

**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
Maureen O'Meara, Town Planner

The minutes of the January 17, 2014 meeting were approved with typographical corrections.

Public Comment

Mark Mayone, representing the Spurwink Rod and Gun Club, referenced comments submitted earlier, thanked the town for the money spent to retain Mr. Cole and for the effort to compromise.

Paul Shconewolf, 28 Cross Hill Rd, said he read the Gun club newspaper article and wants more management of the membership. There are bullets in homes and rapid fire guns in use and the club should operate to an above average standard. This is more than a neighborhood issue because the noise travels far. This is a safety issue, not a have/have not issue.

Ed Reilly, 3 Chesterwood Trail, emphasized that safety is primary. Safety should not be phased in.

Andy Tabor, 33 Littlejohn Rd, said the club has a license. Prior to 1941, residents could shoot anywhere. In 1941, the selectmen created new bylaws with specific requirements on where discharge of a firearm was allowed and noted a range was allowed. In 1951, new language was removed and in 1954, the Rod and Gun Club was created. In June, 1955, the selectmen held a public hearing and with the Police Chief granted a permit to create a supervised range. In 1961, the bylaws were revised and a new permit issued. In 1964, a Firearms Ordinance incorporated the Rod and Gun Club. In 1967, all ordinances were carried forward, including the Firearms Ordinance. He also supports hours of operation allowing shooting until sunset, although the club may reduce the hours.

Jeff, 2 Pond View Rd, said the ordinance references the NRA Source Book, but the book states that these are only suggested practices. The book should be used as a guide but the club should not be constrained by it. Attending the meetings, he appreciates what the committee is doing. He thought this was an effort to shut down the club, but you are listening to all sides and moving forward.

Doris Bauman, 56 Cross Hill Rd, wants the proposed Firing Range Committee membership to be balanced. Maybe another general member needs to be added or the gun expert does not have to be an NRA member.

Review of Ordinance draft

The committee reviewed the sections that had changed since the last meeting.

Under Sec. 24-7-3, Hours, Mr. Walsh noted Mrs. Kline's concerns. Mrs. Sullivan and he agreed that this approach does not require assembling a calendar. Mrs. Sullivan likes that 8:00 a.m. is clearly stated as the start time. The committee discussed Mr. Tabor's comment to allow shooting until sunset. Mr. Cole explained the limit of 1/2 hour before sunset is proposed because it is hard to see at dusk. The committee agreed to leave the draft as proposed.

Under Sec. 24-8-5, the committee discussed the comments opposed to phasing. In response to a question, Ms. O'Meara explained that phasing does not allow waiving of standards. The Cross Hill neighborhood is a phased subdivision where standards such as access had to be met for each phase as well as for the whole subdivision

Mr. Walsh said folks need to trust the system. This is the first time in 20 years that the town has considered an ordinance to address these concerns. Phasing is a chance for the committee to work through issues.

Mrs. Sullivan considered adding language that the committee cannot use phasing, to address email comments, but phasing could provide reasonable direction. The gun club has been in existence for 60 years and there is no requirement for the town to license it but we are doing it. Our approach needs to be measured so that the gun club does not claim a hardship. We are severely restricted by state and federal law. This gives the gun club the opportunity to put something together, without being too onerous but also in a time sensitive manner.

Mr. Cole noted that if the town regulates too much, then the gun club can't operate and can sue the town for arbitrary and unreasonable actions. We are walking down the middle recognizing the Cross Hill neighborhood and the gun

club. There is no obligation of the town to engage at all. The town has the right to license, but not to close the club.

Under Sec. 24-10-1, the committee reviewed the Firing Range Committee membership. Mr. Walsh noted the Town Council's appointments committee process. Mrs. Sullivan noted that Firing Range Committee meetings will be open to the public. All agreed 5 members was a good size.

Under Sec. 24-12-2, Mrs. Sullivan wanted to clarify that the gun club owner is the operator. Mr. Cole said it depends on who is the applicant, but if the owner changes, then the Town can review the application again.

Under Sec. 24-12-3, the committee referenced the email from Mrs. Manson.

Mr. Cole explained that he had added more detail about the types and uses of firearms that will be included in the licensing application. Committee members were comfortable with Mr. Cole's additions and agreed it was important to reference this information. Mrs. Sullivan asked about the reference to other ordinances and Mr. Cole used the example of where improvements might trigger Site Plan Review. Mr. Walsh confirmed that a significant expansion of use at the club that generated a significant increase in noise could trigger the noise regulations. Mr. Cole agreed and noted that this is why an application is needed to establish a baseline.

Committee members noted that a lot of comments had been made on noise but the town needs more than opinions. They noted that the town is limited by state and federal laws. The 1941 town bylaws exempt shooting. A dba measurement is not an opinion.

Under Sec. 24-13-1, the committee noted emails received regarding phasing. Mr. Walsh said the intent is not to bypass standards, but to work together to meet the standards without creating a hardship with financing improvements. Mr. Cole noted that this should be read with Sec. 24-13-2. Exceptions will not impact safety.

Under Sec. 24-13-3, Mr. Cole explained that conditions on a license become part of the ordinance and if the condition is violated, the ordinance is violated.

Under Sec. 24-14-1, Chief Williams questioned how to measure expansion. If a loud gun is used or there are 40 people on the range, that is more obvious. He noted the Police Department does not own a noise meter. If a complaint is made, the responding officer would need to arrive when the same person with the same gun is still shooting. In the past, we have contacted the club president, who has

been able to identify the shooter and weapon. Chief Williams also volunteered that if a certified instructor cannot be found for the committee, the Police Department has a certified firearms instructor.

The committee returned to Sec. 24-10-1 and the composition of the Firing Range Committee. Mr. Cole noted that there is no residency requirement for the certified instructor, so you should be able to find someone or you could leave it open-ended. The committee felt using a police officer could be a fall back position, although it might be complicated for an employee to be a voting member. They agreed to leave the ordinance as is and consider changes if a problem arises.

The committee discussed expansion of use and applicability of the 65 dba standard. Mr. Cole explained that the standard applied to new ranges and to new or expanded use of the existing range. Existing noise is not regulated and not permissible to be regulated by this ordinance. Committee members confirmed that new or expanded uses would need to be documented in an application. The Firing Range Committee would then review the application.

Under Sec. 24-14-2, Mr. Cole said that enforcement always includes warnings and that there would be no automatic closing of the range. Mr. Walsh clarified that complaints need to be “substantiated,” which was a term used in the Short Term Rental amendments. The committee discussed the 3-strikes approach in the Short Term Rental provisions. It was noted that the situation is a bit different in that folks were not calling the police with complaints and there was concern with follow-up of complaints. The committee agreed this situation was different. Chief Williams described the process used to respond to a complaint. The committee agreed to not make additional changes.

Public Comment

Anne Swift-Kayatta, 14 Stonebridge Rd, said she is not a gun owner or member of the gun club. She supports phasing as an option and likes the committee composition. She also would not add the 3-strikes at this time and thanked the Ordinance Committee for their work.

Dr. Frehm, 64 Cross Hill Rd, said he can't get past the 1951 ordinance in place when the club was founded. Title 30A respects existing ordinances so why can't the town's existing noise regulations apply?

John Baldwin, 47 Cross Hill Rd, supports the ordinance as proposed although 3 strikes adds meat to the bone. He wants the firearms instructor on the Firing

Range Committee to be independent of the gun club. He wants the town to respond when the gun club goes beyond the pattern of use today.

Mrs. Ray noted that the firearms instructor is a member of the public, not specified as a member of the gun club.

Mark Mayone, Spurwink Rod and Gun Club Liaison, would like the Firing Range Committee to be a 3 member committee. The decision should be pass or fail with public input but no discussion. The club has made improvements. If they have to hire an industrial sound engineer, that is a hardship.

Cathy Kline, 66 Cross Hill Rd, wants an independent evaluation of the range now for safety/shot containment. Was the recent construction evaluated by the Code Enforcement Officer?

Bobbi Manson, 1 Cardinal Lane, wants the standards to be met for each phase. She would like more definition of safety standards.

Rich Moran, 62 Cross Hill Rd, said that the town's lack of action for 20 years should mean there is more speed to act now. He talked about more activity and noise and suggested if skeet shooting were added, that would be a significant change with more noise.

John McKinney, 76 Ocean House Rd, said that the gun club would have to increase membership from 600 to 1200 members in order to pay for improvements and then the noise would double. He questioned the value of licensing and background checks.

Committee discussion

Mrs. Ray asked if an independent study is required? Mr. Cole said nothing requires or prohibits the Firing Range Committee or Town Council from requiring a study to review the application.

Mrs. Ray said the committee has done its best to strike a balance. We could ask the Town Council to review any adopted ordinance in a year or anytime. We are all concerned with safety and taking a limited regulation approach. She explained the process going forward and thanked the public and staff.

Mr. Walsh moved that the Ordinance Committee accept the ordinance with changes and send it to the Town Council for a decision. Mrs. Sullivan seconded the motion and it passed 3-0.

Next Meeting

The next meeting of the Ordinance Committee is scheduled for Friday, February 7th. The meeting adjourned at 9:35 a.m.