



# TOWN OF MIDDLEBURY

## Board of Selectmen

MINUTES  
Board of Selectmen  
Monday, March 4, 2024 – 4:00 p.m.  
Town Hall Conference Room

RECEIVED FOR FILING  
March 11 2024 at 2:30 pm  
TOWN CLERK'S OFFICE  
MIDDLEBURY, CT  
*Brigitte M. Resnik*  
TOWN CLERK

Start – 4:00 p.m.

End – 6:15 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  
Curtis Bosco, Zoning Enforcement Officer  
Mark Lubus, Building Official  
Patrick Deely, Chief of Police  
Brett Kales, Fire Chief  
John Jenusaitis, BOF- member, Retirement  
Plan Committee Chairman  
Vincent Cipriano, Board of Finance, Chairman  
Terry Smith, Planning & Zoning, Chairman  
Rita Smith, Library Board of Trustees –  
Chairman, PD – Commissioner, BOF member

George Moreira, Police Commission, Chairman  
Peggy Gibbons, Conservation Commission  
member  
Liana St. Germain, Recording Clerk  
Marj Needham, Middlebury Bee Intelligence  
Sarah Shelton, Voices  
Steve Bigham, Republican American

### Also Present

Dr. Robert Rafford  
Carol Taylor  
Katharina Anger  
Jonathan Woodhouse  
Linda Van Wagenen  
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.

Selectman Mahr requested that the agenda be amended to move public comments on agenda items only to the beginning of the agenda, as we have a lot of things to go over. First Selectman St. John noted that there is no need to Amend the Agenda. First Selectman St. John stated that as that topic comes up and an individual would like to speak, they will be recognized and allowed to talk at that time. Selectman Mahr noted that she wants to ensure that the public is heard before any decisions are made. First Selectman St. John ensured that everyone would be heard.

### Approval of the February 20<sup>th</sup>, 2024, Meeting Minutes

First Selectman St. John **MOTIONED** to approve the minutes from February 20<sup>th</sup>, 2024, **SECONDED** by Selectman Mahr. Unanimous approval.

### Tax Rebates

None

### Appointments

None

## **Reappointments**

None

## **Discussion and Consideration**

### **Attorney Robert Smith – Vacancy Question – Greenway Committee**

Attorney Smith noted our charter under Connecticut Law, which states that you are deemed to be the party you were appointed under. Attorney Smith stated since the position was a Republican position when you were appointed, it remains as such. Selectman Mahr then asked if an individual is unaffiliated and they came on as unaffiliated, how would that work? Attorney Smith noted it would work the same way; they are deemed unaffiliated for their whole term. Selectman Mahr stated that with the resignation of Gerald Lukowski, who is unaffiliated, we filled his position with someone who is Independent. How was this accomplished? Attorney Smith noted that it being a Democratic or a Republican position, the town committee would be entitled to refer to more than one name for an appointment. Selectman Vance noted that the position was a Democratic position. It was filled with the consent of the Republican and Democratic chairpersons to appoint an unaffiliated individual. But it remains a Democratic position. When Mr. Lukowski resigned, it was determined that between the Democratic and Republican chairpersons, an unaffiliated could fill that position. Selectman Mahr noted that Mr. Mancini is an Independent, not Unaffiliated. This is not the same. Selectman Vance stated that we can appoint a registered voter if the two Committee chairpersons agree. Selectman Mahr noted that this is not the legal opinion of Attorney Smith, which states from January 16th that whatever party the person is leaving, that's what we vote for. Selectman Mahr noted that this is an inconsistency that she brings to attention, and she believes they did not do it correctly and did not follow the legal opinion. Attorney Smith noted that you have no control over when the town committee nominates someone outside their party. In this case, you had a Democratic position, and they nominated an Unaffiliated or an Independent, but it will remain a Democratic position.

### **Attorney Robert Smith – Special Town Meeting Petition - “Shall the Town of Middlebury allocate funds to pay for legal counsel to defend the appeals from the decisions of the Conservation Commission and Planning and Zoning Commission.”**

Attorney Smith stated that he drafted a response. (see attached) First Selectman St. John read the response aloud. Selectman Mahr thanked Attorney Smith for referring to Section 304 F (3) of the Charter, as she is concerned about that section of the charter. Having been through the minutes of the Board of Selectmen since last May, I can not find any instance where the legal cases referred to in the petition have been brought to the Board of Selectmen. Selectman Mahr noted that in her understanding and what was just read, the Board of Selectmen has the right to decide how those legal cases would proceed, and I do not see how the Board of Selectmen has made those decisions. Selectman Mahr noted that this is a very serious deficiency in that we are spending money on these cases and that we are almost 200% over budget on the legal litigation line. Selectman Mahr noted that she has yet to hear the Board of Finance make any comments regarding this or make any provisions on how that money will be recuperated. Selectman Mahr noted that, in her opinion, the Board of Selectman is not directing legal action, and we're spending money that is not authorized in the budget. Attorney Smith stated that there is a requirement in the law that the town has to defend the legal action brought against one of its boards or commissions. Attorney Smith noted that what his letter deals with is whether or not the petition

is proper, and it is not, for requiring a town meeting. Only the Board of Selectmen has the authority to decide issues of whether or not funding should be provided for lawyers to represent the town, and they have. Selectman Mahr said, and the Board of Selectmen has made that decision? Attorney Smith stated that through recognition over many years of defending several lawsuits that were brought against the town, yes. Selectman Mahr noted that the charter's requirement for the Board of Selectmen to direct legal action doesn't mean that the Board of Selectmen should discuss and decide together. Selectman Mahr questioned if there was some other process that was happening. Attorney Smith stated yes, it's the recognition that the town has to defend. Selectman Mahr questioned where does the town have to defend. Selectman Mahr also pointed out for the record that this is Attorney Smith's opinion and that the Board of Selectmen is not required to take your opinion. Selectman Mahr noted that if she were to ask other lawyers their opinions, she would get different answers, which she did ask, and she did get different answers. Selectman Mahr questioned Attorney Smith, where is it required that the town has to defend its boards. Attorney Smith stated that nothing states that a Board of Selectmen can't raise a particular case, but until that happens, the Board of Selectmen doesn't have to vote on every lawsuit. Attorney Smith stated that the Board of Selectmen has taken the position that they will defend every lawsuit against the town, against the boards and commissions, and individuals on those boards and commissions. First Selectman St. John noted that this petition had bothered him immensely. First Selectman St. John stated that this petition was circulated by Selectman Mahr and others, which is their right. First Selectman St. John stated the complication comes when we're asking to take to a town meeting a motion not to defend the town of Middlebury in a lawsuit that was brought by the Small Town Alliance, which Selectman Mahr is a member of, and you are involved in the corporation. First Selectman St. John noted that Selectman Mahr is suing the town and using her position on the Board of Selectmen as a circulator to go around and circulate a petition; you are basically going to hamstring our legal ability to protect the town of Middlebury from a lawsuit which you were in parcel to filing. First Selectman St. John noted that this is a conflict of interest and an ethics violation for the town of Middlebury. Selectman Mahr stated that voters of Middlebury who put her in this chair knew she was involved with the lawsuit against the town when they voted her in and knew that the charter gives the Board of Selectmen the legal authority to direct action against the town. Selectman Mahr noted that the voters waived the conflict, as far as she is concerned. Selectman Mahr stated that the larger issue is that the Board of Selectmen has not talked about how it decided to handle this case. Selectman Mahr stated that she believes the First Selectman has made the choices about this case. Selectman Mahr noted that she has tried to stay out of it but has now declared that she, too, is against the distribution center. If the Board of Selectmen believes that this is not a good choice for Middlebury and Planning and Zoning and Conservation Commissions are their entities, the argument is that the Board of Selectmen does not have to support a decision that the town and the Board of Selectmen don't believe in. Selectman Mahr stated that it doesn't have to fund a double defense. If the applicant is paying for his defense of the decision, why should we help him? It's the same argument twice. Selectman Mahr noted that with the town people who are supporting the lawsuit, you are asking them to use their taxpayer dollars to pay for a lawsuit against themselves. Selectman Vance stated that he understood the legal opinion of what she had stated. Still, according to the charter, we are obligated to defend all of the town's volunteers and the people who give up their time to serve this community. Selectman Vance noted that he has looked at the budget and the legal expenses, and the legal expenses are not for the project she is referencing. Selectman Vance noted that other things are also going on in this town. Selectman Vance noted that he doesn't know how an individual can sit in this position and work for and against the town. Selectman Vance stated that it's important that we work on unifying to move this town forward and be positive in everything we do. Selectman Vance stated that when it comes to

defending members of our boards and commissions, I will sit here and state that we are obligated to do so. We need to defend the people who serve this town. First Selectman St. John stated that this has always been something the town has done. In this case, this is a unique one. First Selectman St. John noted which Selectman Mahr is a member of, and Selectman Mahr noted along with others. First Selectman St. John noted that the town has a Code of Ethics. Selectman Mahr stated that, regarding the code of ethics, the Board of Selectman received an email (see attached). First Selectman St. John noted that Attorney Smith was handling this. Attorney Smith noted that individuals were concerned, but Facebook policy is not law. The only law that binds the town of Middlebury from disclosing or requiring Middlebury to disclose is the Freedom of Information Act. Attorney Smith said that you are citing something that is not law, and it is a public document. Selectman Mahr stated that the agenda was posted on a page that had not posted an agenda in over a year. This is on the town's website, which posts public service information. Selectman Mahr noted that an agenda and petition were suddenly posted, which had never been done before. What else can someone conclude other than that it was a deliberate attempt at intimidating the people who signed the petition? Selectman Mahr noted that an answer sent to someone by the administration early in the day was that the First Selectman directed Liana, the Executive Assistant, to post the information on Facebook. Selectman Mahr asked the First Selectman what the public purpose of putting the 107 names online was. First Selectman St. John stated that the public purpose was to inform residents on who is raising this question. Selectman Mahr noted that they could visit the town clerk's office and obtain the information if they wanted to know. First Selectman St. John stated that certain pages post what they chose, especially if it's negative against Middlebury. Selectman Vance noted that he believes posting it is transparent. Selectman Vance read aloud an email received from a commissioner (see attached). Selectman Vance stated that we have to defend the people working for this town; every last one of them deserves to be protected for their work. Selectman Mahr noted that this is all centered around the decision of 6 people who decided from the two commissions. Selectman Mahr stated that presumably, one could argue that if six people got an idea in their heads that they were going to approve it no matter what, what recourse would any have? First Selectman St. John noted that this certainly is not the proper recourse; there are plenty of other options. Selectman Mahr stated that the people have power over the budget, and if they choose not to fund something, they have that choice. First Selectman St. John noted that it must be done through the proper process, not through a town meeting. Selectman Mahr stated that we have a legal line that puts \$10,000 in the budget, and we overspent it last year by over 200%. First Selectman St. John stated that the town has an ongoing personal matter that involves the Police Department, and we are defending their action, and that is where the money is being spent. Selectman Mahr noted that this differs from what we are talking about. Selectman Mahr stated that First Selectman St. John stated there is a process to follow: the budget process. Selectman Mahr asked why we have underfunded the legal litigation line if we clearly have obligations. First Selectman St. John stated that if Selectman Mahr stopped filing lawsuits, maybe we wouldn't have a problem. First Selectman St. John noted that we have a town budget, we are procreated an X number of dollars. First Selectman St. John stated it was quiet until 2019. George Moreira, Police Commission chairman, noted that the legal issue with the Police Department started just prior to COVID in 2019. First Selectman St. John stated that we are unsure what our legal bills will be and or when this will end. First Selectman St. John stated that we need to let the legal process work and let the town attorney do their job. First Selectman St. John stated that we do not use our local attorneys on anything done in litigation. Most of it is done with outside counsel to eliminate any interference from the Board of Selectmen or anyone involved. We use all third-party counsel to handle these cases. First Selectman St. John stated that as long as he is here, we will

defend our boards and commissions. First Selectman St. John noted that he believes Selectman Mahr has a conflict of interest in this case.

Vincent Cipriano, chairman of the Board of Finance, stated that the legal fees are double what they are now. We went through a period where we didn't have many fees, so we reduced that, but we have reserve accounts to offset the overages. Mr. Cipriano noted Selectman Mahr's question about overspending, and that happens, and that is why we have our monthly meetings. We review every line item in our budget to ensure what is happening. First Selectman St. John asked Mr. Cipriano if he supports the Board of Selectmen's position that the board needs to defend our boards and commissions, and Mr. Cipriano answered absolutely.

George Moreira, chairman of the Police Commission, also concurred. Mr. Moreira noted that a lot of the boards are independent boards, so when they have a decision, whether you like it or not, it needs to be defended. Mr. Moreira stated that he's never seen a town not defend their cases, and I'd like to find a lawyer who says that they don't on a regular basis. If you can find one, he's not a real lawyer.

Selectman Mahr stated that just because it practically happens doesn't mean it has to happen. Without a specific reference to the legal imperative, the board has to be defended, and can argue that it doesn't have to be. Selectman Vance asked what would you like to see happen? Selectman Mahr noted that the people have expressed a very specific preference and are not supporting a distribution facility in town.

Terry Smith, chairman of the Planning and Zoning Commission, stated that when you sit on the side of the table I sit on, you don't get to vote with your heart. You get to vote on regulations and state statutes. That's what you get to vote on. Mr. Smith noted that no one has asked him his personal opinion on the distribution facility. Mr. Smith stated that he has been sued personally while serving on this board and still serves.

Peggy Gibbons, member of the Conservation Commission, stated that what she believes Selectman Mahr is saying is that the people in Middlebury are so upset because it seems so many people are against the distribution facility in Middlebury. Just a few people made this monumental decision. Ms. Gibbons stated that some commissioners voted the way they did to avoid getting sued. Selectman Vance noted that what people say after the work is private.

Selectman Mahr noted that she has no personal financial gain, so there is no ethics violation because she is not making a choice that benefits her personally.

Carol Taylor stated that she attended just about all of the meetings regarding the distribution facility, and she can say that most of the people in town believe that the town volunteers do a good job. Ms. Taylor noted that she is upset about the lack of transparency. There have been things done that are clearly contradictory, and when asked about them, they are done behind closed doors. Where are the checks and balances?

Selectman Vance stated that he hears what is being said; one thing he doesn't appreciate is being laughed at. I believe in being respectful, and I believe in having an agree to disagree.

First Selectman St. John noted that we should not let this distribution center divide the community. We need to move forward.

Katharina Anger stated that she believes the town has a responsibility to defend the people who are serving this town. For people who are on our commissions, who are volunteering in good faith, and doing their jobs in good faith, Ms. Anger agrees they should be defended 100%. Ms. Anger asked, theoretically, if a group of individuals on a commission makes a decision that isn't correct and didn't do what they were supposed to, they now put the town at legal risk. Does the town have a legal requirement to defend those individuals, and what is the recourse? Selectman Vance stated that this would go to legal counsel, but if you blatantly make a wrong decision, that individual would be responsible for

themselves. Selectman Vance noted that if they blatantly broke the law and didn't follow the rules. But if that person made a decision in good faith and thought they were following the law, we would have to defend. Ms. Anger questioned what the recourse would be if they voted that way based on fear of being sued. Selectman Vance stated that when you have conversations after the meeting, after the fact, and the individuals said they voted the way they did because they didn't want to be sued, that's someone's verbiage. What you say once the meeting is closed is their business. Selectman Vance noted that he heard that rumor but has not spoken to any of those individuals. Ms. Anger questions what the town's recourse is. Attorney Smith stated that this is for the courts to decide. Attorney Smith noted that he has been on both sides of cases, the weak and strong sides. If you have a weak case, you settle it. That's your checks and balances of the court system. Let that process take its course. Connecticut set up zoning laws for a reason, to provide for the orderly development of property, not to be overruled by a political body, and there are a lot of reasons for that. Attorney Smith stated that the town has to represent the zoning board.

Selectman Mahr stated that doesn't require the Board of Selectmen to have an opinion on how that job is performed. It's the power of the Board of Selectmen to remove people from boards and commissions. So, the authority still comes back to the Board of Selectmen, being responsible for the operation of all the commissions in town and for how they do their jobs. Selectman Mahr noted that the Board of Selectmen can have the authority in that case, but it can't have the authority on how to proceed in legal action, which it does, so these two arguments can't stand next to each other. Attorney Smith stated that not if you are making assumptions about whether someone did something wrong on one of the boards or commissions. Attorney Smith noted that it sounds like people are stating that it sounds like people are saying that the Zoning Commission and the Conservation Commission did something wrong. Attorney Smith stated to let the court process proceed. If the attorney representing the town thinks something is wrong, there are ways to settle it or do something different.

Jonathan Woodhouse asked if individuals are being sued in this case that is under discussion? Selectman Mahr answered no. Mr. Woodhouse stated that there has been a lot of conversation about not defending individuals in town, but if it's not a lawsuit against individuals, it's challenging the decision that's a very different issue.

### **Attorney Dana D'Angelo – Building Official Mark Lubus – Building Permit Fees**

Attorney D'Angelo noted that at the last Board of Selectmen meeting, Selectman Mahr raised several issues regarding the fee schedule and the permit process. After the meeting, we narrowed it down to four specific topics. The fee schedule, the addition of generator and solar to the minimum value fee, the six-month policy on building permits, and the cancelation fee. Attorney D'Angelo stated with respect that some of these are easy to deal with, precisely the cancelation fee, which is dealt with in the building code, and that gives that authority to the building official. The building official has the power to create the cancelation fee. It is similar to the six-month policy on building permits and is enumerated in the building code. Attorney D'Angelo noted that with respect to the generator and solar and the minimum value fees, she would let the building official speak on this, but generally, contractors don't provide contracts, so this allows the building official to set a fee. Building official Mark Lubus stated that the minimum value is established to be fair and equitable across the board. Mr. Lubus stated, for example, if you have someone who states they have someone who is donating material or if you have family who may be doing the work, having a fee schedule ensures that everyone will pay the same price no matter what the job or how it's getting done. First Selectman St. John stated that an issue that seems somewhat arbitrary is the six-month (180 days) policy for work to begin. Mr. Lubus noted that this comes

directly from the building code, that if you don't start or have an inspection on your project within six months, it becomes invalid. They can extend it for an additional six months, but it must be written along with the reason for the extension. Mr. Lubus also noted that no local Board can influence the state building code. Selectman Mahr asked when speaking of the six-month requirement if this is a minimum or the only requirement. Mr. Lubus stated that this is the only requirement, and unless you show a valid reason and put it in writing to the building official, it may or may not be extended for an additional six months. Selectman Mahr said, Mr. Lubus, you, as the building official, could not say the permit length is six months, but you'd like to give individuals a year? Would you be able to make that decision? Mr. Lubus stated, no, I cannot make that decision. It is indicated in black and white in the code book. Selectman Mahr noted that you make the decisions on setting the refund fee and permit fee. Mr. Lubus said that this is correct. Selectman Mahr asked Mr. Lubus if our permit fees were in line with those of our surrounding towns, and Mr. Lubus noted that was correct and gave several examples. Mr. Lubus went on to speak on solar. On a website, he checks that solar energy is three to five dollars per watt, which is a kilowatt. Selectman Mahr noted that this is a policy choice. If building costs went up, we'd raise the fees; if we didn't want to, we don't have to. Selectman Mahr noted that this schedule fee was changed three years ago, and I understand that inflation, the pandemic, and many other things that made inflation horrible hit building costs. Selectman Mahr noted that changing the fees again affects everyone. Mr. Lubus stated that no, it doesn't change for everyone. At times, the individuals who give the correct information are paying more for their permits, so the fee schedule isn't even used. The fee schedules are used for the ones who come in low. Mr. Lubus noted that he knows when an individual comes in low on a permit, being in the business for thirty-plus years. Selectman Mahr stated the decision to change the refund from 20% to 50%; if someone didn't start a project, why would you want to keep half of their money? Mr. Lubus noted that there are administrative costs. Selectman Mahr asked if there were any exceptions for that. Mr. Lubus stated, no.

First Selectman St. John noted in the email chain, regarding Selectman Mahr's building permit, one of the emails mentions how much would be refunded if the permit expires. Mr. Lubus noted that this goes back to when the permit was issued. First Selectman St. John requested a copy of the history of this permit from Mr. Lubus. (see attached). Selectman Mahr noted that she asked about policy questions and that he would bring up all of the details of her permit. First Selectman St. John stated that Selectman Mahr raised all these concerns in her email chain. First Selectman St. John noted that he wanted to see how arbitrary our Building official was in determining what needed to be refunded. First, Selectman St. John stated that he would like to know why Selectman Mahr was not accommodated and refunded all the money if there were extenuating circumstances. Selectman Mahr stated that the policy in place was 20%, and Mr. Lubus noted that Selectman Mahr argued that 20% was a lot of money, whereas Selectman Mahr said that she stated that 50% is a lot of money. Selectman Mahr noted that any individual who was issued a permit under one set of rules and midway was applied a different set of rules, and Mr. Lubus stated that yes, that can be done. Selectman Mahr noted that is what is being questioned. Mr. Lubus stated that Selectman Mahr has an issue with the Building Department. Mr. Lubus goes on to state that Selectman Mahr has attacked his integrity personally, as well as the Building Department's integrity. Mr. Lubus requests a full apology from Selectman Mahr in public. Selectman Mahr stated that she would not give Mr. Lubus that apology.

First Selectman St. John noted that he would review the property's history. First Selectman St. John starts reading off the dates/list Mr. Lubus handed the Selectmen. Selectman Mahr requested that First Selectman St. John not read this list. Selectman Mahr calls out a point of order and states that this is not an appropriate discussion at this point. Selectman Mahr noted that she had asked policy questions of the building official, and the building official has since answered them. First Selectman St. John said

that he would finish reading the list, and Selectman Mahr stated that he would not and that if he did, you would hear her explain why she has justification to file a civil rights lawsuit against this town. Selectman Mahr also noted that if you wanted to read the police report about what happened between herself and Mr. Lubus on the day in question, First Selectman St. John stated, I thought we weren't talking about that. Selectman Mahr noted that she could proceed and that you did not want to keep talking about this. First Selectman St. John said the list is available for public record, and Selectman Mahr requested that we move on. Selectman Mahr stated that as a private citizen, she has the right to bring up issues that she considers inconsistent with how policy should happen in town. As a Selectman, she has a right to ask how our policies are formed, which is what she was doing. Mr. Lubus noted that you shouldn't accuse the building official of his integrity. Selectman Mahr stated she never accused his integrity; she only asked who had changed the fees. Selectman Mahr noted that First Selectman St. John signed the fee change in November of 2023, and First Selectman St. John said that was correct, and he signed it based on how the building official explained it to him. Selectman Mahr asked how and why that could be done if, in prior practice, it required a Board of Selectman vote. Selectman Mahr noted that this is all policy-related; just because this was personally connected to her because that is how she discovered what the problem was doesn't mean there is a legitimate policy discussion to be had. Selectman Vance noted that Selectman Mahr could have gotten the answers to her questions from across the desk of the building official, privately. Selectman Vance stated that he believes we don't need to hear your business, and Selectman Mahr agreed. Selectman Vance pointed out that she indeed brought up her pool story. Selectman Vance stated that this has been discussed. Selectman Mahr will not apologize, and I recommend that we move on. Mr. Lubus asked Selectman Mahr about the repeated complaints by contractors and property owners that our building permit process was terrible. Mr. Lubus would like to know who is stating these complaints and how many people are, and he would like to contact them to assist them with the permit process. Mr. Lubus requested a list of individuals who have complained to Selectman Mahr. Mr. Lubus believes that this is all hearsay on Selectman Mahr's part. Selectman Mahr noted that some people in town fear retaliation and don't want to give their names. Mr. Lubus noted that Selectman Mahr had retaliated against him and tried to have him arrested. First Selectman St. John stated that we are to move on to the next topic.

### **Short-term Rental Update – Selectman Vance**

Selectman Vance stated that he met with town residents recently and received some excellent input. I also met with the Fire Marshal, the Zoning Enforcement Officer, and the Police Chief, getting input as well. Selectman Vance sat through a ZOOM meeting with the NVCOG, which was an amazing meeting. They had a great deal of information that will be able to help us with the short-term rental issue. Selectman Vance has also been in talks with Attorney Smith. Work still needs to be done, but progress is being made in the right direction to benefit the community.

### **Cannabis Facility on Turnpike Drive**

First Selectman St. John noted that zoning regulations do not allow for retail establishments, and the Board of Selectmen followed up with an ordinance that does not allow cannabis to be used on town property. First Selectman St. John stated that Waterbury's zoning regulations allow for the retail sale of cannabis. Which is nothing we can object to. First Selectman St. John noted that he and others attended Waterbury's public hearing zoning commission and requested an extension to see if we could do further research to help support our case. Ultimately, that was denied. They did not extend the



hearing. Our discussion with them concerned the mere logistics of where the property is located. It's been a problem for emergency services and public works for years to service this area due to most of that road being in Middlebury.

### **Capital Projects – Rita Smith**

First Selectman St. John noted that our capital projects were approved some time ago. They finally started in 2016, most of which were finished just a couple of years back, and what we have been doing is funding any additional maintenance or requirements to our vast infrastructure with pay-as-you-go. Mrs. Smith stated that at the February 5<sup>th</sup> Board of Selectmen meeting, Selectman Mahr commended the town of Watertown's Public Works Director for their booklet on their Capital Improvement Program. Mrs. Smith stated that the booklet is nice, but it does state accomplishments 2024. There are many things in there that have not been done, and they are still very much in the infancy stage of making their capital plans. What is done here in town is an annual report. All of the work that is done by public works is contained in this report. It is all completed work and factual. In addition, as a committee, they took pictures of everything. All were presented at town meetings, all 17, and the town could weigh in, ask questions, and vote on the projects. Selectman Mahr asked if the bond money was spent on this, and she was advised that it was. Selectman Mahr asked where the supporting information for the capital projects that we are proposing for next year is. Mrs. Smith noted that that hasn't been approved yet. First Selectman St. John stated that we are procreating money ahead. Selectman Mahr noted that the heart of her question is that the Charter states that the Board of Selectman is supposed to meet with the Board of Finance to work on the budget before the February finance meeting, but we haven't done that. Selectman Mahr noted that we continue to receive pieces of paper with your budget on it, but when does the "Board" discuss what we think? First Selectman St. John noted that that date should be coming soon.

### **Region 15 Budget – Selectman Mahr**

Selectman Mahr stated that the Superintendent presented his budget to the Board of Education on Monday, February 26, 2024. Budget workshops will be on Wednesday, March 13, 20, and 27<sup>th</sup>. Selectman Mahr noted that their website has a copy of the proposed budget. Selectman Mahr stated that the Governor is proposing to move funding out of the Cost Sharing Grant and move it to Early Education. The impact on Middlebury would be about \$620,000.00. First Selectman St. John noted that after speaking with Joe Martino last week, he asked about capital improvements; Mr. Martino stated that the pool project is estimated at 4.5 million dollars, the price going up about 2 million dollars.

### **Ice Cream Trucks – Selectman Mahr**

Selectman Mahr stated that ice cream economics is very interesting. The days of trucks driving around house to house are long gone, and trucks now go to where there are crowds of people. Selectman Mahr was able to find an individual who still drives around. Selectman Mahr has a two-part solution. One when the town is holding a large event, the town gets an ice cream truck, and with the woman who does drive around, she starts late April; she requested that the petitioner pick a date they will be home and plan a route and to tell everyone there is going to be an ice cream truck coming on that day.

### **Larkin Bridle Trail**

Selectman Mahr stated that she had heard from both Senator Hartley and Senator Berthel that they both reached out to their legislative aids regarding the issue of enforcement on the Larkin Bridle Trail. Selectman Mahr noted that our Chief of Police also had a meeting last week with DEEP about this issue. Selectman Mahr stated that they have to find the extent of the problem, but DEEP will coordinate efforts with us and the towns of Naugatuck and Oxford. Chief Deely stated that DEEP will lead on this as they have jurisdiction on the Bridle Trail. Chief Deely noted that once he received the email complaint forwarded from Selectman Mahr, he spoke with the complainant and neighbors and confirmed the problem. Chief Deely also met with the Deputy Commissioner of DEEP, and they will coordinate their efforts, whether manpower, drones, vehicles, or intelligence. Chief Deely noted that all the ordinances will be posted on social media to educate the public, along with asking the public for any information they may have on people who may have illegal vehicles.

### **Establish a Poet Laureate for Middlebury – Dr. Robert Rafford**

Dr. Robert Rafford would like to recommend that the Board of Selectmen establish a position of poet laureate for the town of Middlebury. Dr. Rafford stated, in town we'd like a poet laureate. On that, let us not disagree. Poets inspire and warm our souls. In every climb including Middlebury. Poets bring a light to all our hearts. With just some strokes of a pen. Poets charm and challenge with words in a style that only poetry can. So let's agree while we're here today that we like a poet laureate. Middlebury will become richer by far with a poet who's good at it, but not me.

Dr. Rafford would like to make a recommendation. Dr. Rafford stated that all that is required is for the Board of Selectmen to establish the post of poet laureate. A committee would need to be established to look into the rules and regulations of the state and the Poets Association of Connecticut. First Selectman St. John requested Dr. Rafford summarize and submit his presentation in writing to the Board of Selectmen.

### **Invite Boards and Commissions to BOS meetings**

First Selectman St. John noted that they have a standing invitation to attend any meeting they would like to. First Selectman St. John went on to say that he attends multiple meetings, but he does not attend the land use meetings. First Selectman St. John noted that as part of the Charter is a non-voting member of all the boards and commissions.

First Selectman St. John stated that he had discussed the ongoing litigation with Attorney Smith and looked at the legal account so that you know where we're spending our money. First Selectman St. John has requested that the Chief of Police and Attorney Smith sit with Selectman Mahr and Selectman Vance and discuss the background of the particular cases.

### **Public Comments**

Maryann Barra would like to commend those who helped search and locate "Zelda." The Akita dog who went missing on February 25<sup>th</sup> from Glenwood Ave. This includes Animal Control Officer Rusty Bona, local neighbors, the First Selectman, police commissioners, the police chief, and his staff, who were able to use their thermal drone to locate the dog. I am sure that all pet owners in town can rest easy knowing this procedure is now in place, should it ever happen again. Thank you.

Linda Van Wagenen noted she appreciated Dr. Rafford for raising the issue of poet laureate for Middlebury. Ms. Van Wagenen lived in Woodbury for many years before moving to Middlebury. She worked at Memorial Middle School for 16 years. Ms. Van Wagenen greatly supports the concept of bringing a poet laureate to town.

First Selectman St. John stated that everyone always mentions what a great town we live in. Let's see if we can work harder to improve the discourse that has divided our community. First Selectman St. John noted that he'd never seen anything like this before and that it was mind-boggling and heart-wrenching. We always hear what a beautiful town this is. First Selectman St. John stated that this didn't happen by magic. All this town's boards, commissions, and administration participated in what the First Selectman calls Team Middlebury to make it happen. First Selectman St. John stated that we need to keep that team moving, we need to move forward, and we need to move together. First Selectman St. John said his door to speak with everyone is always open. Selectman Vance seconds this comment.

### Executive Session

None

### Adjournment

First Selectman Edward B. St. John **MOTIONED** to ADJOURN the meeting at 6:15 p.m.; **SECONDED** by Selectman Vance. Unanimous approval.

The next meeting is slated for Monday, March 18, at 6:30 p.m.

These minutes are submitted subject to approval.

Respectfully Submitted,

*Liana St. Germain*

Recording Clerk

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

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March 4, 2024

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

**Re: Petition for Special Town Meeting on Conservation and Planning and Zoning Appeals**

Dear Ed:

I have reviewed the attached six-page petition, to determine whether a Special Town Meeting must be called by the Board of Selectmen, pursuant to the Middlebury Charter, for consideration of the resolution proposed in the petition.

Specifically, the petition requests that the Board of Selectmen "call a special town meeting for the purpose of answering the following question: 'Shall the Town of Middlebury allocate funds to pay for legal counsel to defend the appeals from the decisions of the Conservation Commission approving Application #490 of Drubner Equities, LLC issued on May 10, 2023 for warehousing and related facilities at 555 Christian Road/764 Southford Road and the Planning & Zoning Commission approving the Zoning Text Change Amendment #23-58Z, Site Plan Application #23-59Z, and Special Exception for an Excavation and Grading Permit #23-60Z of Southford Park, LLC issued on January 4, 2024 for warehousing and related facilities at 764 Southford Road (the former Timex Site)? A vote of "NO" will mean the funds are not allocated to defend any of the permits and a vote of "YES" will mean the Town will pay to defend the decisions to issue all the permits.'"

Under section 802 B of the Middlebury Charter, the Board of Selectmen is required to call a Special Town Meeting, requested by petition, assuming all procedural requirements of the petition have been met, if the meeting is for a "proper purpose". I have concluded that the Meeting requested in the attached petition would not be for a proper purpose, as the action requested in the petition is not one of those for which a Town Meeting may be called under Section 804 of the Charter, and the requested action would violate another provision of the Middlebury Charter, as follows:

March 4, 2024

1. Under section 304 F(3) of the Middlebury Charter, only the Board of Selectmen has the power "To institute, prosecute, defend or negotiate any legal action or proceeding by or against the Town."

In conclusion, the petition does not request a Town Meeting for a "proper purpose" and, therefore, the Board of Selectmen is not required to call a Special Town Meeting, as sought by the petitioners.

Very truly yours,

A handwritten signature in black ink, appearing to read "Robert W. Smith", written over a horizontal line.

Robert W. Smith

Cc: Board of Selectmen  
Town Clerk

Enclosures: Petition (6 pages)

## Liana St. Germain

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**From:** Katie M  
**Sent:** Monday, March 4, 2024 10:32  
**To:** First Selectman; Jennifer Mahr; J. Paul Vance; Liana St. Germain  
**Subject:** Letter to BOS Regarding the Publishing of Residents' PII on Middlebury's Town Facebook Page

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.

**March 4, 2024**

### **Middlebury Board of Selectmen**

1212 Whittemore Road  
Middlebury, CT 06762

Dear Board of Selectmen,

In April 2022, Meta, the parent company of Facebook changed their guidelines and prohibited the sharing of a person's residential address on the platform even if that address was "publicly available". This change in Facebook's Community Standards was made at the request of their Oversight Board who was asked to weigh in on the handling of private residential information on Facebook and Instagram.

The decision was made in response to the growing issue of "doxing" on social media. Doxing is the publishing of personally identifying information (names, addresses, etc) on social media - even if that information is publicly available through different means - without the approval of the individual.

On Friday, March 2nd, the official public Facebook page of the Town of Middlebury published a petition and did not obscure the names, addresses, or signatures of over 100 Middlebury residents. The publishing was completely out of the norm of what is normally shared on the page and the posting of the private information was unnecessary and unprofessional. Whether the posting was malicious is up to residents to decide, but malicious or not it was against Facebook guidelines and was done without the permission of the residents whose information was published.

Let me make this very clear: **Petition information is public and available at Town Hall, but that is extraordinarily different than publishing that petition information on a public Facebook page.**

As someone whose information was published by my town government I am asking for the following remedies:

1. Middlebury employees and social media professionals should have privacy training, particularly in how to handle PII on social media.
2. The social media post should be edited to remove PII or removed entirely.
3. Those whose information was posted on the Facebook page should be contacted by Middlebury's Town Government so they are aware their information was shared online.
4. Middlebury residents should receive a full accounting on how this occurred - who posted the information, who made the decision to only obscure birth dates, and how the decision was made.
5. Middlebury residents who had their information published should receive an apology.

Sincerely,  
Katie Martin

**Sources:**

Facebook Privacy Violations:

<https://transparency.fb.com/policies/community-standards/privacy-violations/>

Article:

<https://www.theverge.com/2022/4/10/23019046/meta-no-longer-allow-private-residential-address-doxxing-facebook-instagram-oversight-board>

Members of the Board of Selectmen. While I would much rather make my remarks in person unfortunately my schedule changed at the last minute so I would like this letter to be read into the minutes.

My Name is Brendan Browne of 69 Stonewall Dr. I am currently a member of both the Board of Finance and Board of Assessment Appeals, but I have served on various other Boards, Commissions and Town organizations for over 30 years.

When I saw this petition, I felt compelled to comment for a number of reasons, however for the sake of time I won't address the glaring conflict of interest/ethical issues this will raise. It is surprising that someone thought this would be a good idea; shocking that over 100 people signed a proposal that would undoubtedly impair the function of and disenfranchise the many volunteers who are the backbone of this community, and disturbing that this was promoted by a member of the Board of Selectman. Disturbing for 2 reasons: one, it again demonstrates a lack of understanding of the town charter and the general operation of the town; and two, the negative message it sends to all those who serve on our Boards and Commissions as well as other Volunteer organizations and public servants.

To the first ... Trying to establish a precedent of allowing a popular vote to pick and choose what legal issues the town decides to defend will create an uncertain and chaotic environment that will break down the town's ability to function efficiently. I know there are people out there who will say "but that's democracy". To those people I would encourage a search of the term "Representative Republic".

Secondly, it is disturbing because it is a slap in the face to all the volunteers who serve on our boards, commissions and organizations. I have spoken publicly in the past about the nasty and shameful attacks many of these volunteers have endured especially of late. These jobs are already thankless. Now the Town is going to turn their backs on them? These volunteers spend their limited and valuable time serving this town and what do they get for their service? Getting attacked and disparaged by social media trolls, many who can be found on the Middlebury Neighborhood Facebook page? At least you knew the town respected your work and opinion and defended you. Now a member of the board of selectman is looking to take that away? The exodus that likely would occur, of good dedicated people, coupled with the challenge of finding people to begin with, would leave a void that would damage this Town immeasurably.



Now, I took time to review the town charter, so I am confident this proposal should have no real legal merit, but while these ideas are free to be expressed, they are detrimental to the future of this town and need to be challenged loudly. It is all too common for people who never took the time to learn how a system works and why it was designed that way to say it is broken when it is not.

Regards,

Brendan Browne.

1. **March 1, 2023** – Building permit for a multi high and length retaining walls using approx. 36' Dx48wx24H concrete block wall system – approx. 15 wall sections.
2. **July 7, 2023** – Site inspection with zoning official on a report from neighbor on activity
3. **July 7, 2023** – 18'H and 12'Hx-15' – 11ft long built retaining walls with no engineer or building inspections. The owner admitted contractor had three flaws that were structurally deficient. Also zoning violation for erosion.
4. **July 7, 2023** – Stop work order issued.
5. **July 15, 2023** – Issued unsafe structure.
6. **July 17, 2023** – Letter from owner contesting work stop order to the state of Ct Codes and Standards but will remove walls.
7. **July 18, 2023** – letter issued to owner identifying engineer has no valid license. Materials are different than submitted for permit.
8. **September 5, 2023** – Hearing with codes and standards – verbal decision issued, upheld of Cease & Desist.
9. **September 29, 2023** – Codes and Standards upheld stop work order – issued official letter to owner & building official.
10. **September 25, 2023** – Owner submitted revised plan, engineer license, insurance – Owner asked for release of stop work order. Owner needs special inspection workflow, contractor to take wall down and zoning approval.
11. **October 24, 2023** –Hired new contractor. Wall taken down.
12. **October 25, 2023** – Owner asked for release work stop order – needed zoning approval and special inspector.
13. **December 20, 2023** – New engineer to do special inspection.
14. **December 20, 2023** – Zoning compliant.
15. **December 21, 2023** – Released stop work order.