

A G E N D A

COUNCIL MEETING #1-94

FREEPORT TOWN HALL COUNCIL CHAMBERS

JANUARY 18, 1994 - 7:30 P.M.

SPECIAL NOTE: This Agenda is a working Agenda that includes background information and is for the distribution to Council members only.

FROM: Dale C. Olmstead, Jr

TO: Elizabeth Ruff, Chairperson, Durham Road
Randall Bennett, Vice-Chair, Park Street
Edward Bradley, Flying Point Road
Roger Wold, Staples Point Road
Gloria DeGrandpre, Wolf Neck Road
Kenneth Mann, Mann Road
Edward Campbell, Gay Drive

FIRST ORDER OF BUSINESS: To waive the reading of the Minutes of Meeting #26-93 held on December 21, 1993 and accept the minutes as printed.

SECOND ORDER OF BUSINESS: Public Comment Period - 30 Minutes.

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

COUNCIL MEETING #1-94
JANUARY 18, 1994

ITEM #1-94 TO CONSIDER ACTION RELATIVE TO AN APPOINTMENT TO
THE CABLE T.V. REGULATORY BOARD.

BE IT ORDERED: That Genie Beaulieu be appointed, effective immediately, to serve as a member of the Cable T.V. Regulatory Board until October 1, 1995.

BE IT FURTHER ORDERED: That Ms. Beaulieu qualify by swearing an oath of office before the Town Clerk by January 27, 1994.

ITEM #2-94 TO CONSIDER ACTION RELATIVE TO AN APPOINTMENT TO
THE CABLE T.V. REGULATORY BOARD.

BE IT ORDERED: That John Randall be appointed, effective immediately, to serve as a member of the Cable T.V. Regulatory Board until October 1, 1994.

BE IT FURTHER ORDERED: That Mr. Randall qualify by swearing an oath of office before the Town Clerk by January 27, 1994.

ITEM #3-94 TO CONSIDER ACTION RELATIVE TO A RE- APPOINTMENT
TO THE CABLE T.V. REGULATORY BOARD.

BE IT ORDERED: That John Arsenault be re-appointed, effective immediately, to serve as a member of the Cable T.V. Regulatory Board until October 1, 1996.

BE IT FURTHER ORDERED: That Mr. Arsenault qualify by swearing an oath of office before the Town Clerk by January 27, 1994.

COUNCIL MEETING #1-94
JANUARY 18, 1994

ITEM #4-94 TO CONSIDER ACTION RELATIVE TO A RE-APPOINTMENT
TO THE CABLE T.V. REGULATORY BOARD.

BE IT ORDERED: That Peter Moulton be re-appointed,
effective immediately, to serve as a member of the Cable
T.V. Regulatory Board until October 1, 1996.

BE IT FURTHER ORDERED: That Mr. Moulton qualify
by swearing an oath of office before the Town Clerk by
January 27, 1994.

ITEM #5-94 TO CONSIDER ACTION RELATIVE TO AN APPOINTMENT TO
THE SOLID WASTE/RECYCLING COMMITTEE.

BE IT ORDERED: That Barbara McGivaren be appointed,
effective immediately, to serve as a member of the Solid
Waste/Recycling Committee until January 1, 1997.

BE IT FURTHER ORDERED: That Ms. McGivaren qualify
by swearing an oath of office before the Town Clerk by
January 27, 1994.

ITEM #6-94 TO CONSIDER ACTION RELATIVE TO AN APPOINTMENT TO
THE SOLID WASTE/RECYCLING COMMITTEE.

BE IT ORDERED: That Gary Profenno be appointed, effective
immediately, to serve as a member of the Solid Waste/
Recycling Committee until January 1, 1995.

BE IT FURTHER ORDERED: That Mr. Profenno qualify by
swearing an oath of office before the Town Clerk by
January 27, 1994.

COUNCIL MEETING #1-94
JANUARY 18, 1994

ITEM #7-94 TO CONSIDER ACTION RELATIVE TO THE ACCEPTANCE
 OF A DONATION TO THE TOWN OF FREEPORT.

BE IT ORDERED: That a donation of \$500 for the purchase of photography equipment for the Police Department Booking Room be accepted.

Note: The donor wishes to remain anonymous.

ITEM #8-94 TO CONSIDER ACTION RELATIVE TO THE RATIFICATION
 OF A TOWN COUNCIL VOTE AUTHORIZING THE
 SUBMISSION OF AN APPLICATION TO THE ECONOMIC
 DEVELOPMENT ADMINISTRATION.

BE IT ORDERED: That the Town Council vote of November 23, 1993, Agenda Item #216-93, authorizing the submission of an application to the Economic Development Administration (EDA) for \$2,041,500 to construct water and sewer system improvements, be ratified.

ITEM #9-94 TO CONSIDER ACTION RELATIVE TO THE RATIFICATION
 OF A TOWN COUNCIL VOTE AUTHORIZING THE
 SUBMISSION OF AN APPLICATION FOR A COMMUNITY
 DEVELOPMENT BLOCK GRANT.

BE IT ORDERED: That the Town Council vote of November 23, 1993, Agenda Item #217-93, authorizing the submission of an application for a Community Development Block Grant (CDBG) for the purpose of providing matching funds for the Economic Development Administration application (EDA), be ratified.

COUNCIL MEETING #1-94
JANUARY 18, 1994

ITEM #10-94 TO CONSIDER ACTION RELATIVE TO A PARKING LEASE.

BE IT ORDERED: That the proposed parking lease between the Town of Freeport and Freeport Junction Associates for seven (7) parking spaces in the Municipal parking lot on Oak Street, be approved.

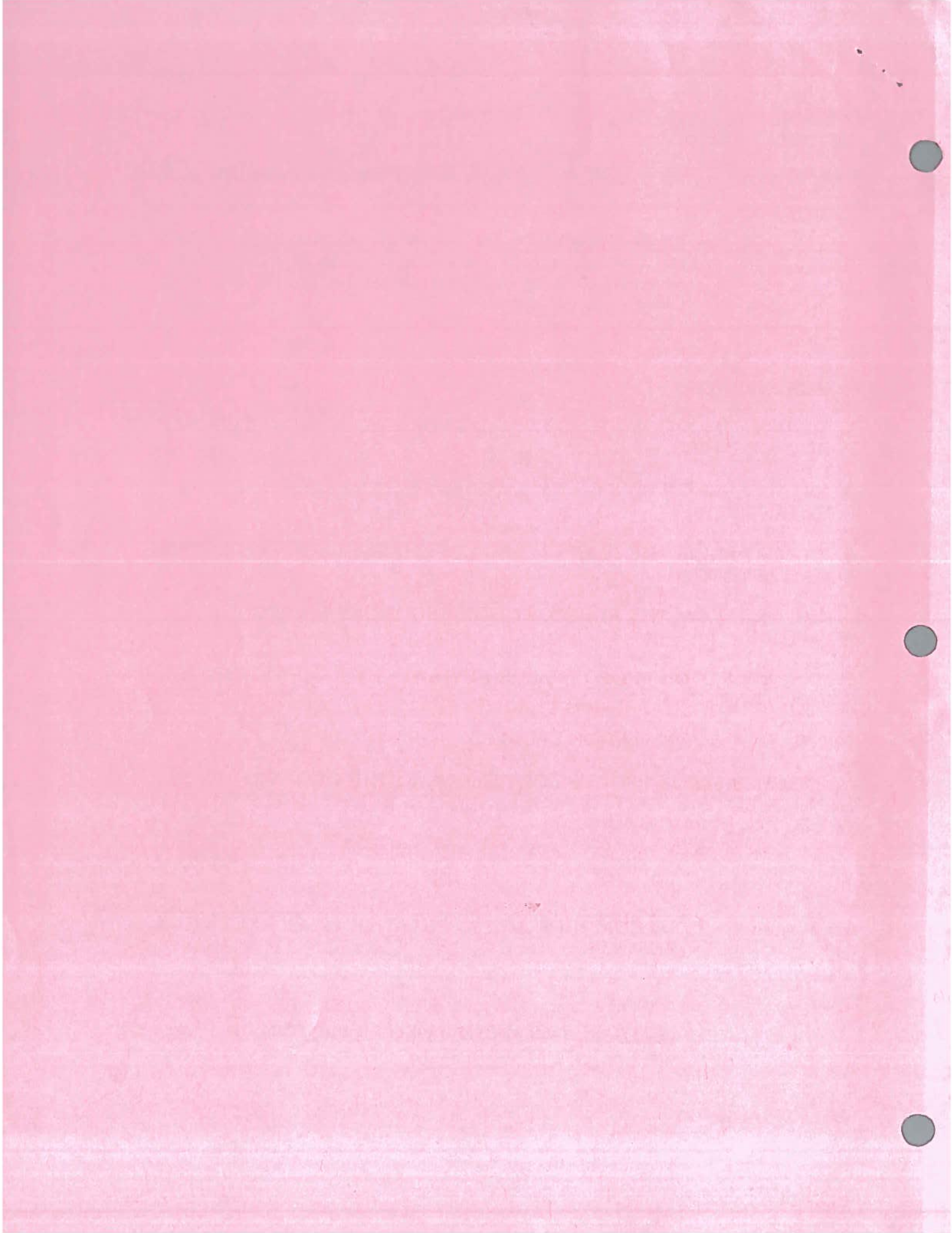
OTHER BUSINESS:

1. REVIEW OF OPTIONS THAT PROVIDE FOR THE HEARING IMPAIRED AT PUBLIC MEETINGS.
2. DISCUSSION ON PROPOSED WATER RATE INCREASE AND LEGAL ASSISTANCE.
3. REPORT FROM THE PLANNING BOARD CHAIRPERSON ON PLANNING BOARD ACTIVITIES.
4. REPORT FROM THE FREEPORT HOUSING TRUST ON RECENT ACTIVITIES.
5. DISCUSSION ON PROPOSAL FOR REVIEWING THE MAST LANDING SCHOOL SITE.
6. EDA GRANT APPLICATION UPDATE.
7. DISCUSSION ON PROCESS OF REVIEWING THE ORGANIZATIONAL STRUCTURE OF FREEPORT RESCUE AND ITS RELATIONSHIP TO OTHER MUNICIPAL DEPARTMENTS.

ITEM #11-94 TO CONSIDER ACTION RELATIVE TO AN EXECUTIVE SESSION.

MOTION: That the Council enter into Executive Session to discuss a personnel matter.

END OF AGENDA



**COUNCIL MEETING #1-94
FREEPORT TOWN HALL COUNCIL CHAMBERS
JANUARY 18, 1994 - 7:30 P.M.**

<u>Chairperson's Call to Order</u>	<u>Present</u>	<u>Absent</u>	<u>Excused</u>
Elizabeth Ruff, Chairperson, Durham Road	X		
Randall Bennett, Vice-Chair, Park Street	X		
Edward Bradley, Flying Point Road	X	(late)	
Roger Wold, Staples Point Road	X		
Gloria DeGrandpre, Wolf Neck Road	X		
Kenneth Mann, Mann Road	X		
Edward Campbell, Gay Drive	X		

FIRST ORDER OF BUSINESS: To waive the reading of the Minutes of Meeting #26-93 held on December 21, 1993 and accept the minutes as printed.

MOVED AND SECONDED: To amend the Minutes of Meeting #26-93 on page 7 to add the word "Facilities" between the word "Municipal" and the word "Committee" and to waive the reading of the Minutes of Meeting #26-93 held on December 21, 1993 and accept the minutes as printed and amended. (Councilors Campbell & Wold) (6 Ayes) (0 Nays)

MOVED AND SECONDED: That the Council enter into Executive Session with its attorney to discuss its legal rights and duties in relation to the request by Deborah Libby for an appeal process before the Town Council. (Councilors Campbell & Wold) **ROLL CALL VOTE** (6 Ayes) (1 Nay - Mann) (Mr. Bradley arrived at 7:40.)

MOVED AND SECONDED: That the Council reconvene. (Campbell & Bennett) (7 Ayes) (0 Nays)

SECOND ORDER OF BUSINESS: Public Comment Period - 30 Minutes. There was no public comment.

MOVED AND SECONDED: To close the Public Comment Period. (Campbell & Bennett) (7 Ayes) (0 Nays)

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

MOVED AND SECONDED: To take Item #10-94 out of order. (Councilors Bennett & Campbell) (7 Ayes) (0 Nays)

ITEM #10-94 TO CONSIDER ACTION RELATIVE TO A PARKING LEASE.

BE IT ORDERED: That the proposed parking lease between the Town of Freeport and Freeport Junction Associates for seven (7) parking spaces in the Municipal parking lot on Oak Street, be approved. (Councilors Campbell & Bradley) **ROLL CALL VOTE** (7 Ayes) (0 Nays)

ITEM #1-94 TO CONSIDER ACTION RELATIVE TO AN APPOINTMENT TO THE CABLE T.V. REGULATORY BOARD.

BE IT ORDERED: That Genie Beaulieu be appointed, effective immediately, to serve as a member of the Cable T.V. Regulatory Board until October 1, 1995.

The First Ballot Vote for Genie Beaulieu was unanimous. There was an election.

BE IT FURTHER ORDERED: That Ms. Beaulieu qualify by swearing an oath of office before the Town Clerk by January 27, 1994. (Councilors Bennett & Wold) **ROLL CALL VOTE** (7 Ayes) (0 Nays)

ITEM #2-94 TO CONSIDER ACTION RELATIVE TO AN APPOINTMENT TO THE CABLE T.V. REGULATORY BOARD.

BE IT ORDERED: That John Randall be appointed, effective immediately, to serve as a member of the Cable T.V. Regulatory Board until October 1, 1994.

The First Ballot Vote for John Randall was unanimous. There was an election.

BE IT FURTHER ORDERED: That Mr. Randall qualify by swearing an oath of office before the Town Clerk by January 27, 1994. (Councilors DeGrandpre & Wold) **ROLL CALL VOTE** (7 Ayes) (0 Nays)

**Item #3-94 TO CONSIDER ACTION RELATIVE TO A REAPPOINTMENT
TO THE CABLE T.V. REGULATORY BOARD.**

BE IT ORDERED: That John Arsenault be re-appointed, effective immediately, to serve as a member of the Cable T.V. Regulatory Board until October 1, 1996.

The First Ballot Vote for John Arsenault was unanimous.
There was an election.

BE IT FURTHER ORDERED: That Mr. Arsenault qualify by swearing an oath of office before the Town Clerk by January 27, 1994. (Councilors Wold & Campbell) **ROLL CALL VOTE** (7 Ayes) (0 Nays)

**ITEM #4-94 TO CONSIDER ACTION RELATIVE TO A RE-APPOINTMENT
TO THE CABLE T.V. REGULATORY BOARD.**

BE IT ORDERED: That Peter Moulton be re-appointed, effective immediately, to serve as a member of the Cable T.V. Regulatory Board until October 1, 1996.

The First Ballot Vote for Peter Moulton was unanimous.
There was an election.

BE IT FURTHER ORDERED: That Mr. Moulton qualify by swearing an oath of office before the Town Clerk by January 27, 1994. (Councilors Mann & Wold) **ROLL CALL VOTE** (7 Ayes) (0 Nays)

**ITEM #5-94 TO CONSIDER ACTION RELATIVE TO AN APPOINTMENT
TO THE SOLID WASTE/RECYCLING COMMITTEE.**

BE IT ORDERED: That Barbara McGivaren be appointed, effective immediately, to serve as a member of the Solid Waste/Recycling Committee until January 1, 1997.

The First Ballot Vote for Barbara McGivaren was unanimous.
There was an election.

BE IT FURTHER ORDERED: That Ms. McGivaren qualify by swearing an oath of office before the Town Clerk by January 27, 1994. (Councilors Campbell & Wold) **ROLL CALL VOTE** (7 Ayes) (0 Nays)

**ITEM #6-94 TO CONSIDER ACTION RELATIVE TO AN APPOINTMENT
TO THE SOLID WASTE/RECYCLING COMMITTEE.**

BE IT ORDERED: That Gary Profenno be appointed, effective immediately, to serve as a member of the Solid Waste/ Recycling Committee until January 1, 1995.

The First Ballot Vote for Gary Profenno was unanimous.
There was an election.

BE IT FURTHER ORDERED: That Mr. Profenno qualify by swearing an oath of office before the Town Clerk by January 27, 1994. (Councilors Bradley & Bennett) **ROLL CALL VOTE** (7 Ayes) (0 Nays)

**ITEM #7-94 TO CONSIDER ACTION RELATIVE TO THE ACCEPTANCE
OF A DONATION TO THE TOWN OF FREEPORT.**

BE IT ORDERED: That a donation of \$500 for the purchase of photography equipment for the Police Department Booking Room be accepted. (*Note: The donor wishes to remain anonymous.*) (Councilors Wold & Campbell) **ROLL CALL VOTE** (7 Ayes) (0 Nays)

**ITEM #8-94 TO CONSIDER ACTION RELATIVE TO THE RATIFICATION
OF A TOWN COUNCIL VOTE AUTHORIZING THE
SUBMISSION OF AN APPLICATION TO THE ECONOMIC
DEVELOPMENT ADMINISTRATION.**

Chairman Ruff said this item presented an opportunity, for anyone that wants to, to abstain from the vote.

Councilor Mann stated that in November he voted to apply for the EDA grants to extend water and sewer down U. S. Route 1. The chief beneficiary of the water and sewer extension would be Health Source of Maine who will be building on a large undeveloped lot down U. S. Route 1. He said because all work would be done in the public right of way, he felt that although he owned property on U. S. Route 1, he had no conflict of interest. About two weeks after the November vote, an anonymous packet of information was sent to the local reporters. Forty-five pages of information were in that packet--tax records, newspaper clippings, charges of violation of the Town Charter, and charges of violations of state law. Because he wanted to avoid the appearance of conflict of interest, he asked the Chairperson to schedule another vote on the EDA Grants so he could abstain. He said that request was rejected by a vote of the full Council--six to one. He added that many weeks have gone by since the November vote and during this period of time, many public officials including members of the sewer district, the school committee, shellfish committee and

Item #8-94 Continued

others have inquired what constitutes a conflict of interest. He said he felt it would be a public service to get a legal answer to that question. He said that he consulted verbally with two local attorneys and having heard from them that they felt he had no conflict of interest, he decided at his own expense to get a legal opinion from a well respected attorney who specializes in both land use and municipal law and is known around the state for being a moderator at town meetings. He said the attorney was Cliff Goodall. He said he would like to read part of his five-page legal opinion (attached).

"Pursuant to your request, I have reviewed the issue of whether or not your vote as a Town of Freeport Councilor on the Economic Development Infrastructure (EDI) award constituted a prohibited conflict of interest. My conclusion is that it did not."

"Conflict of interest law is not as simple as it appears. Each circumstance has to be carefully evaluated in terms of not only Maine statutes, but also common law and other legal requirements with a close review of the facts. Each conflict of interest issue is more of a factual determination than it is statutory interpretation."

"Although it is very important to avoid conflicts of interest, it is equally important for every Council member to perform the duties of the office which includes voting on issues and making difficult decisions. I point out that it is not a coincidence that just after the conflict of interest law in 2607 is the requirement that any municipal official 'who neglects or refuses to perform a duty of office commits a civil violation' which has a fine of \$100 or more. Therefore, the law on one hand tells you to be very careful about conflicts of interest and on the other hand says that you cannot duck controversial issues. Indeed, if you abstain from voting on every issue on which there was the slightest and very remote possibility of benefit to you, you would be disenfranchising your constituents and violating the duties of your office."

"It is my understanding that the Council may reconsider the earlier vote to give you the opportunity to abstain. For all of the reasons discussed above, it is my conclusion that there is no legal requirement or need to conduct such a vote or for you to abstain from voting in the event such a vote is taken."

"Conflict of interest law has a long developmental history. Many members of the public do not understand its application and/or its limitations. It is unfortunate that in this circumstance the anonymous mailers of materials to the newspapers did not take the opportunity to better acquaint themselves with the law and its legal requirements. It is also unfortunate that they apparently do not appreciate the balancing requirements requiring you to vote and not abstain unless you are clearly prohibited from voting. Elected officials in a democracy have little protection against attempts to embarrass them or

Item #8-94 Continued

submit them to personal attacks. In this case I see no reason why you should be embarrassed and I do not think you did anything wrong. Indeed, I think you fulfilled the requirements of your office, and that, of course is why people elected you to be there in the first place."

Mr. Bradley asked why this item was on the agenda. Chairperson Ruff said that the Council attorney suggested this item to be absolutely certain there was no conflict of interest and Ken asked to have a re-vote. This item was defeated but the attorney suggested that the Council ratify this vote.

Mr. Olmstead stated that Attorney Geoff Hole had reviewed the minutes and was concerned that the Council chose not to revisit the issue because there was a provision in the EDA grant application that speaks to conflict of interest and that to preclude any problems down the road with this \$2.1 million grant application that the Council might want to have this vote ratified.

Mr. Mann stated that his attorney, Clifford Goodall, said that there was no conflict of interest with EDA because Mr. Mann is not a contractor who is involved with digging the sewer lines or things of that nature. The EDA conflict of interest laws are very similar to the Town Charter laws because it says that you have to sell goods or services or provide something to the town to have a conflict of interest.

Mr. Campbell stated that our town attorney said we should ratify this vote. He said he feels that Mr. Mann should abstain and the rest of the Council vote so that no one down the road could object to the vote. Mr. Wold urged Mr. Mann to abstain also.

Mr. Mann said throughout the town and the press he has been chastised for this vote and is willing to set the record straight. He said he campaigned to have the town charter followed and he has heard that the first thing he did as a Councilor was to violate the charter. He said he feels this is a very important issue and asked for a legal opinion, at his own expense, and part of that legal opinion says he could be fined a civil penalty of \$100 or more for failure to vote on this issue.

MOVED AND SECONDED: To table item #8-94 indefinitely.
(Councilors Bradley & Wold) (6 Ayes) (1 Nay - Campbell)

ITEM #9-94	TO CONSIDER ACTION RELATIVE TO THE RATIFICATION OF A TOWN COUNCIL VOTE AUTHORIZING THE SUBMISSION OF AN APPLICATION FOR A COMMUNITY DEVELOPMENT BLOCK GRANT.
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MOVED AND SECONDED: To table item #8-94 indefinitely.
(Councilors Bradley & Wold)(6 Ayes)(2 Nays-Campbell & Ruff)

OTHER BUSINESS:

1. REPORT FROM THE FREEPORT HOUSING TRUST ON RECENT ACTIVITIES.

Beth Edmonds, Chair of the Freeport Housing Trust, reported that the Trust now owns Freeport Varney Square, Maplewood Terrace and 60 Bow Street (big yellow building and small single family). The contractors are busy working on the sprinkler system at Maplewood Terrace, the roof will be worked on, the electric heaters are being removed and Monitor heaters are being put in and various painting and repairs are going on. She said the Trust will probably be changing the amount of apartments at 60 Bow Street because to conform with safety requirements. She thanked the Council, Senator Harriman, Chief Duncan, and the Maine State Housing Authority for their support. She said it took a lot of work and effort to get it all done by the deadline of December 31-- it closed on December 24. She said she doesn't have all the figures but will come back and report on the details. The Maine State Housing Authority is loaning the Freeport Housing Trust most of the money at 1%. The Freeport Housing Trust was formed six years ago. She said the Housing Trust owns five housing units at Griffin Woods and has resold them to people. The total of the December 24 closing was 36 units and then this next project will have four or more units--for a total of 45 rental units.

Ms. Edmonds said that people could get information for applying for these units by calling Carol Kaplan at the town office or Jim Hatch, of the Housing Trust, at 865-1652.

Mr. Bradley said that he would like to acknowledge Prithum Sing for making all of this possible. He said that the reason this all happened is because the Housing Trust stuck with it, the very valuable help of Jim Hatch, and the caring Freeport people led by Beth Edmonds.

2. DISCUSSION ON PROPOSED WATER RATE INCREASE AND LEGAL ASSISTANCE.

Chairperson Ruff said that the Council received a letter outlining some of the legal work that had been done relative to monitoring the proposed water rate increase. She said she asked Ed Bradley and Dale Olmstead to meet with Patrick Scully to discuss what had been done and what decisions we might have to make in the future and what cost it would be for us.

Mr. Bradley reported that the issue is twofold: what are the risks and what are the benefits. The risk is \$130,000 worth of new fees that would come to the rate payers because of the application of the water company for both a merger and certain increases in their rates. There is a letter from Pat Scully detailing what he has done and the amount of time he would need to put into the case in order to complete it and a legal bill of significant size. He said that the purpose of the meeting with Mr. Scully was to discuss the chances for success.

Discussion on proposed water rate increase and legal assistance continued.

the cost, and to break down the parts of the case. Basically he said there were three different parts to the case. One was the merger part, which we had agreed as a Council, to ask Pat and others to coordinate so that we weren't paying each town to do--several towns were sharing in that cost. The second part of the case deals with a specific part of a rate increase that the Water Company consumers asked for that related to expenses that would occur in Freeport and that is where Pat Scully concentrated his efforts. There were two primary parts to that effort--one was the company's request for development of a new ground water source to be included in this year's rate and secondly the company's request that certain of their overhead expenses (their parent company expenses) be allocated to Freeport. If we win the first part, relating to the development of a ground water source, our case is they are doing it so late in the year it shouldn't be in this year's rates. If we win, it means that the rate payers won't have to pay the roughly \$50,000. The second part is more complicated--overhead expenses. If we win it would exclude about \$30,000 in the rate increases.

Mr. Bradley said that with respect to the lack of communication, the law firm recognized that had occurred. Bernstein, Shur, Sawyer and Nelson have about \$10,000 out for billing (for Freeport) for what Mr. Scully has done to date and they have agreed to split the bill with us--\$5,000 to be paid by Freeport. Mr. Bradley said that the cost so far is \$11,000 and to complete the case (124 hours) it will be \$7,500 in additional money. If the case is settled, the firm will reduce their fee (the \$7,500). Mr. Bradley feels that this was a positive discussion and recommends completing the case.

Mr. Bradley said that at some point the Council should look into acquisition of this company because there is a lot of money that will go into rates, not only this year but in years to come as well as the development of ground water that we could do cheaper as well as better. He encouraged conversation with the trustees.

Mr. Mann suggested that the Council propose to pay the fee only if the case is won. Mr. Campbell said he would feel more comfortable with the \$7,500 fee.

MOVED AND SECONDED: To accept the offer of Bernstein, Shur, Sawyer and Nelson to cover the amount of unbilled but owed to a total of \$5,000. (Councilors Wold & Campbell)
(7 ayes) (0 Nays)

MOVED AND SECONDED: To accept Bernstein, Shur, Sawyer and Nelson's offer to see this case through to its conclusion for fees not to exceed \$7,500 and further agreement that if the case is settled prior to going its entire route that they would reduce their fees appropriately. (Councilors Wold & Campbell)
(6 Ayes) (1 Nay - Mann)

Discussion on proposed water rate increase and legal assistance continued.

It was the consensus of the Council to ask the firm if they would take the case on a contingency basis for \$7,500.

3. REVIEW OF OPTIONS THAT PROVIDE FOR THE HEARING IMPAIRED AT PUBLIC MEETINGS.

Rick Simard presented his report on options for dealing with the hearing impaired (attached). Rick said that people using a headset would have to sit in a certain place probably near the back wall. People using the wireless headset would be able to sit anywhere but would have to wear a receiver possibly clipped to their belt.

Mary Kennedy said that she would never wear a headset and the Council should consider installing System 3 for \$2,875.

MOVED AND SECONDED: To expend an amount not to exceed \$275 from the Miscellaneous & Contingency Fund to install System 1. (Councilors Mann & Bennett)
(5 Ayes) (2 Nays - DeGrandpre & Ruff)

4. EDA GRANT APPLICATION UPDATE.

Mr. Olmstead said that we should have an answer about the EDA grant by the first of March. We have received a letter from the State Economic and Community Development Department saying that they are granting us \$200,000 and are waiting to hear from applications for \$400,000 for the final total to reach \$600,000 matching funds. The Maine Water Company has agreed to donate the land (\$37,000) for the water tower off Pine Street--part of the budget included buying that land. He said he's also asked the Department of Transportation to waive a \$52,000 street opening fee. He said he is hopeful that the town will receive the second block of EDA funds which would bring our local match up to \$637,000 and if the Department of Transportation agrees to waive the street opening fee, that would bring us over the top on all matching funds. If they don't, we'll look at other options. We should know about the C.D.B.G. by mid-March.

5. DISCUSSION ON PROCESS OF REVIEWING THE ORGANIZATIONAL STRUCTURE OF FREEPORT RESCUE AND ITS RELATIONSHIP TO OTHER MUNICIPAL DEPARTMENTS.

Chairperson Ruff stated that when the Council Goals were established, one of the high priorities on the list was looking at the Rescue and its structure. She said that she and the Vice-Chair would like to start the process by meeting with both the Rescue Unit and the Fire Department. The purpose of the

Organizational structure of Rescue discussion continued.

meeting would be to get ideas and feedback and to encourage the groups to think about what they'd like to see happen. The next step would be to come back to the Council with a recommendation of "where we go from here." Ms. Ruff stated that there had been discussion about a committee being formed after that to work on the issue. She said that a legal opinion was requested from Geoff Hole—which states that the Chair and Vice-Chair can meet with the Rescue Unit and Fire Department and it would not be considered a public meeting. If a committee was formed, all of those meetings would be public meetings.

Mr. Wold said that members of the Council ought to be very careful and don't decide to sit in on those meetings because that would violate the process. He added that if the Council reached a consensus for the Chair and Vice-Chair to proceed in this direction, the Council should all agree amongst themselves to allow that to go forward and not jeopardize it by their presence at any of these meetings.

Councilor Mann said that we also have before the Council the fate of the Rescue Department head Deborah Libby. He said it's very hard to separate the issue of the personnel matter from the structure of the Rescue Unit. Mr. Mann felt it would be more appropriate to hold the meetings after the Deborah Libby issue has been resolved. He also expressed his disappointment that the town attorney was not informed about his desire to attend those meetings and, if he did, it would constitute a public meeting.

Mr. Bradley said this process could decide to eliminate the Rescue head position and that would be viewed to have some impact on Deborah Libby. He said he doesn't think it's possible to separate the two issues. He said he would support the Chair and Vice-Chair if they decide to proceed.

Councilor Wold said he assumed that the present structure does not present a threat to public safety. He expressed concern that the climate in which this discussion would take place would be too emotionally charged to have good discussion of the issue. He said he would support the Chair and Vice-Chair with reservations.

Mr. Campbell expressed support for the Chair and Vice-Chair.

Vice-Chairman Bennett said it didn't have to be the Chair and Vice-Chair that met with the Rescue Unit and Fire Department--just two councilors so that it is not a public meeting. He expressed concern about the time format.

Ms. DeGrandpre feels more will be accomplished with two councilors and the Fire and Rescue than at a public meeting. She said she was uncomfortable that the structure might be decided before the personnel issue was decided. She asked if this process could be postponed for three months.

Organizational structure of Rescue discussion continued.

Councilor Mann expressed his desire, as an elected public official, to attend the meetings. He said he would like to be there to gather information and does not want to be excluded from any meetings.

Chairman Ruff said that she and Mr. Bennett would discuss this issue again.

6. DISCUSSION ON PROPOSAL FOR REVIEWING THE MAST LANDING SCHOOL SITE.

Mr. Olmstead stated that at the last meeting the Council met with Joe Hahn from Bernstein Shur law office to talk about the wetlands issue and the possible review of the studies that have been done to date, the T. Y. Lin study in particular. Joe Hahn recommended that Harold Brown's company be contacted for a proposal to conduct that review. He said this would be on the February 1st Council Agenda.

OTHER DISCUSSION:

Mr. Mann asked about the status of the Denny/Gilliam litigation . Mr. Olmstead said there was a motion for summary judgement filed by Gilliam/Denny in the case. He said there were oral arguments a week ago and a decision is expected in the next month. John Lloyd has asked to meet with the Council in Executive Session as soon as that decision has come in.

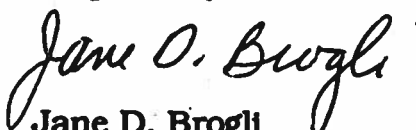
ITEM #11-94 TO CONSIDER ACTION RELATIVE TO AN EXECUTIVE SESSION.

MOVED AND SECONDED: That the Council enter into Executive Session to discuss a personnel matter. (Councilors Bradley & Bennett) (6 Ayes) (1 Nay - Mann)

MOVED AND SECONDED: To reconvene. (Councilors Mann & Bradley) (6 Ayes) (1 Nay - Campbell)

MOVED AND SECONDED: To adjourn at 11:40 p.m. (Councilors Campbell & Ruff) (6 Ayes) (1 Nay - Wold)

Respectfully submitted,


Jane D. Brogli
Council Recorder

DYER AND GOODALL

Attorneys at Law
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December 29, 1993

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**Kenneth Mann
2 Mann Road
Freeport, ME 04032**

**RE: Ken Mann, Freeport Town Council Vote, Conflict of Interest
Economic Development Infrastructure Grant**

Dear Ken:

Pursuant to your request, I have reviewed the issued of whether or not your vote as a Town of Freeport Councilor on the Economic Development infrastructure (EDI) award constituted a prohibited conflict of interest. My conclusion is that it did not.

Conflict of interest law is not as simple as it appears. Each circumstance has to be carefully evaluated in terms of not only Maine statutes, but also common law and other legal requirements with a close review of the facts. Each conflict of interest issue is more of a factual determination than it is statutory interpretation.

FACTUAL BACKGROUND

Prior to your being elected to the Town Council, the Town applied for an EDI award for the construction of a sewerage collection system extension along Route 1 for the purposes of providing sewerage collection and treatment to property which when developed would provide additional jobs for the residents of the area. One large parcel with specific development plans is the major beneficiary. Shortly after your having been sworn in, a vote was taken on the Council concerning this award and you voted in the affirmative on the vote which would place the Town closer to realizing the benefits of the award.

You own property on the section of Route 1 where this sewerage line extension will be constructed. Your property is fully developed and is a small lot which does not have the physical capacity for any substantial expansion. The lot basically is built out and has on it a fully functional subsurface wastewater disposal system. Your property will be burden by this sewerage line extension because of the requirement of Maine law that each abutting piece of property must tie into a collection system is fully functional, adequate or not. Your property is burdened because you will have to pay the expense to accomplish this tie-in, and then you

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will have to pay regular sewerage utility payments. If the line was not extended by your property, you would not have to incur these tie-in expenses and/or these utility payments.

It is my understanding that the Town's Assessor has determined that your assessment will not be increased as a result of this sewerage line extension because your property value will not be increased.

Clearly, all the property along Route 1 in the area of this sewerage line extension will not be burdened in the same manner as your property. Undeveloped parcels and large parcels will benefit from the extension in that the value will be substantially increased because of the availability of public sewerage, higher density development, etc. These lots will be available for new commercial development, which is the very purpose of the grant because they are currently undeveloped. Your property is not under similar circumstances and that is why your property will be burdened as opposed to benefited by this sewerage line extension.

These facts are the key to understanding the conflict of interest issue for this circumstance.

CONFLICT LAW

The law in Maine which applies to this case is found in 30-A M.R.S.A. §2604 et seq. This is a relatively new conflict of interest law which was adopted in 1987. It replaces an earlier law and both codifies and expands common law. Also in this particular circumstance there is conflict of interest law contained in the Charter for the Town of Freeport in Article IX, Section 9.04.

The EDI award requirements also have a conflicts of interest provision requiring certification.

In addition to all the above, there are common law conflict of interest requirements generated by court decisions.

In preparing this letter, I have reviewed all of the above requirements as well as court decisions in the State of Maine and the following treatises on municipal law:

Antieau, Municipal Corporation Law (1990 Ed.)
Section 12.60, et seq.;

McQuillin, Law of Municipal Corporation
(1990 Ed.) Section 12.136, et seq.; and

Sands, Local Government Law (1993 Ed.),
Section 11.10.

DISCUSSION OF LAW

Of the three written conflicts of interest legal requirements described above, the Community Block Development Grant/Economic

Development Infrastructure (CBDG/EDI) award certification requirement is the simplest. The operative language requires the Town application to verify that:

No person who is an . . . elected official . . . of . . . local government . . . which receives CBDG funding may obtain a financial interest in any contract, subcontract or agreement with respect to CBDG activities.

Clearly, your vote did not concern a contract, subcontract or agreement for the expenditures of these funds. As this type of language has generally been interpreted you are not receiving any financial interest or any payment directly or indirectly of the proceeds. These types of requirements also relate to "a financial interest" that is specific and different from that of the general public. In this case you are receiving no direct financial benefit or indirect financial benefit that would disqualify Freeport or jeopardize its award of this EDI grant.

The Town of Freeport Charter in Section 4.04 provides the following:

Any officer . . . who has a substantial financial interest, direct or indirect, . . . in any contract with the town or in the sale of any land, materials, supplies or services in the town or to a contractor . . . shall make no interest and shall refrain from voting upon or otherwise participating in his capacity as an officer . . . in making of such sale or in the making or performance of such contract.

The vote on the CBDG/EDI grant was not in anyway a contract or a sale of land, materials, supplies or services. Also any interest you may have is not close to the legal test of "substantial." Therefore, this provision of the Charter does not apply. Furthermore, this provision has a penalty only when the conflict of interest is "willfully concealed" or the provision of the Charter is "willfully violated." There is no suggestion that your vote meets the legal standard for "willfully" even if this section applied to the current issues. "Willfully concealed" means knowingly and intentionally. Since this section doesn't even apply to the current circumstances, there is no way you could have "willfully" concealed any conflict of interest controlled by this section.

The broadest conflict of interest written law or statute is found in 30-A M.R.S.A. §2604 et seq. This statute in §2605(1) provides that the voting on a question "is voidable when any official in an official position votes on any question in which that official has a direct or indirect pecuniary interest."

The statute goes on to define "direct or indirect pecuniary interest" in §2605(4). The operative language of this subsection is as follows:

[A]n official of a body of the municipality . . . involved in a question . . . is deemed to have a direct or indirect pecuniary interest in a question . . . where the official is an officer, director, partner, associate . . . of a private . . . economic entity to which the question relates

The language of this statute has to be interpreted with reference to prior court cases and common law because it is an attempt to codify common law as well as to expand it. you are obviously an official as a council member. The question that was voted on, however, does not relate to the type of economic entity covered by this statute. You are simply the owner of real estate. The question only remotely at best impacts that real estate. When you read the whole statute, it talks about benefiting financially because of a pecuniary interest in a question.

The answer would obviously be different if you were voting on the contract for constructing the sewerage line and you had any interest in the bidders or companies proposing to do the construction work. Also, if there were any votes by the Council and the design of the system which would cause, for example, the pipe to be located closer to your property so you wouldn't have to pay so much to connect up to it, then that would be a pecuniary interest in a question. It is my understanding that no such issues were raised in the question that was voted upon.

If you owned a large undeveloped parcel in this area that would increase in value because of the sewerage line, then you would have a conflict.

As you know, this statute requires when there is a type of pecuniary interest which creates a conflict, then the Council member must announce that interest in advance and not take part in any of the discussion or the voting.

A conflict of interest law is intended to remove circumstances where any official will be motivated in any way by their own self-interest and not the public interest. Good faith has nothing to do with conflict of interest issues.

Obviously, many votes that come before the Council have remote financial impact on Council members and all residents. Indeed the whole budgeting process has such an impact. Therefore, the

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provisions of subsection 6 of the statute which suggests everyone should "avoid the appearance of conflict of interest by disclosure or by abstention" can be overbroadly applied.

Although it is very important to avoid conflicts of interest, it is equally important for every Council member to perform the duties of the office which includes voting on issues and making difficult decisions. I point out that it is not a coincidence that just after the conflict of interest law in §2607 is the requirement that any municipal official "who neglects or refuses to perform a duty of office commits a civil violation" which has a fine of \$100 or more. Therefore, the law on one hand tells you to be very careful about conflicts of interest and on the other hand says that you cannot duck controversial issues. Indeed, if you abstain from voting on every issue on which there was the slightest and very remote possibility of benefit to you, you would be disenfranchising your constituents and violating the duties of your office.

FUTURE VOTES ON THIS ISSUE

It is my understanding that the Council may reconsider the earlier vote to give you the opportunity to abstain. For all of the reasons discussed above, it is my conclusion that there is no legal requirement or need to conduct such a vote or for you to abstain from voting in the event such a vote is taken.

Conflict of interest law has a long developmental history. Many members of the public do not understand its application and/or its limitations. It is unfortunate that in this circumstance the anonymous mailers of materials to the newspapers did not take the opportunity to better acquaint themselves with the law and its legal requirements. It is also unfortunate that they apparently do not appreciate the balancing requirements requiring you to vote and not abstain unless you are clearly prohibited from voting. Elected officials in a democracy have little protection against attempts to embarrass them or submit them to personal attacks. In this case I see no reason why you should be embarrassed and I do not think you did anything wrong. Indeed, I think you fulfilled the requirements of your office, and that, of course, is why people elected you to be there in the first place.

If you have any additional questions, please do not hesitate to contact me.

Best regards,



CLIFFORD H. GOODALL

CHG/el
eln.10104

TO: DALE OLMSTEAD, TOWN MANAGER

FROM: RICK SIMARD

DATE: DECEMBER 28, 1993

RE: HEARING IMPAIRED

THE FOLLOWING OPTIONS EXIST FOR DEALING WITH THE HEARING IMPAIRED.
THE FIGURES, ALTHOUGH ACCURATE, ARE NOT OFFICIAL QUOTES.

SYSTEM 1: 2 HEADSETS & WIRING	50.00
INSTALLATION	<u>200.00</u>
	250.00

SYSTEM 2: WIRELESS HEADSETS

(2) HEADSETS & WIRING	785.00
INSTALLATION	<u>200.00</u>
	985.00

SYSTEM 3: INSTALLING 3 SPEAKERS IN THE CEILINGS OF
COUNCIL CHAMBERS.

MIXER, AMP., SPEAKERS & WIRING	2,575.00
INSTALLATION	<u>300.00</u>
	2,875.00

SYSTEM 4: TELEVISION MONITOR
TELEVISION & CART
INSTALLATION

625.00
<u>75.00</u>
700.00

