

**TOWN OF CAPE ELIZABETH**

**TOWN COUNCIL MEETING MINUTES**

**MEETING #17-96/97**

**MARCH 12, 1997**

**7:30 P.M.**

***ROLL CALL BY THE TOWN CLERK      PRESENT      ABSENT***

JANET L. MCLAUGHLIN, CHAIRMAN	X
PHYLLIS C. COGGESHALL	X
JOSEPH H. GROFF, III	X
WILLIAM H. JORDAN	X
WILLIAM S. LINNELL II	X
JOHN W. MCGINTY	X
ROSEMARY A. REID	X

***PLEDGE OF ALLEGIANCE TO THE FLAG***

***PRESENTATIONS***

Chairman McLaughlin presented former Planning Board Chairman Stephen Parkhurst with a past chairman's plaque in recognition of his term as chairman.

***REPORTS AND CORRESPONDENCE***

Councilor Linnell congratulated John Sullivan for his placement in the butterfly event at the high school swim championship.

Citizens interested in serving on the new Pool Building Committee should submit their applications by Friday, March 14, 1997.

Nomination papers for Town Council and School Board are available. Deadline is Monday, March 24, 1997 at 5:00 PM in the Office of the Town Clerk.

On Monday, March 24, 1997 a public forum will be held regarding paper streets. Interested citizens are encouraged to attend.

Councilor Jordan gave an overview of the NLC Conference which he attended with Chairman McLaughlin and Manager McGovern.

Moved by W. Linnell and Seconded by J. McGinty

Ordered the Cape Elizabeth Town Council approves Minutes of Meeting #15-96/97 held February 10, 1997 and Special Meeting Minutes of Meeting #16-96/97 held March 5, 1997 as written.

(7 yes) (0 no)

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

Bob Shuman, Delano Park - Mr. Shuman asked the Town Council to consider the disposition of paint thinner. Paint thinner is not accepted at the Transfer Station. Only after an expensive process can an individual dispose of this product.

***CONSENT AGENDA***

Moved by P. Coggeshall and Seconded by J. McGinty

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

ITEM #150-96/97 Approval of burial fees for the Riverside Memorial Cemetery for the 1997 and 1998 burial seasons. See attachment.

ITEM #151-96/97 Approval of a pole location(starting point Pole 74, southwesterly 50') on Shore Road requested by Central Maine Power.

ITEM #152-96/97 Approval of the following events at Fort Williams Park:

British Car Show	September 7, 1997	Rain Date September 14, 1997
Engine One Art Show	August 31, 1997	Rain Date September 1, 1997
Family Fun Day	June 21, 1997	Rain Date June 22, 1997

ITEM #153-97/97 Approval of the dismissal of a Nuisance Claim at 537 Shore Road.

ITEM #154-96/97 Referral of the Municipal Budget to the Finance Committee.

(7 yes) (0 no)

***PROPOSED NEW ZONING ORDINANCE  
PROPOSED NEW ZONING MAP***

Intro - Councilor Coggeshall, Chairman ZORC

Present -       Maureen O'Meara - Town Planner  
                  Mark Eyerman - Consultant  
                  Thomas Leahy - Town Attorney

Presentation of Contract Zoning - Mark Eyerman

Chairman McLaughlin announced the working group which has been established to review the proposed scenic protection provisions. It is the desire of the Town Council to have the report from the working group for the April 14 Town Council meeting. The working group was established following workshop discussions on March 5, 1997.

Working Group-  
Anne Schink   Chairman  
Sonny Young  
John Greene  
Ed McAleney  
Carole Haas

Chairman McLaughlin opened the hearing to public comments at 8:10 PM.

An estimated 90-100 residents gathered for the public hearings(re: contract zoning). After several citizens commented to the Town Council, Chairman McLaughlin asked for a show of hands for the following:

How many citizens approve of the proposed contract zoning?  
How many citizens would like to see the proposal remain in the ordinance and revisited?  
Philosophically, how many citizens do not approve of the proposed contract zoning?

Overwhelmingly the citizens indicated they do not approve of the proposed contract zoning. Approximately 6 individuals indicated they would like to see the proposal remain in the ordinance and revisited (to make contract zoning more strict).

Mallory Haffenreffer, 340 Ocean House Road - Mrs. Haffenreffer asked the Town Council to "pull out" the proposed contract zoning for a "concentrated review" to tighten and clarify language. How does this relate to the Comprehensive Plan?

Peter Jacobs, 44 Cranbrook Drive - Mr. Jacobs said that the Comprehensive Plan allows for a long-term approach to planning. The proposed contract zoning is "narrow-minded, ill-considered, short term approach."

Bruce Coggeshall, 336 Ocean House Road - Mr. Coggeshall indicated he had carefully reviewed the proposal of contract zoning, while some say it may be a useful and beneficial planning tool, Mr. Coggeshall believes contract zoning becomes a "developers tool." To change the class of an existing zone, not contract zoning, should be the process. New protections would be "negotiated with a developer and his lawyer," each time a new developer comes to town.

Bob Tripler, 10 Trundy Road - Mr. Tripler agrees with previous speaker to "not change anything."

Carol Fritz, 9 Hunt Club Road(former Comp. Plan member) - Mrs. Fritz encouraged the Town Council to not "change the intent" of the scenic protection provisions. It's taken "a long time to include the #1 recommendation of the Comprehensive Plan." Mrs. Fritz is "opposed" to contract zoning it is "a way to get around the ordinance."

Warren Hoeller, 37 Ramble Road - Mr. Hiller spoke of the development which has been mentioned for the land aside of Town Hall, in the town center. Mr. Hiller collected approx. 80 signatures for the Town Council - opposed to contract zoning which would allow such a development in Cape Elizabeth.

Jeff Stevensen, 8 Hampton Road - The Comp. Plan states "clear rules, expectations and consistency" - opposed to contract zoning.

Jane Greer, 66 Wells Road - Mrs. Greer questioned the definition of standards in the proposed scenic resource permit standards for approval regarding "Vernacular architectural" and "colors". Chairman McLaughlin indicated that those standards are not intended to be included.

Alan Fishman, representative of a management company which manages properties in Cape Elizabeth - What effect would the proposed scenic protections have on an already approved plan? Why is the entire length of Spurwink Avenue included.

Gerald Amero, 444 Old Ocean House Road - Contract Zoning is a "security issue." The current language is "something that residents can depend on." Do not create a "blank check" impression.

Jeff Alexander, 31 Reef Road - There is a "fear" of what future boards would do with contract zoning. Contract zoning would effect generations for the long term.

Lester Jordan, 515 Ocean House Road - Mr. Jordan asked the Town Council to not include the Pond View Road and area of Ocean House Road, which is proposed in the Great Pond Watershed, which does not flow into the Great Pond.

After hearing no further comments, the public hearing was closed at 8:51 PM

Recess - The meeting reconvened at 8:57 PM

ITEM ##156&157-96/97      Moved by J. McGinty and Seconded by W. Linnell

Ordered the Cape Elizabeth Town Council deletes from further consideration the proposed Article XI. Contract Zoning Section 19-11-1 of the proposed draft of Chapter 19 Zoning Ordinance dated December 17, 1996.

(6 yes) (1 no J. McLaughlin)

Moved by P. Coggeshall and Seconded by R. Reid

Ordered the Cape Elizabeth Town Council refers to the scenic working group for recommendations the proposed sections relating to scenic provisions - see below. The recommendations are due back to the Town Council for the April Town Council Meeting.

◆ See attachment - Scenic Alternative #2 Advisory Overlay Districts.

This document was provided by the Town Planner for review by the Town Council as possible alternative language to the proposed December 17, 1996 draft. In summary:

1. Delete subsection H. of Sec. 19-3-2 dealing with Scenic Resource Permits in its entirety.
2. Revise Sec. 19-6-10. A. Purpose, to clarify that the provisions of the overlay districts is advisory.
3. Revise Sec. 19-6-10. B. and . Permitted Uses and Conditional Uses, to remove the reference to the standards.
4. Revise Sec. 19-6-10 E. Standard, by revising the performance standards to make the provisions advisory only.
5. Delete Sec. 19-8-4, Scenic Protection Performance Standards, in its entirety.

◆ See attachment - Scenic Alternative #3 Purpose Statement.

This document was provided by the Town Planner for review by the Town Council as possible alternative language to the proposed December 17, 1996 draft. In summary:

1. Delete the listing of the three scenic overlay districts in Sec. 19-2-1, Zoning Districts.
2. Delete the reference to scenic overlay districts in Sec. 19-2-6, Lots in Two or More Districts.
3. Delete subsection H of Sec. 19-3-2 dealing with Scenic Resource Permits.
4. Delete Sec. 19-6-10, Scenic Protection Overlay Districts, in its entirety and replace it with a new Sec. 19-6-10, Scenic Protection District, which shall include only a purpose statement on the protection of visual resources.
5. Delete Sec. 19-8-4, Scenic Protection Performance Standards, in its entirety.

(7 yes) (0 no)

Moved by P. Coggeshall and Seconded by J. Groff

Ordered the Cape Elizabeth Town Council approves the attached revisions, to the December 17, 1996 draft, Sec. 19-6-6. Business District B (BB).

(7 yes) (0 no)

(Essentially this revision deletes existing gravel extraction as a permitted use in the Business District B(BB).

Moved by J. McGinty and Seconded by R. Reid

Ordered the Cape Elizabeth Town Council approves the attached revisions, to the December 17, 1996 draft, Sec. 19-6-4. Town Center District (Town Council). It is also the desire of the Town Council to obtain comments and advise from the Planning Board regarding this revision.

(7 yes) (0 no)

(Essentially this revision designates the Town Center Core Subdistrict including a minimum lot area for a single family dwelling unit in the Town Center Subdistrict at 20,000 sq. ft.)

Moved by J. McGinty and Seconded by W. Linnell

Ordered the Cape Elizabeth Town Council sets to public hearing on Monday, May 5, 1997 at 7:30 PM at Town Hall the proposed Revised Chapter 19 Zoning Ordinance and Map as drafted December 17, 1996, including the above stated motions to ITEM ##156&157-96/97, including the amendment to the *current* zoning ordinance (regarding wetland provisions) which is anticipated to be approved in ITEM #155-96/97, a confirmation of the lines of the Great Pond Watershed District - these lines should be available for the public hearing, and the Fort Williams Park amendments adopted by the Town Council on December 11, 1996.

It is the consensus of the Town Council that an agenda item will be placed on the April 14, 1997 Town Council Agenda to include the revisions as suggested above. Although it will not be a formal public hearing, citizens will have an opportunity to comment.

(7 yes) (0 no)

***PUBLIC HEARINGS            PROPOSED AMENDMENTS TO CURRENT ZONING  
ORDINANCE WETLAND PROVISIONS RE:***

- To Permit Landscaping Fences
- To Reduce the Wetland Buffer Width for Official Playing Fields
- To Lift the Mandatory 250' Wetland Buffer around a portion of Great Pond
- To Revise for Clarity when a Topographical Change Occurs
- To Allow Expansions in the Buffer if Located more than 100' from the Wetland Edge
- To Provide for an Appeals Process through a Variance

Intro - Maureen O'Meara, Town Planner

Chairman McLaughlin opened the hearing to public comments at 9:36 PM.

Fred Brown, 16 Fenway Road - Mr. Brown expressed his concerns about "more and more restrictions." Mr. Brown tried to build an 8 ft. extension of a garage - denied due to wetlands.

Charles Pillsbury, 45 Bowery Beach Road - Mr. Pillsbury would like the Town to make the determination if a property is considered a wetland - take the "unnecessary expense" off of the property owner to hire someone to determine wetlands.

Herbert Strout, 351 Spurwink Avenue - Mr. Strout asked the Town Council to "not put the burden on the property owner" to determine wetlands.

After hearing no further comments, the hearing was closed at 9:48 PM.

**ITEM #155-96/97      Moved by J. Groff and Seconded by P. Coggeshall**

Be it ordained by the Town Council of the Town of Cape Elizabeth, Maine, in Town Council assembled to adopt the proposed wetlands revisions to Chapter 19 Zoning Ordinance. See attachment. The following sections are included in the amendment:

- 19-2-8-02      Permitted, Prohibited and Special Permit Uses      28.
- 19-2-8-02      Permitted, Prohibited and Special ("S.P.") Uses      44.
- Zoning Map      Lift the mandatory 250' wetland buffer around a portion of Great Pond
- 19-3-9-06      Resource Protection 1-Critical Wetland Buffers      Subsection 1(b)(i)
- 19-3-9-12      Nonconforming Activities for Wetlands Protection      (i)(ii)(iii)(iv)(v)  
(6 yes) (1 no W. Jordan)

Note: This amendment is to the *current* zoning ordinance, effective in 30 days.

ITEM #158-96/97 Intro - Manager McGovern

Moved by W. Linnell and Seconded by W. Jordan

Ordered the Cape Elizabeth Town Council authorizes the signing of the Joint Resolution/Proclamation of the School Board and Town Council regarding the recognition of National Inhalant and Poisons Awareness Week during the week of March 16, 1997. The Town Council also endorses L.D. 305 An Act to Prohibit the Inhaling of Toxic Vapors for Effect, which will be considered by the Maine State Legislature during the current session.

(7 yes) (0 no)

ITEM #159-96/97 Intro - Manager McGovern  
Present - Jay Scherma, Library Director

Moved by P. Coggeshall and Seconded by W. Linnell

Ordered the Cape Elizabeth Town Council approves funding for the Thomas Memorial Library Entrance Reconfiguration at \$40,000. The project to be funded as stated below.

\$10,000	from the Library Shelving Account (these funds have already been appropriated)	715-4052
\$10,000	from the Town Hall Walks Account	715-5051
\$20,000	from the Brush and Demolition Area Account	715-4027

(7 yes) (0 no)

ITEM #160-96/97 Intro - Manager McGovern

Moved by J. McGinty and Seconded by P. Coggeshall

Ordered the Cape Elizabeth Town Council approves the expenditure of \$15,000 from the balance of \$20,000 remaining in the brush and demolition area account. Said amount is to be set aside to construct a replacement bottle shed at the Transfer Station and for the remainder to lapse into surplus. The book shed at the Transfer Station would be replaced by building shelving along one wall of the swap shop building.

(7 yes) (0 no)

Moved by W. Linnell and Seconded by J. McGinty

Ordered the Cape Elizabeth Town Council takes ITEM #162-96/97, regarding a request from NYNEX for a pole location, out of order.

(7 yes) (0 no)



ITEM #162-96/97     Moved by W. Jordan and Seconded by P. Coggeshall

Ordered the Cape Elizabeth Town Council approves the request from NYNEX to place a pole on Broad Cove Road - from approximately 700' easterly of Ocean House Road.

(7 yes) (0 no)

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

Herbert Strout, 351 Spurwink Avenue - Has the Town Council considered flea markets at the swap shop?

ITEM #161-96/97     Moved by P. Coggeshall and Seconded by J. Groff

Ordered the Cape Elizabeth Town Council enters into executive session at 10:10 PM to discuss a personnel matter and upcoming negotiations with the police bargaining unit.

(7 yes) (0 no)

Moved by J. McGinty and Seconded by P. Coggeshall

Ordered the Cape Elizabeth Town Council exits executive session at 11:04 PM and reenters public session.

(7 yes) (0 no)

Moved by P. Coggeshall and Seconded by J. McGinty

Ordered the Cape Elizabeth Town Council adjourns at 11:04 PM.

(7 yes) (0 no)

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Debra M. Lane, CMC  
Town Clerk

