

FREEPORT TOWN COUNCIL MEETING #19-93

SEPTEMBER 7, 1993 - 7:30 P.M. - COUNCIL CHAMBERS

**SUMMARY AGENDA**

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| ITEM #171-93 | TO CONSIDER ACTION RELATIVE TO THE CONFIRMATION OF A FISCAL YEAR 1994 TAX RATE   |
| ITEM #172-93 | TO CONSIDER ACTION RELATIVE TO THE FISCAL YEAR 1994 TAX DUE DATES AND INTEREST RATES   |
| ITEM #173-93 | TO CONSIDER ACTION RELATIVE TO CASTING A BALLOT FOR OFFICERS AND VOTING DELEGATES OF THE MAINE MUNICIPAL ASSOCIATION   |
| ITEM #174-93 | TO CONSIDER ACTION RELATIVE TO A RELEASE OF JUDGEMENT (TOWN OF FREEPORT V. BRICKYARD COVE)   |
| ITEM #93-93  | TABLED MAY 18 AND AUGUST 3, 1993 TO CONSIDER ACTION RELATIVE TO THE PROPOSED DISCONTINUANCE OF A PORTION OF THE TOWN WAY COMMONLY KNOWN AS PORTERS LANDING ROAD LOCATED NEAR PORTERS LANDING IN SOUTH FREEPORT |
| ITEM #94-93  | TABLED MAY 18 AND AUGUST 3, 1993 TO CONSIDER ACTION RELATIVE TO THE ACCEPTANCE OF A GIFT OF LAND   |
| ITEM #165-93 | TABLED AUGUST 3, 1993 TO CONSIDER ACTION RELATIVE TO PROPOSED AMENDMENTS TO THE SHELLFISH CONSERVATION ORDINANCE (CHAPTER 32)  |
| ITEM #166-93 | TABLED AUGUST 3, 1993 TO CONSIDER ACTION RELATIVE TO PROPOSED AMENDMENTS TO THE TRAFFIC AND PARKING ORDINANCE (CHAPTER 48)   |



OTHER BUSINESS

1. UPDATE ON LOWER MAST LANDING ROAD RECONSTRUCTION
2. DISCUSSION ON THE SALE OF SURPLUS FIRE EQUIPMENT
3. DISCUSSION ON THE RELEASE OF A DEED RESTRICTION (MARINO PROPERTY-GAP BUILDING)

ITEM #175-93      TO CONSIDER ACTION RELATIVE TO AN EXECUTIVE  
SESSION.

**COUNCIL MEETING #19-93**  
**FREEPORT TOWN HALL COUNCIL CHAMBERS**  
**September 7, 1993 - 7:30 p.m.**

| <b><u>Chairperson's Call to Orde</u></b>     | <b><u>Present</u></b> | <b><u>Absent</u></b> | <b><u>Excused</u></b> |
|--|-----------------------|----------------------|-----------------------|
| Kirk Goddard, Chairperson, Mast Landing Road | X                     |                      |                       |
| Edward Bradley, Flying Point Road            | X                     |                      |                       |
| Andrew Arsenault, 287A U.S. Route #1         | X                     |                      |                       |
| John Nelson, Church Street                   | X                     |                      |                       |
| Cary Veilleux, Wardtown Road                 |                       |                      | X                     |
| Randall Bennett, Park Street                 | X                     |                      |                       |
| Elizabeth Ruff, Durham Road                  | X                     |                      |                       |

**FIRST ORDER OF BUSINESS:**

**MOVED AND SECONDED:** To waive the reading of the Minutes of Meetings #17-93 held on August 3, 1993 and #18-93 held September 2, 1993 and accept the minutes as printed.

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

There were no public comments.

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

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**ITEM #171-93    TO CONSIDER ACTION RELATIVE TO THE**  
**CONFIRMATION OF A FISCAL YEAR 1994 TAX RATE.**

**MOVED AND SECONDED:** That the Fiscal Year 1994 Tax Rate of \$16.55 that has been established by the Town's Assessor, be confirmed. (Councilors Bennett & Ruff) (4 Ayes)  
(2 Nays - Bennett & Arsenault)

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**ITEM #172-93 TO CONSIDER ACTION RELATIVE TO THE FISCAL YEAR 1994 TAX DUE DATES AND INTEREST RATES.**

**MOVED AND SECONDED:** \*To amend Item #172-93 to change the interest rate to .83% per month or 10% per annum for the overpayment of taxes (more than due in that year). (Bradley & Arsenault) (5 Ayes) (1 Nay - Bennett)

**MOVED AND SECONDED:** That one-half of the Fiscal Year 1994 Committed Taxes for Real Estate be payable on November 15, 1993, with interest at the rate of .83% per month or 10% per annum, to be charged from November 16, 1993, and that the second-half of the Fiscal Year 1994 Committed Taxes for Real Estate be payable on May 16, 1994, with interest at the rate of .83% per month or 10% per annum, to be charged from May 17, 1994. **BE IT FURTHER ORDERED:** That the Fiscal Year 1994 Committed Taxes for Personal Property be payable on November 15, 1993, with interest at the rate of .83% per month or 10% per annum, to be charged from November 16, 1993. **BE IT FURTHER ORDERED:** That an interest rate of .5% per month or 6% per annum be established for over payment of taxes as amended\*. (Councilors Nelson & Bennett) **ROLL CALL VOTE** (5 Ayes) (1 Nay - Bennett)

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**ITEM #173-93 TO CONSIDER ACTION RELATIVE TO CASTING A BALLOT FOR OFFICERS AND VOTING DELEGATES OF THE MAINE MUNICIPAL ASSOCIATION.**

**MOVED AND SECONDED:** That Freeport cast its ballot for the Slate of Officers proposed by the MMA Selection Committee for the Executive and Advisory Committees. **BE IT FURTHER ORDERED:** That Dale Olmstead be appointed as Freeport's Voting Delegate and Jacki Cohen as Freeport's Alternate Delegate at the Annual MMA Business Meeting. (Councilors Bradley & Bennett) **ROLL CALL VOTE** (5 Ayes) (1 Nay - Arsenault)

Mr. Olmstead reported that this is the annual meeting of the Maine Municipal Association when they vote on the by-laws of the MMA. He said they also discuss issues and hold workshops on coming legislation and vote for a slate of officers. He said the annual membership for Freeport is \$6,500. The services provided for that fee include the Municipal Risk Pool, the Dental Pool, legal advice and assistance, and a seat at the forum of communities.



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**ITEM #174-93 TO CONSIDER ACTION RELATIVE TO A RELEASE OF JUDGEMENT. (TOWN OF FREEPORT V. BRICKYARD COVE)**

**MOVED AND SECONDED:** To table Item #174-93 until September 21, 1993. (Councilors Bradley & Bennett) (6 Ayes) (0 Nays)

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**ITEM #93-93 TABLED MAY 18 AND AUGUST 3, 1993. TO CONSIDER ACTION RELATIVE TO THE PROPOSED DISCONTINUANCE OF A PORTION OF THE TOWN WAY COMMONLY KNOWN AS PORTERS LANDING ROAD LOCATED NEAR PORTER'S LANDING IN SOUTH FREEPORT.**

Chairman Goddard said this is a proposal that Hugh Phelps has approached the Council with about a vehicular right-of-way access to mud flats near his home in exchange for a piece of property located at the end of Cove Road. Mr. Goddard said a discussion was held with several of the abutters at Cove Road about providing an easement for the vehicular right-of-way to the Cove Road property. He said a letter from the Town Attorney suggested we needed a release from Mr. Long, in particular, for the use of the right-of-way, that has been there for sometime, in order to have access to that parcel without any legal impediments. Following the conversation held with Mr. Long, Mr. Long said through his attorney that at this point in time he chooses to take no action. Therefore, the town is in a position, should we be interested in moving forward, of having to take legal action to try to maintain the right-of-way that is there. Chairman Goddard said that the way he reads the Town Attorney's letter is that there is an assumed right-of-way to the Cove Road property based on 1) the town's plowing of a portion of the road over the last 30 years and 2) the access the clambers have had over that land over that time also. He said there seems to be an implied use that it is in fact a public easement. He reported that our attorney said we'd need either a release from Mr. Long to allow us to use it, which he's refused to give, or we need to take further legal action. He asked what the council's interest was for moving forward with Geoff Hole's suggested legal remedy to determine whether there is a public easement.

Councilor Nelson feels if there is a legal opinion that there is hope for public access there, we should pursue it.

Councilor Bennett asked if there was public access on Cove Road without the purchase of this property. Mr. Bradley said there is a road that goes down—it is what you need to use in order to reach the Cove Road property that the Phelps propose to trade. If there isn't a public right-of-way then you can't get to the

land that we're proposing to take. He said Hugh's offer has a problem in advance of getting to it because there is an issue of whether there is a public right-of-way across this land which puts Mr. Long and whomever at odds. Geoff Holes suggests we could resolve it with a Quick Claim—an exchange of deeds—and Mr. Long hasn't bought it. Mr. Bradley said that means someone has to take Mr. Long on in a title action in order to get to the point where we know if what Mr. Phelps has offered can be reached by the public.

Mr. Phelps said that Geoff Holes feels the town could seek a Declaratory Judgement, which is when a judge says he agrees with the town that the town has the right-of-way on this road all the way to the water. Geoff felt this is strongly supported by the decades of use of the road. Mr. Bradley proposed we support this proposal but he feels it could be potentially very expensive. He said he would not feel comfortable saying the town should incur that expense. He felt the Phelps should bear that expense. Mr. Phelps said they would be interested in sharing that expense with the town.

Mrs. Ruff said she received a phone call from Mr. Long the night before. She felt he wasn't sure what his deed read. She suggested that he stop and see Mr. Olmstead and also to get a legal opinion.

Mr. Goddard said that a Declaratory Judgement for an easement in no way affects the property boundaries of Mr. Long. If in fact people have utilized a walk-way or drive-way through his property or on the Cove Road property—the Declaratory Judgement will say either yes "you have it" or "no you don't." Mr. Long chose to take no action.

Mr. Arsenault has concerns about what we are getting in the swap. He said he can't support sharing any of the costs. We own a piece of land now and any costs relating to a swap should be paid by the Phelps. He said the Phelps should present a clear title to this piece of land. He asked why the Council would want to make the trade if the town owns to the water.

Mr. Goddard said the Town Attorney feels the public has established a right and the town could ask for a Declaratory Judgement. He said the short term proposal to swap has been hindered by who pays for Declaratory Judgement and how long that process takes. He believes that the town ought to be involved with obtaining access to the water with reservations about the cost. Do we want to continue? He felt that the costs should be shared. If not interested in pushing this along quickly—maybe we move forward with steps to get the process nailed down. He feels the community should be involved. Mr. Bradley agreed with Mr. Goddard.

Mr. Bradley said more information is needed. He said Mr. Phelps needs to meet with the Shellfish Commission and the town engineer to develop a plan and put through the Corps of Engineers and D.E.P.

Mrs. Ruff asked to hear input from the fishermen. She said this piece was missing. She said she's not sure we are looking at this as a recreation spot unless someone comes forward and says this. She said if she heard from these two groups of people, she'd feel the town should take some responsibility to get the information and not put it all on the Phelps. She suggested the Council hold a Public Hearing on another access to the water.

Mr. Bennett said he doesn't feel we're looking at another access—we have access already but it is undeveloped. He feels we are talking about trading it off for another access with the same problems that we have where we are. He said we have an undeveloped site there that is as big as the property of the town dock and if it were developed, it would hold a lot of vehicles and it would be a good access. He said he was not in favor of it unless all these problems are answered. He asked if the Cove Road property was permitted as an access by the Zoning Ordinance. He said our current access on Porter's Landing is grandfathered. Ms. Cohen was asked for an opinion.

Mr. Goddard proposed that Mr. Olmstead schedule Mr. Phelps on the Shellfish Commission agenda and publicize this meeting with the fishermen. He also recommended holding a Public Hearing again for input.

Mr. Bradley asked for the value of the Phelps property with the right-of-way and without the right-of-way. Mr. Bennett asked for an appraisal of both properties. Council agreed to have Mr. Olmstead get an estimate of appraisal costs.

Mr. Goddard suggested setting a Public Hearing during the September 23, 1993 Council meeting.

Mr. Arsenault said we need to know what use the Cove Road property would be used for. He said the Council needs to decide what is best for the whole town.

Mr. Nelson said he is in favor of going forward with the Cove Road project.

Mr. Bennett asked that notice be sent to all the neighbors about the Shellfish Commission and Town Council meetings on this matter.

Mr. Bradley, Mr. Olmstead, and Ms. Cohen will meet with Mr. Phelps and anyone else that is interested to plan the process.

**MOVED AND SECONDED:** To table Item #93-93 until October 5, 1993 so that the Shellfish Commission can meet and make recommendations to the Council. (Councilors Ruff & Arsenault) (6 Ayes) (0 Nays)

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**ITEM #94-93      TABLED MAY 18 AND AUGUST 3, 1993. TO CONSIDER ACTION RELATIVE TO THE ACCEPTANCE OF A GIFT OF LAND.**

**MOVED AND SECONDED:** To table Item #94-93 until October 5, 1993. (Councilors Nelson & Ruff) (6 Ayes) (0 Nays)

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**ITEM #165-93      TABLED AUGUST 3, 1993. TO CONSIDER ACTION RELATIVE TO PROPOSED AMENDMENTS TO THE SHELLFISH CONSERVATION ORDINANCE. (CHAPTER 32)**

**MOVED AND SECONDED:** That the proposed amendments to the Shellfish Conservation Ordinance, as submitted to Public Hearing on August 3, 1993, be approved. (Councilors Arsenault & Ruff) **ROLL CALL VOTE** (5 Ayes) (0 Nays) (Mr. Bradley not present for this vote.)

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**ITEM #166-93      TABLED AUGUST 3, 1993. TO CONSIDER ACTION RELATIVE TO PROPOSED AMENDMENTS TO THE TRAFFIC AND PARKING ORDINANCE. (CHAPTER 48)**

**MOVED AND SECONDED:** To amend Item #166-93 as follows: Sec. 48-208 Change to read: From: This provision shall be in effect at all times on both sides of Harraseeket Road between Main Street and Dixon Way. To: This provision shall be in effect all year on both sides of Harraseeket Road between Main Street and Dixon Way.

**MOVED AND SECONDED:** That the proposed amendments to the Traffic and Parking Ordinance, as submitted to Public Hearing on August 3, 1993, be approved as amended. (Councilors Nelson & Ruff) **ROLL CALL VOTE** (6 Ayes) (0 Nays)

#### **OTHER BUSINESS:**

##### **1. UPDATE ON LOWER MAST LANDING ROAD RECONSTRUCTION.**

Jackie Cohen said there had been meetings with the D.E.P., the Army Corps, Peter Toubs, and the Soil Conservation Service. She said the conclusion was that reconstruction of the old Mast Landing Road without the ATL, which would mean maintaining the same width, raising it in some places, changing the culverts, replacing the culverts, and increasing the size of the culverts but



limiting the length of the culverts to a certain limitation. Then most likely a D.E.P. permit would not be needed. She said what we don't know is if there would be any intrusion into a ten acre wetland and we won't know that unless there is some investigation or delienation of the wetlands there. If there is no ten acre wetland and we don't widen the road, it is highly likely the reconstruction can occur without a D.E.P. permit. However, she said an Army Corps permit will be needed because any time you do anything at all in a wetland it requires a permit. The type of Army Corps permit would likely be the simplist one which is called the nation-wide permit but we have no guarantee of that. In order to go forward with an Army Corps permit, it would be necessary to investigate the wetlands. She said the ATL gets more complicated. The town would have to know the wetlands, the types, the locations—but it may well be that a D.E.P. alteration permit is needed and a permit (not at the simplist form) from the Army Corps.

Mr. Nelson suggested that we move forward with looking at the reconstruction of the road. As far as the ATL goes, he feels the Conservation Commission and the ATL Group should take a look at where those wetlands would be impacted and take a look at interrupting the Alternate Transportation Lane so as to avoid them.

Mr. Bradley said he supports the ATL and supports John Nelson getting to the bottom of it. He felt it was critically important before we get involved in an expensive permitting process, expensive reconstruction, or expensive ATL, to know the dimension of the problem we have. He said we need to get an estimate.

Mr. Arsenault said he could not support going ahead with the ATL.

It was the concensus of the Council to spend \$3,300 to identify the wetlands.

## **2. DISCUSSION ON THE SALE OF SURPLUS FIRE EQUIPMENT.**

Fire Chief Duncan Daly reported that he has received an offer from the Town of Durham of \$100 per air pack. He said that Coopers Mills has offered \$1 per foot for the 4" hose. He said that this is a fair price for both items. There was a concensus of the Council to agree to those sales.

## **3. DISCUSSION ON THE RELEASE OF A DEED RESTRICTION. (MARINO PROPERTY - GAP BUILDING).**

Bill Dimmers said that the Gap would like to add 8,000 square feet to their existing building. In order to do this they need a release of a deed restriction.

They have taken care of the on-site parking requirements. The Design Review Committee has looked at the project and given them a certificate for design review compliance. He said that Mr. Marino has purchased an additional lot on Oak and Grove Street next to his parking lot down there in order to add parking for this project as offsite parking. He said they appeared before the Planning Board to get a preliminary review and was told this was something they would consider. He said they did not go through with all the engineering work or the specific work to get the approval from the Planning Board. They had a letter from the Planning Board for the Council stating it was a reasonable project. He said that at the time the Gap building was approved, there was a restriction put on the back lot for parking.

Mr. Mike Marino said that he approached the Council several months ago and asked about removing the deed restrictions. He said that at that time there didn't seem to be any problem from the Council regarding removing the deed restriction. He said that the Council asked him to get approvals through the Planning Board and the Design Review Board (at least preliminary) and then come back to the Council.

Mr. Bradley asked what value does the town get for this release. Mr. Marino said that the town would receive increased property taxes and repaving of the upper parking lot (that is owned by the town). Because there is a question of why the deed restriction was put on, Mr. Bradley requested that David Thompson give the Council a history of the deed restriction.

Mr. Arsenault expressed concern about changing the neighborhood and preventing a connection from parking lot to parking lot. Mr. Marino said that the Carvel Lot is in the VC-1 Zone. He said at the time of the deed restriction, there was no mention of a connection to another parking lot. He said it was visually very important to have a longer building there which will restrict traffic circulation and they will be able to deal with loading bays, and on site parking, etc.

Mr. Bennett said that this proposal should go before the Traffic and Parking Committee.

Councilor Ruff said she supports lifting the deed restrictions because Mr. Marino has followed the procedure requested by the Council. She is in favor of this plan.

**MOVED AND SECONDED:** To set a Public Hearing on September 21, 1993 to consider a proposal of Marino-Camplin Properties, Inc. to remove the restriction on the so-called Carvel Parking Lot in order to permit construction of an 8,000 sq. ft. building. (Councilors Bradley & Bennett) (5 Ayes) (1 Nay - Arsenault)

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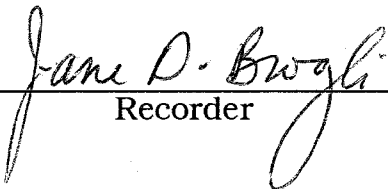
**ITEM #175-93 TO CONSIDER ACTION RELATIVE TO AN EXECUTIVE SESSION.**

**MOVED AND SECONDED:** That the Council enter into Executive Session to discuss a personnel matter. (Councilors Ruff & Arsenault) (6 Ayes) (0 Nays)

**MOVED AND SECONDED:** To reconvene. (Councilors Ruff & Bennett) (6 Ayes) (0 Nays)

**MOVED AND SECONDED:** To adjourn at 10:26. (Councilors Ruff & Arsenault) (6 Ayes) (0 Nays)

The foregoing was recorded by: Jane D. Brogli

  
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Recorder