

MINUTES

For approval at the 3-12-12 meeting

Please note that 3/5/12 Executive Session minutes will be voted on 3/19/12.

Thank you.

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

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

The meeting was broadcast live by Verizon and MCCAM and recorded by MCCAM.

UNANTICIPATED

None.

ANNOUNCEMENTS/RECOGNITIONS

An Animal Clinic will be held on 4/1/12 at the South Middleborough Fire Station from 1 PM to 4 PM.

MINUTES

Upon motion by Selectman McKinnon and seconded by Selectman Frawley, Board voted to approve 2/27/12 meeting minutes. Three in favor. Selectman Rullo abstained.

Upon motion by Selectman McKinnon and seconded by Selectman Frawley, Board voted unanimously to approve 2/13/12 Executive Session meeting minutes.

Upon motion by Selectman McKinnon and seconded by Selectman Frawley, Board voted to approve 2/27/12 Executive Session meeting minutes. Three in favor. Selectman Rullo abstained.

NEW BUSINESS

Upon motion by Selectman McKinnon and seconded by Selectman Quelle, Board voted unanimously to approve and authorized Chairman to sign Stantec Work Authorization form for surveying & Outback Engineering Proposal for Engineering Services re route 44 Boundary Survey.

Upon motion by Selectman Quelle and seconded by Selectman McKinnon, Board voted unanimously to approve the installation of Stop sign on Cherry Street, eastbound at Sachem Street.

Upon motion by Selectman Frawley and seconded by Selectman McKinnon, Board voted unanimously to set Annual Town Meeting for 6/11/12 and 6/12/12 as carryover date.

Upon motion by Selectman McKinnon and seconded by Selectman Frawley, Board voted unanimously to designate the MG&E Commission members as Special Municipal Employees.

Upon motion by Selectman Frawley and seconded by Selectman McKinnon, Board voted unanimously to approve the 6th annual Patriot Half Triathlon (use of Town roads only) on 6/16/12.

Upon motion by Selectman Quelle and seconded by Selectman Frawley, Board voted unanimously to approve One-day Wines & Malt beverages liquor license for The Bartending Service of N.E. for 3/30/12 @ The Alley Theatre from 6 PM to 11 PM.

**Middleborough Board of Selectmen
Meeting Minutes**

March 5, 2012

Upon motion by Selectman McKinnon and seconded by Selectman Frawley, Board voted unanimously to approve a One-day Wines & Malt beverages liquor license for The Bartending Service of N.E. for 4/13/12 @ The Alley Theatre from 6 PM to 11 PM.

Upon motion by Selectman McKinnon and seconded by Selectman Frawley, Board voted unanimously to approve Town Hall rental application for Miss Mass Scholarship Pageant for 3/25 & 4/29/12.

HEARINGS, MEETINGS, LICENSES

Ken Maddigan addressed Board requesting permission to hold a Middleborough Youth Softball League parade on 4/21 with a rain date of 4/22 with all of the kids, parents and coaches. Upon motion by Selectman McKinnon and seconded by Selectman Frawley, Board voted unanimously to approve.

Town Accountant Steve Dooney addressed Board to present his Six-month Financial Report for period ending 12/31/11. Finance Committee member Sue Dube addressed Board and asked when we will be having a discussion re pensions. She offered that she had met with State Treasurer Grossman and asked him why they Town can't go to the state for its pension much like it is with the G.I.C. Health Insurance program. She noted that the State Treasurer indicated that the Towns are allowed to do that, except for the two counties that have county run plans. She asked that we look at the possibilities. She formally requested Town Manager look into whether or not Bank of New York Mellon was ever the custodian for any foreign currency exchange for the Town. They are being investigated for overcharging seven times more than industry average on non-negotiated foreign exchanges. Chairman noted that the Town Manager will look into. Chairman thanked Mr. Dooney for his report.

At 7:30 PM Chairman opened hearing re Title V Variances for 19 Lakeway. Health Officer J. Spalding addressed Board to explain request with Outback Engineering. Engineer Nyles Zager addressed Board to review engineering plans. Discussion ensued. Chairman asked to hear questions/comments by abutters /audience. Hearing none, Chairman declared hearing closed. Upon motion by Selectman Frawley and seconded by Selectman McKinnon, Board voted unanimously with the following conditions:

- The owner or his agent of 19 Lakeway contact owners with the wells less than 100 ft. from the proposed system to conduct well test at the applicant's expense.
- Deed restriction for a two bedroom be registered on the deed.
- Reduction of the required setback between the proposed leaching field and existing private water supply well from 100' to 75' on 19 Lakeway (Locus) per 310 CMR 15.405(1)(g).
- Reduction of the required setback between the proposed leaching field and existing private water supply well from 100' to 85' on 22 Lakeway per 310 CMR 15.405(1)(g).
- Reduction of the required setback between the proposed leaching field and existing private water supply well from 100' to 65' on 33 Lakeview Terrace per 310 CMR 15.405(1)(g).

- Reduction of the required setback between the proposed leaching field and existing private water supply well from 100' to 65' on 31 Lakeview Terrace per 310 CMR 15.405(1)(g).
- Reduction of the required setback between the proposed leaching field and existing private water supply well from 100' to 75' on 29 Lakeview Terrace per 310 CMR 15.405(1)(g).
- Reduction of the required setback between the proposed leaching field and existing private water supply well from 100' to 60' on 12 Terraceway per 310 CMR 15.405(1)(g).

TOWN MANAGER'S REPORT

Town Manager noted correspondence from Blue Cross Blue Shield informing the Town that it will be recognized as a Municipal Innovations Award Winner. Presentation dates, times, and locations to be determined.

Town Manager summarized that correspondence from DPW Director re Rte. 44 Bridge over Rte. I-495 indicates that the problem is almost over. This is confirmation that the broken pipe is now out. We held our ground and held those responsible for breaking the pipe to repair it.

Town Manager noted that there will be a Pre-construction Conference at the District 5 MA Highway office on Thursday, 3/15, at 10 a.m. re the contract consisting of drainage mitigation and improvements at Mayflower Avenue, East Main and Spencer Streets adjacent to the Nemasket River. This is a good indication that the improvements project is about to begin.

Town Manager learned at a meeting with MA Highway that they have put a fence around the old gas station at the Rotary providing for some protection.

Town Manager informed Board that Friday had been the deadline to receive proposals on Washburn Mill site. None were received. We will have to re-group. Town Manager noted that we may need to also put a fence around this area.

CORRESPONDENCE

#7. Selectman McKinnon noted that Middleborough Mess Movers will be conducting Town Clean-up of trash on multiple dates, beginning 4/21 from 9 a.m. to 11 a.m. He asked if the group has a website. Mark Belanger addressed question by responding that he does not believe they have a website, but only an email address and are on Facebook.

#6. Board's Secretary to ask the Town of Dighton for further details regarding its invite to the Board to attend its Centennial Parade on 9/22/12.

#4. Joan Shurtleff addressed Board and read aloud her statement regarding C.P.I. Selectman Frawley offered the attached response. Eleanor D'Angelis addressed Board to clarify that Ms. Shurtleff is not speaking for her or for Oak Point in general. B. Giovanoni asked if Board might

**Middleborough Board of Selectmen
Meeting Minutes**

March 5, 2012

open the warrant next week to possibly place an article on the Warrant to appoint a separate Rent Control Board. Board members offered responses.

Upon motion by Selectman McKinnon and seconded by Selectman Quelle, Board voted unanimously to move Tobacco Regulations hearing to 3/26/12 at 7:30 PM as preferred by MYA.

Jane Lopes addressed Board, speaking on behalf of Soule Homestead's Recycling Event on 4/7/12. Upon motion by Selectman Frawley and seconded by Selectman Quelle, Board voted unanimously to approve placement of advertising sign on the Town Hall lawn.

At 8:10 PM Board voted by Roll Call to go into Executive Session to discuss strategy relative to Pending Litigation and Non-Union Contract Negotiations and not to return into Open Session. Roll Call: S. McKinnon, Yes; B. Quelle, Yes; A. Frawley, Yes; A. Rullo, Yes. Ended at 9 PM.

Jackie Shanley, Confidential Secretary
BOARD OF SELECTMEN



Memo: Please give Middleborough Selectmen Alfred P. Rullo

Date: Monday 2/27/2012

Time: 12:05 PM

From: Joan M. Shurtleff

) selectmen:
7 This arrived after I
J left office for daytime
hours. It was therefore
not seen by me until
Tuesday, 2/28/12.
Jackie



Joan Shurtleff <jms91244@gmail.com>

Re: Middleborough Board of Selectmen Agenda for 2/27/2012

1 message

Joan Shurtleff <jms91244@gmail.com>

Mon, Feb 27, 2012 at 11:58 AM

To: Ben Quelle <selectmanquelle@middleborough.com>, Selectman-Allin Frawley <selectmenfrawley@middleborough.com>, selectmanMckinnon@middleborough.com, selectman-Steven Spataro <selectmanSpataro@middleborough.com>

To the Middleborough Board of Selectmen:

Many of us at Oak Point feel that you do not truly understand the reason that we are questioning the application of an uncapped CPI Escalator to the tenants of the Park, and why we believe that it violates both the spirit and the letter of the Rent Regulation law.

Background of the Rent Regulation Act

The Act itself provides the best reason for its having been enacted. As it says, there is an emergency regarding landlords increasing rents to levels that are not affordable, "particularly for the elderly." This phrase is in the Act, as we believe that Middleborough and the Legislature understood that "the elderly" — like the tenants at Oak Point — are on a fixed income and cannot afford many rent increases. In fact, as you all know, Oak Point, as a 55 and older community, specifically targets the elderly. They do this because Towns prefer and older community that brings no children to schools. In targeting the elderly as its demographic, Oak Point also is aware of the limited income of its tenants. The point is that everyone involved understands that the Oak Point tenants cannot take regular and automatic rent increases and still live in the park.

The Board's Duty Under the Act

As a result of the above known facts, the Act places the burden on the landlord to demonstrate entitlement to a rent increase, and places on the Board the duty to review the requested increase to see if it is justified under the totality of the circumstances. Allowing a landlord to simply have an automatic and uncapped CPI increase is simply allowing a landlord to avoid any proof on the issue at all, and puts all the burden on the Tenants to come in and prove that the rent is too much. We are in our golden years, and such fights are simply too expensive for us. Moreover, by allowing an uncapped CPI escalator, the Board has chosen to abdicate its authority to the landlords and it is failing in its primary duty to review all proposed rent increases. The Board, in its apparent desire to get away from the rent regulation work that is needed, has decided that it will simply skip its duty to protect the tenants of Oak Point. It has essentially told landlords that if they write a lease with an automatic escalator clause, then the Board will ignore its duty, and the landlord

can simply keep raising rents.

The CPI Escalator is Not Fair when Actually Applied

Most of the Board does not think much of the CPI Escalator, presumably because it gives the landlord some small increase in rent. Many of us have had our base rent increase by at least \$10.00 (low estimate) per month. This seems pretty small to the outsider. However there are 800+ units at Oak Point. A \$10.00 per month increase (a 2% CPI on a \$500/mth), means an \$8000.00 per month increase in revenue to Oak Point. In one Year, this means that Oak Point has increased its revenue by almost \$100,000 without ever showing any increase in expenses or addition to services. They just get the increase— which compounds based on the prior year base rent. So in the next year, the increase would be \$10.20 (2% CPI on the \$510/mth rent). This now provides for a rent of \$520.20/mth, which generates NEW revenue to Oak Point of \$97,920, in addition to the \$96,000.00 in the prior year. In two years, Oak Point gets a revenue increase of almost \$200,000, and has never had to prove any increase in expenses or addition to services. Left to the uncapped CPI Escalator, the tenants are stuck with automatic rent increases that compound, with absolutely no intervention by the Board, because — by the Board's thinking — a landlord can simply write out the powers of the Board by inserting an escalator clause. This is a ridiculous proposition.

The Tenants Read The Contracts Before Signing

This is a silly (Red-Herring issue) error in logic intended to be misleading, or a distraction from the topic in order to make it an irrelevant issue. The tenants are not saying they did not read the agreements before signing them. The tenants do not believe that the agreements comply with the spirit of the letter of the Act, and that the CPI clause is unenforceable because it excludes from the rent increase process the only body that has jurisdiction to grant an increase. The tenants were not legal experts on the Rent Control Law when they moved in, and the Board certainly did not have any real, understanding of their powers and obligations under the Act until recently. For the Board to simply close its eyes to the legal issue of whether a CPI Escalator clause can steal the power from the only body in Town that can grant a rent increase is simply reckless and unconscionable.

We simply ask that the Board reconsider its position on this matter, and come to a rational and fair conclusion on their own.

I do believe that this Board understands both the state regulations and the Town Rent Control by-laws.

I do not believe that we are violating the spirit or the letter of the law.

I do not agree that "Oak Point residents cannot take the regular and automatic rent increases and still live in the park."

In fact by agreeing to and signing, under no duress, the leases and then continuing to reside in Oak Point, for the most part, without complaint, the majority of ~~87~~ households agree.

Approximately 10 years ago the Board of Selectman agreed to this method of increases with the original ownership of Oak Point.

And as a result of questions by this Board, we have brought in Special Counsel to confirm what our own Town Counsel has already informed us. The current agreement that governs Oak Point regarding the leases falls well within the intent and boundaries of the Rent Control Regulation Act and the Rent Control by-laws of Middleboro.

This Board has not once abdicated its authority as the Rent Control Board.

And by implying so that leads me to believe that it is you who has not been paying attention. This Board has certainly lived up to its duty as the Rent Control Board. We have not only had multiple hearings on our By-laws but also on individual complaints. In order to confirm our Town Counsel was correct in his opinion, we have also hired special counsel who, once again, confirmed that the agreement at Oak point is well within the boundaries and the intents of both the State Regulations and the Town by-laws.

We as a board have in no way closed our eyes to this issue. We have looked at this issue many times and I do feel we have made a rational and fair conclusion.

As result of this Board not sharing in your interpretation of this law in no way implies that we are not fulfilling our obligation or duty as the Rent Control Board.

I would like to thank you for writing your letter and appearing before the board to voice ~~her~~ concerns. *your*

I would encourage you to contact myself, or any member of the Board regarding any issues you may have in the future.

Thank you for your time,