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**BOARD OF SELECTMEN
REGULAR MEETING
January 5, 2011**

Present: Philip J. Miller, First Selectman
Joel B. Marzi, Selectman

Philip Miller called the meeting to order at 5:03 p.m.

Approval of Agenda:

Motion was made by Philip Miller to approve the Agenda. Joel Marzi seconded the motion and it was unanimously approved. Motion carried.

Approval of Minutes:

Motion was made by Philip Miller to approve the December 15, 2010 Meeting Minutes. Joel Marzi seconded the motion and it was unanimously approved. Motion carried.

Communications and Correspondence: None

PUBLIC COMMENT:

Mr. Neil Nichols read into the record the following statement.

First Selectman Phil Miller
Essex Town Hall Essex, CT
December 15, 2010

As you must know, I was ejected from the Essex Transfer Station for violating your "NO LOITERING" order.

The occasion of this incident was Saturday October 27th while I was exercising my 1st Amendment Constitutional Right of Free Speech at the Essex Transfer Station – a town owned property located in the Town of Essex. As background, the following facts are submitted:

- Campaigning Candidates have conducted public campaign activities at this location for over 30 years.
- You yourself have conducted this activity at this location several times in recent history.
- In no other Town in the 33d District has any similar loitering rule been promulgated.
- No public notice of such a change was ever made.
- Signs were put up in the area but these promptly removed by unknown persons and not replaced.
- No notice was made to the Republican Town Committee of this change.

On the referenced date, I parked my car which had signage identifying it as a campaign vehicle on the grass area on the north side of the public area. I was wearing my Campaign identification.

While conducting campaign activities, I was stopped by a town employee who notified me that I was deemed to be loitering and, by order of the First Selectman, was required to immediately remove myself or the police would be called to remove me from the property..

I advised the Town Employees that this order was in violation of my First Amendment Right of Free Speech on Public Property, suggested that they notify you about this incident and my position that it violated my rights under the Constitution and left.

At no time was I ever impeding the public in conducting their business. I have done this activity for many years and always conduct myself in such a way as to not interfere with the public.

As is my long standing practice, I only approach the public after they have dropped their items off and are on their way back to their vehicles. I introduce myself and offer a Campaign Card. If anyone either averts his/her eyes or otherwise waves me off, I do not attempt to engage them.

Accordingly, I expect that this rule be rescinded with public notice. If this does not occur, I intend to pursue legal recourse including but not limited to a formal complaint to the SEEC, the Connecticut Attorney General and a court with the appropriate jurisdiction.

Thank you for your attention to this matter.


Neil Nichols

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Mr. Miller commented that no such written or verbal order that he is aware of or that he gave. Mr. Miller stated he was aware that several cars descended down on the transfer station, and the people at the station can or may call if there are any safety issues with cars at the transfer station. Mr. Miller stated that he remembered that the sanitary waste commission had instituted some type of order for no loitering due to the incident of the break in at the transfer station office when the money was stolen. There has been no loitering due to that situation. Mr. Miller was also aware of the sign removal in the past. Mr. Miller stated that both political parties would park across the street so there would not be a visual barrier and would not be an impediment. If workers at the transfer station saw anyone campaigning they were alerted to tell them to stand back from the road. Mr. Miller stated he was sorry that Mr. Nichols felt put out, but he believes it was for a safety issue.

Mr. Nichols stated that he was told that the First Selectman ordered there be no loitering and that he was still going forward with Robert Lutz who is the attorney for the state republican party.

Mr. Marzi inquired what the agreement was. Mr. Miller stated that it was a gentlemen's agreement to park cars across the street and to step back from the road. Mr. Marzi stated there is a difference between a gentlemen's agreement and a town policy. Mr. Miller stated that he didn't believe there was anything in writing, but possibly the sanitary waste commission had something in writing. Mr. Nichols stated that this incident occurred at the same time they were both campaigning.

Mr. Marzi stated that although there are rules against loitering, that he didn't feel that campaigning was loitering and we should not ban campaigning and possibly by the next selectmen's meeting on January 19th we should make a clarification on that.

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INFORMATIONAL ITEMS

Falls River Pond Rehabilitation Project

Mr. Miller read into the record the following regarding the Congregational Church Pond. The ponds are rapidly filling in with aquatic plants.

Falls River Pond Rehabilitation Project

Who

A collaboration between Riversedge Association, Ivoryton Congregational Church, Town of Essex, George Washburn (owner of the dam on the pond)

Why

Riversedge – Fire Safety, Life Safety, Integrity of maintaining wildlife and the aesthetics of the Pond

Ivoryton Congregational Church – needs Flood Control

Town of Essex – to use for recreational activities

George Washburn – Hydropower for millwheel and to be a good neighbor

What

We would all like to see the pond dredged and maintained to preserve the wildlife, control flooding, create hydropower (George Washburn's dam which connects to his water wheel) and to enhance the open space in our community.

Possible Resources

- Riversedge would consider a long term lease of the pond to the town in return for help with maintenance and dredging .
- Ivoryton Congregational has offered their parking lot for parking or a launch for canoes or kayaks.
- George Washburn has offered a trail that connects the pond to Falls River Drive Land Trust area that can make potage possible from one site to the next. He has also offered his mining permit to this project. He has access to divert the water and to take the landfill from dredging.

Bids for Dredging

Dick Davis, Fairfield, and Bill Wilson, Woodbury, have come to look at the project to give estimates. Both have worked with George in the past and have the equipment, manpower and experience to dredge. Dick has come up with a ballpark estimate of \$100,000. for digging down 3 feet. We are awaiting the second estimate from Bill Wilson, who suggests going down to the bottom of the pond for the best outcome.

Interested Partners:

Reverend Carl Christiansen, Ivoryton Congregational Church 860-434-6134

Marge Schofield, Riversedge Association 860-767-0051

George Washburn, Owner of Dam, 407-345-1635 (Florida) 860-767-0555

Mr. Miller expects this committee to come to the town in the next month or two with a request for an appropriation to help fund this project.

Mr. Marzi stated that one of the best features of this town are the waterways. Mr. Marzi stated that to maintain the waterways is expensive, but the ponds do need maintenance and the town should have a long-term plan in place.

Mr. Marzi questioned the minimum dredging depth that DEP requires. Mr. Marzi stated that we should put it to the voters and we need to address this issue. Mr. Miller stated that we are finding new technology that might work in our favor.

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OLD BUSINESS:

A. Model Illicit Discharge and Connection Storm Water Ordinance

Mr. Miller reported that we would be speaking about this ordinance at a later date. Mr. Miller suggested finding a shorter version. Mr. Marzi inquired if costs were determined to publish the ordinance and Mr. Miller stated not yet, since the length of the current ordinance would be costly to publish the whole thing.

B. Health / Sanitarian

Mr. Miller reported that he had appointed Dr. Jeffrey Bernstein as an interim public health director and the job of Health Director has been posted on the Essex web site and on the Health Network and the Connecticut Department of Labor.

C. Boat Ramp

Mr. Miller reported that Main Street boat launch project is complete. The cofferdam has been removed and the barge should be gone by Friday. There is approximately \$37,228.29 left for the Novelty Lane project.

Expenses for Boat Launch

Project	Company	Cost	Accounting Code: 26500-508500-G1006
Classified Ad	New Haven Register	252.01	Ad & their Web Site
Classified Ad	Northend Agent's LLC	156.00	Ad
Classified Ad	Shore Publishing	29.45	Maria Ordered this
Classified Ad	Hartford Courant	213.29	Ad
Classified Ad	New Haven Register	29.36	Ad
Angus McDonald	Gary Sharpe	1,000.00	Professional svcs rendered through 03/21/10
Angus McDonald	Gary Sharpe	2,410.00	Professional svcs rendered through 12/20/10
Angus McDonald	Gary Sharpe	630.00	Professional svcs rendered through 10/03/10
Angus McDonald	Gary Sharpe	140.00	Professional svcs rendered through 10/24/10
Angus McDonald	Gary Sharpe	4,215.00	Professional svcs rendered through 06/27/10 prepared bid documents
Copies	Staples	342.60	Lee Thompson reimbursement of 20 copies of RFP
Old Colony		35,938.74	
Old Colony		68,174.07	
Gould Larson, Bennet, Wells & McDonald		1,215.00	Conference & review of old colony contract
		114,745.52	TOTAL SPENT SO FAR

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Old Colony	Original Bid	\$97,200.00	
	Additional Project	14,944.00	
	Cofferdam	39,995.00	
	TOTAL FOR PROJECT	\$152,139.00	TOTAL COST FOR OLD COLONY
Dec. 2010	Less pd on account	-35,938.74	
Dec. 2010	Less pd on account	-68,174.07	
		\$48,026.19	STILL OWED TO OLD COLONY
	Original Grant Award	\$200,000	
	Less Old Colony	-152,139.00	
	Less Angus McDonald	8,395.00	
	Less copies & advertisements	1,022.71	
	Less legal bill	1,215.00	
		\$37,228.29	TOTAL LEFT FOR NOVELTY LANE

Mr. Marzi inquired about the extra hours or extra billing. Mr. Miller stated there are no extra billings. Mr. Miller stated that the ramp is a smaller model of the Baldwin Bridge ramp. Mr. Miller forwarded the ramp plans to the Essex Fire Department so they would know what they are launching into.

Mr. Miller stated that he initially thought that this project could be done without a cofferdam. All of the bids that had cofferdams were starting at \$200,000. The contractor with lowest bid was selected and then they had to add the cofferdam bringing the project up to \$152,139.00. Even though they had to add the cofferdam, the town still got best price for the project.

Mr. Marzi stated that there was a red flag with the bids being so different. Mr. Marzi stated that he felt there should be a bid process and that the Board of Selectmen should be involved in the decisions. Mr. Miller stated that he felt there was a good committee of people who decided on who the contractor was going to be on this project.

NEW BUSINESS:

A. Appointments and Resignations, Boards and Commissions

Philip Miller reported that he appointed David Heiney to Deputy Fire Marshall.

Philip Miller reported that two commissions would like to swap their commission representatives. The selectmen approved the appointment of Robert Laundry to the Economic Development Commission. Mr. Robert Laundry will swap with Mr. Alan Kerr. Mr. Miller and Mr. Marzi stated that planning could finalize the details with this switch of positions.

B. Planning Fees Ordinance

Mr. Miller reported that he is satisfied and felt it appropriate to approve the following:

AN ORDINANCE CONCERNING THE ADOPTION OF A SCHEDULE OF FEES FOR THE PROCESSING OF SUBDIVISION APPLICATIONS

Section 1 Authorization and Purpose

- 1.1** Pursuant to the provisions of the Connecticut General Statutes Section 8-1c, the Town of Essex does hereby establish a schedule of reasonable fees for the processing of applications by the Town of Essex Planning Commission. This ordinance replaces and supersedes Town of Essex 02-02, "An Ordinance Concerning the Adoption of a Schedule of Fees for the Processing of Land Use Applications," adopted October 24, 2002.

Section 2 Definitions

- 2.1** Planning Commission: The Planning Commission of the Town of Essex, which is herein referred to as "the Commission."
- 2.2** Subdivision application: any application to the Commission within its statutory jurisdiction, for the subdivision or resubdivision of land, which is herein referred to as "application." Applications may also include petitions to amend previously approved applications, amend Subdivision Regulations, or revision of lot lines.
- 2.3** Processing: all functions performed in connection with or associated with a subdivision application by the Commission, including but not limited to: fees and expenses relating to the administrative handling of the application; legal advertisements regarding hearings, decisions, and other matters requiring publication to the newspaper; recording and transcribing minutes of commission meetings relative to the application; staff salaries and overhead expenses for Town Sanitarian, Fire Marshal, or other Town officials and expenses in direct connection with the technical and regulatory review; Commission Counsel fees in direct connection with legal advice and review of documents directly related to the application; consultant expenses in direct connection with technical review of the application; and the pre- and post-approval costs associated with the application such as engineering review of construction plans and inspections of improvements during construction to assure compliance.

Section 3 Fee Schedule

- 3.1** The fees set forth herein shall supersede any specific fees set forth in the Connecticut General Statutes, any special act, municipal ordinance and any fee set forth in the regulations of the Commission.
- 3.2** The base fees as set forth in this Ordinance are due and payable to the Town of Essex upon submission of a land use application, unless another date for payment is specified herein.
- a. Base Fee \$750.00**

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- b. Per Lot Fee \$100.00
 - c. Road Fee \$1.00 per linear foot of new road
 - d. State Fee As determined by CGS Section 22a-27j as amended
- 3.3 In the event a Public Hearing is required, the applicant shall pay a fee not to exceed \$1,250.00 as established by the Planning Commission at the time it schedules the Public Hearing as its estimate of the cost associated with advertising, recording, and transcribing the Public Hearing. Such sum shall be paid prior to the commencement of the Public Hearing.
- 3.4 Applicants shall pay for the expense of additional technical review of applications, including but not limited to review by engineering, planning, and legal consultants to the Commission. For this expense, the Commission will prepare an estimate at the time of official receipt of application as defined by Connecticut General Statutes. The applicant shall deposit with the Town of Essex an amount equal to one hundred fifty percent (150%) of this estimate within 30 days of determination of estimate. The costs incurred by consultants during technical review of the application will be drawn against this deposit. In the case of Affordable or Incentive Housing applications submitted under the auspices of CGS Section 8-30g or 8-13m-x, the deposit requirement may, at the Commission's discretion, be reduced to one hundred percent (100%) of the estimate.
Upon completion of the additional technical review and final action by the Commission on the application, including post approval functions, the Town shall determine all costs incurred for technical review and shall refund the excess monies, without interest, to the applicant. Applicants shall not be responsible for costs incurred for technical review which exceed one hundred fifty percent (150%) of the Commission's estimate. No base fees shall be refunded unless the function for which the base fee is charged is not performed.
- 3.5 Upon approval of a subdivision or re-subdivision by the Planning Commission, the following fees shall be paid prior to the filing of the approved subdivision or re-subdivision plan to cover the cost of site meetings, inspection of improvements during construction, and final road acceptance inspections:
 - a. Base Fee \$100.00
 - b. Per Lot Fee \$100.00
 - c. Road Fee \$400.00
 - d. Inspection Fee \$1.00 per linear foot of new road
 - e. Erosion Control \$50.00 per lot
 - f. Legal Fee Charged at the actual hourly rate at which the
 Commission's counsel charges the Commission for legal
 services
- 3.6 For a petition to revise a lot line, the following fees shall be submitted:
 - a. Per Lot Fee \$25.00
 - b. Legal Fee As estimated per Section 3.4
- 3.7 For a petition to amend the Subdivision Regulations, the following fees shall be submitted:
 - a. Base Fee \$100.00
 - b. Technical & Legal Review As estimated per Section 3.4

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- 3.8** For a petition to modify the terms of a previously approved subdivision or re-subdivision, the following fees shall be submitted:
- a. Base Fee \$100.00
 - b. Technical & Legal Review As estimated per Section 3.4

Section 4 **When Fee is Not Required**

The Commission may by resolution determine that the base fees, or portions thereof, are not required in particular cases of a resubmission of a disapproved application or in cases where application changes are minor. Boards, Commissions, and Departments of the Town of Essex are exempt from Fee requirements.

Section 5 **Effective Date**

This ordinance shall be effective fifteen (15) days after publication in a newspaper having substantial circulation in the Town of Essex.

Motion was made by Philip Miller to approve the ordinance concerning the adoption of a schedule of fees for the processing of subdivision applications. Joel Marzi seconded the motion and it was unanimously approved. Motion carried.

C. Fire Department Share of FEMA Reimbursement

Mr. Miller reported that the fire department and the department of public works worked hard during the last storm. Now that FEMA has reimbursed the towns from the storm damage, there were questions on how the funds are to be distributed.

Kelly Sterner, Deputy Treasurer, reported that the reimbursement requests had to be broken down into projects for submittal and the FEMA applications for reimbursement had to be submitted through the municipality. The Town submitted 3 projects with one of them including Essex Fire department costs. The fire department did provide over 1200 man hours of labor, but FEMA provides no reimbursement for volunteer labor. FEMA does allow for some reimbursement on the fire department equipment usage. Mrs. Sterner handed out the following to help clarify. The total submitted for reimbursement for the Category B-Emergency Protective Measures was \$11,115.84 and FEMA reimbursed 75% of approved expenditures. The total reimbursement awarded for this project was \$8,336.88.

Mrs. Sterner stated that there are options. The town could keep all the money, we could reimburse the fire department the 75% of the \$7,509.10 for their equipment usage under the reimbursement awarded or the Town could choose to make the Fire Department whole by providing additional funding equal to 100% of their costs in recognition of the significant man-hours of labor provided during the storms.

Motion was made by Philip Miller to recommend to the Board of Finance an amendment to the current fiscal year budget in order to allocate \$7,509.10 of the reimbursement awarded from FEMA to the fire department. Joel Marzi seconded the motion and it was unanimously approved. Motion carried.

D. Toby Hill Road

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Mr. Miller read into the record the Toby Hill Road Status memo.

To: Essex Board of Selectmen

From: Tom Danyliw, Planning Commission Chairman

Date: December 22, 2010

Re: Toby Hill Road Status



Following up on resolutions originally made in April, 2010, the Planning Commission respectfully requests that the Board of Selectmen continue the process of determining the best legal status and ownership of Toby Hill Road.

At the Planning Commission's request, the Board of Selectmen did consider the possibility of officially discontinuing Essex's section of Toby Hill Road at two of its meetings this Fall, but this issue seems to have been tabled or left without a clear decision being made.

The very limited length of roadway in Essex, the poor condition of the road, and very difficult nature of the intersection with Pond Meadow Road have all led the Planning Commission to encourage the discontinuation of Toby Hill, thus granting the right-of-way to the private landowners who abut the roadway. There is no current or immediately pending application concerning Toby Hill Road, so the time for decision is opportune.

Attorney Royston has provided counsel and correspondence making the procedure and mechanism for this decision clear, and Town Planner John Guskowski has also worked with the First Selectman's office to ensure that the legal and logistical ramifications have been considered.

On behalf of the Planning Commission, please revisit and bring closure to this issue at an upcoming Board of Selectmen's meeting. Thank you for your consideration.

Mr. Marzi requested this item placed on the next Board of Selectmen meeting so that all three selectmen are present.

E. Probate Office Space

Mr. Miller reported that there is a desire for this office space. There has been discussion as to how to use that space. Mrs. Lois Ely suggested using the smaller of the two rooms as storage space. Mr. Miller stated that Park & Recreation has a storage problem but we are still unsure of the best way to use this space at this time.

B. Staffing

Mr. Miller stated he is not ready to report on this yet.

TRAFFIC AUTHORITY

Motion was made by Philip Miller to enter Traffic Authority. Joel Marzi seconded the motion and it was unanimously approved. Motion carried.

Mr. Miller and Mr. Marzi discussed the parking issues on Scholes Lane, which is directly behind the Griswold Inn.

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Mr. Marzi stated that if you say no parking, you may lose two spots on this road. Mr. Marzi suggested we possibly restrict it to resident parking. Mr. Miller agreed to further examine the road boundaries.

Motion was made by Joel Marzi to exit Traffic Authority. Philip Miller seconded the motion and it was unanimously approved. Motion carried.

Public Comment:

Wendy Arnold, who used to work for the Essex Health Department, asked what is going on in the Essex Health department now that Mrs. Cheryl Haase is out on paid administrative leave. Ms. Arnold stated that people are calling with complaints and questions and calls were not being returned. She stated that apparently Cheryl Haase is having a nice vacation at home and is out on a nice paid administrative leave but what is going on with the Essex Health Department. She heard Dr. Jeffrey Bernstein was going to be our Director of Health, but the last she heard we had a Director of Health. What are his hours, what is his pay going to be? What is the story?

Mr. Miller reported that Dr. Jeffrey Bernstein would be signing a similar contract that we have with our current Director of Health provider. Mr. Miller stated that he could not comment on personnel issues.

Mr. Miller wanted to state for the record that Ms. Arnold is an employee of the Connecticut River Area Health District. Ms. Arnold stated that she was here tonight as an Essex resident and a tax payer. She wants to know what is going on with the health department, suppose someone comes in for a health permit, what are they supposed to do?

Mr. Miller stated that all calls have been returned and questions are being answered and he did not know where Ms. Arnold was getting that information about calls not being returned and that it was incorrect.

Ms. Arnold stated that engineers, septic system installers and engineers have been coming into the office and no one was here. Ms. Arnold inquired if the current sanitarian had set hours at the town hall. Mr. Miller stated yes Mr. Cheney is in the office all day on Tuesday and Thursday. Ms. Arnold stated that these hours are not posted anywhere.

Mr. Marzi stated that he only found out about the appointment of Dr. Bernstein tonight.

Mr. Miller stated that the posting of the Director of Health was posted today on line.

Ms. Arnold asked what the \$20,000 would cover for the posted Director of Health job and what the hours were for this position. Mr. Miller stated that it is a contractual thing and that there is no hourly requirement. Identical to the one signed with the recent health director.

Ms. Arnold asked how many hours the town would get for the \$20,000. Mr. Miller said there are no contractual hours but there are requirements, like attending State Department of health meetings. It was published on the public health network. Ms. Arnold inquired about there being no set hours for that and that the town was going to pay \$20,000 a year

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for that? Mr. Miller said it was less than that. Ms. Arnold said that is what the ad said and that she had read the ad. What will the \$20,000 get us. Mr. Miller stated it would get regularly scheduled hours.

Ms. Arnold stated that the Sanitarian was unavailable for two weeks. Mr. Miller stated that was not true because we have a person coordinating things in the Health Department and that calls are being returned.

Mrs. Lois Ely stated for the record that the two weeks in question that the Town hall was closed at noon on Thursday December 23rd and all day on Friday the 24th for the Christmas holiday and then the office was closed on Monday December 27th due to the blizzard on closed again at 1 p.m. on December 30th and closed all day on Friday December 31st for the New Years holiday, so the office was not open much during the holidays.

Mr. Marzi inquired about the hourly rate of Brad Cheney. Mr. Miller stated approximately \$120 an hour. Mr. Marzi inquired if the hours were posted on the door for the Sanitarian. Mr. Miller stated not at this time, but we have a person here during business hours who can take in applications and we can post on the door Ms. Cheney's hours.

Mr. Marzi stated that he does not want to get into the staffing issue since he was not involved in any of the decisions of the health department and Mr. Miller made the decision on his own to let Cheryl Haase go. Mr. Marzi wanted to know how long do we expect this to last? Mr. Miller stated he is not at liberty to discuss this at this point.

Mr. Marzi inquired whether Brad Cheney is a Registered Sanitarian. Mr. Miller stated yes, he is registered and a professional engineer also.

Ms. Arnold asked if Mr. Cheney knew anything about septic systems. Mr. Miller stated that he probably knew more about them than Ms. Arnold did. Ms. Arnold stated "that's nice". Really, do you want to get into that? Ms. Arnold stated that Mr. Cheney only just recently certified in subsurface Phase 1 and Phase 2 and that he took this job not being having those certifications, therefore he is not qualified to deal with the septic systems in the Town of Essex. Ms. Arnold said that Mr. Cheney is not comfortable doing soil testing, so a soil scientist comes down with Mr. Cheney, who gets paid about \$188 an hour is coming down here to doing the testing. Ms. Arnold stated that Mr. Cheney does this because he is not qualified to do the soil testing when Cheryl Haase was qualified and she is not here and also got paid a lot less than Mr. Cheney or the soil scientist did.

Mr. Miller stated that we are assured about getting this done properly.

SELECTMEN GENERAL DISCUSSION: None

Motion was made by Philip Miller to adjourn the regular meeting at 5:55 p.m. Joel Marzi seconded the motion and it was unanimously approved. Motion carried.

Respectfully submitted,
Maria Lucarelli