

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

April 7, 2014

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: Paul Pennoyer, Attorney John Gallant, Brian Cowan, and Abdessamad Madkour,.

The Chairman called the meeting to order at 7:00 p.m. in the TOHP Burnham Library on Martin Street and announced that the Board would hear Public Comment. No one offered any comment.

Mr. Zubricki began the presentation of his Town Administrator's Report for the period March 22nd through April 4th, 2014, regarding the following:

Potential Installation of Parking Kiosk for Non-Resident Trailer Parking: Mr. Zubricki reported that he had spoken with the procurement officer for the City of Gloucester regarding their recent acquisition of solar powered kiosks as receptacles for non-resident parking fees. He also spoke to the City's chosen vendor. The kiosks cost between \$12,000 and \$14,000, each, and one kiosk at the small dirt parking area behind the Essex post office would not generate enough income to pay for itself. This is especially true since the goal of additional regulation is to have more parking available to residents, at no cost. An alternative would be to install a strong box with envelopes. The parker would deposit the fee in the envelope, rip off the parking tag to be placed on his windshield, and place the envelope in the strong box. The Police would periodically check the vehicles and the envelopes to make sure the fees were paid. Anyone without a tag or not paying would get a \$300 ticket and/or be towed. Signage would be installed stating that the dirt area was for resident and non-resident trailer parking only. Those not displaying either a valid resident sticker or a valid fee receipt would be towed or fined \$300. It is also possible to begin a trailer parking regulation program by simply allowing only resident parking in the paved lot, with stiff penalties for violators. Mr. Zubricki said that the Board of Public Works would be discussing the matter at their meeting tonight.

At 7:05 p.m., the Chairman entertained a motion to open a Public Hearing regarding the transfer of a wine and malt package store license from Chanty, Inc., d/b/a Richdale, Peter Panagoplos, Manager, to Energy North Inc., d/b/a Energy Liquors, Abdessamad Madkour, Manager, at 156 Main Street. The motion was moved, seconded, and unanimously voted. The Selectmen were joined by Attorney John Gallant, Brian Cowan, and Abdessamad Madkour. The transfer paperwork was in order. The Selectmen inquired as to the past experience of the manager, Mr. Madkour, who has been managing liquor stores for eight years. The new management plans to keep the same business hours. There were no other questions and a motion was made, seconded, and unanimously voted to close the hearing. A motion was made, seconded, and unanimously

voted to approve the transfer request for forwarding to the State Alcoholic Beverage Control Commission. The Selectmen signed the documents and Attorney Gallant, Mr. Cowan, and Abdessamad Madkour left the meeting.

Christine Creager, from Constellation Energy, joined the Selectmen to discuss the process used to lock into a future energy supply rate, issues surrounding a change order relative to the Town's energy efficiency project, and, Constellation's Peak Response Program. Currently, the rates for energy in 2017, 2018, and 2019 are low, and after some discussion, a motion was made, seconded, and unanimously voted to lock in the rates for these years, pending confirmation that they have not significantly fluctuated by tomorrow morning when they would be locked in. There is still time to lock in the rate for 2016. The 2016 rate is currently very high and it is hoped that it will decrease over the summer and fall. Also, Ms. Creager confirmed that the DPW barn and the Senior Center may be added to the lighting retrofit project without penalty or underlying rate change. Ms. Creager said that, after checking the requirements, she was sorry to announce that the Town did not qualify for Constellation's Peak Response Program. The Selectmen thanked Ms. Creager and she left the meeting.

Finance Committee Final FY15 Budget Recommendation: Mr. Zubricki reported that the Finance Committee has almost completed the proposed FY15 Budget. They expect to send the annual Finance Committee book to the printer's this week. One of the questions remaining was the source of funds for some road repair at Conomo Point. After discussion, it was agreed by the Selectmen that they preferred that the project be funded as follows: \$50,000 from Conomo Point rent proceeds, Chapter 90 funding, and the balance from free cash.

The Selectmen also agreed that the FY15 Conomo Point Legal Budget could be reduced to \$200,000. Further, a motion was made, seconded, and unanimously voted to recommend the Water and Sewer Enterprise Budgets for FY15 to the Town Meeting.

Conomo Point Planning Committee Chair Mark Lynch joined the Selectmen.

A. Raymond Randall, Jr. joined the Selectmen to lead a discussion regarding the use of mind maps as an analytical tool to focus thought on complicated matters, such as those surrounding the future of Conomo Point. Mr. Randall explained the basic concept and asked the Selectmen, Mark Lynch, and Mr. Zubricki, each, to create their own mind map regarding Conomo Point. He limited each map to three critical areas to be determined by each person creating their map. Mr. Randall collected the completed maps and said that he would now consolidate them into one map. He also said that Mr. Lynch could forward maps created by the Conomo Point Planning Committee members to be included in the consolidated map. Mr. Randall agreed to meet with the Selectmen at a future date to discuss the consolidated map. The Selectmen thanked Mr. Randall and he, Mr. Lynch and Mr. Pennoyer left the meeting.

Draft Annual Town Meeting Motions: Mr. Zubricki reviewed the preliminary draft of Annual Town Meeting motions and presenters. Much discussion was held relative to the potential sale of

Beach Circle properties article and the Selectmen will continue that discussion with members of the Conomo Point Planning Committee at the next meeting, after a joint site visit.

Easement, Maintenance Agreement, and Restrictive Covenant, Symmes Property: Mr. Zubricki reported that this matter is still being worked on and may be ready for discussion at the next Selectmen's meeting.

"Friendly" Taking of Dodge Street Parcel by Eminent Domain: Mr. Zubricki said that Town Counsel has been working with the attorneys from the David Choate Estate to determine how to legally complete Mr. Choate's offer before his death to gift a parcel of land to the Town. The land will likely come to the Town by a 'friendly' taking, but the details are still under consideration. Any Order of Taking that comes before the Selectmen or the Board of Public Works will occur only after all heirs have waived rights to request the taking.

In other business, a motion was made, seconded, and unanimously voted to approve the weekly warrant in the amount of \$106,145.77.

A motion was made, seconded, and unanimously voted to approve the minutes for the Selectmen's March 24th, 2014, Open Meeting and Executive Session.

Mr. Zubricki announced that the Planning Board would be hosting a public hearing on April 16, 2014, regarding the new flood maps that have been issued by FEMA and said that he will be attending.

A motion was made, seconded, and unanimously voted to approve a request from Fire Chief Daniel Doucette to appoint Kent Parsons and Andrew Ray to the position of Probationary Firefighter. The Selectmen signed the appointment cards.

Mr. Zubricki reported that the paperwork has not been completed for a Memorandum of Understanding for a grant from Senior Care regarding their RSVP Program for volunteer assistance on behalf of the Essex Council on Aging. The memorandum will likely be available at the next Selectmen's meeting for review.

A motion was made, seconded, and unanimously voted to waive the application deadline for a non-resident recreational clamming permit for Chester Sullivan of Methuen, MA. And, a motion was made, seconded, and unanimously voted to waive the application deadline for a student commercial clamming permit for Alden Burnham.

The Selectmen considered a request from Wallace Bruce to withdraw his resignation from the Conservation Commission, thereby reinstating him on the Commission, and a motion was made, seconded, and unanimously voted to approve his request.

Conomo Point Matters:

Mr. Zubricki reported that a certificate of insurance liability had been received from the Conomo Point Association regarding their seasonal attachment of ramps and floats to the Town piers. However, no signed correspondence has been received, officially requesting permission to do so. The Selectmen asked Mr. Zubricki to request an official, signed letter from Steve Cuthbertson, the CPA President this year, clarifying Mr. Cuthbertson's statements concerning the suitability of the Town's piers.

Mr. Zubricki said that the Building Inspector has informed the attorneys for the Estate of Judith Foley that there is a broken window in the dwelling at 153 Conomo Point Road, Map 24, Lot 17. Town Counsel has drafted a follow-up letter and a motion was made, seconded, and unanimously voted to approve and sign the letter to the Estate.

A written request to change the leaseholder name at 3 Beach Circle, Map 19, Lot 101, from Luise Menges c/o Kurt Menges to Menges Family at the same mailing address that is presently on record was received from the tenants at 3 Beach Circle. After review, the Chairman entertained a motion to approve the written request for the transfer of all interests in the leasehold for the property at 3 Beach Circle (Map 19, Lot 101) from Luise Menges c/o Kurt Menges, to Menges Family (at the same mailing address that is presently on record); 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 Luise Menges and Kurt Menges. The motion was moved, seconded, and unanimously voted.

A motion was made, seconded, and unanimously voted to approve and sign a deed for the pending sale of a Conomo Point property presently leased to Mary Beth Tirrell at 20 Cogswell Road, Map 19, Lot 54. Chairman Jones and Selectman Gould-Coviello signed the deed. Selectman O'Donnell will sign the deed tomorrow in the presence of the Town Clerk, who will notarize the signature. The notarized deed will be held by Town Counsel for safe-keeping until the closing.

The Selectmen discussed the disposition of the dwelling at 9 Beach Circle, Map 19, Lot 96. When the Bridge Lease for 9 Beach Circle expired, the tenant, Thayer Adams, informed the Board that she did not wish to enter into another Bridge Lease term, and that she wished to remove the dwelling from the property. The Selectmen informed Ms. Adams that the Town could not allow removal of the dwelling unless and until a report was received from a qualified building professional to determine whether or not the dwelling is affixed to the Town's land. Subsequently, on March 7, 2014, a letter was received from Arron Sturgis of Preservation Timber Framing, Inc. Mr. Sturgis was qualified as an expert witness in the Pratt litigation. Mr. Sturgis opined that the dwelling is not affixed to the land. The Selectmen said that they believe that his opinion is well supported and his conclusion is reasonable in light of the Town's knowledge of this particular dwelling. If the dwelling is not affixed to the land, according to the Superior Court's judgment in the Pratt case, the former tenant is entitled to a reasonable opportunity to remove the dwelling. Although in some cases a different result might be arrived

at, given the credentials of Mr. Sturgis, the substantive detail of his report and the reasonableness of his conclusion, Selectman Gould-Coviello moved that the Board of Selectmen direct Town Counsel to inform Ms. Adams, through her attorney, that the Commissioners have reviewed the report of Mr. Sturgis, and that the Board will not contest the opinion that the dwelling is not affixed to the Town's land or Ms. Adams' assertion that she has a right to remove the dwelling; and further, that the Town authorize Town Counsel to prepare and negotiate an agreement to facilitate removal of the dwelling within a reasonable period of time so as to protect the Town's interests with respect to the remaining property and any potential liability. The motion was seconded and unanimously voted.

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

Gasoline Storage Permit:

- Nieberle's Service Station Inc., d/b/a Ernie's Service Station, Ernest T. Nieberle, Jr., Manager, at 8 Main Street, for underground storage of 14,000 gallons gasoline.
- Chanty Inc., d/b/a Richdale, Peter Panagoplos, Manager, at 156 Main Street, for underground storage and sale of 24,000 gallons gasoline.
- GBG Crowley, Inc., d/b/a Gaybrook Garage, Michael Crowley, Manager, at 152 Western Avenue, for underground storage and sale of 16,000 gallons gasoline.

Gravel Pit Permit:

- Curlew Cove Realty Trust, Judson A. Lane, for the operation of a gravel pit at 53-59 John Wise Avenue.

Non-Recreational Seasonal Clamming Permit:

- Steve Abbott of Peabody, MA sponsored by Richard Pierro, 90 Belcher Street
- Scott McKenna of Ipswich, MA sponsored by Tom Prentiss, 67 Forrest Avenue
- Shari Simpson of Salem, NH sponsored by Darlene Duggan, 110 Southern Avenue
- Chester Sullivan of Methuen, MA sponsored by Edwin Perkins, 16 Story Street
- Mark West of Marblehead, MA sponsored by Daniel Enos, 63 Main Street

Student Clamming Permit:

- Alden Burnham

The Selectmen were reminded that their next regular Board of Selectmen's meeting will take place on Monday, April 14th, 2014, at 7:00 p.m. in the TOHP Burnham Library on Martin Street.

There will be a Site visit to Conomo Point on Saturday, April 12, 2014 at 9:00 a.m. attended by the Selectmen and members of the Conomo Point Planning Committee.

At 9:05 p.m., citing the need to discuss pending litigation concerning the case of Glenn Mores, et al. v. Board of Assessors of the Town of Essex, ATB Docket No. F316503 and pending litigation concerning the case of Richard D. Rettberg, et al. v. Board of Assessors of the Town of Essex, ATB Docket No. F317827, and any other matters that are presently pending for the Town of Essex before the Appellate Tax Board; 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; and, complaints or charges made against a public employee pursuant to G.L. c.30A, s.21, paragraph 1; 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 negotiating and litigating strategies and invited the Town Administrator to participate in the Session. The Chairman said that the Board would only be returning to Open Session to adjourn the meeting. The motion was moved and seconded. Following a unanimous Roll Call Vote, the Board, their Assistant, and Mr. Zubricki moved to Executive Session.

The Board, their Assistant, and Mr. Zubricki returned to Open Session at 9:35 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:

None

Prepared by: _____
Pamela J. Witham

Attested by: _____
Lisa J. O'Donnell