



## **Cape Elizabeth Town Council Minutes**

**Monday, April 14, 2014 - 7:00 p.m.**

**Cape Elizabeth Town Hall**

Jessica L. Sullivan, Chairman  
Caitlin R. Jordan  
Molly MacAuslan  
Katharine N. Ray  
David S. Sherman, Jr.  
Jamie Wagner  
James T. Walsh

### **Meeting Opening by Jessica L. Sullivan Town Council Chairman**

#### **Roll Call by the Town Clerk**

All members were present.

#### **The Pledge of Allegiance to the Flag**

#### **Town Council Reports and Correspondence**

Councilor Sherman reported the Town Center Plan Committee met this afternoon and plans to complete their report following the 5/19 meeting.

Chairman Sullivan announced the following:

- The Thomas Memorial Library Foundation has agreed to a capital campaign, raising private funds for the library project
- Congratulation to George William Baker, age 101, who was presented with the Boston Post Cane at a presentation at town hall 3/24/2014.
- The newly-formed ad-hoc Senior Citizens Advisory Commission held their first meeting 4/10/2014
- Congratulations to the Recycling Committee for receiving an eco-Excellence Award from ecomaine for their commitment to recycling.
- Thank you to the town manager for the newly-designed agenda mast head.

Councilor Wagner arrived 7:02 p.m.

#### **Finance Committee Report**

Finance Chairman James Walsh reminded everyone of the finance committee budget workshop with the school board on Wednesday, 4/16, 7:00 p.m. town hall council chambers. Congratulations to the town for obtaining a AAA, increased from AA+, credit rating from Standard & Poor's for general obligation bonds.

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

None

#### **Town Manager's Monthly Report**

Mr. McGovern noted four deaths; Herb Strout, John & Doris Rich, Robert "Bob" Williams. Construction season is underway with various projects around town including paving, water mains and improvements within

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Fort Williams Park. Household Hazardous & E-Waste Collection Day is 5/10, 9-1 at the recycling center. Medical drop off is 4/26, 10-2, at the public safety building. Online maps will be available 4/16.

**Review of Draft Minutes of Previous Meeting March 10, 2014**

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

ORDERED, the Cape Elizabeth Town Council approves the minutes from the March 10, 2014 meeting as amended; page 4 Lucas Homicz, second sentence should read, “has never seen unsafe act...”

(7 yes) (0 no)

**Item # 52-2014          Consideration of proposed amendments to Chapter 12 of the Revised Code of Ordinances**

**Public Hearing Proposed Ordinance Amendment to Ban Smoking at Fort Williams Park**

Intro – Councilor Ray, Chairman Ordinance Committee

Present – William Brownell, Chairman Fort Williams Advisory Commission

Chairman Sullivan opened the hearing to public comments at 7:14 p.m.

Jana Thompson, Opportunity Alliance and Healthy Maine Partnership

Ms. Thompson encouraged the adoption of this ordinance to promote healthy communities, joining several other towns adopting similar ordinances in public spaces.

Scott Clark, 6 Brentwood Road

Mr. Clark stated he is a smoker and said there is “nothing wrong with the messaging” particularly to children. He asked why e-cigarettes are excluded since there is “no scientific evidence” they are harmful to secondhand smoke.

Al Romano, 4 Fernwood Lane

Mr. Romano is “embarrassed” the town is considering the ordinance, it’s impractical. Alternate solution is to ban smoking at public events at the park when there is a “greater density.”

Emily Bugbee, 31 Cottage Farms Road

Ms. Bugbee favors the proposal for health reasons, promoting health and wellness.

Bill Brownell, Chairman Fort Williams Advisory Commission

Mr. Brownell, on behalf of the commission, urged the council to adopt the proposal. The proposal is a result from litter in the park (e.g. along the Cliff Walk, at the bus drop off), secondhand smoke, and promotes providing a safe and healthy environment.

After hearing no further comments the hearing was closed at 7:25 p.m.

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

ORDERED the Cape Elizabeth Town Council adopts the recommendation of the Ordinance Committee to amend Chapter 12 Miscellaneous Offenses Article IV. Fort William Park Regulations Sec. 12-4-9 Smoking Prohibited and Sec. 12-4-10 Penalty.

**Article IV. Fort Williams Park Regulations.**

**Sec. 12-4-9 Smoking Prohibited.** Smoking in the Park is prohibited.

Smoking means the lighting, inhaling, exhaling, burning or carrying of any cigar, cigarette, pipe, other tobacco product or e-cigarette, or carrying or having in one's possession any lighted object giving off smoke from tobacco or any other substance that emits smoke that is customarily used and intended for inhalation into the lungs.

Tobacco or tobacco product means any form of tobacco, including but not limited to cigarettes, cigars, pipe tobacco, chewing tobacco or snuff, and any material or device used in the smoking, chewing or other form of tobacco consumption, including but not limited to cigarette papers or pipes.

**Sec. 12-4-9- 10 Penalty.** Any person found to have violated any provision in Article IV shall be punishable by a fine not to exceed Two Hundred Fifty (\$250.00) per day of infraction to be recovered for the use of the Town. The Town shall also recover any fee that would have been assessed if a proper and timely permit had been granted. (Amended eff. 08/08/13)

Moved by Katharine N. Ray and Seconded by James R. Wagner

ORDERED, the Cape Elizabeth Town Council amends the motion to the first paragraph of Sec. 12-4-9 Smoking Prohibited as follows:

**Article IV. Fort Williams Park Regulations.**

**Sec. 12-4-9 Smoking Prohibited.** Smoking in the Park is prohibited.

Smoking means the lighting, inhaling, exhaling, burning or carrying of any cigar, cigarette, pipe, other tobacco product or e-cigarette, or carrying or having in one's possession any lighted object giving off smoke from tobacco or any other substance that emits smoke that is customarily used and intended for inhalation into the lungs.

(6 yes) (1 no Councilor Walsh)

Original Motion as Amended:

(6 yes) (1 no Councilor MacAuslan)

**Item # 53-2014      Consideration of Proposed Amendments to Chapter 19 of the Revised Code of Ordinances**

Intro – Victoria Volent, Chairman Planning Board

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

ORDERED, the Cape Elizabeth Town Council acknowledges receipt of the report from the Planning Board related to proposed amendments to Chapter 19 Zoning Ordinance and refers this proposal to the Ordinance Committee, see below.

Chairman Sullivan opened the item for public comments.

Maynard Murphy, 24 Pilot Point Road

Mr. Murphy urged the council to seek comparisons from the proposal to what the ordinance is now. The proposal will be easing development closer to the sea and increasing pollution to the sea.

George Foley, 9 Pilot Point Road

Mr. Foley stated the current map pushed back to the top of the bank, a comparison from what the ordinance is now should be done. If passed the proposal won't be revisited for years and things can change.

Sheila Mayberry, 30 Trundy Road

Ms. Mayberry stated the planning board did an "incredible job" with the code enforcement officer's request. She asked what happens to the ledge areas; run off pollution will increase, larger homes and developments will be built closer to the water. Compare what we have now in the wetlands to what the proposal would include. Consider adding back the language for areas with ledge and cobblestone.

Deborah Murphy, 24 Pilot Point Road

Ms. Murphy provided handouts identifying the current and proposed normal high-water lines based on the current zoning map. The current zoning map should be consulted, the proposal will allow for more building.

(7 yes) (0 no)

### **Zoning Ordinance**

#### **Normal High Water Line Zoning Amendments**

#### **SEC. 19-1-3. DEFINITIONS**

**Highest Astronomical Tide:** The elevation of the highest predicted astronomical tide, referenced to Mean Lower Low Water (MLLW) at Portland Head Light tide prediction station. This prediction is based on an adjustment from the Portland tidal station. The highest astronomical tide is based on the most recent National Tidal Datum Epoch (NTDE) as determined from time to time by the National Ocean Service, an office within the U.S. Department of Commerce, National Oceanic and Atmospheric Administration.

**Normal High Water Line :** Adjacent to inland waters, the normal high water line shall be that line which is apparent from visible markings, changes in the character of soils due to prolonged action of the water or changes in vegetation, and which distinguishes between predominantly aquatic and predominantly terrestrial land. Areas contiguous with rivers and great ponds that support non-forested wetland vegetation and hydric soils and that are at the same or lower elevation as the water level of the river or great pond during the period of normal high-water are considered part of the river or great pond. Adjacent to tidal waters, the normal high water line shall be the topographic line located at the Highest Astronomical Tide, plus three (3) vertical feet upland.

#### **SEC. 19-6-11. SHORELAND PERFORMANCE OVERLAY DISTRICT**

##### **A. Purpose**

In order to maintain safe and healthful conditions; to prevent and control water pollution; to protect spawning grounds of fish, aquatic life, bird and other wildlife habitat; to protect archaeological and historic resources; to protect freshwater and coastal wetlands; to control building sites, placement of structures and land uses; to conserve shore cover; to protect visual, as well as actual, points of access to inland and coastal waters; to conserve

natural beauty and open space; and to anticipate and respond to the impact of development in Shoreland areas, all land use activities within the Shoreland Performance Overlay District shall conform to the applicable land use standards in Sec. 19-8-2, Shoreland Performance Standards. This district is established in accordance with the provisions of 38 M.R.S.A. §435 et seq.

The Shoreland Performance Overlay District applies to all land within two hundred fifty (250) feet, horizontal distance, of the:

- normal high-water line of any great pond and the Spurwink River
- normal high water line of tidal waters;
- upland edge of a freshwater wetland and all land areas within seventy-five (75) feet, horizontal distance, of the normal high-water line of a stream. This district also applies to any structure built on, over or abutting a dock, wharf or pier, or other structure extending, or located below the normal high-water line of a water body or within a wetland. **(Effective October 15, 2009)** The Town has prepared a zoning map showing the Shoreland Performance Overlay District based on the best available information at a town wide scale. The actual boundaries of this district, however, shall be determined from a field engineering determination of the topographic line as defined above

**Item # 54-2014 Segregation of Space in Police Station**

Moved by Martha MacAuslan and Seconded by David S. Sherman, Jr.

ORDERED, the Cape Elizabeth Town Council allocates \$37,500 from the unallocated fund balance to segregate the surplus space at the police station, provide security improvements, fit out an area for the police department clerk and to repurpose the surplus space to be used by the Cape Elizabeth Historical Preservation Society while the library is removed in 2015. A determination will be made at a later date if the society and its collection and the municipal records it holds will be moved to another location after the library renovation is completed.

(7 yes) (0 no)

**Item # 55-2014 Proposed Policy for Naming of Non-school Facilities**

Intro – Councilor Ray – Establishing a naming policy is a council goal for 2014.

Moved by Katharine N. Ray and Seconded by Martha MacAuslan

ORDERED, the Cape Elizabeth Town Council established the following Policy for Naming of Non-school Facilities as presented.

(7 yes) (0 no)

**Proposed Policy for Naming of Non-school Facilities**

*It is appropriate from time to time to name municipal facilities or a portion thereof for an individual, group or other entity in recognition of significant contributions of time, talent or treasure to the Town of Cape Elizabeth.*

*The town council shall consider such designations at a regular meeting and no plaque shall be placed or official announcement made prior to a final council vote. The intent to consider any naming shall be listed on the council agenda issued prior to the meeting.*

*If there are opportunities for the naming of portions of rooms and spaces in conjunction with the construction of a new building or new facility, or for furnishings for such buildings and/or facilities, no such opportunity shall be offered until the town council shall approve a list of naming opportunities and shall approve a minimum contribution for each naming opportunity. In such instances that this is being done in conjunction with a town council authorized fundraising effort; the town council's approval of the naming opportunity shall constitute the council's final approval of the actual name. The fundraising group may decline any contribution at its sole discretion.*

**Item # 56-2014 Proposed Revisions to Fiscal Year 2014 Budget**

Intro – Mr. McGovern

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

ORDERED, the Cape Elizabeth Town Council approves the following revised appropriations to the Fiscal Year 2014 budget as recommended.

(7 yes) (0 no)

Legal and Audit Services (135)	Additional \$35,000 revising the budget from \$57,000 to \$92,000
Human Services (410)	Additional \$11,600 revising the budget from \$50,400 to \$62,000
Intergovernmental Assessments (710)	Reduce \$46,600 revising the budget from \$101,598 to \$54,998

**Item # 57-2014 Appointment of Attorneys and Auditors**

Intro – Councilor Sherman, Member External Professional Services Study Group

Moved by James R. Wagner and Seconded by David S. Sherman, Jr.

ORDERED, the Cape Elizabeth Town Council approves the recommendations of the external professional services study group, to affirm the continuing appointment of Thomas G. Leahy as town attorney and the firm of Monaghan Leahy LLP as the town's primary legal service provider, to appoint Patricia M. Dunn and the firm of Jensen Baird Gardner & Henry as additional legal counsel on employment law issues, to appoint Durward W. Parkinson and the firm of Bergen Parkinson as primary alternative counsel when Monaghan Leahy has conflicts, to affirm the continuing appointment of Bruce A. Coggeshall and the firm of Pierce Atwood as bond counsel, to appoint Maurice A. Selinger, III as a continuing legal counsel on affordable housing issues and to authorize the town council chair in consultation with the town manager to procure any other additional legal counsel needed prior to a meeting with the understanding that any continuing appointment of any attorney serving the town shall be done by the full town council. All appointed attorneys and legal counsel serve at the will of the town council.

To reappoint Runyon Kersteen Ouellette as town auditors for Fiscal Years 2014, 2015 and 2016 upon such terms as may be mutually agreeable. The engagement letter for each year shall be signed by the town council chair and the town manager at amounts not to exceed budgeted amounts.

(7 yes) (0 no)

**Item # 58-2014 Appointment to Zoning Board of Appeals**

Intro – Councilor Jordan, Chairman Appointments Committee

Moved by Caitlin R. Jordan and Seconded by James R. Wagner

ORDERED, the Cape Elizabeth Town Council approves the recommendation of the Appointments Committee to appoint Aaron Mosher, 6 Leighton Farm Road to an unexpired term on the Zoning Board of Appeals effective immediately extending to 12/31/2015.

(7 yes) (0 no)

**Item # 59-2014          Appointments to Firing Range Committee**

Moved by Martha MacAuslan and Seconded by David S. Sherman, Jr.

ORDERED, the Cape Elizabeth Town Council appoints Caitlin R. Jordan and James R. Wagner to serve as members from the town council on the Firing Range Committee, one of whom shall serve as chairman to be determined by the committee.

(7 yes) (0 no)

**Item # 60-2014          Appointments of Election Clerks**

Intro – Town Clerk Debra Lane

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

ORDERED,

The Cape Elizabeth Town Council confirms the nomination from the Town Clerk for Anne E. Swift-Kayatta to serve as the chairman of the registration appeals board until April 14, 2018 and until a successor is sworn.

The Cape Elizabeth Town Council approves the recommendation of the Town Clerk for Sharon Gower to continue as Warden and Jacqueline Coy and Debra Lane to serve as Deputy Wardens and until successors are sworn.

The Cape Elizabeth Town Council approves the following list of residents who may be considered to serve as election clerks for the Town of Cape Elizabeth for a period of 2 years and until successors are sworn.

**Democrat**

Pamela Anderson  
Lillian Bates  
Elizabeth Brogan  
Janice Chapman  
Margaret Davenport  
Janet Hannigan  
Christine Iyer  
Carol Anne Jordan  
Karen Kerrigan  
Carol Murray  
Claudia Racki  
Linda Winker

**Republican**

Henry Adams  
Scott Berry  
Beverly Brooking  
Deborah Bump  
Marguerite Hallowell

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Debra Harney  
Karen Holmes  
Audrey Jordan  
Kathy Maxwell  
Maureen McCarthy  
Ed Nadeau  
Ellen Nadeau

**Unenrolled Voters**  
Kris Murray  
Teresa Olsen

(7 yes) (0 no)

**Item # 61-2014      Approval of Warrant for the June 10, 2014 School Budget Vote**

Intro – Town Clerk Debra Lane

Moved by David S. Sherman, Jr. and Seconded by James R. Wagner

ORDERED, the Cape Elizabeth Town Council approves the municipal warrant for the June 10, 2014 school budget vote as presented.

(7 yes) (0 no)

**County of Cumberland, ss.**

**To Neil R. Williams, a constable of Cape Elizabeth. You are hereby directed to notify the voters of Cape Elizabeth of the election described in the warrant.**

**School Budget Validation Referendum**

YES    Do you favor approving the Town of Cape Elizabeth school budget for the upcoming school  
NO    year that was adopted at the latest school budget meeting of the Town Council?

**The following is a non-binding expression of opinion for the consideration of the School Board and Town Council.**

I find the school budget adopted at the May 12, 2014 Town Council's school budget meeting to be:  
TOO HIGH  
ACCEPTABLE  
TOO LOW

Election to be held on Tuesday, June 10, 2014, at the Cape Elizabeth High School Gymnasium.

Polls open at 7:00 a.m. and close at 8:00 p.m.



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Absentee Ballot Processing: Absentee ballots will be processed at 9:00 a.m. Monday, June 9, 2014 in the William H. Jordan Conference Room at Town Hall. If properly requested, inspection time is 9:00 – 10:00 a.m. Absentee ballots will be processed on Election Day, on the hour every hour until close, beginning at 7:00 a.m. The Cape Elizabeth Town Democratic Committee, the Cape Elizabeth Town Republican Committee and State Green Independent Party have also been notified, in writing, of the absentee ballot process.

The Registrar of Voters is available to accept new registrations and corrections to the voter list on Election Day at the polls and prior to Election Day at Town Hall, 320 Ocean House Road. Town Hall is open Mondays 7:30 a.m. - 5:00 p.m. and Tuesday - Friday, 7:30 a.m. - 4:00 p.m. Proof of residency and identity is required.

**Item # 62-2014      Amendment to the Personnel Code**

Intro – Mr. McGovern

Moved by James T. Walsh and Seconded by Martha MacAuslan

ORDERD, the Cape Elizabeth Town Council approves the amendment to Chapter 3 Personnel Code as recommended, effective immediately.

(7 yes) (0 no)

**3-2-11 B. Fitness**

The Town shall provide up to ~~\$150.00~~ \$270.00 per calendar year to reimburse any employee who works a regular schedule of at least 20 hours per week for a fitness class, health club membership, a smoking cessation or weight loss program or for any other bona fide program leading to better fitness and health. Reimbursement shall be upon Town receipt of a paid invoice or copy of a cancelled check. (Amended Eff 11/10/2007)

**Citizens Discussion of Items Not on the Agenda**

None

**Adjournment**

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

ORDERED, the Cape Elizabeth Town Council adjourns at 8:53 p.m.

(7 yes) (0 no)

Respectfully Submitted,

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Debra M. Lane, Town Clerk

