



Cape Elizabeth Town Council Minutes

Monday, August 11, 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 the Town Council Chairman Jessica Sullivan

Roll Call by the Town Clerk

All members were present.

The Pledge of Allegiance to the Flag

Town Council Reports and Correspondence

Councilor Sherman, a participant in the Beach to Beach Road Race, thanked the police, fire and public works departments and citizen volunteers for their work on the race.

Councilor Walsh also participated in the Beach to Beacon, “hats off” to the volunteers, town staff and race workers for a successful event.

Chairman Sullivan described the Beach to Beacon as an “organizational masterpiece.” Thank you to everyone for their work.

Mr. McGovern thanked and acknowledged everyone who contributed to this great event. There were a total of 6488 runners, 674 from Cape Elizabeth.

Town Clerk Debra Lane reminded citizens that nomination papers for town council and school board are available. The deadline to submit papers is Friday, September 5th at 4:00 p.m.

Finance Committee Report

Councilor Walsh stated the town is one month into the new fiscal year which began July 1st. Monthly financial reports are in the council packet.

Citizen Opportunity for Discussion of Items Not on the Agenda

None

Review of Draft Minutes of Previous Meetings

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

ORDERED, the Cape Elizabeth Town Council approves the minutes of the July 14, 2014 Town Council meeting as presented.

(6 yes) (0 no) (1 abstention Councilor MacAuslan absent 7/14)

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Item # 108-2014 Ocean House Pizza Annual License Renewals

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

ORDERED, the Cape Elizabeth Town Council approves the renewal malt and vinous liquor licenses for C.A.G. Pizza Inc dba Ocean House Pizza at 337 Ocean House Road.

(7 yes) (0 no)

Item # 109-2014 Normal High Water Mark and Related Amendments

Public Hearing: Definition of Normal High Water Mark in the Zoning Ordinance

Intro – Councilor Ray, Chairman Ordinance Committee

Chairman Sullivan opened the hearing to public comments at 7:12 p.m.

Bill Desena, 11 Wainwright Drive, has no objection to the proposed changes unless the changes deny or diminish property rights.

Nancy Ahlsen, 98 Wells Road, is concerned how far up the line goes to her property. Do the changes interfere with property rights? Will the town send someone to show the lines?

Richard Bryant, 55 Spurwink Avenue, urges the council to not adopt the proposed amendment without modification. The proposal “retreats” from the current level of protection from the shoreland performance overlay district.

Dr. Frederick Aronson, 27 Lawson Road, asked if the changes will protect the environment, what happens to property rights, will real estate taxes be reduced if property rights are reduced.

David Wennberg, 21 Angell Point Road, supports using the astronomical high tide but is opposed to the +3 feet.

Deborah Murphy, 24 Pilot Point Road, tried to show the effects using Google Earth however she said the lines were off so the information was inaccurate.

George Foley, 9 Pilot Point Road, asked what the current and changed lines would look like. Mr. Foley provided the council with pictures and a CD of Surfside Avenue 10/29/2012, 12/21/2012 and 3/7/2013.

Sheila Mayberry, 30 Trundy Road, urged the town council to workshop the subject to better understand the effects of the rocky ledge and how the proposal may impact inland properties.

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Maynard Murphy, 24 Pilot Point Road, asked the council to require a map comparing current and proposed lines.

Justin Strunk, 6 Tides Edge Road and 12 Tides Edge Road (rental property), stated the proposal is “one size fits all;” changes should take into consideration the diverse coastline.

Jay Chatmas, 5 Wabun Road, spoke as a prior member of the Zoning Board of Appeals, stating the current ordinance is “confusing and contradictory.” Mr. Chatmas agrees with the suggestion of Ben McDougal, CEO for a concrete definition of the high water mark, however not including the proposed +3.

After hearing no further comments the hearing was closed at 7:38 p.m.

Overview of Proposed Changes - Maureen O’Meara, Town Planner

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

ORDERED, the Cape Elizabeth Town Council approves the proposed changes to Chapter 19 Zoning Ordinance regarding the normal high water mark and related amendments as presented.

(5 yes) (2 no Councilors Jordan and Wagner)

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 # 110-2014 Thomas Memorial Library Renovation Project Presentation

Intro – Councilor MacAuslan, Chairman Thomas Memorial Library Building Committee
Overview of Project – Dick Reed and Cynthia Loebenstein, Reed & Co.
Also present Derek Converse

Moved by Martha MacAuslan and Seconded by Katharine N. Ray

ORDERED, the Cape Elizabeth Town Council thanks the Thomas Memorial Library Building Committee for their report and approves the building plan as recommended by the committee subject to a vote of the citizens of Cape Elizabeth on November 4, 2014.

(7 yes) (0 no)

Item # 111-2014 Thomas Memorial Library Renovation Proposed Resolution and Vote

Moved by James T. Walsh and Seconded by Martha MacAuslan

ORDERED, the Cape Elizabeth Town Council approves the following proposed resolution regarding the proposed renovation to the Thomas Memorial Library.

(7 yes) (0 no)

**TOWN OF CAPE ELIZABETH, MAINE
TOWN COUNCIL VOTE
AUTHORIZING EXPENDITURE OF UP TO \$4,000,000
FOR RENOVATION AND EXPANDING THE THOMAS MEMORIAL LIBRARY
AND THE ESTABLISHMENT OF A \$200,000 CONTINGENCY FUND
FOR UNANTICIPATED EXPENSES OF THE PROJECT AND AN ADDITIONAL SUM OF UP TO
\$150,000 FOR PROVIDING TEMPORARY LIBRARY FACILITIES DURING THE RENOVATION
PROJECT, THE ACCEPTANCE OF CONTRIBUTIONS FROM THE THOMAS MEMORIAL LIBRARY
FOUNDATION AND THE EXPENDITURE OF THE SAME ON THE PROJECT
AND THE ISSUANCE OF UP TO \$4,000,000 IN BONDS
TO FINANCE A PORTION OF SUCH EXPENDITURES**

VOTED: That the Cape Elizabeth Town Council hereby authorizes the expenditure of up to \$4,000,000 for renovating and expanding the Thomas Memorial Library (the “Project”) plus an additional \$200,000 in a contingency fund for unanticipated expenditures of the project and an additional sum of up to \$150,000 for providing temporary library facilities during the renovation project, and for costs and expenses related thereto.

VOTED: That the Town accept contributions from the Thomas Memorial Library Foundation in amounts up to \$500,000 and expend such contributions for furnishings, fixtures and equipment for the project.

VOTED: Pursuant to the provisions of Section 5772 of Title 30-A of the Maine Revised Statutes and all other authority thereto enabling, and in order to provide funds for the library project authorized by the foregoing votes and the costs and expenses related thereto, the Town Council of the Town of Cape Elizabeth hereby authorizes the Treasurer to borrow on behalf of the Town up to \$4,000,000 in principal amount.

VOTED: That in order to effect the borrowing heretofore authorized, the Treasurer be and hereby is authorized to prepare, issue and sell notes or bonds of the Town in the aggregate principal amount not to exceed \$4,000,000, such notes or bonds to be signed by the Treasurer, countersigned by the Chairman of the Town Council and attested by the Town Clerk.

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VOTED: The form, maturity, interest rate and other details of said notes or bonds shall be as determined by the Treasurer and the Chairman of the Town Council by their execution thereof, but shall have a final maturity not later than 20 years from date of issuance, and shall not be inconsistent with the provisions hereof. Such notes or bonds and any notes issued in anticipation thereof may be issued as callable notes or bonds in the discretion of the Treasurer and Chairman of the Town Council.

VOTED: That the Treasurer and the Chairman of the Town Council are hereby authorized on behalf of the Town to borrow money in anticipation of the issuance of said notes or bonds by the issuance and sale of notes and renewal notes in anticipation thereof, such notes and renewal notes to be in such form, have such maturity and bear interest at such rate as may be approved by the Treasurer and Chairman of the Town Council by their execution thereof.

VOTED: That the Town covenants and certifies that no part of the proceeds of the issue and sale of the notes and bonds authorized to be issued by the foregoing resolutions (including any notes and bonds in renewal thereof) shall be used, directly or indirectly, to acquire any securities or obligations, the acquisition of which would cause such notes or bonds to be "arbitrage bonds" within the meaning of Section 148 of the Internal Revenue Code of 1986, as amended (the "Code").

VOTED: That the Treasurer of the Town be authorized to covenant on behalf of the Town and for the benefit of the holders of the notes and bonds, that the Town will take whatever steps, and refrain from taking any action, as may be necessary or appropriate to ensure that interest on the notes and bonds will remain exempt from federal income taxes.

VOTED: That said notes and bonds are hereby designated "qualified tax exempt obligations" under Section 265(b)(2) of the Code.

VOTED: That this Bond Resolution shall constitute the Town's official declaration of intent for purposes of Section 1.150 of the Internal Revenue Regulations, and to the extent that any costs of the library project are paid by the Town from the general fund or other fund, such payments may be reimbursed from the proceeds of said notes or bonds.

VOTED: That the notes and bonds authorized by this Bond Resolution may, if so determined by the Treasurer, be combined with any other notes or bonds duly authorized by the Town of Cape Elizabeth and together issued as a single bond issue in the aggregate amount of the notes and bonds so authorized.

VOTED: That during the term any of the Bonds are outstanding, the Treasurer be and hereby is authorized to issue and deliver refunding bonds to refund some or all of the Bonds then outstanding, and to determine the date, form, interest rate, maturities (not to exceed 20 years from the date of issuance of the original Bonds) and all other details of such refunding bonds, including the form and manner of their sale and award. The Treasurer be and hereby is further authorized to provide that any of such refunding bonds hereinbefore authorized be made callable, with or without premium, prior to their stated date(s) of maturity, and each refunding bond issued hereunder shall be signed by the Treasurer and the Chairman of the Town Council, and shall be sealed with the seal of the Town, attested to by its Clerk.

VOTED: That the Treasurer is authorized to negotiate, execute, and deliver, in the name of and on behalf of the Town such contracts, agreements, and other documents, Bond Purchase Agreements, instruments and certificates as may be necessary or appropriate as determined and approved by the Treasurer in connection with the issuance of the Bonds, which documents shall be in such form and contain such terms and conditions, not inconsistent herewith, as may be approved by the Treasurer such approval to be conclusively evidenced by his execution thereof.

VOTED: That the Treasurer be and hereby is authorized to engage Moors & Cabot, Inc. as financial advisor to the Town in connection with the issuance and sale of the Bonds.

VOTED: That the Treasurer be and hereby is authorized to select the underwriter for the Bonds heretofore authorized and the Treasurer be and hereby is authorized and empowered to execute and deliver such contracts or agreements as may be necessary or appropriate in connection therewith.

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VOTED: That the Treasurer be and hereby is authorized to prepare, or cause to be prepared, a Preliminary Official Statement and an Official Statement for use in the offering and sale of the Bonds heretofore authorized, such Preliminary Official Statement and Official Statement to be in such form and contain such information as may be approved by the Treasurer, with the advice of the bond counsel for the Town, and that the use and distribution of the Preliminary Official Statement and the Official Statement in the name of and on behalf of the Town in connection with offering the Bonds for sale be and hereby is approved.

VOTED: That the Treasurer be and hereby is authorized to select the registrar, paying agent and transfer agent (the "Transfer Agent") for the Bonds heretofore authorized and to execute and deliver such contracts and agreements as may be necessary or appropriate to secure their services.

VOTED: That the Bonds heretofore authorized shall be transferable only on the registration books of the Town kept by the Transfer Agent, and said Bonds of one maturity may be exchanged for an equal aggregate principal amount of the bonds of the same maturity (but not of other maturity) in minimum denominations of \$5,000 and any integral multiple in excess thereof (or such other minimum denomination as the Treasurer shall approve) upon surrender thereof at the principal office of the transfer agent, with a written instrument of transfer satisfactory to the Transfer Agent duly executed by the registered owner or his attorney duly authorized in writing. Upon each exchange or transfer of a bond the Town and the Transfer Agent shall make a charge sufficient to cover any tax, fee or any other governmental charge required to be payable with respect to such exchange or transfer, and with respect to such exchange or transfer, and subsequent to the first exchange or transfer, the cost of preparing new bonds upon exchanges or transfer thereof to be paid by the person requesting the same.

VOTED: That the Treasurer be and hereby is authorized to undertake all acts necessary to provide for the issuance and transfer of such Bonds heretofore authorized in book-entry form pursuant to the Depository Trust Company Book-Entry Only System, as an alternative to the provisions of the foregoing paragraph above regarding physical transfer of Bonds, and the Treasurer be and hereby is authorized and empowered to enter into a Letter of Representation or any other contract, agreement or understanding necessary or, in his opinion, appropriate in order to qualify the Bonds for and participate in the Depository Trust Company Book-Entry Only System.

VOTED: That the Treasurer and Chairman of the Town Council from time to time shall execute such Bonds as may be required to provide for exchanges or transfers of Bonds as heretofore authorized, all such Bonds to bear the original signature of the Treasurer and Chairman of the Town Council.

VOTED: That the officers executing the Bonds be and hereby are individually authorized to covenant, certify and agree, on behalf of the Town, for the benefit of the holders of such Bonds, that the Town will file any required reports, make any annual financial or material event disclosure, and take any other action that may be necessary to insure that the disclosure requirements imposed by Rule 15c2-12 of the Securities and Exchange Commission, if applicable, are met.

VOTED: That the Treasurer, Chairman of the Town Council and Clerk and other proper officials of the Town be, and hereby are authorized and empowered in its name and on its behalf to do or cause to be done all such acts and things, not inconsistent herewith, as may be necessary or desirable in order to effect the issuance, sale and delivery of the Bonds hereinabove authorized.

VOTED: That if any of the officers of the Town who have signed or sealed the Bonds shall cease to be such officers before the Bonds so signed and sealed shall have been actually authenticated or delivered by the Town, such Bonds nevertheless may be authenticated, issued, and delivered with the same force and effect as though the person or persons who signed or sealed such Bonds had not ceased to be such officer; and also any such bonds or notes may be signed and sealed on behalf of the Town by those persons who, at the actual date of the execution of such Bonds, shall be the proper officers of the Town, although at the nominal date of such Bonds any such person shall not have been such officer.

VOTED: That if the Treasurer, Chairman of the Town Council or Clerk are for any reason unavailable to approve and execute the Bonds or any other documents necessary or convenient to the issuance, execution and delivery of the Bonds, the person or persons then acting in any such capacity, whether as an assistant, a deputy, or otherwise, is authorized to act for such official with the same force and effect as if such official had performed such act.

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VOTED: That the investment earnings on the proceeds of the Bonds, if any, and the excess proceeds of the Bonds (including premium), if any, be and hereby are authorized to be used to pay issuance costs for the Bonds, interest during construction, and debt service on the Bonds, in that order of priority.

VOTED: The Bonds herein authorized shall be either sold at public sale upon sealed bid, or by negotiated sale in such manner as the Treasurer deems appropriate and in the best interest of the Town, and the Treasurer be and hereby is authorized to provide that any of the Bonds herein authorized be made callable, with or without premium, prior to their maturity.

VOTED: That the question of incurring the expenditures authorized by the foregoing votes be submitted to the voters of the Town of Cape Elizabeth in a referendum election on November 4, 2014 and that the foregoing votes authorizing the expenditures shall not be effective unless approved by the voters in such referendum election, and if not so approved, the bonds and notes heretofore authorized to fund such expenditures shall not be issued.

Item # 112-2014 Thomas Memorial Library Renovation Proposed Ballot Question

Moved by Martha MacAuslan and Seconded by Katharine N. Ray

ORDERED, the Cape Elizabeth Town Council approves the proposed ballot question for the November 4, 2014 vote on the proposed renovation to the Thomas Memorial Library as presented.

(7 yes) (0 no)

THOMAS MEMORIAL LIBRARY

Shall the expenditure recommended by the Town Council of up to Four Million Two Hundred Thousand Dollars (\$4,200,000), for renovations to the Thomas Memorial Library, plus an additional \$150,000 for constructing temporary library facilities during the renovation, and the expenditure of such additional funds on the project as may be contributed by the Thomas Memorial Library Foundation and accepted by the Town for that purpose, be approved?

Yes

No

Please place a cross [X] or check [✓] in the appropriate box.

EXPLANATION

On August 11, 2014, the Town Council approved expenditure of up to Four Million Dollars (\$4,000,000), plus an additional contingency amount of \$200,000 for unanticipated expenses for renovations and expansion of the Thomas Memorial Library, together with an additional \$150,000 for providing temporary library facilities during the renovation, all subject to a referendum vote by the citizens of the Town of Cape Elizabeth. The Town Council also voted to accept contributions from the Thomas Memorial Library Foundation of up to \$500,000 and to use such funds to pay for furnishings, fixtures and equipment for the Library. A prior more expensive renovation project was not approved by the voters. Funding for this construction project shall be by the issuance of a municipal bond in the amount of approximately \$4,000,000, contributions by the Thomas Memorial Library Foundation and, to the extent necessary, other funds available to the Town.

Item # 113-2014 Approval of Warrant of November 4, 2014

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

ORDERED, the Cape Elizabeth Town Council approves the Municipal Election Warrant for Tuesday, November 4, 2014 as amended to include the vote for Portland Water District Trustee.

(7 yes) (0 no)

**MUNICIPAL ELECTION
WARRANT
TUESDAY, NOVEMBER 4, 2014**

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.

Voting for two members of the Town Council to serve a three year term until December 11, 2017.

Voting for two members of the School Board to serve a three year term until December 11, 2017.

Voting for one member of the Portland Water District Trustees for a 5 year term.

Citizen Vote on Proposed Library Project

Shall the expenditure recommended by the Town Council of up to Four Million Two Hundred Thousand Dollars (\$4,200,000), for renovations to the Thomas Memorial Library, plus an additional \$150,000 for constructing temporary library facilities during the renovation, and the expenditure of such additional funds on the project as may be contributed by the Thomas Memorial Library Foundation and accepted by the Town for that purpose, be approved?

YES NO

Election to be held on Tuesday, November 4, 2014, at the Cape Elizabeth High School Gymnasium.

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

Absentee Ballot Processing:

Absentee ballots will be processed at 9:00 a.m. Monday, November 3, 2014 in the William H. Jordan Conference Room at Town Hall. If 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 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.

Municipal Officers of Cape Elizabeth, Maine

Dated at Cape Elizabeth this 11th day of August 2014.

A true copy. Attest: _____ Constable

Attest: _____ Town Clerk

Citizens Discussion of Items Not on the Agenda

None

Item # 114 Update on Collective bargaining negotiations with the Teamsters representing Public Works Employees.

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

ORDERED, the Cape Elizabeth Town Council enters into executive session at 9:01 p.m. per 1 MRSA §405 6 D to discuss the status of collective bargaining for a successor agreement with Local 340 of the Teamsters representing public works staff.

(7 yes) (0 no)

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

ORDERED, the Cape Elizabeth Town Council exits executive session and reenters public session at 9:19 p.m.

Adjournment

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

ORDERED, the Cape Elizabeth Town Council adjourns at 9:19 p.m.

(7 yes) (0 no)

Respectfully Submitted,

Debra M. Lane, Town Clerk