



## **Cape Elizabeth Town Council**

**Minutes Monday, July 11, 2022**

**7:00 p.m.**

**Town Hall Council Chambers**

Jeremy A. Gabrielson, Chairman  
Nicole Boucher  
Susan A. Gillis  
Caitlin R. Jordan  
Penelope A. Jordan  
Gretchen R. Noonan  
Timothy S. Reiniger

Chairman Gabrielson convened the meeting at 7:00 p.m.

### **Roll Call by the Town Clerk**

All members of the town council were present.

Debra M. Lane, Town Clerk

Matthew E. Sturgis, Town Manager

### **The Pledge of Allegiance to the Flag**

### **Town Council Reports and Correspondence**

Chair Gabrielson announced items of interest on upcoming council agendas. The Shore Road project referendum vote may be scheduled for 11/2022, or next year. The next workshop of the Housing Diversity Study is 8/8, and if needed for additional discussion 8/22. The School Board is hosting meetings relating to the school project on 7/12, 7/13 and 7/14. A joint workshop of the Town Council and School Board will be held on 7/26.

Councilor Gillis asked about an attorney's opinion relating to LD #2003. What will Cape Elizabeth's baseline be?

Councilor Noonan addressed claims in the letter to the Courier written by Councilor Reiniger related to LD #2003.

Councilor Boucher asked for an update relating to the solar project.

Councilor Penelope Jordan announced the next meeting of the Ordinance Committee on 7/18 to interview applicants responding to the RFP for staff support to the Ad-Hoc Housing Diversity Study Committee.

Councilor Boucher announced the Appointments Committee meeting dates to interview applicants for the Ad-Hoc Housing Diversity Study Committee. The interviews will be held on 7/14 and 7/18 beginning at 6:00 p.m. in the Lower Level Conference Room at Town Hall.

### **Finance Committee Report – Finance Chair Nicole Boucher**

Review of the dashboard ending 6/30/2022.

**Citizen Opportunity for Discussion of Items Not on the Agenda**

John Voltz, 33 Philip Road asked for an update on the technology for hybrid meetings. He also followed up on the recent email sent to the council from the Energy Committee with recommendations relating to the solar project.

Chris Straw, 597 Shore Road asked about bids for reoccurring services to ensure good services for a fair price. When was the last time the town put out competitive bidding for town attorney?

Senator Anne Carney, 21 Angel Point Road followed up on the 6/29 Bureau of Parks & Lands public forum related to waterfront access at Kettle Cove. The state will continue to take comments until 7/14/2022 [jim.vogel@maine.gov](mailto:jim.vogel@maine.gov). Senator Carney and Representative Millett are following the issue.

Jamie Garvin, 76 Oakhurst Road noted the Code of Ethics signed annually by the members of the town council. Concerned about the upcoming interviews of the Appointments Committee for the Ad-Hoc Housing Diversity Study Committee. Before elected, Councilors Gillis and Reiniger were actively engaged in the citizen petition that will appear on the ballot in November. No less than 5 applicants also participated in that effort therefore Councilors Gillis and Reiniger should recuse themselves from all procedural items regarding the appointments of this committee or at the least be excluded from portions of the interviews and voting on these individuals.

Mr. Sturgis noted an update on the solar project will be provided on August 8.

**Town Manager's Report – Matthew E. Sturgis**

The Beach to Beach 10K Road Race will be held on Saturday, 8/6.

Cumberland County is accepting nominations for the Finance Committee (2-year term). Interested councilors should contact the town manager for more information.

Fort Williams Park will close at 1:00 p.m. on Thursday, 7/14. Fort Williams Park will be the site for an event for the National Governors Association semiannual meeting.

LD #290 An Act To Stabilize Property Taxes for Individuals 65 Years of Age or Older Who Own a Homestead for at Least 10 Years passed in the recent legislative session. Information will be posted on the town's website as it becomes available. It is anticipated applications will become available in the fall; application deadline 12/1/2022.

**Review of Draft Minutes**

June 13, 2022

Moved by Gretchen R. Noonan and Seconded by Timothy S. Reiniger

ORDERED, the Cape Elizabeth Town Council approves the minutes of the meeting held on June 13, 2022 as written.

(7 yes) (0 no)

**Consent Calendar Item #103-2022 – Item #107-2022**

Councilor Penelope Jordan and Councilor Caitlin Jordan disclosed their businesses work with the Inn by the Sea and The Good Table.

Moved by Timothy S. Reiniger and Seconded by Susan A. Gillis

ORDERED, the Cape Elizabeth Town Council approves the Consent Calendar Item #103-2022 – Item #107-2022 as presented.

(7 yes) (0 no)

**Item #103-2022      Inn by the Sea Liquor License and Special Amusement Permit**

ORDERED, the Cape Elizabeth Town Council approves the malt liquor (beer), wine and spirits on-premises license and special amusement permit for Inn by the Sea, LLC located at 40 Bowery Beach Road.

**Item #104-2022      The Good Table Liquor License**

ORDERED, the Cape Elizabeth Town Council approves the malt liquor (beer), wine and spirits restaurant license for Good Table, LLC located at 527 Ocean House Road.

**Item #105-2022      Update to Chapter 3 Personnel Code**

ORDERED, the Cape Elizabeth Town Council amends Chapter 3 Personnel Code Sec. 3-2-9 Retirement and Disability (c) to reflect the approved change to increase the employee and employer's contribution to the defined contribution plan 401A from 7% to 8% of gross wages.

**Sec. 3-2-9 Retirement and Disability**

**(c) Defined Contribution Plan**

The Town of Cape Elizabeth became a participant in the ICMA Retirement Corporation, Sec. 401A Money Purchase Plan in 1990. The Town will match effective on the employment date regular employees' contributions at 7 8% of gross wages level with employee's contributions to be paid through payroll deductions. Employees are fully responsible for any fees assessed to participants by the Plan and are responsible for choosing from among a number of investment options for the balances in their accounts. The withdrawal of funds is in accordance with federal regulations. Employees who participate in the MainePERS are not eligible for this defined contribution plan. (Rev. Eff. 01/10/11) (Rev. Eff. 7/11/2022)

Part-time employees who work a regular weekly schedule of 15 or more hours per week on a year-round basis are eligible for this program.

**Item #106-2022      Recommendation from the Appointments Committee to Fill a Vacancy on the Conservation Committee**

ORDERED, the Cape Elizabeth Town Council approves the recommendation of the Appointments Committee to appoint Stacey Dietsch, 2 Park Circle to serve the unexpired term on the Conservation Committee until 12/31/2022. Said term is effective immediately.

**Item #107-2022      Appointment of Registration Appeals Board Chair**

ORDERED, the Cape Elizabeth Town Council confirms the nomination of the Town Clerk to appoint Anne E. Swift-Kayatta, 14 Stone Bridge Road to serve as the Chair of the Registration Appeals Board for a term until July 11, 2026 and until a successor is sworn.

**Item #108-2022      Presentation – Safe in Maine Fund**

Belinda Ray, GPCOG Director of Strategic Partnerships presented an overview of the Safe in Maine Fund. GPCOG has launched a campaign to raise \$1.5M from private and public donations. The goal is to raise the funds within 6 months. Member communities will be asked to consider a donation.

**Public Comment**

Chris Straw, 597 Shore Road encouraged donating funds equally to all that need housing.

John Voltz, 33 Philip Road said don't think you can spread funds equally or nothing gets done. Donate to a program that you think will work. Housing is a regional problem.

It was a consensus to include an item on the August 8 agenda to consider a donation to the Safe in Maine Fund. A list of similar past donations is requested.

**Item #109-2022      Presentation – Fiscal Review in Anticipation of Potential Borrowing**

Joe Cuetara, Moors & Cabot presented an overview of the town's financial status in anticipation of potential borrowing.

A summary of Mr. Cuetara's comments are posted on the town's website.

**Item #110-2022      Shore Road Rehabilitation Project Update/Preliminary Design**

Present –

Nikki Conant, Project Designer – Sebago Technics

Stephen Harding, Town Engineer

Maureen O'Meara, Town Planner

Jay Reynolds, Director of Public Works

Introduction – Mr. Sturgis

Review – Nikki Conant

**Public Comment**

Chris Straw, 597 Shore Road said crosswalk should be at Cottage Farms Road, without a flashing sign. Proposed additional parking would not be used by residents and therefore not help them.

Hope Straw, 597 Shore Road addressed proposed parking spaces at Cottage Farms Road/Island View Road – from previous comments this wasn't something that residents want. The intent isn't for additional parking but rather pedestrian and bike friendly.

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Tom Ward, 611 Shore Road initially thought alternate plan for parking spaces in the Cottage Farms Road/Island View Road area would help parking. Yesterday 32 cars were parked in the area for 14 proposed spaces. The problem is the area accessing the beach, not in the business area. Whatever the plan is, it must address the beach cars. The only fire hydrant in the area is adjacent to a parking space.

Ray Clark, Owner of Cape Elizabeth Service Center, 560 Shore Road asked for further review of the main entrances to his business. The proposed narrowing of the openings is problematic.

Maureen McCarthy, 16 Stonybrook Road said current businesses already use the existing parking across the street from the Cookie Jar – additional spaces will not help the Cookie Jar.

Donna Piscopo, Owner of the Cookie Jar 554 Shore Road said the main concern is losing parking in the front of the building – exiting cars onto Preble Street is using the neighbor's driveway which shouldn't be their responsibility to provide the exit. Robinson Wood's users back onto Shore Road. Where would employees park?

Debbie Peck, 21 Cottage Farms Road favors a flashing sign at the Cottage Farms Road crosswalk. The situation is dangerous in front to the Cookie Jar with cars backing out onto Shore Road – often times drivers do not see pedestrians or bicyclists.

Richard Armstrong, 2 Waverly Road asked to see the alternate design for the Cookie Jar to confirm what the alternate would propose.

Susan Dubuque, 586 Shore Road likes the proposed changes to the intersection at Preble Street. Safety measures are needed during construction. Concerned about storm water – what is the plan?

Helaine Hornby, 635 Shore Road asked why there are proposed sidewalks on both sides.

Nat Jordan, 6 Robinhood Road suggested building the road to accommodate alternatives modes of transportation e.g. bicycles. Where will the car go to park at the beach? If the parking spaces are full, cars will have to move on. Doesn't feel safe on a bike near the Cookie Jar.

Moved by Gretchen R. Noonan and Seconded by Timothy S. Reiniger

ORDERED, the Cape Elizabeth Town Council suspends the Town Council Rules to take up new items after 10:00 p.m.

(7 yes) (0 no)

**Item #111-2022      Request to Consider a Parking License Agreement & Construct Parking Behind Town Hall**

Greg Shinberg provided an overview of his proposal.

**Public Comment**

Jamie Garvin, 76 Oakhurst Road has no concern about the project. Unfortunately this shines a light on the lost opportunity from the squashing of the Dunham Court project however this is a predictable outcome that there is not going to be another affordable housing project.

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Moved by Penelope A. Jordan and Seconded by Susan A. Gillis

ORDERED, the Cape Elizabeth Town Council refers to workshop (9/2022) a request by Greg Shinberg for a parking license agreement and allowance to construct parking behind Town Hall for preliminary plans to construct condominiums on lots 3 & 4 in Ocean House Common.

(7 yes) (0 no)

**Item #112-2022          Consideration of Agreement Between the Town of Cape Elizabeth and the Cape Elizabeth Historical Preservation Society**

Introduction – Mr. Sturgis

Bob Dodd, President Cape Elizabeth Historical Preservation Society thanked the Town for the opportunity for the new location and provided an overview of the CEHPS's plan for a history center and Fort Williams museum.

Moved by Jeremy A. Gabrielson and Seconded by Timothy S. Reiniger

ORDERED, the Cape Elizabeth Town Council authorizes the Town Manager to sign an Agreement Between the Town of Cape Elizabeth and the Cape Elizabeth Historical Preservation Society to include the Bachelor Officers' Quarters Occupancy Agreement and Records Management Agreement as presented.

(7 yes) (0 no)

See attachment.

**Item #113-2022          Report of the Certification of the Citizen Petition to Create Community Housing – Plan B**

Public Comment

Jamie Garvin, 76 Oakhurst Road is happy to see the petition did not receive the necessary number of signatures. If you want to see substantial progress towards creating affordable housing in Cape Elizabeth you have the opportunity by affirming the vote (5-2) of the town council from last fall on the November ballot.

Moved by Nicole Boucher and Seconded by Gretchen R. Noonan

ORDERED, the Cape Elizabeth Town Council acknowledges receipt of the report from the Town Clerk dated June 29, 2022 outlining the certification of the Citizen Petition to Create Community Housing - Plan B which failed to meet the required number of signatures of registered voters, per the Council-Manager Charter, to move the petition to public hearing and referendum vote. No further action is needed.

(7 yes) (0 no)

**Citizens may at this point in the meeting raise any topic that is not on the agenda that pertains to Cape Elizabeth local government.**

None

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**Adjournment**

Moved by Nicole Boucher and Seconded by Timothy R. Reiniger  
ORDERED, the Cape Elizabeth Town Council adjourns at 10:22 p.m.  
(7 yes) (0 no)

Respectfully Submitted,

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Debra M. Lane, Town Clerk

Approved by the Cape Elizabeth Town Council 7/11/2022

**AGREEMENT BETWEEN  
THE TOWN OF CAPE ELIZABETH and the  
CAPE ELIZABETH HISTORICAL PRESERVATION SOCIETY**

This Agreement made as of this \_\_\_\_ day of \_\_\_\_\_, 2022, by and between **THE TOWN OF CAPE ELIZABETH**, a body corporate and politic with a mailing address of 320 Ocean House Road, Cape Elizabeth, Maine 04107 (the "**Town**"), and the **CAPE ELIZABETH HISTORICAL PRESERVATION SOCIETY**, a Maine nonprofit corporation with a mailing address of 325 Ocean House Road, Cape Elizabeth, Maine 04107 (the "**Historical Society**").

In recognition of the Town and the Historical Society having had a longstanding partnership in the preservation of historical public and private records related to the Cape Elizabeth community, including both public documents and materials and artifacts that have been donated to the Historical Society; and have been co-signers to a Records Management Agreement dating back at least to 2014.

And in recognition of the Town and the Historical Society seeing the significant value to Cape Elizabeth citizens, young and old, in the establishment of a place of operation wherein the Historical Society can expand its work of preserving, safely storing, digitally cataloging and publicly displaying historical photos, artifacts and other items for the educational benefit of residents and visitors, and in providing increased awareness of the historic contributions to the state and nation made by the town and its residents since colonial times,

The Town and the Historical Society enter into the following:

- 1) A new Bachelor Officers' Quarters Occupancy Agreement whereby the Historical Society will relocate its operations from the Public Safety Building to the former Bachelor Officers' Quarters Building at Fort Williams Park, and
- 2) An updated Records Management Agreement.

**BACHELOR OFFICERS' QUARTERS OCCUPANCY AGREEMENT**

WHEREAS, the Town has created a Cape Community Campus as part of its updated Master Plan for Fort Williams Park, which includes the Bachelor Officers' Quarters Building, and has approached the Historical Society about locating its operations there; and

WHEREAS, the Historical Society has indicated its strong interest in establishing a CAPE ELIZABETH HISTORY CENTER and FORT WILLIAMS MUSEUM at the Bachelor Officers' Quarters Building, the Town and Historical Society agree to the following:

- 1) The Historical Society agrees to the establishment at the Bachelor Officers' Quarters of the CAPE ELIZABETH HISTORY CENTER, a project of the Historical Society, which will provide the following:
  - 1) the safe storage of the Historical Society's archival collection, 2) the ongoing work of digitizing the archival collection into a specialized database designed for libraries and historical societies, 3) provide workstations and assistance for the public to do family history research and other research into town

history, 4) provide space for the Historical Society's series of history-related presentations that are open to the community; and 5) for public display of the Society's own collection of documents, artifacts, models, recorded oral histories and other items relating to Cape Elizabeth town history.

- 2) The Historical Society agrees to the establishment at the Bachelor Officers' Quarters of the FORT WILLIAMS MUSEUM, a project of the Historical Society that will be open to town residents and visitors to the park at hours to be determined. The Fort Williams Museum will display documents, artifacts, photos, models, video presentations and other items illustrating the historical role of the military base in the defense of our nation at war (including World Wars I and II) and especially the defense of Portland harbor, and the impact of Fort Williams on the lives of the people who resided and served there.
- 3) The space at the Bachelor Officers' Quarters at Fort Williams will be provided to the Historical Society by the Town at no monthly rental fee or heating costs for a period of 10 years and this agreement will be renewable for additional 10-year intervals. This space will include the areas on both the first and second floors **as indicated in the attached floor plans**. This space may be increased to include other offices in the building as they become available and at the Town's discretion.
- 4) For at least the first two years of operation, to allow the Historical Society to focus its resources on establishing the Cape Elizabeth History Center and Fort Williams Museum, the Town will waive electrical utility costs to the Historical Society.
- 5) The Town agrees to move the Historical Society property and Town Records from the Public Safety Building to the Bachelor Officers' Quarters at the Town's expense.
- 6) In order to adequately secure Town Records and Historical Society Property at the Bachelor Officers' Quarters, the Town agrees at a minimum to have locks on all exterior doors and windows, and an intruder alarm system and fire alarm system, which shall be provided by and maintained by the Town.
- 7) The Town and the Historical Society shall have access to the Historical Society's offices at the Bachelor Officers' Quarters during business hours, and non-business hours upon mutual agreement (including for the use of the building for Historical Society evening presentations open to the public).
- 8) The Historical Society will comply with all Americans with Disability Act (ADA) requirements in laying out the interior space for the public and non-public areas; and the Town will be responsible for the design and costs of all exterior accessibility requirements in compliance with the ADA.
- 9) The Historical Society will be responsible for the cost of all interior and exterior signage installed at the Bachelor Officers' Quarters, and will obtain the prior approval on all exterior signage (i.e. signage attached to the building) from the Town; and the Town will be responsible for the design and cost of all signage directing park visitors to the Cape Elizabeth History Center and/or the Fort Williams Museum, and will work with the Historical Society in the planning of this signage.

- 10) The Historical Society will be permitted to send membership recruitment and fundraising appeals to support its activities at the Bachelor Officers' Quarters; and will be allowed to have a "donation jar" or similar device located at the Cape Elizabeth History Center and/or the Fort Williams Museum for voluntary donations.
- 11) The Historical Society will obtain prior approval from the Town if, in the future, it wishes to add a gift shop at the Bachelor Officers' Quarters, and the proceeds from this operation will be intended for a historical preservation/restoration project within the park with Town approval and in compliance with the Fort Williams Master Plan.

## **RECORDS MANAGEMENT AGREEMENT**

WHEREAS, the Town and the Historical Society having had a mutual interest in the preservation of historical public and private records related to the Cape Elizabeth community, including both public documents and materials and artifacts that have been donated to and are owned by the Historical Society; and have been co-signers to a Records Management Agreement that has been in effect since at least 2014 to the present (despite technically having expired in 2019), and

WHEREAS, pursuant to 5 M.R.S.A. §§ 91-98, records created by or belonging to the State of Maine, to a local or county government in the State, or to any agency of the State are the property of the State until ownership and possession are formally relinquished in accordance with statute and rules; and

WHEREAS, the Town's public records may not be removed from Cape Elizabeth municipal property except with permission of the Town Manager (the term "public records," as used herein this Agreement, shall have the same definition as that provided in 1 M.R.S.A. § 402(3)); and

WHEREAS, the Town has an interest in locating certain public records in a space the Town makes available to the Historical Society, and the Historical Society is willing to assist the Town in making these records available for public inspection, pursuant to the requirements of 1 M.R.S.A. §§ 400-521, and in ensuring that the public records are secure from removal or damage; and

WHEREAS, the Historical Society holds artifacts and personal papers that are not the property of the Town, the care and disposition of which are determined solely by the Historical Society (the "Historical Society property"), the Town and Historical Society agree to the following:

1. The Town and the Historical Society shall coordinate together to create and maintain an index listing of all artifacts, records, and public records stored in its collection. The public records of the Town and the Historical Society property shall not be comingled in a manner that prohibits the quick and efficient removal of the public records from the Historical Society's offices at the Bachelor Officers' Quarters by the Town, if necessary.
2. The Historical Society property is not the property of the Town. The Town shall not be responsible for, and the Historical Society shall indemnify and hold the Town harmless from, any and all damages, including the destruction of the Historical Society's records,

artifacts, or other property, that occurs at the Historical Society's offices at the Bachelor Officers' Quarters, unless such damage is caused by the gross negligence or willful misconduct of the Town.

3. The public records shall not be loaned, sold, or otherwise removed from the Historical Society's offices at the Bachelor Officers' Quarters unless to be returned to the sole custody of the Town.
4. The Town shall at all times retain legal title to all public records transferred to Historical Society's offices at the Bachelor Officers' Quarters. Notwithstanding anything contrary herein, the Town shall have the right to regain physical custody of the public records at any time, in its sole discretion.
5. The transfer of public records to the Historical Society's offices at the Bachelor Officers' Quarters and the retention of the public records at these premises is at all times subject to the approval of the Maine State Archives Advisory Board. The premises may be inspected by the Maine State Archives' staff before the transfer of public documents thereto, with reinspection possible any time afterwards.
6. The Historical Society shall at all times comply with the policies and directives of the Town governing confidentiality and the preservation of public records in accordance with state and federal law.
7. The Historical Society shall at all times maintain its non-profit corporate status with the State of Maine, and shall provide evidence of a capacity to care for the public records by providing evidence (1) of a mission statement; and (2) that a person who cares for the public records has basic archival training, such as a workshop approved by the Maine State Archives, formal education, or related experience.
8. In the event that the Town agrees to transfer, and the Historical Society wishes to hold, public documents in its offices at the Bachelor Officers' Quarters that are considered by the Town to be "permanently valuable records," such records shall be contained in a fireproof safe or vault at the premises, provided by the Town and built in accordance with the guidelines provided at <http://www.maine.gov/sos/arc/records/local/storage.html>, and pursuant to 5 M.R.S.A. § 95-B.
9. This Agreement represents the entire agreement between the parties and no oral statements or representations or prior written matter not contained in this Agreement shall have any force and effect. This Agreement shall not be modified in any way except by a writing executed by both parties. This Agreement shall be governed by the laws of the State of Maine.
10. All notices and other communications authorized or required hereunder shall be in writing and shall be sent by recognized overnight carrier or by certified or registered mail, return receipt requested, postage prepaid. Any such notice or other communication which requires or anticipates a response by the receiving party within a certain period, or prior to a certain date, shall be deemed to have been given to the receiving party when received, or refused by the party to whom such notice or other communication is addressed. For the

purposes hereof, the parties' addresses shall be as set forth in first paragraph hereof, but either party may change its address by written notice to the other party.

Annual Review and Termination of Agreements

The Historical Society agrees to provide the Town Manager a report of its activities at the Bachelor Officers' Quarters upon request, and to participate in an annual review of the terms of this agreement with the understanding that both the Town and the Historical Society can seek revisions to the terms at this time.

The above agreements may be terminated by the Town or the Historical Society, which election must be in writing and provided to the other party upon sixty (60) days' notice for termination of the Records Management Agreement and ninety (90) days' notice for termination of the Bachelors Quarters Occupation Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement, effective on the day and year first above written.

WITNESS:

**TOWN OF CAPE ELIZABETH**

\_\_\_\_\_

\_\_\_\_\_  
By Matthew E. Sturgis, Town Manager

WITNESS:

**CAPE ELIZABETH HISTORICAL  
PRESERVATION SOCIETY**

\_\_\_\_\_

\_\_\_\_\_  
By Robert A. Dodd, President

STATE OF MAINE  
CUMBERLAND, SS.

\_\_\_\_\_, 2022

Personally appeared the above named Matthew E. Sturgis, in his capacity as Town Manager of the Town of Cape Elizabeth, and acknowledged the foregoing instrument to be his free act and deed in said capacity and the free act and deed of the Town of Cape Elizabeth.

Before me,

\_\_\_\_\_  
Notary Public/Maine Attorney at Law

\_\_\_\_\_  
Printed Name

STATE OF MAINE  
CUMBERLAND, SS.

\_\_\_\_\_, 2022

Personally appeared the above named Robert A. Dodd, in his capacity as President of Cape Elizabeth Historical Preservation Society, and acknowledged the foregoing instrument to be his free act and deed in said capacity and the free act and deed of corporation.

Before me,

\_\_\_\_\_  
Notary Public/Maine Attorney at Law

\_\_\_\_\_  
Printed Name