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April 4, 2011

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Hon. A. Raymond Randall, Jr., and
Members of the Board of Selectmen
Essex Town Hall
30 Martin Street
Essex, MA 01929

Re: Conomo Point – Quantum of Vote Needed to Authorize Bridge Leases

Dear Members of the Board of Selectmen:

You have requested an opinion as to the quantum of vote needed to authorize the Board of Selectmen, acting as the Conomo Point Commissioners, to enter into short-term leases for portions of the Conomo Point property after expiration of the current leases.

For the reasons set forth below, it is my opinion, based on the records available for my review, that a simple majority vote will be sufficient to authorize the Board of Selectmen, acting as the Conomo Point Commissioners, to enter into short-term leases for portions of the Conomo Point property after expiration of the current leases.

If real property is held by the Town for a specific purpose, then pursuant to G.L. c.40, §15A, the property may not be used for a new and different purpose without a two-thirds vote of Town Meeting to transfer the property from the board having custody of the property for the purpose for which it is held, to the same or a different board for another specific municipal purpose. Furthermore, under G.L. c.40, §15A, the board originally having custody of the property must determine by a majority vote that the land is no longer needed for the purpose for which it has been held and notify the Board of Selectmen of that determination. Harris v. Wayland, 392 Mass. 237 (1984).

If real property is held for general municipal purposes or if it is already held for purposes of lease, in my opinion, no such transfer vote is needed. Rather, a simple majority vote of a town meeting is sufficient to authorize the lease of the Town's real property pursuant to G.L. c.40, §3. Harris v. Wayland, 16 Mass. App. Ct. 583, 585 (overruled as to other issues by the Supreme Judicial Court in Harris v. Wayland, 392 Mass. 237).

With respect to the Town's property at Conomo Point, it is my understanding that you were unable to locate documentation specifically assigning the property to the Board of Selectmen, acting as Conomo Point Commissioners, for purposes of lease. You have, however, found the following relevant documents:

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1. A vote at the Annual Town Meeting of 1874 authorizing the Overseers of the Poor to lease lots of land on the shore of the Town Farm for terms not exceeding five years. It is my understanding that this vote relates to what is now known as Conomo Point.
2. A vote at a Special Town Meeting on April 24, 1967, rescinding the 1874 vote referenced above and adopting the following: "The Board of Conomo Point Commissioners be and are authorized to execute leases for lots of land in the area known as Conomo Point, in Essex, for terms, not exceeding ten years and upon such terms and conditions and for such rentals as the Board of Conomo Point Commissioners may from time to time determine." This vote was by a two-thirds majority.
3. A vote at a Special Town Meeting on June 5, 1972, rescinding the ten year limitation established in 1967 and authorizing ten year leases with options to renew for additional ten year periods. The minutes do not specify the quantum of vote, only that it was voted. In my opinion, this means that it was a majority vote, since, pursuant to G.L. c. 39, §15, the Town Clerk is required to record all two-thirds votes.
4. A vote at the Annual Town Meeting of 1991, authorizing ten year leases with options to renew for additional ten year periods. The minutes do not specify the quantum of vote, only that it was voted. In my opinion, this means that it was a majority vote, since, pursuant to G.L. c. 39, §15, the Town Clerk is required to record all two-thirds votes, as she did with respect to the zoning bylaw amendment voted at the same Town Meeting.
5. A vote at the Annual Town Meeting of 1997 that the Town "not renew the current Conomo Point land leases which expire in the year 2011." The minutes do not specify the quantum of vote, only that it was voted. In my opinion, this means that it was a majority vote, since, pursuant to G.L. c. 39, §15, the Town Clerk is required to record all two-thirds votes.
6. A vote at the Annual Town Meeting of 1999, that certain lots, which subsequently became known as the area North of Robbins Island Road, "shall be retained for public use" upon expiration of the leases then in effect. The minutes specify that this motion passed by a vote of 268 yes and 202 no. This is a majority vote, but not a two-thirds majority.

It is my opinion, based on the above-referenced votes, that the Town's property at Conomo Point is held by the Board of Selectmen, acting as Conomo Point Commissioners, for purposes of lease. Although you were unable to locate documentation specifically assigning the property to the Board of Selectmen, acting as Conomo Point Commissioners, for purposes of lease, it is my opinion that the 1967 two-thirds vote was sufficient to achieve this purpose. Since that time, it appears that the property has been regarded in this manner, as evidenced by the fact that subsequent votes to enter

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into new leases were by simple majority. Therefore, in the absence of any evidence of the property being held by some other board, for some other purpose, it is my opinion that the Town may authorize new leases for portions of its property at Conomo Point by a simple majority vote of its Town Meeting.

It is my further opinion that the Town Meeting votes of 1997 and 1999 were insufficient to effectuate a change in purpose for any portion of the Conomo Point Property. As previously discussed, G.L. c. 40, §15A, sets forth two criteria for changing the purpose for which property is held: (1) a majority vote of the board having custody of the property that it is no longer needed for that purpose; and (2) a two-thirds vote of Town Meeting approving the change in purpose. Neither the 1997 nor the 1999 votes contain evidence of compliance with either of these requirements. Indeed, the record reflects that neither vote obtained a two-thirds majority. Therefore, in my opinion, the Town Meeting votes of 1997 and 1999 were insufficient to effectuate a change in purpose for any portion of the Conomo Point Property and such votes merely expressed the non-binding sense of those meetings.

If you have any questions in this regard, please do not hesitate to contact me.

Very truly yours,



Gregg J. Corbo

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