

Selectmen's Minutes Library

December 3, 2012

Present: Chairman Jeffrey D. Jones, Selectman Lisa J. O'Donnell, Selectman Susan Gould-Coviello, Town Administrator Brendhan Zubricki, Town Counsel Gregg Corbo, Selectmen's Assistant Pamela J. Witham, Town Clerk Christina Wright, Police Chief Peter Silva, Special Police Officer Candidate Paul C. Peoples, Steve Cuthbertson, Ida Doane, and Gloucester Daily Times Report James Niedzinski.

The Chairman called the meeting to order at 7:00 p.m. in the T.O.H.P. Burnham Public Library and announced that the Board would hear Public Comment. No one offered any comment.

Police Chief Silva came forward to introduce his new candidate for a Special Police Officer, Paul C. Peoples. Chief Silva reviewed the many qualifications of Candidate Peoples, who is currently attending the Reserve Academy. Subsequently, a motion was made, seconded, and unanimously voted to appoint Mr. Peoples to the position of Special Police Officer, contingent upon his successful completion of drug, medical, and psychological testing. The Selectmen congratulated Mr. Peoples, and both Mr. Peoples and Chief Silva left the meeting.

Mr. Zubricki reported that Town Counsel has forwarded eleven deeds for properties at southern Conomo Point that are ready to be approved and signed by the Selectmen which include the following properties:

- John & Patricia Amirault, 82 Conomo Point Road, Map 19, Lot 26
- Laura Collins, 6 Robbins Island Road, Map 19, Lot 59
- Cottage Park Realty, 7 Sumac Drive, Map 19, Lot 20
- Carl, Mildred, & Page N. Darrow, 4 Robbins Island Road, Map 19, Lot 58
- Stephen E. & Elizabeth Gammons, 2 Sumac Drive, Map 19, Lot 15
- Mary Jane Given, 100 Conomo Point Road, Map 19, Lot 57
- Paul T. Kelley & Maureen Woodman, 94 Conomo Point Road, Map 19, Lot 47
- William & Rosine Liberti, 12 Robbins Island Road, Map 19, Lot 62
- William & Rosine Liberti, 8 Robbins Island Road, Map 19, Lot 60
- Joanne, Jolinda, & Kirk W. Smith, 9 Town Farm Road, Map 19, Lot 44
- Alexander & Cynthia Y. Carco Van Hamersveld, and Jonyelle B. Ellis, 89 Conomo Point Road, Map 19, Lot 116

A motion was made, seconded, and unanimously voted to approve the deeds as listed above. Christina Wright, acting in her capacity as a notary public, asked the Selectmen to raise their right hands and to swear that they will be signing the deeds as their free act and deed. The Selectmen affirmed that that was correct and proceeded to sign the eleven deeds which were duly notarized by Christina Wright. Following the signature of the deeds, the Selectmen signed Ms. Wright's notary book.

A motion was made, seconded, and unanimously voted to have the Chairman sign the documents for the ***Fire Department's Emergency Management Performance Grant*** in the amount of \$3,000. The Chairman signed the documents which were notarized by Christina Wright.

At 7:07 p.m., citing the need to discuss the sale of real property at Conomo Point, the Chairman entertained a motion to move to Executive Session. He said discussing this matter in Open Session would be detrimental to the Town's negotiating position and invited Town Counsel and Town Administrator Zubricki to attend the session. He also announced that the Board would be returning to Open Session to take care of the remaining items on their agenda for the evening. The motion was moved and seconded, and following a unanimous Roll Call Vote, the Board, Town Counsel, Mr. Zubricki, and the Selectmen's Assistant left the Library to convene in Executive Session in the Town Hall front entry area.

The Board, Town Counsel, the Town Administrator, and the Selectmen's Assistant returned to Open Session in the Library at 7:13 p.m.

A motion was made, seconded, and unanimously voted to approve and sign the deed for the Brennenman Family Irrevocable Trust, 9 Cogswell Road, Map 19, Lot 51. The Selectmen acknowledged that they signed the deed of their own free act and deed. This document was also notarized by Christina Wright. The Selectmen thanked her and she left the meeting.

In other business, a motion was made, seconded, and unanimously voted to accept the ***resignation of Jim Rynkowski*** from the Conservation Commission.

A motion was made, seconded, and unanimously voted to approve the weekly warrant in the amount of \$720,222.95.

A motion was made, seconded, and unanimously voted to ratify the approval of the exemption from Section 20 of Chapter 268A of the General Laws the contract with Ramie Reader contained within the November 29th, 2012 Warrant pursuant to subsection (d) of said Section.

A motion was made, seconded, and unanimously voted to approve the minutes for the Selectmen's November 19th, 2012, Open Meeting and the November 19th, 2012, Executive Session.

A motion was made, seconded, and unanimously voted to acknowledge a ***communication from Senior Care*** stating that the annual grant to the Town of Essex is being reduced from \$1400 to \$1247.

The Selectmen considered a written ***request for assignment of a bridge lease***, the ***proposed assignee's written expression of their desire to accept said assignment***, and an ***acceptance of the second-year bridge lease*** with the assigner's name and signature replaced by the assignee's name and signatures for 29 Middle Road (Map 24, Lot 4) from Elizabeth Moginot to Robert & Aude Sisk. Selectman Gould-Coviello made a motion to approve the request for the assignment of the leasehold for the property at 29 Middle Road (Map 24, Lot 4) from Elizabeth Moginot to Robert & Aude Sisk pursuant to Article VIII, Section 1 of the Bridge Lease for said property, with the caveat that said Bridge Lease will expire by its term on December 31, 2013, and that nothing in this vote shall be construed as an extension of said Bridge Lease or an alteration of

any of its terms; and further, that nothing in this approval is intended to convey or imply any right, title or interest in the subject property, or any portion thereof that was not already held by Elizabeth Moginot. The motion was moved, seconded, and unanimously voted.

A motion was made, seconded, and unanimously voted to sign the Form 43 which is part of an updated application package for a transfer of license request for Lewis' Oyster House of Essex.

Mr. Zubricki reported that the tenants of the properties at 11 Cogswell Road (Map 19, Lot 52) and 19 Cogswell Road (Map 19, Lot 53), Bernice Lichtenstein and Marie McRae have requested further extensions of the closing date for these properties in order to secure financing. A motion was made, seconded, and unanimously voted to approve a signing extension through December 17, 2012, with a closing deadline of December 31, 2012.

At 7:23, citing the need to discuss the lease, sale, and value of real property at Conomo Point; pending litigation concerning the case of Judson Pratt, et al. v. the Town of Essex, Essex Superior Court C.A. No. ESCV2012-00936B; collective bargaining issues in reference to AFSCME, Teamsters, and the EPBA; and the Legal Complaint by Walker et al. Regarding Bridge Lease Rates; the Chairman entertained a motion to move to Executive Session. He said that discussing these matters in Open Session would be detrimental to the Town's negotiating and bargaining strategies, and invited Town Counsel and Mr. Zubricki to attend the session. He said that the Board would be returning to Open Session in approximately one hour. The motion was moved and seconded. And, following a unanimous Roll Call Vote, all others left the room and the Board moved to Executive Session.

The Board, Town Counsel, Mr. Zubricki, and the Selectmen's Assistant returned to Open Session at 8:34. Town Counsel left the meeting and Ida Doane, Steve Cuthbertson, and Gloucester Daily Times Report James Niedzinski were invited to rejoin the meeting.

A motion was made, seconded, and unanimously voted to approve the requests for licenses, permits, and renewals (Selectman Gould-Coviello abstained from voting on and signing the renewals for Robert Coviello, Robert C. Coviello Antiques, at 155 Main Street and for Robert Coviello, Main Street Antiques, at 44 Main Street.):

One-Day Wine and Malt License:

- Teri Eramo, Eventide Art Gallery, for use on Saturday, December 8, 2012, between the hours of 5:00 and 9:00 p.m. within the confines of 63 Main Street

Antiques License Renewals:

- Vincent W. Caravella, The Scrapbook, at 34 Main Street
- Robert Coviello, Robert C. Coviello Antiques, at 155 Main Street
- Robert Coviello, Main Street Antiques, at 44 Main Street
- Joseph Danna, Conomo Point Antiques, at 166 R Eastern Avenue
- Robert W. Hanlon, Walker Creek Furniture, Inc., at 57 Eastern Avenue

- Edwin M. & Laura B. Howard, Howard's Flying Dragon Antiques, at 136 Main Street
- Channing Howard, Howard's Visual Merchandise
- Robert Landry, L.A. Landry Antiques, at 164 Main Street
- James P. Lower, New England Joinery, at 85 Southern Avenue
- Michael March, Blackwood March Antiques, at 3 Southern Avenue
- Kenneth Monroe, Americana, at 48 Main Street
- Andrew Spindler Roesle, Andrew Spindler Antiques, at 163 Main Street
- A.P.H. Waller, Joshua's Corner, at 2 Southern Avenue
- A.P.H. Waller, A.P.H. Waller & Son, at 140 Main Street

Automatic Amusement Device License Renewal:

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

Class II License Renewals:

- John Heath, Essex Falls Auto Body, at 1 Moses Lane
- Scott Woodward, Pike Marine, Inc., at 80 Main Street
- Scott Savory, Scott's Auto Clinic, Inc., at 6 Scott's Way

Common Victualler's License Renewals:

- BN FARM LLC, d/b/a The Farm, Bradley Atkinson, Manager, at 233 Western Avenue
- Cape Ann Golf Course Corp., d/b/a Fairway Pub, James N. Stavros, Manager, at 99 John Wise Avenue
- Chebacco Liquor Mart Inc., John D. Chisholm, Manager, at 201 Western Avenue
- Driftwood of Essex, Inc., d/b/a Lewis Oyster House of Essex, John Broderick, Manager, at 234 John Wise Avenue
- Eben Creek Corporation, d/b/a J.T. Farnhams, Joseph K. Cellucci, Manager, at 88 Eastern Avenue
- Essex Fortune Palace, Inc., d/b/a Fortune Palace, Fang Liaw, Manager, at 99 Main Street
- Greenbow Corporation, d/b/a Shea's Riverside Restaurant & Bar, Carol E. Shepard, Manager, at 122 Main Street
- MAIA LLC, d/b/a Dunkin Donuts, Roy Serpa, Manager, at 125 Main Street
- Riverside Bistro Inc., d/b/a Riverside Bistro, Xun Jie Zheng, Manager, at 112 Main Street
- Towne Landing Inc., d/b/a Periwinkles, Thomas L. Guertner, Manager, at 74 Main Street
- Village Restaurant of Essex, Inc., d/b/a The Village Restaurant, Kevin Ricci, Manager, at 55 Main Street
- Windward Grill LLC, d/b/a Windward Grille, Timothy Kennefick, Manager, at 109 Eastern Avenue

- Woodman's Incorporated, d/b/a Lobster Pool, Stephen B. Woodman, Manager, at 119 Main Street
- Woodman's Inc., d/b/a Woodman's Function Hall & Lobster Trap Pub, Stephen B. Woodman, Manager, at 125 Main Street

All Alcohol Restaurant License Renewals:

- BN FARM LLC, d/b/a The Farm, Bradley Atkinson, Manager, at 233 Western Avenue
- Cape Ann Golf Course Corp., d/b/a Fairway Pub, James N. Stavros, Manager, at 99 John Wise Avenue
- Driftwood of Essex, Inc., d/b/a Lewis Oyster House of Essex, John Broderick, Manager, at 234 John Wise Avenue
- Essex Fortune Palace, Inc., d/b/a Fortune Palace, Fang Liaw, Manager, at 99 Main Street
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- Village Restaurant of Essex, Inc., d/b/a The Village Restaurant, Kevin Ricci, Manager, at 55 Main Street
- Windward Grill LLC, d/b/a Windward Grille, Timothy Kennefick, Manager, at 109 Eastern Avenue
- Woodman's Incorporated, d/b/a Lobster Pool, Stephen B. Woodman, Manager, at 119 Main Street
- Woodman's Inc., d/b/a Woodman's Function Hall & Lobster Trap Pub, Stephen B. Woodman, Manager, at 125 Main Street

All Alcohol Package Store Renewal:

- Chebacco Liquor Mart Inc., John D. Chisholm, Manager, at 201 Western Avenue

Wine and Malt Restaurant License Renewal:

- Eben Creek Corporation, d/b/a J.T. Farnhams, Joseph K. Cellucci, Manager, at 88 Eastern Avenue

Sunday Entertainment License Renewal:

- Woodman's Inc., d/b/a Woodman's Function Hall & Lobster Trap Pub, Stephen B. Woodman, Manager, at 125 Main Street

Weekday Entertainment License Renewal:

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

- Cape Ann Golf Course Corp., d/b/a Fairway Pub, James N. Stavros, Manager, at 99 John Wise Avenue
- Greenbow Corporation, d/b/a Shea's Riverside Restaurant & Bar, Carol E. Shepard, Manager, at 122 Main Street
- Riverside Bistro Inc., d/b/a Riverside Bistro, Xun Jie Zheng, Manager, at 112 Main Street
- Towne Landing Inc., d/b/a Periwinkles, Thomas L. Guertner, Manager, at 74 Main Street
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The Selectmen were reminded that there will be an informational forum, co-sponsored by the Board of Selectmen, the Conomo Point Planning Committee, and Brown Sardina at the Essex Elementary School, starting at 7:00 p.m. on Thursday, December 6, 2012.

The next regular Board of Selectmen's meeting will take place on Monday, December 17th, 2012, at 7:00 p.m. in the Library on Martin Street.

Mr. Zubricki began the presentation of his Town Administrator's Report for the period November 24th through November 30th, 2012 regarding the following:

Conomo Point Planning Committee Meeting: Mr. Zubricki reported that arrangements are continuing for the public forum that is planned for this Thursday evening regarding design options for use of northern Conomo Point. Mr. Zubricki has arranged for Essex Radio to provide a sound system and microphones for the forum. And, Brown Sardina will be showing a power-point presentation illustrating some of the Town's design options for the area.

Town Building Committee Meeting: Mr. Zubricki reported that the Town Building Committee had met recently to consider the proposed renovations to the Town Hall and the Selectmen reviewed the updated **Priority Chart**. The Committee also recommended that the Board pursue the public safety center capital need before the Town Hall/Library capital need.

Continued Review of Draft FY14 Capital Plan: Mr. Zubricki said that he had developed the **Selectmen's Capital Plan** to include a plan for a new public safety building in 2016. Those present agreed that it should be listed in 2014 instead, in accordance with the Town Building Committee's recommendation.

Repair of Fire Station Roof: Mr. Zubricki reported that the Fire Station roof is leaking and the repair project has been sent out to bid. The bidding will close on December 12th, 2012. A motion

was made, seconded, and unanimously voted to sign the contract outside of a meeting as soon as there is a confirmed bid from a credible bidder.

Health Insurance Reform Law – Adoption of Statutes: Mr. Zubricki said that he would like to recommend that the Selectmen adopt the necessary statutes to enable the Town to choose an alternative health plan if it deems it advisable in the future. However, he said that he and the Selectmen needed to make certain declarations before they could proceed to consider the adoption of the Health Care Reform Act Statutes.

Mr. Zubricki proceeded to read the following statement, "I am the appointed Town Administrator of the Town of Essex. As a full-time employee of the Town, I am eligible to participate in the Town's contributory health insurance program. For that reason, any changes in plan design, including coverage and or co-payment costs, may have a financial impact on me. Although it is arguable that such changes may only be "indirect" or "remote and speculative", it is also possible that they could be deemed to be "direct and foreseeable" for purposes of the law.

As you are aware, costs of health insurance for employees and current and future retirees are a significant portion of the municipal budget and the Town's future liability, and this situation is repeated throughout the vast majority of cities and towns in the commonwealth. As Town Administrator, my job is to help the Board, the Town's financial staff, and the Finance Committee plan to fund such costs, both for the short and long term, and meet the Town's other financial and programmatic needs, balancing such competing needs in the most appropriate way for the Town of Essex. This work is part and parcel of my charge as Town Administrator, and I can assure you that any consideration of my personal financial position as it relates to these big picture items is inconsequential, and will not affect the integrity of the services that the Town of Essex may expect from me. I am therefore requesting an exemption under G.L. c.268A, §19(b)(1) to allow me to work on the issue of health insurance generally, including but not limited to analyzing, advising, and administering matters related to potential action by the Board under G.L. c.32B, §§21-23 to change group health insurance benefits pursuant to said statutes, including plan design issues. I will undertake any such work consistent with applicable laws and regulations, in the best interests of the Town, and without respect to any financial implications such matters may have on my personal financial interest as that term is defined for purposes of the Conflict of Interest Law. This request for exemption should also be considered a disclosure under the provisions of G.L. c.268A, §23(b)(3)."

The Board listened to Mr. Zubricki's statement and unanimously agreed that Mr. Zubricki would discharge his duties without undue influence and signed the recommended Ethics Division form.

Selectman Gould-Coviello that proceeded to read the following, "Before we begin, I would ask that the record reflect that none of the members of the Board are participants in the Town's health insurance plan. However, pursuant to the provisions of G.L. c.32B, §2(d), as compensated elected officials we are eligible to participate in the Town's contributory health insurance program, and may also qualify at retirement for health insurance benefits. While we do not believe that we are technically disqualified by the Conflict of Interest Law from participating in

discussions concerning adoption of a new process for effecting changes to health insurance plan benefits, or votes with respect thereto, we have concerns that our interests as described could ultimately be found to constitute a "financial interest" for purposes of the Conflict of Interest Law, and in particular G.L. c.268A, §19. If none of us were to participate, however, that would obviously leave the Board without a quorum to act on these important matters, and the Board is the only entity under state law authorized to take such action. There is a mechanism approved by the State Ethics Commission, called the "Rule of Necessity", that would allow the members with conflicts under the law to participate if the Board cannot reach a majority to act due to conflicts. When properly invoked, the "Rule of Necessity" allows, but does not require, each member of the Board with a conflict to participate and vote. I offer into the record a copy of an opinion letter from the General Counsel for the State Ethics Commission dated September 2, 2011 which addresses the specific subject of health insurance and supports the use of the Rule where the majority of a board of selectmen have conflicts, and state for the record that consultation has also been had with Town Counsel about this issue. Again, while it is possible that our individual interests are not prohibited "financial interests" for purposes of the Conflict of Interest Law, I feel it is best to inform you of the existence of the Rule of Necessity, and its availability to allow the Board to act, and to invoke the Rule based upon the circumstances as described.

For all these reasons, as the Chairman of the Board [Chairman Jones attested to this statement], I hereby invoke the Rule of Necessity to allow all Board members to participate in the discussion and vote on the provision of health insurance to employees and retirees under G.L. c.32B, including but not limited to the health insurance plan, changes to benefits, and/or other design changes, where such members are eligible to participate in the Town's contributory health insurance program now, and may also be eligible at retirement to so participate.

Moreover, I note that even if it is not necessary to invoke the Rule of Necessity under the current circumstances, the Conflict of Interest Law, G.L. c.268A, §23(b)(3), requires municipal employees to disclose matters that might otherwise suggest an appearance of a conflict of interest. In this case, the fact that I am eligible for health insurance as a "municipal employee" or as a retiree may create an appearance that I would act on such matters as a result of undue influence, bias, or kinship. In this case, therefore, I wish to disclose that such matters will not affect my decision making with respect whether to adopt the provisions of G.L. c.32B, §§21-23 or discuss and vote on the specifics of health insurance plan design or any other matters related to health insurance for employees and retirees. Instead, where health insurance costs, and therefore the related matter of plan design and other elements related to the provision of health insurance, constitute a significant portion of the current municipal budget and future liability of the Town, all deliberation and voting with respect to such matters will be in accord with applicable law and regulations, and based upon the best interests of the Town as a whole for both the short and long term."

The Board unanimously agreed that none of their members would act with any undue influence and the Chairman signed the recommended Ethics Division form to be filed with the Town Clerk.

Subsequently, a motion was made, seconded, and unanimously voted, pursuant to the provisions of G.L. c.32B, §21(a), to elect to change group health insurance benefits through the process authorized by G.L. c. 32B, §§21 through 23.

Manchester Essex Regional School District Budget Planning Meeting: Mr. Zubricki said that he and Selectman Gould-Coviello had attended a follow-up budget meeting in Manchester last week. Items that were discussed included focusing on ways to save money, needed repairs to both elementary schools, and staffing. A preliminary public hearing is planned on December 12, 2012 to discuss the proposed budget. There will be additional meetings of the finance committees, the Select Boards, and School Committee Representatives on January 18 and 22, 2013. A second hearing is planned for January 29, 2013, when the final budget will be adopted.

Under additional items to be considered tonight, Mr. Zubricki said that Sarah and Kristen Wainwright have requested an additional extension to consider the purchase and sale agreement for their leased property at 8 Sumac Drive (Map 19, Lot 17) due to the unexpected death of both their parents within a month of each other. A motion was made, seconded, and unanimously voted to grant their request for an extension through December 17, 2012.

The Selectmen considered a request from Daniel Mayer for an extension of the closing date for the three southern Conomo Point properties that he leases: 6 Sumac Drive (Map 19, Lot 16), 12 Town Farm Road (Map 19, Lot 40), and 98 Conomo Point Road (Map 19, Lot 56). After some discussion, a motion was made, seconded, and unanimously voted to grant an extension through January 31st, 2013, contingent upon Mr. Mayer providing by December 31, 2012 verification of bank financing commitments and payment of January's rents for those properties based on the Second Year Bridge Lease amounts.

Mr. Zubricki said that he had received an inquiry from the Historical Commission on whether there is any interest in moving the old freight shed on Island Road to Town land. The building used to be situated many years ago behind the Town Hall and was used as a baggage shed by the railroad. The Historical Commission has said that they might be able to arrange to have the building given to the Town, and then the Town would be responsible for paying for the costs involved in moving the structure to a new site and any renovation. Recently, a demolition permit had been applied for by the owner of the building, and, based on the Town's new demolition bylaw, the Historical Commission has four months to arrange for an alternative solution. After some discussion, Mr. Zubricki said that he would find out if Community Preservation Funds could be used to save the building and whether the Department of Public Works would approve the building's relocation to Town land. The owner would have to agree to wait until the Annual Town Meeting to know whether the Town will fund this project.

The Chairman said that he had been contacted by Kurt Wilhelm who has an 8' x 12' flag that he would like to donate to the Town. Mr. Zubricki will inform Mr. Wilhelm that the Town does not have a high enough flagpole for a flag of that size.

There being no further business before the Board, a motion was made, seconded, and unanimously voted to adjourn the meeting at 9:05 p.m.

Documents used during this meeting include the following:

Fire Department's Emergency Management Performance Grant
Resignation of Jim Rynkowski
Communication from Senior Care
Request for Assignment of a Bridge Lease
Proposed Assignee's Desire to Accept Assignment
Acceptance of the Second-Year Bridge Lease
Priority Chart
Selectmen's Capital Plan

Prepared by: _____
Pamela J. Witham

Attested by: _____
Lisa J. O'Donnell