Chairman Dalpe opened the meeting at 7:00 PM and invited those in attendance to join in the Pledge of Allegiance.

In attendance were: Selectmen A. Frawley, L. Dalpe, J. Knowlton, N. Rosenthal and D. Stewart; Town Manager R. Nunes and Executive Assistant, Colleen Lieb.

This meeting was recorded by MCAMM for broadcast on Comcast and Verizon.

UNANTICIPATED
Adam Bond made a request to the Board to ask that CSX and the Town’s Representatives be brought back in for a meeting with the Board to update them on the progress of installing equipment that will alleviate the overnight idling in the train yard. He notes that spring is coming and it appears that on the weekends the trains are relocated but during the week they are idling all night long. The Town Manager will arrange this.

ANNOUNCEMENTS AND RECOGNITIONS
Selectmen Frawley noted that the herring are running.

Bob Burke invited the community and the candidates running for open seats to attend the Oak Point Veteran’s Meeting the Candidates Night to be held on March 27th at 7 PM at the Club House. This will be covered by MCAMM for future broadcast.

Paula Faye spoke about the upcoming St. Vincent DePaul 5K Road Race that will support the food pantry. The race will be on Sunday April 28th starting at 8:30 AM at the Nichols Middle School.

MINUTES
Upon motion made by Selectmen Knowlton and seconded by Selectmen Stewart, the Board voted unanimously to approve the March 4, 2019 minutes as amended.

WARRANTS
Upon motion made by Selectmen Knowlton and seconded by Selectmen Stewart, the Board voted unanimously to authorize the Chairman or her designee to sign the Warrants for week ending 3/23/19.

NEW BUSINESS
Discuss Complete Streets Policy - SRPEDD

Jed Cornock, Principal Comprehensive Planner - SPREDD Representative was present for the discussion. He provides an overview of the Streets Policy that he will be asking the Board of Selectmen to adopt and reviews the steps in the process. It is noted that once the police is completed the Town would be eligible to apply for State grant funding up to $400,000 per calendar year to fund the project list that will be created as part of the process. R. Nunes reported that he has held several meetings with the DPW, ConCom, OECD and Planning and they are all in full support of this.
Capeway Rovers
David Payne, Representing Capeway Rovers, was present for the discussion. The Board reviews the dates requested for One Day Beer & Wine Licenses, the Weekday and the Sunday Entertainment dates. It is noted that the dates requested are the same amount of dates that was previously approved by the Zoning Board.

Upon motion made by Selectmen Knowlton and seconded by Selectmen Stewart, the Board voted unanimously to approve the 2019 Weekday Entertainment, Sunday Entertainment and One Day Beer & Wine License dates for the Capeway Rovers as indicated.

Update on 2019 Green Communities Competitive Grant Application
Andrew Sukeforth, Assistant to the Town Manager and Jeff Stevens, Green Energy Committee Chairman were present for the discussion. Mr. Sukeforth provided an update to the Board on the 2019 Green Communities Competitive Grant projects and each cost. The projects proposed total $254,940 and if all of them are approved will save the Town $61,000 a year.

Mr. Steven’s speaks briefly about the Grant Application and recognizes the Town Manager’s Office for being the key that pulled all of this work together so that the grants could be applied for.

Upon motion made by Selectmen Rosenthal and seconded by Selectmen Frawley, the Board voted unanimously to eliminate one of the positions on the School Building Committee and not replace an existing vacancy, thereby reducing the total number of Members to 17 and requiring nine members for a quorum.

Upon motion made by Selectmen Knowlton and seconded by Selectmen Stewart, the Board voted unanimously to approve a One Day All Alcoholic License for The Bartending Service of NE for March 30, 2019 from 7 pm to 12 am for a Mardi Gras Fundraiser to be held at the Town Hall.

Upon motion made by Selectmen Knowlton and seconded by Selectmen Stewart, the Board voted unanimously to authorize the Chairman to enter in a contract with Massachusetts Historical Commission should the MPPF grant be awarded.

Discuss North Carver Development – Final Environmental Impact Report (FEIR)
Adam Bond, Planning Board Chairman and Leeann Bradley, Planning Director was present for the discussion. Leeann spoke to the Board regarding her memo dated March 13, 2019 regarding the North Carver Development which is a proposed commercial project located off Rt. 44 and Rt. 58 within the Town of Carver and abutting the Town of Middleborough. She noted that the project proposes to construct a 1.77 million square feet of office/distribution buildings. It is estimated that there will be 8,398 total daily vehicle trips.

There is discussion about truck routes and the quickest way to get to Rt. 495 from the site. There is concern expressed regarding the Rt. 44 intersections from the project site to the rotary and how
they will be affected by the additional traffic. Ms. Bradley suggests that the Board look at hiring an outside consultant, that can work with the Town and MassDOT to see what can be done to mitigate at the intersections and help to continue to push for the flyover at the rotary. The Town Manager will work with the Planning Director to figure out how best to fund this study. The Board expresses concern about putting further traffic through the intersections on Rt. 44, which bottlenecks at the rotary.

There is discussion on asking SRPEDD for information on the site and also asking Old Colony to provide information on it. Chairman Dalpe requests that a letter be send indicating that we are finding funding for a study to be done on the traffic increases from the proposed Carver project and include the three representatives from our Town as well as the Senator. It is asked that the Town Manager of Carver be included as well.

Upon motion made by Selectmen Rosenthal and seconded by Selectmen Frawley, the Board voted unanimously to have a letter drafted indicating a hold on this project until the Town studies the rotary circle impacts and cc the Town’s Representatives, Senator and the Carver Town Manager.

HEARINGS MEETINGS AND LICENSES
NEW HEARING – WRPD Special Permit for construction of a paved Driveway with in 25ft of a wetland for property located on Tispaquin Street, Assessors Map 58J, Lot 3541
Jamie Bissonnette, Zenith Engineering Consultants, LLC was present for the discussion. Chairman Dalpe reads the legal notice and opens the hearing. Mr. Bissonnette returns the green cards. He provides an overview of the project which is for a 12ft driveway to access part of the lot through a wetland crossing that is in a WRPD Zone 3, which has been reviewed and was approved by the Conservation Commission.

Chairman Dalpe opened the hearing up for Board and public comment. There is none.

Upon motion made by Selectmen Rosenthal and seconded by Selectmen Stewart, the Board voted unanimously to close the hearing.

Upon motion made by Selectmen Stewart and seconded by Selectmen Rosenthal, the Board voted unanimously to find that the proposed use:

a. Is in harmony with the purpose and intent of the WRPD By-law and will promote the purposes of the Water Resource Protecting Districts; and

b. Is appropriate to the natural topography, soils and other characteristics of the site to be developed; and

c. Will not, during construction or thereafter, have an adverse environmental impact on the aquifer, recharge areas, water resources of the Town; and

d. Will not adversely affect any existing or potential water supply; and grants the WRPD Special Permit.
CONTINUED HEARING – RENT CONTROL – To consider a petition filed by Anthony Alenci resident of Hometown America/Oak Point for a rent reduction (continued from 1/28/19)
Lisa Goodheart, Sugarman, Rogers, Barshak & Cohen, PC, Kyle Howieson, Oak Point/Hometown America and Tony Alenci – Petitioner were present for the discussion. Chairman Dalpe opened the continued hearing and asked those who wished to speak to use the sign in sheet.

Mr. Alenci begins by reviewing a few administrative things. He explains that there has been reference to the Craw litigation and that he is not actively involved in it. He noted that he filed a complaint with the Attorney General’s Office on January 19, 2018, Oak Point/Hometown America was made aware of the complaint in February and they responded in May, 2018.

Mr. Alenci reviews the six items/issues he has. The first one is the gate. He explains that when he moved in Oak Point/Hometown America was presented as a gated community and he received a key fob to use the gate. He noted that in the past five years it has not been a gated community and he has yet to use the key fob. He also noted that the back gate was pulled out and that gate was operational. He is paying maintenance fees for something that isn’t there.

The next issue is the pot holes. Mr. Alenci speaks about how some of the pot holes are craters, 2ft wide by 3ft long and six inches deep. He states that Oak Point/Hometown America is not maintaining their roads. He refers to the pictures he provided of the pot holes.

Mr. Alenci then speaks about the shoveling of walkways and sidewalks. He states that Oak Point/Hometown America does nothing with the walkways and sidewalks if there is 2-3 inches of snow, they just leave it. However, if there is 6 – 12 inches, they clear them. He refers to the pictures provided of the ice along the street. He notes that the street is clear but the sidewalks have nothing but snow and ice on them.

The next issue is a walkway crack on his property. Mr. Alenci explains that he reported the issue to Oak Point/Hometown America for three years and it was November of last year before it was fixed. He asks what happens with the maintenance fees that I’m paying that they’re supposed to be maintaining these things and they aren’t.

Mr. Alenci then speaks about the sprinkler system. He notes that this is the biggest sore point for him. He refers to his lease with Oak Point/Hometown America and how it is noted that they are required to maintain the lawn. To him, maintaining the lawn means they are going to mow it, edge it, fertilize it, weed it and water it. He explains that nowhere in the lease does it say that he is required to supply the water to the sprinkler system. He explains that he doesn’t even turn the system on and off that Oak Point/Hometown America does. He did not give them permission to put the sprinkler system on his water line. He further explains that Oak Point/Hometown America owns the sprinkler system, they own the maintenance of the lawn then why is he paying for the water. Mr. Alenci states that he is requesting that he be paid for six years’ worth of maintenance that he paid that Oak Point/Hometown America didn’t supply any services. He
asks that the water be for the sprinkler be taken off his system and put on Oak Point/Hometown America’s system or they can pay him for the use of the water on the sprinkler system.

Lisa Goodheart begins by requesting a copy of the pictures that Mr. Alenci provided because they did not receive a copy. This will be provided. Ms. Goodheart contested Mr. Alenci’s claim that he is not part of the Craw Litigation and refers to the six page affidavit signed by Mr. Alenci under the pains and penalties of perjury she provided to the Board. She explains that this case is filed with the Federal Court in Boston in support of a proposed class certification so that the residents of Oak point, if that motion were allowed, can see rent abatement, exactly what is being asked for here, upwards of $11 million in rent abatement.

Ms. Goodheart responds that she understands that Mr. Alenci has expressed that he feels it is borderline fraud and that he feels it’s a violation of the lease. She explains that as a matter of this Board’s scope, this Board respectfully lacks the authority and the jurisdiction under the rent abatement law to deal with the private civil claims of fraud, of negligence, of breach of contract. There is a place for that. The third branch of government, the judiciary, where you go if you have a civil complaint with your landlord of this nature.

Ms. Goodheart references the special act that established the Rent Board and notes that Chapter 703 of the Acts of 1985 makes it very clear that the Board has limited authority to address a specific problem. The legislation states that there was a serious public emergency with respect to the housing of substantial number of citizens in the Town of Middleborough and the emergency had been created by high and unwarranted rent increases. So to prevent people living in manufactured housing communities from being vulnerable to unwarranted high rent increase, the Rent Board was created so that people wouldn’t find themselves homeless and that was the purpose of the Rent Board.

Ms. Goodheart notes that the petition is not brought in response to any rent increase, much less a higher unwarranted on. It is clearly brought to complain about the services provided and arguments about rights and obligations under the party’s lease agreement and as such, it is beyond the scope of what this Board can do in a rent abatement proceeding. For that reason, she asks the Board to rule against Mr. Alenci’s petition and direct him to take his complaints to an appropriate forum where they can be addressed if he wishes to do so. She also states that not only does this Board lack jurisdiction over lease disputes, it lacks the authority to grant an award of money damages, which is, essentially, what Mr. Alenci is looking for. The scope of the Board’s authority is to grant rent abatement only.

Ms. Goodheart reminds the Board that the Attorney General has strong views about the importance of treating everyone in a manufactured home community the same as far as rent goes, except where there are certain approved bases for setting different rent levels. She notes that the Board is being asked by one individual to make rent abatement for him personally and that does not fit with the Attorney General’s concept that the rent should be the same for everyone. She explains that to the extent that Mr. Alenci is complaining about community-wide issues, such as the gate, that is not an issue that he can properly raise on an individual rent abatement petition.
pertaining to his home site only. She goes on to speak about the pot holes and the snow and ice removal and how they are not applicable.

Ms. Goodheart does agree that there is one issue that pertains to his property and that is the sprinkler system. She requests that the first question be reframed slightly. She thinks the property way to frame the question is whether the condition of the home site that Oak Point/Hometown America leases to Mr. and Mrs. Alenci warrants a downward adjustment of the rent. She speaks about the second question and suggests that this Board should not be getting into a lease dispute. She speaks about the language in the lease for tenants to pay for utilities and utility services which are separately metered on the home site.

Ms. Goodheart explains that if Mr. Alenci doesn’t wish to pay for water use through the sprinkler system, he has the control, contrary to what he said, he has the control and he can shut it off. Now if he does not know how to do that, he can ask Oak Point/Hometown America and they will sort it out with him. She states that no one is making him use his own sprinkler system.

Ms. Goodheart respectfully requests that the number of people here tonight who came wanting to be heard on this petition, she finds it difficult to see how they possible have a standing our foundational information that’s appropriate to the limited scope of the rate abatement petition brought by an individual on an individual basis pertaining to his home site only and that the Board does not get into community-wide issues.

Chairman Dalpe opens the hearing up for comments from the Board.

Selectmen Stewart asked how Mr. Alenci came up with the $25 per month reduction due to the lack of maintenance. Mr. Alenci explains that he estimated $5 a month for each item, except for the water, and then he multiplied it over the last five years. For the water, he looked at the average amount that it has cost him over and above his normal use of water off-season.

Chairman Dalpe asks if Mr. Alenci was given the option of turning the sprinkler system off. Mr. Alenci notes that he was not given the option and he also noted that if he does turn it off, the lawn is going to die.

Selectmen Rosenthal noted that he read the lease and in one part it says that Oak Point is responsible for the care of the lawn. He asks how do you equate those two and justify the fact that the water for that bill goes to the tenant. Ms. Goodheart explains that the intention there is to communication what Oak Point/Hometown America does, which is mow the lawn, maintain the shrubs, the mulching and all of that. She notes that Oak Point/Hometown America does winterizing and the turning on and off of the sprinkler system, which she thinks most people find to be a courtesy and something that’s appreciated. Selectmen Rosenthal asks if in the event of a service not being provided, would a request for a community-wide rent reduction be within the Rent Board’s purview. Ms. Goodheart notes that the Rent Board does have an alternative community-wide track but she does believe that the Board hypothetically has the authority to
address community-wide issues that threaten the security and the ability of people to maintain their homes.

Selectmen Rosenthal notes that in the past when we’ve had these Rent Control Board hearings and we started with square one and built a case for a particular rental based on the historical cost of the property, the improvements, the capital improvements that are pending, the maintenance, et cetera, whether or not they have people working there. Any failure of the property owner to provide those services in the past would have constituted for us a failure of their contractual obligation and, therefore, we would then, have to, once again, look at a fair return on investment because they are simply not provided what they claim they are providing and that’s how we’ve deal with it in the past. He asks if that sounds reasonable to Ms. Goodheart. Ms. Goodheart responds that she does not think that is necessary but she was pointing out that there is a right way to do that and an individual petition is not the way to do it.

Selectmen Stewart asks Mr. Howieson if there is a system in place for a resident to report potholes, cracks in the sidewalks, cracks in the walkways, that sort of thing. And if there is, how is the knowledge about that reporting system distributed to the residents. Mr. Howieson explains that when a call comes into the office, its routed to one of the staff and they log that complaint or concern into our recorder system and then that would be put through an analyzed by the general manager and we would dictate some kind of response. He adds that with potholes depending on the time of year it depends on when they can get to it. He also notes that sometimes they wait until they have a few potholes to repair so that they only can coordinate with the paving company to come out and take care of them all at once. Mr. Howieson clarifies that this review of the complaints is done every day. He also notes that Oak Point/Hometown America has 20 miles of roadways.

Selectmen Stewart asks about the snow removal contract. Mr. Howieson explains that Oak Point/Hometown America contracts on snow removal starts at 2 inches of snowfall. That’s normal when you get less than 2 inches because you get a lot of melting and it will go away. He explains that there are times where they will start before the 2 inches, especially if we know that the forecast is going to be that there’s going to be a significant snow event, they will just start plowing. They do driveways, walkways, over 20 miles of streets, sidewalks, fire hydrants after every snow.

Selectmen Frawley asks about the snow removal and the treatment of the roadways. Mr. Howieson notes that they use a salt mixture and deicer. Selectmen Frawley asks for confirmation that there is a shutoff at every person’s home that has a sprinkler system? Mr. Howieson explains that they have an irrigation controller or a clock which can just be switched off or you could turn the timing down to two minutes instead of ten minutes. Selectmen Frawley asks if there is a meter on that. Mr. Howieson explains that there is a meter for the home and beyond that is where the connection is for the irrigation system. Selectmen Frawley confirms that it passes the meter and then anything that goes into the home is metered along with the irrigation system. Mr. Howieson confirms that it is all metered together. Selectmen Frawley
clarifies that Oak Point/Hometown America owns the lot and the lawn but the resident is the one who has to pay to water the lawn.

Ms. Goodheart adds a follow up to Mr. Howieson’s factual comment in response to Mr. Frawley’s question about who owns the lawn. She explains that Mr. Howieson correctly stated the lawn is part of the lot which Oak Point/Hometown America owns, but as with any lease arrangement, it is common for the tenant to have responsibilities to maintain the property that the tenant does not own, but leases and that’s the way they look at the home site. Selectmen Frawley clarifies that the tenant is responsible for the maintenance for the lawn and that includes the water. Ms. Goodheart explains that the water is not because the water is carved out of the lease which specifically said that all metered utilities to the home site, not to the home, to the home site, that’s the distinction.

Mr. Alenci speaks about the lease and that it specifically says they are responsible to maintain the lawn. Also in the lease it says they provide the hookups to the house and that I’m responsible for everything that goes in and out of it. He explains that he doesn’t maintain the lawn and that his wife maintains the flowerbeds or whatever else she wants to plant. Nowhere does it say he is supposed to supply the water to the sprinkler system which they own and they control.

Chairman Dalpe opened the hearing up for comments on the Alenci Petition only.

Paula Fay, Diane Fay, Deborah Bruno, Rick DiSalvo, Oak Point Residents, offer their support for Mr. Alenci’s petition.

Adam Bond, 8 Rock Street, speaks to the Board about the Edgeway Mobile Home Park. He notes that one of the things that was in play was the concept as to whether or not the services that the residents were obtaining from the landlord was sufficient to equal the value in the rent that they were paying. He agrees that it is true that the Attorney General’s office likes to see rents being uniform; however in this case there are Phases. He notes that each Phase pays something different. He also notes that according to the Attorney general’s manual, page 48, number 8, says that a Rent Control Board can lower rent if repairs are not made, that’s the way he reads it.

Steve McDonough offered his support for Mr. Alenci’s petition.

Ms. Goodheart extends a standing invitation to the Board, whenever you wish, that they are welcome to come out and tour the community and judge for themselves the value that the residents are getting for the rent that they pay. Oak Point/Hometown America will take you through the services they receive and we will show you the clubhouse amenities and the park.

Mr. Howieson speaks briefly on the removal of the back gate. He notes that they did repairs and upgraded it only to have a FedEx delivery truck run into the gate and destroy it. So they have ordered a new gate and it was done in January and they have been testing it.
Upon motion made by Selectmen Knowlton and seconded by Selectmen Stewart, the Board voted unanimously to close the Tenant Petition Hearing for Anthony Alenci.

Town Counsel asks both parties to provide summaries of their cases by the end of the week.

The Board will take action on the petition at the March 25, 2019 meeting.

**Discuss South Coast Rail MassDOT**
Chairman Dalpe referenced the email dated May 18, 2019 from Jean Fox explaining that they have no new information to present to the Board and that they propose to appear at a future BOS meeting when a comprehensive update can be provided.

Selectmen Frawley spoke about plans and stormwater calculations that just were put out by MassDOT on the project and he noted that there had been nothing released in regarding to the project since October 2018. There is reference to the newspaper article which states they are 90% done with their design and had pulled all their construction permits. He referenced his discussion with Jean Fox and noted the response that the WRPD plan has not been released yet.

The Board discusses whether or not MassDOT will be following the Town’s WRPD Regulations or not. Chairman Dalpe states that technically they follow the State but that they have indicated that they will work with Middleborough on this matter. Selectmen Rosenthal explains that he takes them at their word.

Selectmen Frawley referenced the vote the Board took previously that was 4-1-0 to oppose the MassDOT Southcoast Rail plans as presented. He states that he is still opposed to the plan and wants them to comply to the Town’s WRPD Bylaw.
Upon motion made by Selectmen Rosenthal and seconded by Selectmen Frawley, the Board voted, four in favor, one against, to ask for a legal opinion from KP Law as to whether MassDOT Southcoast Rail is immune to our local bylaw or do they have to follow it.

**OLIVER ESTATE ITEMS**
Chairman Dalpe reports that Historic New England did their yearly inspection this week at the Oliver House.

**TOWN MANAGERS REPORT**
R. Nunes, Town Manager, reviewed with the Board his Town Manager’s Report which covers March 11th through March 15th. He reviewed the Capital Planning Committees recommended funding for capital items/projects. He also reviewed the FY ’19 Year to Date Revenues.

**REPORT ON COMMITTEES, COMMISSIONS, BOARDS**
There is nothing reported.

**CORRESPONDENCE**
#3 – Selectmen Stewart referenced the updated provided by Hometown America/Oak Point
#7 – Selectmen Stewart referenced the letter the Conservation Commission sent to the developer of 57 Long Point Road (Island Terrace) with their concerns.

#2 – Selectmen Rosenthal asked that Attorney Silverstein – KP Law be asked to confirm that the Town is in compliance with the new bylaw. It is noted that KP Law is working on drafting an application for the Board of Selectmen for their licensing.

ADJOURNMENT
Upon motion made by Selectmen Frawley and seconded by Selectmen Stewart, the Board voted unanimously to adjourn at 10:22 PM.

Respectfully submitted by,

Colleen M. Lieb, Executive Assistant
MIDDLEBOROUGH BOARD OF SELECTMEN