



## **Cape Elizabeth Town Council Minutes**

**Monday, September 8, 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**

None

#### **Finance Committee Report**

Finance Chairman Walsh noted the pay classification plan Item #118.

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

None

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

Mr. McGovern provided a written report of paving and drainage projects for this year. Thank you to Bob Malley, Director of Public Works for his work coordinating these projects.

Elizabeth B. Peterson passed away August 26<sup>th</sup> at the age of 96. Mrs. Peterson was active in the garden club, historical society, a volunteer at the Portland Head Light and the prime author of the history of Cape Elizabeth entitled Past to Present. She will be missed.

#### **Review of Draft Minutes of Previous Meetings – August 11, 2014 Town Council Meeting**

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

ORDERED, the Cape Elizabeth Town Council approves the minutes of the meeting held August 11, 2014 as presented.

(7 yes) (0 no)

#### **Item # 115 Update from the Firing Range Committee**

Chairman Sullivan opened the item for public comments.

Edward Nadeau, 9 Apple Tree Lane stated people have the right to guns and people have the right to peace and quiet. Mr. Nadeau is opposed to granting the exception and requests a noise and safety assessment.

Eric Frehm, Yarmouth asked what does the town council plan to use for a noise standard.

James Richard, 9 Cross Hill Road is opposed to granting the exception and requests a safety inspection.

John Baldwin, 47 Cross Hill Road is opposed to granting the exception and encouraged additional time for the two groups to meeting and find “middle ground.”

Tammy Walter, 1095 Sawyer Road, President of the Spurwink Rod & Gun Club  
Ms Walter encouraged the council to pass the exception so that the club can begin to make improvements. She also stated the safety inspection has been delivered.

Ralph Romano, 12 Tiger Lily Lane stated the provisions of the new ordinance makes a club “go around in circles;” the club needs to work toward shot containment, can’t get building permit without license, and need license for a permit. The oversight in the ordinance needs to be addressed. The club should be given “a reasonable chance to perform.” The town should be responsible for a safety assessment.

Cathy Kline, 66 Cross Hill Road, Member Firing Range Committee  
Ms Kline said she didn’t believe the neighbors meant to “get in the way” of the grant to the state. The neighbors are concerned about shot containment and opening the club to the public.

Richard Moran, 62 Cross Hill Road asked the council what is the “improved” outcome if the exception is granted.

Intro – Councilor Wagner, Chairman Firing Range Committee

The genesis of the request for exception is a timing issue, an attempt to commence construction this fall if the firing range committee deems it appropriate.

The ordinance requires a registration and application process. The ordinance permits the town council to grant exceptions on the basis of hardship and allows phased applications.

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

ORDERED, the Cape Elizabeth Town Council approves the recommendation of the Firing Range Committee that the Town Council grant an exception to the Spurwink Rod & Gun Club pursuant to Article XIII Sec. 24-13-1, as follows: Notwithstanding Article IX, Sec. 24-9-1 the Firing Range Committee, in its discretion, has the authority to grant extensions to a firing range in order for such firing range to complete registration.

(7 yes) (0 no)

Pursuant to Sec. 24-13-1 Exceptions are required in this individual case;

- 1) Result in hardship
- 2) The hardship results from an application of the Ordinance of which the goal is shot containment
- 3) The hardship related specifically to the Spurwink Rod & Gun Club which predates the adoption of the ordinance
- 4) The hardship was not self-induced or self-created following the April 2014 effective date of this Ordinance
- 5) The hardship is peculiar to the Spurwink Rod & Gun Club as it’s the only range in Cape Elizabeth

Pursuant to Sec. 24-13-2 Additional Findings

- 1) There are unique conditions pertaining to the Spurwink Rod & Gun Club because of its 50+ year history and topography being adjacent to a densely populated area of Cape Elizabeth
- 2) A literal interpretation of the provisions of this Ordinance would deprive the applicant of its rights to operate an existing shooting range facility because the Ordinance requires shot containment which Spurwink Rod & Gun Club is not yet able to achieve because of its current configuration

- 3) The requested exception will not materially affect the safety of surrounding neighborhoods or the general public welfare as the exception is drafted to enhance the safety of the surrounding neighborhoods and general public
- 4) The exception requested is the minimum needed to allow continued use of the Spurwink Rod & Gun Club. If literally interpreted the shooting range could be padlocked because shot containment is not achieved by the 90 day registration requirement. This exception allows the shooting range to continue improvements to achieve shot containment.

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

ORDERED, the Cape Elizabeth Town Council approves the recommendation of the Firing Range Committee that the Town Council grant an exception to the Spurwink Rod & Gun Club pursuant to Article XIII Sec. 24-13-1. Notwithstanding Article IX, Sec. 24-9-1 the Firing Range Committee, in its discretion, has the authority to grant extensions to a firing range in order for such firing range to complete registration.

(7 yes) (0 no)

Moved by David S. Sherman, Jr. and Seconded by Caitlin R. Jordan

ORDERED, the Cape Elizabeth Town Council pursuant to Sec. 24-13-1 and Sec. 24-13-2 grants the exception to the Spurwink Rod & Gun Club as follows;

Pursuant to Sec. 24-13-1 Exceptions are required in this individual case;

- 1) Result in hardship
- 2) The hardship results from an application of the Ordinance of which the goal is shot containment
- 3) The hardship related specifically to the Spurwink Rod & Gun Club which predates the adoption of the ordinance
- 4) The hardship was not self-induced or self-created following the April 2014 effective date of this Ordinance
- 5) The hardship is peculiar to the Spurwink Rod & Gun Club as it's the only range in Cape Elizabeth

Pursuant to Sec. 24-13-2 Additional Findings

- 1) There are unique conditions pertaining to the Spurwink Rod & Gun Club because of its 50+ year history and topography being adjacent to a densely populated area of Cape Elizabeth
- 2) A literal interpretation of the provisions of this Ordinance would deprive the applicant of its rights to operate an existing shooting range facility because the Ordinance requires shot containment which Spurwink Rod & Gun Club is not yet able to achieve because of its current configuration
- 3) The requested exception will not materially affect the safety of surrounding neighborhoods or the general public welfare as the exception is drafted to enhance the safety of the surrounding neighborhoods and general public
- 4) The exception requested is the minimum needed to allow continued use of the Spurwink Rod & Gun Club. If literally interpreted the shooting range could be padlocked because shot containment is not achieved by the 90 day registration requirement. This exception allows the shooting range to continue improvements to achieve shot containment.

Notwithstanding Article VIII, Sec. 24-8-1, the Code Enforcement Officer may approve grading, building, or other improvement permits, prior to the submission of a complete application and approval of a license if the Spurwink Rod & Gun Club provides access at reasonable times for a range safety evaluation to be performed at the request and expense of the Town of Cape Elizabeth.

(7 yes) (0 no)

It was a consensus of the town council to take Item ##117 and 122 out of order.

### **Item # 117 Use of Facilities Report**

Intro – Chairman Sullivan

Presentation – Greg Marles, Director of Facilities and Transportation

Mr. Marles provided a year’s worth of data, tracking the number of reservations for 7 buildings (town and school). The data excludes the use of fields.

There were a total of 8491 reservations, a monthly average of 771.

No action was taken.

### **Item # 122 Roosters**

Chairman Sullivan opened the item for public comments.

Crystal Kennedy, 17 Farm Hill Road, Owner of “Elvis” the Rooster

The Kennedy’s have “taken measures to appease the neighbors” who complain about the crowing from Elvis including letting him out later in the morning and insulating the coop.

Joe Gaja, 15 Farm Hill Road has chickens and gave away a rooster. The homes on Farm Hill Road are close and the crowing noise is a nuisance. Roosters should be banned on small lots.

Patrick Kennedy, 17 Farm Hill Road, Owner of “Elvis” the Rooster

The Kennedy’s have “taken measures to appease the neighbors” who complain about the crowing from Elvis including letting him out later in the morning and insulating the coop. Elvis has quieted down during the day.

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

ORDERED, the Cape Elizabeth Town Council refers to the Ordinance Committee a review of the regulation of roosters.

(6 yes) (1 no C. Jordan)

### **Item # 116 Status Report on Short Term Rentals**

Intro – Mr. McGovern

Presentation – Ben McDougal, Code Enforcement Officers

Moved by Katharine N. Ray and Seconded by Martha MacAuslan

ORDERED, the Cape Elizabeth Town Council acknowledges receipt of the Short Term Rental Permits Status Report dated August 29, 2014. Thank you to staff for preparing the survey and gathering the data.

(7 yes) (0 no)

**Item # 118 Pay Classification Plan**

Intro – Councilor Walsh, Chairman Finance Committee and Mr. McGovern

Moved by Katharine N. Ray and Seconded by Martha MacAuslan

ORDERED, the Cape Elizabeth Town council approves the Pay Classification Plan FY 2015 as presented.

See attachment.

**Item # 119 Capital Stewardship Plan**

Intro – Mr. McGovern

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

ORDERED, the Cape Elizabeth Town Council acknowledges receipt of the Capital Stewardship Plan for FY 2016-2025 as presented.

(7 yes) (0 no)

**Item # 120 Public Hearing on Town Center Plan Adoption**

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

ORDERED, the Cape Elizabeth Town Council schedules a public hearing for Monday, October 6, 2014 at 7:00 p.m. at the Cape Elizabeth Town Hall to consider the adoption of the 2014 Town Center Plan draft from the Town Center Planning Committee.

(7 yes) (0 no)

**Item # 121 Public Hearing on Tax Increment Financing District**

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

ORDERED, the Cape Elizabeth Town Council schedules a public hearing for Monday, October 6, 2014 at 7:00 p.m. at the Cape Elizabeth town Hall to consider the approval of a tax increment financing district for the town center.

(7 yes) (0 no)

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

None

**Item # 123 Executive Session Request**

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

ORDERED, the Cape Elizabeth Town Council enters into executive session at 9:50 p.m. to discuss an application for a poverty tax abatement and to begin the annual process for evaluation of the town manager

pursuant to 1 MRSA §405 6 A and 6F.

(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 10:20 p.m.

(7 yes) (0 no)

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

ORDERED, the Cape Elizabeth Town Council denies the request for a poverty tax abatement as other resources are available.

(7 yes) (0 no)

### **Adjournment**

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

ORDERED, the Cape Elizabeth Town Council adjourns at 10:25 p.m.

(7 yes) (0 no)

Respectfully Submitted,

---

Debra M. Lane, Town Clerk