

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

February 11, 2013

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

Also Present: Attorney Sal Frontiero, Bhavikaben J. Patel, Jignesh Patel, Deborah French, April Wanner, Helen Bethell, Vickie Cataldo, Nick Cracknell, John Bediz, Ray Randall, Mark Lynch, Jim Witham, and Steve Cuthbertson.

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. Librarian Debbie French said that she would like to thank Superintendent Paul Goodwin and his department for doing an excellent job removing snow throughout the Town during this past weekend's blizzard of 2013. Mr. Zubricki said that Superintendent Goodwin had asked him to inform the Selectmen that Ernie Nieberle had been an enormous help during the storm. Mr. Nieberle had kept his service station open continually to supply fuel to the equipment and personally performed repairs to damaged snow removal vehicles, replacing broken parts, etc. during the 2-day storm. The Selectmen suggested that a letter of thanks be sent to Mr. Nieberle, recognizing his outstanding contribution. The idea was moved, seconded, and unanimously voted.

Debbie French and April Wanner left the meeting.

Attorney Sal Frontiero came before the Selectmen with his clients who are seeking a transfer of the annual wine and malt package store license from SC Market, d/b/a Schooner's Market, Arian Litton, Manager, to Fenisha Corporation, d/b/a Schooner's Market, Bhavikaben J. Patel, Manager, at 121 Eastern Avenue. The Chairman entertained a motion to open the hearing. The motion was moved, seconded, and unanimously voted. Chairman Jones then asked Attorney Frontiero to give a brief summary of the Patel's request. Attorney Frontiero introduced Bhavikaben and Jignesh Patel, who currently own three other similar stores in Gloucester and Athol. The other three stores are doing well. Following Mr. Frontiero's remarks, the Chairman asked if anyone else wished to speak and no one did. A motion was made, seconded, and unanimously voted to close the hearing. The Selectmen were in agreement and a motion was made, seconded, and unanimously voted to approve the Patel's request for a transfer of license. The Selectmen signed the application form. The entire application package will be forwarded tomorrow by the Licensing Clerk (Selectmen's Assistant) to the Alcoholic Beverages Control Commission for their approval. The Selectmen congratulated Attorney Frontiero and his clients, who thanked the Selectmen and left the meeting.

Mr. Zubricki began the presentation of his Town Administrator's Report for the period January 26th through February 8th, 2013, regarding the following items:

Suggestions for Shellfish Regulation Changes: Mr. Zubricki reminded the Selectmen that at their last meeting, the Shellfish Constable had suggested some amendments to the Town's Shellfish Regulations. Those suggestions included banning commercial harvesting of oysters, offering a discount to the fee charged for commercial shellfishing permits in exchange for assistance with the ongoing shellfish reseeding project, and banning shellfish harvesting when the weather temperature drops to below 28 degrees Fahrenheit. Mr. Zubricki said that he had discussed the Town's ability to ban the harvesting of oysters with the State Division of Marine Fisheries and that it is within the Town's jurisdiction to make the ban. Mr. Zubricki will produce draft changes and will have those reviewed by the Shellfish Constable, Town Counsel, and the Division of Marine Fisheries, as necessary. The Selectmen agreed that the opinion of the Shellfish Advisory Commission should be solicited as well before voting to change the regulations.

Potential Rescheduling of Annual Town Election: Mr. Zubricki said that this year there are two scheduled State elections: on April 30th and on June 25. The Town may elect to move the Town's election, which is currently scheduled for May 13, to the April 30th date. If the Town elects to move the Town election, the State will pay for all expenses the Town incurs for the election. Mr. Zubricki said that the June date was not feasible since it does not fit within the proscribed time period in relation to the Annual Town Meeting. The Selectmen decided to discuss the matter with the Town Clerk and the Finance Committee at their next meeting before making a decision.

FEMA Hazard Mitigation Grant for Generator, Town Hall: Mr. Zubricki reported that it may be possible to obtain FEMA grant funding to purchase and install a generator at the Town Hall. The application is required to be made before March 15th. The Selectmen were in favor of submitting an application and a motion was made, seconded, and unanimously voted to authorize Mr. Zubricki to prepare and submit the application.

In other business, a motion was made, seconded, and unanimously voted to approve the weekly warrant in the amount of \$209,640.74.

A motion was made, seconded, and unanimously voted to approve the minutes for the Selectmen's January 28th, 2013, Open Meeting and the January 28th, 2013, Executive Sessions I and II.

A motion was made, seconded, and unanimously voted to ratify the state of emergency called by the Chairman that commenced at noon on Friday, February 8th, 2013. A second motion was made, seconded, and unanimously voted to ratify the lifting of the state of emergency associated with the February 8th, 2013 snowstorm, on Monday, February 11, 2013 at 12:00 noon.

A motion was made, seconded, and unanimously voted to accept a donation of \$100.00 to the Fire Department from Megan Means Williams of 30A Belcher Street at the *recommendation of Fire Chief Dan Doucette*.

Mr. Zubricki said that he had received a request for Reserve Police Officer Buy-Back of Time from Paul Francis, James Romeos, and Ryan Davis. He explained he has researched the request and that it would not increase the Town's present operating budget. A motion was made, seconded, and unanimously voted to approve the request and to authorize Mr. Zubricki to sign the necessary documents.

Helen Bethell and Vickie Cataldo of the Manchester Essex Conservation Trust came before the Selectmen to request approval of a conservation restriction for Map 6, Lot 9 on Southern Avenue. The Selectmen reviewed the location of the property and a motion was made, seconded, and unanimously voted to approve and sign the application. Selectman Gould-Coviello and Selectman O'Donnell signed the documents. Chairman Jones said that he would make arrangements to meet with the Town Clerk, so she could witness his signature on the documents in her capacity as a notary public. A copy of the completed documents that are filed with the Registry will be forwarded to the Selectmen's Office. Helen Bethell and Vickie Cataldo thanked the Selectmen and left the meeting.

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

One-Day Auction Permits:

- Richard DiFillipo, R.A. DiFillipo Antiques & Auctions, for use on Tuesday, March 19, 2013, between the hours of 8:30 a.m. and 10:30 p.m. within the confines of 125 Main Street.

Senior Commercial Clamming Permits:

- Norman A. Burnham
- Dan Marshall

Commercial Clamming Permits:

- Judson Lane
- Peter Wilson

Non-Resident Recreational Clamming Permits:

- Chester M. Sullivan of Methuen, sponsored by Edwin C. Perkins.

Renewal of Class II License:

- Eric Holdsworth, Portside Auto, at 166 Eastern Avenue

The Selectmen reviewed a request for a transfer of the Class II License for Dynamic Auto Brokers to move their place of business from 14 Laurel Lane to 147 Eastern Avenue. The Selectmen were in agreement that the same restriction should apply. A motion was made, seconded, and unanimously voted to approve the transfer for Dynamic Auto Brokers to 147 Eastern Avenue with the restriction that there would be a limit of 16 cars maximum at one time,

that all work is to be done inside the building, the business may operate from 8:00 a.m. to 6:00 p.m., Monday through Saturday and will be closed on Sunday.

The Selectmen were reminded that the next Cape Ann Chamber of Commerce Business After Hours meeting will be held on Tuesday, February 12, at Pigeon Cove Circle, 6 Breakwater Avenue, Rockport, from 5:00 to 7:00 pm. The fee for members at the door is \$20.00.

The next regular Board of Selectmen's meeting will take place on Monday, February 25th, 2013, at 7:00 p.m. in the Library on Martin Street.

Third (Final) Northern Conomo Point Public Forum: Mr. Zubricki said that the final forum had been held and went well.

Conomo Point Planning Committee Chair Mark Lynch and CPPC members John Bediz, Ray Randall, and Jim Witham, consultant Nick Cracknell, and Town Counsel joined the Selectmen and Mr. Zubricki in a discussion regarding the next steps in the planning process for the future design of northern Conomo Point. It was decided that one, possibly two, Selectmen and Mr. Zubricki will attend the next Planning Board meeting on February 20th, to begin discussing a central Conomo Point zoning district bylaw, which would include the Beach Circle and Robbins Island areas only. The Planning Board Chair will be asked for an appointment and the Selectmen's Assistant will post the Board for the meeting with the Planning Board, once the time is determined. Nick Cracknell agreed to give a presentation at the March 6th meeting of the Planning Board and to be present with Brown Sardina President Jim Heroux for a Central Zoning District Public Forum on March 20th. Everyone present also agreed that they would like Brown Sardina to provide a written executive summary regarding their design ideas that they have presented at the past three public forums for northern Conomo Point.

Nick Cracknell, Mark Lynch, John Bediz, Ray Randall, and Jim Witham left the meeting.

At 7:55 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. v. the Town of Essex, Essex Superior Court C.A. No. ESCV2012-00936B; pending litigation concerning the case of Richard D. Rettberg, et al. v. Board of Assessors of the Town of Essex, ATB Docket No. F317827; pending litigation concerning the case of the Town of Essex v. William Allen, Essex Superior Court C.A. Nos. ESCV2002-00352, ESCV2006-00313, and ESCV2007-02096; pending litigation concerning the case of Walker et al. v. The Town of Essex, Essex Superior Court C.A. No. ESCV2012-02221; collective bargaining Issues with AFSCME and the EPBA; and negotiations with respect to Chief of Police employment contract; 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, litigating, and bargaining strategies. He also said that the Board would be returning to Open Session to finish the remaining items of regular business and invited Town Administrator and Town Counsel to attend the Executive Session. The motion was moved, seconded, and following

a unanimous Roll Call Vote, the Board, Town Counsel, and the Town Administrator moved to Executive Session. Steve Cuthbertson left the meeting.

The Board returned to Open Session at 9:17 p.m. Town Counsel Gregg Corbo left the meeting and Steve Cuthbertson and Shellfish Constable William Knovak joined the meeting.

A motion was made, seconded, and unanimously voted to award Police Chief Peter Silva a 3% merit increase.

The Selectmen reviewed *correspondence from Conomo Point Association President Thayer Adams* and decided to offer and make no changes to the annual license for the ramps and floats at Conomo Point this year. The design of northern Conomo Point is not expected to change in the near future and it would be premature to alter the agreement at this time. The Selectmen asked Mr. Zubricki to invite Thayer Adams to meet with them later this year to discuss her suggestions regarding future waterfront management when she returns to Essex.

Draft Annual Town Meeting Warrant: Mr. Zubricki asked the Selectmen to review the latest *draft of the ATM Warrant* for comment at their next meeting, which is scheduled for February 25, 2013.

Shellfish Constable William Knovak said that he would like to report that he had discovered that a Gloucester resident, who has a Gloucester commercial shellfishing permit and an Essex Non-resident Recreational permit, dug razor clams from an Essex flat and sold those razor clams to an establishment in Essex. His Essex permit only allows him to dig in Essex for family consumption. Constable Knovak said that he would like to recommend that this person's recreational permit be revoked. Mr. Zubricki said that he would check the regulations and that a hearing will likely be necessary. The Board authorized the convening of a hearing at the next meeting to investigate this matter.

Constable Knovak also recommended that the Town's shellfishing regulations be amended to allow a non-resident recreational permit only to be issued to a person without a commercial permit from another town. He also recommended that the regulations should only allow oysters to be harvested for personal use. The Selectmen said that they would take his recommendations under advisement and he left the meeting.

Steve Cuthbertson requested permission to ask a question and received it. He asked for a definition of the criteria that is used to determine the number of bedrooms on a property. Mr. Zubricki said that there are a number of different standards used by different offices. However, for wastewater flow computation purposes, each property needs to be assessed on an individual basis using Title 5 to decide the appropriate method to be used. He invited Mr. Cuthbertson to see him at Town Hall to discuss the matter further.

There being no further business before the Board, a motion was made, seconded, and unanimously voted to adjourn the meeting at 9:29 p.m.

Documents used during this meeting include the following:

Recommendation of Fire Chief Dan Doucette

Correspondence from Conomo Point Association President Thayer Adams

Draft of the ATM Warrant

Prepared by: _____
Pamela J. Witham

Attested by: _____
Lisa J. O'Donnell