

The Conomo Point Planning Committee has prepared a history of the Point which is based on an examination of old Essex Annual Reports and papers on file at the library. We hope it will help Essex voters when they are asked to make decisions concerning future uses of Town-owned land at Conomo Point.

A HISTORY OF CONOMO POINT

At its 1876 annual meeting the town of Essex began a landlord relationship with individuals who wished to lease building lots on Town-owned property at Conomo Point. Since that time, voters have taken action on Conomo questions no less than 150 times; more by far, than for any other district of Town. Those questions have covered all aspects of the typical landlord/tenant relationship, from development, maintenance and services, to leases, rents and taxes. There have been conflicts over tenant rights, public access, year-round conversions and governance. There have been lawsuits and repeated establishment of Ad Hoc committees to look into issues.

Today, Conomo Point supports 104 cottages on leased lots. Those leases expire in 2011.

PART 1: THE TOWN FARM

As a condition for separation from the Town of Ipswich in 1819, Essex agreed to take measures to care for its poor. A committee that was formed in 1825 found four properties to be suitable and affordable for a Poor Farm or Alms House. Those properties were an old farm on the southern end of Hog Island, the Boyd Farm at the end of Spring Street (now owned by The Society for the Preservation of New England Antiquities), an old farm on Hardy's Point and the old Proctor Farm at Conomo Point. All four properties are on the Essex River. Today they are easily some of the most valuable properties in town.

Things were quite different in 1825. Three of the potential Poor Farm sites are quite a distance from the center of town and were difficult to reach until the advent of the automobile. Society viewed the waterfront as a place for work. Waterfront property had little value then if it was not suitable for a shipyard or for drying fish or for farming. (In point of fact, all the potential Poor Farm sites did see shipbuilding and/or fish drying endeavors. All of them were short lived. As for farming, this was a period of general decline in crop yields due to poor soil conditions and 150 years of over-production. This New England-wide problem resulted in waves of migration to Ohio and other regions beginning as early as 1790).

In 1826, The Town purchased the 130+ acre Proctor Farm for \$4,600. The poor, "almost all of whom were impoverished either directly or indirectly by intemperance" were first housed in the century-old Proctor House. In 1834, a new brick building was erected and the old Proctor House was demolished. A third Poor Farm building, which still stands, was built in 1896 and was sold at public auction in 1953.

USE OF THE TOWN FARM FOR "SHANTIES"

The period from 1850 to 1900 was a time of great social, economic and technological change. It was also a period when attitudes toward the waterfront changed. The growth of the new middle class, the shortening of the work-week and the coming of the railroad all helped create a demand for summer waterfront property. To fill this demand, colonies of summer cottages were soon developed all along the New England coast. Most of these cottages were built on lots leased or purchased from towns or local farmers who made easy money from once idle waterfront, beaches and marshland.

In a 1940's paper about Cross Island, Essex historian Addie Hobbs tells us that the first summer visitor to Essex was Philip Southwick. Around 1835 he built a small building, 10 feet square, on a leased lot on Cross Island in the Essex River across from the Point. Because his friends came to see him so often, he soon had to add another 10 feet to the building and not long after that he built another building for sleeping quarters and was later obliged to enlarge that.

In 1850, according to Hobbs, a new owner of Cross Island saw the possibilities of the place, planted trees and erected several buildings to lease as summer cottages.

The Town of Essex also "saw the possibilities".

At the annual town meeting of March 8, 1875, it was voted to permit the "leasing of rights to build shanties on Town Farm Road." It appears that the building of shanties at the Point actually began before this time as the first shanty on the Point is said to have been built around 1860. All the very early Town Farm shanties were, according to Hobbs, "mere gunning and fishing shacks owned by Essex men, who enjoyed the duck shooting and fishing; who loved the salt water, the broad stretches of marshland and the sandy beaches."

A similar community of shanties was established on Robbin's Island. A paper written in 1938 describes development there.

"The first camp was that of David B. Burnham, built on the western end of the island on the edge of the marsh, about 1870-75. Then Charles Cogswell of Essex began to build his (cottage), to be followed by two more. Since the best sites were already taken, later builders had to cut down the sumac, sassafras and wild grape with which the island abounded, to make room for their camps in the rear of those already built. Some of these later buildings led to

dispute over a reputed right of way — the real boundaries of a piece of marshland.”

By 1900, Conomo Point was no longer populated exclusively by Essex citizens. After the coming of the railroad to Essex in 1872, the Point was much more accessible to summer renters from nearby towns, the Boston area and as far away as Florence, Kansas. When the rail line was extended across the river to South Essex in 1892, the new station there was named Conomo Station. On summer evenings local teamsters waited there for passengers who needed transportation to the Point by wagon.

PART 2: CONOMO POINT GOVERNANCE

Essex annual reports offer some interesting insight into the Town's new landlord relationship with its tenants at Conomo Point. In 1876 the first notation of rents collected appears in the report of the Town Treasurer as "land rent, \$62.50." The total number of renters that year was four. By 1892 there were 15 renters listed by name, paying rents totaling \$301.71. Article 22 of that year's town meeting asked voters to take action to insure a more prompt payment of rents due from persons holding lots at Point Conomo.

Initially, collection of rents and all other governance at the Point was under the aegis of The Overseers of the Poor. That changed at the town meeting of 1896 when the Town voted "to elect the Selectmen and Overseers of the Poor as one board." At the same town meeting the voters directed the Selectmen to;

"lay out what is known as Conomo Point into building lots with an accurate description of each lot drawn by a reputable surveyor and any person hiring any of said lots, shall be required to sign a written lease for the same, said lease stating such conditions as said Selectmen shall deem proper to make, and any person now holding any of said lots, shall be required to sign such lease as soon as the time for which they now hold said lots shall expire, not exceeding five Years." (The lease-term was changed to 10 years in 1968).

The new plan was indeed developed, but it appears that it was never filed or registered at the Registry of Deeds. The most prominent new feature was a road around the Point clearly separating the building lots from the shoreline. Most of the land from the road to the water was retained by the town. It is clear from the language of the article that this new lease was intended to supersede any prior leases or agreements. We can only guess the reason for the new plan and leases. They may have come about because of over-development, or disputes over boundaries and rights-of-way. There is also no indication as to why power was taken away from the Overseers.

For whatever reason, the plan was not well received. Two years later, the voters at the 1898 town meeting were asked "To instruct their selectmen to employ

counsel, enter suit and oust tenants at will at Conomo Point who now refuse to sign the lease prepared by the Selectmen, under instructions from the Town."

Over the next 100 years, governance of the Town's property changed six times. In 1900 the Board of Selectmen and the Overseers of the Poor were again made separate bodies. Thirteen years later, in 1923, the Town voted to "divide the duties of the Overseers of the Poor and authorize the election of a Board of Public Grounds and Water Supply to have jurisdiction over Town Farm, adjacent land and ways, Conomo Point, its rentals and water supply."

The new Land and Water Board controlled Conomo affairs for only six years. In 1929 voters were asked "to abolish the land and water board (printed all lower case letters in the annual report) and delegate its powers to the Selectmen." The next year's report of the Land and Water Board (this time with Initial Caps) was signed by Nathaniel M. Quint, Selectman. In 1932 the Selectmen asked that Conomo Point affairs be again delegated to a separate board because "there was a great deal of money represented there".

In 1947 the Land and Water Board was renamed the Conomo Point Commissioners. All Conomo Point affairs were attended to by this body for the next 40 years.

CONOMO RENTS

From the onset, Conomo residents have paid rent in addition to real estate taxes on the rented lot and personal taxes on their cottage. It was from these rents that the town expected to profit from its land. Until recent years, those rents had been based on 1897 land values, with no provision for inflation or change in land value. The only way the rent could be increased was by town meeting vote. This happened only four times in 100 years. In 1927, rents were increased by 25%. In 1951, a "Planning Committee", established to "study the problem of rentals on Conomo Point", recommended an increase of 5% which brought annual rents to \$25, \$35 and \$50 depending on location and view. In 1961, rents were raised again by 25%. They were not raised again for another 30 years. (When adjusted for inflation, Conomo rents collected from 1953 to 1984 actually went down.)

The loss of potential rent was not fully addressed until the early 1980's, when double digit inflation, high interest rates and the constraints of Proposition 2.5 forced the town to cut services, raise fees and hunt for new sources of revenue. By petition, a group of citizens placed an article on the 1986 warrant asking the voters to instruct the Conomo Point Commissioners not to accept any increase in rental rates less than 4% of assessed value. The article was amended to refer the question of rent increases to a committee to be appointed by the selectmen.

That same year, the town's assessors reported to the new Conomo Point Rent Committee that Conomo Point had an assessed value of 4.7 million dollars with an estimated market value of 10 million dollars. Rents for that year averaged only

\$60 per household. The total collected was \$5,700 — approximately one twentieth of one percent of market value and one tenth of one percent of assessed value. The recommendation of the committee was to use 3% of assessed value as a method of establishing a new base rent for each property. In addition, they recommended that rents increase (or decrease) each year by an amount based on the fluctuations of the Consumer Price Index. By the committee's formula, the town could expect annual rent revenues of at least \$142,000.

At a special town meeting held on March 2, 1987, the town voted 136 to 79 to adopt the recommendations of the committee. That same spring, the Conomo Point Commissioners resigned and at the annual town meeting it was voted to transfer all Commission authority to the duly elected Selectmen.

On July 30, 1987, ten Conomo residents filed suit in Land Court against the Town for breaking the existing lease.

PART 3: "TENDING TO THE COMFORTS OF ESSEX TENANTS".

The reason for leasing lots at Conomo Point was crystal clear — to put money in the towns coffers. For the first half-century there was a strong inclination on the part of the town to invest in its property and make its tenants as comfortable as possible. Nowhere is this fact more evident than in the subjects of water and roads.

WATER

At the annual town meeting of 1892, the town voted to appropriate \$1,200.00 to supply Conomo Point with fresh water during the summer months. Two wells were dug in the field at the Point. Pipes were laid and two elevated water tanks with a windmill pump were installed. (Water service to the rest of Essex would not come for another 58 years). The cost of this system was paid through "water rates" charged to the users over the next three years. In 1903 it was voted to increase this water supply and furnish a new water tank. New pumps were installed in 1913 and 1915. In 1919 the town's auditor reported a "splendid financial condition due to the large proportion of Conomo Point rentals collected, and the collection of practically all old bills in Point rentals."

At the 1922 annual town meeting voters were asked if they would favor changes to the sections of the Conomo Point lease that concerned rents. The vote was not recorded in the next year's report, but total rents for 1922 went down 27%. It is probable that this reduction was in consideration of the fact that the residents of Conomo Point that year raised \$2,184.08 to pay for a connection to Gloucester's waterline. This connection remained in service until 1950.

Beginning in 1923 Conomo residents were charged "water rents" in addition to land rents. In 1924 the new Land and Water Board reported "We show a small profit in the water system. The new supply pipe from the street is laid along the

ground in the cheapest way possible. We pay the City of Gloucester \$900 annually by contract and collect \$1,150.00 from residents at the Point."

From 1936 to 1939 there were several Articles dealing with a new three inch water line at Conomo Point. Funding for these capital improvements were appropriated from water funds received from the previous year with the balance coming from town funds.

ROADS FOR NEW LOTS.

From 1888 to 1974 there were 19 town meeting votes to appropriate funds to construct or repair roads at Conomo Point. The Town's road strategy at the Point is best summed up in Article 15 of 1931, "to change the course of the road from the Town farm barn to the turn in the road at Conomo Point so that the outside lots may be leased."

During the depth of the Depression, the Board of the Selectmen reported, "As a Land and Water Board we have tried to keep our leasing tenants at Conomo Point contented and happy, attending to their wishes whenever they arose, to the best of our ability. We recommend upon the return of good business that the proposed survey be made as soon as possible so that more revenue may be derived from the now unused sections." (Two of the three Selectmen at this time were Conomo Point renters).

The period from 1950 to 1970 saw rapid growth at the Point due in large part to the town's efforts to maximize its rental income without increasing rental rates. In most instances, lots were leased, cottages constructed and only then were streets constructed and accepted at town meeting as public ways. At the 1954 annual town meeting there were five consecutive motions for expansion at Conomo Point; Article 36, to accept new plans for cottages at Cogswell Street and Town Farm Road; Article 37, to construct Cogswell Street and Town Farm Road; Article 38, to accept Cogswell Street and Town Farm Road; and Article 44, to extend water to Cogswell Street and Town Farm Road. All five Articles passed unanimously. At the same meeting the newly formed Planning Board asked the Town to adopt a subdivision control law limiting lot size to 15,000 square feet with an exemption to properties controlled by the Conomo Point Commissioners. This article was indefinitely postponed but it was later adopted at a special town meeting.

In 1956 the Town again voted unanimously to accept new cottage lots at Conomo Point. Article 36, amended the by-laws by striking out "does not apply to land within the jurisdiction of Conomo Point Commissioners or other town owned land" also passed 175 to 2. In 1959 this by-law was again amended (by a vote of 105 to 41) to read "no private dwelling in the town of Essex shall be erected or moved upon a lot of land within the jurisdiction of the Conomo Point Commissioners which contains less than 15,000 sq. feet." A special town meeting later that year increased the minimum lot size for the rest of the town to 30,000 sq. feet.

In 1962 the Commissioners confidently reported their success in carrying out the will of the town. "The Conomo Point subdivision to open new lots in the so-called Town Farm area was completed and approved by the Planning Board. This new subdivision opens a total of 26 lots all with a total area of 15,000 sq. feet". In 1963 the Commissioner's report was glowing:

"(the) Town Garages have been removed to create two new lots which are being built on. The twenty-five percent increase in land rentals of the Conomo area, worked out by the Conomo Point Commission and the Finance Committee and approved by town meeting brought in \$1223.50 this year. At present there are 126 lots or parcels under lease by the town. We anticipate within a reasonable time this number will be increased to 152 when the new subdivision has been completely leased".

Six years later, the Commissioner's proud tone was gone.

"You have been hearing from your Conservation Commission on the over crowding and the pollution contribution Conomo is making to our river. The pollution survey submitted by Whitman & Howard makes for some "good grief" reading. The present Commission is not looking toward any expansion in the Conomo area at this time".

PART 4: CHANGE FOSTERS CONTROVERSY

On August 3, 1949, the Gloucester pipeline that had supplied 100 Conomo Point cottages with summer water was turned off and the new Essex supply was connected. The next day, town water service was connected to 404 Essex households.

While many recall the quality of Essex's new water as "not bad", Conomo residents found it was not what they were used to. They complained about rust in their water. The source of the problem was believed to be the old water pipe which had been originally installed "as cheaply as possible" in 1922. From 1951 to 1967 Essex voters funded \$18,300 for pipe repairs and replacement, but the problem persisted. In 1968, the water commissioners asked the voters for \$50,000 to replace 7500 feet of summer service at the Point. Despite the support of the Finance Committee, the Board of Selectmen and the Planning Board, many townspeople felt that the cost of repairs should be borne by Conomo residents exclusively. The defeat of this article marks the first time the town refused to fund capital improvements at the Point.

By the early 1970s, the water supplied to all districts of Essex had gone from "not bad", to just plain bad. It sometimes smelled of rotten leaves and always of Chloride. It also looked bad. Local restaurants, if they served Essex water at all, began to use amber-colored water glasses. The word "Turbidity" was added to

every Essex citizens vocabulary and rust and manganese gave all white laundry a distinct orange cast.

Replacement of the summer water lines at the Point was again unsuccessfully proposed at the annual town meeting in 1972. This time, the Water Commissioners were opposed. They argued that townspeople should not be expected to "underwrite fully, the cost of an improvement which is of no benefit to them financially or otherwise". That summer, Conomo residents petitioned the Massachusetts Department of Public Health for help in their efforts to obtain more and better water. Needless to say, this action was not well received by the Water Commissioners. In their report for 1972, they agreed that the Conomo water line was in bad repair but thought that "the beneficiaries should help pay for the job. This they are reluctant to do". The report then addresses "problems brought to the forefront by petition of the Conomo Point people to the state authorities":

"In their zeal to obtain more and better water for their area, without added cost to themselves, they brought forward the idea that treating the water at the pumping station would improve the water in their area so the pipe would not have to be replaced. Not so! However, we are in receipt of a "suggestion" from the Massachusetts Department of Public Health that we investigate the feasibility and cost of an installation designed to remove iron and manganese".

CONVERSIONS TO YEAR-ROUND USE

Year-round living at Conomo Point never arose as an issue as long as water was supplied by summer surface lines which were traditionally turned off in October. In the early 1970s, several Conomo residents sought relief from rusty water by drilling their own wells. Fearing that this would lead to increased pressure for year-round living at the Point, the members of the Planning Board advised the Conomo Commissioners to take extreme caution in the granting of permission to drill. The members of the Board of Health went even further, insisting that no wells be driven on town-owned land at all.

The Conomo lease contained no restriction to seasonal use. When the duties of the Conomo Point Commissioners were redefined at the 1973 annual town meeting, the sentence "to maintain Conomo Point as a seasonal residential area" was added as a stop gap measure. A motion was made from the floor by a Conomo Point resident to delete the word "seasonal" from the sentence. The motion to delete was defeated and the main motion passed.

Near the end of the 1973 summer season, a Conomo resident who had been refused permission to drill, hired an attorney and threatened court action if his request was not granted within 30 days. During this waiting period the commissioners submitted an article at a special town meeting to ask voters again if they wished to remove the word "seasonal" from the new Conomo Point Commission regulations. This motion was also defeated, 48 to 14. Meanwhile, because the leaseholder had all the required setbacks and lot size and because the

present lease had no clear language that restricted residents to seasonal use only. Town Counsel and the Board of Selectmen determined that it was likely that the court would favor the tenant and not the town. Permission to drill was granted on October 30th. By 1974 it was reported that there were 10 cottages at the Point housing year-round residents.

Pressure toward conversions continued throughout the 70s. Many Conomo residents found they could extend the season past the fall water shut off by installing cisterns. When three Point septic systems failed in 1981, a moratorium on the installation of new cisterns was instituted. That fall, several seasonal cottages remained occupied after the water was shut off. The Selectmen, acting as the Board of Health were forced to place the Point under police surveillance. Lights in Point houses were noted as were plowed driveways. Notices were then sent informing the owners that their cottages were unfit for habitation.

Many Essex residents felt the town's resolve to limit seasonal use was being abused. At the 1982 annual town meeting it was voted to clarify the town's position by amending the duties of the commissioners to include a section stating that there shall be no further conversions of dwellings at Conomo from seasonal to year-round use after May, 1982. The result of this action was a flood of conversion applications prior to town meeting. At the end of 1984 there were 28 Conomo cottages approved for year-round occupancy. In the words of a former Selectman at the time, the town had lost control.

It was later learned that the by-laws outlining the duties of the Conomo Point Commissioners, originally adopted in 1957 and amended in 1973, were never approved by the Attorney General. If they had been filed by the town clerk, they were never received.

PART 5: A NEW LEASE FOR CONOMO POINT

The problems of low rent and year-round conversions at Conomo Point stemmed from an old lease that had not changed to keep up with the times. No one had anticipated inflation. Rents remained low because there was no provision for cost of living increases and an automatic renewal provision effectively locked in those low rental rates. The lease had no seasonal restriction. It had not been anticipated that cheap fuel and new insulation technology could make a summer cottage comfortable in the winter. A new lease had to be written.

The only way the town could make changes to the Conomo leases was to wait for existing leases to expire. Since Conomo leases had many different expiration dates, it would be many years before the entire Point was under the force of a new lease. (There were even some leases that had been written with a 20 year term). Twenty percent of the Point had become year-round. Some saw a real danger that the Point would loose its unique seasonal character. Could the town afford to wait twenty years to stem the tide toward conversion?

It had been thought that the most expedient route to stopping conversions was to amend the by-laws outlining the duties of the Conomo Commissioners to prohibit authorizing conversions after May 3, 1982. Because the original by-laws as amended in 1973, had never been properly received and approved by the Attorney General's office, all amendments to that section were deemed null and void including the amendment prohibiting conversions. With this revelation, the commissioners (most of whom were Conomo leaseholder's) received and approved many new requests for conversions.

At a special town meeting, held March 2, 1987, an article placed on the warrant by the Ad Hoc Conomo Point Rent Committee, asked the voters to adopt 3% of assessed value as a base for rental rates on all new leases. By secret ballot the main motion passed 136 to 79.

Article 3, which was placed on the warrant against the advice of Town Counsel, asked the town not to accept the current base rates and to use 3% of assessed value to establish all rents beginning January 1, 1988. The meeting voted favorably.

Article 4, addressed the issue of year-round conversions and asked the voters to re-adopt the by-laws that prohibited the commissioners from authorizing conversions from seasonal to year-round use after May 3, 1982.

In July, ten Conomo residents filed suit against the Town in Land Court. They argued that the town meeting vote increased rents over and above the rents contracted for in current leases. They also argued that seasonal restrictions were in violation of rights provided for in the existing lease and the vote that made them retroactive to 1982 was in violation of State law.

Hoping for a "declaratory judgment" that would settle the issue of base rent and allow a plan for future rent increase, town officials agreed to certification of the case as a class action. This would mean that any agreements or actions taken by the court would not be restricted to the original plaintiffs but would apply to all Conomo Point leaseholders. However, the court declined to make judgment, and suggested the formation of an Ad Hoc committee, composed of representatives of both the tenants and the town, to see if an out-of-court settlement could be reached.

Several proposals were worked out. All were rejected. By the fall of 1988, the Ad Hoc Conomo Point Settlement Committee proposed a new lease with a 25-year term. At the end of the lease or at anytime a cottage was offered for sale, the town would have first option to purchase. Base rent would be scaled from 1% of assessed value during the first six years and increase to 3% after 13. Additionally, base rents would be increased annually to adjust for inflation. All conversions listed as approved during the rush for conversion in 1982 and 1986-87 would be allowed. This proposed settlements was also rejected by the Point residents.

It took four years to reach a settlement. The new lease term remained at ten years with a single ten year renewal option. Rent increased ten times with a provision for an annual cost of living increase. Conversions are permitted as in the prior lease, subject to Health Board regulations and approval of the Conomo Point Commissioners.

Because all new Conomo Point leases expire in 2011, the voters of Essex have established three committees to investigate future uses of the Point. The members of the current Conomo Point Planning Committee have met twice monthly for close to three years. Like the committees before us, we have been studying the environmental, legal, ethical and economic aspects of five possible options.

1. Continue leasing as we have. By majority vote, the committee has submitted an article on this years annual meeting warrant that asks the voters to allow the current Conomo Point leases to expire in 2011.
2. Sell all of the lots that are currently leased. By majority vote, the committee believes this option is not in the best interest of the town.
3. Sell some of the leased lots while keeping others for open space, communal septic systems and public access. The majority of the committee believes this option holds the best promise for the town and should be explored further. An article in this years warrant asks the voters to direct its Conomo Point Planning Committee to develop such a plan.
4. Sell none of the lots and keep all of the Point for public access and open space. The majority of the committee believes that further discussion of this option should be tabled.
5. Sell all of the Point including parcels not currently developed. The majority of the committee believes that further discussion of this option should be tabled.