

**CAPE ELIZABETH TOWN COUNCIL MINUTES**  
**Special Meeting # 6-02-03**  
**Thursday, October 24, 2002**  
**3:45 p.m.**

**Roll call by the clerk pro-tem**

<b>Jack Roberts, Chairman</b>	<b>Present</b>
<b>Henry N. Berry III</b>	<b>Present</b>
<b>Penelope P. Carson</b>	<b>Present</b>
<b>Carol Fritz</b>	<b>Absent</b>
<b>MaryAnn Lynch</b>	<b>Present</b>
<b>John W. McGinty</b>	<b>Present</b>
<b>Anne E. Swift-Kayatta</b>	<b>Present/Late due to attending to other municipal duties</b>
<b>Town Clerk Debra Lane</b>	<b>Absent</b>
<b>Town Manager Michael McGovern</b>	<b>Present</b>

**Chairman Roberts led the town council in the Pledge of Allegiance to the Flag**

**Moved by H. Berry and Seconded by J. McGinty and voted 5-0** (Swift-Kayatta not yet arrived) to remove from the table the following item:

**Item # 45-02-03**

Acceptance of donations from Graham and Susan Pillsbury and Louise Sullivan of pedestrian easements from the Highlands trail to Two Lights Road

David Sterling of the Conservation Commission spoke on the importance of accepting the easement. Councilor Berry asked that a letter from town attorney Michael Hill explaining the easement language be included as part of the minutes of the meeting. There was a consensus to do so.

**Item # 45-02-03**

**Moved by H. Berry and Seconded by J. McGinty and voted 6-0** to accept with gratitude donations from Graham and Susan Pillsbury and Louise Sullivan of pedestrian easements from the Highlands trail to Two Lights Road

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**Citizens' discussion of items not on the agenda-None**

**Moved by M. A. Lynch and seconded by H. Berry and voted 6-0 to adjourn at 3:56 p.m.**

Respectfully submitted,

Michael K. McGovern  
Clerk Pro-tem

**Future Meetings**

<b>Day</b>	<b>Date</b>	<b>Primary Topic</b>	<b>Also Invited</b>
Wednesday	November 13, 2002	Regular Town Council Meeting	
Thursday	November 14, 2002	Town Center	Planning Board
Monday	December 9, 2002	Regular Town Council Meeting	
Thursday	December 12, 2002	Hold for Workshop	

-----Original Message-----

From: Mike Hill [<mailto:MHill@MonaghanLeahy.com>]

Sent: Tuesday, October 22, 2002 4:41 PM

To: 'Michael McGovern'; Mike Hill

Subject: RE: Special Council Meeting 10/24/02

Mike:

Motorized vehicles are prohibited. This would include maintenance vehicles. If there were a forest fire or some other such emergency, then the Town would have the same rights to bring a motorized vehicle onto the premises as it would to bring emergency vehicles on any other piece of private property.

With regard to the educational purposes, I have not had a conversation with the potential grantors with respect to this issue, so I cannot say what their expectations are. I do know that in past conveyances, as well as this one, the expectation on the part of the Town staff and this office has been that the Cape school system could access the property. I would be happy to add language that would limit it to the Cape school system, or expand it for that matter, if the potential grantors and the Town Council would like.

I am sorry that I will be unable to attend the meeting on Thursday. I have a previous commitment at that time. If you need someone from this office to attend, please let me know.

Mike

# MONAGHAN LEAHY, LLP

ATTORNEYS AT LAW

THOMAS G. LEAHY  
KEVIN G. LIBBY  
CHRISTOPHER C. DINAN  
MICHAEL H. HILL  
JOHN J. WALL, III  
KENNETH D. PIERCE  
CORNELIA FUCHS FISHER  
CAROL G. McMANNUS  
ELIZABETH A. MOONEY

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November 18, 2002

Michael McGovern  
Town of Cape Elizabeth  
320 Ocean House Road  
Cape Elizabeth, Maine 04107-0060

**RE: Pedestrian Easements for the Highland Trail Extension**

Dear Mike:

I understand that the Town Council tabled acceptance of the easement deeds due to questions raised by Council Members in regard to access for general education activities and also with respect to the all-terrain vehicle prohibition. I have discussed the matter with Councilor Berry to better understand the questions raised by the Council.

With regard to what general educational activities would be allowed on the pedestrian easement, it is our position that teachers and students from the Cape Elizabeth school system would be allowed to walk over the pedestrian easement in furtherance of their educational studies, for example, environmental studies or observations. It would not, for example, open up the pedestrian easement to the University of Maine System.

With respect to the prohibition of all-terrain vehicles, the grantors would be able to enforce the prohibition because they continue to own the fee interest. The Town would also have the right, but not the duty, to enforce the prohibition against all-terrain vehicles.

The form of pedestrian easement that we have prepared for Ms. Sullivan and the Pillsburys to sign is consistent with, if not more restrictive than, pedestrian easements which the Town has accepted in the past from other generous citizens or in connection with a subdivision approval. Our office is satisfied that the easements, as written, provide the grantors as well as the Town with the ability to enforce the restrictions which essentially limit the use of the easement area to walking and skiing, with the additional use by the Cape Elizabeth School Department for educational purposes. Such an educational use would, of course, be also limited to walking or skiing over the easement area.

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Our firm would recommend that the Council accept the pedestrian easements as written.

If you have any further questions, please do not hesitate to give me a call.

Very truly yours,

MONAGHAN LEAHY, LLP

By \_\_\_\_\_  
Michael H. Hill, Esq.

MHH/jp