

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

Also Present: Town Counsel Gregg Corbo, Town Treasurer/Collector Virginia Boutchie, and Jean Goldsberry.

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. No one offered any comment.

Mr. Zubricki presented his Town Administrator's Report for the period September 10th, 2011, through September 23rd, 2011 regarding the following:

Downtown Boardwalk Feasibility Study: Mr. Zubricki reported that the contract between the Town and Salem University had been received from the Department of Conservation and Recreation Waterways Division (DCR). The Town has been awarded a Seaport Advisory Council grant in the amount of \$155,000 to pay for a feasibility study to be conducted by Salem University for a proposed Essex River boardwalk. A motion was made, seconded, and unanimously voted to approve and sign the contract with DCR and to sign the necessary agreement with Salem State outside of a meeting, when available. Treasurer/Collector Virginia Boutchie, in her capacity as notary public, witnessed the Selectmen's signatures on the contract. The Selectmen thanked the Treasurer/Collector and she left the meeting.

Planning Board Acceptance of Definitive Subdivision Plan Application: Mr. Zubricki said that the Planning Board has accepted, for review, the ***Definitive Subdivision Plan Application*** for the southern section of Conomo Point. The Planning Board is allowed 90 days in which to review the plan and issue a decision. They will be distributing copies of the plan to each Town department for comment. Two public hearings will be scheduled to discuss the plan (October 19th and November 2nd).

Melrose Datacenter Update: Mr. Zubricki said that he is continuing to work with Town Counsel and the City of Melrose to perfect the language and terms contained in a proposed intermunicipal agreement for the provision of data center storage, processing, and support by the City of Melrose to the Town of Essex. There remain only a couple of points on which to reach agreement. The Selectmen plan to sign the contract at the next Board of Selectmen's meeting on October 3rd after the final version of the contract has been accepted by Town Counsel.

Installation of Plantings in Project Area: Selectman O'Donnell reported that she has been working with the abutters and MassDOT to design and choose the plantings for the planting strips in the Route 133 Reconstruction Project area. The plantings chosen cost about \$1,600 less than MassDOT had budgeted and Selectman O'Donnell has asked that MassDOT use that money to also provide mulch and landscape fabric to control weeds.

Pocket Park Design and Project Uniform Design Standards: Selectman O'Donnell has also been working with MassDOT to determine locations and placement of granite stones left over from the project for use as benches in the pocket parks. She reported that the boardwalk that was proposed for the Paglia pocket park has been vetoed by the Long Term Planning Committee. Selectman O'Donnell will be contacting Carolyn Britt from Community Investments to discuss the remainder of the work to be completed under Ms. Britt's contract with the Town for the coordination of the design of the pocket parks.

Potential Enrollment in Peak and Demand Response Programs: Mr. Zubricki reported that he has met with DPW Superintendent Paul Goodwin to discuss two programs offered by National Grid for which the Town is eligible that could result in a reduced cost to the Town for electricity. The Superintendent has evaluated the programs and is not inclined to recommend them at this time. However, he will be discussing them with the Board of Public Works and will continue to weigh the advantages and disadvantages of the programs.

Successor Heating Oil Supply Contract: Mr. Zubricki reported that he had solicited three quotations for a contract to provide heating oil to the Town for the coming winter season and that only Fox Hill Oil had responded. Fox Hill currently holds the Town contract for this past year's supply which they had agreed to provide at \$0.25 cents over the low daily Boston wholesale price. Their quotation for the coming year was at \$0.28 cents over the Boston wholesale price. A motion was made, seconded, and unanimously voted to approve and sign the ***fuel oil specifications contract*** for the period between October 31, 2011 and October 30, 2012 with Fox Hill Oil.

Procurement for Potential Property Purchases, Rail Trail Update, and Town Building Committee Update: Mr. Zubricki updated the Selectmen regarding the Town's possible purchase of two properties that are being considered. The railroad property is eligible to be purchased with Community Preservation money and the owner has now said that they would sell it to the Town for approximately \$24,995. The Community Preservation Committee has reported that they are not inclined to recommend the purchase of the railroad property unless the Town also purchases the Lahey property. The two properties together would provide a circular walking trail. The Town Building Committee has indicated that they recommend the consideration of the purchase of the Lahey building by Town Meeting as a permanent solution to adequate space needs for Town offices. The Committee is recommending that the scope of necessary renovations be assessed by a cost estimator. The Town would need to issue a Request for Proposals to purchase the Lahey building, but not to purchase the railroad property. A motion was made, seconded, and

unanimously voted to authorize Mr. Zubricki to prepare and issue an RFP regarding the purchase of real property for the relocation of Town offices.

Police Chief Peter Silva and Sergeant Paul Francis joined the Selectmen's meeting.

Renewal of Centrex Telephone Contract: Mr. Zubricki reported that he is expecting to receive a renewal contract from Verizon which will run for three years and will be identical to the present contract which expires at the end of October 2011. A motion was made, seconded, and unanimously voted to sign the renewal contract outside of a Selectmen's meeting, as soon as it becomes available.

Renewal of Pedestrian License, Village Restaurant: Mr. Zubricki said that he has also provided the Village Restaurant with a renewal license that allows pedestrians to pass over the restaurant property to access the stairway to the municipal parking lot behind the Post Office and Fire Station. A motion was made, seconded, and unanimously voted to sign the renewal license outside of a Selectmen's meeting as soon as it is approved, signed, and returned by the Village Restaurant.

Centennial Grove Service Project: Mr. Zubricki said that he had suggested a couple of projects to the Church of the Latter Day Saints that they could perform in exchange for waiving the rental fee for their use of Centennial Grove for their annual outing. To date, the Church has not informed Mr. Zubricki of their choice of project. A motion was made, seconded, and unanimously voted to also offer "repair of the Grove Cottage porch" as an additional option to the Church.

The Chairman turned the meeting over to Police Chief Silva and Sergeant Paul Francis for a commentary regarding parking at Conomo Point. The Chief distributed a ***handout with pictures*** identifying areas that are currently being used for parking at the Point and copies of the Town's ***parking regulations***. The Chief and the Sergeant discussed the limitations of certain parking areas. Chairman Jones said that he would like to schedule a meeting including at least one Selectman, the Chief and the DPW Superintendent to discuss and view the areas of concern at the Point. The Chairman would like to reach a consensus regarding solutions to the parking problems at the Point and to implement those solutions in time for the start of the season in 2012.

The Chief reviewed his thoughts regarding the Town's annual requirement that restaurant and package store managers with Town alcohol licenses be annually recertified under either the TIPS program or the ServeSafe program. The Chief said that it is important to keep up with changes to the regulations, and that in his opinion, there is a greater benefit if the course is taken in person at a designated site rather than on-line. After some discussion, the Board agreed to keep the current regulations in place for the 2011 renewal period. However, the Selectmen discussed amending the regulations for the following renewal period to require new managers to attend training in person and to allow all other managers to obtain the required annual training on-line if desired. The Selectmen also discussed whether managers should be required to attend training in person every 3 or every 5 years.

The Selectmen reviewed a *request from the Chief* to accept the gift of a used 15-foot Boston Whaler from the Massachusetts Environmental Police to the Town. The Selectmen also reviewed *a letter from the Chief* to Senator Bruce Tarr thanking the Senator, the Senator's Assistant Paglia, Colonel Aaron Gross and Lt. Colonel Chris Baker for their diligent efforts to make this donation possible. A motion was made, seconded, and unanimously voted to approve and accept this gift to the Town.

The Chief and the Sergeant left the meeting.

School District Seasonal Budget Discussion: Mr. Zubricki reviewed the schedule that the Selectmen had used for last year's meetings with the School Committee. A motion was made, seconded, and unanimously voted to authorize Mr. Zubricki to set-up a similar series of meetings for this year's budget discussions.

Quarterly Report: The Selectmen reviewed the Quarterly Report to the Department of Environmental Protection that had been prepared by Mr. Zubricki and a motion was made, seconded, and unanimously voted to transmit the report to the DEP.

Statewide Public Works Mutual Aid Agreement Law: Mr. Zubricki reported that the Board of Public Works had reviewed a proposed statewide mutual aid agreement and have expressed a favorable recommendation. A motion was made, seconded, and unanimously voted to "opt in" to MGL c. 40, §4K. Mr. Zubricki will forward the ***MGL c. 40, §4K – Statewide Public Works Municipal Mutual Aid Agreement Opt-In Form*** to the State.

Recommendation Concerning the Acceptance of Lowe Hill Road: The Selectmen discussed the request from residents on Lowe Hill Road to have the Town accept the road as a public way of the Town. Mr. Zubricki said that the Board of Public Works' Superintendent has expressed concerns regarding maintenance of the road's culvert and bridge, the lack of a turn-around at the end of the road for emergency equipment, and the lack of space for snow accumulation from plowing the road. The Board of Public Works has declined, due to a possible conflict of interest, to participate in this matter. After some discussion, Mr. Zubricki agreed to provide the Selectmen with a list of the steps necessary to qualify a road for acceptance by the Town for further discussion at the next Selectmen's meeting.

In other business, a motion was made, seconded, and unanimously voted to approve and sign the weekly warrant in the amount of \$102,433.11.

A motion was made, seconded, and unanimously voted to approve and sign the minutes from the Selectmen's Open Meeting on September 12th, 2011 and the Selectmen's Executive Session on September 12th, 2011.

A motion was made, seconded, and unanimously voted to approve a request for a Reserve Fund Transfer in the amount of \$4,860.00 to Unemployment Expense.

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

One-Day Wine and Malt License:

- Apple Street Farm, Frank McClelland, for use on Friday, October 7, 2011, Harvest Festival, between the hours of 5:00 p.m. and 11:00 p.m. within the confines of the Apple Street Farm at 35 Apple Street.
- Apple Street Farm, Frank McClelland, for use on Saturday, October 8, 2011, Harvest Festival, between the hours of 5:00 p.m. and 11:00 p.m. within the confines of the Apple Street Farm at 35 Apple Street.

The Selectmen discussed the *proposed Veterans' District Office Expansion*. Funding for the request could be provided by using the balance left in the budget for this year's annual veterans' assessment and a reserve fund transfer. A motion was made, seconded, and unanimously voted to approve the request for the additional funding for expansion and to authorize Mr. Zubricki to sign any necessary Reserve Fund Transfer request.

The Selectmen reviewed information regarding the *Massachusetts Municipal Association's Statewide Essay Contest for 6th Graders* and a motion was made, seconded, and unanimously voted to support the participation of the Town's sixth grade students in the MMA's 2012 Statewide Essay contest.

Mr. Zubricki said that he is still working with Senator Tarr's office to determine whether any grant funding may be available to pay for the installation and hook-up of the donated trailer that will provide auxiliary Police Department space.

At 8:25 p.m., citing the need to discuss pending litigation regarding the William Allen property on Southern Avenue, potential litigation at Conomo Point, and the lease of real property at Conomo Point, 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 strategy and to the Town's negotiating strategy. The Chairman said that the Board would be returning to Open Session and invited Town Administrator Zubricki and Town Counsel to attend the Executive Session.

Mr. Zubricki said he would notify Mrs. Goldsberry when the Board returned to Open Session and she left the meeting room.

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

The Board returned to Open Session at 9:50 p.m. Mrs. Goldsberry rejoined the meeting.

Chairman Jones said that the Board had received *written notice of an intra-family assignment of the leasehold* for 4 Conomo Lane (Map 19, Lot 83) for an assignment of interest from Jeanne L.

Spunt, now deceased, to Eric Spunt and Kathryn Spunt. Pursuant to Paragraph 7 of the Lease, he stated that the Conomo Point Commissioners do not have discretion to approve or deny such assignment. 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 assignment 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 assignment or whether the assignee has any legal right to claim such assignment, and any dispute as to the validity of such assignment or the rights of the parties thereto, shall be solely between anyone disputing the validity of the assignment and the assignees, who shall be solely responsible for defending their interest in said lease and who shall indemnify and hold the Town harmless for any claims made in connection with this acknowledgment; 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 Jeanne L. Spunt and also that this acknowledgement does not affect the lease expiration date of December 31, 2011.

Chairman Jones went on to say that, at the Selectmen's meeting of September 12, 2011, the Board had acknowledged, with caveats, a written notice of an intra-family *transfer of the leasehold for 154 Conomo Point Road* (Map 24, Lot 18) 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. In the recent past, he said that the Board had received a request to alter the premises at 154 Conomo Point Road. The lease for said property is held in the name of the above mentioned Trust. The Board has been informed that the Richardsons, now deceased, are no longer the trustees and that Diane R. Lowry has been appointed successor trustee. Ms. Lowry is requesting that the Board acknowledge that she is authorized to act on the Trust's behalf with respect to the Trust's interests in the Lease. Having received no objection to the request, Mr. Jones entertained a motion to acknowledge that Ms. Lowry is authorized to act on behalf of the Trust with respect to the lease of 154 Conomo Point Road, with the disclaimer that the Board takes no position as to whether or not Ms. Lowry's representations of authority are accurate, and any dispute as to Ms. Lowry's authority to act for the Trust shall be solely between Ms. Lowry and anyone challenging her authority, and Ms. Lowry shall be solely responsible for defending her authority and actions as trustee, and she shall indemnify and hold the Town harmless for any claims made in connection with this acknowledgement, and further, that this acknowledgement is not intended to convey or imply any right, title, or interest in the subject property, or any portion thereof, that was not already held by the Trust, and also, that this acknowledgement does not affect the lease expiration date of December 31, 2011. The motion was moved and seconded, and all were in favor.

The Selectmen reviewed a *request from John Goldsberry*, a lessee of 11 Middle Road (Map 24, Lots 22, 23, and 33), for permission to remove a tree. Selectman Gould-Coviello moved that the Board grant Mr. Goldsberry permission to remove the tree as stated in Mr. Goldsberry's request, subject to approval of the tree warden and subject to the caveat that this permission is not intended to convey or imply any right, title, or interest in the subject property or any portion

thereof, and also, that this permission does not affect the lease expiration date of December 31, 2011. The motion was moved, seconded, and unanimously voted.

The Selectmen were reminded that they will be meeting at 7:30 a.m. on Friday, September 30, 2011, in the Library to discuss Conomo Point matters. The next regular Board of Selectmen's meeting will be on Monday, October 3rd, 2011, at 7:00 p.m. at the Senior Center on Pickering Street.

There being no further business before the Board, a motion was made, seconded, and unanimously voted to adjourn the meeting at 10:04 p.m.

Documents used during this meeting include the following:

Definitive Subdivision Plan Application for Southern Conomo Point
Fuel Oil Specifications Contract
Handout with Pictures of Parking Areas at Conomo Point
Parking Regulations
Request from Chief Silva to Accept the Gift of a Boston Whaler
Letter from Chief Silva thanking Senator Tarr & Associates
MGL c. 40, §4K – Statewide Public Works Municipal Mutual Aid Agt. Opt-In Form
Proposed Veterans' District Office Expansion
Massachusetts Municipal Association's Statewide Essay Contest for 6th Graders
Written Notice of an Intra-family Assignment of the Leasehold
Transfer of the Leasehold for 154 Conomo Point Road
Request from John Goldsberry to Remove a Tree

Prepared by: _____
Pamela J. Witham

Attested by: _____
Lisa J. O'Donnell