

CAPE ELIZABETH TOWN COUNCIL MINUTES
Regular Meeting # 2 -2011
Cape Elizabeth Town Hall
Monday, January 10, 2011
7:30 p.m.

Roll Call by the Town Clerk

		Present	Absent	
David S. Sherman, Jr., Chair	74 Hunts Point Road	X	749-2668	12/2011
Frank J. Governali	18 Old Ocean House Road	X	799-5842	12/2013
Caitlin R. Jordan	83 Old Ocean House Road	X	799-7743	12/2013
Sara W. Lennon	54 Cranbrook Drive	X	741-5139	12/2012
Jessica L. Sullivan	38 Cranbrook Drive	X	774-0115	12/2012
Anne E. Swift-Kayatta	14 Stone Bridge Road	X	767-5754	12/2011
James T. Walsh	23 Rock Crest Drive	X	799-6730	12/2012
Michael K. McGovern, Town Manager		X		
Debra M. Lane, Town Clerk		X		

The Pledge of Allegiance to the Flag

Presentation

Chair Sherman presented a mantle clock to Councilor Swift-Kayatta in recognition of her term in 2010 as Chair of the Town Council.

Town Council Reports and Correspondence

Finance Committee Chair Lennon provided a preliminary overview of the fiscal year 2012 projections for the municipal budget.

Councilor Walsh announced the January 19 meeting of the Ordinance Committee (7:30 a.m. William H. Jordan Conference Room at Town Hall) and January 20 meeting of the Fort Williams Advisory Commission (7:00 p.m. Public Works Department Break Room).

Citizen Opportunity for Discussion of Items Not on the Agenda

Daniel Harriman, 21 Kettle Cove Road

Mr. Harriman encouraged the Town Council to review how the town can improve the “infrastructure” for commercial and recreational boating access in Cape Elizabeth. Mr. Harriman said he heard Harbor Master Roger Long is leaving the position. If so, Mr. Harriman hopes Cape Elizabeth will not consolidate with other communities and that the “gaps in service” will be addressed e.g. Harbor Master needs a boat to do the job.

Jodie Jordan, 83 Old Ocean House Road

Mr. Jordan asked the Town Council to consider not consolidating the position of Harbor Master with other communities. He endorses Daniel Harriman as Harbor Master if Roger Long leaves the position.

Town Manager's Report

Manager McGovern said he is unaware of any discussions to consolidate the Harbor Master position. Mr. McGovern and Chief Williams will review the comments presented this evening.

Review Minutes of December 13, 2010 Meeting

Moved by Anne E. Swift-Kayatta and Seconded by Sara W. Lennon

Ordered the Cape Elizabeth Town Council approves the minutes of Meeting #1-2011 held December 13, 2010 as presented.

(7 yes) (0 no)

Item# 17-2011 Driveway Entrance Permit Appeal - 6 Stonegate RD

Tabled 12/13/10

Intro – Chair Sherman and Town Attorney Thomas Leahy

Present –

Patricia Dunn, Attorney for Robert Malley
Thomas Leahy, Attorney for the Town Council
David Lourie, Attorney for Early Bird, LLC
Robert Malley, Director of Public Works
Graham Pillsbury, Early Bird, LLC
Robert Stier, Appellant

Robert H. Stier, Jr. of 9 Rock Crest Drive has appealed a decision of the Director of Public Works to issue a driveway entrance permit for 6 Stonegate Road. The Town Council heard the appeal at the December 13, 2010 meeting and tabled action to this meeting. Councilors Governali, Swift-Kayatta and Walsh have recused from participation on this item.

Findings, Conclusions and Decision
Cape Elizabeth Town Council
Driveway Permit Appeal
Early Bird, LLC, Permittee
Tax Map U31, Lot 9D

On Monday, December 13, 2010, the Cape Elizabeth Town Council ("**Council**") heard the appeal of Robert Stier, Jr. of 9 Rock Crest Drive ("**Appellant**"), regarding a driveway permit issued ,No. 2010-12 ("**Permit**") by Public Works Director Robert C. Malley ("**Director**") for 6 Stonegate Road, which is Tax Map U31, Lot 9D ("**Property**"). Prior to undertaking review and consideration of this matter, Council members Swift-Kayatta, Walsh and Governali requested to be recused, and the remaining members of the Council so voted. The Director was represented by Attorney Patricia Dunn. At the conclusion of testimony and submissions by the Appellant, the Director, and members of the public, the Council closed the public hearing portion of this matter and requested the parties submit briefs on two issues. Those briefs and a reply brief by the Appellant have been received and reviewed by the Council. The Council makes the following findings of fact, conclusions, and decision.

FINDINGS OF FACT

1. The owner of 6 Stonegate Road (Tax Map U31, Lot 9D) is Early Bird Group, LLC (“**Owner**”). Graham Pillsbury acts as the owner’s authorized member.
2. On October 28, 2010, the Director issued the Permit for the Property.
3. On November 27, 2010, Appellant filed an appeal of the Permit, consisting of an email notification of appeal. The Appellant’s property is located within the Stonegate subdivision.
4. Notice of this appeal was provided to the Property Owner on December 1, 2010.
5. The Council was provided with the following additional documents prior to the December 13, 2010 hearing: a memorandum from Robert Malley, dated December 3, 2010, regarding issuance of the subject driveway permit; an email from Thomas Errico, a traffic engineering director at T.Y. Lin International, dated December 3, 2010, regarding sight distance measurements and requirements for the subject driveway; an email from Todd Gammon, a civil engineer with AMEC Earth & Environmental, dated December 2, 2010, regarding the grading of the subject driveway; two sketches showing the proposed driveway; a statement of Rachel Samiezkina, President of the Stonegate Homeowner’s Association, dated December 2, 2010, regarding the substance of this appeal; a copy of the Stonegate phase II subdivision plan and South Entrance detail; the deed of Stonegate Road from Stonegate Associates to the Town of Cape Elizabeth; portions of the Declaration of the Stonegate Home Owners Association; and a presentation from the Appellant regarding the substance of this appeal.
6. The driveway that is the subject of the challenged Permit enters Stonegate Road. Stonegate Road connects the Stonegate subdivision to Mitchell Road. Stonegate Road is a public way conveyed in fee to Cape Elizabeth by Stonegate Associates by warranty deed dated December 5, 1989 and recorded in the Cumberland County Registry of Deeds at Book 9015, page 16. Stonegate Associates recited in its deed of Stonegate Road that the conveyance was subject to Stonegate’s Declaration of Covenants, Conditions and Restrictions.
7. Article III of the Declaration of the Stonegate Home Owners Association states the Association “*shall be responsible for maintaining, repairing and replacing... stonewalls [sic] and landscaping within the road rights of way where such maintenance is not the responsibility of the Town of Cape Elizabeth.*”
8. The conveyance of Stonegate Road by Stonegate Associates to the Town was of an area approximately 135 feet in width from its entrance at Mitchell Road back through area at issue in this appeal. The paved Stonegate Road is approximately 30 feet wide, with vegetation on both sides.
9. The driveway at issue is laid over approximately twenty-five feet of the Owner’s property and approximately seventy feet in the Stonegate Road right-of-way before connecting with the paved portion of Stonegate Road.

10. The Owner submitted sketches to the Director which showed the proposed location, width, and arrangement of the entrance of the proposed driveway onto Stonegate Road. The Director met with the Owner at the site, advised the Owner to move the proposed driveway location, and further advised the Owner as to removal of vegetation.

VOTED 4 to 0 in favor

CONCLUSIONS

Driveway permits are governed by the Ordinances of Cape Elizabeth, Section 17-2-1 through 17-2-5. Based on the record evidence presented to the Council and the Council's findings of fact thereon, the Council voted as follows:

- A. The Appellant made a timely appeal to the Council of Driveway Permit No. 2010-12.

VOTED 4 to 0 in favor

- B. The Director had adequate knowledge of the proposed and final approved location of the driveway in relation to Stonegate Road and its centerline, such that his failure to review a sketch in the Town's Code Enforcement Officer's file showing the setback of the proposed building in relation to the centerline of the traveled way prior to issuance of the driveway permit was harmless.

VOTED 4 to 0 in favor

- C. The determination by the Director that the Owner satisfied the specific requirements of 17-2-4 is supported by the Director's testimony and the written submissions of TY Lin International and AMEC Earth and Environmental

VOTED 4 to 0 in favor

- D. The phrase contained in Section 17-2-1 of the Ordinance that the issuance of a driveway permit "*shall be in compliance with all local regulations*" does not require the Director to review a driveway permit application against the General Standards required of the Planning Board in its review of a proposed subdivision.

VOTED 2 to 2

(Councilors Sherman and Sullivan in favor, and Councilors Jordan and Lennon opposed)

- E. While the deed to the Town of Stonegate Road for that section at issue in this appeal states the conveyance is subject to the Stonegate recorded Declaration, that Declaration does not limit the right of the Town to issue driveway permits over Town property to the Stonegate Road, a Town owned and maintained public road. The Declaration expressly excludes from its restrictions, covenants and conditions to those portions of the development shown as roads on the plan.

VOTED 2 to 2

(Councilors Sherman and Sullivan in favor, and Councilors Jordan and Lennon opposed)

DECISION

Based on these Findings of Fact and Conclusions, the Town Council VOTED on January 10, 2011 to deny the appeal of Driveway Permit No. 2010-12.

Any aggrieved party has the right to appeal this decision to the Maine Superior Court pursuant to Maine Rule of Civil Procedure 80B within thirty days after notice of the Town Council's Decision.

David Sherman, Chair

Jessica L. Sullivan

Caitlin Jordan

Sara W. Lennon

Item # 33-2011 Flagpoles

Intro – Manager McGovern

Present – James Huebener, Member of the Planning Board

Moved by James T. Walsh and Seconded by Caitlin R. Jordan

Ordered the Cape Elizabeth Town Council acknowledges receipt of the report of the Planning Board recommending no change to the current regulations of flagpoles.

(7 yes) (0 no)

**Page 6 Town Council Minutes
January 10, 2011**

Item # 34-2011 Fort Williams Park Group Use Policy

Intro – Robert Malley, Director of Public Works

Moved by Jessica L. Sullivan and Seconded by Sara W. Lennon

Ordered the Cape Elizabeth Town Council acknowledges receipt of the Fort Williams Advisory Commission report and approves the recommendations to amend the group use policy for Fort Williams Park and an updated fee schedule as amended.

(7 yes) (0 no)

See attachments.

Item # 35-2011 Citizen Participation at Library Trustees Meetings

Moved by Jessica L. Sullivan and Seconded by Sara W. Lennon

Ordered the Cape Elizabeth Town Council approves the recommendation of the Thomas Memorial Library Trustees for provisions for citizen participation at their meetings as presented.

(7 yes) (0 no)

**Thomas Memorial Library Board of Trustees
Citizen Participation at Trustee Meetings and Workshops**

The purpose of the monthly meeting and the occasional workshop is primarily for the Board of Trustees to conduct the business of the Board in accordance with its Charter and by-laws. Prior to Board discussion on any item, members of the public may speak on each agenda item for not more than three minutes each and up to a total of 15 minutes. If there are more speakers than the time available, the Chair may allocate the speaking time in order to balance the debate. The public participation portion shall conclude when the Board of Trustees begins its discussions.

Item # 36-2011 Citizen Participation at Arts Commission Meetings

Moved by Anne E. Swift-Kayatta and Seconded by Caitlin R. Jordan

Ordered the Cape Elizabeth Town Council approves the recommendation of the Arts Commission for provisions for citizen participation at their meetings as presented.

(7 yes) (0 no)

Public Participation at Cape Elizabeth Arts Commission Meetings

After an item has been introduced, any person wishing to address the CEAC shall signify a desire to speak by raising their hand. When recognized by the chairman, the speaker shall give his or her name and address or name and local affiliation, if the affiliation is relevant, prior to making other comments. All remarks should be addressed to the CEAC. Comments shall be limited to three minutes per person; however, the time may be extended by majority vote of commission members present. For agenda items that are not formally advertised public hearings, the time for public comments is limited to 15 minutes per agenda item. This time may be extended by a majority of the CEAC. The chairman may decline to recognize any person who has already spoken on the same agenda item and may call on speakers in a manner so as to balance debate. Once the CEAC has begun its deliberations on an item, no person shall be permitted to address the CEAC on such item.

**Page 7 Town Council Minutes
January 10, 2011**

Item # 37-2011 Town Council Goals for 2011

Moved by Sara W. Lennon and Seconded by Anne E. Swift-Kayatta

Ordered the Cape Elizabeth Town Council approves the proposed goals for 2011 as presented.

(7 yes) (0 no)

See attachment.

Item # 38-2011 Capital Improvement Plan

Intro – Manager McGovern

Moved by Jessica L. Sullivan and Seconded by Sara W. Lennon

Ordered the Cape Elizabeth Town Council acknowledges receipt of the Capital Improvement Plan - January 2011 as presented. Revisions to this document will continue throughout the budget process.

(7 yes) (0 no)

Item # 39-2011 Personnel Code Amendments

Moved by Sara W. Lennon and Seconded by Caitlin R. Jordan

Ordered the Cape Elizabeth Town Council approves the proposed changes in the Personnel Code as recommended.

(7 yes) (0 no)

See attachment.

Item # 40-2011 Edward Jones Lease

Moved by Frank J. Governali and Seconded by Sara W. Lennon

Ordered the Cape Elizabeth Town Council approves the new lease agreement with Edward D. Jones & Co, D/B/A Edward Jones for space at 343 Ocean House Road as presented.

(7 yes) (0 no)

See attachment.

Item # 41-2011 Agreement with Efficiency Maine Trust

Moved by Anne E. Swift-Kayatta and Seconded by James T. Walsh

Ordered the Cape Elizabeth Town Council authorizes the Town Manager to sign an administrative contract with Efficiency Maine Trust for the operation of a Property Assessed Clean Energy program.

(7 yes) (0 no)

See attachment.

Item # 42-2011 Registrar of Voters

Moved by Sara W. Lennon and Seconded by Anne E. Swift-Kayatta

Ordered the Cape Elizabeth Town Council reappoints Debra M. Lane to serve as Registrar of Voters for a term to expire on January 1, 2013.

(7 yes) (0 no)

Citizen Opportunity for Discussion of Items Not on the Agenda

Tucker Jordan, 83 Old Ocean House Road

Mr. Jordan supports a local Harbor Master, to not combine the services with other communities. If Harbor Master Roger Long leaves, Daniel Harriman should be considered. Mr. Jordan is also a member of the Cape Elizabeth Fire Department and asked if it is possible for the firefighters to have an option to join the town's health insurance.

Manager McGovern reported that the communities of South Portland, Scarborough and Cape Elizabeth have met to discuss an electric service cooperative. He anticipates a workshop in February inviting the members of the town/city councils.

Item # 43-2011 Executive Session Request

Moved by Jessica L. Sullivan and Seconded by James T. Walsh

Ordered the Cape Elizabeth Town Council enters into executive session at 8:56 p.m. in conformance with 1 MRSA §405 6 A and 6D to begin the annual evaluation of the town manager and to discuss upcoming contract negotiations with the Cape Elizabeth Police Benevolent Association.

(7 yes) (0 no)

Moved by Anne E. Swift-Kayatta and Seconded by Jessica L. Sullivan

Ordered the Cape Elizabeth Town Council exits executive session and reenters public session at 10:00 p.m.

(7 yes) (0 no)

Adjournment

Moved by Anne E. Swift-Kayatta and Seconded by Jessica L. Sullivan

Ordered the Cape Elizabeth Town Council adjourns at 10:00 p.m.

(7 yes) (0 no)

Upcoming Meetings

Town Council Meetings in 2011	Workshop Meetings
February 14	February 7
March 14	Finance Committee- To be determined
April 11 and 25	Finance Committee- To be determined
May 9	May 2
June 13	June 6
July 11	
August 8	
September 12	September 6
October 12	October 3
November 14	November 7
December 12	December 5