

**Selectmen's Minutes  
Senior Center**

**February 22, 2016**

Present: Chairman Lisa J. O'Donnell, Selectman Susan Gould-Coviello, Selectman David A. Doane, Town Administrator Brendhan Zubricki, and Selectmen's Assistant Pamela J. Witham.

Also Present: Pam Beaudoin, Justin Bourgette, Lee Bresnahan, Roger Bresnahan, Helen Brown, Annie Cameron, Robert Coviello, Nat Crosby, David Cutter, Richard Denton, Susan Denton, Scott DeWitt, Kim Drake, David Gabor, Paul Goodwin, Alva Ingaharro, Bill Knovak, Tina Lane, Dimitra Lavrakas, Michael McCarthy, Mark McKenna, Bradley Morgan, Ed Neal, Ken Riehl, Judith Riggs, Richard Ross, Paul Rullo, Katie Ryan, Stretch Stevens, Michael Sullivan, Jennifer Sullivan, Keith Symmes, Melissa Teixeira, Avi Urbas, Jim Witham, Marie Znamierowski, and others.

The Chairman called the meeting to order at 7:00 p.m. in the second floor meeting room of the Senior Center, located at 17 Pickering Street and announced that the Board would hear Public Comment. No one offered any comment.

In other business, a motion was made, seconded, and unanimously voted to approve the weekly warrant in the amount of \$745,146.39.

A motion was made, seconded, and unanimously voted to approve the minutes for the Selectmen's February 10, 2016, Open Meeting and Executive Session.

A motion was made, seconded, and unanimously voted to ratify the Board's promotion of Robert Wheway to the position of Part-time Police Officer from his current position as Special Police Officer for a partial one-year term, ending 6/30/16.

A motion was made, seconded, and unanimously voted to ratify the Board's approval and signature of the Green Communities contract to receive a grant, with an effective date of 2/15/16, for the Town Hall/Library Renovation Project from the Massachusetts Department of Energy Resources in the amount of \$130,270.

Mr. Zubricki announced that George Lane had withdrawn his application for a Commercial Shellfish License.

Acting in their capacity as Licensing Board, a motion was made, seconded, and unanimously voted to approve the following requests for Shellfish Permit Licenses:

Commercial License:

- Clifford Baker
- Julian Balili
- Michael Jacobs, Jr.
- Edward G. Lane
- Elizabeth H. Lane
- Matthew E. Lane
- Brian Loebelenz

Non-Resident Recreational License:

- Clifford Bathalon, Hudson, NH, sponsored by Mark R. Lane
- Ron Blanchette, Beverly, MA, sponsored by Louise Holland
- George Dionne, Brentwood, NH, sponsored by Leo Provost
- Christian P. Frey, Danville, NH, sponsored by Mark R. Lane
- Alex Groetz, Brentwood, NH, sponsored by Leo Provost
- Jim Groetz, Kensington, NH, sponsored by Leo Provost
- Edward Kawczynski, Salem, MA, sponsored by Tim Walsh
- Robert A. Normand, Beverly, MA, sponsored by Leo Provost
- Frank Northrup, Brentwood, NH, sponsored by Leo Provost
- Daniel Provost, South Hampton, NH, sponsored by Leo Provost
- John Standley, Beverly, MA, sponsored by Leo Provost

Senior License:

- Norman Burnham
- Dennis Henderson

The Selectmen were in agreement that they were not interested in agreeing to the request of the City of Gloucester to be represented by Kopelman and Paige, P.C. with respect to the business of the Cape Ann Regional Cable Advisory Committee.

The Selectmen were reminded that the Essex Division of the Cape Ann Chamber of Commerce will meet at 8:00 a.m. on Wednesday, February 24, 2016, at the Windward Grille on Eastern Avenue.

The next regular Board of Selectmen's meeting will take place on Monday, March 7<sup>th</sup>, 2016, at 7:00 p.m. in the Senior Center on Pickering Street.

At 7:05 p.m., Chairman O'Donnell entertained a motion to open the hearing regarding a request to transfer and pledge a Section 12 All Alcohol Restaurant Liquor License from Diamond 4 Cookhouse LLC, d/b/a Castle Kreek, Kelly Roach, Manager, to MRG, Inc., d/b/a Sandcastles, Corey Matthews, Manager, at 234 John Wise Avenue. The motion was moved, seconded, and unanimously voted. Attorney Michael McCarthy introduced himself to the Selectmen. He is representing Cory Matthews in this transaction. Mr. Matthews could not be present this evening. Attorney McCarthy provided an overview of Mr. Matthews plans for the restaurant and said that Mr. Matthews intended to make some minor updates to the property and open the business as soon as possible. Following Mr. McCarthy's comments, the Chairman asked if anyone else wished to speak. No one present offered any comment. 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 request for a transfer of license and a pledge of license. The Selectmen signed the request package which will now be forwarded to the ABCC for final approval. Attorney McCarthy thanked the Selectmen and left the meeting.

Mr. Zubricki began the presentation of his Town Administrator's Report for the period February 6<sup>th</sup> through February 19<sup>th</sup>, 2016, regarding the following:

Disposal of Interior Contents of 153 Conomo Point Road: Mr. Zubricki reviewed his recent draft of rules for the sale of the building contents at 153 Conomo Point Road (excepting the contents of the garage). The Selectmen were in agreement and a motion was made, seconded, and unanimously voted to approve the rules. Photos of the contents will be placed on the Town website. The auction will take place on Friday, March 11, at the temporary Library space at 245 Western Avenue. There will be a Minimum Bid requirement of \$500. The winning bidder will be permitted 3, 8-hour days during a two-week period to remove the contents from the Conomo Point property and will be required to pay for a police detail for each of the 3 removal days.

Members of the Historical Commission (Chair Richard Stevens, Robert Coviello, Nat Crosby, and Keith Symmes) came before the Selectmen to discuss the Folsom Pavilion, Town Hall Safes, and the future of 153 Conomo Point Road.

Chairman O'Donnell began the discussion by saying that the Building Inspector has stated that the Folsom Pavilion should be closed for safety reasons and he will not allow it to be used by the YMCA this summer. Mr. Zubricki said that a contractor has examined the structure and provided an estimate for the necessary repairs. The Town voted at a past town meeting to provide up to \$20,000 for pavilion repairs which would more than cover the estimated repair cost. Chairman O'Donnell said she would like to see the building removed and replaced with a replica. The Historical Commission said that they are in favor of preserving the building for historic reasons. They recommended that a complete structural study be performed. After some discussion, it was agreed by all, and a motion was made, seconded, and unanimously voted to use the town meeting money to repair the pavilion in time for use by the summer camp in 2016. It was also agreed that a structural study with associated costs would be commissioned. The Commission also recommended considering the long-term plans for the building.

The Historical Commission said that they would like to recommend that one of the two safes on the first floor of the Town Hall should be retained by the Town and put on display somewhere in the Town Hall. The Commission said that the item is a tangible representation of Essex history. At present, the Town has only a handful of items that relate to its history. The Selectmen agreed to consider keeping the safe and to ask the Construction Contractor and the architect, McGinley Kalsow, for their opinion regarding an appropriate place to display the artifact. It was noted that the design plans and construction cost has already been approved for the Town Hall/Library Project and the contractor now has control of the site. Retaining the safe at the Town Hall would entail additional cost through change orders by requiring changes in spatial design, structural reinforcement, etc. Mr. Zubricki made clear that a second alternative is for the contractor to take both safes, fully intact, at no cost to the Town.

Lastly, the Historical Commission said that at their last meeting, they had voted to ask the Select Board to reconsider their decision to demolish the building at 153 Conomo Point Road. Selectman Gould-Coviello said that the Conomo Point Planning Committee has also resolved to

ask the Board to reconsider future planning for this property. Selectman Gould-Coviello said that she agrees with the CPPC and would like the Board to reconsider their decision on demolition. Selectman Doane said that he is still in favor of the demolition and Chairman O'Donnell agreed with Selectman Doane. Therefore, the Selectmen's past decision to demolish the building stands.

The Commission informed the Selectmen that one of their members will be resigning and that they would like to recommend that Kurt Wilhelm be appointed as an alternate. Mr. Zubricki said that he would check the State law regarding the Commission's membership and HC Chair Stevens said that he would send both the resignation letter and a recommendation letter for an alternate. The Board voted to appoint Mr. Wilhelm as an alternate after Mr. Zubricki reviews the law. This leaves the Commission with one vacant seat and one alternate, who will only be called upon if a quorum problem occurs.

The Selectmen thanked the Commission members for their comments and they left meeting, along with Helen Brown and Dimitra Lavrakas.

Katie Ryan, Richard Denton, Michael Sullivan, and others joined the Selectmen at the table to discuss the proposed Robbins Island subdivision plan. Katie Ryan, president of the Robbins Island Association, spoke at length regarding different aspects of the proposed plan. The Association is not in favor of the new right of way to the clam flats and said that Mr. Hsia is willing to grant the Town permission to continue to use the old right of way. The Selectmen replied that Mr. Hsia had not come to terms with the Board on this matter over the past two years that the boundary between his property and the Town's was being negotiated. Ms. Ryan also expressed concerns regarding lack of resident parking, neighborhood safety, and the decision not to sell two lots that are currently leased. Everyone present was reminded that the Planning Board will be hosting a public hearing to discuss the proposed Robbins Island subdivision this Wednesday evening, February 24, 2016, at the Essex Fire Station, starting at 7:30. The Selectmen thanked those present for their comments and Ms. Ryan, Michael Sullivan, Jennifer Sullivan, Richard Denton, Judith Riggs, David Cutter, and others left the meeting.

Department of Public Works Chair Scott DeWitt and member Paul Rullo; Superintendent Paul Goodwin; Community Preservation Committee Chair Kim Drake, and member Richard Ross; and Veterans' Group associate Jim Witham joined the table to discuss the creation of a master plan and survey for Memorial Park. Mr. Zubricki said that Town Meeting had voted to approve the Community Preservation Committee's recommendation to provide CPC funding for a survey and master plan for Memorial Park. The Veteran's Group and others, would like to have a study and design plan created to relocate the monuments to the area of Memorial Park between the Fire Station and the Town Hall. The ideal design would be ADA accessible, with benches, etc. The Department of Public Works is not in favor of altering the playing fields at Memorial Park, but is very much in favor of helping to provide a pleasing and accessible setting for the monuments. After some discussion, it was agreed by those present from the CPC, the DPW, the Veterans' Group, and the Board of Selectmen, that Mr. Zubricki will seek design proposals for only that portion of Memorial Park between the Fire Station and the Town Hall. The Chairman thanked everyone for their comments.

Scott DeWitt, Paul Rullo, Paul Goodwin, Jim Witham, and Kim Drake left the meeting.

Green Crab Trapping Grant Program Contract: Mr. Zubricki continued the presentation of his report. He said that the State is considering offering a grant in the amount of \$15,000, each, to cities and towns for the trapping and disposal of green crabs. Mr. Zubricki said that the past program had been very successful until the State had decided to end it in mid-cycle. He suggested a few changes to the way the money would be paid to the trappers. A motion was made, seconded, and unanimously voted to approve and sign the State contract for the grant program, with the issuance of actual permits contingent upon the acceptance by the Division of Marine Fisheries of the Town's proposed rules for disbursement of the grant funds.

The Selectmen were joined by MERSD Superintendent Pam Beaudoin, MERSD Director of Finance and Operations Avi Urbas, MERSD School Committee members Annie Cameron and Alva Ingaharro, Essex Technical High School Principal Bradley Morgan, Essex District School Committee Chair Melissa Teixeira, Essex Technical High School Business Manager Marie Znamierowski, and Town Finance Committee Chair Justin Bourgette and members David Gabor, Mark McKenna, Richard Ross and Ken Riehl.

After introductions of those present, Marie Znamierowski began the discussion with an enrollment status update. She said that the school does not expect to achieve full enrollment for two years and continues to work towards that end. She predicted that Essex will probably continue to experience an increase in the number of students attending the school for the next two years, after which time the enrollment should stabilize. The Committee is working on the budget for FY2017 which is approximately 4.27% over the FY2016 budget. The Committee Chair said that she was confident that they would be able to reduce the amount of the increase. She stated that they have a new, interim superintendent and they are working diligently to resolve their recent financial issues. On another matter, the Selectmen said that they are seeking a solution to control the rising amount of tuition accruing to the Town as a result of an ever increasing number of Essex students desiring and qualifying to attend the Tech school. Chairman O'Donnell thanked the members from both school districts for coming to the meeting and they left the meeting, along with others.

The Finance Committee members remained and FinCom Chair Bourgette reported that they have been meeting with many of the town departments and reviewing the proposed FY17 budget needs.

Continued Review of Draft Annual Town Meeting Warrant: Mr. Zubricki reviewed and discussed with those present, each of the potential articles to be included on the warrant for the coming Annual Town Meeting on May 2, 2016.

Following the Town Administrator's review of the warrant, Chair Lisa O'Donnell read the following statement regarding the Department of Revenue and Internal Revenue Service Tax Assessments: "In February and May of 2015, the Town received notices from the Department of

Revenue with the results of an audit of the Town's payroll records for the period of January 1, 2012 to December 31, 2014. The Town received a similar notice from the IRS in June of 2015 for the period of October 1, 2014 to December 31, 2014.

The audits revealed that the Town's payroll contractor, Boston Business Services, did not remit to the DOR and IRS the full amounts it collected from the Town for employee payroll taxes. The Town no longer has a relationship with Boston Business Services, which had served the Town's needs well for about twenty years prior to this payment remittance issue. The Town's most recent arrangement with the company was a written contract for services signed by the Board of Selectmen in 2013.

Preliminarily, it was estimated that the Town had an outstanding combined state and federal payroll tax obligation potentially as high as approximately \$380,000. The Town initiated a lawsuit against BBS and its owner in early August of 2015 and it obtained an approximately \$380,000 attachment on the owner's real estate. The Town's contract with the company was cited in the Town's legal pleadings as part of the justification that the company was culpable for the missing funds. The lawsuit is currently pending in the Essex Superior Court and we are working with counsel to recover the funds we believe were misappropriated by BBS and its owner.

An internal audit of the Town's records revealed that it paid all amounts due to BBS, and that records the Town received from BBS gave the appearance that it was paying the taxes on the Town's behalf. As had been the case for decades, the Town was following all industry-standard protocols for reconciliation of payments made by a third-party vendor. However, Boston Business Services was providing the Town with one set of figures while providing state and federal officials with lesser liabilities and matching, lesser payments.

The Town was unaware of the issue until it received the notices from the DOR and IRS. At that time, we also learned that the Criminal Investigation arm of the DOR had initiated a criminal investigation of the matter. In addition to that investigation, the Town has initiated discussions with the Office of the Attorney General.

Although the Town is legally responsible for the payments, it initiated an appeal of the DOR assessments, which included principal, interest, and penalties. As a result of that appeal, DOR waived any penalties assessed in connection with the missing payments and it issued final bills in the amounts of \$144,622.12 and \$37,274.61. No similar appeal process was necessary with respect to the IRS assessment since no penalties were pending and, with interest, that assessment totaled \$30,013.61.

In the meantime, the outstanding tax payments had to be paid, or the Town risked the assessment of additional interest and penalties. After consulting with the DOR's Division of Local Services and Town Counsel, we learned that we were able to pay these assessments from available funds of the Town and that we can either cover the cost through a subsequent town meeting appropriation (possibly using free cash or the Town's stabilization fund) or it can be included in

amounts to be raised by taxation on the next tax recapitulation sheet. It is the Town's present understanding that, based upon review of past payroll tax payments made to Boston Business Services versus five years of actual past payments acknowledged as having been received by the DOR and the IRS, the Town's total liability is approximately \$212,000.

Given that the lawsuit against BBS is going to take some time to resolve, I will entertain a motion that the IRS and DOR assessments that have been paid using the Town's cash to date be covered by raising the necessary amounts on the next tax recapitulation sheet, unless the Town Meeting decides to otherwise appropriate funds to cover the assessments prior to the recapitulation process." The motion was moved, seconded, and unanimously voted. A motion was made, seconded, and unanimously voted to add an article to the town meeting warrant to appropriate funding of these assessments.

Ed Neal and Finance Committee members Justin Bourgette, David Gabor, Mark McKenna, Ken Riehl, and Richard Ross left the meeting.

Following discussion regarding FY2017 Merit or Market Wage Increases for the Selectmen's Assistant, the Town Clerk, and the Treasurer/Collector, a motion was made, seconded, and unanimously voted to award 3% merit increases to the Selectmen's Assistant and the Town Clerk. Merit raises are calculated on the base rate of pay, which does not include the previous year's merit raise. A motion was also made, seconded, and unanimously voted to increase the Treasurer/Collector's base rate of pay to \$75,000 in FY17.

The Selectmen reviewed a letter from the Planning Board regarding a request to utilize the services of the Town Planner on an ongoing basis. The Selectmen were in agreement that the Planner may assist the Planning Board from time to time, as needed, on a project by project basis. The Planner will arrange his work schedule as necessary and no standing commitment is being offered.

The Selectmen acknowledged correspondence from Edward T. Neal regarding Conomo Point.

No building permit application had been received by the Selectmen for Mr. Romano's leased property at 29 Robbins Island Road (Map 19, Lot 77/New Map 108, Lot 17), and this discussion was postponed to a future date.

It was also agreed, that due to the lateness of the hour, discussion of the following Executive Session matters would be postponed until the next meeting on March 7, 2016:

- *Pending litigation concerning the case of the City of Beverly vs. the Essex County Sheriff, et al., Essex Superior Court C.A. No. ESCV2015-00350A.*
- *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*
- *Town of Essex v. Boston Business Services Inc., et al. Lawrence Superior Court C.A. No. 1577-CV-01310*
- *Lease, sale, and value of real property at Conomo Point*

- *A successor collective bargaining agreement with AFSCME and/or EPBA*
- *Preparations for contract negotiations with non-union personnel*

There being no further business before the Board, a motion was made, seconded, and unanimously voted to adjourn the meeting at 10:30 p.m.

Documents used during this meeting include the following: None.

Prepared by: \_\_\_\_\_  
Pamela J. Witham

Attested by: \_\_\_\_\_  
Susan Gould-Coviello