

Middlefield Planning Board
April 9, 2013
Meeting Minutes

The meeting came to order at 6:32pm. Members present were Michael Hale, Terry Crean, Janine Savoy, Alan Vint and Maureen Sullivan.

The minutes of the April 2nd meeting were read. A motion to accept the minutes was made and seconded. The vote to accept the minutes as read was unanimous.

Mr. Hale reported that he had attempted to contact Building Commissioner Gerry Garner to speak with him re Mr. Garner's comments on the Use Table update. He had not received a response from Mr. Garner prior to tonight's meeting.

Town Counsel's comments and opinions re his review of the zoning bylaw petitions were read aloud by Mr. Vint. Town Counsel advised that the driveway petition would not be considered valid or enforceable by the Attorney General's Office. His opinion on the petitions regarding camping regulations were that, if adopted, would not pose legal issues that would cause the Attorney General to disapprove the change. Ms. Sullivan said that while the Attorney General Office's would not disapprove of the change, that office does not review bylaws to ensure that they are clear or enforceable.

Ms. Savoy reported on a conversation she had with someone at the Office of Attorney General, in which she identified herself as a member of the Planning Board. She distributed copies of Form 7, the Town Clerk's zoning bylaw reporting form for the Attorney General's office. Ms. Savoy stated that the AG's representative said that the Planning Board had time to hold the public hearing prior to the Annual Town Meeting and warned that if the Board did not act on the petitions that the Board would open itself to a complaint by the petitioners to the AG's office which would trigger an investigation of the Board by the AG's office. Ms. Savoy reported that the AG's representative cited Mass. General Law to support this. However, Ms. Savoy was not able to provide the section of the law to the Board.

Mr. Crean questioned what the AG office had to investigate. He stated that the Board had developed a game plan (to hold the hearing after the Annual Town Meeting) at its previous meeting.

The Board then consulted the calendar to see if the Public Hearing could be rescheduled for prior to the Annual Town Meeting.

Ms. Sullivan requested that Mr. Vint call Mr. Kopelman to ask why there was such a disparity in the advice that he had provided to the Planning Board about the timing of the Public Hearing on the petitions and the information Ms. Savoy provided from her conversation with a staff member of the Attorney General's Office. Mr. Vint said that he would like to call Mr. Kopelman and the AG's office himself.

Mr. Vint stated that the town has no legal jurisdiction on private ways, which are on private land. He stated, "The alleged driveway cut is on private property".

A discussion of private ways and driveways on private property ensued, using Mr. Jamula's property as an example.

Sherri Vendetti was recognized. She pointed out the current driveway bylaw only requires a permit when a driveway or other curb cut connects to a "town road". She also pointed out that the Subdivision Regulations do not mandate access onto only public ways and that those regulations recognize historic lots that no longer have a cut onto a public way.

The Board moved onto a review of the petitions for changes to Section 4.3 Camping.

Ms. Savoy spoke to the need to tighten up the Camping regulations. Using Mr. Jamula's use of his property for camping as an example, she summarized the Building Commissioner's comments on the enforceability of this bylaw by saying that he (the Building Commissioner) would have had to go to Mr. Jamula's property and "find them walking out of the trailers in their slippers" for him (Building Commissioner) to do anything about them.

Mr. Crean said that the Building Commissioner has not been able to enforce the bylaw and that he would prefer to see the bylaw be reviewed in its entirety, rather than a patchwork approach.

Howard Knickerbocker was recognized. He asked if there is a requirement that the town allow camping. If not, why not disallow it?

Mr. Vint pointed out that the town historically has been a place for camping and recreation. The town is a place where nonresident landowners come to enjoy their property.

Ms. Savoy expressed that the current, unenforceable camping regulations, has resulted in Mr. Jamula's use of his property for camping costing the Town in lawyers' fees. She expressed the opinion that if the Board of Health Agent had gone out to his property two years ago the town would not have had to spend \$12,000 in legal fees.

Mr. Vint responded the only cost to the town for enforcement of camping regulations is for the work of the Health Agent and Building Commissioner and that Mr. Jamula is only one of six camping issues that the town has. He also said that it takes coordination of various agents to "pull it off".

Ms. Sullivan said that she would support changes to the camping bylaw that were well written and further the goals of the town, but that the petitions are contradictory and poorly written.

Mr. Crean questioned what is at stake for the petitioners' rights. Ms. Sullivan said that Town Bylaws can only be voted on at Annual Town Meeting, so that any petition received within the required time prior to Annual Town Meeting must be presented for a vote so that the concerns of the petitioners are acted upon. Petitions for Zoning Bylaw changes, which can be voted on at a Special Town Meeting at any time through out the year, and for which a Public Hearing must be held, so they are

not required to be voted on at the Annual Town Meeting. Ms. Sullivan also said that it would be remiss for the Planning Board to hold a hearing before it was fully prepared to answer the public's questions on the petition and the impacts of the changes.

Mr. Hale entertained a motion to hold the public hearing on the camper petition to be held prior to the Annual Town Meeting.

Mr. Vint made a motion to hold the public hearing on the camper bylaws prior to the Annual Town Meeting. Ms. Savoy seconded the motion. Discussion ensued.

Ms. Savoy suggested that other towns' bylaws be looked at to see how they handle camping. She agreed that the camper petitions need work but that the Board could hold the hearing and recommend against the article.

Ms. Vendetti was recognized. She said that the existing camper bylaw does not accomplish what the people of the town want it to, and that the Building Commissioner says that it is unenforceable. The petitions make the bylaw even more confusing. The Planning Board would be putting these petitions before the town for a vote knowing that people would be voting on something that may make the situation worse. Bylaws that are not clear are very expensive to enforce. Mr. Hale responded that the Board can recommend to vote "no" on the petitioned bylaw changes. Ms. Vendetti said that for the Board to put this before the voters it would be abdicating its responsibility.

Mr. Knickerbocker was recognized. He suggested that Ms. Savoy should stand up at the Annual Town Meeting and say that the petitions need work. He said that Ms. Savoy was the originator of the petition. Mr. Knickerbocker said that he would be willing to stand up and say that no camping be allowed in the town.

The Board voted on the motion. Voting "Yes" were Mr. Vint, Mr. Hale and Ms. Savoy. Voting "No" were Mr. Crean and Ms. Sullivan.

Ms. Savoy offered to contact the Country Journal to place the public hearing notice. Mr. Vint dictated the wording of the notice. The hearing date Thursday, May 2, 2013 at 7:00 was selected.

Mr. Vint made a motion to include, at the public hearing, the citizens' petition on bylaw 4.6, Driveways. The motion was seconded by Mr. Crean. Mr. Vint, Mr. Crean, Mr. Hale and Ms. Savoy voted yes, Ms. Sullivan abstained.

The next meeting was scheduled for April 23rd at 6:30pm. On the agenda: Use Table Update.

A motion to adjourn was made and seconded. All were in favor of adjournment. Time of adjournment: 8:43.

Respectfully Submitted,

Maureen Sullivan, Secretary