

OLD BUSINESS

6-22-09

DRAFT
DEPARTMENT OF PUBLIC WORKS DIRECTOR

Definition ~~Administrative, supervisory and~~ Directs and administers the activities of the Public Works Department including administration, highway, trees, rubbish, snow and ice control, water and wastewater. Some intermittent skilled manual work as the supervisor of a major department requiring direct involvement in projects or ongoing programs; all other related work as required.

Deleted: ¶

Deleted: s

Formatted: Strikethrough

Supervision

Works under the administrative direction of the Town Manager.

Performs highly responsible functions requiring the exercise of considerable independent judgment in planning and inspecting the construction of highway projects and in determining the scope and scheduling of maintenance projects.

Supervises the equivalent of twenty-five or fewer full-time employees within the highway division. Also manages two subordinate supervisors who supervise a total of twenty employees in the water and wastewater divisions.

Job Environment

Work is generally performed outdoors with frequent exposure to hazards associated with heavy equipment construction sites; some work is performed indoors under typical office conditions; on all 24 hours a day, seven days a week.

Operates a wide variety of motor equipment, light trucks, automobile, power and hand tools, as well as computer and standard office equipment.

Makes frequent contacts with other Town officials, vendors, contractors and with the general public; has frequent contact with State and Federal agencies; contacts are in person, by telephone or in writing and involve discussing complex information and resolving difficult customer service requests.

Errors in administrative decisions could result in lower standards of service, sub-standard construction, inadequate maintenance programs and civil or criminal claims against the Town; errors in supervisory decisions could result in excessive costs for both construction and maintenance programs.

Essential Functions

The essential functions or duties listed below are intended only as illustrations of the various types of work that may be performed. The omission of specific statements of

Revised 6/12/2009.

Deleted: 6/11/2009

*Middleborough, Massachusetts
Department of Public Work Director
GMEG*

duties does not exclude them from the position if the work is similar, related or a logical assignment to the position.

Supervises the construction and maintenance of streets, roads, bridges, sidewalks, drains storm-control structures, waterways and related facilities; supervises the installation of signs and street islands; plans and lays out the construction, maintenance and operational work of the Highway Department. Supervises the landfill sanitation operations.

Responsible for the operation and planning of the curbside rubbish collection of residential trash and recyclables.

Serves as the Town Tree Warden.

Plans use of manpower and equipment and carries through to execution highway projects and programs; directs activities of field crews and may serve as a leader on a variety of construction and maintenance projects for Town-owned property, facilities and structures; assigns laborers, operators and foreman to specific tasks; instructs laborers and operators in proper use of equipment, ensures that safety procedures are followed.

Submits and balances State funded project requests; coordinates and supervises all contractors.

Exercises responsibility for snow plowing, ice removal and sanding operations.

Inspects work for compliance with standards or instructions or for contract compliance; makes necessary progress reports and final project reports; advises contractors.

Coordinates field operations and assists in emergency highway repairs and in other highway related emergency repairs as required.

Processes daily work orders received; follow up on resulting assignments for compliance with instructions; approves time reports covering men and equipment; keeps operating records and prepares reports.

Oversees the maintenance and repair of all Town-owned vehicles; purchases and stocks all parts and supplies needed for vehicle maintenance; makes recommendations to superiors as to the condition of vehicles and the need for replacement. Prepare the bid specifications for vehicles and equipment.

Oversees the maintenance of all traffic lights, beacons and school zone lights owned by the Town; ensures that traffic lights are in working order and repaired or replaced when necessary; works with Police Department personnel to ensure that traffic light intersections are safe.

Revised 6/12/2009

Middleborough, Massachusetts
Department of Public Work Director
GMEG

Deleted: 6/11/2009

Prepares budgets and payroll for the Highway Department; presents budgets to appropriate Town boards and committees and the Town Manager; estimates costs. Provides guidance to the water and wastewater superintendents on their respective budgets.

Prepares a multi-year capital improvement plan for the Public Works Department with input from the water and wastewater superintendents.

Purchases materials needed for the production of street and traffic signs; inspects workmanship and installation of signs; purchases materials as needed. Performs administrative tasks related to payroll, payment vouchers, inventory, etc.

Performs similar or related work as required or as situation dictates.

Recommended Minimum Qualifications

Education and Experience

Associates Degree in engineering or equivalent of ten (10) years experience in Highway construction and maintenance; ~~five (5) years some experience in the operation of a Sanitary Landfill; ten years of supervisory experience, or an equivalent combination of education and experience.~~ Registration as a Professional Engineer is desirable.

Formatted: Strikethrough

Deleted: or an equivalent combination of education and experience. T

Special Requirements

Massachusetts Commercial Driver's License
Massachusetts Hoisting Engineer's License

Knowledge, Ability and Skill

Knowledge. Working knowledge of the techniques, materials and practices of highway construction and maintenance. Knowledge of the financing and administration of highway department. Working knowledge of the various types of road equipment. Considerable knowledge of civil engineering principles, practices and methods, as applicable to a municipal setting. Practical knowledge of vehicle maintenance procedures. Thorough knowledge of all applicable Town by-laws, policies and regulations affecting highway activities. Thorough knowledge of all applicable State laws, policies and regulations governing the operation of a Sanitary Landfill.

Ability. Ability to plan, assign and supervise the work of groups of employees engaged in a variety of highway construction and maintenance operations. Ability to maintain good public relations. Ability to communicate effectively, orally and in writing, with employees, consultants, other governmental agency representatives, Town officials and the general public. Ability to conduct necessary engineering research and compile comprehensive reports.

Deleted: 6/11/2009

Revised 6/12/2009

Middleborough, Massachusetts
Department of Public Work Director
GMEG

Skill. Skill in operating the above listed tools and equipment. Good organizational, planning and budgetary skills.

Physical Requirements

Moderate physical effort required in performing work. Occasionally required to move (push, pull, lift or carry) objects weighing up to 60 pounds. Sometimes required to operate hand and power tools requiring manual dexterity. Requires good close, distant, color and peripheral vision and depth perception. Ability to lift heavy objects and to occasionally perform some strenuous work under varying weather conditions. Ability to walk and stand for long periods of time.

This job description does not constitute and employment agreement between the employer and employee and is subject to change by the employer as the needs of the employer and requirements of the job change.

| Revised 6/12/2009

Middleborough, Massachusetts
Department of Public Work Director
GMEG

Deleted: 6/11/2009

Charles Cristello

From: Charles Cristello
Sent: Thursday, June 04, 2009 8:57 AM
To: Al Rullo (aprullo@comcast.net); m.brunelle2@verizon.net; Mi Mi Duphily (murielduphily@verizon.net); Rogers, Patrick (DEP); Stephen J. McKinnon (stephenmckinnon867@gmail.com)
Subject: FW: SEMASS MOU
Attachments: SEMASS MOU.pdf



SEMASS
DU.pdf (442 K)

ere is the updated MOU with some changes that are more favorable to the town based on meetings with Middleborough and other communities. The task force met last evening and the consensus is to recommend the Selectmen sign the memorandum as it is non-binding. However, there is at least one point that we would recommend be handled in future negotiations.

This will be on your agenda for June 22 for a vote.

Charlie

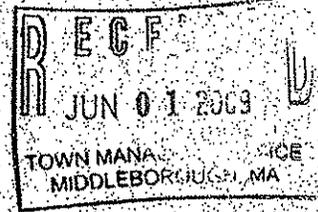
-----Original Message-----

From: Allison Ferreira
Sent: Tuesday, June 02, 2009 4:30 PM
To: Charles Cristello
Subject: SEMASS MOU

Charlie,

Per your request for you to e-mail to committee members.

Thanks,
Allison



SEMASS Partnership
141 Cranberry Hwy.
Wareham, MA 02576
Phone: 508-291-4400
Fax: 508-291-1522

May 28, 2009

Mr. Stephen Lombard
Town Manager
10 Nickerson Ave.
Middleboro, MA 02346

Dear Mr. Lombard:

As you are aware, in January of this year we sent you a Memorandum of Understanding (MOU), which provides your community with the opportunity to continue to benefit from the reliable and environmentally preferred waste disposal solution provided by SEMASS. The MOU also provides a tremendous cost savings to you for years to come. In order to participate in this opportunity, please sign and return the MOU to my office. We will then prepare an amendment to your original Waste Acquisition Agreement.

Based on feedback received from meeting with many of you, we have made a few changes to the terms contained in the MOU. These changes are as follows:

1) Section 2f:

The minimum annual inflation factor has been reduced from 2% to 0%. The sentence in this section of the MOU now reads: "In no event shall the Inflation factor for any contract year be less than 0% or exceed 4% of the prior year's per ton Acceptance Fee..."

2) Section 4:

The language in this section has been deleted. The provision in the MOU, which required that an Extension Agreement must be reached with at least the number of communities such that the Annual tonnage deliveries to SEMASS in the aggregate, represent fifty percent (50%) of the Annual tonnage deliveries for all of the Tier 1 Communities, in order for the provisions outlined in paragraph 3 above to become effective, has been deleted.

3) Section 7:

The language which stipulates that this MOU is a non-binding document has been expanded upon to add further clarity to this provision.

As a result of these changes, we are enclosing revised MOU's for the town's review and approval.

Please sign all three copies of the agreement and mail to:

Covanta Energy – SEMASS
141 Cranberry Highway
West Wareham, MA 02576
Attn: Tom Cipolla

As a reminder, the deadline for the Communities to return the signed MOU's to us is June 30, 2009.

Should you wish to discuss this, feel free to call me at 508-291-4450. I can also be reached by email at: tcipolla@covantaenergy.com

Sincerely,



Thomas J. Cipolla
Business Manager – Covanta SEMASS

MEMORANDUM OF UNDERSTANDING

This MEMORANDUM OF UNDERSTANDING (this "MOU") by and between the Town of Middleborough, Massachusetts, (the "Community"), having an official address at Town Hall, Nickeson Avenue, Middleborough, Massachusetts 02346 and SEMASS Partnership ("SEMASS"), a Massachusetts limited partnership, hereinafter referred to individually as a "Party", and, collectively, as "Parties").

WHEREAS, the Parties entered into a Waste Acquisition Agreement dated as of February 6, 1984, allowing for solid waste from the Community to be accepted for disposal by SEMASS.

WHEREAS, the First Amendment to the Waste Acquisition Agreement dated June 18, 1984, the Second Amendment to the Waste Acquisition Agreement dated March 30, 1992, the Third Amendment to the Waste Acquisition Agreement dated December 12, 1994, the Fourth Amendment to the Waste Acquisition Agreement dated April 1, 2001, the Fifth Amendment to the Waste Acquisition Agreement dated May 1, 2001, the Sixth Amendment to the Waste Acquisition Agreement dated February 1, 2002, the Seventh Amendment to the Waste Acquisition Agreement dated May 5, 2003 and the Eighth Amendment to the Waste Acquisition Agreement dated July 1, 2004 are relevant amendments to the 1985 Agreement (the 1985 agreement name as amended to date, the "Waste Acquisition Agreement")

WHEREAS, the Parties desire to commence negotiating a definitive written agreement and/or modify certain terms and conditions contained in the Waste Acquisition Agreement that exists between the Parties, either of which in form and substance acceptable to the Parties (an "Extension Agreement"); provided however the execution of such an Extension Agreement remains subject to the completion of negotiation, financial analysis, approval of the Parties' respective Boards of Directors and satisfaction of certain conditions precedent including those set forth on this MOU.

NOW THEREFORE, the Parties hereby summarize the principal terms of an Extension Agreement presently being considered as follows:

1. The term of the Waste Acquisition Agreement shall be extended by fifteen (15) years.
2. The per ton Acceptance Fee for solid waste delivered by the Community and accepted at SEMASS, shall be increased according to the following schedule:
 - a. Effective five years prior to the expiration of the Waste Acquisition Agreement, the per-ton fee in effect as of the last day of the prior contract year, inclusive of any Change in Law costs and MTPC grants, shall be increased by \$5.00.

- b. Effective four years prior to the expiration of the Waste Acquisition Agreement, the per-ton fee in effect as of the last day of the prior contract year, inclusive of any Change in Law costs and MTPC grants, shall be increased by \$10.00.
 - c. Effective three years prior to the expiration of the Waste Acquisition Agreement, the per-ton fee in effect as the last day of the prior contract year, inclusive of any Change in Law costs and MTPC grants, shall be increased by \$10.00.
 - d. Effective two years prior to the expiration of the Waste Acquisition Agreement, the per-ton fee in effect as of the last day of the prior contract year, inclusive of any Change in Law costs and MTPC grants, shall be increased by \$10.00.
 - e. Effective one year prior to the expiration of the Waste Acquisition Agreement, the per-ton fee in effect as of the last day of the prior contract year, inclusive of any Change in Law costs and MTPC grants, shall be increased by \$10.00.
 - f. Effective on the first day of the new term of the proposed Waste Acquisition Agreement, the per ton Acceptance Fee, not including any Change in Law costs, shall be adjusted annually on the first day of each successive year of the contract, by multiplication by the Inflation factor (per the Boston CPI-U) for the period ending December 31 of the preceding year. In no event, shall the Inflation factor for any contract year be less than 0% or exceed 4% of the prior year's per ton Acceptance Fee; provided however that if the Inflation factor exceeds 4% (but is limited to 4%) in any year and in any succeeding year the Inflation factor is less than 4%, then such succeeding year's Inflation factor may be increased by an amount equal to the amount by which any prior year's Inflation factor exceeded 4%; again provided that the Inflation factor may not exceed 4% in any year.
3. Effective January 1, 2015 and every five years through the duration of the proposed Waste Acquisition Agreement, the per ton Acceptance Fee paid by the Community shall be ten percent (10%) below the average Acceptance Fee of all non-Tier 1, non-host communities with similar Long-Term Municipal Contracts with SEMASS. Host communities are those communities that host a landfill or energy from waste facility in their town. Long-Term Municipal Contracts shall be defined as any contract entered into by SEMASS and any non-Tier 1 community/municipality on or after January 1, 2010, with an initial term of not less than five years.
4. If recycling programs approved by the Commonwealth of Massachusetts Department of Environmental Protection (or any agency or department thereof) and conducted by the Community actually reduce the amount of Acceptable Waste generated within the Community during a calendar year below the Annual Tonnage, the Community shall be entitled to a credit against the minimum of Acceptable Waste it is required to deliver.

5. If SEMASS defaults in the performance of its obligations under the proposed Waste Acquisition Agreement, then the Town shall have the right to recover liquidated damages approximating the unamortized portion of its above-current-contract Acceptance Fee (as described in paragraph 2 above) in accordance with a schedule determined at or before the execution of the proposed amendment to the Waste Acquisition Agreement. SEMASS' obligations under the proposed amendment to the Waste Acquisition Agreement shall be guaranteed by Covanta Holding Corporation.
6. This MOU shall be effective as of December____, 2008 and will terminate upon execution of an Extension Agreement; provided that this MOU shall have no force or effect if it is not signed by both parties before June 30, 2009. If an Extension Agreement is not reached between the Parties by these dates, then the terms and conditions of the existing Waste Acquisition Agreement shall remain in effect through the remainder of that agreement
7. This MOU represents the good faith obligation of the Parties to negotiate a Extension Agreement during the effective period, however, it is understood and agreed that this MOU, when executed by all of the Parties hereto, merely constitutes a statement of mutual intentions with respect to the proposed transactions, does not contain all matters upon which agreement must be reached in order for the proposed transactions to be consummated and, therefore, does not constitute a binding commitment with respect to any of the proposed terms other than the agreement to negotiate in good faith. Furthermore, the Community will not be bound to any contract until a Waste Acquisition Agreement is duly signed by the Selectmen of that Community. In addition, notwithstanding anything in this MOU, the Community remains free to negotiate for any term, including, without limitation, price, and that such negotiation shall not be deemed evidence of a lack of good faith. A binding commitment with respect to the proposed transactions will result only from the execution of the Extension Agreement, subject to the terms and conditions expressed therein. The parties intend to negotiate and execute the Extension Agreement on or before September 30, 2009.
8. Defined terms used in this MOU which are not defined herein shall have the meanings given such terms in the Waste Acquisition Agreement.

IN WITNESS WHEREOF, the Parties have executed this MOU as of May ____, 2009.

Town of Middleborough, Massachusetts

By: _____

Name: _____

Title: _____

SEMASS PARTNERSHIP.

By: _____

Name: _____

Title: _____

A handwritten signature in black ink, consisting of a large, stylized letter 'Q' followed by a few horizontal strokes.

*Incorporated 1669
336 Years of Progress*



CRANBERRY CAPITAL
OF THE WORLD



Town of Middleborough

Massachusetts

Town Manager

508-947-0928
FAX 508-946-2320

MEMORANDUM

To: Board of Selectmen

From: Charles J. Cristello, Town Manager *CR*

cc: Daniel Murray, Town Counsel

Date: May 8, 2009

Subject: *Draft Mobile Home Rent Control Rules and Regulations*

Enclosed please find a draft of mobile home rent control rules and regulations for the Town of Middleborough. I believe these address your request to have a process for handling requests for rent increases from mobile home park operators as well as to the deal with question of fees for optional charges such as irrigation. I believe these draft rules and regulations also address the decision of the Board in 1998 as to the method of establishing rents at Oak Point.

The attached document, Points for Consideration was an outline of issues that Town Counsel Dan Murray and I discussed in preparing this draft. I thought it would be useful to review them again with you as we discuss the draft.

I suggest that we schedule a meeting with Attorney Murray in June to review the draft with the Board before circulating it to the park operators.

Please call me if you have any questions.

**TOWN OF MIDDLEBOROUGH RULES AND REGULATIONS FOR MOBILE HOME
PARK
ACCOMMODATIONS, RENTS, AND EVICTIONS**

DRAFT

In accordance with Chapter 703 of the Acts of 1985, after hearing in accordance with Mass. Gen. Laws, Chapter 30A, Sec. 2, the Rent Board hereby adopts the following rules and regulations for the purpose of regulating rents, minimum standards for the use or occupancy of mobile home park accommodations, and evictions with respect to mobile home park accommodations in mobile home parks within the Town of Middleborough.

Section 1 – Definitions:

- A. Board:** The Rent Board is the Town of Middleborough Board of Selectmen established by a vote under Article 5 of the warrant for the Middleborough Town Meeting of March 10, 1986.
- B. Capital Improvements:** Any substantial rehabilitation, addition or improvements which appreciably add to the value of the property or prolongs its life or both, but not including ordinary repairs and maintenance.
- C. Mobile Home:** A structure, built in conformance to the National Manufactured Home Construction and Safety Standards which is transportable in one or more sections, which in the traveling mode, is eight body feet or more in width or forty body feet or more in length, or, when erected on site, is three hundred twenty or more square feet, and which is built on a permanent chassis and designed to be used as a dwelling unit with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air conditioning, and electrical systems contained therein. A mobile home is also known as a “manufactured home” as defined in General Laws Chapter 140, Section 32Q.
- D. Mobile Home Park:** A lot or tract of land used for the site of three or more mobile homes occupied for dwelling purpose and licensed pursuant to General Laws Chapter 140, Section 32B. A mobile home park is also known as a manufactured housing community as defined in General Laws Chapter 140, Section 32F.
- E. Mobile Home Park Accommodations:**
1. The lot or space in a Mobile Home Park upon which is located a Mobile Home not owned by the holder of the license of said park and used and occupied as a one family dwelling unit or available for such use and occupancy.
 2. A Mobile Home in a Mobile Home Park owned by the licensee of a mobile home park and used and occupied by a Tenant as a one family dwelling unit or available for such use and occupancy.
- F. Housing Services:** Services or facilities provided by an Owner or required by law or by the terms of a rental housing agreement to be provided by an Owner to a Tenant in

connection with the use and occupancy of any mobile home park accommodation, which may include without limitation: Services, furniture, furnishings and equipment, repairs, decorating and maintenance, provisions of light, heat, hot water, cold water, telephone, kitchen, bath and laundry facilities and privileges, use of yard and other common areas, janitor service, refuse removal, parking facilities, lawn water sprinkler services, vehicle or equipment storage, and any other benefit, privileges or facility connected with the use or occupancy of any mobile home park accommodations.

- G. Owner:** The individual who holds a license granted pursuant to Mass. Gen. Laws, Chapter 140, Section 32B, to conduct, control, manage or operate directly or indirectly a mobile home park in any manner including, but not limited to, a partnership, corporation or trust.
- H. Operating and maintenance expenses:** The reasonable expenses of operating and maintaining a mobile home park including, but not limited to, maintenance, repair, management fee, real estate broker's commission to someone other than the Owner, insurance, utilities not included within the rent, but not including mortgage interest and amortization or an allowance for obsolescence or depreciation.
- I. Rent:** The consideration, including any bonus, benefit, gratuity or charge contingent or otherwise, demanded or received for or in connection with the use or occupancy of a mobile home park accommodation or for housing services or for the transfer of a lease of a mobile home park accommodation, exclusive of the license fee collected by the Owner and paid to the Town under General Laws Chapter 140, Section 32G; excluding therefrom, however, the consideration paid by a shareholder of a Cooperative Housing Corporation organized pursuant to General Laws Chapter 157B for a share of said corporation, a propriety lease, and any maintenance fees associated therewith. Rent shall include fees and charges for services assessed by the owner to a Tenant by an Owner whether or not the services may be provided to a Tenant at the option of the Tenant.
- J. Rental Housing Agreement:** An agreement between an Owner and a Tenant for use and occupancy of a mobile home park accommodation and/or housing services, specifically excluding, however, any agreement for occupancy of a mobile home park accommodation between a Cooperative Housing Corporation as a defined in Massachusetts General Laws Chapter 157B and a shareholder of said corporation.
- K. Tenant:** A tenant, lessee, or other person entitled under the terms of a rental housing agreement with the Owner for the use and occupancy of any mobile home park accommodation; excepting for this definition, however, any person who occupies a mobile home park accommodation pursuant to a propriety lease as defined in General Laws Chapter 157B at Section 4, as a shareholder of a Chapter 157B Cooperative Housing Corporation.
- L. Fair Market Value:** Fair Market Value of property shall mean the current assessed valuation of the property or other valuation that the Board on basis of evidence presented before it considers more appropriate to the circumstances of the case before

it. The Board shall evaluate all evidence presented by any party regarding the fair market value.

M. Fair Net Operating Income: Fair net operating income shall be that income which will yield a return to the Owner of a Mobile Home Park, after all reasonable operating expenses, on the fair market value of the Mobile Home Park, equal to the debt service rate for similar-type property generally available from institutional first mortgage lenders or other rates of return that the Board on the basis of evidence presented before it considers more appropriate to the circumstances of the case. The Board shall evaluate all evidence presented by any party regarding the fair net operating income.

Section 2 – Maximum Rent:

- A. The maximum rent for mobile home park accommodations which a park owner may charge a tenant shall be as follows:
1. For mobile homes which are in existence, occupied by a tenant or occupant and subject to a rental housing agreement on the date these Rules and Regulations are adopted, the maximum rent shall be the rent set forth in Addendum A.
 2. For new mobile homes which have not been previously sold by the park owner and are not occupied by a tenant or occupant under a rental housing agreement on the dates these Rules and Regulations are adopted, the maximum rent shall be the rent set by a rental housing agreement between the park owner and the tenant or occupant of the home. The maximum rent may be higher or lower than the maximum rent for other mobile homes in the park when the rental housing agreement is made.
 3. For mobile homes which were previously sold by the park owner and/or occupied by a tenant or occupant under a rental housing agreement which is no longer in effect, the maximum rent shall be the rent set by a new rental housing agreement between the park owner and the new tenant or occupant of the home. The maximum rent shall not exceed the following:
 - a) If the park owner is offering new mobile homes for sale at the time the new rental housing agreement is made, the maximum rent shall not exceed the rent then being offered to purchasers of new mobile homes.
 - b) If the park owner is not offering new mobile homes for sale at the time the new rental housing agreement is made, the rent shall not exceed the highest rent then being paid by other tenants/occupants in the park.
 4. Maximum rent for mobile home park accommodations may be adjusted from time to time by the Board pursuant to Section 4 and Section 5 of these Rules and Regulations. Maximum rent for mobile home park

accommodations may also be adjusted under a rental housing agreement which provides for a rent adjustment based on application of a yearly consumer price index factor as described in Section 4-D.

- B.** No increase in maximum rent for a mobile home accommodation shall be effective unless:
1. The increase is approved by the Board pursuant to Section 4 and Section 5.
 2. The increase is based on a yearly consumer price index factor approved by the Board; or
 3. The increase is provided for by a yearly consumer price index factor under a rental housing agreement.

Section 3 – Registration:

The Board shall require registration of all mobile home park accommodations on forms approved by it within 90 days of the approval of these regulations. Any new or additional accommodation must be registered prior to occupancy thereof. No petition for an upward adjustment of maximum rent shall be accepted by the Board until all statements and information required to be filed under this Section 3 have been filed and any such petition prior to such filing shall not be entertained by the Board. The Board shall require the following:

1. The legal name, address and business telephone of the owner;
2. The identification of each unit of mobile home park accommodations;
3. The legal name, address and business telephone of the manager;
4. The identification of each Tenant in the mobile home park, including the date the Rental Housing Agreement began, the date on which it terminates, or whether it is a tenancy at will, and the amount of rent due each month;
5. The lot type, if necessary, to distinguish different types of lots for which the owner charges different rents, including the description of the basis(es) for charging the rent differential;
6. A copy of all Rental Housing Agreements and any rules and regulations applicable to each Rental Housing Agreement. The owner shall update the registration annually by June 30th of each year.

The registration forms shall be signed by the Owner under the penalties of perjury.

Section 4 – Adjustment of maximum rent:

- A.** The Board shall, by order or regulation as provided in Section 5, make such individual or general adjustments, either upward or downward, of the maximum rent established by Section 2 for any mobile home park accommodations as may be necessary to remove hardships or correct inequities for both Owner and Tenant, and make adjustments for capital improvements / equipment and in so doing shall observe the principle of maintaining rents at levels which will yield to Owners a fair net operating income for such mobile home park accommodations.

- B. The Board by regulation may establish further standards and rules consistent with the foregoing. The Board may promulgate a schedule of standard rental increases or decreases for improvement or deterioration in specific services and facilities.
- C. Notwithstanding any other provision of this section, the Board may refuse to grant an upward adjustment of maximum rent if it determines that the affected mobile home park accommodation does not comply with the State Sanitary Code or the Town of Middleborough codes or by-laws or any other applicable code, ordinance or state law regulating the conditions of housing accommodations, and if it determines that such lack of compliance is due to the failure of the Owner to provide normal and adequate repairs and maintenance. The Board may refuse to make a downward adjustment of maximum rent if it determines that the Tenant is more than thirty (30) days in arrears in payment of rent unless such arrearage is due to a withholding of rent under the provisions of Section 8A of Chapter 239 of the General Laws or if the Tenant is in substantial violation of any enforceable rule of the mobile home park or if the Tenant is in violation of any laws or ordinances which protect the health and safety of other mobile home park residents.
- D. In setting or adjusting rent for mobile home park accommodations under Section 4 and Section 5, the Board may approve yearly adjustments of the rent based on application of a consumer price index factor as described in this subsection. A rental housing agreement may provide for yearly adjustments of the rent based on application of a consumer price index factor as described in this subsection. The yearly consumer price index factor authorized by these Rules and Regulations shall be based on the Consumer Price Index for All Urban Consumers (CPI-U): U.S. City Average, All Items (unadjusted) (1982-84=100) published by the Bureau of Labor Statistics, U.S. Department of Labor, or if such index is no longer published, such other or successor index which is approved by the Board. Yearly adjustments in rent based on a consumer price index factor shall be calculated by determining the increase or decrease in the index by comparing the current monthly index ("current CPI") to the monthly index for the same month one year prior to the month when the yearly adjustment is being determined ("prior CPI"). The difference between the current CPI and the prior CPI shall be divided by the prior CPI to derive a percentage increase or decrease. The percentage increase or decrease shall then be multiplied by the existing rent to determine the amount of the rent increase or decrease. For example, if the current CPI is 3% more than the prior CPI, the existing rent will increase by 3%.
- E. The Board in adjusting maximum rent for a mobile home park may equalize rent for all substantially similar or comparable units in those cases where the maximum rent which is to be adjusted is not equalized before adjustment.

Section 5 – Rent Adjustment Proceedings:

- A. **Individual Adjustment of Maximum Rent.** The Board shall consider an adjustment of rent for an individual mobile home park accommodation upon receipt of a petition for adjustment filed by the Owner or Tenant of such mobile home park

accommodation or upon its own initiative. Such petition shall be made on a form approved by the Board. The Board shall notify the Owner, if the petition was filed by the Tenant, or the Tenant, if the petition was filed by the Owner, of the receipt of such petition and of the right of either party to request a hearing in writing within thirty (30) calendar days of receipt of such notice or the Board may schedule a hearing on its own initiative. If a hearing is timely requested by either party or if the action is undertaken on the initiative of the Board, notice of the time and place of the hearing shall be furnished to the Owner and Tenant and the hearing shall be conducted before the Board. The Board may consolidate petitions and actions relating to mobile home park accommodations in the same mobile home park, and all such petitions and actions may be considered in a single hearing.

- B. General Adjustment of Maximum Rent by Regulation.** Upon application or petition by an Owner or Tenant, the Board may make a general adjustment by percentage or otherwise of the rental levels for mobile home park accommodations subject to such conditions, if any, as the Board shall determine. Prior to making such adjustment, a public hearing shall be held before the Board. Notice of the time, place, and purpose of such hearings shall be published at least once in a newspaper having a general circulation in the Town, and posted in the Town Hall, both not less than seven (7) days prior to such hearings.
- C. Limitation of Petition for Individual Adjustment.** Notwithstanding any other provision of this section, the Board may, without holding a hearing, refuse to adjust the maximum rent for an individual mobile home park accommodation and may dismiss any petition for adjustment if a decision has been made with regard to the maximum rent for such mobile home park accommodation within twelve (12) months or if the Board finds that the petition for adjustment is filed for purposes of harassment or for other purpose not intended herein.
- D. Hearing, conducted pursuant to Section 5 above shall be conducted as adjudicatory hearings in accordance with the provision of Massachusetts General Laws Chapter 30A, Sections 10, 11 and 12. Rules and procedures for the conduct of said hearings shall be those rules and regulations outlined in 801 CMR 1.00 et seq. for the conduct of adjudicatory hearings before State administrative agencies, which the Board hereby adopts and shall implement as its own rules and regulations for the conduct of adjudicatory proceedings. Within thirty (30) days of the filing of a petition, the Board shall meet and determine whether to proceed on such petition pursuant to the formal or informal rules as outlined in 801 CMR 1.00 et seq. or under other procedures and shall indicate its determination as to which rules and procedures shall be followed in its notice of agency action to affected parties, and in the public notice of said hearing.**
- E. All decisions made by the Board under this Section shall be rendered in writing within 30 days from the date the Board closes the public hearing on the petition.**
- F. The Board shall levy a filing fee upon any and all parties that make application to request a rent adjustment for a mobile home accommodation. The filing fee for any individual rent adjustment requested pursuant to Section 5 of these rules and regulations shall be \$50.00. The filing fee for a general rent adjustment pursuant to Section 5B of these regulations shall be \$10.00 per unit for which a general**

adjustment is requested. The applicant shall also pay the sum of \$100.00 to cover advertising costs. Filing fees and advertising costs shall be paid by check payable to the Town of Middleborough at the time of the filing of a petition.

Section 6 – Incorporation of Administrative Procedure Act and 801 CMR 1.00

The provisions of Massachusetts General Law Chapter 30A including those provisions giving agencies the power to issue, vacate, modify, and enforce subpoenas shall be applicable to the Board as if said Board were an agency of the Commonwealth, as well as, those provisions relating to judicial review of an agency order. The rules and regulations at 801 CMR 1.00 et seq. as adopted by the Secretary of Administration for Massachusetts for application and use by state agencies for the conduct of both formal and informal adjudicator hearings shall be the rules and regulations and procedures adopted for use before The Board for the hearing of all petitions for rent adjustment, and for eviction, unless at the time of the filing of the petitions and before the notice of agency action shall be published, the Board shall by vote determine to use an alternative procedure which nonetheless shall be consistent with the provisions of Massachusetts General Laws Chapter 30A, Section 10, 11, and 12.

Section 7 – Capital Improvements and Capital Equipment Rent Adjustment

A. Pre-Approval

A park owner or management may file a petition for the purpose of obtaining pre-approval from the Board for an increase in maximum rent to offset the cost of a substantial and necessary capital improvement or purchase of capital equipment. The procedures set forth in Section 5 above for individual rent adjustment petitions shall be used for capital improvement or capital equipment petitions. The park Owner or Management shall file with the petition for pre-approval any and all information relating to the cost of and need for financing the capital improvement or capital equipment purchase. Any pre-approval given by the Board shall also be deemed an approval of such financing. The Board shall consider whether the improvement is necessary and the reasonableness of the cost of the improvement in considering a rent increase to support the cost of the improvement. The rent increase shall be conditioned upon satisfactory and final approval of the improvement.

B. Final – Approval

Upon completion of capital improvement or purchase of capital equipment for which a park owner or management has received pre-approval, the Board may give final approval of the increase in maximum rent(s). Final approval shall only be given by the Board upon submission of satisfactory evidence by the park owner or management that the capital improvement has been satisfactorily completed or the capital equipment has been purchased and that the costs incurred for such improvement are equal to or exceed the cost upon which pre-approval was given. In the event that such costs are less than the original estimated costs, the maximum rent shall be increased only to the extent that it reflects such costs. The Board shall hold a public hearing upon submission by the park owner or management of evidence of completion of the capital improvement or purchase of equipment.

Section 8 – Conference of Jurisdiction

The Wareham Division of the District Court Department shall have original jurisdiction concurrently with the Superior Court, of all petitions for review brought pursuant to Section 14 of Chapter 30A of the General Laws. The Superior Court shall have jurisdiction to enforce Chapter 703 of the Acts of 1985 and may restrain violations thereof.

Section 9 – Information to be supplied in Connection with Petitions for Adjustment:

Upon receipt by the Board of a petition for adjustment of maximum rent by an Owner, the Board may request documents, which information may include but not be limited to:

- A. Reviewed Financial statements certified by a CPA for the three (3) years preceding the year of the filing of the petition; such statements should clearly set forth income, sources of income, and a detailed breakdown of operating expenses.
- B. An interim updated financial statement showing income and operating expenses for the current year.
- C. A complete and current balance sheet.
- D. A statement of the number of employees, job titles and job descriptions of any employee whose employment relates to the affected mobile home park.
- E. Current capital improvements and dates of completion.
- F. Proposed capital improvements and proposed dates of completion.
- G. Proposed budget for the year in which the increase is to be effective.
- H. A statement of the rate of return sought and the assessed valuation of the property.
- I. A statement of the fair market value of the park property supported by a current appraisal by a certified appraiser.

In any case where the Owner seeking an upward adjustment in rent owns and operates more than one mobile home park, all financial documentation submitted shall pertain solely to the operation of the mobile home park for which the upward adjustment is sought.

Upon receipt by the Board of a petition for a downward adjustment of maximum rent, the Board may request documents which information may include but not be limited to:

- A. Written reason for such downward adjustment; and
- B. Any evidence financial or otherwise, supporting such downward adjustment.

Section 10 – Evictions:

- A. Pursuant to the provisions of General Laws, Chapter 140, Section 32J, as amended, no Owner shall terminate any lease or tenancy and/or bring an action to recover possession of a mobile home park accommodation unless;
 - 1. the Tenant has failed to pay the rent to which the Owner is entitled;
or
 - 2. the Tenant is in substantial violation of an enforceable rule of the mobile home park; or
 - 3. the Tenant is in violation of a law or ordinance which protects the health or safety of other mobile home park residents; or

4. there is a discontinuance in good faith by the Owner of the use of part or all of the land owned and licensed as a mobile home park subject to any existing contractual right between the Owner and the Tenant located in the mobile home park. No such discontinuance shall be valid for any mobile home sold by the licensee and for which a mobile home site was made available at the time of the said sale by the licensee for a period of five (5) years from the date of said sale.
- B. The Owner must provide the Board with satisfactory evidence that all notice requirements as to any alleged violation have been provided to the Tenant in a timely manner and the Tenant has failed to cure the alleged violation in a timely manner, all as set forth in General Laws, Chapter 140, Section 32J as amended.
- C. 1. An Owner shall file an application in duplicate for obtaining a certificate of eviction with a filing fee of \$50.00 for each unit for which eviction is sought. The fee shall be paid by check or money order made payable to the Town of Middleborough and presented at the time of filing the application for a certificate of eviction.
2. An application for certificate of eviction shall be signed by the Owner under the pains and penalties of perjury and shall describe in complete detail the proposed basis (or bases) for eviction and the facts in support of such basis (or bases). A copy of the lease and the rules and regulations of the mobile home park Owner shall be submitted with the application where the Tenant is claimed to have violated either the lease or the park regulations.
 3. An application for certificate of eviction which fails to comply with the foregoing provisions of this paragraph "C" shall not be processed until such defects have been corrected or removed.
 4. The Board shall, by certified mail, return receipted requested, forward to the Tenant or Tenants listed on the application for a certificate of eviction and to the park Owner a copy of the application for a certification of eviction as received, together with a notice of the date, time and place of the hearing.
 5. An application or an amended application for eviction shall be scheduled for a hearing not less than ten (10) days or more than 21 days from the date on which the notice of hearing is mailed as aforesaid by the Board to the parties. Hearings shall be conducted by the Board and shall be adjudicatory hearings following the procedures set forth in Massachusetts General Laws, Chapter 30A.
 6. A request for postponement of the hearing will be granted for good cause shown.
 7. At the hearing the Owner shall have the burden of establishing the facts and basis for the eviction. Testimony shall be taken under oath and any party shall have the right to cross-examine witnesses of the other party and to introduce evidence in support of its position.

8. A written order granting or denying a certificate of eviction shall be issued by the Board within thirty (30) days of the date of the final hearing and its order denying a certificate of eviction shall be a defense in any summary process action commenced by the Owner against the Tenant or Tenants named on the application for a certificate of eviction.

D. No Owner shall seek recovery of possession of a mobile home park accommodation in a summary process-eviction case unless the Board issues a certificate of eviction therefor.

E. The provisions of this section shall be construed as additional restrictions on the right to recover possession of a mobile home park accommodation. No provision of this section shall entitle any person to recover possession of such a mobile home park accommodation. Upon a decision of said Board concerning the granting or withholding of a certificate of eviction, either party concerned may appeal to the Wareham Division of the District Court Department or the Plymouth Division of the Superior Court Department.

Section 11 – Severability:

If any provision of these rules and regulation or the application of such provision to any person or circumstance shall be held invalid by a final judgment of a court of competent jurisdiction, the validity of other provisions or the application of such provision to other persons or circumstances shall not be thereby affected.

Section 12 – Forms

Any forms adopted pursuant to the provisions of these rules and regulations shall be submitted to the Board under the pains and penalties of perjury.

MIDDLEBOROUGH RENT BOARD RULES AND REGULATIONS

Points for Consideration

1. §1-A - How Rent Board was established/appointed. The Town Meeting established a five (5) person Rent Board to be appointed by the Board of Selectmen. The Board of Selectmen appointed itself as the Rent Board even though it was not required to do so.
2. §1-F - Should fees or charges for optional services such as lawn sprinkler charges and storage of vehicles/equipment be included.
3. §1-I - Should rent include fees or charges for optional services.
4. §1-M - Is the mortgage rate applied to the fair market value an appropriate standard for a fair net operating income? The special statute (Section 3) requires that rents are to be at a level which yields a fair net operating income for the mobile home units involved.
5. §2 - There are three parks in Middleborough. Thought should be given to establishing the initial maximum rent. Also, the Rent Board established the initial rent for Oak Point units with a built-in COLA. Should the regulations reflect that the Rent Board may set rents which will be subject to COLA?
6. §6-F - Are the amounts for the fees appropriate.
7. §6 - The special act (Section 4) makes provisions of Chapter 30A (Administrative Procedures Act) applicable to the Rent Board.
8. §9-A - Should financial statements certified by a CPA be required? My understanding is that a statement certified by an accountant is substantially more costly than an uncertified statement.
9. Consider adoption of Town By-law to regulate registrations and evictions.
10. Consider development of forms for at least the following:
 - (a) registration of units;
 - (b) petition – individual adjustment of rent;
 - (c) petition – general adjustment of rent;
 - (d) petition – capital improvements/equipment rent adjustment;
 - (e) petition for pre-approval of capital improvements/equipment rent adjustment;
 - (f) application for certificate of eviction; and
 - (g) certificate of eviction.
11. Recommend that draft regulations be sent to each of the park owners and tenants associations for review and comment before scheduling public hearing to consider adoption of regulations.