

2012  
Commonwealth of Massachusetts  
Town of Essex  
Warrant for Special Town Meeting

Essex, ss:

To either of the Constables of the Town of Essex;

GREETINGS:

In name of the Commonwealth of Massachusetts you are hereby directed to notify and warn the inhabitants of the Town of Essex, qualified to vote as the laws direct, to meet in said Essex at the Essex Elementary School on Monday, November 19, 2012 at 7:30 p.m. and there and then to act on the following Articles, viz:

ARTICLE 1

To see if the Town will vote to Amend Section 7-7 of the Town's General Bylaws, titled "Sewer Service Area" as indicated below with deletions shown in ~~strike through~~ and additions shown in **bold**, or take any other action relating thereto.

7-7 SEWER SERVICE AREA

7-7.1 PURPOSE. It is the purpose of this by-law to protect water resources in order to:

- a. protect the health, safety and welfare of the residents of the Town of Essex through the preservation of the town's groundwater, surface water and marine water resources by addressing primarily existing sewage disposal problems;
- b. protect groundwater, surface water and marine resources from nitrogen contamination and pollution from subsurface disposal of wastewater; and
- c. protect other sensitive water resource areas, including those lands that contribute recharge to private drinking water supplies.

It is also the purpose of this by-law to regulate the connections to and extension of the Town's sewer system in order to preserve and manage limited treatment capacity pursuant to an intermunicipal agreement with the City of Gloucester which limits the total treatment capacity available to the Town of Essex to 225 thousand gallons a day.

7-7.2. *IDENTIFICATION OF LOTS TO BE SERVED*. Upon completion of construction of the Town's sewer collection system, only those lots existing as of record and recorded in the Essex County Registry of Deeds as of February 1, 2000 and listed in Appendix B to the Task 2 Report, Sewage Facility Plan MEPA Special Procedures Report (MEPA No. 11805) dated and filed with the Secretary of Environmental Affairs on March 30, 2000\* (hereinafter defined as the "Sewer Service Area"), shall be permitted to connect to the Town's sewer collection system. ~~Notwithstanding paragraphs 7-7.7 and 7-7.8,~~ Each lot listed in Appendix B is entitled to connect a design flow of 330 gallons per day or the design flow in place as of February 1,

2000, whichever is greater, at any time. Any vacant lot listed in Appendix B is entitled to a design flow of one (1) sewer unit ~~as defined in paragraph 7-7.10.~~

~~Notwithstanding paragraphs 7-7.7 and 7-7.8, each lot listed in Appendix B is entitled to connect a design flow of 330 gallons per day or the design flow in place as of February 1, 2000, whichever is greater, at any time.~~

\* As amended below pursuant to Article 13 of the 2001 Annual Town Meeting:

Add the following properties:

Address Map Lot  
8-10 Apple Street 32 23  
166 Eastern Avenue 15 31 (second lot)  
166 Eastern Avenue 15 31 (third lot)  
10-12 Icehouse Lane 8 47A  
1 Landing Road 33 16  
3 Landing Road 33 16A  
9 Landing Road 33 15  
21 Lebaron Road 15 14  
23 Lebaron Road 15 10A  
28 Lebaron Road 15 6  
47 Lebaron Road 15 9  
47 Lebaron Road 15 9A  
0 Scot's Way 8 15D  
11 Southern Avenue 38 1  
89 Southern Avenue 10 18  
Delete the following properties:  
Address Map Lot  
0 Burnham Court (Garage Lot) 41 44  
0 Burnham Court 37 11  
0 Burnham Court 41 41  
0 Dodge Street 41 23A  
0 Dodge Street 41 23B  
0 Dodge Street 41 28  
0 Dodge Street 41 45  
12 Dodge Street 41 22  
0 Eastern Avenue 39 33A  
0 Forest Avenue 10 27  
0 Grove Street 10 33  
0 Grove Street 34 62  
3 Harlow Street 15 32  
0 Lakeview Road 8 43C  
13 Lakeview Road 8 38A  
0 Shepard Memorial Drive 37 68  
0 Southern Avenue 34 3  
15 Tree Hill Road 13 14  
0 Walnut Park 36 74  
0 Western Avenue 40 46A  
0 Winthrop Street 36 27

**7-7.3 RESERVE CAPACITY.** As used in this Bylaw, the term “Reserve Capacity” shall mean the difference between the total treatment capacity available to the Town pursuant to the Intermunicipal Agreement with the City of Gloucester, as may be amended in the future, currently 225,000 gpd, and the total amount of flow allocated to sewer users in accordance with this Bylaw.

~~7-7.3 NEW LOTS.~~ Subject to the moratorium set forth in 7-7.5 of this by-law, sewer extensions to new streets, subdivisions or lots created and recorded in the Essex County Registry of Deeds after February 1, 2000 shall not be permitted except by a two thirds (2/3) vote of Annual Town Meeting and at the discretion of the Board of Public Works, subject to available capacity.

**7-7.4 RESERVE CAPACITY FOR FUTURE MUNICIPAL BUILDINGS.** The Town shall maintain **16,600 gallons per day of Reserve Capacity** a reserve capacity of 16,600 gallons per day for the sole purpose of serving future municipal buildings.

~~7-7.5 MORATORIUM ON ALLOCATION OF RESERVE CAPACITY.~~ Notwithstanding any other provisions of this by-law to the contrary, the Town shall not allow any sewer connections or extensions except as identified in 7-7.2, 7-7.4 and 7-7.6 of this by-law until after September 30, 2012. The Town shall not allow the expansion of any use connected to the sewer system that would increase the design flow above 330 gpd until after September 30, 2012.

#### **7-7.5 ADDITIONAL CAPACITY FOR EXPANSION OR CHANGE IN USE OF EXISTING FACILITIES.**

No property in the sewer service area shall be permitted to increase the design flow of the facility above its original capacity allocation as determined in accordance with Section 7-7.2 of this Bylaw, through an expansion or change in use, except as provided herein. Violations of this section shall be punishable in accordance with the provisions of Section 7-6 of the Town Bylaws.

In accordance with the procedures set forth in regulations adopted by the Board of Public Works, the Town may allow property owners in the sewer service area to purchase Reserved Capacity from the Town, for a permanent privilege fee to be determined by the Board of Public Works in accordance with the formula set forth in Section 7-7.6 of this Bylaw, to allow for an increase in design flow for expansions or changes of use above the original capacity allocation as determined in accordance with Section 7-7.2 of this Bylaw.

Subject to available capacity, the Board of Public Works may approve requests for additional capacity of 1,000 gallons per day or less per property, in the aggregate. Requests for more than 1,000 gallons per day of additional capacity per property, in the aggregate must be approved by Town Meeting.

The Board of Public works is hereby authorized to adopt regulations to carry out the provisions of this Section, which regulations shall include provisions for the method of determining the amount of additional capacity needed for expansions or changes in use.

Upon the granting of additional capacity for an expansion or change in use, the Reserved Capacity shall be reduced by like amount.

All requests for additional capacity shall be subject to availability and in no case shall the Town allocate more than the total treatment capacity available to the Town pursuant to

the Intermunicipal Agreement with the City of Gloucester, as may be amended in the future, currently 225,000 gpd.

All requests for additional capacity shall be processed on a first-come, first-served basis.

**7-7.6 COST REIMBURSEMENT FOR RESERVE CAPACITY.** The Town owns any and all Reserve Capacity not otherwise allocated specifically to an individual, corporation, or other entity. Anyone wishing to purchase Reserve Capacity from the Town for an expansion or change in use as set forth in Section 7-7.5 of this Bylaw, shall pay the Town a permanent privilege fee based on the value of one year of additional design flow, calculated by the Board of Public Works in accordance with the following formula:

**$((\text{Additional GPD} \times 365)/1000) \times \text{Sewer Rate at Time of Request}$**

Said permanent privilege fee shall be paid in conjunction with a building permit for a specific project and for only the sewage design flow required for that project. Reserved capacity allocation shall not be transferable to any other property or project, and shall be forfeited – with its associated sewage flow increase deemed null and void - should the project not be completed within one year of the issuance of the building permit (or, in the case of a project that required a Town Meeting approval, within three (3) years of said approval). Time allowed for the completion of a given project may be extended by the Board of Public Works for good cause shown.

**7-7.7 VACANT LOTS.** The owner of any vacant lot within the sewer service area shall be entitled to connect any facility with a design flow of 330 gallons per day, upon payment of a Capacity Allocation Fee as calculated in accordance with the following paragraph and subject to the terms and conditions set forth in this section and any regulations promulgated by the Board of Public Works, and such a connection shall not be considered an increase in design flow based on an expansion or change in use and the property owner shall not be required to pay a Permanent Privilege Fee except as provided below.

In recognition of the fact that the owners of vacant lots paid only forty percent (40%) of the required betterment at the time of the original sewer construction, such property owners shall pay a Capacity Allocation Fee equal to sixty percent (60%) of the required betterment as set forth in the Schedule of Betterment Units found in the Town's Sewer Use Regulations. The Capacity Allocation Fee shall be calculated as follows:

**Capacity Allocation Fee = amount of original betterment had the property been occupied at the time of assessment X .60**

Said Capacity Allocation Fee shall be paid at the time application is made.

If the owner of a vacant lot is seeking approval for the connection of a facility with a design flow of greater than 330 gallons per day, the number of gallons per day above 330 shall be considered an expansion of use and the application shall be subject to sections 7-7.5 and 7-7.6 of this Bylaw, including the payment of a Permanent Privilege Fee based on the number of gallons per day above 330. Under such circumstances, if the connection is approved, the property owner shall be required to pay the Capacity Allocation Fee and the Permanent Privilege Fee.

~~7-7.6 ALLOCATION OF RESERVE CAPACITY FOR FAILED SEPTIC SYSTEMS.~~ By majority vote of a Town Meeting and at the discretion of the Board of Public Works, subject to available capacity, failed septic systems for lots in existence on February 1, 2000 may be incorporated into the sewer service area. The sewer service design flows calculated for failed septic systems shall be determined by the sewer design capacity and sewer unit calculation set forth in paragraph 7-7.10 of this by-law.

~~7-7.7 ALLOCATION OF RESERVE CAPACITY FOR EXPANSION OF EXISTING FACILITIES.~~ After the moratorium period set forth in paragraph 7-7.5, the Town may by a two thirds (2/3) vote at an Annual Town Meeting and at the discretion of the Board of Public Works, subject to available capacity, allow the expansion of existing facilities within the Sewer Service Area that will result in increased sewage flow. The design flow for the expansion of the existing facilities shall be calculated in accordance with the sewer design capacity and sewer unit calculation set forth in paragraph 7-7.10. The reserve capacity shall be reduced by a like amount. The owner of the expanded facility shall reimburse the Town for the expense of maintaining his/her portion of the reserve capacity as set forth in paragraph 7-7.9 of this by-law.

~~7-7.8 ALLOCATION OF RESERVE CAPACITY FOR CHANGE IN USE OF EXISTING FACILITIES.~~ After the moratorium period set forth in paragraph 7-7.5, the Town may by a two thirds (2/3) vote at an Annual Town Meeting and at the discretion of the Board of Public Works, subject to available capacity, allow the change in use of existing facilities within the Sewer Service Area that will result in increased sewage flow. The design flow for the change in use of the existing facility shall be calculated as follows:

~~Additional Design Flow: New Design Flow — Existing Design Flow~~

~~The Existing Design Flow is the average daily water consumption for the facility as recorded by the Essex Water Department in the year 1998 and the New Design Flow is the Sewage Flow calculated in accordance with paragraph 7-7.10 of this by-law. The reserve capacity shall be reduced by a like amount. The owner of the facility shall reimburse the Town for the expense of maintaining the portion of the reserve capacity that has been allocated to him/her as set forth in paragraph 7-7.9 of this by-law. No rebates shall be granted for change of use which reduces water consumption.~~

~~A “change of use” shall be defined as any undertaking on a property, whether involving material changes to structures or not, which results in a difference in classification of the type of establishment(s) on the property from the existing conditions pursuant to Title 5 (310 CMR 15:203).~~

~~7-7.9 COST REIMBURSEMENT FOR RESERVE CAPACITY.~~ The Town owns any and all sewer system capacity not otherwise allocated specifically to an individual, corporation, or other entity. Upon allocation of reserve capacity from the Town to an individual, corporation or other entity, the Town shall be reimbursed for its portion of the reserve capacity in accordance with the Town’s cost allocation procedures as determined by the Board of Public Works. The method of reimbursing the Town shall be in the form of a permanent privilege fee in accordance with General Laws Chapter 83, Section 17.

~~7-7.10 SEWER DESIGN CAPACITY AND SEWER UNIT CALCULATION.~~ The required number of sewer units for a failed system, new connection, expansion of an existing facility, or change in use of an existing facility shall be determined by the following formula:  
Number of Sewer Units = Title 5 Design Flow / 330 gallons per day

The Title 5 Design Flow is equal to the sewage volume calculated per 310CMR 15.203, Title 5. The sewage capacity that must be reserved for the connection shall be determined by the following formula:

Sewage Flow = Number of Sewer Units x 141 gallons per day

~~7-7.11 APPROVAL REQUIRED FOR CHANGE OF PROPERTY USE. Any proposed change of property use (as defined in Section 7-7.8) for a property within the Sewer Service Area shall be reviewed by the Board of Public Works (the Board). Said review shall be initiated via an application completed by the property owner on a form approved by the Board and shall accurately and completely indicate both the existing property use and the proposed property use. An application for a change of property use shall only be approved if it is determined by the Board that the proposed use will not increase the property's theoretical wastewater design flow as compared with the flow for the existing use. If the proposed use is commercial and the existing use carries a theoretical wastewater flow of 1,000 gallons per day or over, the design flow associated with the proposed use shall be deemed to be 200% of the 1998 actual water use for the property. In all other cases, the design flow associated with the proposed use shall be calculated pursuant to Title 5 (310 CMR 15.203) – see Section 7-7.10. In no case shall any Title 5 design flow: a) for any existing or proposed use on any type of property be deemed to be less than 330 gallons per day, b) for any existing or proposed use on any type of property be deemed to be greater than that calculated via Title 5, and c) for any proposed use on property originally carrying a commercial, theoretical wastewater flow of 1,000 gallons per day or over be deemed to be less than the number of betterments assessed to the property multiplied by 330. Any change of property use not first approved by the Board shall result in the modification of the new use by the property owner to the extent necessary to satisfy the Board that no increase has occurred. Said modification shall be accompanied by a proper application as discussed above and the nature of the old use, the improper change of use, and the modification of the improper use shall be described thereupon. Violations of this section shall be punishable in accordance with the provisions of Section 7-6 of the Town By laws;~~

## ARTICLE 2

To see if the Town will vote to authorize the Board of Public Works to grant the prospective purchaser of 5-11 Southern Avenue (Assessors' Map 38, Lots 1, 2, 3, and 4) an increase in the present total aggregate sewer design flow for said lots, in an amount to exceed one thousand (1,000) gallons per day, for the purpose of developing said lots for use as a restaurant. Said authorization is contingent upon approval of the Bylaw adopted under Article 1 of this November 19, 2012 Special Town Meeting by the Massachusetts Attorney General and shall take effect upon the effective date of said Bylaw. Said authorization is subject to all requirements and procedures set forth in said Bylaw and the regulations promulgated thereunder, including but not limited to the payment of a permanent privilege fee in an amount calculated in accordance with said Bylaw, and nothing herein shall be deemed to relieve the prospective purchaser of its obligation to obtain all other permits and approvals necessary to develop the land for the purpose stated herein; or take any other action relating thereto.

## ARTICLE 3

To see if the Town will vote to raise and appropriate, transfer from available funds, or borrow a sum of money for renovations to the Town Hall and Library building at 30 Martin Street in order to improve health, safety, and the working environment; and to determine whether such vote will be contingent upon a vote of the Town to exempt from the limitation on total taxes imposed by G.L. c.59, §21C (Proposition 2 ½) the amounts required to pay the principal of and interest on any borrowing authorized by the vote; or take any other action relating thereto.

#### ARTICLE 4

To see if the Town will vote to raise and appropriate, transfer from available funds, or borrow a sum of money to be added to the Conomo Point Legal Budget for fiscal year 2013; or take any other action relating thereto.

#### ARTICLE 5

To see if the Town will vote to authorize the Board of Selectmen to grant an easement, for the purposes of access and egress, and for such other purposes as the Board of Selectmen deem appropriate, over Town property abutting Southern Avenue known as Assessors' Map 3, Lot 22 ("Lot 22") and described in a deed recorded with the Essex South District Registry of Deeds in Book 1020, Page 108, to the owner of property that is proximate to but not abutting Southern Avenue known as Assessors' Map 3, Lot 19 ("Lot 19"), in accordance with the sketch on file with the Town Clerk entitled "Sketch Depicting Approximate Location of Proposed Easement Over Town-owned Lot 22 on Assessors' Map 3", dated October 29, 2012 on such terms and conditions that the Board of Selectmen deems appropriate, provided that said owner grants to the Town of Essex a restrictive covenant for a minimum period of 200 years that runs for the benefit of and is enforceable by the Town, whether or not the Town continues to own Lot 22, and limiting the minimum lot size, so that no lot created or remaining upon a division of Lot 19 shall be less than four acres; and to authorize the Board of Selectmen to accept from said owner said restrictive covenant on such terms and conditions, including the payment of monetary consideration, that the Board of Selectmen deems appropriate; or take any other action relating thereto.

#### ARTICLE 6

To see if the Town will vote to renew its membership and to participate in the Northeast Massachusetts Mosquito Control and Wetlands Management District for a minimum of three years, pursuant to Chapter 258 of the Acts of 1958, as amended by Chapter 410 of the Acts of 1996, G.L. c. 252, ss. 5 and 5A, and other applicable laws, subject to an assessment through a reduction in Cherry Sheet revenue in an amount to be determined annually by the District Commissioners, and to authorize the Board of Selectmen and the Board of Health to enter into all agreements and to execute any and all instruments as may be necessary to affect this vote; or take any other action relating thereto.

#### ARTICLE 7

To see if the Town will vote to raise and appropriate, transfer from available funds, or borrow a sum of money to purchase or to lease for a term of more than three years with an option to purchase a fully-equipped police cruiser, and to authorize the Board of Selectmen to enter into a purchase or lease/purchase agreement on such terms and conditions as the Board deems in the best interest of the Town in order to replace one of the existing police cruisers; and to authorize the Board of Selectmen to dispose of the vehicle replaced by the new cruiser by sale or trade and to take other action as necessary to effectuate the purposes of this vote; or take any other action relating thereto.

#### ARTICLE 8

To see if the Town will vote to raise and appropriate, transfer from available funds, or borrow a sum of money to purchase personal body armor for the Police Department; or take any other action relating thereto.

ARTICLE 9

To see if the Town will vote to raise and appropriate, transfer from available funds, or borrow a sum of money to fund that portion of the deficit deemed uncollectible in the Police Detail Revolving Fund; or take any other action relating thereto.

ARTICLE 10

To see if the Town will vote to raise and appropriate, transfer from available funds, or borrow a sum of money for repairs to the roof of the Fire and Police Headquarters building at 24 Martin Street; or take any other action relating thereto.

ARTICLE 11

To see if the Town will vote to raise and appropriate, transfer from available funds, or borrow a sum of money to fund the Town's Other Post-Employment Benefits (OPEB) Trust Fund; or take any other action relating thereto.

ARTICLE 12

To see if the Town will vote to amend the vote taken under Article 12 of the May 7, 2012 Annual Town Meeting by adding a Sick Leave Buyback line and by transferring a sum of money from Sewer Enterprise free cash for the purpose of funding same; or take any other action relating thereto.

ARTICLE 13

To see if the Town will vote to raise and appropriate, transfer from available funds, or borrow a sum of money to pay unpaid bills from past fiscal years; or take any other action relating thereto.

And you are hereby directed to serve this Warrant by posting attested copies; one at the Post Office, one at the Town Hall, and one at the Essex Elementary School, in said Essex, fourteen days at least before the time for holding said meeting.

Given under our hand this 1st day of November, two thousand twelve.

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Jeffrey D. Jones, Chairman

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Lisa J. O'Donnell

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Susan Gould-Coviello

BOARD OF SELECTMEN  
TOWN OF ESSEX

Return of the Warrant:

Date: \_\_\_\_\_

I have served this warrant by posting attested copies thereof – one at the Post Office; one at the Town Hall; and, one at the Essex Elementary School in said Essex; at least fourteen days before the time for holding said meeting.

\_\_\_\_\_  
Constable