

CAPE ELIZABETH TOWN COUNCIL MINUTES
Regular Meeting # 4-2014
Cape Elizabeth Town Hall
Monday, March 10, 2014
7:00 p.m.

Roll Call by the Town Clerk Present Absent

Jessica L. Sullivan, Chairman	X	Term Expires 12/2015	jsullivan08@maine.rr.com
Caitlin R. Jordan	X	Term Expires 12/2016	caitlin.jordan@capeelizabeth.org
Molly MacAuslan	X	Term Expires 12/2016	mmacauslan@gmail.com
Katharine N. Ray	X	Term Expires 12/2014	retbank@maine.rr.com
David S. Sherman, Jr.	X	Term Expires 12/2014	dsherman@dwmlaw.com
James R. Wagner (Arrived 7:05pm)	X	Term Expires 12/2015	jamiewagnerlaw@gmail.com
James T. Walsh	X	Term Expires 12/2015	jim.walsh@capeelizabeth.org

Debra M. Lane, Town Clerk X
Michael K. McGovern, Town Manager X

The Pledge of Allegiance to the Flag

Town Council Reports and Correspondence

Councilor Jordan announced two openings; Personnel Appeals Board (term to expire 12/31/2016) and Zoning Board of Appeals (term to expire 12/31/2015). Application deadline is Monday, 3/24.

Councilor Sherman reported the Town Center Plan Committee met this afternoon 4 – 6 p.m. The committee has made progress on their report due to the town council 6/2014. The committee continues to seek public input.

Chairman Sullivan thanked the public works department for their continued work through this long winter.

Finance Committee Report

Chairman Walsh deferred to Item #50 fiscal year 2015 budget.

Citizen Opportunity for Discussion of Items Not on the Agenda

None

Town Manager's Monthly Report

A written report will be available by the end of the week and posted on the town's website.

Review of Draft Minutes of February 10, 2014 meeting

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

ORDERD, the Cape Elizabeth Town Council approves the minutes of Meeting #3-2014 held February 10, 2014 as written.

(7 yes) (0 no)

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Councilor Wagner arrived 7:05 p.m.

Item #43-2014 Draft Shooting Range Ordinance

Public Hearing Proposed Shooting Range Ordinance

Present – Kenneth Cole, Attorney representing the Town of Cape Elizabeth
Police Chief Neil Williams

Councilor Wagner is recused from discussion and voting on this item per an earlier council vote.

Chairman Sullivan opened the hearing to public comments at 7:06 p.m.

For purposes of the minutes, the Spurwink Rod and Gun Club will also be referred to as “the Club.”

James Richard, 9 Cross Hill Road

Mr. Richard highlighted safety as the primary concern of the neighbors. A safety inspection is requested in order to ensure the Club meets safety standards. Why is the disturbing the peace ordinance not being enforced?

Robert Horr, 66 Hunter Place

Mr. Horr is a member of the Club and is opposed to the ordinance. The Club has made significant process, let the discussions continue between the Club and the neighbors.

Carl Best, 12 Pond View Road.

Mr. Best is a member of the Club and encourages everyone to see what it is all about.

Jeff Moen, 2 Pond View Road

Mr. Moen, active military duty, uses the Club with his son. He appreciates the town council’s time working on this issue.

Daniel Price, 53 Cross Hill Road

Mr. Price stated the “town council is not interested in keeping the neighborhood safe.” How will the undue hardship be determined in the ordinance?

Herbert Dennison, 63 Spurwink Avenue

Mr. Dennison is a charter member of the Club. Neighbors should have known the club was there when they purchased. Safety is important.

Ted Strojny, 82 Hunts Point Road

Mr. Strojny is a member of the club, stating members are responsible and concerned about safety, rules and regulations. He feels the ordinance is unnecessary.

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Walt Marier, South Portland

Mr. Marier is a member of the club and stated when he used to hunt on the property near the club he walked on the other side knowing the club was there. Neighbors should have asked about the club before they purchased in the neighborhood. The club has been a good neighbor.

Kathleen Kramer-Howe, 9 Steeplebush Road

Mrs. Kramer-Howe has seen “a significant change” in the last 2-3 years in the weapons being fire. There needs to be a compromise for a win-win for everyone.

Craig Brett, 7 Steeplebush Road

Mr. Brett is asking the town council for “common sense” approaches for safety of the children.

Mark Mayon, Former President of Spurwink Rod and Gun Club, Co-Chairman No Blue Sky Committee

Mr. Mayon stated the Club has the same number of members as in past years. The Club will continue its modernization whether the ordinance passes or not. The license obtained 60 years ago is “still in good standing” so there’s not a reason to relicense. Suggestion for workshop to get all of the parties together to work through the issues.

Tammy Walter, 1095 Sawyer Road, President Spurwink Rod and Gun Club

Ms Walter outlines the improvements made by the Club. It would be a substantial cost for them to relicense; funds spent on the license would not be available for upgrades. She encouraged the council to not pass the ordinance and thanked them for their work. Donations from the neighbors for upgrades are accepted.

Jonathan Baldwin, 47 Cross Hill Road

Mr. Baldwin believes the Club has funds for upgrades.

Ralph Romano, 12 Tiger Lily Lane

Mr. Romano said the Club is admitting it needs improvements if it is upgrading. Safety should not be compromised. Noise is a separate issue. The make up of the proposed committee may be “stacked” with Club members. Liability insurance should be in place now and “should not be a problem to get if the Club is safe.”

Byron Castro, 185 Fowler Road

Mr. Castro said “the community needs to come together because everyone has a part in this.” The town should charge everyone in town \$100 to get the improvements done all at once.

Bobbie Manson, 1 Cardinal Lane

Ms. Manson said her house is one of the ones that has been struck and has asked the town for help to protect from other stray bullets however nothing has been done.

Eric Mukai, 4 Apple Tree Lane

Mr. Mukai said neither side wants the ordinance to pass; perhaps it’s not the right thing for either side.

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Lucas Homicz, 22 Broad Cove Road

Mr. Homicz said he is observing claims going back and forth without any facts. He has been to the Club and “has never seen an unsafe act and has never heard automatic weapons.” In terms of the cost, “the Cross Hill neighborhood association has a lot more disposable income than the gun club.” The council needs to consider the precedence it is setting getting involved in a “localized” dispute between the neighborhood and gun club.

Rich Moran, 62 Cross Hill Road

Mr. Moran is in favor of the ordinance which provides a basis for everyone to work together. He favors donations to the Club to help with improvements and presented them \$20.00.

Mary Romano, 12 Tiger Lily Lane

Mrs. Romano said kids in the neighborhood are unable to go outside the play because of the gun club. She asked the council “who are you representing the neighborhood or the club?” It is the town council’s job to “protect the children and the community.”

Peter Bolling, 495 Ocean House Road

Mr. Bolling is not a member but supports the Club. He doesn’t want to see the town change and said it is not right to try to push them out of town.

Cathy Kline, 66 Cross Hill Road

Ms Kline asked where we stand with safety. The Club is asking for donations but no one has seen the plan.

After hearing no further comments the hearing was closed at 7:47 p.m.

Intro- Councilor Ray, Chairman Ordinance Committee

Moved by Katharine N. Ray and Seconded by James T. Walsh

ORDERED, the Cape Elizabeth Town Council having held a public hearing on Monday, March 10, 2014 hereby makes the following findings and adopts a new Chapter 24 of the Revised Official Code of Ordinances of the Town of Cape Elizabeth, said ordinance being the January 24, 2014 draft recommended by the Ordinance Committee and entitled, “Shooting Range Ordinance,” a copy of which is to be attached to the minutes of this meeting and which shall be filed with the Maine Commissioner of the Department of Inland Fisheries and Wildlife.

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

ORDERED, the Cape Elizabeth Town Council amends the motion Sec. 24-8-1 first sentence to read: An application for a license to establish and operate a Shooting Range Facility shall be submitted by the legal property owner (s) or lessees (or their agent) to the Firing Range Committee, which application shall contain detailed contact information regarding the applicant which shall also contain a professional range safety evaluation.

(6 yes) (0 no) (Councilor Wagner recused)

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1. The 1941 Cape Elizabeth By-Laws, regarding disturbing the peace, readopted in 1951, as amended March 14, 1955 regulated noise while concurrently authorizing shooting ranges approved by the municipal officers. The implication is that the sounds generated at a shooting range were considered in compliance with existing noise regulations.
2. The Spurwink Rod and Gun Club was established in the Town of Cape Elizabeth in 1954/1955 and was thereafter authorized by the municipal officers.
3. Chapter 9 of the current Cape Elizabeth Code of Ordinances at Section 9-1-1 allows the discharge of firearms at the Spurwink Rod and Gun Club.
4. State law pre-empts municipalities from adopting noise ordinances that limit or prohibit shooting activities that have occurred on a regular basis at a shooting range prior to enactment. See 30-A M.R.S.A. § 3011(2).
5. State law does not pre-empt the regulation of new shooting ranges or expansion of uses at existing shooting ranges.
6. Expansion of uses at existing shooting ranges may include, but is not limited to, physical expansion, increased hours of operation, expansion in the type of shooting and expansion in the type of firearms discharged.
7. The Town is not obligated to license shooting ranges, but may elect to do so to protect public safety.
8. Public safety mandates that any shooting range must operate with 100% shot containment.
9. Bullets have been found in homes in the neighborhood abutting the Spurwink Rod and Gun Club.
10. The draft Shooting Range Ordinance includes standards from the NRA Source Book regarding both noise and public safety.
11. It is the Town Council's intent to work with the existing shooting range to meet its licensing requirements in a manner that prioritizes public safety and secondarily moderates the financial impact on the club.
12. Phasing does not eliminate the requirement to meet standards and can be used by the applicant to create a multi-step improvement program, subject to approval by the Town Council.
13. Exceptions are provided for in the ordinance to provide flexibility while still meeting public safety requirements.

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14. It is the Town Council's intent that a professional range safety evaluation be conducted as part of the license application.
15. Annual licensing will insure continuing municipal oversight of both public safety and noise mitigation at shooting ranges.

Original Motion as Amended
(6 yes) (0 no) (Councilor Wagner recused)

Item# 44-2014 Arboretum at Fort Williams Park Approvals

Intro – Councilor Walsh, Liaison Fort Williams Advisory Commission

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

ORDERED, the Cape Elizabeth Town Council having received a recommendation from the Fort Williams Advisory Commission and having reviewed the plans at a workshop meeting on Monday, February 24, 2014 does hereby approve the Fort Williams Charitable Foundation's plans for two sites at Fort Williams Park for the "lighthouse view" site and for the proposed "Children's Garden" site.

(7 yes) (0 no)

Item# 45-2014 Fort Williams Park Group Use Request

Intro – Mr. McGovern

Moved by Martha MacAuslan and Seconded by James R. Wagner

ORDERED, the Cape Elizabeth Town Council hereby approves the Fort Williams Advisory Commission's recommendation to permit St. Alban's Episcopal Church to have a worship service at Fort Williams Park on Sunday, June 22, 2014 commemorating the exact date of the centennial of St. Alban's in Cape Elizabeth as presented.

(7 yes) (0 no)

Item# 46-2014 Storage Space Lease at Building #326 at Fort Williams Park

Intro – Mr. McGovern

Moved by Katharine N. Ray and Seconded by David S. Sherman, Jr.

ORDERED, the Cape Elizabeth Town Council hereby approves the lease of storage space in Building # 326 at Fort Williams Park to *Behavioral Health Resources, Inc.* for a three year term beginning March 1, 2014 as presented.

(7yes) (0 no)

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Item# 47-2014 Proposed Amendment to the Ordinances Regarding Smoking at Fort Williams Park

Intro – Councilor Ray, Chairman Ordinance Committee

Moved by Katharine N. Ray and Seconded by David S. Sherman, Jr.

ORDERED, the Cape Elizabeth Town Council hereby sets a public hearing for Monday, April 14, 2014 at 7:00 p.m. at the Cape Elizabeth Town Hall on a proposed amendment to Chapter 12 of the Revised Official Code of Ordinances of the Town of Cape Elizabeth which would have the effect of banning smoking within Fort Williams Park.

(7 yes) (0 no)

Item# 48-2014 School Boiler Project

Intro – Mr. McGovern

Moved by James T. Walsh and Seconded by Martha MacAuslan

ORDERED, the Cape Elizabeth Town Council hereby authorizes the town manager to apply to the Cape Elizabeth Planning Board and to the Maine Department of Environment Protection for permits needed to update the boiler serving Pond Cove School and the Cape Elizabeth Middle School as presented.

(7yes) (0 no)

Item# 49-2014 Appointments

Intro – Councilor Jordan, Chairman Appointments Committee

Moved by Caitlin R. Jordan and Seconded by Martha MacAuslan

ORDERED, the Cape Elizabeth Town Council hereby appoints the following citizens to the indicated committee as recommended by the Appointments Committee.

(7 yes) (0 no)

Senior Citizens Advisory Commission- Appointed through December 31, 2014.

Elizabeth Baillie	18 Fessenden Road
Patricia Bredenberg	8 Fox Hill Road
William Marshall	10 Wildwood Drive
Bruce Nelson	890 Shore Road
June O'Neill	10 Clinton Road
Barbara Page	32 Starboard Drive
Brett Seekins	4 High Bluff Road

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Thomas Memorial Library Trustees

Term is effective immediately and expires December 31, 2014

Gil Brennan 4 Baker Road

Item# 50-2014 Annual Budget

Intro – Mr. McGovern

Moved by James T. Walsh and Seconded by James R. Wagner

ORDERED, the Cape Elizabeth Town Council hereby refers the town manager's proposed Fiscal Year 2015 budget to the finance committee.

(7 yes) (0 no)

Citizen Opportunity for Discussion of Items Not on the Agenda

None

Item# 51-2014 Proposed Executive Session

Moved by David S. Sherman, Jr. and Seconded by Katharine N. Ray

ORDERED, the Cape Elizabeth Town Council hereby enters into executive session in conformance with 1 MRSA 405 6 A and F to continue the evaluation of the town manager and to consider a request for a poverty abatement under 36 MRSA Sec. 841 at 8:51 p.m.

(7 yes) (0 no)

Moved by Caitlin R. Jordan and Seconded by Martha MacAuslan

ORDERED, the Cape Elizabeth Town Council exits executive session and reenters public session at 9:06 p.m.

(7 yes) (0 no)

Moved by David S. Sherman, Jr. and Seconded by Katharine N. Ray

ORDERED, the Cape Elizabeth Town Council denies the request for a poverty tax abatement as the applicant is not in imminent danger of losing their primary residence.

(6 yes) (1 no Councilor MacAuslan)

Moved by Katharine N. Ray and Seconded by David S. Sherman, Jr.

ORDERED, the Cape Elizabeth Town Council reenters executive session in conformance with 1 MRSA 405 6 A to continue the evaluation of the town manager at 9:08 p.m.

(7 yes) (0 no)

Moved by David S. Sherman, Jr. and Seconded by Katharine N. Ray

ORDERED, the Cape Elizabeth Town Council exits executive session and reenters public session at 9:40 p.m.

(7 yes) (0 no)

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Adjournment

Moved by David S. Sherman, Jr. and Seconded by Katharine N. Ray
ORDERED, the Cape Elizabeth Town Council adjourns at 9:41 p.m.
(7 yes) (0 no)

Respectfully Submitted,

Debra M. Lane, Town Clerk