

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

September 12, 2011

Present: Chairman Jeffrey D. Jones, Selectman Lisa O'Donnell, Selectman Susan Gould-Coviello, Town Administrator Brendhan Zubricki.

Also present: Attorney Gregg Corbo - Town Counsel, Jean Goldsberry, Steve Cuthbertson, and Clayton Morin.

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.

Mr. Morin indicated that he and his neighbors on Lowe Hill Road are interested in the Town Meeting considering Lowe Hill Road for acceptance of a public way. Mr. Zubricki explained that the Board of Public Works had potential conflicts of interest regarding the acceptance process. Mr. Zubricki explained that the law allows for the Selectmen to handle the entire process, but that the Selectmen usually get a review and recommendation from the Board of Public Works first. The Board agreed that Mr. Zubricki should seek a recommendation from the Superintendent of Public Works, without consultation with the Board of Public Works, and report back.

At 7:05 p.m., citing the need to discuss pending litigation with respect to the City of Gloucester, 138 Conomo Point Road, and the Allen case; the leasing of real property at Conomo Point; and collective bargaining issues with AFSCME, the Teamsters, and EPBA, the Chairman entertained a motion to move into Executive Session. He stated that discussing these matters in Open Session would be detrimental to the Town's litigating position, negotiating position, and bargaining position, respectively. The Chairman invited Mr. Zubricki to attend the Executive Session along with Attorney Corbo and said that the Board would be returning to Open Session. The motion was moved, seconded, and per a unanimous Roll Call Vote, the Board moved to Executive Session.

Ms. Goldsberry, Mr. Cuthbertson, and Mr. Morin left the meeting.

The Board returned to Open Session at 8:15 p.m.

Mr. Nathaniel Crosby joined the meeting and the Board heard from him a bit about his background and learned that he had been *recommended by the Historical Commission* to replace retiring member Kurt Wilhelm. The Board said that they would consider his actual appointment later in the meeting. Mr. Crosby thanked the Board and left the meeting.

Ms. Jane Phillips, Mr. Christopher Phillips, Mr. Steve Cuthbertson, Ms. Donna Wells, Ms. Leah Maher, and Ms. Jean Goldsberry joined the meeting. Ms. Phillips, Mr. Phillips, and Ms. Maher were present to discuss Ms. Phillips potential future desire to transfer a leasehold to a third party (Ms. Maher). The others in attendance were present to observe. Mr. Zubricki called the Board's attention to a *letter from Ms. Phillips' attorney* attesting to the fact that Ms. Phillips is the rightful leaseholder of the property at 130 Conomo Point Road (the party who had originally

signed the lease as Trustee of a trust is deceased and Ms. Phillips is now the Trustee of said trust). Ms. Phillips explained that Ms. Maher was interested in becoming the transferee of the leasehold at 130 Conomo Point Road and that she (Ms. Phillips) was, as suggested by her attorney, the party who is solely able to request or "trigger" a transfer. Discussion was held as to the rights of the two other Trustees, since those two individuals (David Wendell and Sarah Wendell) had provided *two letters to the Board* via fax earlier in the day regarding the topic of transfer. Ms. Phillips provided to the Board various documents associated with the David R. Wendell 1993 Trust. Town Counsel will provide the Selectmen with a suggested motion to declare, at their next meeting, which will include a disclaimer, regarding who the authorized representative of the Trust is. The parties agreed to provide the Board with a formal request for transfer from the Trust to Ms. Maher prior to the Board's next meeting. The parties will provide Mr. Zubricki with materials related to agreement among the trustees, with possible reference to the potential transferee by noon on Wednesday, September 21, 2011. Mr. Zubricki will provide the parties with an appointment at the next meeting, if they are ready, after review by Town Counsel. (Note: The collection of documents discussed above shall be known as the Wendell Documents for the purposes of the Selectmen's minutes for this meeting.)

All of the above-listed parties left the room at approximately 8:50 p.m.

Mr. Zubricki presented his Town Administrator's Report for the period August 6th, 2011, through August 19th, 2011 regarding the following:

Update of Conomo Point Calendar: Mr. Zubricki presented the Board with an updated version of the *Conomo Point Calendar*. The Board agreed with the updated content.

Conomo Point Property Appraisal Update: The Board discussed the fact that our appraiser has informed Mr. Zubricki and Chairman Jones that his report will be delayed by at least one week, mostly due to the fact that the Town asked for an additional week before field work could begin (at the request of the leaseholders). The Board understood that the figures would be delayed until at least September 16, 2011.

Meeting with Legislators: Mr. Zubricki and Chairman Jones described for the Board topics discussed in two recent meetings with Senator Tarr and Representative Ferrante concerning the amendment or augmentation of the Chapter 30B Special Legislation for Conomo Point. The Board then took up the "Vote to refresh certification of support relative to Chapter 30B Special Legislation for Conomo Point" agenda item as follows:

Chairman Jones made the following statement and motion: As Chairman of the Board of Selectmen and as a member of the Board that voted on this issue in November of last year, I move that the Board petition the Legislature for a new special act exempting the Town from the procedural requirements of Chapter 30B with respect to the sale and/or lease of more than five years of portions of the Town's property at Conomo Point in the form provided by Town Counsel, all in accordance with Article 16 approved at the Special Town Meeting of November

15, 2010. [Town Counsel's form of the Special Act is shown below – see page 4 of these minutes]

Do I have a second?

The motion was seconded.

Because this Board has a new member, I offer the following explanation for my motion:

The Town of Essex has an open form of Town Meeting. At a Special Town Meeting held on November 15, 2010, the voters of the Town authorized the Board of Selectmen to petition the Legislature for a Special Act exempting the sale and/or lease of portions of the Town's property at Conomo Point from the procedural requirements of Chapter 30B. Although Town Meeting voted specific language for such special act, the Meeting vested the Board of Selectmen with the authority to approve amendments within the scope of the general public objectives of the petition. The Board of Selectmen, however, by unanimous vote, voted to submit the petition to the Legislature in the exact form approved by Town Meeting.

The legislation approved by Town Meeting is a small piece of a larger plan concerning the future of the Town's property at Conomo Point. As you know, although the Town has owned the property and acted as lessor for several decades, at least, the Town is under strict court order to remedy the failing septic systems in use at the property within a short time frame after expiration of the current leases on December 31, 2011. Unfortunately, the situation cannot be feasibly remedied if the Town continues to own all of the property. Therefore, the Town has started a planning process that it hopes will lead to the sale of a portion or portions of the property to private citizens and perhaps retention of other portions by the Town for purposes of long-term leasing. As part of such process, the Town has recognized that the current leaseholders feel a deep connection to the property and we anticipate that current leaseholders will assert legal claims against the Town if they are not offered a fair and reasonable opportunity to remain on the property. We believe that litigation of this nature would deprive the Town of any financial benefit it may obtain as a result of selling or leasing portions of the property to third parties. Therefore, it was decided to petition for the Chapter 30B exemption so that the Town would have the authority to give present occupants a certain level of preference in future transactions.

Based on the existence of external deadlines beyond the control of either the Selectmen or the Legislature, it became apparent that the special legislation was not going to be signed into law in time to meet the next milestone in the Town's transition plan, that being the need for Town Meeting to adopt a bylaw establishing procedures for short-term bridge leases. Therefore, the Board of Selectmen, in accordance with the authority conferred upon it by Town Meeting, voted to authorize an interim solution that it believed would allow the process to move forward without compromising the Town's ultimate goal. That compromise was to support a narrower scope than the scope of the Act voted on at Town Meeting to limit its scope to short-term leases of five years or less, so-called "Bridge Leases". While the Selectmen supported the Legislature's

proposed narrowing of scope, they urged the Legislature to adopt the special act in its original form as authorized by Town Meeting.

Ultimately, the Legislature passed Chapter 17 of the Acts of 2011, granting the Town an exemption from Chapter 30B for short term leases of five years or less only. Notwithstanding the Legislature's action, there remains a need for an exemption from Chapter 30B for sales and/or long-term leases. In fact, it has come to our attention that many tenants are unlikely to sign bridge leases unless the Town receives an exemption from Chapter 30B for sales and long-term leases. In recognition of this need, my motion asks for approval of a new petition to the Legislature to ask for a second special act to realize the full scope of what was authorized by Town Meeting on November 15, 2010.

The November 2010 Special Town Meeting was attended by more than 350 residents and the vote to approve the petition was supported by an overwhelming majority of those present. Since less than a year has passed since the vote was taken, I believe that the Town still favors the legislation that it originally approved.

Therefore, for the reasons just stated, I ask for a role-call vote on my motion.

A unanimous, role-call vote was made regarding the Chairman's motion.

Town Counsel will prepare the necessary cover letter and other supporting documents to transmit the Board's vote to the Legislature.

Town Counsel's Recommended Form of Second Special Act:

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same as follows:

SECTION 1: Whereas the Town of Essex Massachusetts includes a unique land mass known as Conomo Point which the Town has historically leased to private individuals for extended periods of time, and where such leases will soon expire, the Town has an interest in establishing, under the specific circumstances at issue, an appropriate procedure for the future potential sale or leasing of such land. Therefore, notwithstanding the provisions of section 16 of Chapter 30B of the General Laws, or any other general or special law to the contrary, the Town of Essex, if first authorized by a vote of its Town Meeting, may sell or lease for periods of more than five years all or any portion of its land known as Conomo Point, at fair market value, upon such terms and conditions as the Board of Selectmen deem appropriate, in accordance with a bylaw adopted by Town Meeting, which bylaw ensures that such sales or leases shall be undertaken in accordance with an open, fair, and competitive disposition process, using sound business practices and principles of fair dealing, which process may, but need not, recognize as a criteria for evaluation for such sale or lease a certain level of preference for current lessees of such land.

SECTION 2: This Act shall not exempt the Town from the provisions of sections 3, 15 or 15A of Chapter 40 of the General Laws, Sections 2-13.4 and 2-13.11 of the Town bylaws or any other general or special law which requires a vote of Town Meeting to authorize the sale or lease of real property.

SECTION 3: This act shall take effect upon passage.

Special Town Meeting Warrant: Town Counsel advised the Board that the recent voter registration challenge process could extend beyond the date of the September 26, 2011 Special Town Meeting that had been planned. As such, Counsel recommended that the Board nullify the votes associated with that meeting, for which a warrant had not been signed and for which public posting never occurred. A motion was made, seconded, and unanimously voted that the Selectmen rescind the votes taken on August 22, 2011 with respect to the September 26, 2011 Special Town Meeting.

Chairman Jones said that the Board had received *written notice of an intra-family transfer* of the leasehold for 154 Conomo Point Road for a transfer of interest from Franklin and Marjorie Richardson to themselves as Trustees of the Trust Agreement of Franklin T. Richardson and Marjorie B. Richardson. Pursuant to Paragraph 7 of the Lease, he stated that the Conomo Point Commissioners do not have discretion to approve or deny such transfer. However, because the Town has been threatened with litigation concerning this issue in the past, a motion was made, seconded and unanimously voted that the Selectmen acknowledge said transfer with the disclaimer that, having received no objection to the notice, the Selectmen are acknowledging the notice on its face and the Selectmen take no position as to whether or not the original lessee approved the transfer or whether transferee has any legal right to claim such transfer, and any dispute as to the validity of such transfer or the rights of the parties thereto, shall be solely between the Estate of Franklin and Marjorie Richardson and the current Trustee of the Trust; 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 Franklin and Marjorie Richardson and also that this acknowledgement does not affect the lease termination date of December 31, 2011.

Chairman Jones said that another leaseholder, Eric Spunt, has made *inquiry regarding a transfer of leasehold* for 4 Conomo Lane. The Board agreed that he should provide the Town with proper documentation of his circumstances and the matter will be taken up again at the Board's meeting of September 26, 2011.

At 9:30 p.m., citing the need to again discuss pending litigation with respect to the City of Gloucester, 138 Conomo Point Road, and the Allen case; the leasing of real property at Conomo Point; and collective bargaining issues with AFSCME, the Teamsters, and EPBA, the Chairman entertained a motion to move to Executive Session. He stated that discussing these matters in Open Session would be detrimental to the Town's litigating position, negotiating position, and bargaining position, respectively. The Chairman invited Mr. Zubricki to attend the Executive Session along with Attorney Corbo and said that the Board would be returning to Open Session.

The motion was moved, seconded, and per a unanimous Roll Call Vote, the Board moved to Executive Session.

The Board returned to open session at 9:55 p.m. Attorney Corbo had left the meeting during the Executive Session.

Peak Response and Demand Response Electricity Program Update: Mr. Zubricki explained that the Town's electricity supplier, Constellation New Energy, has now completed its analysis of programs that the Town could enroll in to save money in the future. The first program, known as the Peak Response Program, would require the Town to curtail the use of electricity and/or use generators during times when ISO New England sets base rates for electricity delivery, known as capacity tags. By showing a lower usage of electricity during peak times, the Town's tag would be lowered and base delivery rates would be lower year-round, saving money. Peak Response events typically occur about four times per year for three to four hours at a time.

The second program, known as the Demand Response Program, would require the Town to start all of its generators at least twice per year for planned audits and, possibly more, if demand requires. Each activation would be for two to three hours. Just for enrolling in this program, if our supplier's estimates are correct, the Town could be paid approximately \$1,300 per month.

The Selectmen agreed that the Town needs to determine if the use of the generators is feasible and what the costs would be (both for fuel and for personnel to start generators even when the power is on – which is not the normal mode). Mr. Zubricki will refer the matter to the Board of Public Works through the Superintendent of Public Works for comment.

Monthly Route 133 Reconstruction Project Meeting: Mr. Zubricki described various recent accomplishments associated with the Route 133 Reconstruction Project, along with a variety of matters that are still pending. He explained that he and Selectman O'Donnell had walked the site with the contractor and MassDOT personnel earlier in the day. The Board agreed that Mr. Zubricki and Selectman O'Donnell should continue to monitor the completion of all remaining tasks.

Sponsorship of Various Streetscape Features: Mr. Zubricki said he had received an inquiry as to whether merchants could maintain various streetscape features associated with the recent Route 133 Reconstruction Project if they could place small signs (not to exceed 8" x 8") indicating that a particular area is being sponsored by a particular merchant. The Board was agreeable to the concept. A motion was made, seconded, and unanimously voted to allow this practice in the future so long as each merchant obtains any other required permits (if necessary) and that all signs are of uniform design using a format to be approved by the Board in advance of any sign deployment.

Rail Trail Update: Mr. Zubricki informed the Board that representatives of the Boston & Maine Railroad had counter-offered regarding the potential purchase of certain railroad land behind Martin Street. The railroad is asking \$24,995. The Board agreed that the purchase of the

property could be funded using the Community Preservation Act and that the matter could be considered at a fall Town Meeting, potentially in November. Mr. Zubricki indicated that the railroad was planning on providing the Town with a draft purchase & sales agreement that would carry, among others, a condition that the purchase required approval by Town Meeting. Mr. Zubricki indicated that he would prompt the Community Preservation Committee to pull together a new meeting to consider this matter (since their first attempt at a meeting did not result in a quorum).

Town Building Committee Update: Mr. Zubricki reviewed a *summary of Town building costs* based on a wide variety of scenarios that the Town Building Committee had developed. The summary included the total cost of borrowing, including all principal, interest, and fees. The Board is aware that the owner of the Lahey Building is interested in feedback about whether the Town Meeting will consider the purchase of the building in the fall. The Board agreed that Mr. Zubricki should express to the owner's agent that the matter will, in fact, be placed on the fall Town Meeting warrant so long as the Town Building Committee agrees with that course of action at their next meeting, which is scheduled for September 13, 2011.

Southern Conomo Point Definitive Subdivision Plan: Mr. Zubricki described for the Board a proposed schedule for the review and approval of the subject Plan. Presently, the Town's consultant is working to have the application reviewed by the Planning Board in a preliminary fashion on September 21, 2011 with public hearings on the matter to follow on October 19 and, potentially, November 2. The Board was in agreement with this schedule and a motion was made, seconded, and unanimously voted to authorize Chairman Jones to sign any and all necessary application materials, when available.

Town of Essex Alcohol Service Training Regulation: Mr. Zubricki explained that several restaurant proprietors have asked why the Town's regulations require alcoholic beverage service training recertification annually when the training products are often good for longer periods of time per the training organizations. After discussion, the Board decided to take the matter up with the Chief of Police when he attends the Board's meeting on October 3, 2011.

Renewal of U-Mass Influenza Immunization Billing Contract: Mr. Zubricki discussed the need for this successor contract on behalf of the Board of Health. The Board of Health plans to continue administering flu shots and requires this vendor to assist with cost reimbursement through parties' insurance carriers. A motion was made, seconded and unanimously voted to sign the U-Mass Influenza Immunization Billing Contract outside of a meeting, once it has been forwarded to the Town by the vendor. The form of the contract has already been approved by Town Counsel.

Addendum to Public Sector Partners Billing Contract: Mr. Zubricki presented the need for an addendum to an existing contract on behalf of the Board of Health. The Board of Health plans to continue to administer flu shots to seniors even though the vaccine had been available from the State in the past for free. The addendum adds the vendor's Medicare flu vaccine reimbursement service (reimbursement for actually buying vaccine) to the vendor's existing service, which is

reimbursement for the Board of Health's personnel time. A motion was made, seconded and unanimously voted to sign the addendum to the Public Sector Partners Billing Contract outside of a meeting, once it has been forwarded to the Town by the vendor. The form of the contract has already been approved by Town Counsel.

YMCA Summer Camp Discussion: Mr. Zubricki explained that representatives of the YMCA will be in attendance at the Board's October 3, 2011 meeting to discuss the past summer camp season, with an eye toward next season. He also indicated that he had received an inquiry as to whether the YMCA could potentially take over the half-day programs that are typically run at the Essex Elementary School. The Board was not opposed to that course of action, so long as the YMCA would continue to offer the programs at the school site, as opposed to busing students to a YMCA facility. Mr. Zubricki will provide that information to the Essex Shipbuilder's Athletic Association, since they may be interested in ceding the programs to the YMCA.

In other business, a motion was made, and unanimously voted to ratify the exemption from § 20 of Chapter 268A of the General Laws the contract with Ramie Reader contained within the September 6, 2011 warrant pursuant to subsection (d) of said Section.

A motion was made, seconded, and unanimously voted to approve and sign the weekly warrant in the amount of \$78,731.41.

A motion was made, seconded, and unanimously voted to approve and sign the minutes for the August 22nd, 2011, Selectmen's Open Meeting, and the minutes for the August 22nd, 2011, Selectmen's Executive Session.

A motion was made, seconded, and unanimously voted to ratify the Chairman's declaration of a state of emergency as of 12:35 p.m. on August 26, 2011 (due to the impending Hurricane Irene), and the Chairman's termination of the state of emergency at 12:00 noon on August 29, 2011.

A motion was made, seconded, and unanimously voted to accept *Virginia Boutchie's letter of resignation* from the Community Preservation Committee.

A motion was made, seconded, and unanimously voted to appoint *Vickie Cataldo as the Selectmen's representative* to the Community Preservation Committee.

A motion was made, seconded, and unanimously voted to accept *Kurt Wilhelm's letter of resignation* from the Historical Commission.

A motion was made, seconded, and unanimously voted to appoint Nathaniel "Nat" Crosby as a replacement for Mr. Wilhelm on the Historical Commission.

The Board discussed a request by the Church of Latter Day Saints to identify a service project at the Centennial Grove in exchange for the church's recent use of the Grove for their annual outing. Mr. Zubricki suggested minor repairs to and organization of the contents of the Grove

Cottage Garage. The Board was in agreement and Mr. Zubricki will relay that project to the church.

Mr. Zubricki said that it had been brought to his attention that public meetings at the Fire Station are sometimes hard to hear due to the equipment that is running in the firefighters' meeting room. Mr. Zubricki indicated that the Youth Commission owns a portable public address system and the Board asked him to offer it to the Town Clerk for use in the ongoing voter registration hearings.

Mr. Zubricki called the Board's attention to a request by a resident to utilize the Centennial Grove Cottage for a 50th birthday party in early October. The Board was not opposed to that use so long as all applicable rules and regulation were followed and that the fee recently paid for a resident wedding was also paid in this case. Mr. Zubricki said he would reach out to the resident to determine whether they wanted to proceed.

A motion was made, seconded, and unanimously voted to approve and grant the following licenses and permits:

One-Day Entertainment License:

- Essex County Greenbelt Association, Sheilagh Doerfler, for use on Saturday, September 24, 2011, between the hours of 6:00 and 11:00 p.m. within the confines of the Cox Reservation at 82 Eastern Avenue.
- Essex Historical Society & Shipbuilding Museum, for use on Saturday, September 24, 2011, between the hours of 10:00 a.m. and 5:00 p.m. within the confines of the Shipyard, Essex Shipbuilding Museum, Main Street. (application has been received and the license will be generated by the Licensing Clerk upon her return from vacation and subsequently signed by the Board outside of a meeting)

One-Day Wine and Malt License:

- Apple Street Farm, LLC, three separate, one-day licenses for use on Thursday, September 15; Friday, September 16; and Saturday, September 17, 2011, between the hours of 5:00 p.m. and 11:00 p.m. within the confines of the Apple Street Farm, 35 Apple Street. (applications have been received and the licenses will be generated by the Licensing Clerk upon her return from vacation and subsequently signed by the Board outside of a meeting)

One-Day Auction Permit:

- R.A. DiFillipo Antiques, for use on Tuesday, October 4, 2011, between the hours of 8:30 a.m. and 10:30 p.m. within the confines of 125 Main Street. (application has been received and the permit will be generated by the Licensing Clerk upon her return from vacation and subsequently signed by the Board outside of a meeting)

Selectman Coviello said that the Manchester Essex Regional School District Superintendent had asked her about the Town's preference for scheduling the usual operating budget discussion this season. Mr. Zubricki said that he would bring last year's schedule to the Board as an example to review at the Board's next meeting.

The Selectmen were reminded that the Essex Division of the Cape Ann Chamber of Commerce will be meeting September 15th at 8:00 a.m. at Woodman's.

The Selectmen were reminded that representatives from the YMCA will attend the Board's meeting of October 3, 2011 to discuss the summer camp experience from this past season, with an eye toward next season.

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:

Letter from Ms. Phillips' Attorney
Two Letters to the Board from Sarah and David Wendell
Conomo Point Calendar Dated September 12, 2011
Letter from Attorney Melvin Barron Concerning Richardson and Lowry
E-mail from Mr. Eric Spunt Concerning 4 Conomo Lane
Summary of Town Building Costs
Virginia Boutchie's Letter of Resignation
Vickie Cataldo as the Selectmen's Representative
Kurt Wilhelm's Letter of Resignation
Recommendation of Nat Crosby by the Historical Commission

Prepared by: _____
Brendhan Zubricki

Attested by: _____
Lisa O'Donnell