

**TOWN OF CAPE ELIZABETH**

**TOWN COUNCIL MEETING MINUTES**

**MEETING #13-96/97**

**JANUARY 13, 1997**

**6:30 P.M.**

**ROLL CALL BY CHAIRMAN MCLAUGHLIN**

**PRESENT ABSENT**

<b>Janet L. McLaughlin, Chairman</b>	<b>X</b>
<b>Phyllis C. Coggeshall</b>	<b>X</b>
<b>Joseph H. Groff, III</b>	<b>X</b>
<b>William H. Jordan</b>	<b>X</b>
<b>William S. Linnell II</b>	<b>X</b>
<b>John W. McGinty</b>	<b>X</b>
<b>Rosemary A. Reid</b>	<b>X</b>

***PLEDGE OF ALLEGIANCE***

ITEM #123-96/97 Moved by P. Coggeshall and Seconded by W. Jordan

Ordered the Cape Elizabeth Town Council enters into executive session at 6:30 p.m. for the annual evaluation of the Town Manager.

(7 yes) (0 no)

Moved by P. Coggeshall and Seconded by W. Linnell

Ordered the Cape Elizabeth Town Council exits executive session at 7:28 p.m. and reenters public session at 7:30 p.m.

(7 yes) (0 no)

***CITIZENS' DISCUSSION OF ITEMS NOT ON THE AGENDA***

John Ridge, 2 Pleasant Valley Avenue - Mr. Ridge asked Chairman McLaughlin to announce the vote of last months last item #121-96/97 regarding annual appointments. This item was voted on following an executive session.

***REPORTS AND CORRESPONDENCE***

Councilor Coggeshall, member of the Bridge Opening Steering Committee, encouraged citizens to forward their comments to the Chamber of Commerce, 145 Middle Street, Portland, ME 04101 e.g. who crosses the bridge first. An article on our Transfer Station has been distributed, through the press, throughout several U.S. cities.

Councilor Linnell informed the public he will speak before the Standing Committee on Utilities at a public hearing regarding Maine Yankee.

Councilor Jordan reported that RWS will be presenting a report following a meeting with the head of the DEP.

Chairman McLaughlin reported on the workshop with the School Board held January 7, 1997. A workshop with the Town Councils and School Boards of Cape Elizabeth and Scarborough has been tentatively scheduled for January 29, 1997 at Scarborough.

Ms McLaughlin announced she would not seek reelection in May.

Moved by W. Jordan and Seconded by R. Reid

Ordered the Cape Elizabeth Town Council approves the Minutes of Meeting #11-96/97 held December 11, 1996 and Meeting #12-96/97 held December 17, 1996 as written.

(7 yes) (0 no)

### ***CONSENT AGENDA***

Moved by W. Jordan and Seconded by R. P. Coggeshall

Ordered the Cape Elizabeth Town Council approves the Consent Agenda as presented:

ITEM #124-96/97 Approval to authorize the Town Manager to execute a quitclaim deed to Ross B. & Maureen A. Lonsdale for land and buildings situated at 138 Mitchell Road (Map U17 Lot 34)

ITEM #125-96/97 Approval of the Fort Williams Advisory Commission recommendation for the USCG to conduct a change of ceremony on the green aside Portland Head Light on June 27, 1997

ITEM #126-96/97 Acknowledge receipt of the proposed Capital Improvement Plan for fiscal year 1998 - 2002

ITEM #127-96/97 Set a public hearing for Monday, February 10, 1997 at 7:30 p.m. at the Cape Elizabeth Town Hall upon the recommendation of the New Bridge Naming Committee to recommend to the Maine Legislature a name for the new bridge under construction between South Portland and Portland

ITEM #128-96/97 Acceptance of all gifts received by the Town in 1996, with appreciation to all the donors, as listed in the memorandum to the Town Council from Debra Lane dated 1/7/97

(7 yes) (0 no)

***PUBLIC HEARING CONDITION OF FOWLER ROAD***

7:45 p.m.

Intro. - Manager McGovern

Phil DeLeon, PACTS - Mr. DeLeon provided the Town Council with an overview of the results of the Fowler Road Survey.

Chairman McLaughlin opened the hearing to public comments at 8:03 p.m.

Jack Roberts, 185 Fowler Road - Mr. Roberts thanked the Town for providing an opportunity to complete the survey. Issues to be considered - trenching - widening of road with paved shoulders and parking along Fowler Road.

After hearing no further comments, the hearing was closed at 8:06 p.m.

ITEM #129-96/97     Moved by W. Linnell and Seconded by W. Jordan

Ordered the Cape Elizabeth Town Council authorizes the Town Manager to notify PACTS of the Town Council's endorsement of the proposed reclamation of Fowler Road with plans to return to the Town Council for review and approval prior to any construction. Strong consideration in design shall be given to the results of a survey recently conducted with said results to be attached to the minutes of this meeting.

(7 yes) (0 no)

***OTHER ITEMS***

ITEM #130-96/97     Present - Robert Malley, Director PWD

Moved by W. Linnell and Seconded by P. Coggeshall

Ordered the Cape Elizabeth Town Council approves the following allocation of funds within the Roadway/Drainage Account:

\$10,000	Fowler Road Temporary Repairs
\$25,000	Miscellaneous Paving Including Shore Road Shoulders at \$2,100
\$10,000	Local Share for Route 77/Shore Road/Scott Dyer Road Signal
\$10,000	Miscellaneous Drainage Projects
\$45,000	Towards the Total of \$125,000 Needed for Pleasant Avenue

(7 yes) (0 no)

ITEM #131-96/97 Present - Michael Hill, Town Attorney  
Chris Vaniotis, Attorney for First Atlantic Corporation  
Craig Coffin, Chief Operating Officer of First Atlantic Corporation

Moved by J. Groff and Seconded by W. Jordan

Ordered the Cape Elizabeth Town Council adopts the proposed emergency ordinance as presented in the January 6, 1997 letter from the firm of the Town Attorney and refers the amendment to the Planning Board. The emergency ordinance reads as follows:

**TOWN OF CAPE ELIZABETH  
EMERGENCY ORDINANCE**

WHEREAS, Section 19-2-10 (b) (4) and (5) of the Town of Cape Elizabeth's Zoning Ordinance govern the duration of and amendments to Site Plan approvals; and

WHEREAS, the present provisions do not address the duration of an amendment to a previously approved Site Plan; and

WHEREAS, the present provisions do not expressly address whether the review of a proposed amendment to a Site Plan which reduces the size of buildings, structures or other site improvements should be conducted pursuant to the ordinance provisions in existence at the time of the original Site Plan approval; and

WHEREAS, the absence of express ordinance provisions with respect to the duration of and ordinance sections applicable to the review of amendments to previously approved Site Plan adversely affect the property of the Inhabitants of the Town and therefore constitutes a public emergency effecting life, health, welfare and property of the Inhabitants of the Town;

NOW, THEREFORE, to meet the existing emergency, the Town Council hereby adopts the following Emergency Ordinance pursuant to Article II Section 12 of the Town Charter, to take effect immediately:

Section 19-2-10 (b) Subsections 4 and 5 are hereby amended as follows:

4. Site Plan approval shall be valid for a period of one year from the date of the Planning Board Decision. Prior to the expiration of the Site Plan approval, the applicant may request an extension of up to one year from the Planning Board for cause shown. Site Plan approval shall remain valid if a building permit has been issued for the project prior to the expiration date. Expiration of the building permit shall render the Site Plan approval null and void. Failure to comply with conditions placed upon Site Plan approval, to post any necessary performance guarantees, to comply with any other permitting processes or to address any other issues of site development, except pending litigation challenging the Site Plan approval, shall not imply automatic extension of the Site Plan approval.

Projects which have received Site Plan approval prior to February 1, 1994, shall be valid until February 1, 1995, prior to which time an extension may be requested. Amendment of a previously approved site plan shall extend the approval for one year after approval of the amendment provided a written request for amendment is submitted to the Town Planner prior to the expiration of the original approval, the expiration of any previous extension or the expiration of a building permit for the project, whichever is later. Only one extension as result of amendment shall be permitted and for no more than one year. If a requested amendment is denied, the previous approval expires on the same date as it would have expired if no amendment had been requested.

5. Any alteration of a site which is inconsistent with the approved Site Plans shall require an amendment to the Site Plan. Planning Board approval must be obtained prior to the alteration. If the alteration proposes a reduction in the size of buildings, structures, or other site improvements, it shall be reviewed under the provisions of this Ordinance and any other Town Ordinances which were in effect at the time of the original application and approval. De minimis changes to an approved Site Plan may be placed on the Planning Board Consent Agenda at the discretion of the Town Planner. De minimis changes shall not include (1) a change to a public or private right-of-way or easement, (2) a decrease in proposed buffering or landscaping, or (3) any issue involving a condition placed on the Site Plan approval. Prior to placement on the Consent Agenda, the applicant shall meet with the Town Planner to review the proposed changes and shall provide eight (8) copies of the revised Site Plan to the Town Planner at least eighteen (18) days prior to the next regular Planning Board meeting. The decision of the Town Planner to not place an item on the Consent Agenda may be appealed to the Planning Board upon submission of fourteen (14) copies of the proposed change to the Town Planner eighteen (18) days prior to the next regular meeting of the Planning Board.

Pursuant to Article II Section 12, any amendment to a previously approved Site Plan which is timely submitted to the Town Planner through the pendency of this Emergency Ordinance and approved by the Planning Board of the Town of Cape Elizabeth shall be valid for one year after the approval of the amendment, regardless of whether this Emergency Ordinance automatically stands repealed as of the 91<sup>st</sup> day following the date hereof.

(5 yes) (2 no P. Coggeshall, J. McGinty)

Moved by W. Jordan and Seconded by W. Linnell

Ordered the Cape Elizabeth Town Council takes ITEM #136-96/97 out of order.

(7 yes) (0 no)

ITEM #136-96/97 Intro. - Manager McGovern  
Richard Nest, Chairman School Service Delivery Option Committee

Present - Members of the Committee - Gilbert Jordan, Mary Gale  
and Judy Rowe

Moved by P. Coggeshall and Seconded by W. Linnell

Ordered the Cape Elizabeth Town Council acknowledges receipt of the report of the School Service Delivery Option Committee with appreciation to the Committee for a fine review of the non-educational aspects of the school department.

(7 yes) (0 no)

ITEM #132-96/97 Intro. - Manager McGovern  
Jay Scherma

Moved by P. Coggeshall and Seconded by J. McGinty

Ordered the Cape Elizabeth Town Council accepts the proposed policies contained in the policy manual presented by the Library Director and the Trustees of the Thomas Memorial Library.

(7 yes) (0 no)

Note: It was noted by the Town Council, to be consistent with the format, names of the Library Assistants should not be listed in the job descriptions as presented on page 17.

ITEM #133-96/97 Intro.- Jeffrey Van Fleet, Immediate Past Chairman of the  
Fort Williams Advisory Commission  
Tom Emery - Land Use Consultants

Moved by J. Groff and Seconded by P. Coggeshall

Ordered the Cape Elizabeth Town Council authorizes an application to the Planning Board for the proposed Cliff Walk at Fort Williams Park as presented.

(7 yes) (0 no)

ITEM #134-96/97 Intro. - Councilor Jordan, Chairman Ordinance Committee

Moved by J. McGinty and Seconded by W. Jordan

Ordered the Cape Elizabeth Town Council sets a public hearing on the proposed amendments to the Fort Williams Park Master Plan for February 10, 1997 at 7:30 p.m. at the Cape Elizabeth Town Hall.

(7 yes) (0 no)

ITEM #135-96/97 Intro. - Manager McGovern

Present - Tom Emery, Planning Board Member on behalf of  
Chairman Stephen Parkhurst

Moved by P. Coggeshall and Seconded by W. Linnell

Ordered the Cape Elizabeth Town Council sets a public hearing on the proposed new Zoning Ordinance for Wednesday, March 12, 1997 at 7:30 p.m. at the Cape Elizabeth Town Hall.

(7 yes) (0 no)

ITEM #137-96/97 Intro. - Manager McGovern

Moved by P. Coggeshall and Seconded by W. Linnell

Ordered the Cape Elizabeth Town Council approves the expenditure of up to \$21,500 from undesignated surplus account to cooperate with the City of South Portland to Perambulate the boundary between the two communities. The \$21,500 represents Cape Elizabeth's half of the estimated cost.

(6 yes) (1 no J. McGinty)

ITEM #138-96/97 Intro. - Councilor Reid - Chairman Appointments Committee

Moved by R. Reid and Seconded by P. Coggeshall

Ordered the Cape Elizabeth Town Council approves the recommendation of the Appointments Committee to appoint Pam McNally and Jack Roberts to the Poor Farm Study Committee, and to appoint Marsha Wiggins to serve the unexpired term of Marsha Donahue until January 1, 1998 on the Arts Commission.

(7 yes) (0 no)

Chairman McLaughlin announced the members of the Poor Farm Study Committee:

Joseph Groff  
Phyllis Coggeshall  
Thomas Emery  
Donald Evans  
Randy Blake  
Jack Roberts  
Pamela McNally

ITEM #139-96/97     Moved by P. Coggeshall and Seconded by W. Linnell

Ordered the Cape Elizabeth Town Council enters into executive session at 10:30 p.m. to discuss land acquisition/disposition, a request for a poverty tax abatement, upcoming negotiations with the Cape Elizabeth Police Benevolent Association and the annual evaluation of the Town Manager.

***CITIZENS' DISCUSSION OF ITEMS NOT ON THE AGENDA***

Moved by P. Coggeshall and Seconded by J. McGinty

Ordered the Cape Elizabeth Town Council exits executive session and reenters public session at 11:27 p.m.

(7 yes) (0 no)

Moved by P. Coggeshall and Seconded by J. McGinty

Ordered the Cape Elizabeth Town Council approves a request for a poverty tax abatement in the amount of \$1103.30.

(7 yes) (0 no)

Moved by R. Reid and Seconded by P. Coggeshall

Ordered the Cape Elizabeth Town Council adjourns at 11:30 p.m.

(7 yes) (0 no)

Reminders:

Annual Evaluation of the Town Manager     January 16, 1997 9:00 p.m.(following Day Care Forum)

Executive Session Re: Police Negotiations     February 10, 1997 (following meeting)

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Debra M. Lane, CMC  
Town Clerk