Board of Selectmen
Town Office Annex
September 5, 2007
Regular Meeting Minutes

Selectmen present: Brad Parker, Randy Dill and Peter Govert.
Also present: Linda Zemienieski, John Bennet, Mark Walter, Charlie Farrow, Ed Blaschik, Emmett Lyman, Jeff Rhoades, George Giesey, Matt Budzik, Wyley Peckham, Mary Ellen Klinck, Melissa Ziobron, and Sarah Wasley.

1. The meeting was called to order at 7:30 p.m. by First Selectman Parker and the attendees said the Pledge of Allegiance.

2. Approval of Agenda: Mr. Parker added item 8.B. Tax Collector and then altered the order of the agenda to allow Attorney Bennet to address items 7.A. 4-8 Middle School Discussion and 8.B. Tax Collector after item 5, First Selectman's Report. Motion made by Mr. Dill, seconded by Mr. Govert, to approve the agenda as amended. Unanimous aye.

3. Approval of Minutes:

Regular Meeting of August 1, 2007: Mr. Dill commented that he had no corrections to the minutes but reminded Mr. Parker of some open items from that meeting such as providing procedures for dog pound and senior center donations and the costs regarding the repairs to Day Hill Road. Mr. Parker noted that he would get the procedures for donations and the information regarding Day Hill Road was already put in the Selectmen's folders.

Motion made by Mr. Govert, seconded by Mr. Dill, to approve the minutes of the Regular Meeting of August 1, 2007 as written. Unanimous aye.

Special Meeting of August 2, 2007: Mr. Dill noted a correction on page 3, paragraph 2, line 5, the word "*disappointed*" should be changed to "*disappointment*".

Motion made by Mr. Govert, seconded by Mr. Dill, to approve the minutes of the Special Meeting of August 2, 2007 as amended. Unanimous aye.

Special Meeting of August 7, 2007: Motion made by Mr. Dill, seconded by Mr. Govert, to approve the minutes of the Special Meeting of August 7, 2007 as written. Unanimous aye.

Regular Meeting of August 15, 2007: Mr. Dill noted that he was not in attendance and would abstain from the vote.

Motion made by Mr. Govert, seconded by Mr. Parker, to approve the minutes of the Regular Meeting of August 15, 2007 as written. Ayes: Govert, Parker. Abstention: Dill.

4. Correspondence: Mr. Parker noted that there were several items of correspondence put in the Selectmen's folders for review.

5. First Selectmen's Report: Mr. Parker reported on the following items:

- The annual First Day Celebration at the Middle School was well attended and the weather was favorable. He commented that it was the first opening for both the new middle school principal and the new superintendent.

- The Chatham Health District will be coordinating through a group of Emergency Management project volunteers a Pandemic Flu drill on November 3. Each of the towns in the district will be conducting a screening within their own town. East Haddam's screening will be held at the high school. From there one family representative will be bussed to a POD (point of dispensing) clinic in Portland where in an actual emergency they would receive necessary medicine to take back to their families. As part of this drill we will actually be bussing people to the POD and participants will be able to get a free flu shot that day. This drill will run through all the actual steps of a Pandemic Flu dilemma and give our volunteers and emergency service people a chance to practice the event.

- He announced that he was asked once again to chair the CCM Public Safety Committee. He explained that this was the committee that recommended legislation for new bills so if either Mr. Dill or Mr. Govert had any interest in this area to let him know as they would be having a committee meeting at the end of the month.

- He announced that he was also a member of a committee for CCM representing a group of large and small towns on Municipal Health Care. He explained that last year through the legislative session there was a move to adopt a bill that would create a health care program for municipalities which met rejection from a lot of people in the towns and the state. The committee had their first meeting today and worked on what would and would not work for the towns and would be presenting some information back to the Comptroller's Office as well as the legislators.

Resident Trooper Report: Mr. Parker introduced East Haddam's new Resident State Trooper Jeff Rhoades. He explained that Trooper Rhoades started with East Haddam last Monday, lived in Hebron, and was previously a resident trooper in Old Lyme.

Trooper Rhoades announced that he has been with the state police for fifteen years and has been all over the state. He has had assignments with the Bethany Barracks, Westbrook Barracks (where he was a resident trooper for Old Lyme), and then moved to Troop K in Colchester around 1998-1999 to be a dog handler and has been with the K-9 program ever since so he comes to East Haddam with a canine.

Trooper Rhoades reported on following items:

- Burglaries at the Church on Orchard Road - He noted that they had another burglary last night. He added that they have had complaints about some kids doing drugs at the town beach and that today Trooper Hassett interrupted a couple of kids at the beach (one of which took off into the woods, the other Trooper Hassett was able to apprehend). The vehicle that the kids were in had some of the items that were stolen from the church so the police were in the process of identifying the suspects in that incident.

- DUI spot check on Route 149 two Fridays ago – Three DUI arrests were made.

- Fatal motor vehicle crash at Lake Hayward – This incident would probably be under investigation for a couple more months until they could determine the cause of the accident.

- Copper Theft at the new Middle School – That incident was solved through a bomb threat that was place at the Norwich Superior Court. Trooper Hassett was off duty listening to his radio and he recognized the description of the vehicle. They were able to solve the bomb threat and through the interviews for that crime were able to obtain confessions on the copper theft as well.

- Trooper Hassett would be starting the DARE program at the Middle School soon.

- The police were still receiving a lot of speeding complaints from motorists in town. They are trying to step up their efforts regarding this.

- The current DUI and speed enforcement grants were coming to an end for 06-07 and they would be applying for 07-08 grants.

- Project Safe Halloween planning was underway.

- Plans for Underage Drinking enforcement were underway. Troopers Hassett and Rhoades would be going to a multi-town conference in Westbrook to look for additional funding to address underage drinking in town.

- The police were still receiving complaints regarding dirt bikes and ATVs. They have had a couple of quads that they have been able to catch and get off the road.

- On Saturday and Sunday there were a couple of cars broken into on Alexander Road and those suspects have been caught. All three suspects were East Haddam residents. Two of the three suspects were still locked up. One of the suspects was sixteen and was released.

Trooper Rhoades asked for questions from the board at this time.

Mr. Dill asked about the status of two untimely deaths that occurred in town back sometime ago and whether their investigations were active or not. He realized that Trooper Rhoades was new to East Haddam and was probably unfamiliar with the two cases but asked if he could check on their status. Mr. Parker noted that he was aware of the situations that Mr. Dill was referring to and would get Trooper Rhoades the dates of those incidents.

Mr. Dill also commented that having Trooper Rhoades come with a dog was a great benefit to the town but he was also aware that he would get called out elsewhere on occasion because of that resource and asked Trooper Rhoades his expectation of how often he felt he would get called away. Trooper Rhoades responded that was hard to say. His whole career he has worked the evening shift

and this was his first assignment on the day shift so he needed to get a feel for the day shift demands. When he worked evenings his call out time varied, sometimes he was called out once a month, sometimes not at all during a month and at other times he would be called out two to three times a week. He commented it was like anything else, if we had a serious issue in East Haddam we would expect the surrounding towns such as East Hampton and Colchester to help us.

Mr. Govert asked Trooper Rhoades his impression of East Haddam relative to the other places he has worked. Trooper Rhoades responded that East Haddam was a busy town and quite spread out. He explained that the reason he choose East Haddam over some of the other resident trooper openings was that he like being a resident trooper in Old Lyme and East Haddam had some of the same qualities. One of his reasons for leaving Old Lyme was it was a long ride and he had a wife and kids and wanted to be closer to home.

The selectmen welcomed Trooper Rhoades to town and thanked him for his report.

7. Old Business:

A. 4 - 8 Middle School Discussion: Mr. Parker commented that there has been a lot of media attention lately regarding a couple of things related to the school. One of the issues was related to school reimbursements and the other to the land. He noted that he would speak briefly on the reimbursement issue and has asked John Bennet to speak on the land issue.

Mr. Parker explained that the reimbursement issue was created because last spring during the legislative session the bond package was not approved. The Bond Commission will be meeting on Monday. He explained that the reimbursement schedule was set up so that every sixty days the town received a reimbursement check for monies that have been spent. The town puts in paperwork within the first thirty days and thirty days later receives a reimbursement check. He noted that the town's last reimbursement was in June and the next one should have been in August but since the bond package was not approved East Haddam was one of 35-40 towns in the state that received notices that our reimbursement would be delayed until September because of this. Our reimbursement for August was scheduled to be $1.9 million. The Bond Commission was expected to approve the package on Monday and as long as the Governor signed it reimbursement payments would be back on schedule.

Mr. Dill asked if it was true that reimbursement payments would not be made to us unless we had clear title to the land. Mr. Parker responded that it was not true and the town had already received reimbursement payments.

Mr. Parker turned the land issue discussion over to Attorney Bennet.

Attorney Bennet gave a brief overview of the acquiring of the two parcels from the Donnellan's and Gold/Manger Estate. He noted that the town did the taking and paid money to the court based on the appraisals. He explained that the Gold appeal challenged that the town had a six month time from the original resolution in which to take the property and the Supreme Court in summary judgment ruled in favor of the town. He commented that the Donnellan's accepted the money and challenged the appraisals. He explained that what the Gold's recent Appellate Court decision said essentially was there was a factual issue that required a trial of fact that the Superior Court judge should have given an opportunity for a factual trial/factual determination about the

intent of the town in taking the property. He noted that, frankly, he found it a surprising decision because the only way that a town expressed its intent was by the action of its legislative body which took the property. He noted that we have since that time made a motion for reconsideration. He added should that not be successful he would talk with the Selectmen in executive session about specific strategies but we have the option then to appeal to the Supreme Court or to simply go back and have the trial and have the factual determination made. The object here was to try and terminate this litigation as soon as possible. He noted that obviously we were not in complete control of this because even if we go back and have the trial and prevail again they could appeal again and he could not guarantee anything for the town. The one thing he could tell us was that in the suit that has been brought and was the subject of the appeal, which was on a parallel track to our taking case, they have not challenged our underlying authority to acquire the property or the underlying purpose for taking the property; they were simply raising this single procedural point. He commented that this was odd since, as Mr. Parker mentioned in his press release; most of those months were spent trying to negotiate with them and come up with a price that was agreeable. The figures that the Gold's have been suggesting have been nearly twice what the towns appraisals said. He commented that at the end of the process, the simple solution if we were to lose everything, which he did not anticipate given the previous decisions of the supreme and superior courts regarding this issue of timeliness, would be to retake the property. He noted that he would speak about specific strategies on litigation with the Selectmen in executive session but he would be happy to answer whatever questions he could that did not get into those specifics.

Mr. Dill noted that he had one question that went back to this lingering issue of the six month statutory limitation on properties taken for purposes other than a school. He noted that he did not recall that it ever came up in any of their strategy discussions with the negotiating committee in executive session. He clarified that if they could have acted within six months then all of this would have been off the table. Attorney Bennet noted that the simple answer was yes, the resolution could have passed and the next day he could have started all the taking procedures assuming that the money was there and all the pieces were in place. Mr. Dill noted that he understood that we were trying to negotiate and it would have been better if we could have come up with agreeable prices for both Gold and Donnellan and avoided all the eminent domain issues but again, when the town was approaching that six month period he did not recall any discussion about that. Attorney Bennet responded that the six month period was simply not an issue with respect to taking property for a school. Mr. Dill replied that he understood that but the referendum was not just for a school it was split out for other purposes. Attorney Bennet did not believe that to be the case. He explained that what happened was that there was a resolution that said "acquiring the property for the purposes of a school", that was the purpose that was intended. The text then went on to enumerate the fact that portions of the land would end up being open space and used for other town uses and in fact those acreages did not bear any resemblance to reality. He did not know how that text got in there as it was not text that was in the original resolution. Mr. Dill remembered when that issue came up during discussions with bond counsel and there was an insistence that it be split out. Attorney Bennet noted that he did not participate in those discussions and it was not text that he approved, but that the underlying purpose on the head of that document was "taking for a school" and that was the understanding he had and text he had seen. He noted that the language regarding the acreage did not bear any resemblance to reality as the school project has consumed sixty plus acres and he did not believe there was ever a plan that divided the property physically on a map or anything else for the school, open space and town uses and he did not know where those figures came from. He noted that at the end of the legal process, if the position was going to be that the property was being taken

for some other purpose, then the town would need to retake it for a school. The previous finding of the Superior Court was that the property was being taken for a school.

Mr. Dill asked if there had been any recent changes to eminent domain from the legislature that the town would need to be concerned about. Attorney Bennet responded that discussions in the legislature about changes in eminent domain pertained to redevelopment cases where you would be taking property for redevelopment and handing it off to a private owner to build hotels and such, as in the New London case. There have never been any suggestions that he has heard of in terms of eminent domain procedures that effect direct municipal uses. He explained that it was in these redevelopment cases where people objected to the taking of their house and property and having it turned over to build hotels where other people would be making a profit on their former land. He has never heard of a challenge to the underlying authority of a town on the taking of property. He also added that there was no challenge in the case that we have. They were not challenging our authority to take the property it was a single procedural point on timing, which has been decided in our law before.

Mr. Parker noted that under Selectmen's discussion they would be booking a meeting with Attorney Bennet in executive session. He would inform Attorney Bennet of the date the board selected.

Mr. Dill commented for the record that he was a little concerned that the board had waited this long to call a meeting on this issue. He noted that the Appellate Court release was dated August 21 and until today the board has not had any conversations about dealing with this. He just wanted to express his concern that we have not called a meeting sooner. Mr. Parker responded that until the end of August he did not have all three Selectmen available at the same time.

8. New Business:

B. Tax Collector: Mr. Parker explained that the town has an issue where the name of Janet Tucker was accidentally omitted on the Democratic slate of candidates this year. All the proper steps in the process were taken but when the paperwork was filed the committee secretary had accidentally omitted the name. Before it was noticed it was beyond the deadline for adding people to the ballot so there was an action in the works to put this name on the ballot. He noted that Attorney Bennet would speak to that this evening and explain the motion the board would need to take to authorize this.

Attorney Bennet explained that Ms. Tucker was properly nominated in a timely fashion at the party caucus and the minutes reflect that slate. He also understood that the Republicans did not propose a candidate. The process was that the party chairman and secretary would need to sign a certified slate of the nominations passed by the town committee but who ever transcribed that slate dropped the Tax Collector off completely, the Town Clerk took it, and before anyone realized it was left off the time limits to petition someone on the ballot had expired. He explained that what happened in a case such as this was that the Tax Collector and the party would need to sue the Town Clerk in order to get a court order to put the name on the ballot. He added that this was cumbersome but it was the only process that existed to accomplish this. So in light of this the Democratic Party and Janet Tucker have brought suit against the Town Clerk seeking this order and there was a hearing scheduled on September 17. Attorney Bennet explained that one of the jobs of the Board of

Selectmen was to settle litigation for the town and he would need the board to advise him whether or not they wanted him to stipulate that her name could go on the ballot at the hearing on September 17.

Mr. Parker noted that the way he understood this was once the court authorized Debra Denette to do this then she had the authority to add the name to the ballot. Attorney Bennet acknowledged that was correct.

Motion made by Mr. Dill, seconded by Mr. Govert, to authorize Attorney Bennet to stipulate that the name of Janet Tucker could go on the ballot as Tax Collector at the hearing on September 17, 2007. Unanimous aye.

6. Citizen's Concerns: None.

7. Old Business:

A. 4 – 8 Middle School Discussion: This item was previously discussed.

B. Goodspeed Update: Mr. Parker stated that he had nothing new to report since the last meeting of which the minutes were just approve this evening. He commented that he has had some discussions since the last meeting regarding the Goodspeed's issues with the sidewalk and speeding problems.

Mr. Dill noted that he had a comment based on their last meeting with the Goodspeed. He commented that part of the reason for meeting with the Goodspeed was for ongoing communication but more importantly was the negotiation for acquisition of property for access from the parking lot to Route 149. He added that those negotiations were going nowhere. He felt the Goodspeed really did not want to talk about it even though the town has gone through the trouble of getting appraisals which if not used in a timely fashion would need to be redone at an additional cost to the town and as far as he was concerned he saw no reason to meet with them any longer. He noted if they were not going to be upfront and negotiate or even be willing to negotiate and talk about that property he saw no point in meeting. He noted that at the last few meetings he has gone to the Goodspeed has talked about the same things, there has been nothing new.

Mr. Govert noted for the record that he understood Mr. Dill's point of view and where he was coming from but he also understood why the Goodspeed did not want to enter into negotiations with the town to sell that piece at this point in time. He did believe they would be willing to negotiate at a later time but appreciated Mr. Dill's comments regarding the appraisal and its shelf life. He commented that it would have been nice to know their intentions before the appraisal was performed. He personally still felt it was important to meet with the Goodspeed and would like to continue to do so.

Mr. Dill disagreed with Mr. Govert. He recapped that the reason the Goodspeed used for delaying negotiations was that the property was one of their better accommodations for actors and the argument they used against turning the property over to the town for access was that it would disturb the actors because they slept late. He felt that was a very poor argument when cars were lined up at the stop sign to go over the bridge in front of the building. He took that excuse as a stall tactic. The other item that concerned him was that the town appropriated money and the EDC hired a consultant who told the town that the access was key to developing this property. He commented

that we were worried about getting developers here as the project was not big enough but without that access we would not get any interest. He noted that lastly it was a safety issue coming out of the parking lot. He stated that he was disappointed in Goodspeed.

Mr. Parker noted that he felt it was important to continue to meet with the Goodspeed and he planned on continuing to do so and it would be up to Mr. Dill whether he chose to attend the meetings or not. Mr. Dill noted that he was not going to waste his time as he had important things to do.

C. Ethics Policy: Mr. Parker explained that he has spoken with Attorney Bennet and they discussed the potential of discussing the ethics policy at the same meeting as the school. Mr. Dill asked if Attorney Wells would be there as well since he was the attorney that wrote the response. Mr. Parker noted the Attorney Bennet had spoken with Attorney Wells on this matter. Mr. Dill asked who the board would be meeting with, Attorney Bennet or Attorney Wells. Mr. Parker responded that potentially both attorneys.

D. Middle School Conversion Committee: Mr. Parker passed out a list of applicant's names and their party affiliations. He asked that the board review the list of potential candidates so that the board could work on appointments. He commented that there were some new names and faces interested in this committee. He was hoping that at the next meeting the board could start early and work on the appointments. Mr. Dill requested that a separate meeting would be better for this work.

Mr. Govert asked about the minority representation on a seven member committee. Mr. Parker responded that no more that four members from any one party could be appointed for a seven member committee.

Mr. Dill suggested that Mr. Govert might want to get a copy of the original review or evaluation that was done on the Middle School by Kaestle Boos.

Mr. Parker noted that they would talk about the date and time for this meeting at the end of the agenda.

8. New Business:

A. Tax Refunds: Motion made by Mr. Govert, seconded by Mr. Dill, to award tax refunds in the amount of:

$51.03 to Richard I. Joaquin II
$29.84 to Margaret Cantrell
$48.21 to Roberto T. Lucheme
$59.95 to Chase Man. Auto Finance
Unanimous aye.

B. Tax Collector: This item was previously discussed.

9. Public Comment: Mark Walters asked if Attorney Bennet gave an indication of how long the whole process would be of the appeal to the courts on the motion for reconsideration and the

possibility of bring this back to a vote of the town. Mr. Parker replied that they would be having those discussions next week when the board met with Attorney Bennet. He noted that he was not sure how long the process was for the motion for reconsideration and deferred to Attorney Matt Budzik who was in the audience. Matt Budzik responded that there was no deadline but we should know within thirty days as they would typically act fairly soon on whether or not to grant the motion.

Mr. Walter questioned if this were brought back to the town for a vote was there a danger that the town would not approve the eminent domain. Mr. Parker noted that the town has already approved this so that action has already been taken. If this went back to a town meeting it would not be to disallow what the town has already done, it would be to reapprove the taking. He explained that they would not be going before the town for the entire property we would only be going for the property that was owned by this particular person because the whole property was not being contested. In response to Mr. Walter, Mr. Parker noted that the school was on the piece of property in question and the access road was on the other piece.

Mr. Govert gave a short overview of the background of the purchase of this property. He noted that the school was on what you would call the "filet" of the land and the balance of the property was ledge and wetlands. They felt that it would be responsible governance to purchase all the land and not just the prime piece and leave the owners with worthless property of wetlands and ledge.

Matt Budzik clarified that he understood Mr. Parker to say that if we go to town meeting and this issue was not reauthorized that did not do away with or change the original authorization. Mr. Parker confirmed that was correct.

Mr. Dill asked if the town has considered getting a second legal opinion on this. Mr. Parker replied that was something he thought they would be discussing at the meeting next week. Mr. Dill noted that he would recommend that.

10. Selectmen's Discussion: Mr. Parker noted that he had previously offered two dates for the special meeting with Attorney Bennet to the board and he asked which date worked best for them. It was decided that the board would meet on September 11 at 9:00 at Attorney Bennet's office in Essex.

Mr. Parker confirmed that Mr. Dill had some conflicts with the October meeting schedule. Mr. Dill clarified that he had conflicts with the next three meetings. It was determined that the regular meeting of October 3 would be changed to October 10, the regular meeting of October 17 would be changed to October 24, and the regular meeting of September 19 would be changed to September 27 at 7:30pm and a special meeting would be held on September 27 at 6:00pm to discuss the Middle School Conversion Committee.

Mr. Dill noted that he has been receiving calls regarding Olmsted Road. He was told that the town crew had done a little work there but he understood that there was money in the budget to do some major work. Mr. Parker noted that there was money in the budget to do work on Olmsted Road and that Roger Nemergut was in the process of doing some design work on the culvert that needed to be replaced. Mr. Dill noted that the road was collapsing and there was a drainage problem. Mr. Parker reported that Fred Thumm and Bob Sosnoski went out there on Friday to make

some decisions as to what they could do out there on a temporary basis until the design work was completed and they were able to do the full project. Mr. Dill clarified that it was Public Works intention to do more than the culvert and address the entire section that was distressed. Mr. Parker confirmed that it was and that a lot of that road needed to be completely redone. He confirmed that Roger Nemergut was working on the design and that it would be coming before the Wetlands Commission.

Mr. Govert commented that he has attended the First Day Celebrations at the Middle School since they started and they kept growing and were getting to be bigger and bigger and becoming real solid events. He added that it was very gratifying to see more and more parents getting involved.

Mr. Govert also announced that Youth and Family Services would be hosting a ballroom dancing fundraiser on September 22. It would be held at the Middle School and the cost was $10.00. He added that the Arthur Murray Dance School would be coming to the event.

Mr. Dill noted that the Transfer Station Committee has not met in a while and asked where that stood. Mr. Parker responded that he has been putting a few things together and he would be trying to set up a meeting in the near future. Mr. Dill asked what the water source was for the Transfer Station for washing and that sort of thing. He understood that there was bottled water for drinking. Mr. Parker noted that there was a well but it did have a lot of iron in it. Mr. Dill noted that he had received some complaints about that. Mr. Dill confirmed that it was an iron issue and that the well had been tested and there were no contaminants that Mr. Parker was aware of other than iron. Mr. Parker noted that Mr. Dill was correct.

Mr. Govert mentioned that Mr. Parker was going to arrange for a site walk with the Building Inspector at the new Middle School and asked if Mr. Dill wanted to be part of that. Mr. Dill noted that the Wetlands Commission needed to do another walk out there as well. The board agreed to arrange a combined walk with IWWC, BOS and the Building Inspector. Mr. Dill would check the Wetlands schedule, alert Jim Ventres, and work from there.

11. Adjournment: There being no additional business to discuss, a motion was made by Mr. Govert, seconded by Mr. Dill, to adjourn the meeting at 8:39 pm. Unanimous aye.

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537B

Respectfully submitted,

Peter T. Govert, Secretary