

CAPE ELIZABETH TOWN COUNCIL MINUTES
Regular Meeting # 15-2011
Cape Elizabeth Town Hall
Monday, November 14, 2011
7:30 p.m.

Roll Call by the Town Clerk

Present Absent

David S. Sherman, Jr., Chair	Term Expires	12/2011	X		dsherman@dwmlaw.com
Frank J. Governali	Term Expires	12/2013	X		frank.governali@capeelizabeth.org
Caitlin R. Jordan	Term Expires	12/2013	X		caitlin.jordan@capeelizabeth.org
Sara W. Lennon	Term Expires	12/2012	X	(8:14 p.m.)	slennon@maine.rr.com
Jessica L. Sullivan	Term Expires	12/2012	X		jsullivan08@maine.rr.com
Anne E. Swift-Kayatta	Term Expires	12/2011	X		aeskay@maine.rr.com
James T. Walsh	Term Expires	12/2012	X		jim.walsh@capeelizabeth.org
Michael K. McGovern, Town Manager			X		
Debra M. Lane, Town Clerk			X		

The Pledge of Allegiance to the Flag

Recognition of Anne E. Swift-Kayatta

Chair Sherman recognized Anne E. Swift-Kayatta for 12 ½ years of service on the Town Council; she did not seek reelection. Chair Sherman also announced that Councilor Swift-Kayatta is the 2011 recipient of the Ralph T. Gould Award for outstanding citizenship. Ms Swift-Kayatta thanked her fellow councilors, the citizens, employees and her family for their friendship and support during many years of service.

Town Council Reports and Correspondence

Councilor Sullivan encouraged residents to attend the Cape Elizabeth Fire and Police Appreciation event on November 17, 2:30 – 4:00 p.m. in the Community Room at the Town Center Fire Station.

Citizen Opportunity for Discussion of Items Not on the Agenda None

Town Manager McGovern’s Report

Thank you to Debra Lane and the election staff for their work on November 8.
 Congratulations to the council and school board members who were elected on November 8.
 Thank you to Anne Swift-Kayatta for her 12 ½ years on the council.
 The town recently took delivery of a new rescue unit.
 The police department held an unused drug collection day approximately 187 pounds of drugs were collected.
 Residents are encouraged to continue to comment on the redesign of the library and vision of library services; the project may be voted upon in November 2012.

Review of Draft Minutes of October 12, 2011 Meeting

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

Ordered the Cape Elizabeth Town Council approves the minutes of Meeting #14-2011 held October 12, 2011 as presented.

(5 yes) (0 no) (1 abstention)

Councilor Sullivan abstained from voting because she was absent from the meeting.

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Public Hearing: Proposed Rezoning of Turkey Hill Farm at 120 Old Ocean House Road and Loveitt Heirs Parcel behind Locksley Road from RB to RA

Present – Maureen O’Meara, Town Planner

Chair Sherman opened the hearing at 7:53 p.m.

Bob Dodd, Locksley Road

Mr. Dodd said he is speaking on behalf of several neighbors; they support the rezoning and maintenance of trails and links throughout the neighborhoods.

Phil Clifford, Freeport, Loveitt Heir and fractional owner

Mr. Clifford wants the parcel to “stay natural and beautiful.” He would like to be “included in future decisions.” What is the town planning to do, “it seems to be moving fast?” His share will be up for sale soon.

After hearing no further comments, the hearing was closed at 7:54 p.m.

Item # 142-2011 Turkey Hill Farm

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

The Cape Elizabeth Town Council hereby amends the Official Zoning Map of the Town of Cape Elizabeth to change the lot located at Map R03-2 Lot 20 at 120 Old Ocean House Road known as Turkey Hill Farm from RB to RA as presented.

(6 yes) (0 no)

Item # 143-2011 Loveitt Heirs Parcel

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

The Cape Elizabeth Town Council hereby amends the Official Zoning Map of the Town of Cape Elizabeth to change the portion of the lot located at Map R01-Lot 18A that is currently zoned as RB to RA as presented.

(4 yes) (2 no Councilor Jordan and Councilor Sullivan)

Item # 144-2011 Consumer Fireworks Regulations

Public Hearing: Proposed Consumer Fireworks Regulations

Present – Chief Neil Williams

Chair Sherman opened the hearing at 8:03 p.m.

After hearing no comments the hearing was closed.

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

Ordered the Cape Elizabeth Town Council adopts a new Article V of the Miscellaneous Offenses Ordinance regarding the use and sale of consumer fireworks as presented.

(6 yes) (0 no)

Article V. Consumer Fireworks Regulations

Sec 12-5-1. Definitions The following definitions shall apply to this article:

Consumer Fireworks: Shall have the same meaning as in 27 Code of Federal Regulations, Section 555.11 or subsequent provision, but includes only products that are tested and certified by a 3rd party testing laboratory as conforming with United States Consumer Product Safety Commission standards, in accordance with 15 United States Code, Chapter 47. Consumer fireworks does not include missile type rockets, helicopter and aerial spinners, all as defined by the State Fire Marshal by rule. Nor does the definition include sky rockets and bottle rockets which for purposes of this section are defined as cylindrical tubes containing not more than 20 grams of chemical composition as defined by the State Fire Marshal by rule.

Display: An entertainment feature where the public or a private group is admitted or permitted to view a showing or discharge of fireworks or special effects.

Sec. 12-5-2. Consumer Fireworks Prohibited No person shall use, possess with the intent to use, sell, possess with the intent to sell or offer for sale consumer fireworks within the Town of Cape Elizabeth. This section does not apply to a person issued a fireworks display permit by the Town of Cape Elizabeth and/or by the State of Maine pursuant to 8 M.R.S.A. §227-A.

Sec. 12-5-3. Seizure and Disposal of Fireworks The Town may seize consumer fireworks that the Town has probable cause to believe are used, possessed or sold in violation of this Article and shall forfeit seized consumer fireworks to the State of Maine for disposal.

Sec. 12-5-4. Penalties

- (a) Any person who uses consumer fireworks or possesses consumer fireworks with the intent for use in the town of Cape Elizabeth shall be punished by a fine of not less than two hundred dollars (\$200.00) and not more than four hundred dollars (\$400.00) plus costs. For second and subsequent offenses, a fine of not less than three hundred dollars (\$300.00) and not more than six hundred dollars (\$600.00) per violation plus costs shall be imposed.
- (b) Any person who sells consumer fireworks or possesses consumer fireworks with the intent to sell in the town of Cape Elizabeth shall be punished by a fine of not less than five hundred dollars (\$500.00) plus costs. For second and subsequent offenses, a fine of not less than one thousand dollars (\$1000.00) per violation plus costs shall be imposed.

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Item # 145-2011 Roosters

Public Hearing: Roosters

Intro – Councilor Walsh, Chair Ordinance Committee

Chair Sherman opened the public hearing at 8:06 p.m.

Kelly Gordon, Ben (son) & Daughter – 110 Two Lights Road

The Gordon family spoke against the proposed ordinance, there is “no need.” The rural character of Cape Elizabeth includes farm animals. Called the police department, during the last year no complaints against horse, cow, sheep, goat, ox and swine. According to animal control, no complaints against these farm animals, no complaints against chickens, “a couple against roosters, mostly dogs.”

Councilor Lennon arrived at 8:14 p.m.

Mattie ?, 3 Young Lane shared her experiences with 4 H and the importance of raising animals.

Bethany Angle, 3 Young Lane feels the ordinance may have “unintended consequences.” The council should consider the economy for a family to raise their own animals. The experience of 4 H is important. Suggestion – close in roosters at dark for properties under 100,000 square feet.

Mitch Mason, 4 H Youth Cooperative Extension Coordinator explained the life skills learned through 4 H.

Pat Salve Bothel, 90 Ocean House Road said chickens take care of tick problems. “There is not a clear problem to solve.”

Paul Seidman, 21 Oakview Drive is not bothered by farm animals. He is against the ordinance.

Penny Jordan, Jordan’s Farm, Chair Cape Elizabeth Farm Alliance

The town should be looking at this from a “food production perspective.” Non-commercial providers should be able to raise their own food.

Jodie Jordan, 83 Old Ocean House Road stated passage of this ordinance “may end farming.”

Peter Eastman, Owner Turkey Hill Farm said Turkey Hill Farm will never be developed.

After hearing no further comments the hearing was closed at 8:30 p.m.

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

Ordered the Cape Elizabeth Town Council tables the draft amendments to Sec 12-1-2 of the Miscellaneous Offenses Ordinance regarding persons having charge of certain noisy animals to a workshop to be scheduled in January 2012.

(7 yes) (0 no)

Item # 146-2011 Proposed Fee for Buses and Trolleys

Public Hearing: Proposed Fee for Commercial Passenger Transportation Vehicles at Fort Williams Park

Chair Sherman opened the public hearing at 8:36 p.m.

Roger Rioux, 5 Bridle Path Way, and his wife support the fee to support the park.

Herb Dennison, 63 Spurwink Avenue suggests cutting expenses, rather than establishing fees. The people have already spoken against fees.

Greg Gordon, 110 Two Lights Road works with bus and cruise ship passengers. If fees are established, they should be “just and equitable across the board.” Consider expanding the gift shop and opening a restaurant to raise revenue.

Joel Edgar, 20 Robinhood Road, Volunteer at Portland Head Light Museum, supports the fee, tour buses are a “commercial endeavor. Those that use those services expect to pay.”

Greg Isherwood, Owner Custom Coach & Limousine and Board of Directors NE Bus Association “not sure why we are back here, the voters voted fees down, we seem to be a target.” The economy is “killing” motor coach companies, can’t continue to pass on the fees to passengers. He estimates visits to the park will drop to ½ of the estimate if fees are established.

Jessie Timberlake, 19 Hunts Point Road supports the fee, to “share the burden.”

Lynn Shaffer, 650 Shore Road supports the fee to share in the expense of the maintenance of the park.

Mary C. Page, 39 Forest Road favors the fee. This is not “an ideal world, we have user fees for everything.”

Fred Prince, 2 Rocky Hill Road encouraged the council to go back to the Fort Williams Advisory Commission to come back with something else, “not the same tired answer.” Fees have already been voted down by residents.

Jeanne McGurn, Owner Maine Tour Connection said the fee “discriminates against those who ride on motor coaches. The fee will drive people away.”

Betty Crane, 9 Starboard Drive favors the fee. Residents voted down pay display, “it had nothing to do with other fees. People read something into the vote that was not there.”

After hearing no further comments, the hearing was closed at 9:01 p.m.

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Moved by Jessica L. Sullivan and Seconded by Frank J. Governali

Ordered the Cape Elizabeth Town Council, as recommended by the Fort Williams Advisory Commission, hereby establishes a fee for commercial passenger transportation vehicles such as busses and trolleys for access to Fort Williams Park. The fee shall be \$40.00 for each vehicle per access or a single identifiable bus or trolley may pay a \$1,500 access fee for a calendar year. A commercial passenger transportation vehicle is defined as a vehicle with more than 16 seats which has riders who have paid a fee to any party for access to the vehicle. Passenger vehicles owned by governmental agencies including school departments or by elder care facilities are exempt. This fee shall not apply for vehicles used as part of a group use approved by the Town Council. For such group uses, the fee shall be an inclusive fee recognizing all impacts of the group use. . The town manager shall establish administrative procedures for ensuring maximum collection of amounts owed under this decision.

(5 yes) (2 no Councilor Sherman and Councilor Swift-Kayatta)

Item #147-2011 General Assistance Annual Update

Public Hearing: General Assistance Guidelines

Chair Sherman opened the public hearing at 9:26 p.m.
After hearing no comments the hearing was closed.

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

Ordered the Cape Elizabeth Town Council adopts the new general assistance guidelines as recommended by the Maine Municipal Association as presented.

(7 yes) (0 no)

Item # 148-2011 Report of Open Space Management Study Committee

Intro – Councilor Sullivan

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

Ordered the Cape Elizabeth Town Council acknowledges receipt of the draft report of the Open Space Management Committee, and thanks the committee for their work and to refers the draft “Management of Greenbelt and Open Space Plan” to a future Town Council workshop.

(7 yes) (0 no)

Item # 149-2011 Arts Commission

Chair Sherman opened the item for public comment.

Julia Bassett Schwerin, 6 Cottage Lane, Member Arts Commission

Ms Bassett Schwerin asked the council if they discontinue the Arts Commission to set December 31, 2011 as the effective date in order for the commission to prepare. She also asked for consideration of funding to set up a 501 c 3 to help support an independent successor group.

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

Ordered the Cape Elizabeth Town Council hereby discontinues effective December 31, 2011, the appointed Arts Commission as an official town board and encourages the creation of an independent citizen group to promote the arts in our community. The Town Council entertains a recommended allocation in the manager's proposed budget to help support the successor group. The town manager shall reach out to the current members of the Arts Commission to continue support for the arts during the period of transition to the new group and may provide previously appropriated funds to carry out activities during the transition period.

(7 yes) (0 no)

Item # 150-2011 Fort Williams Park Group Use Policy

Present – William Nickerson, Chair Fort Williams Advisory Commission

Moved by Sara W. Lennon and Seconded by James T. Walsh

Ordered the Cape Elizabeth Town Council hereby adopts the updated Fort Williams Park group use policy as recommended by the Fort Williams Advisory Commission as presented.

There shall be no alcoholic beverages consumed within the grounds at Fort Williams Park, unless approved by the Cape Elizabeth Town Council in conjunction with a Group Use Request.

(7 yes) (0 no)

Item # 151-2011 Maine State Troopers Association Fort Williams Park Use Request

Intro – William Nickerson, Chair Fort Williams Advisory Commission

Present – Representative of the MSTA

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

Ordered the Cape Elizabeth Town Council approves the recommendation of the Fort Williams Advisory Commission to approve, as presented, the request of the Maine State Troopers Association (MSTA) to utilize the Parade Field of Fort Williams Park on Thursday, September 13, 2012 for a gathering of the National Troopers Coalition (NTC). The MSTA will pay a fee to the Town of Cape Elizabeth in the amount of \$3,600.00 and reimburse the Town of Cape Elizabeth for any personnel or material expenses incurred by the Town of Cape Elizabeth associated with the event.

Be it voted that the MSTA comply with the following requirements:

- That the MSTA hire a Cape Elizabeth Police Officer to monitor the entry/exit point throughout the event.
- That the event take place during the regular operating hours of the park.
- That the event is not open to the public.
- That beer and wine may be served with the following restrictions:
- That the beer and wine be served by an entity and/or individual that is licensed by the State of Maine to serve such beverages off premises, with confirmation of this to be provided in writing to the Town prior to the event.
- That all consumption and dispensing of alcohol be in compliance with the laws of the State of Maine governing such.

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- That an area be designated with approved signage and cordoned off with security fencing to provide for guests to consume alcohol.
 - That no individual be allowed to leave this designated area with any alcoholic beverages.
 - That all consumers be required to show proof of identification, if requested.
 - That all beverage containers be collected in appropriate containers, along with all other refuse and recyclable items.
 - That all logistical issues, such as trash disposal, Porto-johns, parking coordination and security be the responsibility of the MSTA.
 - That the Town of Cape Elizabeth be provided a Certificate of Insurance (COI), listing the Town as both "Certificate Holder" and "Additionally Insured" prior to the event.
- (7 yes) (0 no)

Item # 152-2011 Acceptance of Property

Intro – Manager McGovern

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

Ordered the Cape Elizabeth Town Council hereby accepts in accordance with the June 2008 vote of the Town Council the pedestrian easement and open space land shown on the approved plan for Eastman Meadows as presented.

(7 yes) (0 no)

Item # 153-2011 Review of Article VII, Section 6 of the Town Charter

Moved by Caitlin R. Jordan and Seconded by Jessica L. Sullivan to approve the request of Councilor Jordan to recuse her from discussion and voting on this item due to a possible conflict of interest of financial gain.

(6 yes) (0 no)

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

Ordered the Cape Elizabeth Town Council affirms the Town Charter and to not expand exemptions in Article VII, Section 6 Conflict of interest.

(5 Yes) (1 No Councilor Lennon) (1 Recusal Councilor Jordan)

Sec. 6. Conflict of interest. No full or part-time employee of the Town or School Department shall serve in any local elected office, provided that this provision shall not prohibit a volunteer member of the Cape Elizabeth Fire Department from serving as an elected official, provided that this subsection shall not apply to a person serving in a part-time position and as an elected official at the time of adoption of this section.

Citizen Opportunity for Discussion of Items Not on the Agenda None

Item # 154-2011 Executive Session Request

Moved by James T. Walsh and Seconded by Sara W. Lennon

Ordered the Cape Elizabeth Town Council, in conformance with 1MRSA §405 6 F, enters into executive session to review a request for a hardship abatement at 10:16 p.m.

(7 yes) (0 no)

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Moved by Sara W. Lennon and Seconded by James T. Walsh

Ordered the Cape Elizabeth Town Council exits executive session and reenters public session at 10:34 p.m.

(7 yes) (0 no)

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

Ordered the Cape Elizabeth Town Council denies the request for a hardship abatement not finding sufficient poverty.

(6 yes) (1 no Councilor Swift-Kayatta)

Adjournment

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

Ordered the Cape Elizabeth Town Council adjourns at 10:35 p.m.

(7 yes) (0 no)

Respectfully Submitted,

Debra M. Lane, Town Clerk