

**Middletown Springs Selectboard Special Meeting
Tuesday, May 3, 2016 • Approved Minutes**

BOARD IN ATTENDANCE: H. Childress, C. Fenton, P. Kenyon, T. Redfield, J. Webber

PUBLIC IN ATTENDANCE: Barby Carr, Lois Dansereau, Emmett Francois, Paul Grace, Carl Haynes, Don Hemenway, Pat Hemenway, Linda Hurcomb, Tom Hurcomb, Anne Krause, Theron Krause, Ron Masleh, David Munyak, Phil Nietupski, Linda Peavy, Ursula Smith, David Wright

CALLED TO ORDER: 6:40 pm

Board Chair T. Redfield opened the session to remind everyone that in the March town meeting, there was a petitioned item as follows:

Shall the voters of the Town of Middletown Springs be allowed to vote for the Select Board to enact zoning for regulating outdoor storage of junk and junk vehicles?

This item passed on a vote of 215-161, or a 57% majority.

H. Childress reported that both the Vermont League of Cities and Towns and the Town's attorney Gary Kupferer believed that the wording of the ballot item made it unenforceable, and that the vote should be considered advisory rather than binding. Attorney Kupferer, as well as Poultney town manager Jonas Rosenthal and Rutland Regional Planning Commission executive director Ed Bove, advised Middletown Springs to begin with consideration of the Vermont League of Cities and Towns' "Ordinance Regulating the Outdoor Storage of Junk and Junk Vehicles: (updated July 2015), which can be found online at <http://www.vlct.org/assets/Resource/Models/VLCT-Model-Junk-Ordinance.pdf>. Copies of this model ordinance were provided to those attending this meeting.

If this ordinance were to be adopted, complaints of possible violation could be initiated by the designated enforcement officer; by members of the Select Board; or by members of the public who filed a complaint to the Select Board. It is important to note that the language of violation includes the following:

"...where any such item is visible from the main traveled way of a highway or visible from an abutting property owner's land at any season of the year." [emphasis added]

H. Childress and P. Kenyon both acknowledged that the voters had expressed a desire for action on this issue, but that the Board has serious questions about both the nature of and the cost of enforcement. The Ordinance provides for fines to be assessed against property owners in violation, but the collection of such fines, if not voluntary, becomes a matter for civil litigation in either the Vermont Judicial Bureau or the Vermont Superior Court.

The meeting was then opened to public comment, with Chair Redfield moderating. Comments included the following themes:

- A lot of us take pride in our property, and then have to live with this mess in our midst. We have to see it every single day.
- This problem reduces sale prices of properties, and increases difficulty of sales.
- We want to get along with our neighbors, but what one person does impacts others.
- This problem makes it difficult to boost tourism and economic development; Middletown Springs just doesn't have the "curb appeal" of other nearby communities.
- It seems that Middletown Springs has a particular problem with this, it's not as widespread in neighboring communities.
- We need to make sure that we keep the townspeople fully informed about what is covered by the ordinance, what isn't covered, and what the next steps in the process might be.
- It's not merely the quantity and type of junk that matters; how long it's been there should also be considered.
- There are scrap dealers and salvage auto yards who will pay for and take away discarded vehicles.
- Rural Vermont has a long tradition of individual homes and farms having their own dumps. But times have changed, and we know more about environmental hazards than we used to. And once it impacts other property owners, that's the point at which action has to be taken.
- The voters have spoken, and the Select Board needs to get on board with this. It's a great chance to make an impact.
- If there's a fine involved, that will make people take action. Once it hits your pocketbook, you have motivation to make change.

Along with comments, there were several questions that were discussed, though not fully resolved:

Q: What about mobile homes and trailers that are mostly unused but which may be used for storage or occasional guests? What about storage of building materials? Shouldn't we just focus on vehicle-related materials?

A: The model ordinance offers specific definitions of "junk" and "junk vehicles," which we can amend to suit the specific needs of our community. For instance, we could write the definitions so that a decaying mobile home would be considered a "dilapidated dwelling" rather than junk and thus not subject to this ordinance. But as an example, discarded appliances such as air conditioners, refrigerators and so on clearly fall within the spirit and the definition of "junk," even though they are not vehicle-related.

Q: Is there a farm exemption?

A: Jonas Rosenthal of Poultney says that Poultney's zoning code does not have a farm exemption, but rather a farming (and quarrying) equipment exemption. Unused and discarded farm machinery is not considered a violation of their junk zoning statute, but that doesn't give a farm permission to become a repository of

other junk or junk vehicles. In addition, the VLCT model ordinance has language that excludes “an on-premise utility vehicle” from their definition of junk vehicle, so that an unregistered utility pickup that never leaves the property would not be subjected to the ordinance.

Q: Should there be an appointed position to be the enforcement officer under this ordinance? It would be good to have someone who builds relationships, gains experience, and has the resources to do the work.

A: The model ordinance does not specify who the enforcement officer should be. Since Middletown Springs does not currently have a constable, the responsibility would either fall to a member of the Select Board, to the Sheriff’s Department under the voter-approved law enforcement contract which may begin in July 2016, or to a newly established position. There are precedents—such as the fence viewer, tree warden, or listers—for a Town officer who intercedes in property-related issues.

Q: Going from “zero to ordinance” is a big step. Are there intermediate steps we might take (perhaps as a first or trial phase)?

A: It’s possible that there might be other routes, such as buyback programs or other Town programs that would help property owners discard unwanted material. We might be able to get out the message that voluntary removal of junk and junk vehicles are the desirable first step, and that an ordinance may be required if voluntary compliance isn’t sufficient.

Q: Didn’t the March 2016 petitioned item specifically require the Town to enact a zoning process to address this issue?

A: The VLCT and the Town’s attorney both have advised that the language of the petitioned item is not enforceable, and that the Town should treat it as an advisory rather than binding vote. In addition, Vermont Select Boards may deliberate upon and enact ordinances at their discretion without requiring a vote. However, the Board recognizes that this will be a significant and emotional issue, and will likely bring any recommended ordinance to public vote before adoption.

Q: Have other nearby towns enacted this or other related ordinances? Is that why they don’t have as many problems with this?

A: The Board doesn’t have specific knowledge of what neighboring communities have done, and will investigate that. We do know that Poultney, because they have zoning, addresses the issue through its zoning ordinances rather than having an independent junk ordinance.

The Select Board will continue to investigate possible resolutions, including but not limited to the adoption of a junk and junk vehicle ordinance. Anyone wishing to offer suggestions for specific additions, deletions, or modifications to the VLCT model ordinance can contact Board member Herb Childress at 235-2093 or herb.childress@gmail.com, or can speak with any member of the Board.

The Select Board's final recommended resolution will almost certainly be put before the voters once again, in greater detail and specificity.

Other Business: P. Kenyon moved to adopt the revised Local Emergency Operations Plan (LEOP); C. Fenton 2nd [*all in favor, motion carried*].

Adjourn: Meeting adjourned by assent at 7:47 pm.

Respectfully submitted,
Herb Childress, Select Board Clerk