

MINUTES
for approval on **4/11/16**

9/21/15
MINUTES



UNANTICIPATED

Upon motion made by Selectman McKinnon and seconded by Selectman Dalpe the Board voted unanimously to authorize the Town Manager, Selectman Frawley and McKinnon to have a conference call with Special Counsel regarding the Land Into Trust Agreement and discuss what the Town's options are.

Upon motion made by Selectman McKinnon and seconded by Selectman Dalpe to allow Chairman Frawley to put together a meeting with our State Reps and other town's officials that are party to the Compact to discuss the impact from the casino on their communities.

Selectman Dalpe asks Selectman Frawley and Selectman McKinnon what their problem is with her. She referenced two Brockton Enterprise Newspaper articles. She explained that she would like to clear the air so that the Board may move on with the Town's business.

Selectman McKinnon speaks about his filing of an ethics complaint on Selectman Dalpe. He explained that Selectman Dalpe has opened a Bed & Breakfast and he is now concerned that it is in direct conflict with her role as Vice Chairman of the Board of Selectmen and Chairman of the Tourism Committee.

Selectman McKinnon speaks further about the process of the Bed and Breakfast was flawed. He says Selectman Dalpe sits on this Board and deals with violations of licenses. He referenced the lack of understanding with zoning when opening the Bed and Breakfast.

Selectman McKinnon talked about a grant submission for the Oliver Estate. He also speaks on the two articles for the upcoming Town Meeting that weren't discussed by the Board of Selectmen. One article is for the disbandment of the Tourism Committee and the second article is to take control of the Oliver House away from the Board of Selectmen. He calls for the resignation of the Chairman of the Tourism Committee. He also calls for her resignation as Vice Chairman of the Board of Selectmen.

Selectman Dalpe presented a written response from the Ethics Commission to the Board regarding her recusing herself on anything related to Tourism or Business in the Town. There is clarification on the question asked. Selectman Dalpe asked the question verbally. Selectman Frawley asked for both the question and answer to be in writing.

Selectman Dalpe speaks on the misunderstanding with the Building Inspector. She has one unit and he said to her "less than three". She took that to mean units but he meant the number of people. She states that she has not had more than three people stay and that she has updated her website.

Selectman Dalpe speaks on the grant submission for the land purchase of the Oliver property, she noted that the grant was put together and submitted by a Town Employee and that she did not have an action on it. Selectman McKinnon will provide her with a copy of the grant he is referring to.

Selectman Dalpe speaks on the two warrant articles. She noted that the articles were presented and approved by the Board of Selectmen. She referenced the September 8, 2015 meeting. Selectman McKinnon referenced an August 4, 2015 correspondence from Town Counsel to Selectman Dalpe that could have been presented to the Board but was not.

Selectmen Frawley speaks about the continued unwillingness to post Tourism Sub-Committee meetings. He feels that the Tourism Committee is not following the proper protocol and avoiding answering Selectmen questions. He asks that they follow the rules. He noted that he has received various public complaints regarding her and her spouse as it relates to the Tourism Committee. Selectman Dalpe confirmed with Selectman Frawley that he has these emails. Selectman Frawley confirms he has emails and he stated he will check and get back to Selectman Dalpe.

Selectman Dalpe explained that it is the State Ethics Commissions guides/answers she follows and she will continue to do so.

ANNOUNCEMENTS & RECOGNITIONS

Public announcements are made.

MINUTES

Upon motion made by Selectman Dalpe and seconded by Selectman McKinnon, Board voted unanimously to approve the 9/14/15 minutes.

Upon motion made by Selectman McKinnon and seconded by Selectman Dalpe, Board voted to unanimously approve the 9/14/15 Executive Session meeting minutes.

Upon motion made by Selectman Dalpe and seconded by Selectman McKinnon, the Board voted to unanimously to authorize the Chairman or his designee, to sign the warrants for week ending 9/19/15.

NEW BUSINESS

Upon motion made by Selectman Dalpe and seconded by Selectman McKinnon, the Board voted to unanimously approve a One-day All Alcoholic Beverages Liquor License for Muckey's Liquors for 10/7/15 from 5 PM to 11 PM at Oak Point for the annual Taste of Middleboro.

Discussed proclamation of support for Middleborough Police Officers and declaring the month of October as "Show support for our Police officers" month by decorating with blue lights and ribbon across the Town.

Town Manager presented Chris Peck, DPW Director's, proposed recommendation for additional trash and recycling barrel fees. There was discussion.

Upon motion made by Selectman Dalpe and seconded by Selectman McKinnon, the Board voted unanimously to continue the discussion on trash barrel fees at a time when Chris Peck can attend the discussion.

HEARINGS, MEETINGS, LICENSES

Town Moderator Wayne Perkins addressed the Board to remind the public that Special Town Meeting will be held on Monday, October 5, 2015.

Town Manage explained STM Warrant Articles,

Article #1 Barbara Erickson addressed the Board to offer that she is opposed to the funding for this position being taken out of the budget and noted a letter provided by the Board of Assessors.

Article #2 Upon motion by Selectman Dalpe and seconded by Selectman Stewart, Board voted unanimously to support this article.

Article #3 Upon motion by Selectman Dalpe and seconded by Selectman Stewart, Board voted unanimously to support this article.

Article #4 Upon motion by Selectman Dalpe and seconded by Selectman Stewart, Board voted unanimously to support this article.

Article #5 Upon motion by Selectman Dalpe and seconded by Selectman Stewart, Board voted unanimously to support this article.

Article #6 Upon motion by Selectman Dalpe and seconded by Selectman Stewart, Board voted unanimously to support this article.

Article #7 Upon motion by Selectman Dalpe and seconded by Selectman Stewart, Board voted unanimously to support this article.

#8 Upon motion by Selectman Dalpe and seconded by Selectman Stewart, Board voted unanimously to support this article.

#9 Upon motion by Selectman Dalpe and seconded by Selectman Stewart, Board voted unanimously to support this article.

#10 Upon motion by Selectman Dalpe and seconded by Selectman Stewart, Board voted unanimously to support this article.

#11 Upon motion by Selectman Dalpe and seconded by Selectman McKinnon, Board voted unanimously to support this article.

#12 Upon motion by Selectman Dalpe and seconded by Selectman Stewart, Board voted unanimously to support this article. Neil Rosenthal addressed the Board to express his concerns relative to the cost for a Feasibility Study. School Committee....Rich Young responded

#13 Upon motion by Selectman Dalpe and seconded by Selectman McKinnon, Board voted unanimously to support this article.

#14 Upon motion by Selectman Dalpe and seconded by Selectman Stewart, Board voted unanimously to support this article.

#15 Upon motion by Selectman Stewart and seconded by Selectman Dalpe, Board voted unanimously to support this article.

#16 Upon motion by Selectman Dalpe and seconded by Selectman Stewart, Board voted to support this article. Four in favor. Selectman Knowlton opposed.

#17 Board agreed to hold.

#18 Board agreed to hold.

#19 Upon motion by Selectman Dalpe and seconded by Selectman Stewart, Board voted unanimously to support this article.

#20 Upon motion by Selectman McKinnon and seconded by Selectman Stewart Board voted unanimously to support this article.

#21 Upon motion by Selectman Dalpe and seconded by Selectman Stewart, Board voted unanimously to support this article.

#22 Upon motion by Selectman Dalpe and seconded by Selectman Stewart, Board voted unanimously to support this article.

#23 Upon motion by Selectman Dalpe and seconded by Selectman Stewart, Board voted to table until next week so that Town Counsel can be consulted. Four in favor. Selectman Knowlton opposed.

#24 Upon motion by Selectman Knowlton and seconded by Selectman Stewart, Board voted to support this article. One in favor. Selectman Dalpe abstained. Selectman Frawley and McKinnon against.

#25 Upon motion by Selectman Knowlton and seconded by Selectman Dalpe, Board voted to support this article. Two in favor. Three opposed.

#26 Upon motion by Selectman Dalpe and seconded by Selectman McKinnon voted unanimously to support this article.

#27 Upon motion by Selectman Dalpe and seconded by Selectman McKinnon voted unanimously to support this article.

#28 Upon motion by Selectman Dalpe and seconded by Selectman McKinnon voted unanimously to support this article.

#29 Upon motion by Selectman Dalpe and seconded by Selectman McKinnon voted unanimously to support this article.

#30 Upon motion by Selectman Dalpe and seconded by Selectman McKinnon voted unanimously to support this article.

TOWN MANAGER'S REPORT

Town Manager reported on the following:
FY15 Budget Review

- a. Local Receipts
- 1. Department of Revenue Certification
 - b. Free Cash
 - c. Retained Earnings
 - i. Water
 - ii. Wastewater
 - iii. Sanitation

CORRESPONDENCE

#1 Selectman Knowlton noted.

#8 Selectman Stewart noted.

#6 Selectman McKinnon asked the Town Manager to obtain a schedule of areas to be flushed and put on Town's website.

EXECUTIVE SESSION

Upon motion by Selectman Dalpe and seconded by Selectman McKinnon, Board voted by Roll Call to go into Executive Session for the purpose of discussing Collective Bargaining as it relates to GMEG, DPW, Clerical & Library at 9PM and not to return to open session. Roll Call: S. McKinnon, Yes; L. Dalpe, Yes; J. Knowlton, Yes; D. Stewart, Yes; A. Frawley, yes. Ended at 9:49 PM

This past June Ms. Marzelli requested that the BOS put an item on the agenda to discuss disbanding the Tourism Committee citing that the Tourism Committee was contributing to the unrest on the BOS. Although I don't agree with her that the Tourism Committee was the cause of this unrest, she was spot on about the Board being dysfunctional.

For months now I have been subjected to attacks from members of this board and out of respect for the office but more importantly in an effort to help the board focus on the business of the town and work for the residents who elected us, I have taken the high road and extended olive branches to its members and tried to keep an amicable working environment.

Obviously with the publishing of this article on the front page of the Enterprise, my efforts have not been successful therefore I ask you Mr. Mckinnon and Mr. Frawley, what is it that you want from me? What end do you hope to accomplish by these vicious untrue attacks?

Answer to question

Nee, Amy (ETH) <amy.nee@state.ma.us>

Mon 9/21/2015 1:52 PM

To: Selectman Leilani Dalpe <SelectmanDalpe@middleborough.com>;

CONFIDENTIAL

Dear Ms. Dalpe:

This e-mail is a response to your question about the conflict of interest law, G.L. c. 268A.

You are a Selectman in Middleborough. By reason of that position, you also serve as a member of the Tourism Committee. You have opened a bed and breakfast in Middleborough. Members of the public have expressed a concern that the conflict of interest law prohibits you from accepting a room fee of \$50 or more.

Provisions prohibiting gifts. There is no provision of the conflict of interest law that would prohibit you from receiving a room fee of \$50 or more. Two provisions of the conflict of interest law prohibit municipal employees from accepting gifts of substantial value, i.e., worth \$50 or more, from outside sources under certain circumstances. Section 3 prohibits a municipal employee from accepting a gift of substantial value "for or because of any official act or act within his official responsibility performed or to be performed by him." G.L. c. 268A, § 3. In other words, you may not accept a gift worth \$50 or more as an incentive or reward for the performance of a particular official act as a Selectman or as a member of the Tourism Committee. Section 23(b) (2) prohibits you from accepting a gift given to you for or because of your official position. This provision prohibits you from accepting a gift that is given to you because you are a Selectman or a member of the Tourism Committee.

A room fee is an amount paid by a customer of your bed and breakfast to rent a room. It is not paid to you or your bed and breakfast because of the public positions you hold or because of any official act that you perform in your public positions. The provisions that relate to gifts worth \$50 or more are not relevant to receiving room fees as the owner of a bed and breakfast.

Section 19. On the other hand, under § 19 of the conflict of interest law, you may not participate in a particular matter as a municipal employee if you or an immediate family member has a financial interest in the matter. While you serve as a Selectman or member of the Tourism Committee, you may not participate in a matter that affects your financial interests as the owner or operator of a bed and breakfast. You also may not participate as a municipal employee if you are an officer, director, trustee, partner or employee of a business organization and the business organization has a financial interest in a particular matter. If the bed and breakfast is a business organization, and you hold one of the listed relationships to the business organization, you may not participate in a matter that affects the financial interests of the bed and breakfast. Finally, you may not participate as a municipal employee in any particular matter that affects your business competitors. As an elected official, your only option is to recuse yourself when matters of this type come before the Selectmen or Tourism Committee.

You should be careful about separating issues regarding your own business interests from your duties as a public official. For example, the question about whether you may charge a room fee of \$50 or more is an issue that affects you personally or affects your business and, I assume, does not relate to any particular matter that is

coming before the Board of Selectmen for discussion or decision. You should not address this issue in the context of a Selectman's meeting. If individuals are concerned about whether you may charge such fees, you should address the concerns in conversations or other communications as an individual rather than in the course of your official duties as a Selectman.

Confidentiality. Both this e-mail and your request for advice are confidential by statute. This means that you are free to disclose this advice to anyone you wish, but that the State Ethics Commission may not disclose your request or any other identifying information unless you consent, or unless you misrepresent the contents of this e-mail.

I hope this advice has been helpful. Please contact us again if you have any further questions about your obligations under the conflict of interest law.

- Amy

- Amy

Amy Bressler Nee
Staff Counsel
State Ethics Commission
One Ashburton Place
Boston, MA 02108
(617) 371-9527

Please note my new e-mail address: Amy.Nee@MassMail.State.MA.US

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4/4/16
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Chairman Frawley opened the meeting at 7:00 PM by inviting those in attendance to join in the Pledge of Allegiance.

In attendance were: Selectman A. Frawley, L. Dalpe, J. Knowlton, D. Stewart and S. McKinnon; and Acting Executive Assistant, Colleen Lieb

REORGANIZATION

Selectman McKinnon confirmed that all newly elected members of the Board of Selectmen have been sworn in and takes over the meeting for the purposes of reorganization. He calls for nomination of Chairperson. Selectman Frawley nominates Selectman Stewart, Selectman Dalpe seconds. He calls a second time for nominations for Chairperson. He calls a third time for nominations for Chairperson.

Upon motion made by Selectman Frawley and seconded by Selectman Dalpe the Board voted unanimously Selectman Stewart as the Chairman to the Board of Selectmen for a one year term.

Chairman Stewart takes over the meeting.

Chairman Stewart calls for nominations for Vice Chairperson. Selectman Frawley nominates Selectman McKinnon, Selectman Knowlton seconds. She calls a second time for nominations for Vice Chairperson. She calls a third time for nominations of Vice Chairperson.

Upon motion made by Selectman Frawley and seconded by Selectman Knowlton the Board unanimously voted Selectman McKinnon Vice Chairperson to the Board of Selectmen for a one year term.

UNANTICIPATED

There is nothing from the Board. There is nothing from the audience.

ANNOUNCEMENTS AND RECOGNITIONS

Rich Young, High School Building Committee and Chairman of the School Committee, spoke about The Compass Group, who were choose to be the Owner's Project Manager for the High School Building project.

Steve McKinnon, resident, thanked the voters for taking action on the Police Station Building. There was an 11% turnout and roughly 1200 votes in favor.

Paul Provencher, 17 Barrows Street, reminds everyone to attend the inauguration for Honorary Mayor, this Wednesday at 7 pm at the Town Hall.

Selectman Dalpe speaks about the dates and times of the upcoming Herring Festival. She shows the ad that was AAA magazine and also that the event made the list of "Best Things to do for

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Under \$15". She showed the Historic New England Properties article that was printed in Antique Homes Magazine with the picture and summary of the Oliver House. She referenced the documentary to be shown at the Alley Theater on Friday night that features the herring. She also spoke about the grand opening and ribbon cutting ceremony planned for Saturday at 10 AM.

Selectman McKinnon spoke about Middleborough Mess Movers and the first Saturday to begin collecting trash and refuse. April 16, 2016 at 9AM at the Town Hall parking lot. He also spoke about his attendance at the Taunton Chamber of Commerce meeting and the question he asked Secretary Pollock regarding getting the rotary flyover project plans to 25%.

Selectman Knowlton spoke about the Cultural Council Grantee Reception and some of the presentations of the plans for the funds.

Chairman Stewart read the information for the DPW Rain Barrel program.

MINUTES

There was discussion on 9/21/15 minutes. These will be amended and brought back for approval.

Upon motion made by Selectman Dalpe and seconded by Selectman McKinnon, the Board unanimously voted to approve the March 28, 2016 minutes.

WARRANTS

Upon motion made by Selectman Dalpe and seconded by Selectman McKinnon to approve and authorize the Chairman, as a designee to sign the warrants for the week ending April 2, 2016. Unanimous vote.

NEW BUSINESS

Kelly Jarabek, Animal Control, was present for the discussion. Kelly spoke about the need to increase the dog adoption fee to cover vaccinations and medical attention if required. The current cost is \$10 and it an insufficient amount. A \$150 dollar adoption fee is recommended and is in line with what other shelters charge for adoptions. The Selectmen agree with the increase.

Chris Peck, DPW Superintendent, spoke on the petition from the residents to connect to Town water and noted that he did receive some estimates on the cost for this work. There is a question as to where the funding will be allocated from. There was discussion on a combination of retained earnings and capital improvement projects.

Attorney Dan Murray, Town Counsel, was present for the discussion. Chairman Stewart spoke about a meeting held with Town Counsel to discuss what the Board of Health options are on the

issues happening at 88 River Street. Attorney Murray spoke to the Board about his research with regard to the excessive odors emanation from the 88 River Street Composting Operation.

Attorney Murray spoke about MGL Chapter 111, Section 143. He explained a public hearing would be required and a finding would be made if the evidence warrants a nuisance arising from the property. The owner would have the opportunity to offer evidence in the public hearing. There was reference to the DEP Order and the appeal period. The Board of Health's hearing can be held while the DEP situation is in process.

Upon motion made by Selectman Frawley and seconded by Selectman Knowlton the Board, acting as the Board of Health voted unanimously to hold a hearing at the next possible date to discuss whether odors discharged from the composting facility operated at 88 River Street constitute a nuisance, source of filth and/or cause of sickness injurious to the Public Health.

Upon motion made by Selectman McKinnon and seconded by Selectman Dalpe, the Board voted unanimously to authorize the Chairman to sign the letter and vote to vacate temporarily the Cease & Desist Order for the Harju Earth Removal.

HEARINGS, MEETINGS & LICENSES

The Board discussed the recent tobacco violations and the discussions with each of the owners on the reasons why they sold tobacco to a minor. It is noted that the current tobacco fines are \$100/\$200/\$300. There is agreement that an increase in second in third offenses should be made. There is a proposal of increasing the second fine to \$500 and third fine to \$1,000. It is noted that the Board of Health does have the ability to raise fees or fines as necessary.

Arthur Battistini, resident, suggested the Board consider creating a fine for the individual who makes the sale. There is discussion on the need for the business to be responsible and held accountable. If a fine were imposed to the employee, in addition to the business, then there is a question as to how the employee fine would be enforced. Tobacco stings are done by the State and the Town is not aware of when they take place or which businesses are involved. The Board of Health is notified and the results of the sting are provided. No Town officials are involved.

Upon motion made by Selectman McKinnon and seconded by Selectman Frawley the Board acting as the Board of Health, voted unanimously to increase the tobacco fines from \$100/\$200/\$300 to \$100/\$500/\$1000.

The Board discussed the State law that requires all tobacco sales comply with the regulation that if it looks like they are under the age of 27 you ask them for a photo id. It is unclear how a mandatory check of ID's for everyone would be enforced.

The Board discussed the idea of Raising the age to 21 to purchase tobacco products. Selectman Knowlton spoke against raising the age. He explained that at 18 you become an adult in our

society, you are able to fight for our country and you should be able to make an informed choice as to whether or not you want to enjoy tobacco product. Selectman McKinnon discussed how the town's businesses would lose sales to surrounding towns if the age requirement was raised to 21 in this town. The state law is 18 and the surrounding towns are all at age 18. There is reference to legislation in process to increase the age to 21.

Hearing - Class II Dealers License, Applicant, Denise Margolin, 35 Harding Street, Map 047, Lot 535 and continued from March 28, 2016.

Attorney Robert Mather and Denise Margolin were present for the discussion. Attorney Mather provided an overview of the property, which is located right next to the Holiday Inn as you are leaving town. It's a large manufacturing building. He explains that the applicant is asking to put two cars out for sale at a time. The applicant currently has the same business in the Town of Norfolk and has the experience of selling 5-8 vehicles a week by only displaying the vehicles two at a time. It was noted that all the vehicle and warranty, records and work will be done by John Auto's Repair on Cape Cod Highway.

Attorney Mather spoke about the letter from the Building Commissioner regarding the locations of where the cars will be displayed. Attorney Mather spoke about the established site and the 27 feet of grass with a good portion of that in the Town layout. Attorney Mather does not agree with the Building Commissioner and has spoken with Town Counsel about the non-conforming site. He is waiting to get in writing from Town Counsel his opinion on the plan for the site and whether or not the Zoning Board has to make a determination. He asks the Board to vote contingent on Town Counsel's opinion and the agreement to comply with either finding.

Upon motion made by Selectman Frawley and seconded by Selectman Dalpe the Board voted unanimously to grant a Class II Dealer's License for City Limits auto Brokers, located at 35 Harding Street subject to the following condition, that pending Town counsel's determination that the plan does comply with zoning and if town Counsel determined that the plan does not comply with zoning, than no vehicles will be displayed within the 25ft buffer unless relief is provided by the Zoning Board.

TOWN MANAGER'S REPORT

The Town Manager discussed the letter from MassDOT, regarding the Town's Chapter 90 Allocation, which is \$872,408. The Town Manager referenced the Article on the town meeting warrant, from free cash in the amount of \$308,000, along with the Chapter 90 funds for a total of 1.3 million for road and parking lot improvements.

CORRESPONDENCE

#4 Selectman Frawley referenced Town Counsel letter and noted that he was within his rights to step down from the Board and then speak as a resident.

#4 Selectman Knowlton referenced Town Counsel's letter also. He noted that with the Town Meeting Warrant review on the next agenda. He explained that he understood why Selectman Frawley stepped down but questioned if Town Counsel should be asked if Selectman Dalpe needs to step down from the Board because of her work on Tourism.

Selectman Frawley explained that he stepped down from the Board to err on the side of caution and because of the possibility of perceived conflict. But since Town Counsel has indicated that he can speak on the article, he plans to do so at the next discussion.

Selectman Knowlton asked how Selectman Frawley can speak on that article when he is the one that will directly benefit from it if it passes. Selectman Frawley asked how he would directly benefit from the article. Selectman Knowlton explained that he is the recipient of the funds. Selectman Frawley stated that those funds will go to the Selectmen's Office. Selectman Knowlton explained that is not true and that those funds will go to him.

Chairman Stewart indicates that Town Counsel will be asked to provide a finding on whether members of the Board of Selectmen can speak on or take action on articles presented at their meeting, as they relate to the other Committees that individual Board members are on.

Selectman Frawley asked if Selectmen Dalpe is a signatory on the petitioned article. Selectman Frawley reiterates that he, in no way shape or form, had anything to do with the petitioned article.

Selectman Knowlton responds that he has had records requests previously and has been asked by the Town Clerk what the charge will be for him to provide those records and that those funds go directly to him. So he asked for no funds. It is his understanding that the funds go to the recipient who the request is made to.

Selectman Frawley asks Selectman Knowlton to direct that question to the Town Clerk.

The question to be asked of Town Counsel is where the funds go for public records requests and who sets the amounts for those funds, the town clerk or the holder of the records.

Upon motion made by Selectman Dalpe and seconded by Selectman Knowlton the Board voted unanimously to ask Town Counsel where the funds go for a records request and who sets the amounts for those funds, the Town Clerk or the holder of the records.

ADJOURNMENT

Upon motion made by Selectman Dalpe and seconded by Selectman McKinnon the Board voted unanimously to adjourn at 9:40 PM.

Respectfully submitted by,

Colleen M. Lieb – Acting Executive Assistant
MIDDLEBOROUGH BOARD OF SELECTMEN