

CAPE ELIZABETH TOWN COUNCIL MINUTES

Regular Meeting # 3-2012
Cape Elizabeth Town Hall
Monday, February 13, 2012
7:00 p.m.

Roll Call by the Town Clerk		Present	Absent	
Sara W. Lennon, Chairman	Term Expires	X	12/2012	slennon@maine.rr.com
Frank J. Governali	Term Expires	X	12/2013	frank.governali@capeelizabeth.org
Caitlin R. Jordan	Term Expires	X	12/2013	caitlin.jordan@capeelizabeth.org
Katharine N. Ray	Term Expires	X	12/2014	katharine.ray@capeelizabeth.org
David S. Sherman, Jr.	Term Expires	X	12/2014	dsherman@dwmlaw.com
Jessica L. Sullivan	Term Expires	X	12/2012	jsullivan08@maine.rr.com
James T. Walsh	Term Expires	X	12/2012	jim.walsh@capeelizabeth.org
Michael K. McGovern, Town Manager		X		
Debra M. Lane, Town Clerk		X		

The Pledge of Allegiance to the Flag

Town Council Reports and Correspondence

Councilor Sherman reported that he attended his first meeting as representative to ecomaine. He commended the town for making the decision years ago to join other communities in establishing this waste management facility.

Citizen Opportunity for Discussion of Items Not on the Agenda

Mark Dennison, former graduate and resident, 1/3 interest in 63 Spurwink Avenue, current resident of South Portland

Mr. Dennison expressed concern about “3 instances involving the public works department,” letters were distributed to the council.

Town Manager’s Report

Mr. McGovern presented photos of the recent retirement of Anne Burke who served as the Cape Cottage Postmaster for 65 years, and the \$40,000 project inside the tower at Portland Head Light including repairs, lead paint abatement and repainting.

Review of Draft Minutes of January 9, 2012 Meeting

Moved by David S. Sherman, Jr. and Seconded by Frank J. Governali

Ordered the Cape Elizabeth Town Council approves the minutes of Meeting #2-2012 held January 9, 2012 as written.

(7 yes) (0 no)

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Item #37-2012 Public Hearing: Sewer Rates

Chairman Lennon thanked Chris Dwinal of Wright-Pierce, Michael McGovern, and Robert Malley for their work on the Ottawa Road Combined Sewer Overflow Master Plan dated December 2011.

Chairman Lennon opened the public hearing at 7:13 p.m.
After hearing no comments the hearing was closed.

Moved by David S. Sherman, Jr. and Seconded by James T. Walsh

ORDERED, that the Cape Elizabeth Town Council, pursuant to Sec. 15-1-11 of the Town Ordinances, does hereby revise and adopt the following Sewer Service Charge and Schedule.
(7 yes) (0 no)

- A. The following user charge shall be effective for the first bill issued after the indicated date for all buildings within the Town of Cape Elizabeth connected to the public sanitary sewers of the Town:

Effective March 1, 2012

\$ 40.00	<u>Up to 100 cubic feet of monthly measured water usage</u>
\$ 5.10	<u>Each additional 100 cubic feet, or fraction thereof, of monthly measured usage</u>

Effective March 1, 2013

\$ 43.00	<u>Up to 100 cubic feet of monthly measured water usage</u>
\$ 5.25	<u>Each additional 100 cubic feet, or fraction thereof, of monthly measured usage</u>

Effective March 1, 2014

\$ 46.00	<u>Up to 100 cubic feet of monthly measured water usage</u>
\$ 5.41	<u>Each additional 100 cubic feet, or fraction thereof, of monthly measured usage</u>

Effective March 1, 2015

\$ 48.00	<u>Up to 100 cubic feet of monthly measured water usage</u>
\$ 5.57	<u>Each additional 100 cubic feet, or fraction thereof, of monthly measured usage</u>

The sewer service charge shall be applied directly for each water meter in place and for every structure attached to the municipal sewer.

- B. Sewer Connection Fee Effective January 1, 2010

Pursuant to Sec. 15-1-6 (b) and 15-1-6 (c) of the Town Ordinances, the connection fee, including inspection and start-up assessment, shall be as follows:

\$4,000 for each unit to be served by the municipal sewer system with said fee to be paid prior to any connection to said system.

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C. ORDERED, in accordance with Sec. 15-1-11 (c) of the Sewage Ordinance, interest for past-due sewage charges shall be assessed beginning twenty-five (25) days after date of billing at the same interest rate as is charged for past due taxes.

Item #38-2012 Public Hearing: Fort Williams Park Master Plan Update

Chairman Lennon thanked the Fort Williams Advisory Commission, Robert Malley, Robert Metcalf, John Mitchell, Bill Nickerson and Jim Walsh for their work on the Fort Williams Park Master Plan Update.

Chairman Lennon opened the public hearing at 7:39 p.m.

Richard Brennan, 20 Surf Road

Mr. Brennan asked what the total cost is of the recommendations of the plan. Mr. Metcalf responded the total cost is approximately \$760,000 and clarified the projects will be done over time.

After hearing no further comments the hearing was closed at 7:41 p.m.

Moved by James T. Walsh and Seconded by David S. Sherman, Jr.

ORDERED, that the Cape Elizabeth Town Council refers to the Planning Board and the Fort Williams Advisory Commission the proposed master plan update (amendments) dated January 2012 for Fort Williams Park and hereby requests comments within sixty days. This is in conformance with Sec 19 6-8 D.1. of the Cape Elizabeth Zoning Ordinance.

(7 yes) (0 no)

Item # 39-2012 Short Term Rentals Proposed Referral to Planning Board

Intro – Councilor Walsh, Chairman Ordinance Committee

Chairman Lennon provided an opportunity for citizens' comments, as allowed by council rules.

Patty Grennon, 8 Sea Barn Road, opposes the proposed language. She suggests the "elimination or limit of short term rentals; it is a business in a residential neighborhood." Defining single family dwelling in the ordinance may be helpful.

Mary Volin, 17 Lawson Road, opposes the proposed language. She states it "legitimizes business activity in a residential neighborhood" and compromises home values.

Betty Crane, 9 Starboard Drive, is a former resident of Lawson Road. She encourages the town council to take time to write an ordinance that will "take care of the problems in all neighborhoods so it will not spread."

Jim Huebener, 13 Kettle Cove Road, owner of 11 Kettle Cove Road (short term rental property), does not "see the need" for the ordinance as "problems have not been reported in other parts of town." Ordinances are already in place to deal with problems e.g. noise and parking. It puts an "undo administrative burden" on the town and property owner and "limits use of rental property."

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Peter Clifford, 36 Lawson Road, supports the ordinance to require a minimum of a one month rental and to establish a short term rental agreement or contract. He suggests the need for a definition of nuisance and provided suggested language from a community in North Carolina. Mr. Clifford is an attorney and has represented the Grennon's (8 Sea Barn Road) against their neighbor for problems with renters.

Jennifer Aronson, 27 Lawson Road, opposes the proposed ordinance. The neighborhood has been "transformed over the last couple of years," residential neighborhoods are being "ruined." She supports "stringent ordinances."

David Volin, 17 Lawson Road, supports the suggestion of requiring rentals to be a minimum of one month. He states "in the next few years 2-3 homes may sell in the Lawson Road neighborhood; homes with short term rental potential will be attractive to purchase for income not to reside in."

Jana Zimmerman, 81 Oakhurst Road, is "surprised this business is allowed in residential neighborhoods." She has concerns about safety particularly for children, property values and ruining neighborhoods.

Jeannine Forget, 2 Sea Barn Road, asks the following questions. Why are short term rentals less restrictive than ordinances for B&B's? Why aren't these businesses charged sales and use taxes? Why are short term rentals not being considered a business?

Joan Aldrich, 18 Lawson Road, has "elected not to complain" about noise and other problems with the rental properties in the neighborhood. Without neighbors complaining, complaints are not a "fair measure. People don't want Fort Williams as commercial, so why would they want it in a residential neighborhood?" What is the impact to sewers?

Rob Crawford, Bernstein Shur, representing owners of 3 Lawson Road Jean Armstrong Taylor and David Armstrong, supports advancing the ordinance and supports the "moderate view" of the proposed ordinance. The Armstrong's would like to keep their roots to the town. If this doesn't work the council can come back and "tighten up" the issues. The proposal is "too restrictive and may go too far with unintended impacts like there will be to the Armstrong's."

Moved by James T. Walsh and Seconded by David S. Sherman, Jr.

ORDERED, that the Cape Elizabeth Town Council refers to the Planning Board proposed language to the Zoning Ordinance relating to short term rentals.

(7 yes) (0 no)

Item # 40-2012 Old Setback Violation

Present – Andrew & Gay Howe, 21 Woodcrest Road

Moved by David S. Sherman, Jr. and Seconded by Jessica L. Sullivan

ORDERED, that the Cape Elizabeth Town Council authorizes the Town Manager to file an action in the Maine District Court in connection with a modest side yard set-back violation at 21 Woodcrest Road created when an addition was constructed in 1999-2000 and the owners mistakenly assumed the location of their boundary with 17 Woodcrest Road, and to thereafter enter into a consent judgment under which the Town would agree not to seek further enforcement of the setback violation, conditioned upon: (a) the owners paying to the Town the cost of such action (estimated at \$1,000); and (b) the Code Enforcement Officer recommending such action after determining the views of all abutting property owners.

(7 yes) (0 no)

Item # 41-2012 Bus Trolley Program for Fort Williams Park

Mr. McGovern noted that Greg Gordon, InterCruises is present.

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

ORDERED, that the original fees adopted by the Town Council shall remain in place except that any locally based tour operator who agrees in advance to participate in our invoicing program shall pay \$35.00 per bus instead of \$40.00 per bus. This includes the cruise ship buses and all buses coordinated by locally based operators. The trolleys will be \$1,500 for each of the three trolleys in regular circulation with the billing schedule to be determined by the Portland Head Light Museum Director. A backup trolley occasionally used by the operator will not be additionally charged.

In addition, the Portland Head Light Museum Director may have the flexibility to waive some bus fees, in 2012 only, for any tour where evidence can be shown that the tour and pricing were set before November 1, 2011. This is in the interest of building long term cooperative arrangements with the tour operators. The Portland Head Light Museum Director will also work with our webmaster in providing bus and tour operators an opportunity to prepay fees through the Portland Head Light website.

The Town Council also agrees to authorize the hiring of greeters at Portland Had Light in 2012 provided 75% of the cost is paid through the budget for Portland Head Light. The greeter program shall be in effect from May through October and shall not exceed \$15,000 in total cost.

(7 yes) (0 no)

Item # 42-2012 Bond Refunding

Intro – Councilor Governali, Chairman Finance Committee

Moved by Frank J. Governali and Seconded by James T. Walsh

ORDERED, the Cape Elizabeth Town Council approves the following bond refunding.

(7 yes) (0 no)

**TOWN OF CAPE ELIZABETH, MAINE
TOWN COUNCIL VOTE AUTHORIZING REFUNDING BONDS
IN AN AMOUNT NOT TO EXCEED \$780,000**

WHEREAS, the Town has previously issued its \$1,500,000 2002 General Obligation Bonds dated June 1, 2002 (the "Prior Bonds"); and

WHEREAS, the Town wishes to refinance up to \$780,000 of the Prior Bonds in order to take advantage of a drop in interest rates and effect a cost savings to the Town.

NOW, THEREFORE, it is hereby

VOTED: Pursuant to the provisions of Section 5772 of Title 30-A of the Maine Revised Statutes and all other authority thereto enabling, and in order to provide funds to refinance the Prior Bonds, the Town Council of the Town of Cape Elizabeth hereby authorizes the Treasurer to borrow on behalf of the Town up to \$780,000 in principal amount to refinance the Prior Bonds.

VOTED: That in order to effect the borrowing heretofore authorized, the Treasurer be and hereby is authorized to prepare, issue and sell notes or bonds of the Town in the aggregate principal amount not to exceed \$780,000, such notes or bonds to be signed by the Treasurer, countersigned by the Chairman of the Town Council and attested by the Town Clerk under the seal of the Town and to be in such form, have such maturity and bear interest at such rate as may be approved by the Treasurer and Chairman of the Town Council by their execution thereof.

VOTED: The form, maturity, interest rate and other details of said notes or bonds shall be as determined by the Treasurer and the Chairman of the Town Council by their execution thereof, but shall have a final maturity not later than 20 years from date of issuance, and shall not be inconsistent with the provisions hereof. Such notes or bonds and any notes issued in anticipation thereof may be issued as callable notes or bonds in the discretion of the Treasurer and Chairman of the Town Council.

VOTED: That the Treasurer is authorized to negotiate, execute and deliver, in the name of and on behalf of the Town such contracts, agreements, and other documents, including refunding escrow agreements, verification reports, Bond Purchase Agreements, instruments and certificates as may be necessary or appropriate as determined and approved by the Treasurer in connection with the refinancing of the Prior Bonds, which documents shall be in such form and contain such terms and conditions, not inconsistent herewith, as may be approved by the Treasurer, such approval to be conclusively evidenced by his execution thereof.

VOTED: That the Treasurer be and hereby is authorized to engage Moors & Cabot, Inc. as financial advisor to the Town in connection with the issuance and sale of the Bonds.

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VOTED: That the Treasurer be and hereby is authorized to select the underwriter for the Bonds heretofore authorized and the Treasurer be and hereby is authorized and empowered to execute and deliver such contracts or agreements as may be necessary or appropriate in connection therewith.

VOTED: That the Treasurer be and hereby is authorized to prepare, or cause to be prepared, a Preliminary Official Statement and an Official Statement for use in the offering and sale of the Bonds heretofore authorized, such Preliminary Official Statement and Official Statement to be in such form and contain such information as may be approved by the Treasurer, with the advice of the bond counsel for the Town, and that the use and distribution of the Preliminary Official Statement and the Official Statement in the name of and on behalf of the Town in connection with offering the Bonds for sale be and hereby is approved.

VOTED: That the Treasurer be and hereby is authorized to select the registrar, paying agent and transfer agent (the "Transfer Agent") for the Bonds heretofore authorized and an escrow agent for the Prior Bonds and to execute and deliver such contracts and agreements as may be necessary or appropriate to secure their services.

VOTED: That the Bonds heretofore authorized shall be transferable only on the registration books of the Town kept by the Transfer Agent, and said principal amount of the bonds of the same maturity (but not of other maturity) in minimum denominations of \$5,000 and any integral multiple in excess thereof (or such other minimum denomination as the Treasurer shall approve) upon surrender thereof at the principal office of the Transfer Agent, with a written instrument of transfer satisfactory to the Transfer Agent duly executed by the registered owner or his attorney duly authorized in writing. Upon each exchange or transfer of a bond, the Town and the Transfer Agent shall make a charge sufficient to cover any tax, fee or any other governmental charge required to be payable with respect to such exchange or transfer, and with respect to such exchange or transfer, and subsequent to the first exchange or transfer, the cost of preparing new bonds upon exchanges or transfer thereof to be paid by the person requesting the same.

VOTED: That the Treasurer be and hereby is authorized to undertake all acts necessary to provide for the issuance and transfer of such Bonds heretofore authorized in book-entry form pursuant to the Depository Trust Company Book-Entry Only System, as an alternative to the provisions of the foregoing paragraph above regarding physical transfer of Bonds, and the Treasurer be and hereby is authorized and empowered to enter into a Letter of Representation or any other contract, agreement or understanding necessary or, in his opinion, appropriate in order to qualify the Bonds for and participate in the Depository Trust Company Book-Entry Only System.

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VOTED: That the Treasurer and Chairman of the Town Council from time to time shall execute such bonds as may be required to provide for exchanges or transfers of Bonds as heretofore authorized, all such Bonds to bear the original signature of the Treasurer and Chairman of the Town Council, and in case any officer of the Town whose signature appears on any Bond shall cease to be such officer before the delivery of said Bond, such signature shall nevertheless be valid and sufficient for all purposes, the same as if such officer had remained in office until delivery thereof.

VOTED: That the Treasurer be and hereby is authorized and directed to covenant and certify on behalf of the Town that no part of the proceeds of the issue and sale of the Bonds authorized to be issued hereunder shall be used directly or indirectly to acquire any securities or obligations, the acquisition of which would cause such Bonds to be "arbitrage bonds" or "private activity bonds" within the meaning of Sections 148 and 141 of the Internal Revenue Code of 1986, as amended.

VOTED: That if the Bonds or any part of them, are issued on a tax-exempt basis, the officers or officials executing the Bonds be and hereby are individually authorized to covenant and agree, on behalf of the Town, for the benefit of the holders of such Bonds, that the Town will file any required reports and take any other action that may be necessary to insure that interest on the notes will remain exempt from federal income taxation, and that the Town will refrain from any action that would cause interest on the Bonds to be subject to federal income taxation.

VOTED: That the officers executing the Bonds be and hereby are individually authorized to covenant, certify and agree, on behalf of the Town, for the benefit of the holders of such Bonds, that the Town will file any required reports, make any annual financial or material event disclosure, and take any other action that may be necessary to insure that the disclosure requirements imposed by Rule 15c2-12 of the Securities and Exchange Commission, if applicable, are met.

VOTED: That any or all of the Bonds issued hereunder may be consolidated with and become a part of any other issue of temporary notes or general obligation bonds authorized to be issued by any previous or subsequent order of the Town Council of the Town of Cape Elizabeth.

VOTED: That the Treasurer and Chairman of the Town Council and Clerk and other proper officials of the Town be, and hereby are authorized and empowered in its name and on its behalf to do or cause to be done all such acts and things, not inconsistent herewith, as may be necessary or desirable in order to effect the issuance, sale and delivery of the Bonds hereinabove authorized.

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VOTED: That if any of the officers or officials of the Town who have signed or sealed the Bonds shall cease to be such officers or officials before the Bonds so signed and sealed shall have been actually authenticated or delivered by the Town, such Bonds nevertheless may be authenticated, issued and delivered with the same force and effect as though the person or persons who signed or sealed such Bonds had not ceased to be such officer or official; and also any such bonds or notes may be signed and sealed on behalf of the Town by those persons who, at the actual date of the execution of such Bonds, shall be the proper officers and officials of the Town, although at the nominal date of such Bonds any such person shall not have been such officer or official.

VOTED: That if the Treasurer or Chairman of the Town Council or Clerk are for any reason unavailable to approve and execute the Bonds or any other documents necessary or convenient to the issuance, execution and delivery of the Bonds, the person or persons then acting in any such capacity, whether as an assistant, a deputy, or otherwise, is authorized to act for such official with the same force and effect as if such official had performed such act.

VOTED: That the investment earnings on the proceeds of the Bonds, if any, and the excess proceeds of the Bonds (including premium), if any, be and hereby are authorized to be used to fund the refunding escrow for the Prior Bonds, to pay redemption premium on the Prior Bonds, if any, to pay interest on the Prior Bonds or the Bonds and to pay issuance costs for the Bonds.

Item # 43-2012 Town Council Goals for 2012

Moved by James T. Walsh and Seconded by David S. Sherman, Jr.

ORDERED, the Cape Elizabeth Town Council approves the Cape Elizabeth Town Council Goals and Work Plan for 2012 as presented.

(7 yes) (0 no)

**Cape Elizabeth Town Council
Goals and Work Plan for 2012**

Citizen Participation and Effective Policy Development

In recent years, the Town Council and other boards and committees have implemented new guidelines for citizen participation and transparency.

In 2012, the Town will build on these measures through the following initiatives:

- o Conduct training for all board and commission chairs on running effective meetings and on enhancing public participation
- o Invite known interested parties to provide early input on policy issues
- o Foster regular ongoing dialogue with community groups including the Cape Elizabeth Education Foundation, the Cape Elizabeth Business Alliance, the Cape Farm Alliance, the Cape Elizabeth Land Trust, the new arts group, the Thomas Memorial Library Foundation and the Fort Williams Charitable Foundation
- o Continue to collaborate with the Cape Elizabeth School Board on issues of mutual interest

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- Develop a plan for Town Hall meeting room space to better accommodate citizens
- Review the current policy for the availability of municipal space for community groups and meetings
- Schedule public meetings at times that are convenient for citizens to attend
- Provide time for reflection on citizen input, and when possible delay voting after a public hearing until the following Town Council meeting
- Post supporting documents for agenda items on the town website
- Offer monthly financial updates at Town Council meetings
- Appoint Council liaisons to boards and commissions

Municipal Services and Projects

In 2012, the Town Council will:

- Dedicate the completed Shore Road Pathway
- Adopt an updated master plan for Fort Williams Park
- Schedule a citizen vote on a new vision and facility for the Thomas Memorial Library and Cultural Center
- Adopt a revised master plan for the Riverside Memorial Cemetery
- Adopt policies relating to the management of the Town's open space and greenbelt
- Request the Planning Board to continue implementing the Comprehensive Plan by reviewing updates to the subdivision ordinance
- Encourage the Future Open Space Preservation Committee to complete its work by December 31, 2012
- Extend the charge to the Alternative Energy Committee through the end of 2012
- Consider a revised organizational structure that would place the Donald Richards Pool in the Community Services Department
- Develop guidelines for reviewing requests for poverty tax abatements
- Collaborate with the Cape Elizabeth School Department on recycling and composting
- Review fundraising policies for municipal property projects and programs
- Complete ordinance provisions on short term rental properties and roosters

Item # 44-2012 Thomas Memorial Library and Cultural Center

Present – RuthAnne Haley, Chair Thomas Memorial Library Trustees
Jay Scherma, Director of the Thomas Memorial Library

Moved by Jessica L. Sullivan and Seconded by Katharine N. Ray
ORDERED, the Cape Elizabeth Town Council hereby

1. Requests the Trustees of the Thomas Memorial Library to finalize and present to the town council a cultural center plan which optimizes functionality and accessibility of space and resources, adaptability for current and emerging technology and which emphasizes programming and resources for youth. As part of this plan, a pro forma operating budget should be prepared for programs, staff and utility costs for the new facility.
2. Requests the town manager to work with the Trustees and the Cape Elizabeth Historic Preservation Society to re-evaluate the space needed for archival storage in the proposed new facility.
3. Requests the town manager to include in his recommended FY 2013 budget funds for part-time library staff so that the library director and the children's librarian may free up time for project planning and for implementation of enhanced library programming
4. Expresses its sincere appreciation to the Trustees of the Thomas Memorial Library, to the Thomas Memorial Library Foundation, to Demont Associates, to the library study oversight committee, to Jay Scherma, to Judy McManamy and to all of the citizens who participated in the library study through meeting with representatives of Demont Associates.

Moved by Frank J. Governali and Seconded by David S. Sherman, Jr.

ORDERED, the Cape Elizabeth Town Council amends the original motion to include #3

1. Requests the Trustees of the Thomas Memorial Library to finalize and present to the town council a cultural center plan which optimizes functionality and accessibility of space and resources, adaptability for current and emerging technology and which emphasizes programming and resources for youth. As part of this plan, a pro forma operating budget should be prepared for programs, staff and utility costs for the new facility.
2. Requests the town manager to work with the Trustees and the Cape Elizabeth Historic Preservation Society to re-evaluate the space needed for archival storage in the proposed new facility.
3. Requests the town council chairman, the finance committee chair and the town manager to work with school officials and others to evaluate capital needs in light of the upcoming retirement of debt service payments for past school projects.
4. Requests the town manager to include in his recommended FY 2013 budget funds for part-time library staff so that the library director and the children's librarian may free up time for project planning and for implementation of enhanced library programming
5. Expresses its sincere appreciation to the Trustees of the Thomas Memorial Library, to the Thomas Memorial Library Foundation, to Demont Associates, to the library study oversight committee, to Jay Scherma, to Judy McManamy and to all of the citizens who participated in the library study through meeting with representatives of Demont Associates.

(5 yes) (2 no) (Councilor Ray and Councilor Sullivan)

Vote on the original motion as amended.

(5 yes) (2 no) (Councilor Ray and Councilor Sullivan)

Item # 45-2012 Drainage Easements

Present – Robert Malley, Director of Public Works

Chairman Lennon thanked Robert Malley, Grant & Judith Dinmore, Karen Kerrigan and the representatives for all parties for their work and agreeing to the drainage easements.

Moved by David S. Sherman, Jr. and Seconded by Jessica L. Sullivan

ORDERED, the Cape Elizabeth Town Council gratefully accepts two drainage easements on Rocky Knoll Road from the Dinmore and Kerrigan properties. The town attorney shall file the deeds upon receiving releases from any mortgage holders.

(7 yes) (0 no)

Item # 46-2012 Great Pond Boat Rack Program

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

ORDERED, the Cape Elizabeth Town Council thanks the Conservation Commission for their report on the Great Pond Boat Rack Program and approves its recommendations as presented. (7 yes) (0 no)

Recommendations for next season

1. Publicity. The lottery system and applications were placed on the town website and included in a Cape Courier article. In addition, the 2010 permit holders received a letter notifying them of the lottery system and including an application form. The letter also noted that use of the boat racks would be monitored for possible future limits on permit holders who do not store a boat on the rack.

No change recommended.

2. Lottery system. The lottery system worked well. There were a few complaints supporting prior permit holders getting preference, but also positive comments about the fairness of obtaining a permit. It appears that some folks are “padding” the odds by applying for a permit under family members and friends names, which may slightly increase the total number of permits actually desired. This appears to be generating only a small number of additional applications, however, and no recommendation is made to try and halt the practice. The lottery system should be continued next season.

No change recommended

3. Permit losers. In the end, 8 applicants did not receive a permit. In addition, there were approximately 5 additional folks who came into the office over the summer seeking a permit. A few folks who are not town residents or property owners also sought a permit but are ineligible due to the terms of the easement. The recommendation is to continue to monitor demand in light of available boat rack space. It should be noted that additional boat rack space may not be added unless the Sprague Corporation agrees to renegotiate the easement.

No change to available slots recommended.

4. Permit use. It appears that 4 permit holders never stored a boat rack, based on 8 inspections spread over the season. In light of the demand exceeding boat rack permit supply, the Conservation Commission recommends that 2011 permit holders who did not use the racks and then apply for a permit in 2012 be assigned a boat rack in 2012 only if there are no other applicants.

Recommend that permit holders that did not store a boat be moved to the end of next season’s list of eligible permit holders if they apply.

5. Spare slots. The spare slots are narrower than the regular boat storage slots. This season, some of the permit holders could not fit their canoe into the spare slots and had to chain their canoes on the ground. Members of the public perceived this as an acceptable practice, which is precluded by the terms of the easement, and may promote further activity not allowed by the easement. When possible, I arranged for kayak owners to trade their slots with the canoe owners.

Recommend that the spare slots only be issued to kayak owners.

6. Vandalism. Again, there was some very limited unauthorized use of boats. One boat was left floating in the pond. The permit system made it possible for a member of the public to call in the wayward boat with the permit number. Town staff contacted the boat owner, who had no idea that the boat was not on the rack, appreciated the notification, and was able to retrieve it. Another boat owner was notified that his boat was on the rack properly stored, but that the lock was not engaged. A copy of the boat permit list is provided to the Police Department and they use it to contact boat owners if vandalism is reported.

No change recommended.

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7. Boat removal. No boats were left after the season ended, requiring Public Works to remove the boats. Letters were sent to permit holders with boats on the racks November 1st reminding them of the removal date. The Town Council has adopted a boat removal fee of \$50 if Public Works needs to remove a boat, again in compliance with the terms of the easement.

No change to the boat removal fee is recommended.

Item # 47-2012 Hardship Abatement Guidelines

Moved by David S. Sherman, Jr. and Seconded by Frank J. Governali

ORDERED, the Cape Elizabeth Town Council approves the hardship abatement guidelines as presented.

(7 yes) (0 no)

**Town of Cape Elizabeth
Review of Hardship Abatement Applications**

Introduction

Pursuant to Title 36, §841-A of the Maine Revised Statutes Annotated:

The Cape Elizabeth Town Council, within 3 years from the date of a tax commitment, may, on their own knowledge or on written application thereof, make such abatements as they believe reasonable on the real and personal taxes on the primary residence of any person who, by reason of infirmity or poverty, is in their judgment unable to contribute to the public charges. The town council may extend the 3-year period within which they may make abatements under this subsection.

Application Procedure

The town shall provide that any person indicating an inability to pay all or part of taxes that have been assessed because of poverty or infirmity be informed of the right to make application for hardship abatement.

The town shall make available online and during regular business hours application forms for requesting abatement based on poverty or infirmity and such forms shall contain notice that a written decision will be made within 30 days of the date of application. All applications are to be submitted to the town manager. Town staff or contracted staff shall assist individuals in making application for abatement

All applications, information submitted in support of an application, files and communications relating to an application for abatement and the determination on the application for abatement are confidential. Hearings and proceedings held relating to abatement applications must be in executive session; a final decision on an abatement application shall be publicly voted but shall not indicate the recipient of the abatement.

Appeal Procedure

The town manager shall provide to any person applying for abatement notice in writing of the decision within 30 days of application. All decisions shall include the specific reason or reasons for the decision and inform the applicant of the right to appeal and the procedure for requesting an appeal. The procedure for requesting an appeal is for the applicant to write to the town assessor within 60 days of the date of the written notice of the decision indicating the desire for an appeal. The Town assessor shall schedule a meeting of the Cape Elizabeth Board of Assessment Review which shall decide the appeal. An appeal of the decision of the Board of Assessment Review may be made to Maine Superior Court.

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Town Council Review of Hardship Applications

To obtain abatement, the applicant has the burden of proof of eligibility for the abatement.

The purpose of the abatement law is to prevent towns from forcing the sale of property in order to collect taxes from those otherwise unable to pay.

The town council shall consider whether or not the applicant's future use of their property as their primary residence is solely contingent upon the town's action.

The town council shall consider the status of other pending foreclosure proceedings on the property. If a foreclosure is imminent for reasons other than a property tax liability, abatement may be denied.

The town council shall consider the lack of a threat of forcing a sale of property if the tax lien process is not yet near maturity. Abatement may be denied if the applicant is not in imminent danger of losing their primary residence.

The town council shall consider two primary income factors. First, is the applicant eligible for general assistance? Second, does the household have income at or below 150% of the federal poverty level? Not meeting either of these standards may be a justification for denial.

The town council shall consider if assets other than income are available to pay for property taxes. If other assets are available, abatement may be denied.

The town council shall consider whether or not an applicant who has been granted a previous abatement has taken advantage of other assistance including the Maine property tax relief program, a homestead exemption and meeting with a social worker to assist the applicant with other programs. Failing to follow previous instructions to seek other assistance may be cause for denial.

The town council shall consider whether or not the primary residence has an assessed value in excess of the median assessed value of all single family homes in Cape Elizabeth. If the primary residence has an assessed value exceeding the median assessed value, abatement may be denied.

The town council may deny abatement if the application form is not signed and/or if false information have been provided on the application form.

Notwithstanding any of the above, the town council, within 3 years from the date of a tax commitment, may, on their own knowledge or on written application thereof, make such abatements as they believe reasonable on the real and personal taxes on the primary residence of any person who, by reason of infirmity or poverty, is in their judgment unable to contribute to the public charges. The town council may extend the 3-year period within which they may make abatements under this subsection.

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Draft Motions for Use in Considering Applications

I move to enter executive session in conformance with 1MRSA §405 6 F to review a request for a hardship abatement. Requires 3/5th vote

I move to return to open session. Requires majority vote

I move to grant an abatement in the amount of \$ _____ pursuant to 36 MRSA § 841 (2) Requires majority vote

I move to deny an abatement of property taxes pursuant to 36 MRSA § 841 (2) as the town council finds the application does not meet the standards to grant an abatement as -

_____.

Choose any one or more of the following:

- *Other assets are available to pay for property taxes.*
- *The property in the application is not the primary residence of the applicant.*
- *The applicant is not under threat of forcing a sale of their property as the tax lien process is not near maturity.*
- *The applicant did not provide sufficient information to establish a burden of proof of eligibility for abatement.*
- *The applicant's future use of their property as their primary residence is not solely contingent upon the town's action.*
- *The applicant has not followed past instructions to seek other opportunities for assistance with their property tax liability.*
- *The applicant does not meet the financial eligibility standards.*
- *The applicant's property has an assessed value in excess of the median assessed value of all single family homes in Cape Elizabeth.*
- *The application was not signed.*
- *The application contained information that was found to be false.*

Citizen Opportunity for Discussion of Items Not on the Agenda None

Item # 48-2012 Town Manager Annual Evaluation

Moved by David S. Sherman, Jr. and Seconded by Frank J. Governali

ORDERED, pursuant to 1 MRSA §405 6 A the Cape Elizabeth Town Council enters into executive session at 9:06 p.m. to continue the annual evaluation of the Town Manager.

(7 yes) (0 no)

Moved by James T. Walsh and Seconded by David S. Sherman, Jr.

ORDRED, the Cape Elizabeth Town Council exits executive session and reenters public session at 9:50 p.m.

(7 yes) (0 no)

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Moved by Frank J. Governali and Seconded by David S. Sherman, Jr.

ORDERED, the Cape Elizabeth Town Council recently reviewed the compensation of the town manager to determine if it is commensurate with comparable municipal manager salaries in the area. Based on the review, the town council by order approves the following compensation effective January 1, 2012;

Salary: \$112,000

Deferred Compensation Contribution: 14.5% of Salary (\$16,240) paid as earned.

Vehicle Allowance: \$4,800 per annum paid in bi-weekly increments

In addition, except as stated above, the town manager receives those benefits provided by the Personnel Code for all other employees. He is also reimbursed for up to \$600 per fiscal year for cell phone service upon submittal of invoices.

Prior to this adjustment, the town manager has received a total adjustment of 2% since July 1, 2008. This adjustment would place the town manager's compensation at the mean amount for the comparable communities for salary, retirement contribution and vehicle allowance.

(7 yes) (0 no)

Adjournment

Moved by Frank J. Governali and Seconded by David S. Sherman, Jr.

ORDERED, the Cape Elizabeth Town Council adjourns at 9:50 p.m.

(7 yes) (0 no)

Respectfully Submitted,

Debra M. Lane, Town Clerk