



TOWN OF MIDDLEBOROUGH OFFICIAL MEETING POSTING

NAME OF PUBLIC BODY: Board of Selectmen/Rent Board

DAY AND DATE OF MEETING: Monday, July 9, 2012

TIME OF MEETING: 7:00 PM

LOCATION OF MEETING (INCLUDING ADDRESS): Town Hall, 10 Nickerson Ave.

MEMBER OF PUBLIC BODY POSTING MEETING: Jackie Shanley, Confidential Secretary

POSTED BY TOWN CLERK'S OFFICE: July 3, 2012 @ 8:48am LH
Revised July 5, 2012 @ 4:01pm (JF)

*FOR CANCELLATIONS

MEMBER OF PUBLIC BODY CANCELLING MEETING: [Type text]

CANCELLATION POSTED BY TOWN CLERK'S OFFICE: DATE: TIME:

REVISED AGENDA

- 1. Pledge of Allegiance
2. Unanticipated
3. Announcements & Recognitions
4. Minutes: (To be voted on 7/23/12)
5. New Business:
1. Vote to approve SERSG Regional Administrator as Special Municipal Employee.
2. Vote to request mitigation funds from Mashpee Wampanoag Tribe.
3. Vote to authorize the use of the Town Hall lawn for Krazy Days activities.
4. Vote to authorize the Town Manager to consult Robert Garrity Esq. regarding designer selection for the Police Station feasibility study in an amount not to exceed \$2,000.
5. Vote to hold the fall Special Town Meeting on Monday, October 1 with Friday, August 17 the deadline to submit articles.
6. Hearings, Meetings, Licenses
7:20 PM Mimi Duphily re "No Parking" signs in downtown area.
7:25 PM Hillcrest MHC, LLC Public Hearing - Petition for Rent Increase (continued from 6/25/12)
7:30 PM Hillcrest Petition for Eviction
8:00 PM Edgeway Mobile Home Park Matter (continued from 6/25/12)
8:15 PM Public Hearing - Dave's Diner re Alteration of Premise.
8:30 PM Public Hearing - Harry's Pub re Alteration of Premise.
8:40 PM Center Ave., LLC, d.b.a. Center Ave. Cafe re Application for Pledge of license.
7. Unfinished Business
8. Town Manager's Report
9. Correspondence
10. Executive Session - Pending Litigation - Dispute with Mashpee Wampanoag Tribe and Collective Bargaining - Employee disciplinary matter.
11. Adjourn.

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

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

UNANTICIPATED

Selectman Frawley noted that the 5th Annual Travis Albert Circle of Friends Poker Run will be held on Saturday, August 4th. Tickets are for sale at Century 21 North Main Street, Carver and at Andrew's Family Automotive at 79 Main Street, Lakeville. This event is to be held at the PATC in Taunton. This is a memorial scholarship for high school students.

Selectman Frawley asked the Town Manager to look into the intersection of Cedar, Plympton, and Carmell Streets where the incident took place as he heard from a number of people in the area that it's getting out of control with car burn outs, traffic, and dangerous activity. Town Manager agreed noting an informal roadside shrine there due to a death in that location. It attracts and perpetuates that type of behavior. He has taken Chief Gates there in the past to look at. He suggests a policy be put in place indicating that these shrines be taken down after a certain period of time so as to not take away from the homes in the area. Selectman McKinnon doesn't think roadside shrines should have a policy, but we could have police patrol area for those who are burning out with tire marks. Town Manager will review with Police Chief.

Mark Belanger asked if we've heard back yet from the A.G. re the Voter I.D. Bylaw. Town Manager responded that we didn't get anything in writing, other than from the State Elections division just prior to Town Meeting. Mr. Belanger thinks it is incumbent of the Town to share that information with the voters prior to voting on something illegal. Brian Giovanoni responded. Mr. Belanger asked Mr. Giovanoni if the petitioners of the article had the information prior to Town Meeting to which he answered, yes, at approximately 6:15 PM.

Selectman McKinnon noted that the 4th of July parade was a success. He further noted that there had been a tragic accident that evening. He thanked all emergency personnel who were involved with this matter.

MINUTES

None.

NEW BUSINESS

Upon motion by Selectman McKinnon and seconded by Selectman Frawley, Board voted unanimously to pass SERSG Regional Administrator appointment as Special Municipal Employee by Town Counsel.

Selectman McKinnon suggested adding language to letter to Tribe re mitigation funds that they are delinquent by two years and to include copies to the BIA and the Governor, and all pertinent people. Upon motion by Selectman Frawley and seconded by Selectman McKinnon, Board voted unanimously to do so.

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Krazy Days matter this agenda was cancelled.

Town Manager explained process for designer selection and feasibility study re new Police station. He has known Mr. Garrity for years and this is his specialty. Upon motion by Selectman Spataro and seconded by Selectman Frawley, Board voted unanimously to authorize the Town Manager to consult Robert Garrity, Esquire, re designer selection for the Police Station feasibility study in an amount not to exceed \$2,000.

Upon motion by Selectman McKinnon and seconded by Selectman Frawley, Board voted unanimously to hold the fall Special Town Meeting on Monday, October 1, 2012 with Friday, August 17th as the deadline to submit articles. Board agreed to post to web and distribute to departments, committees, and boards.

HEARINGS, MEETINGS, LICENSES

“No Parking” signs – Downtown area

Mimi Duphily addressed Board to discuss “No Parking” signs in the downtown area. She serves on the Downtown Beautification Committee. She clarified that everything done, is paid for through donations and not through taxes. She would like to see these signs removed from the downtown area. She believes that they are not being enforced anyway. She has spoken with the DPW Director, the Chief of Police, the Town Manager, and the MG&E. She asked that the Board take a look at and consider her request. Chairman Rullo offered that he had discussed the matter with the Town Manager. They agreed that some of the signs could possibly be moved up higher on their brackets. Town Manager had some removed last year that appeared to be redundant. He feels that having no signs would cause a problem, not allowing parking spaces for downtown shopping. The signs help to avoid gridlock. Chairman offered that the Board would take under advisement and will discuss at future meeting. Selectmen McKinnon and Frawley confirmed that the Police department does, in fact, issue tickets.

Hillcrest MHC, LLC Public Hearing from 6/25/12

At 7:25 PM Chairman continued Hillcrest MHC, LLC Public Hearing from 6/25/12. Chairman noted that all information requested by the Board has been received. Upon motion by Selectman Frawley and seconded by Selectman McKinnon, Board voted unanimously to close the hearing. Chairman noted that the Board would now begin discussion and deliberation on the matter and noted it is for the Board only. The Chairman would not be taking questions/comments from others. The Board may not make a decision this evening, but rather take under advisement. Chairman reviewed his handout “Draft Calculation Hillcrest Rent Increase, Average Three Years, 2010 thru 2012”. Selectman Frawley thanked the Chairman for the time and expertise he contributed in determining these calculations. He agreed with the Chairman’s calculations. Selectman Spataro noted that he cannot participate in voting on this matter. Selectman McKinnon offered his appreciation to the Chairman for his contributions in formulating these calculations. He further noted his observations of the material that had been presented to the Board throughout the hearings on this application for rent increase. He noted that the Chairman’s recommendation represents a 20% increase in year one and year two, however, he noted that residents will most likely not receive a 20% increase in income each of those years. He recommended a \$38/year increase, specifically noting that the owner waited ten years to apply for this request and should be

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responsible for its own business model. Chairman noted that the regulations require this Board to allow owners to earn a fair market value and that the Board must ensure that the Park is being run appropriately. In his opinion, it would be unfair to drop the rate that low as it would not allow the owner to earn a fair return. Selectman Frawley suggested an increase of \$77 divided over a period of three years. Selectman McKinnon reiterated his position relative to much of the financials that had been presented. He also questioned why the owner didn't come in sooner. He agreed to go along with the \$77/month increase over three years. Selectman Spataro noted that it is a fair return today, but with inflation, it would not be over the following two years. He also applauded the Chairman for his work with the financial calculations. Chairman did note that it was the owner who failed to repair the water meter and that is why he adjusted the figures regarding the meter usage. He also acknowledged that an increase for the residents is difficult, however, noted that it has been 16 years since they have had one. He agreed he could agree with a three-year spread. Upon motion by Selectman Frawley and seconded by Selectman McKinnon, Board voted \$26/month over three years. Three in favor. S. Spataro abstained. Upon motion by Selectman McKinnon and seconded by Selectman Frawley, Board voted to authorize Chairman to draft the Decision with Town Counsel. Three in favor. S. Spataro abstained. Chairman announced the Decision would be released within the next 30 days.

Hillcrest MHC, LLC Application for Certificate for Eviction of resident William Kupchun

At 7:51 PM Chairman opened public hearing on the application made by Hillcrest MHC, LLC for a Certificate of Eviction by reading aloud the public hearing notice. Chairman reviewed the procedures by which the hearing would be conducted. Chairman noted that he does not anticipate tonight's hearing to be continued. Board took brief recess to allow witnesses to sign the appearance sheet. Chairman continued hearing at 8 PM. Attorney Joseph Kelleher addressed Board and reviewed purpose of application by Hillcrest MHC, LLC. He noted he has an updated Tenant Statement (Owner Exhibit #1). Attorney Kelleher advised the Board that Mr. William Kupchun is behind in his rent in the amount of \$3,631.00 and of steps taken in an attempt to get into a payment plan with resident William Kupchun. At certain points, they would not receive agreed upon payments, and at others, they would receive checks that would bounce. He offered that the Park has received complaints from other residents of activities at the address of Mr. Kupchun that have been disruptive to other residents in the Park.

William Kupchun addressed Board and noted that he had submitted a packet to the Board this evening, including documentation from three neighbors indicating that they haven't heard any disruptive noise from his residence. He gave the Board a history of his living at Hillcrest. He offered that he originally moved there to live with his brother. His brother passed away and he met up with some people who he extended an open door to, but he told them to move on in March. He has had some financial difficulties. He noted that nobody notified him of noise issues, until he received a letter from Attorney Kelleher. He noted a couple of checks he had sent for rent payments and they were returned to him. Chairman explained it was due to insufficient funds. He went to Harbor One to establish direct payments, but the bank told him they would need to hear from Hillcrest, MHC, LLC. He offered that he is suffering from some physical and psychological difficulties and noted that his son is now handling his finances. He does have some payments that he is ready to make. Chairman noted the documents that had been provided to the Board by Hillcrest, MHC, LLC (Exhibits #B1-B5). Attorney Kelleher offered that the only documents they intend to submit have been submitted, but asked the Chairman if he could ask questions of Mr.

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Kupchun. Mr. Kupchun agreed. He asked Mr. Kupchun if he had been served with a Notice to Quit on 4/4/12. Mr. Kupchun could not recall, however, he did acknowledge his signature on the Certified Mail receipt when shown by Attorney Kelleher. Attorney Kelleher asked Mr. Kupchun if he recognized the amount of rent he owes. Mr. Kupchun offered that he does not dispute what he owes in rent. Betty Wadsworth was questioned by Attorney Kelleher. She was asked if she had received complaints. She answered yes, specifically, that there were young girls coming and going from his home all hours of the night offering services. She received an unsigned letter referencing traffic and she doesn't know if that means vehicles or drug trafficking. She noted complaint dated February 2012 from resident regarding gasoline being siphoned from their vehicles. Attorney Kelleher presented as (Owner Exhibit #2). Selectman McKinnon questioned accepting these letters, especially those that are unsigned as exhibits. Chairman allowed, noting that it will be up to the Board as to the weight it gives the letters. Chairman asked Ms. Wadsworth the time in which the complaints were received. She said over a period of time and it was investigated over a period of months. Chairman noted that none of the residents allegedly filing these complaints were present tonight to which she answered no. In response to question by Selectman Frawley, Attorney Kelleher indicated that a search warrant had been issued by the Middleborough Police department, however, it was agreed upon that the reason for the search was not for reasons of violation of the Rent Rules & Regulations. Mr. Kupchun addressed Board and agreed he is in arrears of rent. He went to two banks to try and get out of his financial situation, but was denied by both. He would like to arrange for a payment plan. Chairman explained that the Board does not have the authority to take part in agreeing to a payment plan, but to decide if an eviction is warranted. Attorney Kelleher offered that they are willing to work with a payment plan, but they would like to do that through a court order. Mr. Kupchun made closing statement that he agrees with obtaining a court order to establish a payment plan. Attorney Kelleher offered he is willing to withdraw on the rules violation, based on the testimony tonight that Mr. Kupchun has admitted he is behind on rent. Upon motion by Selectman Spataro and seconded by Selectman Frawley, Board voted unanimously to close the hearing. Chairman noted that the Park Owner has cited two reasons for eviction – rent and violation of Park rules. The resident has admitted to being in arrears in rent, which is sufficient to issue the Certificate of Eviction, however, they have withdrawn the violation of Park rules. Upon motion by Selectman Spataro and seconded by Selectman McKinnon, Board voted unanimously to issue the Certificate of Eviction. Chairman encouraged a settlement be worked on and noted that the Certificate will be issued. Upon motion by Selectman Spataro and seconded by Selectman Frawley, Board voted unanimously to authorize Chairman to work with Town Counsel on drafting a Decision.

Edgeway Mobile Home Park Matter (continued from 6/25/12)

At 8:35 PM Chairman continued the Edgeway Mobile Home Park matter from 6/25/12. Attorney Gerard Marsan addressed the Board. He reviewed the status of the Punch list and noted the Punch list provided today through Prime Engineering and requested that the Board close the matter. In response to Selectman McKinnon, Town Manager explained that based on the Settlement Agreement, we have to issue the Park its license. Chairman noted we signed an agreement that they complete Phase I to improve the condition of the Park. With the certification by Prime Engineering, it is evident that Phase I is complete. We are obligated by the Settlement Agreement to close this hearing, rule in favor not to roll back rents, and ask the Health department to issue the Park license for 2012. By 9/15/12 the retaining wall and all plantings must be complete. Selectman

Spataro asked Attorney Marsan if they intend to sell any units, to which he replied that if they sell any, the agreement is that the money goes into an Escrow account and funds put towards what is left to be done in the Park. Upon motion by Selectman Spataro and seconded by Selectman McKinnon, Board voted unanimously to close the hearing. Selectman Frawley still thinks things are not done because downspouts are on upside down. Chairman moved to deliberation and discussion. He noted that the Park owner met the requirements under the court ordered agreement and now this Board must abide by its responsibilities under this agreement. Selectman McKinnon reviewed the timeline of the entire Phase I process. He offered that this all could have been done last year if the Park Owner hadn't dragged his feet. He doesn't have a lot of faith that Phase II will go smoothly. He acknowledged that the residents have been through a lot throughout this process. He motioned to roll back the rents by \$10/month based on what the residents have been through. Chairman agreed that the residents were treated miserably by the Park Owner, but noted that the justification for rent rollback being proposed by Selectman McKinnon does not fall within the Rules and Regulations. Selectman Frawley likes the idea of rolling back rents, but agrees that the Board can't based on the settlement agreement. He would be in favor, however, that if the Board has to take the Park license away again in the future, it invoke the \$100/day penalty fee upon the Park owner. Chairman reminded Attorney Marsan that the Board and the residents will be paying attention as things move forward and if they do not follow through, they will be back before the Board. Selectman Spataro offered that these are homes and not apartments with ease of moving. He acknowledged that the tenants did due diligence, but also offered that the Town Manager deserved recognition. He additionally recognized Attorney Marsan, referring to him as having acted in the capacity similar to a Project Manager. Selectman McKinnon withdrew his motion. Upon motion by Selectman Spataro and seconded by Selectman McKinnon, Board voted in favor of not rolling back rents due to condition of the Park and to ask the Health department to issue the Park license for 2012.

Upon motion by Selectman Spataro and seconded by Selectman McKinnon, Board voted unanimously to authorize Chairman to work with Town Counsel to draft an opinion. Chairman noted that the Board, as the Board of Health, it would not support selling of units without required upgrade of septic system.

Dave's Diner – Alteration of Premises

At 9:02 PM Chairman opened public hearing on the application made by Dave's Diner, Inc., d.b.a. Dave's Diner for an Alteration of Premises by reading aloud the public hearing notice. Chairman welcomed David Fisher, owner of Dave's Diner who explained that he would like to have the patio included in the description of the liquor license. Chairman asked if anyone had any comments/questions. Hearing none, Chairman declared hearing closed. Upon motion by Selectman Frawley and seconded by Selectman Spataro, Board voted unanimously to approve.

Harry's Bar & Grille – Alteration of Premises

At 9:05 PM Chairman opened public hearing on the application made by HTF, Inc., d.b.a. Harry's Bar & Grille for an Alteration of Premises by reading aloud the public hearing notice. Owner, David Fisher explained that he would like to have the patio included in the description of the liquor license. Chairman asked to hear further comments/questions. Hearing none, Chairman declared hearing closed. Upon motion by Selectman McKinnon and seconded by Selectman Frawley, Board voted unanimously to approve.

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Center Ave., LLC, d.b.a. Center Ave. Café, 160 Center Ave. – application for Pledge of License.

Upon motion by Selectman McKinnon and seconded by Selectman Frawley, Board voted unanimously to approve.

TOWN MANAGER'S REPORT

Town Manager noted proposed Terms for Permanent Cable Committee Members. This will be a future agenda item.

CORRESPONDENCE

#2 EOEa – Selectman McKinnon commented on Non-Compliance/Dam Safety Order-Stoney Brook Pond Dam correspondence.

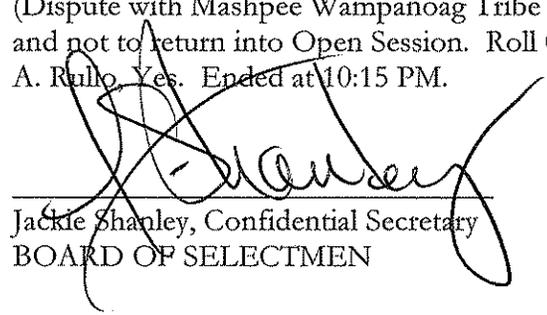
#1 Selectman Frawley noted Land into Trust application/Town's non-support of application letter from Paula Hart, Director of Indian Gaming. He suggested asking all members of our delegation to try and get a copy of this document. Adam Bond offered that he talked to Becky at BIA in Mr. Keel's office, trying to track down FIA request. Becky said it would be about 10 days before anybody gets the Land into Trust documents. If we can get Senator Brown or anyone at Federal level to move things along, it would be helpful. He asked the Board if it would entertain asking Mr. Keel to speak with surrounding communities and explain what the actual ramifications are so we understand our rights under Federal guidelines as this is in Federal hands right now. He's asking the Board to consider writing him a letter. He suggested sending a letter around to surrounding communities involved. Upon motion by Selectman Spataro and seconded by Selectman McKinnon, Board voted unanimously to issue letter.

#3 Selectman Frawley noted correspondence from Representative Orrall's office re Mitigation meeting on 7/12/12 from 3 – 6 PM. Chairman will attend with either the Town Manager or Ruth Geoffroy. Selectman Frawley will also attend.

#5 Selectman Frawley noted correspondence from Conservation Commission re Rockland Industries site. Town Manager volunteered to call the State and ask where the report is.

#8 Chairman noted that the Town Clerk's office has a vacancy. Those interested should contact the Town Clerk's office.

Upon motion by Selectman McKinnon and seconded by Selectman Spataro, Board voted by Roll Call to go into Executive Session at 9:26 PM to discuss strategy relative to Pending Litigation (Dispute with Mashpee Wampanoag Tribe and Collective Bargaining (employee disciplinary matter) and not to return into Open Session. Roll Call: S. Spataro, Yes; A. Frawley, Yes; S. McKinnon, Yes; A. Rullo, Yes. Ended at 10:15 PM.



Jackie Shanley, Confidential Secretary
BOARD OF SELECTMEN