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**Regular Selectboard Meeting  
Tuesday, November 7, 2022  
Meeting Minutes**

Members Present: Brian Carpenter, Heather Seeley, Isabel Gogarty, Andy Hooper, Dan Brown, Farhad Khan and Lindsey Fuentes-George.

Staff Present: Town Manager Kathleen Ramsay and Co-Directors of Public Works Planning Dan Werner and Emmalee Cherrington and Chief of Police Tom Hanley

Also Present: Town Moderator Susan Shashok and Ross Conrad

**1. Call to Order**

The meeting was called to order at 7:00 p.m. by Chair Carpenter.

**2. Approval of Agenda**

Seeley moved to approve the agenda and Hooper seconded the motion.

It was noted there would be an Executive Session to discuss a real estate matter. The motion carried with 7 in favor and the agenda was approved with the addition of an Executive Session. **MOTION PASSED.**

**3. Informational Meeting on Ballot Article 1: Vermont Gas Service to 3 Mill Street**

Town Moderator Susan Shashok opened the Special Town Meeting and read the Warning. She said this was an informational meeting only and no action would be taken at this time.

Shashok read Article 1 that says, "Shall the legal voters of the Town of Middlebury approve the current Deed of Easement agreement as approved by the Middlebury Select Board at their meeting on June 28, 2022 and convey to Vermont Gas Systems a land easement to install gas service to 3 Mill Street?"

Carpenter went on to give background on this vote and said at its meeting on June 28, 2022, the Selectboard approved a request from Vermont Gas Systems (VGS) for an easement on a parcel of Town-owned property that would allow the company to install natural gas service to 3 Mill Street, and the approval triggered a required 30-day public notification and comment period, under 24 VSA § 1061, regarding the conveyance of Town-owned land. The said the Board authorized Town Manager Kathleen Ramsay to work with town counsel to initiate the notification process and, if no objections were raised within the 30-day period, as prescribed by Section 1061, to sign the Deed of Easement, but on August 3, 2022, Town Clerk, Ann Webster reported that resident, Ross Conrad submitted a citizens' petition in response to the Board's June 28<sup>th</sup> decision to grant an easement deed to Vermont Gas for the installation of natural

48 gas service at 3 Mill Street. He said the petition sought to put the matter before  
49 Middlebury voters on the General Election ballot in November and the petition included  
50 291 verified signatures (5% of 5,819 registered voters) required by Statute in order for it  
51 to be placed on the ballot.

52  
53 Carpenter said subsequently, on September 1<sup>st</sup>, the Selectboard received an email from  
54 Dave Walker, Gas Control and Right of Way Supervisor for Vermont Gas, notifying the  
55 Town that the contractor was able to install gas service to 3 Mill Street without entering  
56 the Town's right of way and, therefore, the request for an easement is no longer  
57 needed. He said since the citizens' petition that had already been filed, calling for a  
58 Special Town Meeting in November to discuss whether the Town should grant VT Gas  
59 an easement to install gas service at 3 Mill Street, Town Manager Kathleen  
60 Ramsay informed the Board that Town Counsel advised proceeding with the meeting  
61 and vote, even though the matter is moot at this point, he explained that there is no  
62 explicit language in statute authorizing the Board to rescind the meeting notice or cancel  
63 the town vote, despite the changing circumstances.

64  
65 Carpenter said even though the easement is not needed now, he had hoped the results  
66 of the vote would give an indication of the way voters felt for any future requests for  
67 easements on Town owned land, however ballots were mailed to everyone by the State  
68 so he's not sure how many people will even vote on this question.

69  
70 He said one of the thoughts was the Town was giving away town property, but he felt  
71 the Board's thought was that Vermont Gas is paying a significant amount in property  
72 taxes for their infrastructure in town (around \$375,000), so they aren't getting much for  
73 free. He said they had also authorized other easements for businesses in Middlebury,  
74 and felt it was equitable to permit the same for 3 Mill Street. He is hopeful there are  
75 enough votes to give an indication of the way voters feel on the subject.

76  
77 Ross Conrad a resident and the person responsible for circulating the petition, said if  
78 the Board recalled, they didn't feel at the time they wanted to delay approving the  
79 easement to find out from the owner of 3 Mill Street if there was any other non-fossil fuel  
80 alternative that would work other than installation of natural gas, and the Board didn't  
81 want to charge anything for the easement. He felt because Vermont Gas business is  
82 threatening everything we hold dear, he felt it would be better to put it to the voters and is  
83 why he submitted the petition. He understands Vermont Gas pays a significant amount  
84 in property taxes, but he doesn't feel it precludes them from paying for the Town  
85 property, and when they found there was going to be a delay they found a way to install  
86 it anyway without the easement. He says it appears Vermont Gas doesn't always need  
87 Town property, but when they find it an easier route that saves them money, then they  
88 come and ask the Town to give them the land at no charge. He says any time in the  
89 future when Vermont Gas requests an easement in town and the Selectboard doesn't  
90 ask the property owner if they've explored alternative sources that are better for the  
91 environment or if the Town doesn't charge anything to use the Town property, or ask if  
92 the easement is really needed to service this property, then he is most likely going to  
93 collect signatures on a petition to bring it to a vote to let voters decide.

94  
95 Hooper said he isn't clear what are actions the Board takes are up for voter review that  
96 can delay an agenda item for months until there is an election. Town Manager Ramsay  
97 said there is a specific State statute regarding conveyance of Town owned land. Brown  
98 questioned if an easement was the same thing since the Town still owns the land, but  
99 Hooper responded it's conveying a right to the property.

100  
101 Resident Victoria DeWind said she's sympathetic to Conrad's concerns, but because  
102 this ballot wasn't mailed out to all residents automatically the Selectboard may not get a  
103 clear picture of the sentiments of the community on this issue and wonders if in the  
104 future it comes again would the Board reconsider their policy on how to handle the  
105 easement requests. Carpenter said it would depend on the situation and the Board  
106 would stand firmly in providing the easement to the Mill Street property, and while he  
107 understands there is a climate crisis, you can't solve the crisis on every single deal and  
108 with some of these older buildings it's a major deal to change the heating system. He  
109 thinks the Board made a very conscious decision and they'd stand by it again.

110  
111 DeWind asked about charging for easements instead of giving them away for free.  
112 Carpenter said it would be decided on a case-by-case basis.

113  
114 Hooper said the value of the Vermont Gas infrastructure increases with each  
115 connection, so the value of their distribution network would increase as well. Ross said  
116 actually the value is set by the Public Utility Commission and it actually decreases over  
117 time.

118  
119 Khan asked Conrad how the Selectboard could tell a private property owner they  
120 couldn't use fossil fuels. Conrad said that isn't what he's asking the Board to do, he's  
121 asking the Board to not give free easements to Vermont Gas when gas might not be the  
122 best use for the property owner. Conrad said power companies and other utilities follow  
123 the established right-of-way along the road to run their lines, but Vermont Gas likes to  
124 save money and take an easier route across town owned land, and as a property owner  
125 in town he takes exception to that.

126  
127 With no further comments or questions, Khan moved to close the Special Town  
128 Meeting, and Seeley seconded the motion, and the motion carried unanimously, and the  
129 meeting was closed at 7:20 p.m.

#### 130 131 **4. Approval of Consent Agenda**

132  
133 4.a. Approval of Minutes of the October 25, 2022 Regular Selectboard Meeting

134  
135 4.b. Acceptance of Selectboard Subcommittee Meeting Minutes  
136 October 19, 2022, Middlebury Energy Committee Meeting  
137 October 27, 2022, Infrastructure Committee Meeting

138  
139 4.c. Agenda Placeholder

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4.d. Agenda Placeholder

4.e. Town Manager’s Report

- Turning Point of Addison County request for allocation of National Opioid Settlement. Turning Point of Addison County (TPCAC) has submitted a request for \$3,500 of the first payment from the National Opioid Settlement to continue providing services for individuals and families struggling with substance use disorders.
- Pre-Award notice for ARPA funds for Combined Sewer Overflow Abatement Project(s). In an email from Renee Miller, Program Technician with Vermont Agency of Natural Resources, Department of Environmental Conservation, she congratulates the Town of Middlebury on being selected to receive ARPA funding for the Combined Sewer Overflow (CSO) Projects in an amount of up to \$664,000.
- E-mail from Leon Smith regarding Posting of Property and Trails of Washington Street Extension. Mr. Smith asked the Town to clarify the allowed uses of the legal trail off Washington Street Extension, a discontinued Town Highway formerly known as Means Wood Road, and requirements and authorization for building and maintaining trails on Town property, and further suggested that the Town convene all stakeholders to solicit input and coordinate efforts, policies and messaging about legal trails and recreational trails.
- IIsley 100 Project Team Community Engagement Meetings. The IIsley 100 Project Team plans to host four community engagement meetings to discuss the vision for the expansion/renovation project and hear feedback in the month of November.
- Current Correspondence received October 21 – November 3.

Carpenter said in response to Leon Smith’s email, that the Board would be meeting with stakeholders of the properties in the Means Wood area to discuss this some time in the spring following Town Meeting in March.

Hooper moved to approve the consent agenda, and Gogarty seconded, and the consent agenda were approved with 7 in favor. **MOTION PASSED.**

**5. Citizen Comments**

There were no citizen comments.

186 **6. Public Hearing on Charter Amendment for Appointment of a**  
187 **Town Treasurer by the Selectboard**  
188

189 Carpenter said in preparation for a March 6, 2023, Town Meeting vote for a proposal to  
190 amend the Town's Charter to provide for the appointment, rather than the election of the  
191 Town Treasurer, tonight is an opportunity for the Selectboard to take public testimony.  
192

193 He said in accordance with governing statutes 17 VSA 2641 and 17 VSA 2645, the  
194 Board is conducting a public hearing to take questions and comments from the  
195 Middlebury community regarding a proposed change to the Town's Charter for the  
196 appointment, rather than the election of Town Treasurer, and he opened the public  
197 hearing at 7:22 p.m.  
198

199 Carpenter said the Town still has an elected position with the Town Clerk, but the Board  
200 feels it's important due to the amount of money the Town handles and as complex as  
201 the accounting system is, we need someone who is qualified and this allows us to  
202 advertise, interview and screen for someone that is not in an elected position. He feels  
203 that this is not an appropriate elected position.  
204

205 Since there were no public comments, Carpenter closed the public hearing at 7:26 p.m.  
206 and said the next public hearing on this amendment would be on Tuesday, November  
207 29, 2022.  
208

209 **7. Agenda Placeholder**  
210

211 **8. Dan Werner and Emmalee Cherington, Directors of Public Works Planning with**  
212 **updates from the October 27, 2022 Infrastructure Committee Meeting and**  
213 **requests for DWSRF application and Declaration of Intent to Bond for the Water**  
214 **Storage Facility Project**  
215

216 **8.a. FY24 Capital Budget approved with changes by the Committee**  
217

218 Werner said the Infrastructure Committee went through the second draft that totaled  
219 \$1,728,455.  
220

221 He said following discussion they reduced the Charles St/Monroe St intersection budget  
222 by \$10,000 to \$50,000, that is earmarked to remove the existing structure on the  
223 Maverick Gas Station property once the Town has acquired the parcel. He said they  
224 also decided to remove \$40,000 for the Downtown Transportation Grant, and to remove  
225 for one year the \$15,000 set aside for the salt shed, and to decrease the Memorial  
226 Sports Center roof replacement by \$10,000. He said these reductions totaled \$75,000  
227 and brought the total Capital Improvements Budget to \$1,653,455.  
228

229 He said the Board will review Capital Improvements budget more thoroughly at the  
230 Selectboard meeting after Thanksgiving.  
231

232 Cherington said they have selected three finalists for the RFQ process for the  
233 Wastewater Treatment Plant upgrade design, and they are scheduled to present to the  
234 Infrastructure Committee on November 17<sup>th</sup>. Werner said the Committee will hear the  
235 presentations on the 17<sup>th</sup> and then meet again on December 1<sup>st</sup> to make a  
236 recommendation to the Selectboard on who to choose for the Wastewater Plant design.

237

238 **8.b. Approval of Application for Drinking Water State Revolving Fund (DWSRF)**  
239 **funding for Water Storage Facility Improvements**

240

241 Werner said back in August the Board authorized the Manager to sign an engineering  
242 agreement with Dufresne Group and the State has approved them, so now they can  
243 begin their design work. He said the next step is to submit the application for the  
244 DWSRF funds, so they are requesting the Board authorize the Town Manager to sign  
245 the application when it is complete. He said this project can go to bond or go through  
246 the Revolving Loan Fund, and sometimes there's a discount through the revolving fund,  
247 and it also might allow for loan forgiveness in the future.

248

249 Brown asked what the need was for this other tank on Chipman Hill, and Werner  
250 responded it was for more capacity. He said in addition to the 1.5 million gallon tank  
251 that is there currently, this tank will add an additional 1.3 million gallons. He said the  
252 additional capacity is needed since some of the fire flows are deemed lacking at daily  
253 demand times, so this will solve that. He said the application will be submitted and with  
254 the timing of the grant and the design time, the earliest this could happen would be  
255 2024, but it really depends on funding.

256

257 Brown asked if there were grants available for this project, and Werner said the DWSRF  
258 fund payback has the potential to be forgiven, but they don't do outright grants. Brown  
259 asked if these funds are paid back from water users or taxes, and Werner said it would  
260 be water users unless the Town opted to use some of the Local Option Tax funds.

261

262 Seeley said in 2018 there was a Hydraulic Study done and this water storage facility  
263 was the number one project listed in their report and it is something the State has asked  
264 us to do for many years, so it has been vetted as a priority project.

265

266 Seeley moved to authorize the submission of an application for the DWSRF program  
267 funding for construction of a water storage tank at a preliminary-estimated cost of  
268 \$3,000,000. Khan seconded the motion. The motion carried with 7 in favor. **MOTION**  
269 **PASSED.**

270

271 **8.c. Approval of Declaration of Intent to Bond for**  
272 **Water Storage Facility Improvements**

273

274 Werner said the Board has to declare for an official Intent to Bond prior to going through  
275 the bond process. He said the bond request would be for \$3 million and they're asking  
276 the Board to authorize the Town Clerk to sign the official Intent to Bond.

276

277 Seeley moved to authorize Town Clerk, Ann Webster to sign the Declaration of Official  
278 Intent of the Town of Middlebury in relation to potential bonding for the construction of a  
279 water tank for public drinking water system. Khan seconded the motion. The motion  
280 carried with 7 in favor. **MOTION PASSED.**

281  
282 **10. Fire Chief David Shaw request for purchase of replacement of Chipman Hill**  
283 **Repeater from sole source provider, Radio North Group under the Sole Source**  
284 **Provisions Policy, as recommended by the Infrastructure Committee**

285  
286 Carpenter said Chief David Shaw provided a memo requesting the purchase of  
287 replacing the Chipman Hill Repeater and he explains that this repeater is 25-  
288 years old, with a life cycle of 20-years. He said the money has been set aside for  
289 years in the Capital Budget for this expense so Chief Shaw explains he would  
290 like to move forward with the purchase before something happens to the  
291 repeater. He said the Infrastructure Committee has approved the  
292 recommendation by Chief Shaw for sole source provider, Radio North Group to  
293 do this replacement in the amount of \$19,993.00.

294  
295 Seeley moved to award a contract to sole source provider Radio North under the  
296 Sole Source Provisions Policy for the replacement of the Chipman Hill Repeater  
297 at a total cost of \$19,993.00. Khan seconded the motion. The motion carried  
298 with 7 in favor. **MOTION PASSED.**

299  
300 **11. Police Chief Tom Hanley, Chair of the Public Health & Safety Committee, with**  
301 **updates from the Committee's October 24, 2022 Meeting, including the**  
302 **Committee's recommendation to change the noise ordinance timeframe**

303  
304 Chief Hanley said they were asked to look at the Noise Ordinance to see if they could  
305 change some of the hours. He said the only part of the ordinance that has restrictive  
306 hours are loud music, and it currently states nothing after 10:00 p.m. Sunday through  
307 Thursday and after 1:00 a.m. Friday and Saturday. He said it's prima facie  
308 unreasonable noise and the request was to bring the time down to 10:00 p.m. for all  
309 seven days, but following a lot of discussion, it was voted to lower the time to 11:00 p.m.  
310 on Friday and Saturday night.

311  
312 Carpenter asked if a band could play past 11:00 p.m., and Hanley said it all depends.  
313 He said noise can be unreasonable at any time of the day, but this one section of the  
314 ordinance says it's automatically unreasonable after these hours, but musical  
315 instruments and bands don't have a time limit, but after certain hours they most likely  
316 are unreasonable.

317  
318 Sue Ritter, Director of Community Relations at Middlebury College, said she had  
319 expressed concern on behalf of the College to Chief Hanley in regard to College events  
320 and events in the Town. She said College reunions typically go past 11:00, and she  
321 was also wondering about Town events like the Film Festival. Hanley said if it's a  
322 permitted event they wouldn't fall under this, and it's rather vague and leaves room for

323 interpretation and someone would have to complain about it. She said the vagueness  
324 concerns her as much as the time. Hanley said the Committee is aware this would  
325 impact everything.

326  
327 Hooper said the Committee discussed all the events in town that might typically go past  
328 10:00 p.m., such as Festival on the Green, and decided 11:00 might work. Brown  
329 doesn't mean an event has to shut down at 11:00 p.m., it means it just can't be noisy,  
330 and most of them aren't. Hanley said most of the complaints are about yelling and  
331 talking and those complaints can be complained about anytime, not just after 11:00 pm.  
332

333 Ritter said reunions do typically go past 11:00 and feels there would be complaints from  
334 neighbors, so maybe they can apply for some type of exception. Brown pointed out  
335 they could call and complain about the reunion at 9:00 p.m. they wouldn't have to wait  
336 until 11:00. Ritter said the thing that's holding her up is that it would be prima facie.  
337

338 Hanley said this is just an informational presentation tonight and there would need to be  
339 a public hearing to amend the ordinance, and the Committee is recommending  
340 proceeding. Hooper said even though this time limit is intended for electronic sound  
341 producing devices, it also signals that these are the quiet hours in town.  
342

343 Gogarty said she's concerned about the vagueness of the ordinance and is wondering if  
344 specific town or College events could ask for some ease on the hours for their event.  
345 Hanley said there was a request a few years ago to create an entertainment district in  
346 the immediate downtown area where the restaurants that would not be included in the  
347 Noise Ordinance, but that went nowhere.  
348

349 There was further discussion on the difference between amplified music and just music,  
350 and the time of day. Hanley said the vast majority of noise complaints are not about  
351 College events and at the moment only 14 Cross Street continues to be an issue, but  
352 they haven't heard from either of the other two properties where these complaints  
353 began. Hanley said they respond to all noise complaints regardless of the time of day  
354 and most people are responsive.  
355

356 Carpenter thought it would be a good idea to continue with the process and hold the  
357 public hearing to hear what people have to say. Carpenter thought 1:00 a.m. seemed  
358 kind of late in a residential area and thought 11:00 p.m. might be reasonable.  
359

360 Seeley moved to hold a public hearing and take public comments on the proposed  
361 amendments to the Noise Ordinance as recommended by the Public Health and Safety  
362 Committee. Fuentes-George seconded the motion. The motion carried with 7 in favor.

363 **MOTION PASSED.**  
364  
365  
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367



368 **12. Addison County Community Trust (ACCT) Executive Director Elise**  
369 **Shanbacker with a request for an agreement between the National Bank of**  
370 **Middlebury, ACCT and the Town of Middlebury regarding the administration of**  
371 **Vermont Community Development Program (VCDP) Grant funding for the Lindale**  
372 **Mobile Home Park Septic System Improvement Project to facilitate financing for**  
373 **the project**  
374

375 Ramsay said the payment agreement between the National Bank of Middlebury, ACCT  
376 and the Town of Middlebury was straight forward, wherein the Town will remit  
377 reimbursements from the \$450,000 Community Development Block Grant (CDBG) from  
378 the Vermont Community Development Program (VCDP) for the Lindale Mobile Home  
379 Park septic system project to the National Bank of Middlebury, rather than to the  
380 Addison County Community Trust.

381  
382 Khan moved to authorize Town Manager, Kathleen Ramsay to sign the payment  
383 agreement for the administration of VCDP Grant funding for the Lindale Mobile Home  
384 Park Septic System improvement Project as a duly authorized agent of the Town.  
385 Gogarty seconded the motion. The motion carried with 7 in favor. **MOTION PASSED.**  
386

387 NOTE: Elise Shanbacker from ACCT arrived later in the meeting and said bids for this  
388 project will be opened on November 17<sup>th</sup> and they are waiting for the Agency of Natural  
389 Resources to make one final funding announcement, but they're optimistic construction  
390 will begin in 2023.

391  
392 Carpenter asked if there were any low-income housing projects on the horizon.  
393 Shanbacker said there is nothing in the pipeline in Middlebury, but they are talking with  
394 Summit Housing and may partner with them on the Seminary Street Extension project.  
395 She said they would love to build another multi-family apartment building close to  
396 downtown Middlebury. She said typically it takes about 2 acres to put together enough  
397 units that works with the low-income housing tax credit funding model.  
398

399 **13. Approval of Check Warrants**  
400

401 Seeley moved to approve total expenditures in the amount of \$6,954,285.49, consisting  
402 of \$6,847,146.31 for accounts payable, and \$107,139.18 for payroll, for the period  
403 October 26, 2022 through November 7, 2022. Khan seconded the motion. The motion  
404 carried with 7 in favor. **MOTION PASSED**  
405

406 Seeley said this included the tax payment to the schools and the bond payment.  
407

408 **14. Board Member Concerns**  
409

410 Seeley mentioned again the Infrastructure Committee schedule has changed some to  
411 accommodate the presentations by the engineers for the Wastewater Plant.  
412

413 Hooper said he was sorry he missed the facilities tour this past Friday.

414  
415 Gogarty said she went on the facilities tour and it put a lot of the items on the Capital  
416 Budget into perspective and helped her realize the needs for these projects.

417  
418 Khan thought there seemed to be more homeless people on the streets this year, and  
419 he isn't sure where they will stay this winter with the housing shortage.

420  
421 Fuentes-George pointed out people can go to the police station if they need a place to  
422 warm up. She also wanted everyone to know that they changed the name of Addison  
423 Central Teens to The Teen Center, which is what most everyone called them anyway.  
424 She said their website is now [www.teencentervt.org](http://www.teencentervt.org).

425  
426 Seeley appreciated Gogarty saying that seeing the facilities brought attention to the  
427 need, and it would be great to figure out how to provide that visual in some way for  
428 interested community members. Carpenter suggested a pictorial display would be a  
429 helpful way to show the need.

430  
431 **15. Executive Session**

432  
433 Seeley said in accordance with Vermont's Open Meeting Law requirements, she moved  
434 that the Board find that premature general knowledge of the consideration of  
435 consideration of a real estate matter would clearly place the Selectboard at a substantial  
436 disadvantage, because the Select Board risks disclosing its litigation strategy if it  
437 discusses the real estate matter in public. Khan seconded the motion. The motion  
438 carried with 7 in favor. **MOTION PASSED.**

439  
440 Seeley further moved that the Board enter into Executive Session to discuss a real  
441 estate matter under the provisions of Title 1, Section 313(a)(1) of the Vermont Statutes.  
442 Khan seconded the motion. The motion carried with 7 in favor. **MOTION PASSED.**

443  
444 The Board entered Executive Session at 8:21 p.m.

445  
446 **16. Action on Matters Discussed in Executive Session**

447  
448 The Board exited Executive Session at 8:28 p.m. upon motion by Khan, seconded by  
449 Hooper.

450  
451 Khan moved to authorize the Town Manager to sign the contract and complete the  
452 transaction for the purchase of a small piece of property for the construction of the  
453 Halladay Road Pump Station improvements. Fuentes-George seconded the motion.  
454 The motion carried with 7 in favor. **MOTION PASSED.**

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**17. Adjournment**

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The meeting adjourned at 8:29 p.m. upon motion by Seeley, seconded by Fuentes-George.

The next regular meeting of the Middlebury Selectboard will be November 29, 2022 in the Town Offices.

Respectfully submitted,  
Beth Dow