

**Town of Cape Elizabeth
Ordinance Committee Minutes**

January 17, 2014

8:00 a.m., Town Hall

Present: Kathy Ray, Chair
Jim Walsh
Jessica Sullivan

Staff: Ken Cole, Special Legal Counsel
Neil Williams, Police Chief
Ben McDougal, Code Enforcement Officer
Maureen O'Meara, Town Planner

The minutes of the January 10, 2014 meeting were approved with the amendment of deleting two "nots" in the remarks by Mr. Mayone.

Public Comment

Mark Mayone, President of the Spurwink Rod and Gun Club, would like an exemption for the existing gun club added to the ordinance. He asked for a 30 day extension to give the club time to prepare and submit a basic site plan that shows shot danger containment. They already have a basic survey. They believe this approach is more efficient than adopting an ordinance and can satisfy the town and neighbors.

Andy Tabor, 33 Littlejohn Rd, is the Boy Scouts Trustee and is concerned the ordinance appears to regulate new firing ranges when there doesn't seem to be any land, except for the Sprague Corporation, that could meet the 1/2 mile setback proposed. This ordinance appears to target a single entity in existence since 1954. He specifically noted that Sec. 24-6-5 may not be workable if it precludes maintenance and training; that Sec. 24-7-3 hours are not realistic; that Sec. 24-10-1 does not specify certification for what. He also noted a 1993 site plan of the gun club.

John McKinney, 122 Ocean House Rd said he can hear shooting if the wind direction is right. He suggested that Article 5, Performance Standards add "per published NRA standards;" and that Sec. 24-6-1 specify "general shooting range;" He noted people who buy a house next to an airport do not complain about noise. He thinks focussing on gun safety is ok.

Robert Stear, 5 Colefield Rd, lives 1/2 mile from the gun club, which he was aware of when he bought his home in 2009. He said the license should be for new

clubs and the existing club already has a license. The gun club has moved to spend money to make improvements for the safety of members and neighbors. He thinks requiring the gun club to provide insurance for the town is superfluous.

Bill Zellman, South Portland resident and club member, does not support the insurance clause. Scarborough and Falmouth do not require town coverage.

Richard Drake, 2 Philip Rd, is a 34 year resident of the town. The club is an asset and a safe haven for fathers and sons and daughters to practice marksmanship. The Cape Elizabeth Police Department has free access to use the range to train for qualification. Now that is outsourced to another gun club and cost is incurred by town.

Draft Ordinance Review

The committee agreed to review the ordinance from the beginning with changes from the last meeting and review the entire ordinance at this meeting. The draft ordinance was reviewed and comments specific to ordinance sections were reviewed with each section.

The purpose statement is unchanged. Each committee member expressed that the Town Council has referred to them the task of reviewing the draft ordinance and that they would complete that task. Once the ordinance is before the Town Council, a public hearing will be held before any vote for adoption.

There were no changes until discussion of Article 5, Performance Standards. In response to a question referring to NRA standards, Mr. Cole suggested that the town should retain flexibility and not be constrained by NRA standards. Under Sec. 24-6-1, Mr. Cole will add clarifying language that it also applies to existing facilities and also clarify that standards "for the type of range" apply.

Under Sec. 24-6-2, Mr. Walsh asked Mr. Cole to respond to a comment questioning why this is grandfathered. Mr. Cole noted that grandfathering based on what has happened over the last 60 years. The Code Enforcement Officer made that determination to treat this as permitted. The committee agreed to leave the draft as proposed.

Under Sec. 24-6-4, it was clarified that a structure that does meet the setback can be relocated as long as it does not further encroach on the setback.

The committee agreed that operating hours should not limit access to the facility for routine maintenance and business that does involve shooting.

The committee agreed with comments that the hours of operation should be revised.

Under Sec. 24-7-4, Mr. Cole explained that the town is immune from liability but that does not stop someone from suing the town and the town would need to incur legal costs to defend the lawsuit. This provision protects taxpayers from paying for the legal defense. Nationally, this is very common. There is no requirement that the town license a gun club, but once you do, then you are open to litigation. The committee encouraged the gun club to obtain information on the cost to add this to their insurance.

Under Sec. 24-8-1, in response to a question, Mr. Cole stated that the club does not have a license now. It is a land use entity. Land use regulations are not licenses. A license is derived from the police power, such as requiring a health license for a restaurant.

Under Sec. 24-8-4, the committee agreed to add some flexibility to the 100 scale. Mr. Walsh asked about the site plan. Ms. O'Meara said that there is no Planning Board site plan and Mr. McDougal said there was no site plan to his knowledge in the code files.

Under Sec. 24-9-1, the committee discussed what a reasonable time would be. The committee discussed that with 90 days plus 30 days for the ordinance to take effect, that would be 4 months to prepare a site plan, which is reasonable. The committee decided to leave the time period as is.

Under Sec. 24-9-2, the committee discussed the time needed to come into compliance. Mr. Cole clarified that the club could continue to be used during the process. If at the end of the time period the club does not comply, then the town could use its authority to shut it down. He noted that the committee can extend time frames and that this is a road map. The committee decided to change the time period to 1 year. The committee noted that the gun club is working on safety changes now and that there are financial implications so the town may not want to push too fast in the beginning.

Ms. O'Meara asked if the committee wanted to more explicitly reference phasing. Mr. Cole noted it is already covered in a generic way. The committee decided to add language to make it clear that the Firing Range Committee can accept a phased plan. Mr. Cole noted that the Firing Range Committee retains authority to say no to a phased plan.

Under Sec. 24-10-1, the committee clarified that certification as a firearms instructor is what is intended and that the club member is a certified member of the NRA.

Under Sec. 12-12-1, the committee noted a comment that the license be valid for more than 1 year. In response to a query, Mr. Cole said that 1 year is typical, but the committee could change it to 2 years. Mrs. Sullivan noted this is different from a restaurant license and Mr. Walsh said he supported 1 year to start the process and establish a solid record of compliance. Mrs. Ray inquired about inspections and it was stated that the Code Enforcement Officer can inspect. Ms. O'Meara reviewed the approval times for Planning Board reviews. Mrs. Sullivan asked why 1 year would be a hardship. Mr. Mayone responded that it is more about efficiency for the town as the gun club safety structures are heavy and massive and will not degrade in one year. The committee agreed to leave the draft at 1 year.

The committee ended their review at Sec. 24-12-2, Exemptions, and will continue review at their next meeting.

Next Meetings

The next meetings of the Ordinance Committee will be Friday, January 24th and Friday, February 7th. Both meetings will begin at 8:00 a.m.

Public Comment

Eric Frehm, 64 Cross Hill Rd, does not want any delay on safety issues. Noise is not what it should be. When were the town's earlier noise regulations legislated away? Where did my disturbance of the peace rights go? There has been testimony that there is a change in activity at the gun club. He does not support exemptions.

Mrs. Sullivan noted that the 1941 ordinance specifically exempts shooting ranges. Mr. Cole reviewed that towns are legally creatures of the state and can only regulate what the state allows them. The state allows local regulation for noise only for specific facilities. This is his opinion, with 42 years of experience, and also the opinion of town counsel Tom Leahy. This question has been answered. Mr. Cole suggested Mr. Frehm may want to consult his own legal counsel.

Thomas Rasor, 22 Broad Cove Rd, said this ordinance is about one club and how it moves forward in the next 50 years. He is a 1 ½ year member and asks that the club's time and money be taken into account.

Cathy Kline, 66 Cross Hill Rd, suggested that this is more of a town issue because the gun club is close to town open space and a town road. It is reasonable to have shot containment and she questions how safe it is now until the club makes its changes.

Mrs. Ray said this is a tough, emotional issue. We are trying to work together and thank you for your comments.

Mr. Walsh made a motion to adjourn, seconded by Mrs. Sullivan and passed unanimously.