

# **MINUTES**

**For approval at the 4-8-13 meeting**

**Middleborough Board of Selectmen  
Meeting Minutes**

March 25, 2013

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

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

**UNANTICIPATED**

Adam Bond thanked the Police and Fire departments for their actions relative to a motor vehicle driving into his office.

Town Manager left meeting room.

**ANNOUNCEMENTS & RECOGNITIONS**

None.

**MINUTES**

Upon motion by Selectman McKinnon and seconded by Selectman Frawley, Board voted unanimously to approve 3/18/13 meeting minutes.

**WARRANTS**

Upon motion by Selectman Frawley and seconded by Selectman Quelle, Board voted unanimously to authorize the Chairman, or his designee, to sign Warrants for week ending 3/29/13.

**NEW BUSINESS**

Upon motion by Selectman Frawley and seconded by Selectman McKinnon, Board voted to ratify the Town Manager's appointment of Thomas Dexter as a member of the Historical Commission for a three-year term ending on 6/30/16.

Motion made by Selectman Quelle and seconded by Selectman Frawley to approve "Handicapped Parking" signs for The First Unitarian Universalist Society church. Motion made by Selectman McKinnon and seconded by Selectman Frawley to amend and include "subject to review by Town Counsel". Board voted unanimously to approve with the amendment.

Upon motion by Selectman McKinnon and seconded by Selectman Frawley, Board voted unanimously to approve Betterment Agreement for Jane and David Blanton of 313 Old Center Street in the amount of \$14,043.

Selectman McKinnon left meeting room at 7:08 PM. Upon motion by Selectman Spataro and seconded by Selectman Frawley, Board voted to certify population estimate for Seasonal liquor licenses in 2013 to be 23,439 as of 7/10/13. Selectman McKinnon returned to meeting room at 7:09 PM.

Chairman spoke about Jim Braga and explained that there was a community desire to do something in memory of Mr. Braga. Upon motion by Selectman Frawley, and seconded by Selectman

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McKinnon, Board voted unanimously to name MHS access path "Braga's Path" in memory of James O. Braga. Brian Giovanoni spoke in favor of naming the path after Mr. Braga. Members of Mr. Braga's family were present and extended their thanks & appreciation.

Upon motion by Selectman Frawley and seconded by Selectman McKinnon, Board voted unanimously to grant the Board's Confidential Secretary a 3% step increase, effective July 1, 2013.

Upon motion by Selectman McKinnon and seconded by Selectman Frawley, Board voted unanimously to approve and sign the Annual Town Election Warrant.

Upon motion by Selectman McKinnon and seconded by Selectman Frawley, Board voted unanimously to approve and sign the April 30, 2013 Special State Primary Warrant.

Upon motion by Selectman Frawley and seconded by Selectman McKinnon, Board voted unanimously to approve the Election Officer Appointments for 2013 and Board of Registrars appointment.

Upon motion by Selectman Frawley and seconded by Selectman McKinnon, Board voted unanimously to approve the DHCD Grant Extension request to include an extension date of 9/30/13.

Upon motion by Selectman Frawley and seconded by Selectman McKinnon, Board voted unanimously to approve Stantec's revised Scope of Work and Cost Estimate for Route 44/Cross Street site.

**HEARINGS, MEETINGS, LICENSES**

At 7:25 PM Chairman opened public hearing for Boston Tavern re Alteration of Premises, 58 E. Grove Street by reading aloud the public hearing notice. Owners, Peter Morrissey and Dennis Barbato addressed Board and explained the alterations to the interior of the building. Chairman noted comments received by the Building Commissioner, the Health Officer, and the Conservation Agent. Chairman asked to hear comments. Hearing none, Chairman declared hearing closed. Upon motion by Selectman McKinnon and seconded by Selectman Frawley, Board voted unanimously to approve the application for alteration.

**Edgeway Mobile Home Park-Application for license**

Chairman announced that Attorney Burke has indicated that he has a potential buyer and requested that the Board continue the hearing for one more week. Motion made by Selectman Frawley and seconded by Selectman McKinnon to continue the hearing to 4/1/13 at 7:30 PM, but with the agreement that the hearing is going to go forward on 4/1/13. Adam Bond addressed the Board to offer his opinion that the Board may not want to issue this license when the Park is not in compliance while not issuing licenses to others who are also not in compliance. He additionally suggested that the sale of Edgeway Park should be "as is/where is". Chairman responded that every situation is different and includes different facts and it is up to the Board to determine how to handle each situation. Adam Bond asked if the Board is legally allowed to give the Park the license

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when it is not in compliance. Chairman responded that the Board will ask Town Counsel. Selectman McKinnon offered that, while he does not like the manner in which Attorney Burke has handled things, he does believe it is going to take someone with money to repair the Park for the residents. Chairman offered that the owner is working with the Town and the DEP to repair the septic system and continues to work towards a plan to fix it. Health Officer Jeanne Spalding shared it is her understanding that they have had preliminary discussions with DEP re upgrading of the septic system and what will be required. This Board went to great lengths to hurry up and get the Municipal Water Agreement. Unfortunately, it doesn't appear that Attorney Burke has followed through with that, and now we are currently stalled. Town Manager returned to meeting at 7:41 PM. Selectman Frawley asked the Town Manager to ask Town Counsel if the Park can be sold without a license. Selectman Spataro summarized his understanding of what the Health Officer was communicating. She confirmed that it is the Trustee holding things up, and regardless of what they do, they have to have the municipal water supply. DEP did drag the whole aggregate legal issue, but today's progress is not being held up by DEP. Brian Giovanoni addressed Board and asked what can be expected to change one week from now. Town Manager responded that we have a new buyer interested. Chairman reiterated that we have a serious buyer and that is the difference. Louisa Brown addressed Board and asked Chairman what he is comfortable doing. He responded he comfortable doing everything within the authority of this Board to allow this possible transaction to move forward. We were told that they are very close and in one week there could be a potential buyer for this Park. Board voted in favor of continuing the matter to 4/1/13 at 7:30 PM. Four in favor. Selectman Spataro opposed.

**Tispaquin Family Campground Annual license hearing**

Barbara Holton distributed handout to the Board. At 7:51 PM Chairman opened hearing by reading aloud the public hearing notice. Barbara Holton read aloud a statement to the Board. Chairman asked Mrs. Holton about recent meeting minutes of the ZBA, specifically, two weeks ago and the ZBA's comments that although she had installed a tight tank, you didn't use any of the local Board's to inspect that tight tank to make sure that it met the requirements to support a campground with 113 sites. She responded no and explained tight tank is designed by an engineer who is qualified to do the job and that person is the supervisor of the job. She gets an installer, who gets a permit from the Health department. The Health department can have say in the job or inspect the job and Catherine Hassett inspected the tight tank and saw no problem with it. She didn't have to sign off on it and the engineer told Mrs. Holton that his seal supersedes her authority anyway. This job was for a Dump Station and Holding Tank. Chairman asked Health Officer if this tight tank addresses all of her concerns relative to the septic system. Health Officer responded that it does not as it is not just a tight tank, but an industrial wastewater holding tank, and part of Title V that requires any fixed waste within a campground be deposited here and not in their septic system. This is one component of the Title V requirements that the campground still has to, if it wants to increase its capacity, put in the standard Title V septic system. If this were just a tight tank that would require a variance procedure, and that is only considered approvable if there are no other options for repair. You could not increase capacity, under any circumstance, with a tight tank. This is an industrial wastewater holding tank and is a different issue. Other campgrounds have been required to put them in. We still have to go forward with the septic system upgrade to bring it up to the capacity for what she is requesting. The sign off and completion of the holding tank is only waiting for the final electrical inspection and approval by the Electrical Inspector.

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Chairman confirmed with the Health Officer that the septic system is still not sufficient for the number of camp sites and bath houses. Selectman McKinnon asked if the bath houses feed into the septic system to which Health Officer Spalding responded, yes. Further discussion ensued. Chairman noted that the matter has been to court and the Courts have said that the Town is correct in that the septic system is not adequate and that you are required to upgrade or significantly lower the number of units. Mrs. Holton responded that her engineer addressed the capacity of her septic tanks. The Health Officer is looking for me to install all new septic systems. I have three bath houses there. They will, according to Title V, accommodate the septic that needs to be accommodated since before 1995 when they were all built before 1995. She accused Health Officer Jeanne Spalding of altering her Title V report. Jeanne Spalding responded to the accusation of changing the Title V report and explained that she had questioned her Title V Inspector regarding her report because the content of the report differed from the front page. He had made an error and had resubmitted the title page with the correction. His signature, not Jeanne's Spalding's name, is on the title page.

Further discussion ensued. Chairman asked to hear further comments. Hearing none, Chairman declared hearing closed. Motion made by Selectman McKinnon and seconded by Selectman Frawley, because of the Title V inspection in front of the Board that says the system is in failure, Board voted unanimously to deny the permit for 113 units.

**Review ATM Warrant Articles**

#25 Amend Zoning By-law

Ruth Geoffroy addressed Board to explain this article. Upon motion by Selectman Spataro and seconded by Selectman McKinnon, Board voted unanimously to support this article and to refer it back to the Planning Board for a public hearing.

#18 Community Preservation Committee (CPC) – fund annual revenues

Maureen Franco addressed Board and explained this article. Selectman Frawley confirmed that we got \$56,200 from the State last year just for signing up for the Community Preservation Act. Upon motion by Selectman McKinnon and seconded by Selectman Frawley, Board voted unanimously to support this article.

#19 CPC – fund preservation museums & historic records

Jane Lopes addressed Board and explained this article. Upon motion by Selectman McKinnon and seconded by Selectman Frawley, Board voted unanimously to support this article.

#20 CPC – fund refurbishment & preservation of Pipe Organ-Unitarian Universalist Church

Jane Lopes addressed Board and explained this article. A question and answer period ensued. Upon motion by Selectman Spataro and seconded by Selectman Frawley, Board voted unanimously to support this article.

#21 CPC – fund refurbishment & preservation of Pipe Organ-Unitarian Universalist Church

Josephine Ruthwicz addressed Board and explained this article. Upon motion by Selectman Spataro and seconded by Selectman McKinnon, Board voted unanimously to support this article.

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#22 CPC - fund portion of Shoe Shop Place Affordable Housing Project

Jane Lopes addressed Board and explained this article. A question and answer period ensued. Upon motion by Selectman Spataro and seconded by Selectman McKinnon, Board voted unanimously to support this article.

#24 Adopt Wetlands Protection By-Law

Conservation Commission Co-Chairman Steve Ventresca addressed Board and explained this article. A question and answer period ensued. Upon motion by Selectman Spataro and seconded by Selectman McKinnon, Board voted unanimously not to support this article noting that forty recommended changes by Town Counsel were not applied to, or considered in, the submitted proposed by-law. Mr. Ventresca asked to withdraw the article with the intention to re-submit it in the fall.

**TOWN MANAGER'S REPORT**

Town Manager noted Counsel wrote to the Tracey's to let them know that we will be there on the 16<sup>th</sup> to assess their compliance with the Court Order.

Town Manager noted a meeting with the EPA permit writer on Thursday who toured the Wastewater Treatment Plant and talked to us about the draft permit. The perimeters are very much in line with what we have been preparing for in terms of the upgrade. Town Manager reviewed steps to be taken towards getting a zero percent interest loan. We will be required to put together a Comprehensive Wastewater Management Plan.

**CORRESPONDENCE**

#4 Selectman Frawley offered he is pleased to see that the Assessor's office is now open on Wednesdays.

Upon motion by Selectman Spataro and seconded by Selectman McKinnon, Board voted by Roll Call to go into Executive Session to consider the purchase, exchange, lease, or value of real property as the Chairman declared that discussing the matter in public would be detrimental to the Town's position and not to return into Open Session. Roll Call: S. McKinnon, Yes; B. Quelle, Yes; A. Frawley, Yes; S. Spataro, Yes; A. Rullo, Yes. Ended at 9:30 PM.

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Jackie Shanley, Confidential Secretary  
BOARD OF SELECTMEN

 **DRAFT**

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**April 1, 2013**

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

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

**UNANTICIPATED**

Upon motion by Selectman McKinnon and seconded by Selectman Quelle, Board voted unanimously to approve a One-day Beer & Wine liquor license for The Bartending Service of N.E. for 4/6/13 from 6 PM to 11 PM at the Alley Theatre, 133 Center Street.

**ANNOUNCEMENTS & RECOGNITIONS**

Selectman McKinnon acknowledged the tragic motor vehicle accident that happened over the weekend and involved two Middleborough residents.

Chairman announced a scheduled tour of the Wastewater Treatment Plant for April 6, 2013.

**MINUTES**

To be voted 4/8/13.

**WARRANTS:**

Upon motion by Selectman McKinnon and seconded by Selectman Frawley, Board voted unanimously to authorize the Chairman, or his designee, to sign Warrants for week ending 3/29/13.

**NEW BUSINESS**

Town Manager reviewed the order of preference re design services for the Wastewater Treatment Plant. Discussion ensued. Upon motion by Selectman McKinnon and seconded by Selectman Frawley, Board voted unanimously to approve ranking as presented, allowing negotiations to begin with Wright Pierce.

Upon motion by Selectman Frawley and seconded by Selectman Quelle, Board voted unanimously to approve a 2<sup>nd</sup> Hand license for Boutique Azaleia, 465 Center Street.

Upon motion by Selectman Frawley and seconded by Selectman McKinnon, Board voted unanimously to accept donation of five picnic tables from Carole Rapone for the Oliver Mill Park.

Upon motion by Selectman Frawley and seconded by Selectman McKinnon, Board voted unanimously to approve sending a thank you letter to Ms. Rapone.

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Tispaquin Family Campground's 2013 Permit Application-Amendment of 3/25/13 vote

Mrs. Holton made a statement. Upon motion by Selectman McKinnon and seconded by Selectman Frawley, Board voted unanimously to amend the vote on 3/25/13 regarding the Tispaquin Family Campground's 2013 permit application by denying a campground license for 2013 for 110 camping units for Tispaquin Family Campground because the campground has insufficient septic waste disposal design capacity to serve the number of camper units which will be used during the camping season.

**TOWN MANAGER'S REPORT**

Town Manager noted subsidized housing inventory tally from Housing Director Josephine Ruthwicz. We are about half way to the 10% goal.

**CORRESPONDENCE**

#2 Selectman Frawley noted correspondence from Elizabeth Frazier re Property & Trespassing of Borrego Solar Co. He suggested that the Board begin preparing for solar installation in the future.

Selectman Spataro asked status re height of the dam. Selectman Frawley reported that Mr. Fennessy looked at it two Sunday's ago and concluded that our fish ladder and dam have little to nothing to do with the height of Long Pond. The height of the dam is at good level right now.

Selectman Frawley announced that Rhode Island Fisheries and Wildlife will be coming to Middleboro fish to borrow a bunch of spawning herring and bring them to watersheds in R.I. as part of migrating process.

Selectman Quelle noted job posting for DPW Truck Driver. Town Manager noted that it has been filled.

Selectman Quelle noted MBTA budget correspondence.

**HEARINGS, MEETINGS, LICENSES**

Edgeway Mobile Home Park-Application for license (continued from 3/25/13)

At 7:30 PM Chairman continued the discussion re application for license for Edgeway Mobile Home Park. Attorney Burke addressed the Board and announced that the potential buyer has decided not to buy the Park. He explained that he has plenty of interested buyers for the Lakeville side of the Park, but not for the Middleborough side and he is trying to find a buyer for both. He confirmed that he had accepted the offer of the anticipated buyer and had even prepared a P & S Agreement. The anticipated buyer, Bob Pollucci of South Shore Real Estate Development addressed Board at the invitation of the Chairman to explain what happened to change his mind. He explained that when he was in the Lakeville side of the Park on Wednesday or Thursday, he saw Columbia Gas Company tearing up the roads and learned that it was related to ongoing gas leaks. He had made an

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offer never knowing about the gas leaks. It was never disclosed to him. According to him, when his Attorney, Bob Mather inquired with Attorney Burke about the gas leaks, Attorney Burke indicated that he knew nothing about it. He also listed all of the items that need to be corrected in the Park and noted that it will be very expensive to accomplish. Paul Hartel, President of Hartel Commercial Realty of Falmouth and Quincy, MA. He concurred with Mr. Pollucci and offered that he thinks Bob has gone out of his way to try and understand the nuances of this particular deal. Mr. Hartel has worked on this for several months. Two other potential buyers had backed out of buying the Park saying they were uncomfortable doing business with the Town of Middleborough based on past dealing that they've had with the Town of Middleborough. When asked by the Board, he would not specify as to whom these qualified buyers were or what, exactly, their dealings had been with the Town of Middleborough. He informed the Board that they were petrified to have dealings with the Town of Middleborough. It is our goal to have one entity to buy both sides of the Park and it is the goal of the heirs as well. He asked the Board to support Attorney Burke's request for another two week extension. The Chairman asked what was going to happen in two weeks noting that this has been continued for months. Attorney Burke responded that he could not guarantee he'd have an offer in two weeks, but that it would create a worse problem in terms of trying to move the property if the Board votes to deny the Park's license. The Chairman asked him if he is suggesting that he is asking the Board to continue the matter indefinitely until he finds a buyer. Attorney Burke responded, yes. Attorney Bond addressed the Board and announced that he represents the residents of Edgeway and Twin Coach. He informed the Board that he had discussion with Attorney Mather about the issue of the joint ownership of the two Parks. They talked about Mr. Pollucci getting the Twin Coach side and the Edgeway residents getting the Edgeway side. They did not, however, get to continue that discussion to date. He suggested that the Board ask itself if the conditions relative to septic and water are at a level where the license should be reinstated. He agreed that it's difficult to sell a building/business without a license, but it can be done. Selectman Spataro offered that he completely rejects the assertion about the Planning Board and named multiple success stories with developers. Selectman Frawley offered that the Board has above and beyond and bent over backwards to work with everyone involved in this Park. He noted that it was offensive to put the blame on this Board that this Park isn't selling. The owners of the Park led the Board on and gave the Board the slip and the Park does not qualify for a license. Selectman McKinnon offered that he took umbrage at the accusation made by Mr. Hartel, and, especially since he was not willing to back it up. He addressed Attorney Burke and offered that he is not doing his job. He also noted that if anyone has a problem with our Town departments, he wants to be told exactly why. Selectman Quelle offered that the Board needed to get back to the black letter law re licensing compliance. This Park does not meet the standards to be issued a license. Mr. Pollucci addressed Board and offered that the banks that he has been dealing with, will not loan money without a license so you would most likely need a cash buyer. Anne McGann thanked the Board for everything it's ever done for the residents. She informed the Board that the residents don't want to deal with anyone else (a new owner). She

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offered that giving the owner a license would be ridiculous with all of the violations. Chairman asked her about her statement that the residents don't want to deal with anybody else, and asked her if that meant that the residents want to buy the Park. Attorney Adam Bond responded that it was not a fair question, but it isn't out of the realm. Chairman noted that the Board has given Attorney Burke a very fair opportunity of time and that he doesn't know what extending this will do. However, he also noted that we have heard real life experience of how it will be difficult if not impossible, to get financing to buy the Park without a license. Selectman Spataro credited the Town Manager for all of his efforts involved in the matter. Chairman declared hearing closed. Upon motion by Selectman McKinnon and seconded by Selectman Quelle, Board voted unanimously to deny the 2013 permit based on an inadequate or failed septic system.

Review ATM Warrant Articles

Article (8)

Capital Planning Committee Chairman Steve Morris addressed Board. Chairman thanked the Committee for all of its work this past year. Selectman McKinnon offered his thanks to Mr. Morris and asked questions regarding the types of vehicles being paid for with this article, which was answered by the Police Chief. Upon motion by Selectman McKinnon and seconded by Selectman Frawley, Board voted unanimously to support this article.

Article (9)

Upon motion by Selectman Spataro and seconded by Selectman Frawley, Board voted unanimously to support this article.

Article (10)

CPC Chairman Morris gave description/background re each vehicle. Upon motion by Selectman Spataro and seconded by Selectman McKinnon, Board voted unanimously to support this article.

Article (11)

Mr. Morris explained the article. Upon motion by Selectman Spataro and seconded by Selectman Frawley, Board voted unanimously to support this article.

Article (12)

Mr. Morris explained the article. Upon motion by Selectman Spataro and seconded by Selectman Quelle, Board voted unanimously to support this article.

Article (13)

Mr. Morris explained the article. Selectman Spataro asked Mr. Morris if they had a commitment from the School department to spend this money on what it has indicated it will spend it on. CPC Chairman Morris indicated that the Committee has gotten commitments up front, including last

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year. Upon motion by Selectman Spataro and seconded by Selectman Frawley, Board voted unanimously to support this article.

Article (14)

Mr. Morris explained the article. Upon motion by Selectman Spataro and seconded by Selectman McKinnon, Board voted unanimously to support this article.

Article (16)

Police Chief Gates addressed Board to explain this article. In response to question by Chairman, Town Manager offered that he believes that the Finance Committee will be supporting this article. Upon motion by Selectman Spataro and seconded by Selectman Frawley, Board voted unanimously to support this article.

Upon motion by Selectman Spataro and seconded by Selectman McKinnon, Board voted unanimously to approve the Special and Annual Town Meeting Warrants.

Upon motion by Selectman McKinnon and seconded by Selectman Frawley, Board voted by Roll Call to go into Executive Session at 9 pm to discuss strategy relative to Collective Bargaining with all bargaining units as discussing in public would be detrimental to the Town's position and not to return into Open Session. Roll Call: S. McKinnon, Yes; B. Quelle, Yes; S. Spataro, Yes; A. Frawley, Yes; A. Rullo, Yes. Ended at 9:40 PM.

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Jackie Shanley, Confidential Secretary  
BOARD OF SELECTMEN