

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

**March 21, 2011**

Present: Chairman A. Raymond Randall, Jr., Selectman Jeffrey D. Jones, Selectman Lisa J. O'Donnell, Town Administrator Brendhan Zubricki, and Selectmen's Assistant Pamela J. Witham.

Also present: Stephan Landers, Shepherd Means, Wayne and Kameron Leveille, Jared Clemenzi, Leonard Woodman, Finance Committee Chair Jeff Soulard, Conomo Point Leaseholder Mark Osburn, Conomo Point Chair Mark Lynch and Conomo Point Planning Committee members Susan Coviello and Jim Witham, Police Chief Peter Silva, Special Police Officer Mark Gagnon, and Mike Stroman.

The Chairman called the meeting to order at 7:00 p.m. and announced that the meeting was being recorded and that the Board would hear Public Comment.

Shepherd Means came forward and said that he now lives in Gloucester and will not be applying for a renewal of his shellfishing license. However, he would like to continue to fish under his old license until it expires on March 31, 2011. He stated that his wife has lost her job and that the fee for a Gloucester license from now until Gloucester's renewal date of June 30, would be \$400. After some discussion, the Selectmen voted unanimously to return Mr. Means' 2010-2011 license for use during the next two weeks. The Town no longer offers reciprocity for shellfishing licenses, and the Selectmen said that they were sorry they could not issue him an interim license. Mr. Means thanked the Selectmen and left the meeting.

Police Chief Silva and Special Officer Mark Gagnon came before the Selectmen to request that Mr. Gagnon be promoted to Part-Time Police Officer. Chief Silva introduced Mr. Gagnon and reviewed his many accomplishments. A motion was made, seconded, and unanimously voted to approve the Chief's recommendation to appoint Mr. Gagnon to the position of Part-time Police Officer. Everyone congratulated Mr. Gagnon; and, Mr. Gagnon and Chief Silva left the meeting.

Steve Landers of 232 Lake Drive, Hamilton, came forward to request that he be granted a waiver for missing the filing deadline for an annual non-resident shellfishing permit. After some discussion, it was agreed that since this is the first year of the new rules for obtaining shellfishing permits and that the changes received little publicity in town and probably none in other towns, that they would waive the deadline for Mr. Landers. Therefore, a motion was made, seconded, and unanimously voted to waive the deadline and approve his permit application pending review of the application information.

Wayne Leveille and his son, Kameron, of 8 Sumac Drive also came forward to request a waiver of the filing deadline for a student license. Kameron gave the Selectmen a copy of his school transcript. A motion was made, seconded, and unanimously voted to grant the waiver for the filing deadline. Kameron and his father thanked the Selectmen and they left the meeting.

George Thompson of Chebacco Terrace said that he would like to request a waiver of the filing deadline for a senior license and that he had just missed the deadline. A motion was made, seconded, and unanimously voted to waive the filing deadline. Mr. Thompson thanked the Selectmen and left the meeting.

Jared Clemenzi of 5 County Road said that he had been away during the application time and would like to apply for a student license. A motion was made, seconded, and unanimously voted to waive the filing deadline for Mr. Clemenzi. Another motion was made, seconded, and unanimously voted to approve Mr. Clemenzi's application pending receipt of his school transcript and a completed street census. Jared thanked the Selectmen and left the meeting.

Leonard Woodman, a member of the Shellfish Advisory Board, said that his board had met recently and that they would like to recommend that the Selectmen vote to close the winter flats on 4/1/2011. Mr. Woodman reported that the line marking the boundary of the winter flat portion of the Spit is no longer defined. Discussion followed as to how best to mark that boundary, given safety concerns, the need for visibility, and the past experience of disappearing stakes and signs. Laying wide, brightly colored plastic mesh along the boundary line was suggested. A motion was made, seconded, and unanimously voted to ask the Shellfish Constable to replace the stakes at 30-yard intervals in a straight line along the boundary as it was marked last year. A second motion was made, seconded, and unanimously voted to close the winter flats (the Spit: southwest of the marked closure line, Joe's Creek, Jehu's Bank, and America's Bank), effective at 11:59 p.m., March 31<sup>st</sup>, 2011. Mr. Woodman left the meeting.

Mr. Zubricki commented that the shellfish truck has failed inspection and will need to go to Ernie's Service Station to be fixed. The Selectmen said that they would like to review the work plan for the Shellfish Constable and discussed asking the Shellfish Advisory Board to comment on any changes that may be made to the work plan. Mr. Zubricki will provide them with a copy.

Mr. Zubricki presented his Town Administrator's Report for the period covering March 5<sup>th</sup>, 2011 through March 18<sup>th</sup>, 2011, regarding the following items:

Finalization of Budget and Override Discussion: Mr. Zubricki explained the sequence of events regarding voting Town Meeting Articles, amending articles on the floor of town meeting, voting the ballot, and scheduling additional town meetings based on the passage/non-passage of certain Conomo Point and budget articles at the Annual Town Meeting in May.

Boat/Trailer Parking, Conomo Point: Mr. Zubricki reported that he had toured Conomo Point with the DPW Superintendent to determine where to place no parking signs on Sumac Drive where people have been leaving trailers and boats on private property. While at the Point, they

noticed that trailers are being left without vehicles at Clammers Beach. The Selectmen asked Mr. Zubricki to contact the Shellfish Advisory Board for their comments concerning parking at Conomo Point.

Quarterly Report: Mr. Zubricki said that he has finished compiling the *Quarterly Report* for March 31<sup>st</sup>, 2011. A motion was made, seconded, and unanimously voted to approve and send the report. Mr. Zubricki said that in a recent conversation that he had with Mr. David Ferris of the Department of Environmental Protection, Mr. Ferris had stated that they will allow modification of compliance dates to the Conomo Point Plan, with no need to amend the Final Judgment.

Coordination of Southern Conomo Point Bylaw Presentation: Chairman Randall and Conomo Point Planning Committee Chair Lynch and Planning Board Chair Drake have reached agreement that the proposed bylaw amendment regarding southern Conomo Point will be presented at Town Meeting by Kim Drake.

Treasurer/Collector Virginia Boutchie and Glenn Boutchie joined the meeting.

Emergency Management Performance Grant: Mr. Zubricki said that the Town has qualified to receive a \$3,000 matching grant, and that the Town was able to apply a portion of the purchase price for the Code Red System to meet the match requirement. A motion was made, seconded, and unanimously voted to approve the chairman's signature on the *grant documents* which was witnessed by Virginia Boutchie in her capacity as a notary public. Following the signing, Mr. and Mrs. Boutchie left the meeting.

Final Annual Town Meeting Warrant: Mr. Zubricki briefly reviewed the proposed Conomo Point articles on the Annual Town Meeting Warrant. There was a great deal of discussion regarding articles 2 and 3. Mr. Stroman suggested that there should be a covenant contained in the bridge leases that states that the signer shall not initiate legal action against the Town at the end of the lease term, and will quit the premises peacefully.

Mr. Zubricki said that he has obtained median assessed values for properties at Conomo Point. The median value for a typical southern property is \$320,000 and the median value for a northern property is \$560,000. Mr. Zubricki asked if the Selectmen wanted the planned sample appraisals on seasonal or year round property and whether or not they wanted the appraiser to enter the house as part of the appraisal process. The Selectmen said they wanted the appraisal for seasonal property and they did not want the appraiser to enter the house if at all possible. Mr. Zubricki reminded the Selectmen that before the official appraisal can be contracted, a sample lease is needed. The terms of the anticipated lease will affect the valuation of the property. The Selectmen would like to have the appraisals before the Annual Town Meeting.

If the Conomo Point articles are passed at the Annual Town Meeting, then the Town could vote for an under-ride at a Special Town Meeting in November, based on the anticipated income to be received from the new bridge leases.

That concluded the discussion of Conomo Point items and Mark Lynch, Mark Osburn, Mike Stroman, and Jim Witham left the meeting.

Town Building Feasibility Study Update: It was reported that the Town Building Committee had met with a Reinhardt Assoc. representative recently. The John Wise Avenue site does have wet areas, but after talking with the Town's Conservation Agent and Reinhardt Assoc., it has been determined that there are ways to minimize impacts. Reinhardt Assoc. has prepared an initial draft of what a floor plan of a safety building might look like on this site.

Those present discussed whether or not the Finance Committee's Annual Report that is being prepared for distribution at the Annual Town Meeting should contain different budgets based on what may or may not be voted. The consensus was that it should only contain one budget proposal.

Finance Committee Chair Jeffrey Soulard left the meeting.

Pocket Park/Causeway Design Update: Mr. Zubricki said that he and Selectman O'Donnell had met with the MassDOT design people this past week. The design for the Village Pocket Park is still not resolved. Mr. Ricci's design consultant had independently contacted MassDOT with another design plan. MassDOT has taken all the plans for the area on the corner of Martin and Main Street under advisement. Currently, the only accepted plan for this area calls for just a grassed-in area.

MassDOT has said that there must be a guardrail by the site of the proposed Paglia Park, but that it can be shortened by a couple of lengths. They have also said that after the guardrail is installed and the project is completed, the Town could paint the guardrail which must be steel for safety reasons. They have agreed not to lengthen the guardrail by the Spar Pit, but to keep the same layout currently in place. They are also willing to move the lighting boxes around. They have turned down the requests to widen other shoulder areas, to include a grass strip, and the addition of recessed planters. The Town may place free-standing planters in suitable areas. MassDOT has a budget for trees and the Town may buy as many or as few of any variety that the Town would like so long as the total cost does not exceed the established budget.

Mr. Zubricki said that Carolyn Britt had contacted him with some questions. Ms. Britt is the consultant who has been engaged by the Town to coordinate and facilitate the design of the proposed pocket parks. In answer to her questions, Mr. Zubricki said that MassDOT is only willing to consider widening the shoulder in the area of the Village restaurant, the only material option for the guardrails is steel, and the guardrails will allow access to the pocket park areas. There is no funding for lighting on the causeway and that is not part of the MassDOT reconstruction project. Mr. Zubricki will check with Town Counsel to see if Community Preservation money may be used to pay for lighting. The decking materials for a boardwalk at the Paglia pocket park have been donated to the Town for free, but a labor source will be needed to construct the boardwalk and install the support pilings. MassDOT will allow the proposed

placement of trees to be altered. Mr. Zubricki said that Ms. Britt has also asked for feedback from the Selectmen regarding the design project.

Assessors' Remapping Project: The company that has been hired to execute the four-year Town remapping project has asked for an extension of the second year portion of their contract through August 31, 2011. The company has been working with the Manchester Essex Conservation Trust to acquire valuable property information, but the process has been more tedious than anticipated. The Board of Assessors is in favor of the extension. A motion was made, seconded, and unanimously voted to approve the extension of the second year contract with Cartographics through August 31, 2011.

Field of Dreams Sign: Mr. Zubricki said that he has found an old sign for Centennial Grove in the basement of the Town Hall and that with some minor repairs such as new posts and touch-up painting, the sign could be used to direct people to the Grove. A motion was made, seconded, and unanimously voted to approve placement of the renovated sign on Town-owned land at the beginning of Centennial Grove Road across from the church.

Annual Easter Egg Hunt: Mr. Zubricki announced that the Manchester Essex Rotary Club has agreed to take responsibility for organizing this year's Annual Easter Egg Hunt behind the Town Hall. He said that Annie Cameron has offered to donate some money that was left over from the Halloween event towards the Easter expenses. There is no budget to rent an Easter bunny costume.

Metro Boston Consortium for Sustainable Communities Agreement: Mr. Zubricki reminded the Selectmen that they had previously voted to join the Metro Boston Consortium for Sustainable Communities. An *agreement* has now been forwarded for the Chairman's signature. A motion was made, seconded, and unanimously voted to approve the Chairman's signature on the agreement.

In other business, a motion was made, seconded, and unanimously voted to approve and sign the weekly warrant in the amount of \$67,188.58.

A motion was made, seconded, and unanimously voted to approve and sign the minutes for the March 14<sup>th</sup>, 2011, Selectmen's Open Meeting and the March 14<sup>th</sup>, 2011 Selectmen's Executive Session.

A motion was made, seconded, and unanimously voted to approve a request from Kelly MacDonald to pass over town roads during their 3<sup>rd</sup> Annual (Motorcycle) Ride to Remember on Sunday, June 26, 2011.

The Selectmen considered the Shellfish License renewal applications. The first grouping of applications were from individuals that had attended the recent public hearing regarding proof of residency, and also, applications that had been received with complete documentation. A motion was made, seconded, and unanimously voted to approve these applications. The second grouping

was composed of requests for student licenses. A motion was made, seconded, and unanimously voted to approve all of these student applications except for the ones missing an official school transcript and/or census information. The third group comprised all the applications for annual, non-resident permits. All the non-resident permits had been signed by sponsors who are Essex residents and a motion was made, seconded, and unanimously voted to approve all of these permits. The next group included all the requests for senior licenses. All of them, except one, had verified supporting documents and census information and a motion was made, seconded, and unanimously voted to all of them except for the one lacking census information. The last grouping consisted of those applications missing various documentation and the Selectmen reviewed, discussed, and voted them one at a time. Applications for shellfishing licenses were voted and approved unanimously for the following people:

**Non-Resident Recreational:**

Bathalon, Cliff	Danca, Stephen	Frey, Christian
Glass, Kenneth	Hartmann, Frank	Kinney, Wayne
Landers, Stephan	Linehan, Robin	Normand, Robert
Provost, Dan	Standley, John	

**Senior:**

Beaulier, Albert	Brophy, Robert	Burnham, Norman
Burns, William	Doane, Robert	Hartley, Stephen
Henderson, Dennis	Henderson, James	Jordan, Russell
Lane, George	McNeil, Charles	O'Leary, Richard
Reed, Everett	Thompson, George	Woodman, Leonard

**Standard Commercial:**

Aiello, Stephen	Amero, Kenneth	Appeltofft, William
Balili, Julian	Buczko, Richard	Butler, Jonah
Carter, Sheila	Corrao, Kelly	Doane, Daniel
Dunsmore, Scott	Earl, David	Earl, Sefton
Fitzgerald, Robert	Fitzgerald, Jr., Robert	French, Michael
Hamlen, Scott	Hemeon, Ronald	Hemeon, Steve
Jacobs, Matthew	Jacobs, Jr., Michael	Jordan, Mark
Lane, Edward	Lane, Judson	Lane, Mark
Lane, Matthew	Leveille, Wayne	Loebelenz, Brian
Lowry, Dale	MacDougall, Phillip	MacDougall, Steven
Manzi, Rocco	Marshall, Dan	Marshall, Peter
Marshall, Timothy	Maxfield, Christopher	Mello, Bruce
Mullin, George	Nunes, Herbert	Oyer, Kevin
Pascucci, Michael	Pascucci, Richard	Pike, Glenn
Reed, Scott	Richards, Barry	Rossi, Dean
Savoie, Wayne	Silva, Nicholas	Tofuri, Richard
Whitman, Mark	Wilt, Christopher	

Student:

Carter, Kevin	Congdon, Devin	Congdon, Nicholas
Leveille, Kameron	Loebelenz, Michael	McNeil, Christopher
Reed, Bryan	Riehl, Cooper	Ronchi, Steven
Xavier, Christopher	Xavier, Matthew	

The Selectmen considered setting a date for the next department head quarterly meeting and agreed to Monday, April 4<sup>th</sup>, 2011 at 7:30 p.m. in the Senior Center. The Conomo Point discussion will be moved to 8:30 p.m. for that meeting.

Mr. Zubricki said that Deirdre Henderson had contacted him to inform the Selectmen that she is working with the Town of Manchester for a right of way to reach her property that is behind the Coolidge Trust off Southern Avenue.

The Selectmen were reminded that the next Board of Selectmen's meeting will take place on Monday, April 4<sup>th</sup>, 2011, in the T.O.H.P. Burnham Library on Martin Street.

Jeremy Harold Pratt's Eagle Scout Court of Honor will be held on Saturday, April 2, 2011, at 11:00 a.m. at the First Congregational Church of Essex.

Mr. Zubricki said that there is a meeting scheduled in Gloucester on Thursday, March 24<sup>th</sup> with the Environmental Protection Agency to protest the high sewer rates that will result from the EPA's mandate for a \$60 million dollar secondary treatment requirement. The Selectmen will be unable to attend the meeting and a motion was made, seconded, and unanimously voted to authorize Mr. Zubricki to draft a letter to the EPA of concern and support to be signed by the Chairman outside of a BOS meeting. Copies of the letter will be sent to the Department of Environmental Protection, Senator Bruce Tarr, Representative Ann Margaret Ferrante, Senator Scott Brown, Senator John Kerry, and Representative Tierney.

At 10:25 p.m., citing the need to discuss contract negotiations with non-union personnel, pending litigation, the value of leases for real property, and collective bargaining, the Chairman entertained a motion to move to Executive Session. The Chairman stated that discussing contract negotiations in Open Session would be detrimental to the Town's bargaining position, that discussing pending litigation in Open Session would be detrimental to the Town's legal strategy, that discussing the value of leases of real property in Open Session would be detrimental to the Town's negotiating strategy, and also that discussing collective bargaining in Open Session would be detrimental to the Town's bargaining strategy. He said that the Board would be returning to Open Session and invited Town Administrator Zubricki to attend the meeting. The Board moved to Executive Session following a unanimous Roll Call Vote.

The Board returned to Open Session at 11:15 p.m.

A motion was made, seconded, and unanimously voted to include the articles as they appear on the draft of the Warrant dated March 21<sup>st</sup>, 2011, which is attached hereto.

A motion was made, seconded, and unanimously voted to close the Warrant.

A motion was made, seconded, and unanimously voted to sign the Warrant.

There being no further business before the Board, a motion was made, seconded, and unanimously voted to adjourn the meeting at 11:25 p.m.

Documents used during this meeting include the following:

*Quarterly Report*

*Emergency Management Performance Grant Documents*

*Metro Boston Consortium for Sustainable Communities Agreement*

Prepared by: \_\_\_\_\_  
Pamela J. Witham

Attested by: \_\_\_\_\_  
Lisa J. O'Donnell



2011

Commonwealth of Massachusetts  
Town of Essex

Warrant for Annual Town Meeting and Election

Essex, ss:

To either of the Constables of the Town of Essex;

GREETINGS:

In the name of the Commonwealth of Massachusetts you are hereby directed to notify and warn the inhabitants of the Town of Essex, qualified to vote as the laws direct, of the Annual Town Election to bring to ballot for the following officers:

Moderator for one year  
Selectman for three years  
Assessor for three years  
Board of Health Member for three years  
Two Constables for one year  
Regional School Committee Member for three years  
Trustee of Library Funds for one year  
Trustee of Library Funds for three years  
Planning Board Member for two years  
Planning Board Member for five years  
Housing Authority Member for five years

AND, to do this by vote on one ballot. The polls will be open on Monday, May 9, 2011 at 7:00 o'clock A.M. and will close at 8:00 o'clock P.M. at the Essex Fire and Police Headquarters.

AND, you are hereby directed to notify and warn the inhabitants of the Town of Essex, qualified to vote as the laws direct, to meet in said Essex at the Essex Elementary School on Monday, May 2, 2011 at 7:30 p.m. and there and then to act on the following Articles, viz:

ARTICLE 1

To see if the Town will vote to amend the Town of Essex Bylaws, Chapter VI, "Zoning", by inserting a new section, to be numbered as Section 6-11, as follows; or take any other action relating thereto.

**6-11 Southern Conomo Point Zoning District.**

**6-11.1. Purpose:** The purpose of the Southern Conomo Point Zoning District ("SCPZD") is to facilitate the subdivision of the previously developed area south of Robbins Island Road while minimizing disruption to the existing historical building configuration.

**6-11.2. Establishment:** The SCPZD is a zoning district shown on the Town's Zoning Map (see Exhibit 1) and is subject to all provisions of Chapter VI of the Essex bylaws except as specifically defined below. Based on the existing land use patterns within the SCPZD, the SCPZD consists of two sub-districts as follows (see Table of Dimensional Regulations following at Section 6-11.6(E)):

A. Single Family Sub-District

B. Seasonal Cottage Sub-District

**6-11.3. Definitions:** In addition to the definitions set forth in Section 6-2.2 of the Zoning By-Law, the following definitions shall apply only in the SCPZD:

**Seasonal Cottage** – A detached residential dwelling unit, other than a mobile home, of 1½ stories or fewer and 1,800 square feet or under, to be used for seasonal occupancy only between April 15 and October 15 of any given year.

**Floor Area, Gross** – The area of all floors located within the principal structure enclosed within exterior walls, including the thickness of the walls. Unfinished or finished storage areas, attics, or basements more than 50% above the ground, shall be included as floor area.

**Floor Area Ratio (FAR)** – The ratio of the Gross Floor Area of all principal structures on a lot divided by the lot area. (Example: 3,000 SF Gross Floor Area / 30,000 SF lot area = FAR .1)

**Lot Building Coverage** – The percentage of the lot area covered by the area of all principal and accessory buildings or structures with roofs. (Example: 2,000 SF roof area / 30,000 SF lot area = 6.67% Lot Building Coverage)

**Impervious Surface Coverage** – The percentage of the lot area covered by impervious surface. (Example: 1,200 SF impervious surface / 6,000 SF lot area = 20% Impervious Surface Coverage)

**6-11.4. Permitted Principal Uses:**

- A. Single Family Sub-District – Single Family Dwellings are permitted as of right and may be used year-round.
- B. Seasonal Cottage Sub-District – Seasonal Cottages are permitted as of right, but use and occupancy shall be limited to seasonal use only between April 15 and October 15 of any given year.

**6-11.5. Permitted Accessory Structures and Uses:**

- A. Accessory Buildings or Structures – Accessory Buildings or Structures are permitted as of right in both sub-districts, subject to the following limitations:
- a maximum of two Accessory Buildings and/or Structures per lot;
  - total gross floor area of all Accessory Buildings and/or Structures on each lot shall not be greater than 576 SF;
  - Maximum permitted height of 15 feet.
  - Minimum side or rear yard setback of 5 feet.
- B. Home Occupations – Home Occupations are permitted as of right in both sub-districts, subject to the following additional limitations:
- No more than one employee who does not reside in the building or structure;
  - No more than one commercial vehicle shall be parked on the property;
  - No external display or sale of goods or services shall be permitted.

**6-11.6. Dimensional and Density Regulations:**

A. General Requirement: Except as provided under Section 6-11.5.A., all lots, new construction and reconstruction of or additions, alterations or extensions to any principal or accessory buildings or structures shall comply with the dimensional regulations listed in Table 1 at Section 6-11.6(E).

B. Exceptions: This Section contemplates that new lots will be created through a subdivision to accommodate the principal and accessory buildings or structures in the SCPZD existing at the time of adoption of this Section. The following exceptions to the dimensional regulations in Table 1 at Section 6-11.6(E) shall apply within the SCPZD:

1. East of Conomo Point Road - New lots approximating the currently shown lease areas may be created on the eastern side of Conomo Point Road within the SCPZD (currently identified as Assessor's Map 19, Lots 116, 117 and 118) to accommodate the existing buildings and structures,

provided that (a) such lots shall have a minimum lot area of 3,500 square feet and a minimum frontage of 80 feet, and (b) the existing buildings and structures on such lots shall have minimum front yard and side yard setbacks of 5 feet, and a minimum rear yard setback of 1 foot.

2. West of Conomo Point Road - New lots complying with the lot area and frontage requirements in Table 1 at Section 6-11.6(E) may be created within the areas of the SCPZD west of Conomo Point Road to accommodate the existing buildings and structures, even if the new lot lines render the existing buildings or structures nonconforming.

C. Regulation of Nonconforming Lots and Structures: All newly-created nonconforming lots created pursuant to this Section and all existing buildings and structures rendered nonconforming as a result of the newly-created lots created pursuant to this Section are hereby deemed to be lawful nonconforming lots and lawfully existing nonconforming buildings or structures. Future reconstruction, alterations, extensions and/or additions to such nonconforming lots and buildings/structures are subject to the following:

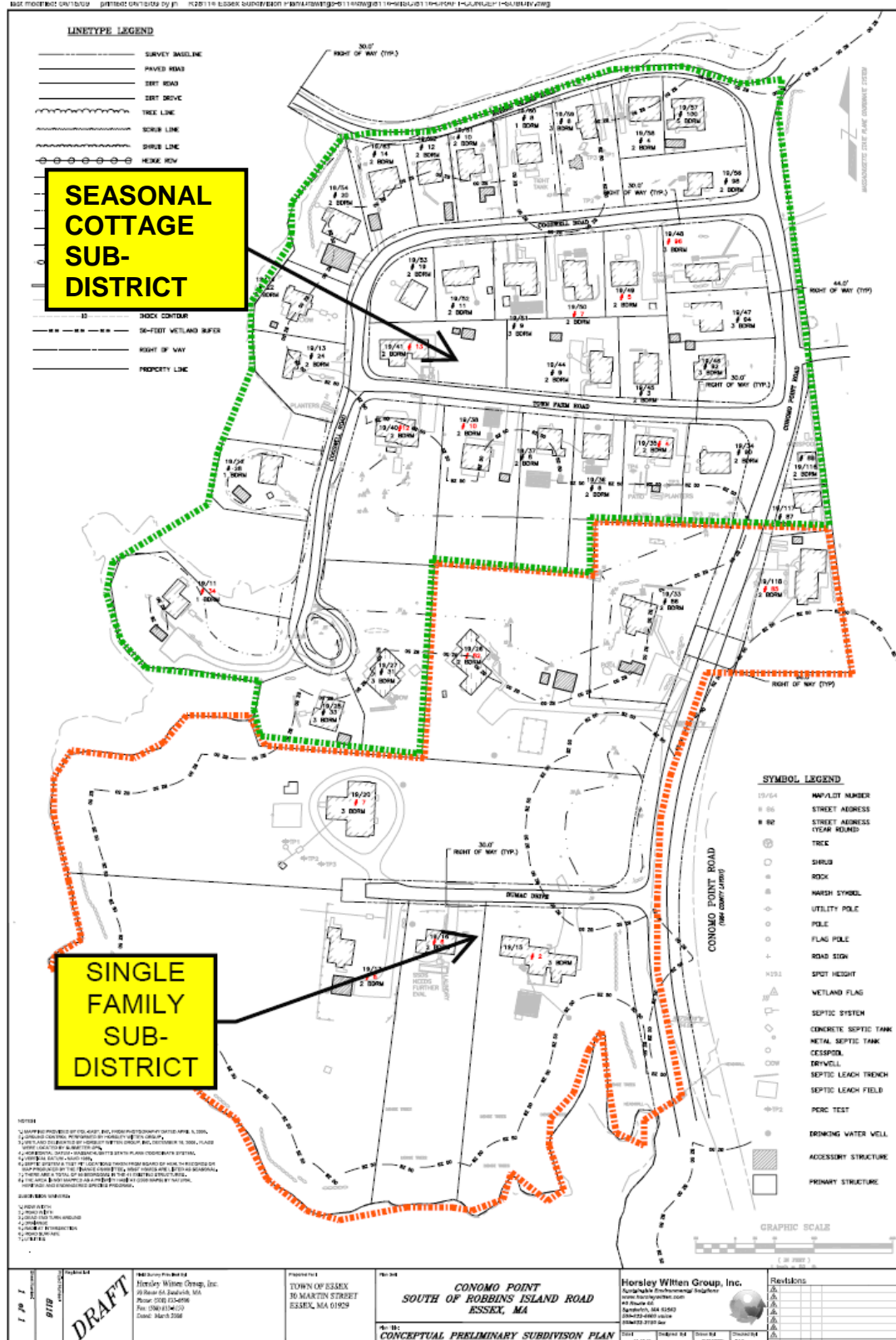
1. As-of-Right Changes: Any reconstruction, alteration, extension or addition to any existing nonconforming building or structure that conforms to the dimensional requirements listed in Table 1 at Section 6-11.6(E) and does not increase any existing nonconformity shall be permitted as-of-right, except as provided in subsection 2(b) below concerning nonconforming lots created on the eastern side of Conomo Point Road.
2. Variance Changes:
  - (a) Any reconstruction, alteration, extension or addition to an existing nonconforming building or structure that does not conform to the dimensional requirements listed in Table 1 at Section 6-11.6(E) or increases any nonconformity shall require a variance from the Board of Appeals.
  - (b) Any reconstruction, alteration, extension or addition to a building or structure on a nonconforming lot created on the eastern side of Conomo Point Road pursuant to 6-11.6(B)(1) shall require a variance from the Board of Appeals.

D. Merger: Within the SCPZD, adjoining lots that are held in common ownership shall retain their status as separate lots, and shall not be deemed to have merged into a single lot for purposes of zoning solely on the basis of such common ownership.

E. Table of Dimensional Regulations:

Table 1 – Dimensional Regulations – Permitted As-of-Right:

Sub-District		A	B
Dimensional Controls		Single Family Sub-District	Seasonal Cottage Sub-District
1	Minimum Lot Size in square feet	30,000	6,000
2	Minimum Frontage in feet	100	60
3	Minimum Front Yard Setback in feet	25	15
4	Minimum Side Yard Setback in feet	25	10
5	Minimum Rear Yard Setback in feet	25	25
6	Maximum Height in feet	20	15
7	Maximum Floor Area Ratio	.1	.2
8	Maximum Lot Building Coverage (%)	5%	15%
9	Maximum Impervious Surface Coverage (%)	10%	20%
10	Maximum Number of Stories	2	1.5

[illegible]

## ARTICLE 2

To see if the Town will vote to amend its General Bylaws by adding a new section to Chapter II to be known as "Section 2-13.13. Procedure for Sale or Lease of Property at Conomo Point" as follows:

### 2-13.13 Procedure for Sale or Lease of Property at Conomo Point

#### Section 1: Definitions

The terms that follow shall have the meanings set forth below unless context otherwise requires:

Bridge Lease – a lease for a period of five years or less.

Commissioners – the Conomo Point Commissioners, which are also presently the Board of Selectmen.

Long-term Lease – a lease for a period of more than five years.

#### Section 2: Bridge Leases

- a. If duly authorized by a vote of Town Meeting, the Commissioners may enter into one or more Bridge Leases for occupancy of any or all of its property at Conomo Point.
- b. Bridge Leases with an initial term of less than five years may be extended, if authorized by Town Meeting and the Commissioners, as long as the total length of the lease, including any extensions, does not exceed five years.
- c. Prior to entering into any Bridge Lease(s), the Commissioners shall establish the essential terms and conditions for such leases. Such terms and conditions shall include a requirement that the lessee will pay at least the fair market rental value as determined in accordance with this Bylaw and all taxes assessed upon the property.
- d. After essential Bridge Lease terms and conditions have been established by the Commissioners, the Commissioners shall retain the services of a Massachusetts Certified General Appraiser with an MAI designation from the Appraisal Institute to determine the fair market rental value for each segregable portion of the property the Commissioners intend to lease.
- e. Upon receipt of appraisals, the Commissioners may offer current occupants a reasonable opportunity to accept the terms and conditions established by the Commissioners and enter into Bridge Leases.

f. The Commissioners may offer Bridge Leases to the general public in accordance with an open, fair and competitive disposition process, using sound business practices and principles of fair dealing.

Section 3: Long-term Leases

[Reserved for future use]

Section 4: Sales

[Reserved for future use]

Section 5: Effective Date

This Bylaw shall take effect upon approval by the Massachusetts Attorney General, provided that this Bylaw shall not take effect unless and until the Special Legislation known as "An Act Establishing Procedures for the Sale and/or Lease of Property Known as Conomo Point in the Town of Essex", which was approved by the voters at the November 15, 2010 Special Town Meeting, is enacted by the Massachusetts Legislature.

; or take any other action relating thereto.

ARTICLE 3

To see if the Town will vote to authorize the Board of Selectmen, serving in their capacity as Conomo Point Commissioners, to lease all or any portions of its property at Conomo Point for such number of years, not to exceed five (5), as are acceptable to the Board of Selectmen and to authorize the Board of Selectmen to set the amount of rent for any such leases upon such terms and conditions and for such consideration as deemed to be in the best interests of the Town by the Board of Selectmen; or take any other action relating thereto.

ARTICLE 4

To see if the Town will vote, pursuant to Town of Essex Bylaws, Chapter II, Section 2-20 to consider appointments to the Conomo Point Planning Committee, including the appointment of new members, or the reappointment or termination of current members of the Committee; or take any other action relating thereto.

ARTICLE 5

To see if the Town will vote to determine the manner of electing or choosing all other Town Officers usually elected or chosen at the Annual Town Meeting and take any appropriate action to elect such officers.



**ARTICLE 6**

To hear and receive the Reports of the Town Officials and Committees, and also to consider and receive any Reports contained in the Annual Town Report; or take any other action relating thereto.

**ARTICLE 7**

To see if the Town will vote to raise and appropriate, transfer from available funds, or borrow, a sum of money for professional appraisal services concerning the future lease and/or sale of Town property at Conomo Point, said services to be contracted by the Board of Selectmen, acting in their capacity as the Conomo Point Commissioners, with all or a portion of said sum possibly being contingent upon a vote at a Town election to assess additional real estate and personal property taxes in accordance with the provisions of Proposition 2 ½, so called; or take any other action relating thereto.

**ARTICLE 8**

To see if the Town will vote to raise and appropriate, transfer from available funds, or borrow, a sum of money for legal services regarding any aspect of the Town's property at Conomo Point, with all or a portion of said sum possibly being contingent upon a vote at a Town election to assess additional real estate and personal property taxes in accordance with the provisions of Proposition 2 ½, so called; or take any other action relating thereto.

**ARTICLE 9**

To see if the Town will amend or revise the Wage and Salary scale for fiscal year 2012 in accordance with the recommendations of the Personnel Board Report, a copy of which is on file in the Town Clerk's office and is incorporated herein by reference; or take any other action relating thereto

**ARTICLE 10**

To see if the Town will vote to fix the salary and compensation of each of the elected officers of the Town as required by Massachusetts General Law Chapter 41, Section 108, as amended, for fiscal year 2012 in accordance with the recommendations of the Personnel Board Report, a copy of which is on file in the Town Clerk's office and is incorporated herein by reference; or take any other action relating thereto.

**ARTICLE 11**

To hear and act upon the Report of the Finance Committee and to vote to raise and appropriate or transfer from available funds a sum of money for the Town charges and expenditures for the ensuing year, with a portion of said sum possibly being contingent upon a vote at a Town

election to assess additional real estate and personal property taxes in accordance with the provisions of Proposition 2 ½, so called; or take any other action relating thereto.

**ARTICLE 12**

To see if the Town will vote to transfer from available funds, or borrow a sum of money for the purpose of funding the Sewer Enterprise Fund for the remainder of fiscal year 2011; or take any other action relating thereto.

**ARTICLE 13**

To see if the Town will vote to raise and appropriate, transfer from available funds, or borrow a sum of money for the purpose of funding the Sewer Enterprise Fund; or take any other action relating thereto.

**ARTICLE 14**

To see if the Town will vote to transfer from available funds, or borrow a sum of money for the purpose of funding the Water Enterprise Fund for the remainder of fiscal year 2011; or take any other action relating thereto.

**ARTICLE 15**

To see if the Town will vote to raise and appropriate, transfer from available funds, or borrow a sum of money for the purpose of funding the Water Enterprise Fund; or take any other action relating thereto.

**ARTICLE 16**

To see if the Town will vote to raise and appropriate, transfer from available funds, or borrow a sum of money for the purpose of funding the Youth Enterprise Fund for the remainder of fiscal year 2011; or take any other action relating thereto.

**ARTICLE 17**

To see if the Town will vote to revoke its acceptance of the provisions of Chapter 44, § 53F½ of the Massachusetts General Laws, ceasing the Youth Enterprise Fund effective July 1, 2011; or take any other action relating thereto.

**ARTICLE 18**

To see if the Town will approve the Gross Operating and Maintenance Budget of the Manchester-Essex Regional School District, and raise and appropriate or transfer from available funds a sum of money for the Town's assessment from the District - said sum to be calculated solely

in accordance with the "Agreement Between the Towns of Essex and Manchester-by-the-Sea, Massachusetts with Respect to the Formation of a Regional School District", as most recently amended, by invoking and approving the provision found in paragraph four of Massachusetts General Laws chapter 71, section 16B allowing District members "to reallocate the sum of their required local contributions to the district in accordance with the regional agreement", for the fiscal year beginning July first, two thousand eleven, with a portion of said sum possibly being contingent upon a vote at a Town election to assess additional real estate and personal property taxes in accordance with the provisions of Proposition 2 ½, so called; or take any other action relating thereto.

#### ARTICLE 19

To see if the Town will appropriate a sum of money to pay the Town's share of the costs of the Essex North Shore Agricultural and Technical School District for the fiscal year commencing July 1, 2011, with a portion of said sum possibly being contingent upon a vote at a Town election to assess additional real estate and personal property taxes in accordance with the provisions of Proposition 2 ½, so called; or take any other action relating thereto.

#### ARTICLE 20

To see if the Town will vote to amend Section 7-7.5 of the Town of Essex Bylaws, which presently reads:

*7-7.5 MORATORIUM ON ALLOCATION OF RESERVE CAPACITY.* Notwithstanding any other provisions of this by-law to the contrary, the Town shall not allow any sewer connections or extensions except as identified in 7-7.2, 7-7.4 and 7-7.6 of this by-law within five (5) years of the date of substantial completion of the sewer system. The Town shall not allow the expansion of any use connected to the sewer system that would increase the design flow above 330 gpd within five (5) years of the date of substantial completion of the sewer system.

By deleting said Section 7-7.5 and replacing it with the following:

*7-7.5 MORATORIUM ON ALLOCATION OF RESERVE CAPACITY.* Notwithstanding any other provisions of this by-law to the contrary, the Town shall not allow any sewer connections or extensions except as identified in 7-7.2, 7-7.4 and 7-7.6 of this by-law until after September 30, 2012. Excepting residential use, the Town shall not allow the expansion of any use connected to the sewer system that would increase the design flow above 330 gpd until after September 30, 2012. For residential use, any property that is already within the Sewer Service Area that has an existing design flow of less than 440 gpd may be expanded to a yield a design flow of up to 440 gpd and that portion of said expanded design flow between 330 gpd and 440 gpd (a total of 110 gpd) shall be subject to Cost Reimbursement for Reserve Capacity calculated in accordance with Section 7-7.9 of this bylaw.

Said amendment shall not take effect unless and until the Board of Public works reconciles its existing Sewer Regulations to accommodate the changes; or take any other action relating thereto.

## ARTICLE 21

To see if the Town will vote to amend the current Zoning Bylaw of the Town of Essex (hereinafter the "Zoning Bylaw") by inserting the following Section 6-14 entitled "Open Space Residential Development" into Chapter VI of the Zoning Bylaws as follows:

### SECTION 6-14. OPEN SPACE RESIDENTIAL DEVELOPMENT

#### 6-14.01. PURPOSE AND INTENT

1. The primary purposes for Open Space Residential Development ("OSRD") are the following:
  - a. Allow for greater flexibility and creativity in the design of residential developments;
  - b. Encourage the permanent preservation of open space, agricultural land, woodland, wildlife and rare species habitat, other natural resources and features, including aquifers, water bodies, and wetlands, recreational, historical and archeological resources, in a manner that is consistent with all current plans adopted by the Town of Essex, including such plans as the Town of Essex Community Development Plan; Town of Essex Watershed Protection Plan and Town of Essex Open Space and Recreation Plan;
  - c. Encourage a less sprawling, more efficient and compact form of development that disturbs less open land and natural materials and conforms to existing topography and natural features better than a conventional or grid subdivision;
  - d. Minimize the total amount of disturbance on the site;
  - e. Further the goals and policies of the all current plans adopted by the Town of Essex, including such plans as Town of Essex Community Development Plan, Town of Essex Watershed Protection Plan and Town of Essex Open Space and Recreation Plan; as amended from time to time;
  - f. Facilitate the construction and maintenance of housing, streets, utilities, and public services in a more economic and efficient manner, that are in harmony with the architectural heritage of the Town of Essex; and
  - g. Promote affordable housing and a more diversified housing stock.

#### 6-14.02 APPLICABILITY

1. Land Area: The proponent of any proposed residential development that is on a parcel of five (5) acres or more or on contiguous parcels totaling five (5) acres or more may submit a special permit application to the Planning Board for an OSRD in accordance with the provisions of this Section, which shall include an OSRD Special Permit Plan as described below. The Planning Board shall, in compliance with Massachusetts General Laws c. 40A, s. 9, hold a public hearing on the OSRD application. If a development for which a special permit application is submitted under the provisions of this Subsection involves the subdivision of land, the applicant shall also submit a Preliminary Subdivision Plan at the same time pursuant to the *Rules and Regulations Governing the Subdivision of Land in the Town of Essex*, as amended (hereinafter "the Subdivision Rules and Regulations").

2. Contiguous Parcels: To be eligible for consideration as an OSRD, the total tract shall consist of one parcel of land or set of contiguous parcels. Parcels located on two sides of an existing road or similar minor separation shall be considered contiguous for this article.

3. Land Division: To be eligible for consideration as an OSRD, the proposed OSRD must involve either (i) a subdivision, or (ii) a division of land pursuant to Massachusetts General Laws c. 41, s. 81P.

#### 6-14.03 SPECIAL PERMIT REQUIRED

The Planning Board may authorize an OSRD pursuant to the grant of a special permit. Special Permit public hearings may be held simultaneous to the conventional preliminary plan discussions and to the conventional definitive plan public hearings.

#### 6-14.04 PRE-APPLICATION CONFERENCE

The applicant for an OSRD shall attend a pre-application conference with the Planning Board at a regular business meeting of the Planning Board. The Planning Board shall invite to the conference a representative of:

- The Conservation Commission
- Open Space Committee
- Board of Health
- Department of Public Works, plus the
- Building Inspector

The purpose of a pre-application conference is to:

- Streamline the formal application process
- Minimize the applicant's costs of engineering and other technical experts
- Commence discussions with the Planning Board at the earliest possible stage in the development

At the pre-application conference the applicant may:

- Outline the proposed OSRD and the yield based on a conventional subdivision buildout
- Seek preliminary feedback from the Planning Board and/or its technical experts
- Set a timetable for submittal of a formal application

#### 6-14.05 DESIGN PROCESS

1. At the time of the application for a special permit for an OSRD in conformance with *Subsection 6-14.06 PROCEDURES* below, applicants are required to demonstrate to the Planning Board that the following four-step design process was performed by a qualified design team. Such a team is to include a registered landscape architect, or a professional civil engineer. The team shall consider the layout of proposed streets, house lots, and open space.

a. Step One: Identifying Conservation Areas and the Potentially Developable Area. The qualified design team shall first identify and delineate two categories of conservation areas at the site, as follows:

1. Primary Conservation Areas, consisting of those areas protected by federal, state or local laws, including but not limited to:

- Wetland resource areas
- Vernal pools
- Outstanding Resource Waters
- Rare species habitat
- Flood hazard areas
- Floodplains

2. Secondary Conservation Areas, consisting of those elements of the natural landscape that are not protected fully by law, but the maintenance of which in their natural state would provide environmental, aesthetic or other value to the environment or community, including but not limited to

- Steep slopes (typically greater than twenty five percent [25%])

- Mature woodlands
- Vernal pool species upland habitat
- Wetland buffer zones
- Existing trails and footpaths
- Farmland
- Large open meadows
- Stone walls
- Unique geological formations
- Critical wildlife habitats and
- Important cultural features such as historic and archeological sites
- Scenic views

3. Potentially Developable Area (hereinafter "PDA") is land outside identified Primary Conservation Areas. Consideration shall be given to avoiding and/or properly implementing the Secondary Conservation Areas in landscaping plans. The Planning Board retains the right to exclude some or all of the Secondary Conservation Areas from development. The design team shall then delineate the PDA. Development shall be located exclusively within the PDA. However, in cases where rare species habitat designations would preclude the establishment of a PDA anywhere on the lot, or where a very small PDA cannot support the density of development based upon the Conventional Subdivision Sketch Plan, the Planning Board may work with the developer, developers consultants and the towns technical consultants to determine the best possible location for the limited amount of development to be allowed under the Open Space Residential Development.

b. Step Two: Locating House Sites. The landscape architect or design team shall then locate the approximate sites of individual structures within the PDA and delineate the private yards and shared amenities, so as to reflect an integrated neighborhood that conforms with the existing topography and natural features, with emphasis on consistency with the Town's historical development patterns and heritage.

c. Step Three: Aligning the Streets and Trails. The landscape architect or design team shall then align streets to access the house lots or units and lay out sidewalks and walking trails to create internal and external connections to existing and/or potential future streets, sidewalks, and trails.

d. Step Four: Delineate Lot Lines. The landscape architect or qualified design team shall then delineate the lot lines according to *Subsection 6-14.08 REDUCTION OF DIMENSIONAL REQUIREMENTS* below.

#### 6-14.06 PROCEDURES

1. Application: An application for a special permit for an OSRD, or for an amendment thereto, shall include, among other supporting information, an OSRD Preliminary Plan. The OSRD Preliminary Plan submittal shall consist of an OSRD Sketch Plan and a Conventional Subdivision Sketch Plan, as follows:

- a. OSRD Sketch Plan. The OSRD Sketch Plan shall be prepared by the approved qualified design team, and shall identify the:
  - Primary Conservation Areas,
  - Secondary Conservation Areas,
  - Potentially Developable Area
  - General features of the land,
  - Approximate configurations of the lots,
  - Open space, and
  - Roadways, and shall also include
  - Information listed in the Subdivision Rules and Regulations to the extent applicable.

The proposed development as identified on the Sketch Plan shall reflect and incorporate the Four-Step Design Process set forth in *Subsection 6-14.05, DESIGN PROCESS* above.

- b. Conventional Subdivision Sketch Plan. The Conventional Subdivision Sketch Plan shall depict the maximum number of lots as allowed in 6-14.07 below and Section 7 of the *Rules and Regulations Relative to Subdivision Control of the Town of Essex*.

2. Distribution for Review: Any application for an OSRD Special Permit or amendment thereto shall include fifteen (15) copies. Within five (5) business days of the filing of the completed application, copies of the application, including the accompanying OSRD Preliminary Plan and other documentation, will be distributed by the Planning Board to the:

- Board of Health
- Conservation Commission
- Open Space Committee
- Building Inspector
- Department of Public Works
- Police Chief
- Fire Chief



for their review.

3. Public Hearing: The Planning Board shall, in compliance with Massachusetts General Laws c. 40A, s. 9, hold a public hearing on the OSRD application for a special permit. Notice and the publication and giving of notice for such public hearing and the procedural requirements for such public hearings shall be those set forth in said M.G.L. c. 40A, s. 9, as amended which is incorporated herein by reference. Similar to all applications to the Planning Board, all fees incurred for said application and notices and postage are the responsibility of the applicant. Also, similar to the application process for a Preliminary Plan and a Definitive Plan, Public Hearings must be held, all expenses will be the responsibility of the applicant and the procedure for the necessary escrow and bond funds shall be completed.

4. Site Visit: Whether or not conducted during the pre-application stage, the Planning Board may conduct a site visit during the public hearing process. At the site visit, the Planning Board and/or its agents shall be accompanied by the applicant and/or his or her agents if requested by the applicant.

a. The Planning Board may adopt fees for the employment of outside technical experts, at the applicants' expense, as reasonably necessary in connection with its review of the applicant's proposed plan(s) or technical reports in accordance with the provisions of Massachusetts General Laws c. 44, s. 53G.

5. Procedures for Submission and Approval of an OSRD Preliminary Plan. Procedures for Submission and Approval of an OSRD Preliminary Plan shall follow the rules and regulations as set forth by Section 5.01 of the *Rules and Regulations Relative to Subdivision Control*.

6. Procedures for Submission and Approval of an OSRD Definitive Plan. Procedures for Submission and Approval of an OSRD Definitive Plan shall follow the rules and regulations as set forth by Sections 6.01 to 6.06 of the *Rules and Regulations Relative to Subdivision Control*. The procedural and substantive special permit requirements set forth in Section 6-14 of the Zoning Bylaw shall be in addition to any other requirements of the *Rules and Regulations Relative to Subdivision Control* and any other provisions of the Zoning Bylaw for the Town of Essex.

7. Relationship Between the OSRD Preliminary Plan and OSRD Definitive Plan. All OSRD special permits issued by the Planning Board shall, by virtue of this provision, include a condition that any OSRD Definitive Plan shall substantially comply with the approved OSRD Preliminary Plan and special permit conditions.

a. An OSRD Definitive Plan shall be considered not to substantially comply with the OSRD Preliminary Plan if the Planning Board determines that any of the following changes exist:

- (1) An increase in the number of building lots or dwelling units;
  - (2) A significant decrease in the open space acreage or configuration;
  - (3) A significant change in the lot or road layout or unit placement;
  - (4) A significant change in the general development pattern, which is contrary to or inconsistent with the primary purposes of an OSRD, as specified in *Subsection 6-14.01 PURPOSE AND INTENT* above;
  - (5) A significant change to the storm water management facilities; and/or,
  - (6) A significant change in the wastewater management systems.
  - (7) Other significant changes in landscape conservation, or development design specifically identified by reviewing parties, including members of the public.
- b. If the Planning Board determines that the OSRD Definitive Plan does not substantially comply with the OSRD Preliminary Plan special permit conditions, the Board may disapprove the OSRD Definitive Plan.
  - c. The relationship between an OSRD Preliminary Plan and OSRD Definitive Plan shall be subject to the terms and conditions set forth in Section 5.02 of the *Rules and Regulations Relative to Subdivision Control*

#### 6-14.07. CONVENTIONAL SUBDIVISION YIELD PLAN - BASIC MAXIMUM NUMBER OF LOTS

Determination of Yield: The basic maximum number of lots, as described herein, shall be derived from and delineated on a Conventional Subdivision Sketch Plan (hereinafter referred to as "Basic Maximum Number"). For the determination of yield, the Conventional Subdivision Sketch Plan shall show the maximum number of lots that could be placed upon the site under a conventional subdivision process according to the Subdivision Rules and Regulations and all applicable requirements of the Essex Zoning Bylaw. The proponent shall have the burden of proof with regard to the Basic Maximum Number of lots. The Planning Board may request further information related to the proposed yield, including but not limited to an approved wetland and resource delineation. The determination of yield shall set the amount of lots submitted in the Conventional Subdivision Sketch Plan.

#### 6-14.08. REDUCTION OF DIMENSIONAL REQUIREMENTS

1. The Planning Board may allow applicants to modify lot size, shape, and other dimensional requirements set forth in Section 6-3.2 for lots within an OSRD, subject to the following limitations:

a. Lots having reduced area or frontage shall not have frontage on a street other than a street created by the OSRD. However, the Planning Board may waive this limitation to the extent it determines that such waivers will substantially further the purposes and intent of Open Space Residential Development.

b. At least 50% of the minimum front yard, side yard, and rear yard setbacks shown in Section 6-3.2.1, "Table of Dimensional Requirements," shall be maintained for lots in the OSRD except for lots bordering lands outside the development, in which case each required setback shall be the same as in Section 6-3.2.1.

c. Minimum lot size shall be ten thousand (10,000) square feet for lots in the OSRD; provided, however, that the Planning Board may reduce this minimum lot size to the extent it determines that such reduction(s) will substantially further the purposes and intent of Open Space Residential Development.

d. The requirement in Section 6-3.2.1 for maximum lot coverage shall not apply to lots in the OSRD. Instead, the percentage of the lot area covered by impervious surface ("impervious surface coverage") on each individual lot shall be no greater than 25%; provided, however, that the Planning Board may increase this maximum impervious surface coverage to the extent it determines that the overall design of the development protects an amount of open space and important resources that will substantially further the purposes and intent of Open Space Residential Development.

e. The minimums set forth in Section 6-3.2.1 for lot frontage, lot width, and lot depth may be reduced by up to 20% for a lot in the OSRD. The maximum building height set forth in Section 6-3.2.1 shall apply to lots in the OSRD.

f. Modifications to the dimensional requirements of Section 6-3.2.1 that are allowed by the Planning Board for lots in the OSRD are deemed to be conditions of the OSRD Special Permit. Any subsequent requests by the applicant or by future owners of building lots within the OSRD for further modifications to the dimensional requirements shall be considered amendments to the OSRD Special Permit and must receive approval by the Planning Board.

#### 6-14.09 OPEN SPACE REQUIREMENTS

1. A minimum of fifty percent (50%) of the tract shown on the development plan shall be open space delineated as a separate lot or lots, and must be preserved as such in perpetuity in accordance with this Subsection.
2. At least fifty percent (50%) of the total uplands on the site shall be included in the open space set aside. Uplands shall not include wetland zones or Riverfront Area as defined by the Massachusetts Wetlands Protection Act, M.G.L. c. 131, s. 40, and regulations adopted there under, as amended. The Planning Board may allow a reduction of this upland ratio if it furthers the purposes and intent of Open Space Residential Development.
3. The open space shall be connected. At the discretion of the Planning Board, open space may still be considered connected if it is separated by a trail or narrow roadway. Strips and patches of land proposed as open space will not be accepted. Separate open space areas may be considered by the Planning Board to the extent it determines that the proposed open space furthers the purpose of Open Space Residential Development.
4. The open space shall be suitable for and protected and maintained for wildlife habitat, conservation, historic preservation (landscapes and/or structures), outdoor education, passive or active recreation, park purposes, agriculture, horticulture, forestry, and/or a combination of these uses. The Planning Board may permit up to five percent (5%) of the open space to be impervious surface. Parking areas and areas used for vehicular access or egress shall not constitute open space; however a parking area for use by the open space parcel (for trails access or for parking at a farmstand) should be allowed to be counted as part of the open space, as long as it does not exceed the 5% impervious surface limit.
5. At the discretion of the Planning Board, subsurface wastewater and storm water management systems serving the OSRD may be located within the open space. Surface systems, such as retention and detention ponds, shall not qualify towards the minimum open space required unless these systems are determined by the Planning Board to be "soft" (non-structural), natural-like, low-impact storm water management systems that do not create impervious surfaces, that enable infiltration and that are otherwise compatible with the contemplated uses of adjacent open space.
6. The open space shall either be subject to a recorded conservation restriction enforceable by the Town providing that such land shall be perpetually kept in an open state, preserved exclusively for the purposes set forth herein, and maintained in a manner which will ensure its suitability for its intended purposes, or, with the Planning Board's approval, shall be conveyed to one or more of the following:

- a. A nonprofit organization, the principal purpose of which is the conservation of open space and any of the purposes for such open space set forth above; and/or
- b. A corporation or trust owned jointly or in common by the owners of lots within the OSRD. If such corporation or trust is utilized, ownership thereof shall pass with conveyance of the lots in perpetuity. Maintenance of such open space and facilities shall be permanently guaranteed by such corporation or trust that shall provide for mandatory assessments for maintenance expenses to each lot. Each individual deed, and the deed or trust or articles of incorporation, shall include provisions designed to effect these provisions. Documents creating such trust or corporation shall be submitted to the Planning Board for approval as part of the OSRD special permit process, and shall thereafter be recorded.

In the case where the open space is not subject to a recorded conservation restriction, a restriction enforceable by the Town shall be recorded providing that such land shall be kept in an open state and preserved exclusively for the purpose set forth herein. No building permits shall be issued until this process is complete.

#### 6-14.10. DECISION OF THE PLANNING BOARD

1. The Planning Board may grant a special permit for an OSRD if it determines that the proposed OSRD has less detrimental impact on the tract and advances further the interests of the community than a conventional development proposed for the tract, after considering the following factors. Not all the following factors have to be met for the Planning Board to approve the proposed OSRD:

- a. Whether the OSRD achieves greater flexibility and creativity in the design of residential developments than a conventional plan;
- b. Whether the OSRD promotes permanent preservation of open space, agricultural land, woodland, wildlife and rare species habitat, other natural resources and features, including aquifers, water bodies, and wetlands, and historical and archeological resources in a manner that is consistent with all current plans adopted by the Town of Essex, including such plans as the Town of Essex Community Development Plan, Town of Essex Watershed Protection Plan and Town of Essex Open Space and Recreation Plan;
- c. Whether the OSRD promotes a less sprawling, less land consumptive and more efficient and compact form of development that disturbs less open land and

natural materials and conforms to existing topography and natural features better than a conventional subdivision;

d. Whether the OSRD reduces the total amount of disturbance on the site as compared to a conventional subdivision;

e. Whether the OSRD furthers the goals and policies of the Town of Essex Community Development Plan, Town of Essex Watershed Protection Plan, and Town of Essex Open Space and Recreation Plan as amended from time to time;

f. Whether the OSRD facilitates the construction and maintenance of housing, streets, utilities, and public services in a more economical and efficient manner than a conventional subdivision plan;

g. Whether the OSRD Special Permit Plan and other supporting documentation complies with all provisions of this Section;

h. Whether the proposed construction of housing, landscape and streetscape is in harmony with the character of the Town of Essex;

i. Whether the OSRD promotes affordable housing; and,

j. Whether the OSRD promotes a more diversified housing stock.

#### **6-14.11 INCREASES IN PERMISSIBLE DENSITY**

1. The Planning Board may award a density bonus for an OSRD to increase the number of lots beyond the Basic Maximum Number as determined by the Conventional Subdivision Yield Plan. The density bonus for the OSRD shall not, in the aggregate, exceed twenty percent (20%) of the Basic Maximum Number. Computations shall be rounded down. Any additional lot allowed as a density bonus shall conform to all dimensional requirements of this Section, and the OSRD shall remain subject to the open space requirements set forth in Section 6-14.09. Such a density bonus may be awarded in the following circumstances and only if the Planning Board determines that the proposed development is in substantial conformance with the purposes and intents of this by-law:

- a. For every lot on which each dwelling unit thereon is restricted in perpetuity or for the longest period allowed by law to sale for low and moderate income housing as defined by General Laws chapter 40B Section 20, such that the unit(s) shall qualify as low or moderate income housing under the Department of Housing and Community Development Subsidized Housing Inventory ("affordable lot"), the Planning Board may award a one lot density bonus;

provided, however, that the number of units to be constructed on the additional lot shall not exceed the number of units on the affordable lot .

- b. For each set aside of an increased ten percent (10%) of open space over the minimum fifty percent (50%) open space set aside, the Planning Board may award a bonus of ten percent (10%) of the Basic Maximum Number of lots.

#### 6-14.12. ADOPTION OF RULES AND REGULATIONS

The Planning Board may after notice and hearing adopt rules and regulations to implement the provisions of this Section, including but not limited to specifying the content and number of required plans, application procedures, filing and review fees, design criteria, development standards, and other general requirements consistent with this Section.

; or take any other action relating thereto.

#### ARTICLE 22

To see if the Town will vote to transfer from available funds a sum of money to be added to the amount appropriated under Article 5 of the May 3, 2010 Annual Town Meeting; Item 423 Snow and Ice overtime, contractors and expenses for the purpose of funding the fiscal year 2011 deficit; or take any other action relating thereto.

#### ARTICLE 23

To see if the Town will vote to appropriate or reserve from the Community Preservation Fund, including FY2012 estimated annual revenues, a sum or sums of money for Community Preservation projects or purposes, including acquisitions of interests in land, all as recommended by the Community Preservation Committee; or take any other action relating thereto.

#### ARTICLE 24

To see if the Town will vote to amend the Town of Essex Bylaws by adding a new section to Chapter IV to be known as "Section 4-15. DEMOLITION DELAY/REVIEW." as follows:

##### 4-15. DEMOLITION DELAY/REVIEW.

##### **4-15.1 Intent and Purpose.**

The purpose of this bylaw is to encourage the preservation and protection of significant buildings and structures within the Town of Essex that constitute or reflect distinctive features of the Town's architectural, cultural, economic, political or social history and to limit the adverse effect that demolition may have on the character of the Town.

(Italics in the following sentences indicate terms defined in the next section). Under this bylaw, *applicants* for *permits to demolish* any *building* or *structure* deemed *preferably preserved* are encouraged to pursue alternatives to demolition that will preserve, rehabilitate or restore the building or structure, and to alert residents to impending demolition of buildings or structures that are deemed preferably preserved. To achieve this purpose, the *Commission* is empowered to advise the *Building Inspector* with respect to applications for *Permits to Demolish*. The issuance of Permits to Demolish is regulated as provided by this bylaw.

#### **4-15.2 Definitions.**

The terms that follow shall have the meanings set forth below unless context requires otherwise:

1. ***Applicant.*** Any person or entity that files an application for a Permit to Demolish. If the applicant is not the owner of the building or structure specified in the application, the owner's assent shall be filed with or attached to it.
2. ***Building.*** A combination of materials constructed to provide shelter to persons, animals or property.
3. ***Structure.*** A combination of materials assembled at a fixed location intended to provide support or access such as a bridge, trestle, tower, cribwork, retaining wall, streetscape or the like.
4. ***Building Inspector.*** The Building Inspector of the Town of Essex or any other person who may be authorized to issue a Permit to Demolish.
5. ***Commission.*** The Historical Commission of the Town of Essex or its designee.
6. ***Demolition.*** The act of pulling down, destroying, removing, dismantling or razing a building or structure or the commencement of work of total or partial demolition with intent of completing the same.
7. ***Permit to Demolish.*** The permit issued by the Building Inspector for the demolition of a building or structure.
8. ***Significant Building or Structure.*** Any building or structure within the Town of Essex that is in whole or in part at least one hundred years old and has been determined by the Commission to be significant based upon any one or more of the following criteria:
  - The building or structure is listed on, or is within an area listed on, The National Register of Historic Places; or
  - The building or structure has been deemed eligible for inclusion on The National Register of Historic Places; or
  - The building or structure is importantly associated with one or more historic events or persons or is associated with the architectural, cultural, political, economic or social history of the Town of Essex or the Commonwealth of Massachusetts; or
  - The building or structure is historically or architecturally important (in terms of period, style or method of its construction); or



- The building or structure is associated with a recognized architect or builder either by itself or in the context of a group of buildings or structures.
- 9. ***Preferably Preserved.*** Any significant building or structure that, by the determination of the Commission and following a public hearing, is deemed best preserved rather than demolished. Demolition of a preferably preserved building or structure is subject to a four (4) month delay period under this bylaw.

**4-15.3 Procedure.**

1. All applications for a permit to demolish a building or structure in the Town of Essex (whatever its age) shall include the actual (or if not ascertainable, the estimated) date or dates of construction.
2. A Permit to Demolish for a building or structure that is in whole or in part at least one hundred (100) years old shall be issued only in accordance with the provisions of this bylaw. If a building or structure is of unknown age, it shall be assumed to be at least one hundred years old for the purposes of this bylaw.
3. An applicant proposing to demolish a building or structure in the Town of Essex any part of which is at least one hundred years old shall file with the Building Inspector (in duplicate) an Application for a Permit to Demolish containing (at a minimum) the following:
  - The physical address of the building or structure to be demolished;
  - The owner's name, address and telephone number;
  - A written description of the building or structure;
  - The reason for requesting a Permit to Demolish;
  - The reason the applicant believes the building or structure is not significant or is not preferably preserved, if that is the applicant's position;
  - A written description of the proposed reuse, reconstruction or replacement, if any;
  - Such plans and specifications as shall be required by the Building Inspector; and
  - Photographs of the building or structure to be demolished. These shall include at least one photograph of each building or structure elevation.
4. The Building Inspector shall within seven (7) days of receipt forward a copy of the application to the Commission.
5. The Commission shall within fifteen (15) days of its receipt of the application determine in writing whether or not the building or structure is significant.
6. Should the Commission determine that the building or structure is not significant, the Commission shall notify both the Building Inspector and applicant in writing. The Building Inspector may then issue a Permit to Demolish provided that all other applicable requirements have been met.
7. Should the Commission determine that the building or structure is significant, the Commission shall so notify the Building Inspector and applicant in writing, and a Permit to Demolish shall not be issued at that time. If the Commission does not notify the Building Inspector within fifteen (15) days of its receipt of the

- application, the Building Inspector may issue a Permit to Demolish provided that all other applicable requirements have been met.
8. If the Commission finds that the building or structure is significant, it shall hold a public hearing within thirty (30) days after its written notification to the Building Inspector.
  9. Public notice of the time, place and purpose of the hearing shall be published in a newspaper of general circulation in the Town of Essex at the applicant's expense and posted in a conspicuous place in Town Hall at least seven (7) days before the hearing, and forwarded to abutters of the subject property. The Commission shall also notify the Building Inspector and the applicant in writing of the time and place of the hearing.
  10. The Commission shall decide at the hearing or within fifteen (15) days after completion of the hearing whether the building or structure is preferably preserved. To the extent agreed to by the applicant, the determination of the Commission may be postponed.
  11. If the Commission determines that the building or structure is not preferably preserved, the Commission shall promptly give written notice of its determination to the Building Inspector and the applicant. The Building Inspector may then issue the Permit to Demolish provided that all other applicable requirements have been met.
  12. If the Commission determines that the building is preferably preserved, the Commission shall promptly give written notice of its determination to the Building Inspector and the applicant. No Permit to Demolish may be issued for a period of four (4) months from the date of the Commission's determination unless agreed to by the Commission.
  13. If the Commission does not, within fifteen (15) days after completion of its hearing, provide the Building Inspector written notice that it has determined that the building or structure is preferably preserved, the Building Inspector may issue the Permit to Demolish provided that all other applicable requirements have been met.
  14. No Permit to Demolish a preferably preserved building or structure may be issued until all plans for future use and development have been filed with the Building Inspector and the Commission, and have been found to be in compliance with all laws pertaining to the issuance of a Building Permit. All approvals necessary for the issuance of a Building Permit including without limitation any zoning variances or special permits must be granted and all appeals to the granting of such approval must be concluded prior to the issuance of a Permit to Demolish.
  15. Subject to the requirements of Section 14 and any other applicable requirements, the Building Inspector may issue a Permit to Demolish for a preferably preserved building within the four-month delay period if the Commission notifies the Building Inspector in writing that the Commission, after further review and receipt of updated plans, finds that the intent and purpose of this bylaw are served.

16. Subject to the requirements of Section 14 and any other applicable requirements, and following the four-month delay period, the Building Inspector may issue the Permit to Demolish.

**4-15.4 Administration.**

1. After appropriate notice and a public hearing, the Commission may adopt such rules and regulations it considers appropriate for the administration of this bylaw.
2. The Commission is authorized to adopt a schedule of reasonable fees to cover the costs associated with the administration of this bylaw.
3. The Commission may delegate authority to make initial determinations of significance to one or more of its members or to a municipal employee.
4. The Commission may adopt and from time to time amend a list of one or more buildings or structures or both that it has determined are significant.

**4-15.5 Emergency Demolition.**

If after an inspection, the Building Inspector finds that a building subject to this bylaw poses a threat to public health or safety due to its deteriorated condition and that there is no reasonable alternative to the immediate demolition of the building, the Building Inspector may issue an Emergency Permit to Demolish. The Building Inspector shall promptly submit a report to the Commission explaining the condition of the building and the basis for his decision.

**4-15.6 Enforcement and Remedies.**

The Commission and/or the Building Inspector are each specifically empowered to institute any and all actions and proceedings, in law or in equity, that they may deem necessary or appropriate to obtain compliance with the requirements of this bylaw or to prevent a threatened violation thereof.

Any person who has demolished or has authorized or agreed to the demolition of a significant building or structure without complying with the provisions of this bylaw shall be subject to a fine of three hundred dollars (\$300). Each day the violation exists shall constitute a separate offense until a faithful restoration of the building or structure is completed or unless agreed otherwise by the Commission. Such violations may be enforced by the noncriminal procedure authorized by M.G. L. c. 40, sec. 21D and included in Sec. 2-21 of the Town Bylaws.

If a significant building or structure is demolished and the owner or any other person responsible for the demolition has not complied with this bylaw, no Building Permit shall be issued for a period of two (2) years from the date of demolition on the parcel of land where the building or structure was located or any adjoining parcel of land under common ownership and control, unless the Building Permit is for faithful restoration as referred to above or unless agreed otherwise by the Commission.

**4-15.7 Severability.**

If any provision of this bylaw is ruled invalid by a court, this bylaw shall be deemed amended to the extent necessary to remove the invalidity and as so amended shall continue in full force and effect.

; or take any other action relating thereto.

## ARTICLE 25

To see if the Town will vote to amend the building permit fee section contained in Essex Bylaw Section 2-7A that presently reads:

### *BUILDING FEE SCHEDULE:*

Any construction work including new building, additions, etc.

Permit Application Minimum	\$35.00
Cost of Construction	\$6.00 per \$1,000 plus minimum fee
Building Demolition Fee	\$75.00 per story
Reinspection Fee	\$25.00 per reinspection
Stop Work Order Release Fee	\$50.00

For the purpose of determining the building permit fee, the "cost of construction" shall be generally be determined by the Inspector of Buildings to be an amount equal to the product of the square footage area of the construction multiplied by seventy-five dollars (\$75.00). Square footage of any second story shall, for the purpose herein, be deemed to be one-half of the actual square footage of such second story. In cases where it is impossible or impractical to determine the "cost of construction" by the above method, then such "cost of construction" shall be as the Inspector of Buildings shall in his discretion determine.

by increasing the "Cost of Construction" fee to "\$10.00 per \$1,000 plus minimum fee"; or take any other action relating thereto.

## ARTICLE 26

To see if the Town will vote to amend the dog licensing fee section contained in Section 8 of the Essex Animal Control Bylaw, that presently reads, in relevant part:

The annual fees to be charged by the Town of Essex for the issuance of licenses for dogs shall be:

Males and Females	\$8.00
Neutered Males and spayed Females (a certificate of neutering or spaying will be required)	\$5.00
Kennels:	
Four dogs or less	\$15.00
Five to ten dogs	\$30.00
More than ten dogs	\$60.00

Further, the town will charge a late fee of Five Dollars to be paid by owners or keepers of record each year who license said dog or dogs on or after July 1st.

by deleting the foregoing, in its entirety, and replacing it with the following:

The annual fees to be charged by the Town of Essex for the issuance of licenses for dogs shall be:

Males and Females	\$24.00
Neutered Males and spayed Females (a certificate of neutering or spaying will be required)	\$15.00
Kennels:	
Four dogs or less	\$45.00
Five to ten dogs	\$90.00
More than ten dogs	\$180.00

Further, the town will charge a late fee of Fifteen Dollars to be paid by owners or keepers of record each year who license said dog or dogs on or after July 1st.

; or take any other action relating thereto.

#### ARTICLE 27

To see if the Town will vote to accept the provisions of § 9A of Chapter 53 of the General Laws, which establishes procedures for obtaining nominations papers for Town offices; or take any other action relating thereto.

#### ARTICLE 28

To see if the Town will vote to raise and appropriate, transfer from available funds, or borrow a sum of money to purchase or to lease for a term of more than three years with an option to purchase a fully-equipped police cruiser, and to authorize the Board of Selectmen to enter into a purchase or lease/purchase agreement on such terms and conditions as the Board deems in the best interest of the Town in order to replace one of the existing police cruisers; and to authorize the Board of Selectmen to dispose of the vehicle replaced by the new cruiser by sale or trade and to take other action as necessary to effectuate the purposes of this vote, with all or a portion of said sum possibly being contingent upon a vote at a Town election to assess additional real estate and personal property taxes in accordance with the provisions of Proposition 2 ½, so called; or take any other action relating thereto.

ARTICLE 29

To see if the Town will vote to raise and appropriate, transfer from available funds, or borrow a sum of money for the purpose of purchasing, preparing, and furnishing a portable modular unit to be located on Town property for the Police Department or for the purpose of leasing, preparing, and furnishing additional space in an existing, privately-owned building for the Police Department; and, in the case of a lease, to authorize the Board of Selectmen to enter into such lease for a period not to exceed ten years, with all or a portion of said sum possibly being contingent upon a vote at a Town election to assess additional real estate and personal property taxes in accordance with the provisions of Proposition 2 ½, so called; or take any other action relating thereto.

ARTICLE 30

To see if the Town will vote to raise and appropriate, transfer from available funds, or borrow a sum of money to purchase or to lease for a term of more than three years with an option to purchase a dump truck equipped with a snowplow, and to authorize the Board of Public Works or the Board of Selectmen to enter into a purchase or lease/purchase agreement on such terms and conditions as the Board deems in the best interest of the Town in order to replace one of the existing dump trucks; and to authorize the Board of Public Works or the Board of Selectmen to dispose of the vehicle replaced by the new dump truck by sale or trade and to take other action as necessary to effectuate the purposes of this vote, with all or a portion of said sum possibly being contingent upon a vote at a Town election to assess additional real estate and personal property taxes in accordance with the provisions of Proposition 2 ½, so called; or take any other action relating thereto.

ARTICLE 31

To see if the Town will vote to raise and appropriate, transfer from available funds, or borrow a sum of money for the purchase of a new copying machine for the Town Hall, with all or a portion of said sum possibly being contingent upon a vote at a Town election to assess additional real estate and personal property taxes in accordance with the provisions of Proposition 2 ½, so called; or take any other action relating thereto.

ARTICLE 32

To see if the Town will vote to authorize the Board of Selectmen to enter into a lease for a parking lot located at 109 Main Street for the purposes of providing alternative parking for the duration of the Route 133 Reconstruction Project and to raise and appropriate, transfer from available funds, or borrow a sum of money for monthly lease payments therefor, with all or a portion of said sum possibly being contingent upon a vote at a Town election to assess additional real estate and personal property taxes in accordance with the provisions of Proposition 2 ½, so called; or take any other action relating thereto.

**ARTICLE 33**

To see if the Town will vote to raise and appropriate, transfer from available funds, or borrow a sum of money for the payment of unpaid bills from past fiscal years; or take any other action relating thereto.

**ARTICLE 34**

To see if the Town will vote to transfer from the Town Septic Betterment Fund a sum of money for the purpose of making necessary payments to the Massachusetts Water Pollution Abatement Trust during fiscal year 2012 in accordance with the terms of repayment for Community Septic Management Program loan funds; or take any other action relating thereto.

**ARTICLE 35**

To see if the Town will vote to raise and appropriate or transfer from available funds a sum of money for the Town's Stabilization Fund; or take any other action relating thereto.

**ARTICLE 36**

To see if the Town will vote pursuant to Massachusetts General Laws chapter 44, section 53E ½ to reauthorize a revolving fund for the Dog Officer for the purpose of compensating the Dog Officer for the care of impounded dogs and for reimbursing the Dog Officer for all associated expenses. Payments from dog owners seeking to claim impounded dogs shall be credited to the fund and expenditures from the fund shall be authorized by the Board of Selectmen up to a maximum of \$10,000; or take any action thereto.

**ARTICLE 37**

To see if the Town will vote pursuant to Massachusetts General Laws chapter 44, section 53E ½ to reauthorize a revolving fund for the Board of Health for the purpose of purchase of supplies and services as deemed necessary by the Board of Health for the purpose of the planning and execution of an annual youth triathlon or other exercise program. Donations, grants and fees collected for said purpose shall be credited to the fund and expenditures from the fund shall be authorized by the Board of Health up to a maximum of \$12,000; or take any action thereto.

**ARTICLE 38**

To see if the Town will vote pursuant to Massachusetts General Laws chapter 44, section 53E ½ to reauthorize a revolving fund for the Board of Health for the purpose of purchase of supplies and services as deemed necessary by the Board of Health Department for the purpose of health, safety, and/or emergency planning, preparation and education. Donations, grants and fees

collected for said purpose shall be credited to the fund and expenditures from the fund shall be authorized by the Board of Health up to a maximum of \$10,000; or take any action thereto.

ARTICLE 39

To see if the Town will vote pursuant to Massachusetts General Laws chapter 44, section 53E ½ to reauthorize a revolving fund for the Board of Health for the purpose of purchasing supplies and pharmaceuticals as needed by the Public Health Nurse and for the payment of Public Health Nurse wages. Medicare and other reimbursements relating to said programs and donations for the purpose of purchasing supplies and pharmaceuticals and for Public Health Nurse labor shall be credited to the fund and expenditures from the fund shall be authorized by the Board of Health up to a maximum of \$10,000; or take any action thereto.

And you are hereby directed to serve this Warrant by posting attested copies; one at the Post Office, one at the Town Hall, and one at the Essex Elementary School, in said Essex, seven days at least before the time for holding said meeting.

Given under our hand this 21<sup>st</sup> day of March, two thousand eleven.

\_\_\_\_\_  
A. Raymond Randall, Jr., Chairman

\_\_\_\_\_  
Jeffrey D. Jones

\_\_\_\_\_  
Lisa J. O'Donnell

BOARD OF SELECTMEN  
TOWN OF ESSEX

Attest: \_\_\_\_\_  
Constable

Date: \_\_\_\_\_