

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

September 10, 2012

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

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. Ms. Thayer Adams said that she supported the Town re-joining the Northeast Mosquito Control District and hoped that the Board would consider that when developing the next annual budget. She indicated that she hoped a solution could be worked out for elderly Conomo Point tenants on a fixed income with the Conomo Point leasehold being their sole residence. She pointed out that residents of Conomo Point presently mow the grass along the front of the Point and that the stone pier is in need of repair. Ms. Adams also indicated that she and others hoped that the Town would be allowed by the court soon to improve the situation involving a dilapidated structure at 138 Conomo Point Road.

At 7:01 p.m., Mr. Richard Tofuri approached the Board to discuss Bridge Lease rent reduction and his pending purchase and sale agreement for a leasehold in Southern Conomo Point. He asked for an extension to the signing deadline for his purchase and sale agreement since he would not be able to purchase the property himself and needed time to find another party interested in buying the property. He explained that he is on a fixed income, which presents a hardship, and that he had been under the impression when he first started leasing that the year-round privilege at the leasehold would be something perpetual, even if he sold his interest to another party, making his interest more valuable. Mr. Tofuri also requested a reduction in the \$5,000 deposit that is required to accompany a signed purchase and sale agreement. Mr. Zubricki explained that Mr. Tofuri qualifies for \$750 in annual rent reduction since he meets certain criteria found in the Bridge Lease and a motion was made and seconded to ratify Mr. Tofuri's recent rent payment which totaled \$750 less than the quarterly amount due and all were in favor. The Board explained that these requests would be taken under advisement.

At 7:15 p.m., Ms. Jean Appelfofft and her son-in-law, Mr. John Cummings, approached the Board to discuss her pending purchase and sale agreement for a leasehold in Southern Conomo Point. Mr. Cummings requested that the Board grant Ms. Appelfofft a perpetual year-round privilege at the property she now leases since it would allow Ms. Appelfofft to more easily find a party interested in purchasing the property from the Town. He explained that it had been his experience that buyers are not as interested in seasonal properties as they are in year-round properties and that it is harder to obtain a mortgage on a seasonal property than on a year-round property. Mr. Cummings asked that, if the perpetual right could not be granted, the Board consider allowing Ms. Appelfofft to continue to rent the property. He stated that she also needed a reduction in the \$5,000 deposit and an extension of time for signing the purchase and sale agreement. The Board explained that these requests would be taken under advisement.

At 7:30 p.m., Mr. Al Landry and Ms. Jane Powers, two leaseholders approached the Board to discuss their pending purchase and sale agreement for a leasehold in Southern Conomo Point.

Mr. Landry explained that he had met with the Town Administrator and the Board indicated that they were taking up the topics that he had discussed with the Administrator for the first time as a group at the meeting. Mr. Landry and Ms. Powers explained that Mr. Landry is on a fixed income and requested that Mr. Landry be allowed to continue to rent the property. They also asked if the signing date for the pending purchase and sale agreement could be extended. The Board explained that these requests would be taken under advisement.

Mr. Zubricki began the presentation of his Town Administrator's Report for the period August 18th, 2012 through September 7th, 2012, regarding the following items:

Conomo Point Planning Committee Update: Mr. Zubricki explained that the Conomo Point Planning Committee RFS Subcommittee had been continuing to revise a ***draft Request for Services (RFS)*** for planning and design services at northern Conomo Point. The Subcommittee had met on September 6, 2012 and Mr. Zubricki had been asked to review the most recent iteration of the RFS. Mr. Zubricki provided his comments and suggested edits to the Board and the Board was in agreement with that content. Selectmen Coviello called the Board's attention to a section of the RFS that read: "The project deliverables are intended to detail the highest & best land use options for Northern Conomo Point with a focus on maximizing public access improvements and for the enjoyment of Northern Conomo Point for all the residents of Essex." Given that the Board feels that the term "highest & best" should be sufficient for a consultant to consider the access issues, along with other issues such as financial implications of given scenarios, they do not wish to limit the focus in any way. As such, they would like to see the sentence revised as follows: "The project deliverables are intended to detail the highest & best use options for Northern Conomo Point." Mr. Zubricki said that he would pass along that input to the Chairmen of the full committee and the subcommittee.

Mr. Zubricki also indicated that Chairman Lynch had asked for the Board's input on potentially hiring a consultant to serve as the Town's technical advisor at all or some of the stages of the RFS and the eventual design project. The Board agreed that this arrangement could be very beneficial to the project and its outcome and suggested that consultant Nicholas Cracknell be invited to a Selectmen's meeting on September 17, 2012 to discuss the idea along with Chairman Lynch. Mr. Cracknell's involvement could certainly help with the transition from the design project back to the northern zoning bylaw project that was put on hold back in May.

Board of Health Consideration of Mosquito-Borne Disease: The Board agreed given the recent confirmation of the close proximity to Essex of mosquitos carrying disease that joining the Northeast Mosquito Control District should be explored for as early as the beginning of the next mosquito season. Mr. Zubricki will determine if there is a way to get started with a Town Meeting vote in November so that the Town could potentially join the District for spring management (as opposed to waiting until July 1, 2013).

Essex Cultural District Update: Selectman Coviello commented that the process for approving the new Essex Cultural District was going very well and that the State is working with the Town to establish the best possible boundary delineation before the approval process advances further.

At 8:00 p.m., the Board of Public Works and Superintendent of Public Works Paul Goodwin approached the Board to discuss the revision of Sewer Bylaws and Regulations and the future use of a portion of Spring Street Cemetery. Mr. Zubricki explained that three major issues had prompted all parties to recommend a simple extension of the sewer flow moratorium back in May, as opposed to a proposal on the warrant to allow increases under certain circumstances. The issues were: whether the fee for additional flow was priced too low; whether the proposed changes to the bylaw would inadvertently remove a requirement that those with vacant lots in the Sewer Service Area were required to pay the balance (60%) of the original betterment upon development of the property; and whether the bylaw should seek to impose limitations on approvals for additional flow, in order to avoid speculative practices. After much discussion, both the Board of Selectmen and the Board of Public Works agreed that the fee formula as presented in May was appropriate and should be re-proposed "as-is" in November; that Mr. Zubricki should work with Town Counsel to ensure that the original vacant lot payment rules were left intact (as originally intended); and that the proposal should require any request for additional flow to be tied to a specific building permit application only for the specific amount of flow required for that activity and that if the project was not completed within one year, the flow approval would expire and the fee would be lost.

The group also discussed the possibility of changing the purpose of a portion of the Spring Street Cemetery property abutting John Wise Avenue (now under the care and custody of the Board of Public Works for cemetery purposes) to general purpose land (under the care of the Board of Selectmen). The change is necessary if the Town is to move forward on a potential future project to site a new public safety facility in that location. In order for the Town Meeting to vote on changing the purpose of the land, the Board of Public Works must first vote to declare the property surplus. The Board of Public Works agreed to take the matter under advisement.

The group discussed the status of the contract with solid waste contractor Covanta and the process that was used to arrive at a recent Order of Conditions for the maintenance clearing of the Alewife Brook. The Board of Public Works and the Superintendent left the meeting. The Board discussed the present proposal for a three-day transfer station schedule (effective January 1, 2013) and asked Mr. Zubricki to pass along to the Superintendent and Board of Public Works that they favored simply dropping Friday (leaving Monday, Wednesday, and Saturday).

Mr. Zubricki continued with the presentation of his Town Administrator's report.

Town Hall/Library Health, Safety & Working Environment Design:

Mr. Zubricki explained that the designer working on this project had held conference calls involving him and various sub-consultants earlier in the day. One sub-consultant that is working on the basement de-watering asked whether the Board would prefer an interior approach versus a more intrusive, but possibly more effective, exterior approach. The Board indicated that they are only interested in exploring the exterior approach. Mr. Zubricki also explained that the sub-consultant working on the mechanical and electrical issues had recommended a variety of items

that were not even on the Town's initial list. The Board agreed that a fire alarm system replacement, an emergency lighting upgrade, and exit sign repairs should be added to the scope of work (at an approximate cost of \$60,000). The Board discussed other items and they need more information on the overall project cost estimate before deciding on final selections. Mr. Zubricki will pass all of the above back to the designer so that they can begin to formulate a cost estimate for choices made thus far, plus all of the items that the designer is working on directly. The Board will take another pass at the potential work elements as compared to the available budget at a future meeting.

Successor Solid Waste Disposal Agreement: Mr. Zubricki explained that the Board can expect a final signed Agreement from Covanta (compliant with Town Counsel's comments) in the near future, with an effective date of January 1, 2013.

Ship's Wheel Monument Positioning: The Board agreed to conduct a site visit with Mr. William Bradford in the near future to better understand his ideas for potentially adjusting the position of the ship's wheel monument on the Town Landing property. Mr. Zubricki will work to set that up.

Potential November Special Town Meeting: The Board reviewed a *draft list of potential topics* for a Special Town Meeting, potentially on November 5, 2012. Mr. Zubricki will develop a draft warrant for the Board's review at an upcoming meeting.

Draft Kennel Bylaw: Mr. Zubricki explained that the Dog Officer had recommended a *kennel bylaw* to regulate future kennels in Town. Attorney Corbo explained that a recent change in State Law would drastically affect both existing Town dog bylaws and whether new ones can legally be implemented. He recommended that this topic be tabled until after more is known about the effects of the change in law.

The Board next took up its Other Business items as follows:

A motion was made, seconded, and unanimously voted to approve the weekly warrant.

A motion was made, seconded, and unanimously voted to approve and sign the minutes for the August 20th, 2012, the August 24th, 2012, and the August 27th, 2012, Selectmen's Open Meetings; and, the August 20th, 2012, the August 24th, 2012, and the August 27th, 2012 Selectmen's Executive Sessions.

A motion was made, seconded, and unanimously voted to appoint Jonathan Henriquez and Chad Lipinski, each, to the position of Police Officer, Part-Time, contingent upon successful completion of drug and medical screens.

A motion was made, seconded, and unanimously voted to accept the resignation from the Conservation Commission from Joe Ahearn.

A motion was made, seconded, and unanimously voted to accept the resignation from the Conservation Commission from Phil Caponigro.

A motion was made, seconded, and unanimously voted to approve and sign an application to the ABCC for a change of manager for Shea's Riverside Restaurant & Bar.

The Board briefly discussed *various letters from Conomo Point tenants concerning Purchase & Sale Agreements* they have been provided with. The Board indicated that those letters would be discussed with Town Counsel in executive session.

Mr. Zubricki explained that he had recently been informed that a grant known as the Massachusetts Downtown Initiative Grant (MDI), concerning which the Town has had two grant applications turned down in the past, may be looked upon more favorably if the area of focus for the grant is also within a Cultural District. Since the Town is presently in the process of forming a Cultural District, and since the deadline for this year's MDI grant applications is September 28, 2012, it was suggested that the Town re-submit its most recent (2010) MDI application in hopes of funding – pointing out our new Cultural District undertaking. The Board was in agreement and a motion was made and seconded to authorize the Chairman to sign a resubmittal application once prepared by Mr. Zubricki and all were in favor.

Mr. Zubricki explained that the Fire Chief had informed him of a need to have Mr. Henry Peter Hoare appointed as a Probationary Firefighter. A motion was made and seconded to make that appointment and all were in favor.

At approximately 9:00 p.m., citing the need to discuss:

- the lease, sale, and value of real property at Conomo Point.
- pending litigation concerning the case of the Town of Essex vs. the Estate of Judith H. Foley, Northeast Housing Court C.A. No. 09H77SP003249.
- pending litigation concerning the case of Judson Pratt, et. al. vs. the Town of Essex, Essex Superior Court C.A. No. ESCV2012-00936B.
- a potential easement over Town land for the benefit of Demeter, Map 3, Lot 19, Southern Avenue.
- a potential easement over Town land for the benefit of Gardner and Patel, Map 3, Lots 21 and 14, 280 and 284 Southern Avenue.
- pending litigation concerning the case of the Town of Essex vs. William Allen, Essex Superior Court C.A. Nos. ESCV2002-00352, ESCV2006-00313, and ESCV2007-02096.
- pending litigation concerning the case of Appellants vs. the Town of Essex Board of Assessors, ATB Docket No. X305092 – Executive Session expected.

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 litigating strategies. The Chairman stated that the Board would be returning to Open Session only to adjourn the

meeting and invited the Town Administrator and Town Counsel to attend the Executive Session. The motion was moved, seconded, and following a unanimous Roll Call Vote, the Board moved to Executive Session.

The Board returned to Open Session at approximately 11:05 p.m.

There being no further business before the Board, a motion was made, seconded, and unanimously voted to adjourn the meeting.

Documents used during this meeting include the following:

Draft Request for Services (RFS)

Draft List of Potential Topics for a Special Town Meeting

Proposed Kennel Bylaw

Various Letters from Conomo Point tenants concerning Purchase & Sale Agreements

Prepared by: _____
Brendhan Zubricki

Attested by: _____
Lisa J. O'Donnell