MINUTES

For approval at the 4-4-11 meeting

DRAFT

Middleborough Board of Selectmen **March 28, 2011**
Meeting Minutes

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

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

ANNOUNCEMENTS
Chairwoman announced that Saturday, April 2, 2011 is Election Day and encouraged residents to exercise their right to vote.

The meeting was aired live by Comcast and taped by Verizon and Comcast.

MINUTES
Upon motion by Selectman Spataro and seconded by Selectwoman Duphily, Board voted unanimously to approve 3/21/11 meeting minutes.

Upon motion by Selectman McKinnon and seconded by Selectman Rullo, Board voted unanimously to approve 3/14/11 meeting minutes with changes as discussed.

NEW BUSINESS
Upon motion by Selectman McKinnon and seconded by Selectman Rullo, Board voted unanimously to authorize Chairwoman to sign Initial Compliance Certification re Mary K. Goode School Green Repair program.

Upon motion by Selectman Spataro and seconded by Selectman McKinnon, Board voted unanimously to authorize Town Manager to participate in Designer Selection and Owners Representative Selection for the Mary K. Goode school repair project.

Upon motion by Selectwoman Duphily and seconded by Selectman McKinnon, Board voted unanimously to approve Town Hall rental request by the library for 4/19 & 4/22 with a waiver of fees.

Upon motion by Selectman Spataro and seconded by Selectman McKinnon, Board voted unanimously to approve the transfer of funds in the amount of $2,300 from a donation account under the Town Clerk's office to the Herring Fishery Commission's revolving fund that were initially intended to cover the expense of issuing herring permits. Board extended its appreciation to the Commission for its willingness to assist the Town Clerk's office with the cost of issuing these permits.

Town Manager explained need for Designer Selection procedure adoption. Board presented questions to, and were answered by, the Town Manager. Upon motion by Selectwoman Duphily and seconded by Selectman McKinnon, Board voted unanimously to adopt Designer Selection procedures.

HEARINGS, MEETINGS & LICENSES
Wayne Packard applicant for proposed manager of the VFW introduced himself to the Board. Mr. Packard informed Board that he was past manager of American Legion Post in Hanson. Upon motion by Selectman McKinnon and seconded by Selectman Spataro, Board voted unanimously to approve application for change of manager.

Edgeway Mobile Home Park Hearing
Hearing was continued from 1/24/11. Chairwoman announced that the (2) two-page documents submitted by Louisa brown and John & Margo King would not be accepted into evidence as exhibits in the hearing as an objection had been received. Upon motion by Selectman McKinnon and seconded by Selectman Rullo, Board voted unanimously to close the hearing. Chairwoman announced Board has had the opportunity to read through all of the documentation and get answers to any questions it had. Chairwoman noted Board would review all Findings & Facts in groups of five.

FINDINGS OF FACT (references attached)
Chairwoman read aloud #'s 1-5 followed by asking if any Board members would like to comment on these. Selectman McKinnon noted that Mr. Williams was asking for something in 2006 that he couldn't get simply because he didn't have a permit. Selectman McKinnon asked if that should be in there. Chairwoman believes it is listed down further. Selectman Rullo thinks it's appropriate to be in there as a Finding of Fact. Chairwoman inserted into document. Upon motion by Selectman McKinnon and seconded by Selectman Rullo, Board voted unanimously to approve first five findings of facts with inclusion of that which was just noted.

Chairwoman read aloud #'s 6-10. Deliberation and discussion ensued. Upon motion by Selectman McKinnon and seconded by Selectman Rullo, Board voted to accept #1-10.

Chairwoman read aloud #'s 11-15. Upon motion by Selectman McKinnon and seconded by Selectwoman Duphily, Board voted unanimously to accept #11-15.

Chairwoman read aloud #'s 16-20. Selectman Rullo noted that the owner attempted to increase rents, but after resistance by the tenants, the owner backed down. Chairwoman added to Findings of Facts document. Selectman McKinnon noted that the Affidavit from Heidi Balben indicates that Eubank moved into18 Lynn Lane in 1996, but that the Finding of Fact indicates something different. Town Manager verify date on that. Upon motion by Selectwoman Duphily and seconded by Selectman McKinnon, Board voted unanimously to accept #16-20.

RULINGS OF LAW (references attached)
Chairwoman read aloud Rulings of Law. After it was noted that the park had lost its license in 2004, it was asked how the park could be charging higher rents. Town Counsel herein further referred to as "TC" offered that it was his view that the matters are

distinguishable and separate and unrelated from each other. TC was asked what the consequences would be for the owner losing his license. TC responded that state statute provides for a penalty of $100 per day for each day that park remained open. No complaint was filed with Wareham District Court to impose the penalty. It goes to the Commonwealth just like any other criminal find. State statute and the Rent Board Rules & Regulations allow for change of rent rate upon change of ownership (tenant). Selectman McKinnon made point of reading aloud Ch.140, S. 32 A "Licenses", which states that you can't operate a park without a license. He noted that listed under #1, in the third line, 1999 had to be at least 1996. Chairwoman responded that it will be looked into. TC was asked what else could have been done if licensed were revoked, other than for criminal penalties. TC responded that at the time it was considered as to whether or not the Board had power to go to court to seek an injunction to shut down the park. It did not, but rather the $100 per day penalty was the sole remedy. In response to question posed by Selectman Spataro, TC explained that mobile homes are not allowed to be parked on just any piece of land/property as per zoning laws, unless grandfathered. Selectman McKinnon made point of order by reading aloud Code of Regulation Ch. 140, S. 32E, which, in summary, indicates the park owner must have a license to operate. Town Manager made observation. It (Code of Regulations) seems to imply that even if they lose their license, they still have to comply with all the other rules/laws. It implies they may lose their license, but still operate. The remedy is a fine, which the Town didn't pursue, unfortunately. Selectman McKinnon responded that they still have to obey the laws and shouldn't be able to increase rents while violating another law. Selectman Rullo noted that on a change of ownership he can re-negotiate rent rates and it happens in every mobile home park. Upon motion by Selectman McKinnon and seconded by Selectman Rullo, Board voted unanimously to accept Item #1 with change of 1999 to 1996 after researching.

#2 read aloud by Chairwoman. Upon motion by Selectman Rullo and seconded by Selectman McKinnon, Board voted unanimously to accept Item #2.

#3 read aloud by Chairwoman. Upon motion by Selectwoman Duphily and seconded by Selectman McKinnon, Board voted unanimously to accept Item #3. Selectman Rullo offered that the Board should talk about possibility of a general rent reduction in this park due to the failure of the owner to make ordinary repairs; not in this hearing, but in a separate hearing.

#4 read aloud by Chairwoman. Upon motion by Selectman Rullo and seconded by Selectwoman Duphily, Board voted unanimously to accept Item #4.

#5 read aloud by Chairwoman. Upon motion by Selectman Rullo and seconded by Selectman Spataro, Board voted unanimously to accept Item #5.

#6 read aloud by Chairwoman. Upon motion by Selectman McKinnon and seconded by Selectman Spataro, Board voted unanimously to accept Item #6.

#7 read aloud by Chairwoman. Upon motion by Selectman Rullo and seconded by Selectman McKinnon, Board voted unanimously to accept Item #7.

#8 read aloud by Chairwoman. Upon motion by Selectman Rullo and seconded by Selectman McKinnon, Board voted unanimously to accept Item #8.

#9 read aloud by Chairwoman. Selectwoman Duphily announced that she did not agree with this. Mr. Williams set parameters for himself through the flyer he distributed. Upon motion by Selectwoman Duphily and seconded by Selectman McKinnon, Board voted unanimously to strike # 9 as not in keeping with flyers that were distributed and to add that the park owner is in violation of Ch. 140 S. 32 A relative to the licensing. Chairwoman asked TC if this can be incorporated as part of this even though this hearing is relative to rents. TC responded that he thinks it is possible and proper to have a finding such as this in this hearing.

DECISION

Chairwoman read aloud. Chairwoman noted that there's a new owner at 133 Wesley Circle now. Chairwoman asked TC if the Board should order that the previous owner be rebated and if it can order a rebate be given to the existing owner since the time that they became new owner. TC responded that the Board can order the illegal increase be paid back to them and to the new tenant either through payment or credit towards future rent. Exact date is in one of the exhibits given to the Board. TC thinks it is at the discretion of the Board. Selectman McKinnon noted that he wants it specifically stated by the Board as to what is to be paid back. Town Manager recommended making the park pay the whole thing back.

Upon motion by Selectman McKinnon and seconded by Selectman Spataro, Board voted unanimously to rebate previous and current tenants, within 30 days, back to rate of $290 per month with confirmation that payment has been made.

Chairwoman asked what recourse is if the money is not rebated within 30 days. TC responded that a complaint can be brought Wareham District Court. TC is not sure there would be an appeal, which may or may not suspend the order.

Selectman McKinnon made motion that given the fact that park has been running for seven plus years without a license, and in direct violation of several laws, he would recommend that we reduce all of the rents to $280 per month back to 1/1/04 for all of the units, because the owner of the park is in direct violation of Ch. 140, S. 32 b and the Town's rent control laws and the license was revoked in 2004. Motion was seconded by Selectman Rullo for discussion. TC responded that there is no basis in the law to do that in this particular case. Selectman Spataro asked TC if the Board took as a separate action as Mr. Rullo suggested, could the Board take such action. TC responded that he thinks

it's arguable; probably yes, but would have to examine special statute and rules & regulations of the Board. Section three of the Special Act outlines specific factors you must consider. It doesn't proport to be a comprehensive list. Selectman McKinnon noted that a park owner has to have a license to operate based on all the laws that he has read tonight and rolling back the rent, will get the attention of the people who need to be doing what they should be doing. Chairwoman responded that TC says they can't tie together. Selectman Rullo noted that the Board could also take action in court to impose the $100 per day fine. Chairwoman responded that she thinks it's important to get all of those facts out in another hearing.
Town Manager informed the Board that he made a telephone call to the Attorney General's office today and briefed them on the issue and what the Board is doing, but doesn't think motion made by Selectman McKinnon can go forward with Findings of Facts. Town Manager recommended getting through the evening's material and right after decision is made, establish how Board will get owner's attention going forward. Amendment was withdrawn. One in favor. Four opposed. Motion did not carry.

Selectwoman Duphily noted that she spoke extensively with TC about all of this. The fact is that the park owner did not do the many things he should have, but TC recommended that a separate hearing should be set up. She told the tenants that they have not gotten full value for their money. Selectman Rullo suggested that the Board hold another hearing as quickly as possible, with reasonable cause, due to park owner not meeting requirements of his special permit, i.e., not completing roads, lighting, planting of trees, etc. We need the Building Inspector to initiate a zoning enforcement action for failure to comply. Chairwoman asked TC if the Board can encompass all that the park owner has not done as was required by his special permit. TC responded yes, and that it would be all encompassing. Selectman McKinnon offered that, with what he is proposing, if they don't comply with this opportunity, TC will file with Wareham District Court, and the Attorney General will find out how long they've been operating without a permit. TC noted that not everyone's rent was $280 in 2004, some were higher.

Upon motion by Selectman Rullo and seconded by Selectwoman Duphily, Board voted unanimously to accept Decision - Order, as amended, to include retroactive payment of rents for 133 Wesley Circle to prior tenant and current tenant in the amount of the applicable overpayment.

TC recommended Board form a committee of three to formulate a Memorandum of Decision based on Findings of Fact. Town Manager recommended immediately determining who would be on the committee. Upon motion by Selectman McKinnon and seconded by Selectman Spataro, Board voted unanimously to assign to Vice Chairman Rullo.

Upon motion by Selectwoman Duphily and seconded by Selectman Rullo, Board voted unanimously to hold another hearing to order overall rent decrease based on conditions of the park and failure to complete the park within a reasonable time.

Upon motion by Selectman McKinnon and seconded by Selectman Rullo, Board voted unanimously to authorize Zoning Enforcement Officer to take action on complaints for failure to complete special permit.

Selectman Rullo motioned to draft article for this Annual Town Meeting authorizing Board of Selectmen (BOS) to appt a separate Rent Control Board no later than 3/31/12. Motion seconded by Selectman McKinnon for discussion. Selectman McKinnon thinks we need a liaison from the BOS to serve on that Board. Town Manager recommended that Board authorize it to be put on ATM warrant for further discussion. It can always be removed. Motion and second withdrawn with agreement to just draft for warrant.

Upon motion by Selectman Spataro and seconded by Selectman McKinnon, Board voted unanimously to file complaint in District Court to impose a fine for failure of Park owner to procure an appropriate license for the park. TC noted that the judge can determine fine amount up to $100.

Chairwoman announced to Edgeway residents that they will be notified of next hearing. Upon motion by Selectman McKinnon and seconded by Selectman Rullo, Board voted unanimously to tentatively set hearing for 5/2/11.

Town Manager will work on drafting letter to Building Commissioner.

John King, 64 Lynn Lane, Edgeway Park, addressed Board and mentioned many veterans are living in the park and he just wanted to thank the Board for its attention to this matter.

BUDGET REVIEWS

Board met with department heads and reviewed budgets as follows:

- Finance Committee
- Law Department
- Library
- Historical Commission
- Park Department
- Veterans' Services
- Zoning
- Council on Aging
- Highway Department
- Water Enterprise System
- Wastewater Enterprise System

TOWN MANAGER'S REPORT
Town Manager noted letter from Town Moderator re his appointment of Catherine MacDonald to Citizens Environmental Health Impact Committee.

Town Manager noted letter from Executive Director of MMA addressing criticisms he's heard lately about MIIA's plan designs and potential conflicts of interest, of which there are none.

Board discussed the revised draft of Town Clerk's job description. Upon motion by Selectman Rullo and seconded by Selectman McKinnon, Board voted unanimously to change Town Clerk's position to report administratively to the Town Manager, upon hire of new Town Clerk.

Town Clerk's certification takes some time per Town Manager, and will clarify language so that applicants understand that they don't have to start with the certification, but they will be responsible to become certified. It took present Town Clerk three years to obtain certification. Town Manager will verify so that a reasonable amount of time is allotted for new Town Clerk. Upon motion by Selectman Rullo and seconded by Selectman McKinnon, Board voted to approve Town Clerk job description with changes as discussed. Unanimous. Town Manager noted that they have received twelve resumes thus far.

Town Manager noted Homestead Protection Law changes relative to manufactured homes.

CORRESPONDENCE
#4 Selectman Rullo noted change in liquor license laws.

#1 Selectman McKinnon noted DOR Local Option Personal Exemptions re guardsman and reservists. Upon motion by Selectman McKinnon and seconded by Selectman Rullo, Board voted unanimously to put on warrant for 100% waiver.

#10 Selectman McKinnon noted Grants Administration Training 5-16 & 5-17-11, Rhode Island. Board requested it be distributed to department heads.

Selectwoman Brunelle brought up letter she received from resident James Ellis and offered her appreciation of his concerns and pride in the community.

Selectwoman Duphily noted that an email was received from Michael Solimini re ATR cover. Selectwoman Brunelle asked Town Manager to send something to school or put it on his calendar and have someone at the school coordinate Mr. Solimini's request to have school students submit artwork for consideration of next year's ATR cover.

Board had brief discussion re draft of Selectmen's annual Town report. Chairwoman asked if Board had anything else it wanted to add. Board members noted that they were satisfied with what Chairwoman had drafted.

OTHER

Board Rules & Procedures

Selectman Rullo asked if Board would consider voting to accept part of the drafted guidelines so as to have a procedure to follow at its first meeting following elections. Upon motion by Selectman Rullo and seconded by Selectman McKinnon, Board voted unanimously to adopt the "Election of Officers" section as drafted.

Chairwoman announced Selectwoman Duphily would like to remove the suggested text re revisiting & rescinding under the "Voting" section. Upon motion made by Selectman McKinnon and seconded by Selectman Spataro, Board voted unanimously to discuss at a later date.

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

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Jackie Shanley, Confidential Secretary
BOARD OF SELECTMEN

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.

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 promotional flyer advertising the availability of accommodations at the Park (Board Exhibit B-5) is not a regulation or limitation of rent in the Park under the Rent/Eviction Law nor is it an order of the Board under the Rent/Eviction Law.

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.

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Town of Middleborough Rent Board