



# TOWN OF MIDDLEBURY

## Board of Selectmen

MINUTES  
Board of Selectmen  
Tuesday, January 16, 2024 – 6:30 p.m.  
Town Hall Conference Room

Start – 6:30 p.m.

End – 7:30 p.m.

### Present:

Edward B. St. John, First Selectman  
J. Paul Vance, Selectman  
Jennifer Mahr, Selectman  
Robert Smith, Town Attorney  
Patrick Deely, Chief of Police  
Rita Smith, Library Board of Trustees –  
Chairman, PD – Commissioner, BOF-member  
Vincent Cipriano, Board of Finance – Chairman

Patricia Kurze, Safety & Health Committee,  
Chairman  
Sarah Shelton, Voices  
Liana St. Germain, Recording Clerk

### Also Present

Jerry Nardone  
Robert Nerney  
Bob Marages

### Call to Order with Pledge of Allegiance

The meeting was called to order by the First Selectman at 6:30 p.m. with the Pledge of Allegiance.

### Approval of January 2<sup>nd</sup>, 2024, Meeting Minutes

First Selectman St. John MOTIONED to approve the minutes from January 2<sup>nd</sup>, 2024, SECONDED by Selectman Vance. Unanimous approval.

### Tax Rebates

None

### Re-appointments

#### **Safety and Health Committee**

Patricia Kurze – Chairman  
Kevin Dawes – Co-Chairman  
Chief Brett Kales  
JoAnn Cappelletti  
Betsy Anderson  
Jo-Ann LoRusso  
James Long  
Mark Stevens

RECEIVED FOR FILING  
Jan 18 2024 at 3:55 pm  
TOWN CLERK'S OFFICE  
MIDDLEBURY, CT  
*Richard M. Beath*  
TOWN CLERK

First Selectman St. John stated our insurance company requires this. Each member of this committee is a town employee representing each department.

First Selectman St. John MOTIONED to reappoint all members to this committee, SECONDED by Selectman Vance. Selectman Mahr abstained.

Selectman Mahr stated she had several technical questions regarding this committee. One being posted on the Agenda the public comment section. If the meeting is made up of town employees for town employees, it looks like this committee is being treated like it is a public committee.

First Selectman St. John requested, since Chairman Kurze was present, if she could assist with a response. Selectman Mahr noted that if this committee comprises town employees for town employees due to insurance purposes, is it necessary to treat it like a board or commission regulated by the charter or a committee the Board of Selectmen may set up? Selectman Mahr states the reason for asking this is because this committee is made up of town employees, but our charter states that boards and commissions must have minority representation. So, would that apply to this committee? Selectman Mahr noted that political parties should have nothing to do with town employees.

Chairman Kurze stated that the Safety and Health Committee Agenda is a standard agenda. Those meetings are open to the public, and anyone who wishes to attend them is welcome; it is not a closed-door meeting. Selectman Mahr noted that minority representation applies since this is a town committee. Chairman Kurze stated that according to the insurance company, Travelers, it must be comprised of employees. Attorney Smith noted that there must be an exemption for this. First Selectman St. John requested that Chairman Kurze look into this further. Selectman Mahr stated that if we appoint this as a board, we should treat it as such. Selectman Vance noted that this board is made up of employees who are not all town residents. Selectman Mahr noted that with that, we put ourselves in a dilemma. First Selectman St. John requested that Attorney Smith research this and advise on his findings.

### **Discussion and Consideration**

#### **Job Description Approval – Part-time Administrative Support to the Offices of Town Hall**

Patricia Kurze stated that certain departments are currently running on the lean side. Mrs. Kurze noted that at least two department heads have come to her with concerns about our current staff members' workload. Mrs. Kurze stated that based on their input and things that have been observed, she recommends bringing on a part-time administrative individual to support the town hall offices. This individual will be a floater, and there are currently two offices in dire need of help. The primary focus of this position would be for those offices, but with the understanding that whoever staffs this position would not necessarily be committed to those two offices. They will be cross-trained accordingly.

First Selectman St. John noted that it wasn't mentioned that this is being driven because of dealing with health issues with employees, which keeps them away from their regular work assignments. First Selectman St. John MOTIONED to accept the part-time Administrative Support to the Offices of Town Hall. SECONDED by Selectman Vance. Unanimous approval.

Selectman Mahr asked Mrs. Kurze if references would be required, and Mrs. Kurze stated that yes, they are required in the town's standard application.

#### **Update on Short-Term Rental Ordinance**

Attorney Robert Smith stated that he had a ZOOM meeting with the council for VRBO and another member of the VRBO team last Friday afternoon. VRBO assured me they will abide by our ordinance. Attorney Smith noted that while in the meeting, the member from VRBO went online and showed that, currently, there are no ads for the Town of Middlebury. VRBO stated that if one does get through, VRBO provided an email alias to Attorney Smith to notify them, and they will be able to take it down. Attorney Smith advised that if anyone sees one on VRBO, let him know, and he will contact VRBO and then take it down. Attorney Smith noted that as far as Airbnb, I advised that I contacted them. I received a green card from my certified mail, but no one ever contacted me. So, it is unclear if it got to the right individual. Attorney Smith stated he did send an email to someone in their legal department today and is still

waiting to hear back. Police Chief Deely noted that the police department is working hand in hand with the legal department—the police department documents every incident and the time frame of when the ordinance was implemented.

Jerry Nardone stated that issuing infractions has been discussed previously. Mr. Nardone noted that he had sent an email during this period to the Police Chief regarding seven or eight listings that are active on Airbnb and made requests to send infractions regarding the first offense, which is a non-fineable offense. Mr. Nardone believes this would be a good, easy, and cheap way to notify the owners of these properties, advising them that there is now an ordinance in place. Chief Deely stated this ordinance went into effect on December 20, 2023, and asked Mr. Nardone what factual date we have of that advertisement. Mr. Nardone advised December 30, 2023. Chief Deely advised Mr. Nardone to come into the police department in person and make an actual report because you cannot do a report via email and have all the data available so that an officer can research and handle the police report. Attorney Smith noted that these properties must be given notice and an opportunity to be heard. That is the constitution. Certified letters were sent out to Airbnb and VRBO. I received a response from VRBO and have not gotten one from Airbnb, which suggests that the wrong person has the certified letter. Attorney Smith stated that he reached out to Airbnb today. Attorney Smith noted that he would not try to enforce this law until he was sure someone there understood what we had here, and we would then take action just as VRBO did.

Selectman Mahr asked when a violation had occurred; our progressive steps are to notify them that they had a violation and then fine them \$250.00. Is this the extent of our authority? Attorney Smith advised that this is the extent of our authority under the statute. Selectman Mahr noted that we chose to draft this ordinance on that statute. Do we have any other options in terms of an ordinance? Selectman Mahr asked what someone would get arrested for in this case. Chief Deely stated we have the names of the individuals, and they will be sent the infraction in the mail, and if they choose to pay it or not pay it, that is up to them. Selectman Mahr asked, but can you not arrest anyone for advertising on VRBO? Chief Deely stated, no. Selectman Mahr just needed clarification. Attorney Smith noted that this is giving them a citation and a fine. This is not arrestable. It is not a misdemeanor or a felony. Selectman Mahr questioned whether there were any other stronger enforcements. Any other statutes. When this was implemented, it was noted that it had no teeth. Chief Deely stated there is a ceiling on what we can impose upon them: the \$250 fine. What was recommended to the neighbors was for them to compile all the data and for them to take civil action against the homeowner. All the police department can do is document each incident and proceed accordingly. Chief Deely believes that before long, the individuals who rent these homes will no longer answer the door to the officers. However, the Chief is advising his officers to handle the police report still accordingly and document everything appropriately.

First Selectman St. John noted in an email sent from Selectman Mahr. She stated, "I would also like to revisit the total ban from the perspective that an on-site homeowner renting two or less bedrooms by definition cannot be a whole house party location, and there are legitimate reasons why someone might need or want this option: traveling nurses, parents visiting Westover students, out of town relatives visiting family whose house is too small to stay in, etc." First Selectman St. John noted that we have gone from enforcement to looking at something that may undo some enforcement. When this was brought up, I believe we should get from those parties what we can do to change this. Or will you, Selectman Mahr, be representing these individuals? Selectman Mahr stated she was asking this question because she was not part of the ordinance's decision-making process, and she believes no one saw the proposed language on the day that this was voted on. Selectman Mahr noted that she thinks this ordinance we have was voted on in a very short amount of time. There wasn't a lot of

discussion on it, it was a response to an emergent situation. I think we did not take any time to discuss the difference between a business that is a whole house rental, where the owner doesn't live there, versus the entire reason why VRBO or Airbnb was started in the first place: a homeowner has space in their home, where they live there, which they wish to rent a room. Selectman Mahr stated that she believes there is a legitimate need, and that need was overlooked when we went to this ordinance. There is no attempt to undo enforcement because it is a separate issue. Selectman Mahr noted that enforcing anything has a problem because we don't have an ordinance with teeth right now. The difference between a whole house rental and owner-occupied rental is a legitimate discussion with nothing to do with enforcement. Selectman Mahr noted that this was the point she was making; she was not diminishing the suffering that Mirey Dam was experiencing.

Selectman Vance stated this needs to be tabled for further discussion with the council. Selectman Vance noted we need to ensure we don't create mini businesses in small houses. Selectman Vance stated there was just a fire in Connecticut where two individuals died in an illegal apartment that they were renting from a homeowner. We need to ensure we are covering all our bases, whether it be the fire marshal or the police department, who will be required. Selectman Vance noted that he is not against this, but this needs to be further discussed with the council and proper authorities.

Selectman Vance MOTIONED to table this at this time, SECONDED by Selectman Mahr. Unanimous approval.

### **Updates on Budget and Projects**

First Selectman St. John wanted to note briefly - that department head budgets were received and given to each Selectman. First Selectman St. John also advised that explanations were requested at the last meeting and that narratives were attached.

### **Request to Purchase Town-owned Land (T-lots)**

First Selectman St. John stated a request from a property owner at 461 Lake Shore Drive to purchase T-lots. This is to be referred to Attorney Dana D'Angelo. First Selectman St. John noted that the town has been involved for many years. For example, these lots are deeded to the town when individuals pass on. They are interior lots. Some are minimal in size and very small. We make them

available to adjoining property owners, they are put back on the tax rolls. They cannot be subdivided or created into other subdivisions. It then goes to the town Attorney, who gets an appraisal pursuant to our charter. It is then returned to the Board of Selectmen for review. If the Board of Selectmen agrees, it is then sent to the Planning and Zoning Commission and then comes back to the Board of Selectmen for it to be sent to a town meeting. Selectman Mahr questioned if this property was offered to the other abutting property owners or if this individual came to us. First Selectman St. John noted that this individual came to us. Selectman Mahr then asked if the other property owners would be asked. Attorney Smith said he would rather have Attorney D'Angelo answer these questions; she handles all the land use and knows the procedures well.

First Selectman St. John MOTIONED to refer this request to Attorney D'Angelo, SECONDED by Selectman Vance. Unanimous approval.

### **Minority Representation**

Attorney Smith stated an email was sent early today. (See attached)

Attorney Smith noted that for any vacancy, whether elected or appointed, it must go to the town committees to replace the individual of the same party. They are entitled to present a list to the Board of Selectmen to vote on. Selectman Mahr noted that you are speaking on an unexpired vacancy when someone leaves in the middle of their term. Attorney Smith confirmed yes when someone leaves a position midterm or passes away, as in what recently happened. Selectman Mahr noted that this is distinguished when someone's term has expired and no longer wishes to re-up on their term. Selectman Mahr stated that how we appoint individuals is different from minority representation. Selectman Mahr noted that she was reviewing the Boards, Committees, and Commissions. Selectman Mahr noticed that the Retirement Plan Committee is all Republican, the Commission on Aging has more Republicans than necessary, and so does Planning and Zoning. Selectman Mahr questioned if someone was looking at this or paying attention. Attorney Smith noted that Planning and Zoning had someone who is now gone. Attorney Smith questioned whether this was meeting attendance or the actual board makeup. The Planning and Zoning is a five-member board with three alternates, and you treat those as two separate entities. Selectman Mahr noted why we treat it as two separate panels when it's all one board. Attorney Smith states that's what it states in the charter. Selectman Mahr noted, but does the charter comply with state regulations? Attorney Smith said that the charter supersedes the state law. Selectman Mahr questioned how it superseded it if there was less minority representation, which state law requires. Attorney Smith stated the charter specifically cites the state law as the basis for minority representation, and technically, the charter could be different than the state law, and it would supersede it, and that is how the Home Rule Act works. There are very few places where the charter supersedes the state law, but it does.

First Selectman St. John asked Selectman Mahr who the author of the Small Town Alliance Facebook page. Selectman Mahr noted that the members of the alliance are. First Selectman St. John stated that a post was made suggesting that the town may want to use any of our undesignated funds or possibly surplus funds, and a comment was made that those funds could be used to offset increases in the grand list. First Selectman St. John noted that he's not quite sure how that would be done, but if Selectman Mahr isn't the author, she wouldn't be able to answer the question. Selectman Mahr stated why is this question appropriate for this meeting. First Selectman St. John noted that to prevent grand list expansion, we would use all our surplus or unexpended money to cover town expenses, which is not a very good move. The town is a pay-as-you-go town. We do not bond. First Selectman St. John noted that we use the surpluses and the undesignated to pay for future expenditures, like our million-dollar road program—all repairs and maintenance of our town buildings – buying fire apparatus – buying public works equipment – police department vehicles. This is how the town funds this. First Selectman St. John stated he believes this is good budgeting, an excellent way to do business, and the town pays as you go. First Selectman St. John stated when you vote on the budget, you will have the school budget, you will have the town budget, and you will then have the capital items.

Selectman Mahr stated that if someone had a business in town that commented about town policy, I highly doubt that you would call out that business at a Board of Selectman meeting. For this meeting, my business is the Middlebury Small Town Alliance, separate from my duties as an elected official. Selectman Mahr noted that this was not an appropriate question. First Selectman St. John stated that after reading that posting, he wanted to clarify what the town does with its surplus money, and that was the only point he tried to raise.

Selectman Mahr stated that a police officer was stationed at the last Planning and Zoning meeting, and she objected to that. Selectman Mahr noted that the last time an officer was at the Conservation

Commission meeting, where a decision was made in anticipation of an unhappy public, there was a police officer stationed there. There was no notice that a decision was going to be made at the Planning and Zoning, yet a police officer was present. Selectman Mahr noted from the perspective of an intimidating town presence. Selectman Mahr believes that having an officer present is a good message to send. Selectman Vance stated that this decision was made by public safety, where there will be a largely attended meeting. Chief Deely stated multiple commission members were in fear and requested police presence at this Planning and Zoning meeting.

**Public Comments**

None

**Executive Session**

None

**Adjournment**

First Selectman Edward B. St. John MOTIONED to ADJOURN the meeting at 7:30 p.m.; SECONDED by Selectman Vance. Unanimous approval.

The next meeting is slated for Monday, February 5, at 4:00 p.m.

These minutes are submitted subject to approval.

Respectfully Submitted,

*Liana St. Germain*

Recording Clerk

**ROBERT W. SMITH  
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January 16, 2024

Edward B. St. John, First Selectman  
Town of Middlebury  
1212 Whittemore Road  
Middlebury, CT 06762

**Re: Procedure for Filling Vacancies in Elected and Appointed Positions**

Dear Ed:

You have requested that I provide a legal opinion relative to the December 22, 2023 email request from Selectman Jennifer Mahr, regarding the filling of vacancies for elected and appointed members of Town Boards and Commissions.

In Middlebury, the Town Charter spells out the process for filling vacancies, so as to include the two Major Political Parties.

As for elected officials, Charter Section 212 provides, in relevant part:

“When filling a vacancy of any officer, board or commission member who was elected as a nominee of a political party, the Board of Selectmen shall fill the vacancy with a person of the same political party as the vacating officer, commission or board member from a list provided by the Town Committee of the Political Party of the vacating officer, commission or board member.”

Regarding the process for filling a vacancy, for appointed officials, Charter Section 505 provides, in relevant part:

“All such appointments shall be made in accordance with the provisions of Section 212 above.”

Therefore, by reference back to Section 212, the Board must fill the vacancy with a person of the same political party, and permit the associated Town Committee to provide a list of names, from which the appointment must be made.

The mandated process is certainly not based on first come, first serve, which is antithetical to an orderly political process. In this regard, be advised that the Middlebury Republican and Democratic Town Committees are continually involved in the process of finding and vetting individuals, within their party, to be candidates or volunteers for

available elected and appointed positions. This process is established, and governed, by Connecticut laws, State Party bylaws and the bylaws of the Town Committees themselves.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Robert W. Smith', with a large, stylized initial 'R'.

Robert W. Smith

cc: Board of Selectmen  
Brigitte Bessette, Middlebury Town Clerk  
Thomas King, Chair, Middlebury Republican Town Committee  
Curtis Bosco, Chair, Middlebury Democratic Town Committee