park have a rent greater than \$280.00/month.

15. The Park owner on or about February 1, 2006 increased the monthly rent for the home and existing tenants at 133 Wesley Circle from \$290.00 to \$340.00 and subsequently, increased the rent to \$350.00 as of July 1, 2006.

16. The Board on October 16, 2009 adopted Rules & Regulations for regulating rents and evictions with respect to mobile home park accommodations in mobile home parks in Middleborough.

17. When the Park opened for business in about 1999, the original rent for some new homes was \$280.00/month. Thereafter the rent for some new homes which were sold by the Park to new tenants was set at a monthly rate of more than \$280.00.

18. The Park did not increase the monthly rent for tenants who purchased their homes new from the Park and who remained in occupancy in the Park, except in one

instance, the home located at 133 Wesley Circle (See Homeowners' Association Brief – Exhibit 16).

19. After the Board order in January 2006 that there was to be no rent increase in the Park until the Board approved the increase, the Park owner increased the rent for one home located at 133 Wesley Circle in two phases, once in February 2006 and once in July 2006.

20. Rent established for new homes purchased by original tenants from the Park owner, where the original tenants currently continue to occupy the homes, did not increase except with respect to the home located at 133 Wesley Circle.

#### RULINGS OF LAW

1. Rent in the Park may exceed \$280.00/month for some tenants in the Park. Initial rents for new homes sold by the Park owner for the first time started at \$280.00/month. Initial sales of homes were made during 1999 and 2000. Subsequent sales of new homes were made in 2001 and thereafter where rents were set at a rate higher than \$280.00/month. Those higher rents are lawful. Rent may be set at a rate higher than \$280.00/month with respect to the sale of new homes by the Park owner. This is consistent with the Board's Rules and Regulations (Section 2-A-2).

2. The Attorney General regulation (940 CMR 10.02 (7)) cited in the complaint letter received from the attorney for the Homeowners' Association declares as an unfair business practice violation a rent increase where a park is under the jurisdiction of a rent control statute, except as permitted by the rent control statute. The Board interprets this regulation to apply to rent increases for existing tenants and not to apply to rent set for

new tenants who purchase a home from either the Park owner or from a former tenant. In any case, rent increases are lawful if the increases are permitted pursuant to a rent control law.

3. The Board did not regulate rent in the Park until its order of January 2006.

4. The Park owner increased rent for a tenant after January 2006 in violation of the Board's order in January 2006. The rent for the tenant residing at 133 Wesley Circle (Lizotte) was increased on February 1, 2006 from \$290.00/month to \$340.00/month. The rent for this tenant was increased again to \$350.00/month on July 1, 2006.

5. Rent is not required to be the same amount for all tenants in the Park.

6. The Board order in January 2006 prohibited any increase in rent for an existing tenant in the Park and any increase in the rent payable by a new tenant for a home which the new tenant purchased from a former tenant in the Park.

7. Prior to the Board order in January 2006 prohibiting any increase in rent, the Park owner was at liberty to set rent for a new tenant who purchased an existing home from an existing tenant at a rate higher than the rent paid by the seller of the home.

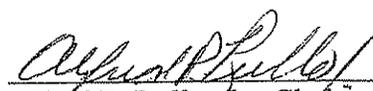
8. The Park owner was and is not prohibited by the Rent/Eviction Law from setting rent at a rate greater than \$280.00/month for a new home which is sold to a new tenant.

9. The Park owner is in violation of General Laws, Chapter 140, Section 32A in not having a license to operate the Park.

DECISION – ORDER

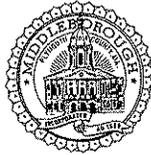
Based on the foregoing, the Board declines to make a general roll-back or reduction of rents for all tenants/homes in the Park to the level of \$280.00/month. The Board orders the Park owner to reduce the rent for the home at 133 Wesley Circle from \$350.00/month to \$290.00/month, such reduction to be effective for the month of April 2011 and thereafter until a change in the rent is authorized. The Board orders the Park owner to pay to the current tenants of the home at 133 Wesley Circle the amount of rent they paid in excess of \$290.00/month and to pay to the former tenants of the home at 133 Wesley Circle the amount of rent they paid in excess of \$290.00/month, such payments to be made within thirty (30) days of the date of this Memorandum of Decision, and orders the Park owner to file with the Board written confirmation that the payments to the current tenants and former tenants of the home at 133 Wesley Circle have been made as ordered.

Town of Middleborough Rent Board  
By:

  
\_\_\_\_\_  
Alfred P. Rullo, Jr., Chairman

DATED: April 11, 2011

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CRANBERRY CAPITAL  
OF THE WORLD



**Town of Middleborough**  
**Massachusetts**

Town Manager

508-947-0928  
FAX 508-946-2320

MEMORANDUM

TO: Board of Selectmen

FROM: Charles Cristello, Town Manager 

RE: Agreement with Middleborough Professional Firefighters Association Local 3653

DATE: August 29, 2011

Cc: Chief Benjamino

Enclosed please find the agreement reached recently with the firefighters association. This agreement is similar to all the other agreements we have reached with the primary provision the change to the health care plan. There are also a few clarifications and housekeeping items.

Please feel free to call me if you have any questions

Original

**TOWN OF MIDDLEBOROUGH'S OFF THE RECORD OFFER TO  
THE MIDDLEBOROUGH PROFESSIONAL FIREFIGHTERS ASSOCIATION LOCAL  
3653**

**Dated: July 7, 2011**

The Town of Middleborough ("the Town") and the Middleborough Professional Firefighters Association, Local 3653 ("Association") hereby agree that the collective bargaining agreement between the Town and the Association will be extended for two years, through June 30, 2012, with the changes agreed to by the parties' negotiating teams and set forth below. This offer and Agreement shall be considered **off-the-record** until ratified by the Association's membership and the Board of Selectmen. The bargaining teams shall sponsor and support such ratification.

If ratified by both parties' principals, a new comprehensive Collective Bargaining Agreement shall be drafted which incorporates the material terms of this Agreement and the material terms of the parties' MOA for 2007-10 that have not been rendered moot into the unchanged provisions of the 2004-2007 Agreement that have not been rendered moot. Failing ratification by both parties' principals, the Agreement shall be deemed void and both parties will be free to return to their prior bargaining positions.

Unless otherwise specified, all the changes set forth below will take effect July 1, 2010.

**1. ARTICLE 1, section 8-**

Change "6 days (8 hours per day)" to "48 hours."

**2. ARTICLE 4, section 3a. Substitutions-**

- a. Section 3a. Overtime-** Change section 3a to read, "All new firefighters shall remain at the bottom of the overtime list until they pass a basic recruit training program at the Massachusetts Firefighting Academy or its equivalent, as

determined by the Chief, that certifies the firefighter as a Firefighter I and Firefighter II."

3. Article 8, sections 1(b), 3, 7-

a. Section 1(b). Change to read as follows: "As a condition of employment, a firefighter shall be required to successfully complete the first time the basic recruit program at the Massachusetts Firefighting Academy, or its equivalent as determined by the Chief, that certifies the firefighter as a Firefighter I and Firefighter II." Firefighters shall be regularly assigned to dispatch and desk duty until successful completion of a basic recruit program. Either transportation or mileage shall be paid by the Town. A Firefighter who is unable to complete the program because of injury will be given an additional opportunity to complete it

A new firefighter's continued employment shall be subject to successful completion of a probationary period ending 12 months after successful completion of the basic recruit program. The Chief shall make the determination as to whether the probationary period is successfully completed and his determination shall not be subject to the grievance and arbitration procedure.

b. Section 3. Night Differential- Change to read, "Effective July 1, 2004, all members of the bargaining unit except the Day Captain shall receive a night differential of six percent(6 %) for twenty eight (28) hours each workweek."

c. Section 7. Specialist Pay- Change first sentence to read, "Any employee who has receive three(3) National or State fire related certifications may present them to the Fire Chief for 2%, which shall be added to the base pay."

4. ARTICLE 9, Section 1. Special Details- Change last sentence to read, "An off-duty regular full time firefighter will have first refusal to be called back for outside details under the call back procedure set forth in Article 12, Section 1."

5. ARTICLE 12, Section 2. Alarm Calls- Change first sentence to read, "Permanent firefighters responding to calls off duty may respond to alarm calls in accordance with the following rules: "

6. ARTICLE 13, Section 2- Health Insurance- Delete existing language and replace with the following:

"The Town's contribution to the PPO plan it offers will be 60 % (sixty percent) of the monthly premium. The Town's contribution to the HMO plan it offers will be 80% (eighty percent) of the monthly premium. Except for the Town's contribution toward the monthly premium, the employee will be obligated to pay all other costs associated with the health

insurance coverage, except that the Town will provide reimbursements, after July 1, 2010, for the following:

a. Effective July 1, 2010-December 31, 2010, the amount by which a co-pay for a 90-day drug prescription or refill (Tier 3) exceeds \$60. Effective January 1, 2011-June 30, 2012, the amount by which a co-pay for a 90-day drug prescription or refill (Tier 3) exceeds \$50;

b. Effective July 1, 2010-June 30, 2012, the amount by which a deductible for a hospital admission exceeds \$300;

c. Effective July 1, 2010-December 31, 2010, the amount by which a deductible for a day surgical procedure exceeds \$75. Effective January 1, 2011 through June 30, 2012, the amount by which a deductible for a day surgical procedure exceeds \$25

d. Effective January 1, 2011 through June 30, 2012, the amount by which a co-pay to see a specialist physician exceeds \$15.

e. After an employee on an individual HMO plan has expended a total of more than \$160 in a fiscal year to pay any increase from fiscal year 2010 in the co-pays and deductibles described in a, b,c and d ("the increases"), the Town will reimburse the full amount of the increases in those co-pays and deductibles.

f. After an employee on an a family HMO plan has expended a total of more than \$ 420 in a fiscal year to pay any increase from fiscal year 2010 in the co-pays and deductibles in a, b, c and d ("the increases"), the Town will reimburse the full amount of the increases in those co-pays and deductibles.

g. Increases paid by the employee in FY 11 under either the July 1, 2010-December 31, 2010 or January 1-June 30, 2011 reimbursement program will be cumulative for purposes of determining whether the employee reached the \$160 or \$420 ceiling in FY 2011.

The reimbursement of the amounts described above will be done under a reimbursement procedure established by the Treasurer/Collector's office. Compliance with the procedure is a condition precedent for reimbursement.

Any reduction in the reimbursement program on or after June 30, 2012 is subject to the Town meeting any bargaining obligation it has to implement the reduction.

The Town will make available and pay the administrative costs for a Flexible Spending Account (FSA) that covers medical expenses and dental care."

7. Article 16, Substation Assignments, sections 1(a), 1(c)-

- a. Section 1(a)- Change next to last sentence to read, "As determined by the Chief or his designee, firefighters shall report to the Central Station for training on desk and apparatus procedures."
- b. Section 1(c) - Change to read, "To be eligible for any assignment to a substation, an employee must have ten years in the Middleborough Fire Department or must have completed the basic recruit program at the Massachusetts Firefighting Academy or its equivalent as determined by the Chief."

8. ARTICLE 19, Section 2. Duration of Agreement-

Change first sentence to read as follows: At the request of the Town, the parties will continue to bargain about the terms and conditions under which the Town will employ firefighter-paramedics to enable the Department to provide Town emergency medical services at an ALS/Paramedic level. The bargaining will be done on a schedule to attempt to reach agreement by the deadline for the Town to accept a grant that is necessary to hire personnel to facilitate the Town providing the emergency medical services, but neither party waives any rights under M.G.L. c. 150E. At the request of the Union, the parties will bargain about wages in the second year of the Contract. Otherwise, the term of this Agreement shall be from July 1, 2010 through June 30, 2012. *usual*

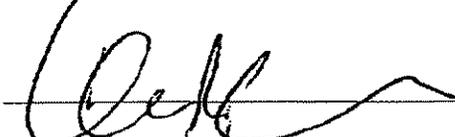
9. The Union withdraws its pending grievance and waives all claims related to past changes in health insurance.

*including the usual statutory provisions for the resolution of contract disputes between the Municipality and firefighters.*

MIDDLEBOROUGH FIREFIGHTERS  
ASSOCIATION

TOWN OF MIDDLEBOROUGH

  
\_\_\_\_\_  
7-7-11

  
\_\_\_\_\_  
7/7/11

\* *Equivalency will be determined by factors which include the following: training obligations, physical fitness requirements, class hours and other integral aspects of the Massachusetts Firefighters Academy Program.*

▶ August 29, 2011

Charles J. Cristofalo, Town Manager  
Town Hall Building  
10 Nickerson Avenue  
Middleborough, MA 02346  
508-947-0928  
Fax: 508-946-2320

Re: Town Hall Cupola Reinstallation and Dome  
Reinforcement

**Dear Charles:**

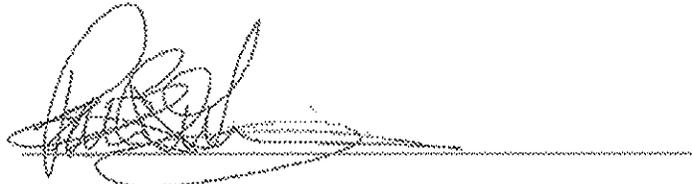
Our office has received the bid from Campbell Construction Group, LLC. This contractor was the single respondent among the three contractors who attended the pre-bid walkthroughs for the town hall cupola repair, reinstallation and dome reinforcement project. We reviewed the cited references in view of the project at the Town Hall and each of them clearly demonstrates a familiarity with the type of construction at the town hall, in fact the Gloucester City hall is a structure of similar architectural refinement and also involved work on a domed building.

We believe the bid price of \$189,500 is an appropriate value for the scope and scale of work. We do recommend the Town reserve a contingency value above the contract price of approximately 10-percent against unforeseen discovery during the course of work.

Please let us know of receipt of additional information that should be considered for this recommendation.

We request that should you concur with this recommendation that our office receive a copy of the Notice of Award for our records.

Sincerely,



Patrick Guthrie, RA, LEED BD+C

Project Architect