

**MINUTES**  
**FREEPORT TOWN COUNCIL MEETING #03-20**  
**FREEPORT TOWN HALL COUNCIL CHAMBERS**  
**TUESDAY, FEBRUARY 4, 2020**  
**6:30 p.m.**

<b><u>ROLL CALL OF MEMBERS:</u></b>	<b>PRESENT</b>	<b>ABSENT</b>	<b>EXCUSED</b>
John Egan, 38 Curtis Road (Chair)	x		
Eric Horne, 62 Pine Street	x		
Henry Lawrence, 93 Hunter Road	x		
Daniel Piltch, 25 Quarry Lane	x		
Douglas Reighley, 2 Harbor Ridge Road	x		
Sarah Tracy, 2 Pettengil Road	x		
Tawni Whitney, 56 Baldwin Road (Vice Chair)	x		

Chair Egan called the meeting to order at 6:30 p.m.

**FIRST ORDER OF BUSINESS:** Pledge of Allegiance

Everyone stood and recited the Pledge.

**SECOND ORDER OF BUSINESS:** To waive the reading of the minutes of Meeting #02-20 held on January 21, 2020 and to accept the minutes as printed.

**MOVED AND SECONDED:** To waive the reading of the minutes of Meeting #02-20 held on January 21, 2020 and to accept the minutes as printed. Reighley & Horne) **VOTE:** (7 Ayes) (0 Nays)

**THIRD ORDER OF BUSINESS:** Announcements

Chair Egan announced:

- **Freeport Community Library's 18<sup>th</sup> Annual Chocolate Bash** will take place February 6<sup>th</sup> from 6:30 p.m. – 7:30 p.m. You can taste chocolates, enter the raffle to win chocolate desserts, and enjoy live music by the Cul de Sax.
- **AARP is providing fee Tax Preparation assistance** for low-moderate income households, and those 60 years and older at the Freeport Community Center. You can call 865-4743 x100 and leave a message to request an appointment. Once a week a volunteer will be calling people back with an appointment date and time.
- **Freeport Community Services' "Freeze Out"** will be on Saturday, Feb. 16th, from 9am - 5pm. *Freezin' volunteers will stay outside all day at various locations around town to collect donations for the Carol Kaplan Fuel Fund and gather non-perishable food and personal care items for the FCS Food Pantry OR you can drop off your donations at the Freeze Out box here at Town Hall. Also, from 9am-2pm, they will be at Shaw's Supermarket for the "Stuff the Bus" event.*

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Councilor Tracy announced that Freeport Community Services' annual White Nights will take place on Thursday, February 6 at the Hilton Garden Inn. It's a lovely community event. It is on the Hilton Garden Inn's website.

**FOURTH ORDER OF BUSINESS:** Information Exchange

Councilor Whitney advised that she attended a meeting with FEDC, the Chamber of Commerce, Maine Beer and L.L. Bean. The purpose of the meeting was to look at our businesses' calendar together to try to find out where there are gaps and if we can fill those with fun events to entice people to come to Freeport. She also attended an Arts & Cultural and Chamber of Commerce meeting and found it to be really exciting. The discussion was on perhaps purchasing a used trolley to help people around town and get them to the waterfront. She feels this is really great.

She was unable to attend the Sustainability Committee meeting held last night. She is aware that they do so much work before they come to present and wants to thank them for doing that. She wanted to also highlight that they have a presentation coming up on building sustainable communities and it will be held at the Freeport Community Center on Monday, February 10 from 6:30-7:30 p.m. There will be complimentary food and Maine Beer will be providing complimentary beer.

Councilor Whitney reminded residents that if they are out there and need a bucket of sand at their home, they should call her at (774) 212-0269 and she will have one delivered.

Councilor Reighley explained that he attended the Complete Streets Committee meeting this morning and they are in the process of creating the Complete Streets Policy so they will have a document that spells things out. They talked about what needs to be looked at for connections, not just as a walkway, but a pathway for bikes, hikers, walkers and strollers. They had a situation with the proposed apartment complex on Desert Road and approved the 5' sidewalk width but with a very strong discussion and concerns of how can this be designed so that it could be maybe expanded into a 12' width. Complete Streets is going to be more involved with these pathways. They are not just talking about traffic and parking anymore.

Councilor Horne advised that he sat with colleagues on the Appointments Committee and had a number of volunteers come forward to fill the vacancies that we had. He feels they got all but one committee fully staffed. They are looking for folks to serve on the Project Review Board but folks are looking into that. He thanked the volunteers serving on existing committees and those willing to serve in the future. On the Special Projects Committee, they decided on a Citizen of the Year. They haven't yet contacted the recipient but it will be coming to the Council soon. He attended an Active Living meeting this week. That group continues to work more and more with Complete Streets. It is a great group of people and he is happy to sit with them.

Councilor Lawrence attended the Shellfish Conservation Committee meeting last month and there is another one coming up on Thursday. They talked about the spring harvesting hours. They changed the hours for soft shell clams. Quahogs and razors stayed the same. They are also working on the lottery for licenses, trying to make it fair for everyone that has been in the pool for a long time. There are a limited number of licenses. If anyone has ideas, please contact the Commission and let them know what you think.

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Councilor Tracy advised that she attended a meeting of the Boards of PACTS and GPCOG. There has been an ongoing process of merging those two entities. They are both in charge of infrastructure related to the Greater Portland area. They do not have exactly the same membership but there is a lot of crossover.

Their staffs merged over a year ago so recently there was a discussion as to whether the Boards should essentially merge. The majority of the group voted to move forward with that merger so that will be a consolidation that will occur. We are part of both entities so it doesn't change much for us but will make less meetings to go to potentially. It was led by Kristina Egan, Executive Director of GPCOG. She felt it was an efficient use of those entities. It was supported and they are moving forward.

Chair Egan reported that he attended an ad hoc gathering of the Casco Bay Trail Alliance led by Doug Leland that is working with a number of stakeholder constituent groups to facilitate Freeport's portion to add to the Eastern Greenway which goes down the whole East Coast of the United States. We have an opportunity here in Maine to participate and coordinate with other Southern Maine coastal communities and to get from Yarmouth to Brunswick is our portion. Related to the discussion we were just having in a workshop about trail connectivity parallel to Route One, the Trail Alliance is specifically working towards and having success with having a non-vehicle, bike/pedestrian trail way so you are not sharing that right-of-way with motorized vehicles to go from the State's border on through here. It is exciting and may take a while but things could actually start moving quickly. There are some real opportunities for us to work with the constituent groups that Doug and his committee have organized and put together. It is a very cooperative and forward-looking group.

**FIFTH ORDER OF BUSINESS:** Town Manager's Report

Mr. Joseph advised that Chair Egan read that the Library's Chocolate Bash would be held on February 6<sup>th</sup> whereas it will actually be held tomorrow night, February 5<sup>th</sup>. People should plan to attend the Chocolate Bash tomorrow, February 5.

Mr. Joseph reported:

**Congratulations to Freeport Police Department Officers Gabbard and Norris**

On January 25, the Maine Association of Police (MAP) presented Freeport Police Officers with the following awards:

- The MAP Meritorious Service Award was awarded to Officer Thomas Gabbard for his actions to protect a potentially suicidal subject.
- The MAP Lifesaving Award was presented to Officer Keith Norris for his actions in saving the life of a citizen suffering a seizure in July of last year.

We are immensely proud of our Officers, who are regularly recognized by their peers for their actions.

**Welcome to Freeport Police Department Officer George Savidge.**

The Town of Freeport is happy to announce that Officer George Savidge was recently sworn to duty in Freeport. George is a veteran officer who comes to us from another area department, and we hope you'll join us in welcoming him as an employee of the Town. George was pictured in the Report with Chief

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Nourse, Officer Gabbard, and Marine Resource Officer/Harbormaster Tetreau. Mr. Joseph has passed on the Council's request for our two new officers to come to a Council meeting when they are on duty.

**Information on coronavirus 2019-nCoV available on Town website**

The town continues to monitor information being distributed by the CDC regarding the 2019-nCoV virus which has received extensive news coverage. At this time, there is little to no virus activity in our immediate geographical area, but this could change very quickly. Information is available on the Town's website.

**Sale of former Ambulance "Rescue 4"**

The Town is proposing to sell the former ambulance Rescue 4 to Autotronics of Bangor, Maine for \$14,000. This vehicle has been listed for sale several times by the Town, as far back as 2018, but several previous sales have fallen through for unrelated reasons. Council approval of the sale is not required, but Town policy requires that the Town Manager notify the Council of any proposed sale.

**SIXTH ORDER OF BUSINESS:** Public Comment Period – (30 Minutes)

Josh Olins, Freeport resident and Chair of the Sustainability Advisory Board, advised that he applauded the goals the Council put out recently. They are encouraged by the recognition of urgency by the Council's approach to Climate Change. They have two simple recommendations. One is that the Council follow up on its 2020 Goal on the reduction of carbon emissions relative to historic levels by establishing measurable and actionable targets to fulfill its stated goal. The other is that they would like to offer themselves as a resource in establishing a baseline for current greenhouse gas emissions and define concrete targets to work towards this. It may or may not include hiring a consultant to research options like that for the Council and it may communicate with nearby communities that have already gone through some of this process. He mentioned he can e-mail this to the Council and if needed, he can provide estimates for that kind of research.

Susana Hancock explained that she is here tonight by invitation of Chair Egan and following up a bit on Josh. She noted that Freeport has established a track record of being a leader on environmental issues. She requested that Freeport continue its trend and asked the Council to set an emissions target at least as stringent as set forward by the Maine Climate Council and establish a science-driven concrete road map for achieving these targets. For reference a 45% reduction of 1990 levels by 2030 and 80% reduction by 2050. She recognizes that establishing 1990 levels could be challenging and costly for towns but there are ways and methods for this to happen. Thus far, Maine has been untouched by many of the dire consequences of climate change seen in headlines around the world but we are not immune. The Gulf of Maine is warming 99% faster than all other global sources of water and the implications of this specifically to various populations in this town. She has received a lot of support from the Town and is happy to document the information so that the Council will know she is not standing here alone. She is proposing to conduct the necessary research and formulate specific targets for the Town.

Doug Leland of South Freeport wanted to provide additional context on the Casco Bay Trail Alliance to the Council. He feels it fits in with the Council's prior discussion on the TIF. The Alliance was established last summer by Sue Ellen Bordwell and Dick Woodbury of Yarmouth. Sue Ellen has been in the past on the Board of Directors for the East Coast Greenway and instrumental in the development of the Eastern Trail which is in the southern part of Maine. The East Coast Greenway is a 3,000-mile trail from Key West, Florida to Calais, Maine. Its vision is to be 100% off road or protected pathway. Right

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now, they have 1,000 miles of protected pathway or off road. Maine is responsible for 336 miles of the East Coast Greenway and 38% right now is off road. The majority of that is the Down East Sunrise Trail in Washington County which is probably more of an ATV trail than it is a bike trail but that is about 80 miles. The rest of it is pretty much south of Portland, Biddeford and Scarborough. The Casco Bay Trail Alliance was put together to specifically focus on Portland to Topsham. The piece to envision here and honestly a few months ago, he would have said this is a really worthwhile project and it will take a long time to get there. Things have changed and if you can envision an off-road trail from the Old Port to the center of Freeport, that is what we are talking about right now. The earlier discussion had a representative piece of that. The ad hoc committee that was mentioned earlier, met last week and will be hopefully meeting again in the next month to talk about another piece which is the YMCA to Pine Street. The piece from the YMCA to the Cousins River Bridge is well underway in terms of development and planning with the DOT and then there is the piece from Portland up to Freeport. Right now, in Augusta there is a movement to establish the rights to the St. Lawrence railway from Portland to Yarmouth. That is from B&M Baked Beans up to Yarmouth where it then starts going west. That trail, if the rights are enabled for that, would connect to the Beth Condon trail way which gets you almost to the Cousins River Bridge. If you start piecing all that together, you are looking at a 100% off-road trail from the Old Port. He did not go into all the benefits of multi-purpose trails such as economic, health, environmental and safety. From an economic standpoint they are significant. If you build a trail, people will come and it isn't just visitors coming and spending their dollars coming to Freeport. It attracts new residents into a community because they want to be in a community that supports trail systems and want a home that is near a trail system. For Freeport, it is envisioned that it would be from the Yarmouth line to the Brunswick line eventually. That would be the major artery through Freeport and there would be opportunities to build connections off of that. That is part of what we discussed last week. The ad hoc committee that got together included the chairpersons of the Active Living Committee, Complete Streets Committee, Sustainability Committee, Project Review, Planning, Conservation Committee and the Freeport Conservation Trust. They will be adding to that committee at the next meeting with representatives from the Bicycle Coalition of Maine, the East Coast Greenway, the North New England Director of the East Coast Greenway, Casco Bay Trail Alliance and representatives of L.L. Bean. They discussed connectivity but noted Andy Spaulding is quite involved in and he may have a few words to say about that.

**NOTE:** Councilor Whitney was excused at 7:06 p.m. to deal with a situation at home.

Andy Spaulding, South Street resident and Chair of the Active Living Committee advised that the Council adopted the Active Living Plan in 2014 and their committee since then has been charged with putting in place as many of the 86 recommendations as possible. They work closely with the Complete Streets Committee who carry the previous Traffic and Parking mission and the more proactive thinking of how to create safe active living opportunities for our residents. The major initiatives of the Active Living Plan came out of the significant public input process. The major initiatives fall under a connectivity frame and a lot of what Doug spoke about and the earlier discussion in the workshop related to the TIF, got him thinking that connecting the two sides of our town over or under the highway was really the major initiative of interest in the Active Living Plan. In looking at safe routes to schools in our town, safe routes to work, safe routes to playgrounds, they were key items. He encouraged the Council to think about with all we have going on with the Cousins River Bridge, the two highway bridges that we have impressed upon with MDOT that we would like an adequate bicycle/pedestrian accommodation. With the Casco Bay Trail Alliance and the East Coast Greenway goal to connect through out town, their committee will work with Complete Streets on a Connect Freeport Moniker. They feel that now is the time to work toward a common goal or common purpose that helps us get across the finish line with a lot of these projects. He encouraged the Council to think about this. He knows his committee will work closely with Complete Streets to see what they can come up with and articulate it better than he can right now.

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**SEVENTH ORDER OF BUSINESS:** To take action on the following items of business as read by the Council Chairperson:

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ITEM # 14-20                      To consider action relative to adopting the February 4, 2020 Consent Agenda.

**BE IT ORDERED:** That February 4, 2020 Consent Agenda be adopted. (Egan & Reighley)

Chair Egan asked the Council if they had a chance to review the Consent Agenda and if anything should be taken off. Councilor Tracy mentioned that the Consent Agenda includes incredibly generous donations by the community to the Heating Assistance Program, the Library and Fire/Rescue. She found it impressive for people to support those resources that can help others in need. She thanked them. Mr. Joseph echoed her comments.

Councilor Reighley noted it was great work by the Appointments Committee. Some really great people have volunteered to serve our town.

**VOTE:** (6 Ayes) (1 Excused-Whitney) (0 Nays)

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ITEM # 15-20                      To consider action relative to proposed amendments to Chapter 21: Zoning Ordinance of the Town of Freeport regarding definition of “Mixed Use Development” and adding it as a permitted use in the Commercial I Zoning District. PUBLIC HEARING.

**MOVED AND SECONDED:** To open the Public Hearing. (Lawrence & Horne) **VOTE:** (6 Ayes) (1 Excused-Whitney) (0 Nays)

Caroline Pelletier, Interim Planner displayed a large map and explained that this is an applicant-driven agenda item. The Route One South applicant has multiple commercial tenants and an apartment. They wanted to add a second apartment and the Codes Officer determined that mixed use is not permitted in that Zone so they could not add a second unit. They wanted to do that so they made application to the Planning Board to amend the Zoning Ordinance and allow commercial and residential uses in the same building. The Planning Board was supportive of looking at the definition of mixed-use development. Mixed Use Development is an existing definition in the Zoning Ordinance. It specifies you can have three residential units plus any number of commercial units in one building. The proposal before the Council is proposing to change that definition to lower it so you can have one residential unit minimum and commercial uses. This change would potentially add Mixed Use to the Commercial I Districts. The use is currently only permitted in the Village Mixed Use I and Village Mixed Use 2, both of which are smaller zoning districts located in the area of Bow and South Streets.

Councilor Tracy pointed out that there has been discussion about supporting the vibrancy of the downtown and mixed use is one of those topics. To the extent that people wanted to add residential apartments above Ralph Lauren or something like that, that is not currently allowed. Ms. Pelletier advised that there is always an exception and there is one in the Village Commercial. Village Commercial allows mixed use in a different way. You can have multi-family or dwelling units other than on the first floor. In the village today you can have a commercial use on the first floor and residential units above it. The difference with Mixed Use is that it won't regulate whether they be on the first floor.

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Councilor Horne asked if there are any districts in town that do not have any Mixed-Use allowance that are commercial. Ms. Pelletier advised that Lower Main Street, the Commercial 3 District and the Commercial 4. You could add the Village Commercial I into that because you could do it in a different way. It is definitely a project for the Planning Board to look at if there is community support to add it to other areas. Councilor Horne noted he does support this.

Councilor Pilch clarified that it sounds like there are two things being added on: to allow for Mixed Use and to reduce the definition from three to one. He asked if we should really go from three to one or should we go from three to two? Ms. Pelletier advised that the Planning Board was really supportive of one. There are other mixed uses in the Commercial I District and there are mixed uses that have one unit so it would bring it into conformity. It is up to the Council on what they think is most appropriate.

Andrew Arsenault, Route One resident asked the Council to support this issue. He feels it is a great move to bring residences back into this district. He encouraged a later discussion to bring it to other districts in Freeport so we can revitalize other commercial districts with mixed uses or residential uses. He hopes the Council will support this tonight the way it is with one residence.

Peter Foster is part of the ownership of the application. He wanted to clarify how this came about. The former Codes Officer was a great guy. None of the redevelopment of their site was well documented when it should have been. He went in with the notion that they were always allowed to have a second apartment on the site which he was told by Fred Reeder. When he met with the current Codes Officer, he said there was enough gray area in this language that he was not comfortable approving a second one when the first one didn't read so well. He noted that both uses are permitted in the district currently but not in the same building. That was the hang-up the Codes Officer was stuck on. They could have both uses on the property but not in the same building. Their initial goal was to clear up the language. As they went through the process with the Planning Board, it morphed to a recommendation for Mixed Use because it sounds like there are a lot of other areas that could benefit from the change to Mixed Use. It has been about a year from coming in to ask for that to a formal notification that he was going to have to kick his tenant out that has been there for ten years. He hired an attorney to draft the language and attended two Planning Board meetings and now he is here before the Council.

Chair Egan thanked Mr. Foster for blazing a trail and bringing this forward. He is in favor of this and thinks it is a great way for us to diversify our uses as the market changes. He apologized that it has taken that long and thanked Mr. Foster for sticking with it.

Ms. Pelletier pointed out that she forgot to mention one thing and wanted the Council to fully understand what it is prepared to act on. Under the purpose, they are proposing to add the words: The intent of the district is to provide suitable locations for commercial uses and adding in Mixed Use Development to the purpose.

**MOVED AND SECONDED:** To close the Public Hearing. (Lawrence & Reighley) **VOTE:** (6 Ayes) (1 Excused-Whitney) (0 Nays)

Councilor Horne asked what is the upper limit to the number of dwellings in this district. Ms. Pelletier advised that there is no cap in place but there are different factors that come into play when you add units. There is a land per dwelling unit requirement and then at some point you might trigger subdivision and you might have different standards. There is no cap but depending on which process you take, there could be a limit or different method of how you get there.

**BE IT ORDAINED:** That proposed amendments to Chapter 21: Zoning Ordinance of the Town of Freeport as follows be approved:

1. Section 104-Definitions to amend existing definition of “Mixed Use Development” and Section 409-Commercial I District “C-I” to add Mixed Use Development as a permitted use subject to site plan (Hal & Mark LLC, applicant). (Lawrence & Horne)

Councilor Reighley pointed out that Councilor Lawrence read Section 104 incorrectly and noted it was Section 409. Councilor Tracy noted it was as printed in the agenda.

**VOTE:** (6 Ayes) (1 Excused-Whitney) (0 Nays)

Councilor Tracy mentioned to Ms. Pelletier that she would encourage the Planning Board to take a look at expanding this kind of approach to the other commercial districts and even though she understands Ms. Pelletier’s comments that the downtown already has this ability in another form, she feels we want maximum flexibility. She would like the Planning Board to start this discussion when it has time. Councilor Reighley suggested using the same verbiage in each district as it applies so we don’t have any chance for people to interpret it in different ways.

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ITEM # 16-20

To consider action relative to proposed amendments to Chapter 21: Zoning Ordinance of the Town of Freeport regarding food trucks as a permitted use in the Commercial I Zoning District. PUBLIC HEARING.

**MOVED AND SECONDED:** To open the Public Hearing. (Horne & Reighley)  
**VOTE:** (6 Ayes) (1 Excused-Whitney) (0 Nays)

Caroline Pelletier, Interim Town Planner explained that this is in the Route One South area and is another applicant-driven agenda item. The applicant owns property on Route One South and they had a truck/shed/peddler selling food. They came to Town Hall and discovered they could not have a food truck down there because they did not fit into the peddler cart standards or the food truck standards. They are back seeking an amendment to allow food trucks in the Commercial I District. The Council may recall that food trucks were added a number of years ago but conservatively because there was a lot of public comment as to whether or not they were good. They were added as permitted uses in about eight districts. They were permitted as accessory to artisan foods and beverage which is a small batch specialty food and beverage producer or commonly seen as the breweries. They also are permitted if someone has a special event which is a large event that you get a permit for and have greater than 250 people at that event. L.L. Bean concerts would be an example. The applicant has an existing business on U.S. Route One which is not artisan food and beverage. They feel that anyone down on U.S. Route One that has been through site plan review should be allowed to have one. The proposal before the Council today is adding “subject to site plan review” the use of food truck. Being subject to site plan review would be subject to food truck standards such as showing you have access to trash receptacles, you have to be open when the business is open, you have to have access to rest rooms, etc. The Planning Board did hear from members of the public and the applicant. They heard from another member of the public in support and they heard from an existing business in the village that was not in support. They heard from a resident that wanted the Planning Board to really think about the impact on other businesses. The Planning Board did recommend that they be permitted down there.

Amanda Kent, Freeport resident explained that she and her husband own Wicked Goods Mercantile on Route One. They brought to the Council a proposal to make an amendment to the zoning of C-I to allow



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food trucks as an accessory to businesses along the Route One corridor. She feels food trucks are becoming a fixture in all of our communities. They serve a different purpose than the traditional brick and mortar restaurants. The C-I corridor of Freeport does not have the same issues as the village. It has more space, more parking and pass-through travelers looking for quick food options. They have no food trucks on their road and are forced to go elsewhere for a quick lunch. They do have an income property within their building and their tenant wanted to operate a food trailer. They felt it was a good idea and she drew a repeat customer following very quickly. When they applied for the peddler cart as an accessory to their business only to find that her trailer was too large to qualify and remain as a cart. She then fell within the cracks. They then applied for her to operate her business under an Activity Permit. They had three weeks to host her which was their maximum usage for the whole year to host an activity at their location. At that time, she had to close her window due to the zoning limitations. To make her business viable, she had to move to brick and mortar. Her business drew interest from many of the workers in the area as well as those passing through. It seemed that a change in the Ordinance was needed to encourage this type of entrepreneurial business that brought more potential customers to their area.

Andrew Arsenault of U.S. Route One encouraged the Council to support this in this zone. He would like to help his end of town and doesn't believe the food cart will be strict competition for anyone downtown.

**MOVED AND SECONDED:** To close the Public Hearing. (Horne & Lawrence) **VOTE:** (6 Ayes) (1 Excused-Whitney) (0 Nays)

**BE IT ORDAINED:** That proposed amendments to Chapter 21: Zoning Ordinance of the Town of Freeport as follows:

Section 409-Commercial I District "C-I" to allow food trucks as an accessory use to any use subject to site plan review (Maine Wicked Goods Mercantile, Nick and Amanda Kent, applicants). (Horne & Reighley) **VOTE:** (6 Ayes) (1 Excused-Whitney) (0 Nays)

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ITEM # 17-20

To consider action relative to a Special Amusement Permit renewal for the Hilton Garden Inn, 5 Park Street, Freeport. PUBLIC HEARING.

**MOVED AND SECONDED:** to open the public hearing (Tracy & Reighley) **VOTE:** (6 Ayes) (1 Excused-Whitney) (0 Nays)

There were no public comments provided.

**MOVED AND SECONDED:** to close the public hearing. (Tracy & Reighley) **VOTE:** (6 Ayes) (1 Excused-Whitney) (0 Nays)

**BE IT ORDERED:** That a Special Amusement Permit renewal for the Hilton Garden Inn be approved. (Tracy & Reighley)

Mr. Joseph noted that this is a pretty straight forward application. It is what they have been doing for a long time.

**VOTE:** (6 Ayes) (1 Excused-Whitney) (0 Nays)

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ITEM # 18-20 To consider action relative to setting a public hearing for February 25, 2020 regarding a Tax Increment Finance (TIF) District request from L.L.Bean, Inc.

**BE IT ORDERED:** That a Public Hearing be scheduled for February 25, 2020 at 6:30 pm in the Freeport Town Hall Council Chambers to discuss a TIF District request for L.L.Bean, Inc.

**BE IT FURTHER ORDERED:** That copies be distributed equally between the Town Clerk's Office, the Town Manager's Office and the Freeport Community Library for inspection by citizens during normal business hours and the notice be placed on Freeport's local cable channel and the Town's website. (Piltch & Reighley)

Chair Egan explained that this relates directly to the workshop we had prior to tonight's Council meeting. Mr. Joseph advised that documents will be made available as they are drafted and applied. Chair Egan mentioned that the presentation from the applicant in this TIF application has outlined a number of items that are generally characterized as community benefit items as it relates to the TIF conversation. There are two components; there is whether or not the TIF is created and what is considered a credit enhancement agreement or a mutual sharing of additional revenues created by the additional value. He wanted to make it clear that he is interested in the Council hearing from members of the public on the 25<sup>th</sup> before we have any substantial tuning, tightening or expansion of items on that community benefits list. It is a very elaborate and detailed plan as present by the applicant. However, it is from the applicant so he wanted to make it clear that one of the purposes of having a public hearing on the 25<sup>th</sup> is to get input from the public on what they think and are there pluses or minuses on what is being proposed and for the Council to move forward on that discussion.

**VOTE:** (6 Ayes) (1 Excused-Whitney) (0 Nays)

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ITEM # 19-20 To consider action relative to setting a public hearing for a Special Amusement Permit for Athena's Cantina at 491 US Route 1 #10, Freeport.

**BE IT ORDERED:** That a Public Hearing be scheduled for February 25, 2020 at 6:30 pm in the Freeport Town Hall Council Chambers to discuss a Special Amusement Permit for Athena's Cantina at 491 US Route 1 #10, Freeport.

**BE IT FURTHER ORDERED:** That copies be distributed equally between the Town Clerk's Office, the Town Manager's Office and the Freeport Community Library for inspection by citizens during normal business hours and the notice be placed on Freeport's local cable channel and the Town's website. (Reighley & Lawrence)

Mr. Joseph noted this is a straight forward application and a representative for the applicant is here.

**VOTE:** (6 Ayes) (1 Excused-Whitney) (0 Nays)

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ITEM # 20-20 To consider action relative to an appointment to the Planning Board in exception to the term limits due to exigent circumstances.

**BE IT ORDERED:** That the following appointment be approved in exception of the term limits ordinance due to exigent circumstances.

**Planning Board**

Greg Savona  
(Lawrence & Piltch)

April 1<sup>st</sup>, 2020 – March 31<sup>st</sup>, 2023

Councilor Horne explained that a whole lot of new people have come onto the Planning Board and Mr. Savona had some institutional knowledge and it was felt that it was best preserved. Chair Egan explained that Mr. Savona served three consecutive terms and our policy requires that anything more than an additional year requires Council action for the reasons outlined by Councilor Horne. Councilor Tracy asked if there is a long line of applicants who want to be appointed to the Planning Board that will be deferred. Chair Egan explained that they were trying to fill vacancies and the context of this was a recommendation from the Planning Board Chair as well.

**VOTE:** (6 Ayes) (1 Excused-Whitney) (0 Nays)

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**OTHER BUSINESS:**

**MOVED AND SECONDED:** To move Item #2 to the top. (Reighley & Piltch)

**VOTE:** (6 Ayes) (1 Excused-Whitney) (0 Nays)

1. Discussion of Airboat Legislation LD 2065

Town Manager, Peter Joseph explained that this is proposed by the State and deemed necessary by the Inland Fisheries and Wildlife and Department of Marine Resources. We started having conversations with State agencies regarding our questions about airboat noise, what could happen, what could not happen, our reading of the State Statute which was later confirmed that an airboat is included under the definition of motorboat which took a bit of discussion to get to the point where everyone agreed on that as well. The second problem is that the State had not adopted noise standards. The State Law says there is a decibel limit when subjected to an operational test or when subjected to a stationary sound level test. They adopt those things through an administrative rule-making procedure so the Commissioner proposes an administration regulation, then a public hearing with extensive public input and adoption through administrative procedures process. They were hesitant to adopt the standards that would apply across all motorboats because they felt it would put all airboats in the State out of business. Obviously, there are many people that use them for enforcement purposes, commercial uses, official business, for fishing and harvesting. The Departments were nervous to go down a road where they would have to essentially give massive tickets and take away their right to use what they are currently using. This proposal came out of all those discussions and it seems a little counterintuitive at first because it exempts airboats from the statutory definition of motorboats. It then directs the departments to do an administrative rule-making procedure to set appropriate decibel limits or noise limits for airboats specifically. It takes that out of the statutory process and puts it into the administrative rule-making process. They have already communicated to us that they would hold public hearings generally in this area but they could anywhere in the State as long as they meet the administrative rule-making requirements, at which point the Department would promote an administrative role that would be enforceable as law. He explained the run arounds he has been doing for the past year to get an answer from various State departments as to how this could be handled. He feels eventually it will get us there and it is an important step. One Councilor asked if this is something we want to take a position to support this bill which is why it is front of you

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through the Legislative process which we regularly do for items considered important enough and the Council will take a position and then authorize Staff to go and testify. Last but not least, this was discussed at the Municipal Association's Legislative Policy Committee and it received a 60 to 2 vote in favor to support having the Municipal Association take a position on it. Freeport currently has the ability in Title 12 in the 1300s to enforce those sections of the Statute. Licensed law enforcement officers have the ability to enforce those sections. This is something we can discuss as we go through the Administrative Rule-making process, not the Legislative process.

Chair Egan advised that he would like to know what the enforcement piece looks like before the Council gets behind a particular piece of legislation to know what our capacity is going to be and what our responsibilities are going to be for enforcement of a particular Statute regarding whatever the Rule-making determines.

Councilor Reighley pointed out that the State had nothing in place for airboats so this is many legs up on this and hopefully it will satisfy the people that have been involved with the excessive decibel levels of the airboats if it proves to be true. Councilor Tracy noted that we have had a lot of people adversely impacted by this issue and we have consistently said that it is not our jurisdiction. We have asked the State to take action. The State has evaluated and said they need additional tools in their toolbox to take action. She feels we should support the proposed LD 2065.

Councilor Reighley suggested that if the Council approves, it direct this position of being favorable to our State Senator and our State Representative. Mr. Joseph mentioned that if the Council gets affirmative support of this tonight, that will be communicated. He or Chair Egan can forward an e-mail and communicate to them that the Town has officially endorsed this and would like them to support it. As to whether we would be able to enforce it and have local authority, he feels we would need to be involved in the Legislative process when this is adopted and, in the future, when they have hearings and take feedback. We would want to discuss this again and provide official feedback from the Council which would address if we have any role to play. If we choose to support this, we would have to come back when the Administrative Rule-making Department starts. Chair Egan noted that the text in LD 2065 does not specify who is actually responsible for enforcement. Mr. Joseph advised that it would specify that there would need to be a rule-making process adopted. Councilor Lawrence added that this is a framework to get the process rolling. Mr. Joseph pointed out what enforcement capacity we have but it is hobbled because the Commissioner never established the decibels. Chair Egan advised that we should convey to our Legislative representatives the frustration of the circular argument and have the State action and rule-making to clarify who will be responsible for what? Mr. Joseph pointed out that as proposed here, we would have as much authority as the State would but they have to come up with the rule. He also noted that airboat users have the right to go and testify and provide feedback.

Councilor Tracy suggested that our Town Manager provide testimony regarding the significance of the issue in our community and that we will be actively participating and hope that others will actively participate in the development of rules that both address the noise issue in a way that does not adversely impact people who are making a living on the ocean using airboats. There was no opposition to giving that direction to the Town Manager.

Bob Santomena of Harraseeket Road advised that this has been an issue for folks living on the harbor for two years. He noted there is a public hearing scheduled on the 19<sup>th</sup> for the Inland Fisheries and Wildlife Committee and at Councilor Tracy's suggestion which he supports, maybe there should be some representation by the Town at that hearing. Mr. Joseph advised that as proposed, if the State enacts standards setting noise limits, we would have the right to enforce the standard as it is shown here.

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Someone needs to follow up and make sure they actually establish those standards. Mr. Santomena feels it has been an annoying situation on the water and dangerous to the sailing activity because of noise interfering with the ability of the instructors with kids in small boats.

Councilor Tracy mentioned that even though this Statute says they will enact routine technical rules, it is not an easy task to get rules that measure decibel levels of a moving airboat. It is not an easy exercise so it will be important for people to participate in the process and then for our police force to get comfortable with whatever is enacted. Yes, we will have the ability to enforce but she expects our police force will want to enforce clear violations but we also will have questions about do we have the right equipment and how is it done? This is going to be a process that starts the dialogue and stops the intractable nature of the issue. She mentioned that a letter from IF&W was received indicating that they are committed to pursuing this. In this instance, it was an airboat that was malfunctioning that was so far outside of the norm. Everybody wants to find the right balance between the commercial use of airboats for appropriate harvesting and even recreational but have the ability to address those machines that are just out of line. That is the effort here.

Chair Egan requested that Mr. Joseph provide a follow-up e-mail to the Council about the timing and date and what he is planning to do on that date for testimony.

## 2. Discussion regarding Island Rover Litigation

Chair Egan advised that this issue has been going on for sometime and there is now a trial date expected to be set by the court so that the back and the forth between the Town, the Island Rover Foundation and other members on the defendant's side with attorney's actions for motions and filings proceedings. At this point all of those have been exhausted and we are heading for a trial related to the ownership.

Mr. Joseph advised that our attorneys wanted us to check in with the Council and Council leadership and he felt it should be done publicly so the public could also hear the update. The attorney pointed out that there would be a substantial cost incurred as we go forward to trial so the Council and the public knows that. There has been some communication but no concrete plans, with the parties involved on the other side about is it possible to launch. He doesn't know if they are still looking at it or if it has stalled. His update is that we are preparing to go to trial. If there is any hesitancy or questions to ask, this is the time to do it.

Councilor Horne advised that the thing that has concerned him about this is the cost to our taxpayers. In one of our updates it was established that the cost would be borne by whatever ultimate result occurred. Now that we are going to trial, he is nervous about the price tag. Mr. Joseph would not want to make any assumptions on whether we have to pay or not the tens of thousands of dollars going to trial as the Town.

Councilor Tracy noted we got an order from Superior Court indicating that it was a finding of contempt and we were given an option of assessing per day penalties or just waiting and recovering our costs which do include attorney's fees. We decided since those per day penalties would go to the General State Revenue Fund, it didn't accomplish anything so we decided to wait but, in the meantime, we filed a petition indicating what our attorney's fees are to date and we got positive feedback from the court about that. It is all to do with the contempt issue and the contempt being failure to move the boat when they indicated in the consent decree that they signed that they would get the boat launched or transfer title. The litigation is on two tracks. There is this other issue about can we even transfer title, what are our rights because the majority of the boat transferred from Island Rover to defendant, Carter Becker. That is what is being litigated coming up at trial and there is no guarantee on that track that we will recover attorney fees. Some of it is recoverable and we will recover some of the action. To date we got approval of \$30,000 or \$40,000 for our first petition but this trial preparation since it is on the other side, she

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understands that there is no guarantee that we will recover that. We can talk about that with our attorney but she would not presume that we would be reimbursed. Mr. Joseph noted he felt this was perfectly accurate. There was a running tab that started at \$30,000 for attorney's fees for the first contender but ran higher after that matter because it was specifically related to that case. If there are future actions required before that case is 100% sealed up, those will be added to that tab. The court has already given us a court order rewarding us that amount plus any future amounts until that case is closed out. There is no such order and it is highly unlikely that we will get a single order in the current case. We are expecting to pay \$10,000-\$30,000 in the second action.

Councilor Piltch asked if there was some way to get the boat launched, is that a possibility the Council and the other parties could look at before the trial. Mr. Joseph indicated that it is up to the Council and he assumes that would take care of the biggest problem we have. If the opposing side asked us that question, the Council would have to say, drop it, it's good to go and it would seem like a rational course of action. That is the issue. Until the seven Councilors deliberate on that and it should probably be done in an Executive Session if you get to that point with our Attorney. Councilor Piltch assumes it is prudent to tread carefully about any discussions.

Chair Egan noted the contempt issue is about moving the boat but the ownership issue was a response we had since the boat wasn't being moved. The consent decree was way back years ago that the Town would take possession and when we made a move to go forward with that, things were not quite the way they were lined up and there were some delays and when we went to execute on that allowance under the consent decree, we found that we were not in the same position that we thought we were. All of which relates to the Town wanting the boat moved. If the boat is going to be moved out of its current location, he doesn't see why it wouldn't be endorsed by our original effort which was what the whole court action from years ago to get it out of the area.

Councilor Tracy added that we had a flurry of activity around the contempt proceeding and then we started moving on the second track which is the ownership track but the Council leadership at the time and Mr. Joseph and the Town Attorney communicated to the defendants that if they had a solution, to please let us know and we would dedicate staff resources to explore that. It was explored. There were a couple of things floated in the interim. DEP was out there and our Codes Enforcement Officer was out there exploring options and to date, nothing has really come to fruition but the message from the Council continues to be, if you have a solution, please come forward. That being said, the litigation is the only leverage to get any movement potentially. We have been clear, and it could change tonight if you feel that is what you want to do, that in an effort to enforce our own rules and regulations or commitments and the consent decree that the defendant, Island Rover Foundation agreed to, we are moving forward if there are no other options on the table.

Councilor Reighley asked if all the permits been obtained for the movement of the vessel. Mr. Joseph indicated that nothing has been obtained but he wanted to condition it on that there were several different options that were seriously being considered and may be still being considered to put it in the water but there were several other options of moving it to a conforming location or locations where it could go into the water. They may still be on the table. No permits have been obtained but there are several parts of it that are permissible. The Town's attitude is that it is still moveable over the road assuming a few small conditions can be met. The general concept of moving it over the road, Town staff felt it was doable from an engineering perspective. Where it can go in the water is a multi-jurisdictional question that involves not just the Town but other agencies he cannot comment on. He cannot comment on State and Federal agencies. He feels there is an open channel of communication there and we can talk about the technical details without talking about litigation.

Councilor Lawrence asked when the court date will take place. Mr. Joseph has not heard a specific date but was told to expect something soon. It is out of our hands at this point.

3. Discussion of Tree Task Force

Councilor Horne explained that the document in front of the Council is a draft of what a Tree Task Force would look like. About a year ago a number of volunteers and the Maine Forestry Service has a project canopy program. We undertook a tree survey of the Town to understand where the trees are in the public rights-of-way and where there may be opportunities for enhancing them with a number of trees. That inventory work was conducted and the next step is to submit a grant to the Maine Forestry Service under the project canopy program to being a planting plan. In order to be eligible for that grant which is run through the State, communities have to have a Tree Board or a Tree Task Force that can administer the planting plan. What is in front of the Council is a request to create such a Task Force that would be parked under the Sustainability Advisory Board. There are a number of folks there that are interested but it would not entirely run by that. It could be associate members from the community but the idea here would be to formulate a tree plan for Freeport that would make us eligible for this grant money. It is something other communities are doing all over the State as well as all over the country. He offered to answer questions.

Chair Egan mentioned that this would be a focus on trees that are located on public rights-of-ways and public land, we are not talking about inventorying every tree in the community. Councilor Horne noted it is just trees in the public right-of-way. The membership of that committee is not limited to just the Sustainability Committee. In this case, it is a long-term effort to really enhance Freeport's tree cover. The benefits of tree cover are well known. He mentioned the old photographs showing what Freeport used to look like with trees lining the streets. Discussion on hybrid trees followed.

Chair Egan pointed out that the next step is to put some details around the Task Force and maybe have a small group led by Councilor Horne. Perhaps the Chair and Vice Chair can take a look at details around the composition of what the Tree Board may look like and come back with an action item to make it happen. Councilor Tracy felt it sounded good and maybe a mechanism for having some other membership so there is a variety. To the extent that it doesn't harm grant applications, it makes sense to have an evaluation period like on for five years and then either a sunset or a revisit to the Council that is preprogrammed to make sure it is a committee functioning as it should and just touch base.

Councilor Reighley mentioned he knows a couple of Forestry graduates who are writers and could write some grants. Councilor Horne asked him to send them his way.

Chair Egan reminded the Council that next week is a workshop. Our next Council meeting is on February 25 and we just set public hearings for that date in addition to a public hearing on the TIF application. There is a series of budget event meetings in between our regular scheduled large meetings as well so he asked Councilors to please get them on their personal calendars. A schedule can be obtained from our Town Clerk. It is a full court press here in February and the first part of March. We have a lot of information to come forward in our budget process and then get back to our regular twice a month schedule in April. He appreciates the Council's focus on that and their time commitment for the next six or eight weeks to accomplish all the work we have to do.

**MOVED AND SECONDED:** To adjourn at 8:30 p.m. (Reighley & Lawrence)  
**VOTE:** (6 Ayes) (1 Excused-Whitney) (0 Nays)

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Respectively submitted,

Sharon Coffin, Council Secretary