

Selectmen's Minutes
T.O.H.P. Burnham Library

November 28, 2011

Present: Chairman Jeffrey D. Jones, Selectman Lisa J. O'Donnell, Selectman Susan Gould-Coviello, Town Administrator Brendhan Zubricki, and Selectmen's Assistant Pamela J. Witham.

Also Present: Judd Pratt, Mr. and Mrs. Osburn, Christopher Osburn, Mary Beth Tirell, John Amirault, Glenn Boutchie, and others.

The Chairman called the meeting to order at 7:00 p.m. in the T.O.H.P. Burnham Library and announced that the Board would hear Public Comment. Glenn Boutchie came before the Selectmen to comment on the way that MassDOT had finished the sidewalk in front of the Catholic Church. The Church has always had a front step, but now it is higher on one side than it is on the other and is generally a shorter step. The back entrance to the Church now has an odd shaped slope where it meets the sidewalk, which is a tripping hazard. Also, there is a lip on the ramp that goes to the crosswalk to Willow Court and a person in a wheelchair may have to go outside of the walkway lines to go around the lip. And finally, there are two planting beds in front of the Church. MassDOT has already agreed to convert one to concrete, but the Church would also like the other one converted to concrete since they claim no one will maintain it and it will interfere with people dropping passengers off. Mr. Zubricki said that MassDOT has agreed to fix the sidewalk grading at the back entrance to the Church, but has not agreed to fix the front step or the crosswalk and suggested that a line be painted on the step to alert pedestrians to the change in step height. After some discussion, the Selectmen agreed that they would like to keep the second planting strip. Mr. Boutchie thanked the Selectmen and left the meeting.

Mr. Zubricki presented his Town Administrator's Report for the period November 11th, 2011 through November 23rd, 2011 regarding the following:

Essex Youth Commission Program Offerings: Mr. Zubricki reported that he had met with representatives from the YMCA and that they are very much interested in providing after-school programs, as well as special events at the Essex Elementary School. The PTO has indicated that they would like to offer programs, but has not consistently done so to date. The YMCA has a broad palette of activities that it could offer including cooking, legos, chess, and even after-school licensed child care. The Selectmen agreed that they would like the YMCA to provide these programs and Selectman Gould-Coviello said that she would contact school officials to begin a discussion about the possibilities of the YMCA providing activity programs at the school.

Route 133 Reconstruction Project Update Meeting: Mr. Zubricki said that MassDOT is currently fixing the drainage problem at the Village Restaurant parking lot. MassDOT will also be cutting back the island at Main Street and has already added additional turning guidelines at Main and Martin Street. The Selectmen were in agreement that they would like to have the current striping ground and restriped to allow for a wider shoulder on the Village Restaurant side to enable safer parking. MassDOT has seeded all grassed areas and will guarantee the plantings for one year. They also need to replace some no parking signs and remove all the orange construction signs.

Installation of Gate on Road to Grove Cottage: The Selectmen were in agreement that a gate should be installed at the beginning of the drive to the Grove Cottage to prohibit vehicles. The gate will be funded from the Grove Revolving Fund. Foot traffic will be able to go around the gate. Mr. Zubricki will arrange for this work.

Janet and Tina Cass came before the Selectmen to request the transfer of their lease for the property at 22 Cogswell Road (Map 19, Lot 14) to Christopher C. Osburn. The Selectmen asked Tina Cass if she would put her request in writing and she agreed. The Chairman entertained a motion to approve the transfer of the leasehold for the property at 22 Cogswell Road (Map 19, Lot 14) from Donald and Marion Cass to Christopher C. Osburn, acting through the Cass' Durable Power of Attorney, Ms. Bettina Cass Luttinger, with the caveat that the lease expires by its term on December 31, 2011, and that nothing in this vote shall be construed as an extension of said lease; and further, that nothing in this approval is intended to convey or imply any right, title or interest in the subject property, or any portion thereof that was not already held by Donald and Marion Cass or Ms. Bettina Cass Luttinger. Mr. Osburn was given copies of the new bridge lease and he agreed to return the signed copies after he had reviewed them. Janet and Tina Cass, Christopher Osburn, and Mr. and Mrs. Osburn thanked the Selectmen and left the meeting.

In other business, a motion was made, seconded, and unanimously voted to approve and sign the weekly warrant in the amount of \$658,514.45.

A motion was made, seconded, and unanimously voted to approve and sign the minutes for the November 21, 2011, Selectmen's Open Meeting and the November 21, 2011, Selectmen's Executive Session.

A motion was made, seconded, and unanimously voted to appoint Richard Stevens to the Long Term Planning Committee based on a recommendation from LTPC Chair Mike Dyer.

Subdivision of Northern Conomo Point: Mr. Zubricki reported that The Horsley Witten Group has agreed to provide an existing conditions analysis of northern Conomo Point for \$21,000 as part of an overall zoning and subdivision proposal. Funding for the subdivision study was recently approved at the November Special Town Meeting. A motion was made, seconded, and unanimously voted to authorize Horsley Witten to begin Phase I (Existing Conditions Report) of the northern subdivision study which is not to exceed a cost of \$21,000. Mr. Zubricki will bring a contract to the Board at the next meeting.

Subdivision of Southern Conomo Point: The Planning Board is continuing to consider their approval of the subdivision plan for southern Conomo Point. Mr. Zubricki has been in contact with the Planning Board Chair to make sure that all his questions and concerns are addressed. The Selectmen asked that a Horsley Witten representative be present at the next Planning Board meeting to provide support for the subdivision plan. Board of Selectmen Chair Jones also plans on attending the Planning Board meeting.

Draft Fiscal Year 2013 Capital Project Request Forms: Mr. Zubricki reviewed each of the items in the *preliminary draft of the proposed capital budget* for the years 2013 through 2022. The Selectmen provided some general guidance for revisions.

At 8:00 p.m., the Chairman entertained a motion to open a Public Hearing regarding a dog owned by Robyn Pydynowski. The motion was moved, seconded, and unanimously voted. The Chairman asked anyone that wished to speak at the hearing to raise their right hand and to solemnly swear or affirm that the testimony to be given in this matter will be the truth, the whole truth, and nothing but the truth. Animal Control Officer Amy Reilly, Animal Health Officer Pam Stone, Robyn Pydynowski, Mr. Pydynowski, Attorney Victor Koufman, Roger Broom and Doug Curtis so swore. Amy Reilly reviewed events to date. A small child had been visiting the Pydynowskis with his parents when he was severely bitten in the face by Neut, the Pydynowskis' 15-year old dog. No one witnessed the accident. The Pydynowski attorney, Victor Koufman, handed out a document entitled *Appeal of Dog Officer's Decision Concerning Neut*. Neighbors and friends of the Pydynowskis testified on behalf of Neut. The Chairman asked if anyone else wished to speak. No one did. A motion was made, seconded, and unanimously voted to close the hearing. Those present discussed appropriate measures for ensuring that the no one else would be harmed by the dog. Subsequently, a motion was made, seconded, and unanimously voted to rescind the previous order from the Dog Control Officer. A second motion was made, seconded, and unanimously voted to issue a warning to the Pydynowskis that referenced the Pydynowski voluntary plan to avoid any repeat occurrence of such an incident. The Board reserved their right to open a new case at any time. The Board acknowledged that an electric fence was not necessary. Those present for the dog hearing left the meeting.

The Selectmen reviewed a *memo from Chief Silva* advising that he will be on vacation from December 1 through December 7, 2011.

A motion was made, seconded, and unanimously voted to approve a request from Cape Ann Golf Course to close the Fairway Pub from December 15, 2011 to March 15, 2012 for cleaning and general maintenance.

The Selectmen were advised that the Red Cross Tenth Annual Heroes Breakfast will be held on Thursday, March 15, 2012.

A motion was made, seconded, and unanimously voted to approve a request from the American Diabetes Association to pass over Essex roads during their annual Tour de Cure fundraiser on May 20, 2012.

A motion was made, seconded, and unanimously voted to approve the following requests for license renewals:

All Alcohol Restaurant License Renewal:

- Bradley Atkinson, Manager, BN Farm LLC, d/b/a The Farm at 233 Western Avenue

- James N. Stavros, Manager, Cape Ann Golf Course Corp., d/b/a Fairway Pub at 99 John Wise Avenue
- David R. Brown, Manager, Greenbow Corporation, d/b/a Shea's Riverside Restaurant & Bar at 122 Main Street
- Timothy Kennefick, Manager, Windward Grill LLC, d/b/a Windward Grille at 109 Eastern Avenue

Antiques License Renewal:

- A.P.H. Waller, A.P.H. Waller & Son at 140 Main Street

Automatic Amusement Device License:

- James N. Stavros, Manager, Cape Ann Golf Course Corp., d/b/a Fairway Pub at 99 John Wise Avenue (Two)

Class II License Renewal:

- Scott Savory, Scott's Auto Clinic at 6 Scott's Way

Common Victualler's License Renewal:

- Bradley Atkinson, Manager, BN Farm LLC, d/b/a The Farm at 233 Western Avenue
- Joseph K. Cellucci, Manager, Eben Creek Corporation, d/b/a J.T. Farnham's at 88 Eastern Avenue
- James N. Stavros, Manager, Cape Ann Golf Course Corp., d/b/a Fairway Pub at 99 John Wise Avenue
- David R. Brown, Manager, Greenbow Corporation, d/b/a Shea's Riverside Restaurant & Bar at 122 Main Street
- Timothy Kennefick, Manager, Windward Grill LLC, d/b/a Windward Grille at 109 Eastern Avenue
- Roy Serpa, Manager, MAIA LLC, d/b/a Dunkin Donuts at 127 Main Street

Weekday Entertainment License Renewal:

- Bradley Atkinson, Manager, BN Farm LLC, d/b/a The Farm at 233 Western Avenue
- James N. Stavros, Manager, Cape Ann Golf Course Corp., d/b/a Fairway Pub at 99 John Wise Avenue
- David R. Brown, Manager, Greenbow Corporation, d/b/a Shea's Riverside Restaurant & Bar at 122 Main Street
- Timothy Kennefick, Manager, Windward Grill LLC, d/b/a Windward Grille at 109 Eastern Avenue

Wine and Malt Restaurant License Renewal:

- Joseph K. Cellucci, Manager, Eben Creek Corporation, d/b/a J.T. Farnham's at 88 Eastern Avenue

Wine and Malt Package Store License Renewal:

- Arian Litton, Manager, SC Market, Inc., d/b/a Schooner's Market at 121 Eastern Avenue pending successful completion of TIPS training

The Selectmen were reminded that the next Board of Selectmen's meeting will take place on Monday, December 5th, 2011, at 7:00 p.m. in the T.O.H.P. Burnham Library on Martin Street.

The Essex Division of the Cape Ann Chamber of Commerce will be meeting on Tuesday, November 29th at the Windward Grille, beginning at 8 a.m.

Parking Signage for Conomo Point: Mr. Zubricki exhibited *three proposed designs* for parking signs to be placed at Conomo Point. The Selectmen asked that the size of the lettering be increased at the very bottom of the two non-residents signs. Mr. Zubricki will have new proofs developed.

Remote Participation at Public Meetings: The Chairman said that he is not in favor of adopting a provision that would allow remote participation at public meetings and both Selectmen agreed.

Future Conomo Point Information Forum: It was decided that the best date for a Conomo Point Information Forum would be in mid to late January. Mr. Zubricki will make the arrangements for the meeting.

Under additional business, Mr. Zubricki said that the Town Hall is looking for someone to shovel snow from the walkways at the Town Hall, the Senior Center, and the Fire Station. The Selectmen suggested that Mr. Zubricki canvass the local landscaping firms to see if they would be interested in performing the service for a fee.

Mr. Zubricki reminded the Selectmen that he will be attending the annual MMA meeting held in Boston in January. Selectman O'Donnell said that she would be interested in attending and Mr. Zubricki promised to forward the registration forms to her.

The Selectmen reviewed a request for an extension of the signing deadline from Bernice Lichtenstein regarding her bridge lease for the property at 11 Cogswell Road. A motion was made, seconded, and unanimously voted to extend the signing deadline for Mrs. Lichtenstein until December 15, 2011.

The Selectmen reviewed a request from Joan Brown Herrmann for additional time to obtain signatures on her lease for 172 Conomo Point Road since her children live in Florida and Maine. A motion was made, seconded, and unanimously voted to allow Mrs. Herrmann until December 15, 2011 to complete the signatures on the bridge lease.

The Chairman said that the Board had received a written request to amend the Trustee of the David R. Wendell 1993 Revocable Trust, leaseholder of the lease for 130 Conomo Point Road

(Map 24, Lot 41). The lease for said property is held in the name of a Trust and the lease was signed by Dorothea Wendell and Harlan Wendell as David R. Wendell's Attorney-In-Fact, Mr. David R. Wendell being Trustee of the David R. Wendell 1993 Revocable Trust. The Board has been informed that David R. Wendell is deceased. Sarah and David Wendell, the children of David R. Wendell, are requesting that the Board acknowledge that they are authorized to act on the Trust's behalf with respect to the Trust's interests in the Lease. Having received no objection to the request, the Board entertained a motion to acknowledge that Sarah and David Wendell are authorized to act as co-trustees on behalf of the Trust with respect to the lease of 130 Conomo Point Road, with the disclaimer that the Board takes no position as to whether or not Sarah and David Wendell's representations of authority are accurate, and any dispute as to Sarah and David Wendell's authority to act for the Trust shall be solely between Sarah and David Wendell and anyone challenging their authority, and Sarah and David Wendell shall be solely responsible for defending their authority and actions as co-trustees, and they shall indemnify and hold the Town harmless for any claims made in connection with this acknowledgement, and further, that this acknowledgement is not intended to convey or imply any right, title, or interest in the subject property, or any portion thereof, that was not already held by the Trust, and also, that this acknowledgement does not affect the lease expiration date of December 31, 2011. The motion was moved, seconded, and unanimously voted. A motion was also made, seconded, and unanimously voted to extend the signing deadline for the lease for 130 Conomo Point Road until December 15, 2011.

The Chairman said that he would entertain a motion to approve the transfer of the leasehold for the property at 167 Conomo Point Road (Map 24, Lot 11) from The Marion L. Murphy Trust to Marion L. Murphy, Robert B. Murphy Jr., Annmarie Potcner, Marian Markiewicz, Arlene McFadden, and Lurinda Durie with the caveat that the lease expires by its term on December 31, 2011, and that nothing in this vote shall be construed as an extension of said lease; and further, that nothing in this approval is intended to convey or imply any right, title or interest in the subject property, or any portion thereof that was not already held by The Marion L. Murphy Trust. The motion was moved, seconded, and unanimously voted. A second motion was made, seconded, and unanimously voted to extend the signing deadline to December 15th, 2011 for the lease for 167 Conomo Point Road.

The Selectmen reviewed a letter from Jean C. LeRoyer regarding the possible transfer of her lease for 122 Conomo Point Road (Map 24, Lot 44). The Selectmen asked Mr. Zubricki to advise her that the Selectmen needed a specific case presented to them before they could voice an opinion.

The Selectmen reviewed a request from Sarah Cushing to add her son's name to her lease for 136 Conomo Point Road, and an additional request to re-assign the lease for 163 Conomo Point Road. The Selectmen asked Mr. Zubricki to refer the matter to Town Counsel. A motion was made, seconded, and unanimously voted to extend the signing deadline for these two leases until after Town Counsel has issued an opinion and logistics can be worked out.

At 9:10 p.m., citing the need to discuss the leasing of real property at Conomo Point, the Chairman entertained a motion to move to Executive Session. He stated that discussing this matter in Open Session would be detrimental to the Town's negotiating strategy and said that the Board would be returning to Open Session only to adjourn the meeting. The Chairman invited Town Administrator Zubricki to attend the Executive Session. Everyone else left the meeting. The motion was moved, seconded, and following a unanimous Roll Call Vote, the Board moved to Executive Session.

The Board returned to Open Session at 9:35 p.m. There being no further business before the Board, a motion was made, seconded, and unanimously voted to adjourn the meeting.

Documents used during this meeting include the following:

Preliminary draft of the proposed capital budget
Appeal of Dog Officer's Decision Concerning Neut
Memo from Chief Silva
Three proposed designs

Prepared by: _____
Pamela J. Witham

Attested by: _____
Lisa J. O'Donnell