



# TOWN OF MIDDLEBURY

## Board of Selectmen

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TOWN CLERK'S OFFICE

MIDDLEBURY, CT

### MINUTES

Board of Selectmen

Monday, February 5, 2024 – 4:00 p.m.

Town Hall Conference Room

*Brigitte M. Beattie*  
TOWN CLERK

Start – 4:00 p.m.

End – 4:40 p.m.

#### Present:

Edward B. St. John, First Selectman  
J. Paul Vance, Selectman  
Jennifer Mahr, Selectman  
Robert Smith, Town Attorney  
Dana D'Angelo, Town Attorney  
John Calabrese, Town Engineer  
Rita Smith, Library Board of Trustees –  
Chairman, PD – Commissioner, BOF-member  
John Jenusaitis, BOF- member  
Marj Needham, Middlebury Bee Intelligence  
Liana St. Germain, Recording Clerk

#### Also Present

Dr. Robert Rafford  
Frank Mirovsky  
Alice DeMartino  
Scott Peterson  
John Moriarty  
Carol Moriarty  
Beverly Dasonville  
Ralph Barra  
Maryann Barra

#### Call to Order with Pledge of Allegiance

The meeting was called to order by the First Selectman at 4:00 p.m. with the Pledge of Allegiance.

#### Approval of January 16<sup>th</sup>, 2024, Meeting Minutes

First Selectman St. John MOTIONED to approve the minutes from January 16<sup>th</sup>, 2024, SECONDED by Selectman Vance.

Selectman Mahr requested one correction in the last paragraph, where it states, "Selectman Mahr believes that having an officer present is a good message to send." Where it should state. "Selectman Mahr believes having an officer present *isn't* a good message to send."

First Selectman St. John MOTIONED correction is noted SECONDED by Selectman Mahr. Unanimous approval.

#### Tax Rebates

None

#### Re-appointments

First Selectman St. John MOTIONED to reappoint Ann Spierto to the Commission on Aging, SECONDED by Selectman Vance. Unanimous approval.

Term – 02/02/24 – 02/02/26

First Selectman St. John MOTIONED to reappoint Candice Graziano to the Zoning Board of Appeals, SECONDED by Selectman Vance. Unanimous approval.

Term – 01/17/24 – 01/17/29

### **Discussion and Consideration**

#### **Attorney Dana D'Angelo – 8-24 Referral to Planning and Zoning for the sale of Two T-lots**

First Selectman St. John noted that at the last meeting, the Board of Selectmen referred to Attorney D'Angelo, an 8-24, to the Planning and Zoning Commission for the sale of t-lots in the Long Meadow section to James and Nancy Zanavich. Attorney D'Angelo noted multiple t-lots were acquired in the estate of Alishauskas this past summer. Attorney D'Angelo stated in previous plans of conservation meetings that one of the things that they have tried to work on is getting these land lot pieces to landowners to combine with their land. First Selectman St. John noted that historically, the town has been doing this for about 25 years. Attorney D'Angelo stated they have been trying to clean up this part of town with these small pieces. First Selectman St. John asked Attorney D'Angelo if an appraisal had been done on the property, to which she stated that there had not been one yet. Still, Mr. Zanavich knows the total cost will be the appraisal, including the cost to obtain the appraisal. First Selectman St. John stated this is a long process. Selectman Mahr asked Attorney D'Angelo if this would need to come to a vote, and Attorney D'Angelo stated yes and explained further. Attorney D'Angelo explained that the process starts with the Board of Selectman and then moves to the Planning and Zoning Commission, which is part of their planning function, not their zoning function. They then recommend to the Board of Selectmen whether or not they feel it is in the town's best interest to sell this land. It then returns to the Board of Selectmen, at which point it needs to be scheduled for a town meeting. Attorney D'Angelo noted that by this point, the appraisal would be in, there would be a contract, and they would know the property's value. Selectmen Mahr stated that she had asked Attorney Smith, but he deferred to you. Is there anything that requires us to ask any other surrounding landowners if they wish to purchase the property? Attorney D'Angelo stated that no, there isn't anything that requires that. Attorney D'Angelo noted that Mr. Zanovich approached the town and that this is how this often happens. First Selectman St. John MOTIONED the following resolution (see attached),

#### **BE IT RESOLVED:**

The Board of Selectman of the Town of Middlebury moves to refer to the Middlebury Planning and Zoning Commission in accordance with Connecticut General Statute §8-24 the sale of property known as MBL 1-00-55 & MBL 1-00-48 Lake Shore Drive to James K. Zanavich, Jr.

SECONDED by Selectman Vance. Unanimous approval.

#### **Emergency Management Performance Grant 2023 (E.M.P.G.)**

First Selectman St. John stated that the town has participated in this grant since 9/11. This requires an annual resolution (see attached).

First Selectman St. John MOTIONED to approve the resolution SECONDED by Selectman Mahr. Unanimous approval.

#### **Streetlight Request – Anawan Ave @ Straits TPKE**

First Selectman St. John noted the request came from the homeowner who lives at 1428 Straits Turnpike. The streetlight request location is for Anawan Avenue at Straits Turnpike. First Selectman St. John stated that the procedure for this request is that the Public Works Commission must first approve it. First Selectman St. John noted that the town hadn't received a request like this in quite some time

and that this was the scene of a very unfortunate accident. First Selectman St. John MOTIONED to approve the request of the streetlight request SECONDED by Selectman Vance. Unanimous approval.

### **Dr. Robert Rafford – State Land Transfer to the Town of Middlebury**

First Selectman St. John noted that this had to do with the Rochambeau Memorial and to establish a monument for General Rochambeau. It was decided that it would fit best at Meadowview Park. Dr. Rafford and his team determined that this would be a great location. First Selectman St. John noted that when the property was surveyed, it was found that part of the monument would overlap with state property. Dr. Rafford introduced Frank Mirovsky, Vice President of the Board of the Historical Society, and Alice DeMartino, Secretary of the Board. Dr. Rafford stated that when they re-engineered the Routes 188 and 64 intersections, they had to take personal property away from someone. When the state completes a project, it usually returns that property to the town, but it doesn't always happen. In this case, it did not occur. The state still owns a sizeable portion of the intersection, which comes down into the park, and it conflicts with the landscaping design that has already been chosen. Dr. Rafford noted that the landscaper has redesigned it to fit that land, but it squeezes things very down. Dr. Rafford stated that to be on the safe side. We would request that the state give the town the land from the goodness of their hearts. Dr. Rafford noted that to do this, an official request from the Board of Selectmen must be made. Dr. Rafford stated he has been in contact with Senator Hartley's office, and her office requested that the first request come from the Board of Selectmen. Requests will also be made to Senator Berthel and Representative Pizzuto. First Selectman St. John stated that he welcomes this with open arms. When the state was redoing that intersection, the park was already built, and the state, through eminent domain, took a part of our property, so hopefully, we will be getting some of our land back with this request. First Selectman St. John requested that Dr. Rafford and his team prepare precisely what is needed and work with our town engineer to prepare a letter. First Selectman St. John noted that he fully supports this endeavor.

Selectman Mahr requested clarification on whether this memorial is happening regardless of what happens to the land where the current monument sits. First Selectman St. John stated that this is an alternative location to where it is now. This property has been made available to the Historical Society with the intent that a monument will be built. Dr. Rafford stated that this is independent. No matter what happens to the other monument, this will proceed as such. First Selectman St. John noted to Dr. Rafford that he is requesting the town be the vehicle to make this property that will make the project viable and that we will be the applicant for the state property. Selectman Mahr asked if the town would request the whole piece of land. Town Engineer John Calabrese recommended the town ask for the entire piece of land. First Selectman St. John MOTIONED that the town be the vehicle and support the Historical Society, SECONDED by Selectman Vance. Unanimous approval.

### **Updates on Budgets and Projects**

First Selectman St. John noted the only update he has and change that was presented publicly is the Youth and Evidence Area at the Police Department, which will be increased by \$50,000.00 for a new total of \$350,000.00.

First Selectman St. John noted that an increase in police personnel would also be added to the budget and that it would be up to the taxpayers to approve that.

First Selectman St. John asked town Attorney Robert Smith if he would like to comment on his correspondence to Selectman Mahr on the Planning and Zoning Alternates; Minority Representation. Attorney Smith said he did not plan to, and Selectman Mahr stated she was all set. (see attached)

First Selectman St. John noted that Selectman Vance has been working on and looking into the Short-Term Rental Ordinance, and asked Selectman Vance for any updates. Selectman Vance stated that he has spoken to the Fire Marshal and, the Zoning Enforcement Officer and Building Official, all of which were very informative and helpful. Selectman Vance stated he also spoke with other surrounding communities to see what they do and what they have to offer. Selectman Vance requested to meet with Attorney Smith, share the information he has gathered, and receive some further guidance. Selectman Vance noted this would take a little more time, but it needed to be done right.

Selectman Mahr would like to commend the Town of Watertown Department of Public Works for their booklet on their Capitol Improvement Program. Selectman Mahr stated the Director is a Middlebury resident, and she ran into the Director in town. Selectman Mahr read the article in the paper and advised the Director she was impressed by it. The booklet is informative, and she believes our Public Works Department should do something along these lines. First Selectman St. John advised that the town already does this, and Selectman Mahr has requested to see it. Selectman Mahr stated, in particular, that if there is a schedule for when roads are serviced that exist, that's great. She apologizes for not knowing but would love to see it, as would the town's residents. First Selectman St. John noted that it is posted yearly in the town's Annual Report.

Selectman Mahr would like to raise a concern about the Food Scrap Diversion Program. In particular, it's about the group's requirement to operate under FOIA rules. The concern is that the Board of Selectmen created this commission and gave them a job, and I believe it must operate under FOIA rules. Selectman Mahr noted if what was wanted was a group of people to hear the presentation from DEEP and give their opinion on it, then that doesn't have to happen under a formal board process. Selectman Mahr stated that this can't be in the middle; either it's done thoroughly, and you comply with FOIA rules, or you don't. First Selectman St. John noted to Attorney Smith that many discussions have been had about working committees and that this is how this committee, in particular, ended up becoming. Selectman Mahr noted that this is a great idea, from making multiple phone announcements, that everyone is now aware that the town is doing this, so this has been made a very public discussion, and that the public should be able to follow that discussion. Attorney Smith stated that this meets the definition of public agency and the Freedom of Information Act.

Selectman Mahr congratulated the newly elected Republican and Democratic Town Committees. Come March, I look forward to working with the new Chair and am thrilled to see the continued engagement from Middlebury voters. Selectman Mahr stated that she would like the Board of Selectmen to consider and have all Boards, Commissions, and Committees visit a Board of Selectmen meeting. Selectman Mahr noted that she and Selectman Vance are new enough that meeting the boards, hearing what they are working on, and seeing their agenda for the year would be a lovely way to understand their priorities and vision for Middlebury. Selectman Mahr noted they do the town's work on our behalf, and I think any partnership we can strengthen would be great. Selectman Vance agreed and stated that he started doing this when he became a Selectman last year.



### Public Comments

Ralph Barra has requested that the Board of Selectmen put new appointments on hold since there are two new Town Committees until they take effect in March. There are many positions that need to be filled, and let the new town committees handle the new appointments. Mr. Barra stated to have the Board of Selectmen table all new appointments until the new committees take effect. John Moriarty noted that he doesn't see a reason for this. Mr. Barra stated that these committees only have a month until they start and let them make the new appointments. Mr. Moriarty stated he had been a Democratic alternate on the Board of Finance for some time and hoped to get a permanent position.

Marj Needham asked if the Board of Selectmen could interfere with the actions of the local political parties, to which the Selectmen stated no. Ms. Needham noted that that would be controlling the town committees, which are political entities that are not part of the town. Mr. Barra stated that we need to let the Board of Selectmen make that call.

First Selectman St. John stated that they would need to defer to counsel.

Carol Moriarty stated that nationally, a few years ago, appointments were held off in the Supreme Court until the new groups came in, and hostility went every which way. One side wanted to wait while the other did not, and they ended up waiting. Mrs. Moriarty said they waited until the new administration came in, which took months. This would put the town in the same pickle here.

Selectman Mahr asked Attorney Smith if the authority to fill the position was with the Board of Selectmen, to which he stated yes. Selectman Mahr noted, so we take recommendations, but does this mean what is recommended to the Board of Selectmen is what we have to accept? Attorney Smith stated you are provided with a list from the town committees, and they make the recommendation. Selectman Mahr noted that because they were recommended, they do not have to be appointed, and the Board of Selectman decides whether to fill the vacancy or not. Selectman Vance noted that it was stated at several meetings ago that we indicated that Boards, Commissions, and Committees should be full. They are volunteers who want to participate and work with and for the town, and we wanted to fill this as expeditiously as possible. First Selectman St. John stated that we were criticized for taking too long to fill vacancies.

Scott Peterson, President of the Middlebury Land Trust, with an update on the progress of the dog park. This is being proposed for a small portion of our property called our Nichols Road Preserve, which is set back by a forested buffer by Shaddock Road. Mr. Peterson stated the site plan was approved by the Middlebury Conservation Commission last week, and we are shooting to come before the Planning and Zoning Commission as early as March 7<sup>th</sup>. There continues to be widespread support for this project, and we are excited to bring this resource to our community. It has been almost eight years since Beverly Dassonville and a few of her fellow dog lovers first started exploring the possibility of a dog park in our community, and she is here this afternoon with me to express our gratitude to our many supporters who have contributed their time, expertise and financial resources to bring this project to fruition. First Selectman St. John noted that this requires no approval from the Board of Selectmen. Mr. Peterson stated in 2016, Ms. Dassonville and a group of her patriots explored creating a dog park, and the town and the Board of Selectmen were very generous and offered them a piece of property of about five acres off Long Meadow Road. Unfortunately, that initiative failed because it was quite expensive, and they were not able to raise the kind of money needed. Mr. Peterson noted that we have been successful through the land trust and other fundraising funding over the last few years. Ms. Dassonville stated the committee had raised over \$4,000, and it was turned over to the Middlebury Land Trust. Selectman Mahr asked if they are fully fundraised or still working on it. Mr. Peterson

noted that the Land Trust will flip the bill and continue to fundraise, but they won't let that hold them up. Selectman Mahr asked what the project's total cost would be, to which Mr. Peterson noted it is unknown at this time due to changes in fencing prices. There will be separate areas for larger and smaller dogs. Maryann Barra asked if it was water accessible, as would a faucet be available to fill water bowls if a patron wishes to fill theirs. Mr. Peterson noted that they were still working on that, and it's looking good; the water company stated that a waterline does go under the road in the area, and they have been very generous and will allow us to tap into that. We don't want to have anything that multiple dogs can drink out of. Ms. Dassonville stated that once the park does open, we will continue to have fundraisers to help sustain the park. The committee will help enforce the rules, which will be an ongoing project. Mr. Peterson stated lastly the main thing that will be needed would be volunteers, a "poop squad," and all the unglamorous things that go along with a dog; we are working on it. Mr. Barra questioned if the park would have a locked gate and if it would have posted hours. Mr. Peterson noted that all land trust properties are open from dawn to dusk, and the only thing they would need to work on would be getting someone to open and lock up the park.

### **Executive Session**

None

### **Adjournment**

First Selectman Edward B. St. John MOTIONED to ADJOURN the meeting at 4:40 p.m.; SECONDED by Selectman Vance. Unanimous approval.

The next meeting is slated for Tuesday, February 20, at 6:30 p.m.

These minutes are submitted subject to approval.

Respectfully Submitted,

*Liana St. Germain*

Recording Clerk

**RESOLUTION**

**Regarding the sale of property known as MBL 1-00-55 & MBL 1-00-48 Lake Shore Drive to James K. Zanavich, Jr.**

After review of map(s), assessor card and other supporting documentation at the Board of Selectman meeting of February 5, 2024, the Board of Selectman of the Town of Middlebury moves to refer to the Middlebury Planning and Zoning Commission in accordance with Connecticut General Statute §8-24 the sale of property known as MBL 1-00-55 & MBL 1-00-48 Lake Shore Drive to James K. Zanavich, Jr.

Therefore,

**BE IT RESOLVED:**

The Board of Selectman of the Town of Middlebury moves to refer to the Middlebury Planning and Zoning Commission in accordance with Connecticut General Statute §8-24 the sale of property known as MBL 1-00-55 & MBL 1-00-48 Lake Shore Drive to James K. Zanavich, Jr.



## TOWN OF MIDDLEBURY

### AUTHORIZING RESOLUTION OF THE TOWN OF MIDDLEBURY

**RESOLVED** that the First Selectman be and hereby is authorized to act on behalf of the Town of Middlebury in executing a Memorandum of Understanding with the State of Connecticut, Department of Emergency Management and Homeland Security for participation in the Fiscal Year 2023 Emergency Management Performance Grant Program.

**IN WITNESS WHEREOF**, the undersigned has affixed their signature this 5<sup>th</sup> day of February 2024.

Edward B. St. John  
First Selectman  
Town of Middlebury



**ROBERT W. SMITH  
LAW OFFICES, LLC**

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MIDDLEBURY, CT 06762-1263

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rws@robertsmithlaw.com

Facsimile: (203)598-0129

February 5, 2024

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

**Re: Planning and Zoning Alternates; Minority Representation**

Dear Ed:

You have requested that I review the January 22, 2024 email request from Selectman Jennifer Mahr (copy attached), and provide a legal opinion, or otherwise respond to the request for same. As best as I can determine, there are two issues, raised, that are legal in nature. They are as follows:

1. Minority representation at individual Planning and Zoning Commission meetings, and
2. Whether the panel of alternates, to the Planning and Zoning Commission, can be considered a "separate body", for the purposes of minority party representation, under the Middlebury Charter and Connecticut law.

I first note that the request apparently comes from a Town resident, who is not a Town official, or part of any Town Board, Commission or other body. In that regard, I note that Section 602.M. of the Charter provides that "Town Counsel shall be the legal advisor to the Town Meeting, Board of Selectmen, the First Selectman and all other Town officers, boards, commissions, authorities or committees in all matters affecting the Town..." It is those officers of bodies that can request an opinion, subject, of course, to approval of the First Selectman or the Board of Selectmen.

More importantly, inasmuch as the noted issues are currently in litigation filed against the Town, by the Middlebury Small Town Alliance, LLC, it is not appropriate to request the Town's position, outside of the litigation process. The Town's position, factually, legally and otherwise, is part of its litigation strategy, handled by the attorney that is representing the Town. That attorney would certainly not want litigation strategy

to be discussed in open session, at a Board of Selectmen meeting. In addition, such strategy should not be discussed with, or be provided to, anyone who is associated with the party that brought the Court action against the Town, except through our counsel, as part of the litigation process.

Very truly yours,

A handwritten signature in black ink, appearing to read "Robert W. Smith". The signature is fluid and cursive, with a large initial "R" and "S".

Robert W. Smith

cc: Board of Selectmen

## Fwd: Alternate appointment to Last meeting of planning and zoning

From (senders in message print header) Jennifer Mahr <jmahr@middlebury-ct.org>

To Ed St. John<firstselectman@middlebury-ct.org>, Liana St. Germain<lstgermain@middlebury-ct.org>, J. Paul Vance<JPVance@middlebury-ct.org>

CC Jerry Nardone<jerry.nardone@tpsx.net>, Robert Smith<rws@robertsmithlaw.com>

Date Monday, January 22nd, 2024 at 12:41 PM

Good Afternoon, Liana -

I am forwarding the below email from Mr. Jerry Nardone for the First Selectman's consideration.

12.17 KB 1 file attached

Designation of Zoning Alternates SAMPLE.docx  
12.17 KB

I believe there are two questions here:

1. What is Middlebury's exact procedure for the use of Planning and Zoning Alternates? At November's P&Z meeting, a Republican Alternate was seated for an absent Republican Regular member, and an Unaffiliated Alternate was seated for an absent Democratic Regular member. But at the December P&Z meeting, a Republican Alternate was seated for an absent Democratic regular member, despite the Unaffiliated alternate being present. This meant 5 Republicans voted on the Southford Park application, which appears to violate the Charter's minority representation clause. Mr. Smith's legal opinion does not cover this issue, and I agree with Mr. Nardone that a further legal opinion is warranted.

I request the Town Attorney reach out to the Attorney General or the Secretary of State as appropriate for further clarification on 1) the seating of P&Z alternates, and 2) on Middlebury's Charter treating regular members and alternate members as separate bodies for minority representation. The only purpose of alternates in this case is to fill in for absent regular members, and the alternates are not empowered to act on their own as a group. Therefore, it would seem that the purpose of the alternates is directly tied to maintaining the proper minority representation balance of the board as set by the

appointments of the regular members of the board. There should be no discretion on the part of the Chair to alter this balance, and it should be one board of 8 members, not two boards of 5 and 3. I maintain my challenge that the Town Charter cannot trump State law regarding minority representation. The charter can require MORE minority representation, but it cannot require less. I believe the Attorney General's office has issued previous guidance to other towns that Planning and Zoning Commissions are one board, even with regular and alternate members, so that should be easily clarified.

2. Could the town website please update the party affiliations of each member of all our Boards and Commissions? I noticed it was done for the BOS, but not any of our other boards. Thank you!

Respectfully,  
Jennifer Mahr

Sent from my iPhone

Begin forwarded message:

**From:** Jerry Nardone <jerry.nardone@tpsx.net>  
**Date:** January 22, 2024 at 9:41:40 AM EST  
**To:** Jennifer Mahr <jmahr@middlebury-ct.org>  
**Cc:** Jerry Nardone <jerry.nardone@tpsx.net>  
**Subject: Alternate appointment to Last meeting of planning and zoning**

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe. Email support@computercompany.net if you doubt the validity of this email.

Hi Jennifer,

I was in attendance at the last board of selectman's meeting on Jan 16<sup>th</sup>.

I have a copy of the handout of the legal opinion by R Smith concerning filling of vacancies.

The important issue I have was not addressed.

That which is the use of Alternates on the planning and zoning commission concerning the meeting held January 4<sup>th</sup>, and the all important voting that occurred.

It is noted that there are (5) full time members of the commission, and (3) alternates. According to the Middlebury Charter:

Minority representation is 1 for the full time group and 2 for the alternate group.

The use of alternates is not specifically addressed as related to the main group minority count.

However, the vacancy on the main group is covered by the charter as R Smith noted in his opinion, with no mention of the use of an alternate in lieu of permanently filling the vacancy. My understanding is that vacancy is a DEM.

I would like to see a legal opinion regarding this matter.

I have attached a sample of what was done in the town of West Hartford to address this specific issue

By the way, how does the public know the party affiliation of the makeup of any of the town's boards? I am not sure there is a data base with that information available.

Thank you for your consideration.



Jerry Nardone  
224 Mirey Dam Road