

**CAPE ELIZABETH TOWN COUNCIL MINUTES**  
**Regular Meeting # 13-2012**  
**Cape Elizabeth Town Hall**  
**Wednesday, November 14, 2012**  
**7:00 p.m.**

**Roll Call by the Town Clerk                      Present    Absent**

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

**The Pledge of Allegiance to the Flag**

**Town Council Reports and Correspondence**

Councilor Sherman presented Chairman Lennon with an engraved crystal bowl in recognition of her term as chairman and service on the council.

Councilor Sullivan thanked the election staff for their hard working during the election.

Town Clerk Debra Lane thanked and recognized the election staff and town/school departments who worked as a team to provide exemplary service to Cape Elizabeth residents during the election.

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

Update - Mark Mayon, President Spurwink Rod and Gun Club

The club has hired a Range Technical Training Advisor to evaluate the range; he hopes to have a report within a month. The fence is 60% complete.

**Town Manager's Report**

Mr. McGovern thanked the election staff for their work on Election Day and during absentee voting. He also recognized outgoing elected officials; Senator Snowe, Senator Dill, Representative Eberle and County Commission Feeney. Bruce Smith, Code Enforcement Officer is resigning effective at the end of the week. Mr. McGovern thanked Mr. Smith for his 15 years of service.

**Review of Draft Minutes of October 10, 2012 Town Council Meeting**

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

ORDERED, the Cape Elizabeth Town Council approves the minutes of the meeting #12-2012 held October 10, 2012 as presented.

(6 yes) (0 no)

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

ORDERED, the Cape Elizabeth Town Council suspends the Town Council Rules to take Item #132 Robinson Woods II out of order.

(6 yes) (0 no)

**Item# 132 -2012      Robinson Woods II**

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

ORDERED, the Cape Elizabeth Town Council pursuant to its vote of June 13, 2011 hereby authorizes the Town Manager to provide \$350,000 to the Cape Elizabeth Land Trust at closing for its acquisition of a 63+- acre parcel known as Robinson Woods II, accepts the public access easement in the form deemed acceptable to the town attorney on November 14, 2012 and agrees to authorize the Town Manager to sign a third party acceptance of a conservation easement over said parcel being granted by the Cape Elizabeth Land Trust to the Maine Coast Heritage Trust as presented.

(6 yes) (0 no)

**Item #130-2012      Public Hearing: Proposal to Amend the Zoning Ordinance Regarding Short Term Rentals**

**Proposed Amendments to Zoning Ordinance Regarding Short Term Rentals**

Present – Maureen O’Meara, Town Planner  
Police Chief Neil Williams

Chairman Lennon opened the public hearing at 7:20 p.m.

Jennifer Aronson, 27 Lawson Road views the ordinance as a compromise to move the issue forward. She thanks the committees for their work, encourages council approval, including language to address sub-lessors and a requirement of a formal review of the ordinance in one year.

Peter Clifford, 36 Lawson Road stated the ordinance is a compromise and will “help to live in a residential neighborhood.” Sub-leasing to be addressed, only the property owner should be empowered to enter into a rental agreement.

Patty Grennon, 8 Sea Barn Road thanked the committees and council for their work on this compromise and encourages approval. She stated when new owners purchase a property it will be helpful for the owners to know the guidelines.

Jim Huebener, 13 Kettle Cove Road and owner/landlord of a short term rental. Mr. Huebener is not in favor of the ordinance; it is “unnecessary.” Prediction – net effect on Lawson Road mediation between neighbors, net effect on other landlords - fees and more paperwork.

Sandy Dunham, 11 Becky’s Cove Lane and owner/landlord of a short term rental. Mrs. Dunham supports the language for sub-leasing, what will be the fee, thanked the committees for their work.

June Eiesland, 117 Old Ocean House Road owner/landlord.

Ms Eiesland said the ordinance is not ready for approval. She would like more review on the required safety features for residential homes, quicker notification to property owners when the police are called and review of the “three strike” policy.

After hearing no further comments, the public hearing was closed at 7:35 p.m.

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

ORDERED, the Cape Elizabeth Town Council approves the short term rentals ordinance provisions as described below and requests a review of the provisions in one year, December 2013.

(5 yes) (1 no Councilor Jordan)

### **SHORT TERM RENTALS ORDINANCE PROVISIONS**

WHEREAS, short term rentals to third parties by owners of residential properties in Cape Elizabeth has in numerous cases caused issues to surrounding neighbors that are not commonly presented when such properties are occupied by owners, negatively impacting the residential character of surrounding neighborhoods; and

WHEREAS, the Town’s Ordinance Committee and Planning Board have conducted many meetings with interested parties on this issue; and

WHEREAS, the greatest negative impacts from short term rentals are from those properties on lots of less than 30,000 square feet and where the short term rentals are for shorter durations; and

WHEREAS, the Town Council finds that the negative impacts on surrounding neighbors with short term rentals appear to be less so when the property owner lives in another building on or abutting the property subject to the short term rentals; and

WHEREAS, the Town is concerned for the safety of those renters and their guests who occupy properties for short term rentals, specifically in regard to building code and septic system compliance of such properties and emergency evacuation plans; and

WHEREAS, given the Town’s public safety and welfare concerns, the Town Council finds it important in enacting Short Term Rental Zoning Ordinance provisions to make them effective as to all future Short Term Rentals regardless of the date of such contracts, provided that, in doing so, such Ordinance provisions shall be applied to the maximum extent possible without thereby substantially impairing such contracts which are fully executed and in force as of the effective date of this Ordinance.

ORDERED, that Short Term Rental provisions of the Zoning Ordinance as set forth in the attached draft are hereby enacted.

**Item# 131-2012 Proposed Amendments to the Solid Waste Ordinance**

**Public Hearing: Proposed Amendments to the Solid Waste Ordinance**

Chairman Lennon opened the hearing to public comments at 8:01 p.m.  
After hearing no comments the hearing was closed.

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

ORDERED, the Cape Elizabeth Town Council hereby enacts the attached proposed amendments to Chapter 11 Health and Sanitation ordinance, specifically Article II Solid Waste Disposal Ordinance as presented.

(6 yes) (0 no)  
See attachment.

**Item# 133-2012 Future Open Space Committee Final Report**

Present – Maureen O’Meara, Town Planner  
Intro – John Green, Chairman FOSP

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

ORDERED, the Cape Elizabeth Town Council acknowledges receipt of the final report of the Future Open Space Committee with appreciation to the committee and to its staff and refers the report to a future town council workshop for review and discussion.

(6 yes) (0 no)

**Item# 134-2012 Fort Williams Park Group Use Fees**

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

ORDERED, the Cape Elizabeth Town Council approves the recommendation of the Fort Williams Advisory Committee and the Town Manager to revise group use fees as presented. The Fort Williams Advisory Commission is asked for recommendations regarding the concession program for 2013 and for an evaluation of the bus/trolley program and to report back to the town council at the January 2013 meeting.

(6 yes) (0 no)  
See attachment.

**Item# 135-2012 Driveway Easement**

Intro – Mr. McGovern  
Present – Michael & Stephanie Concannon

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

ORDERED, the Cape Elizabeth Town Council clarifies that a driveway easement, approved by the Town Council in January 2012, from 349 Ocean House Road on to the high school driveway is for both entering and exiting.

(6 yes) (0 no)

**Item# 136-2012 Proposed Capital Improvements Planning Committee**

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

ORDERED, the Cape Elizabeth Town Council refers to a joint workshop with the school board establishing a capital improvements planning committee.

(6 yes) (0 no)

**Committee Charge**

**Cape Elizabeth Capital Improvements Planning Committee  
November 6, 2012**

**Committee Created**

The Capital Improvement Planning Committee (CIPC) is a four-member committee. The CIPC is comprised of two members of the Town Council and two members of the School Board. The Town Council and School Board shall select their respective committee members. The Town Manager and School Superintendent may serve as an ex-officio member without the right to vote.

**Committee Responsibility**

The CIPC's charge of duties is as follows:

The Capital Improvement Planning Committee shall define and study all proposed capital projects and improvements involving major tangible assets and projects and maintenance expenditures.

The Committee shall consider the relative need, impact, timing and cost of these expenditures. The Committee shall prepare a long-term capital planning report, recommending a ten-year capital projects plan, schedule of capital project priorities and annual capital projects forecasting for the next five fiscal years beginning in Fiscal Year 2014, and present the report to the Town Council and School Board for their consideration.

The CIPC is an advisory committee, with authority for spending decisions residing solely in the School Board and Town Council.

**Item# 137-2012 Facility Study Report**

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

ORDERED, the Cape Elizabeth Town Council acknowledges receipt of the Town of Cape Elizabeth Seven Building Facility Study prepared by Harriman Architects & Engineers and refers to the report to a future town council workshop.

(6 yes) (0 no)

**Item# 138-2012      Personnel Code Amendment- Section 125 Plan Limits**

Intro – Mr. McGovern

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

ORDERED, the Cape Elizabeth Town Council sets to public hearing on Monday, December 10, 2012 at 7:00 p.m. at the Cape Elizabeth Town Hall proposed amendments to the Personnel Code relating to new federal regulations limiting Section 125 deferrals as presented.

(6 yes) (0 no)

**Sec 3-2-11**

**(a)      Section 125 Plan**

The Town of Cape Elizabeth offers a Section 125 Plan reimbursement account through Maine School Management Association. The Town may choose another provider at its option. Medical expense reimbursement accounts are limited to the maximum permitted under federal law. \$3000 per year. Dependent care reimbursement accounts are limited to \$5,000 per calendar year per family but may be lower if the maximum allowed by federal law is less than \$5,000. The enrollment period for this program occurs once annually or on the initial hire date. (Rev. Eff. 01/10/11)

**Item# 139-2012      General Assistance Annual Updates**

Intro – Debra Lane, Town Clerk

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

ORDERED, the Cape Elizabeth Town Council sets to public hearing on Monday, December 10, 2012 at 7:00 p.m. at the Cape Elizabeth Town Hall proposed annual updates to the appendices to the General Assistance Ordinance as presented.

(6 yes) (0 no)

**Item# 140-2012      Project Canopy Grant Application**

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

ORDERED, the Cape Elizabeth Town Council authorizes a grant application to USDA Forest Service – Urban and Community Forestry for a Project Canopy grant for hickory stand restoration and shade tree replacement in public areas as presented.

(6 yes) (0 no)

**Item# 141-2012      Maine Right to Know Law Update**

Intro – Mr. McGovern

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

ORDERED, the Cape Elizabeth Town Council appoints the Town Clerk to serve as the local public information officer to be responsible for adherence to requests for public information as required by new “open records” provisions of Maine’s Freedom of Access Act (FOAA) effective August 30, 2012.

(6 yes) (0 no)

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Intro – Mr. McGovern

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

ORDERED, the Cape Elizabeth Town Council suspends the Town Council Rules to take up an item out of order – Commercial lease agreement with Treetops Capital LLC for property at 343 Ocean House Road.

(6 yes) (0 no)

**Item #142-2012      Commercial Lease Agreement**

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

ORDERED, the Cape Elizabeth Town Council authorizes the Town Manager to sign a commercial lease agreement for property at 343 Ocean House Road with Treetops Capital LLC as presented.

(6 yes) (0 no)

See attachment.

**Citizen Opportunity for Discussion of Items Not on the Agenda**                      None

**Adjournment**

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

ORDERED, the Cape Elizabeth Town Council adjourns at 8:34 p.m.

(6 yes) (0 no)

Respectfully Submitted,

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Debra M. Lane, Town Clerk