



Cape Elizabeth Town Council Minutes

Wednesday, October 14, 2015

7:00 p.m.

Cape Elizabeth Town Hall

Katharine N. Ray, Chairman
Patricia K. Grennon
Caitlin R. Jordan
Molly MacAuslan
Jessica L. Sullivan
Jamie Wagner
James T. Walsh

The meeting was convened at 7:00 p.m. by Town Council Chairman Katharine N. Ray.

Roll Call by the Town Clerk

6 Members of the Town Council were present.

Debra M. Lane, Town Clerk

Michael K. McGovern, Town Manager

Absent

James R. Wagner

Town Council Reports and Correspondence

Senator Rebecca Millett presented a Sentiment from the 127th Legislature celebrating Cape Elizabeth's 250th anniversary.

Councilor Walsh attended the Portland Head Light volunteer appreciation dinner and thanked them for their service. The Fort Williams Advisory Commission will be presenting a recommendation to the town council at the November 4 meeting regarding pickleball.

Cape Elizabeth's 250th anniversary is November 1st. Councilor Sullivan thanked the 250th Anniversary Committee for their work and events held during the last year.

Chairman Ray announced the results of the tax bill survey results. The results are available at www.capeelizabeth.com.

Finance Committee Report

Councilor Walsh, Finance Chairman reviewed the financial dashboard. The town council will meet with the auditors at workshop on October 26. The audit results are available at www.capeelizabeth.com.

Citizen Opportunity for Discussion of Items Not on the Agenda

Chris McCarthy, 9 Salt Spray Lane supports Verizon's application for facilities at the water tower on Avon Road and encourages the town council to not appeal the court's decision.

Gwynne Rivers, 49 Shipwreck Cove asked when Verizon makes application it be moved on to the planning board.

Page 2 Town Council Minutes
October 14, 2015

Oriel Offit, 9 Ironclad Road concurs with the two previous residents when Verizon makes application it be moved on to the planning board.

Michelle Frost, 3 Peabbles Cove Road concurs with the previous residents.

Aubrey Miller, 2 Pine Ridge Road concurs with the previous residents.

Town Manager's Monthly Report

Mr. McGovern reviewed the Verizon lawsuit. If the town council wants to appeal the decision they would have to indicate so at this meeting to be within the appeal period. If the town doesn't appeal, upon receipt of a building permit Code Enforcement Officer Ben McDougal will forward to the planning board.

Mr. McGovern acknowledged the passing of Leroy M. Chace, III on October 1st at 78 years old. He was one of the founding members of the Fire/Police Unit and last year received recognition of 25 years of service. His wife Edna also worked at in the tax office. Lee will be missed.

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

ORDERED, the Cape Elizabeth Town Council suspends the **Town Council Rules** to take the item out of order regarding the appeal of the Verizon lawsuit.

(6 yes) (0 no)

Moved by Jessica L. Sullivan and Seconded by Caitlin R. Jordan

ORDERED, the Cape Elizabeth Town Council chooses to not appeal the United States District Court decision Verizon v Town of Cape Elizabeth regarding a permit to construct a wireless telecommunications facility on an existing water tower on Avon Road.

(6 yes) (0 no)

Review of Draft Minutes of September 14, 2015 meeting

Moved by James T. Walsh and Seconded by Patricia K. Grennon

ORDERED, the Cape Elizabeth Town Council approves the minutes of the meeting held September 14, 2015 as written.

(6 yes) (0 no)

Item # 105-2015 Tabled September 14, 2015

Moved by James T. Walsh and Seconded by Jessica L. Sullivan

ORDERED, the Cape Elizabeth Town Council takes Item #105-2015 off the table from September 14, 2015.

(6 yes) (0 no)

Page 3 Town Council Minutes
October 14, 2015

Moved by Jessica L. Sullivan and Seconded by Caitlin R. Jordan

ORDERED, the Cape Elizabeth Town Council adopts the following Findings of Fact, en bloc, in regard to the Shooting Range Facility License Application by the Spurwink Rod & Gun Club, a Maine non-profit corporation ("SRGC").

FINDINGS OF FACT:

1. SRGC owns and operates a Shooting Range Facility located at 1250 Sawyer Road, Cape Elizabeth, in existence since 1955 and thereby is deemed an existing Shooting Range Facility under the Cape Elizabeth *Shooting Range Ordinance*, Chapter 24 ("**Ordinance**").
2. SRGC has timely submitted a License Application ("**Application**") under Article VIII of the Ordinance, including the required Site Plan under Section 24-8-4.
3. The Town retained an independent safety evaluator, R Design Works, of Kennesaw, Georgia, to evaluate the SRGC facility under the standards of the Ordinance.
4. Richard F. LaRosa of R Design Works, a Maine licensed architect, provided a final report dated July 27, 2015 to the Town and gave a summary of findings at the Town Council meeting on August 10, 2015.
5. Prior to receipt of the R Design Work's report, the Cape Elizabeth Firing Range Committee on July 13, 2015, made its Findings and Recommendations as to the Application to the Town Council, including that the License Application be approved, but recommending that the Town Council ask the independent safety evaluator about the SRGC phasing plans, particularly as to shot containment and facility design.
6. Based upon a draft report from R Design Works dated July 21, 2015, the Town's Chief of Police ordered live ammunition use be suspended pending review of the Application.
7. SRGC, as currently operated, is in compliance with Section 24-6-3 in regard to warning signage meeting the NRA Range Source Standards,
8. SRGC, as currently operated, is found to be exempt from Section 24-6-4, as to setback requirements from existing Occupied Dwellings as an existing Shooting Range Facility at the time of the adoption of the Ordinance.
9. SRGC, as currently operated, is found to be in compliance with Section 24-6-5 in regard to access limitations with adequate security and control of ingress and egress with electronic entry coded for members, subject to the Town Code Enforcement Officer's final certification of compliance in the record of this Application.
10. SRGC, as it is currently operated, meets or exceeds the standards specified in the NRA Range Source Book thereby meeting the requirements of Section 24-7-1 in regard to maintenance, based upon a certification thereof by a licensed professional, to be confirmed by the Town Code Enforcement Officer final certification thereof in the record of this Application.
11. SRGC, as currently operated, is in compliance with the Best Management Practices requirement of Section 24-7-2 relating to lead management, as evidenced by its EPA Lead Management Plan, attached to its Application, including record keeping and annual review. SRGC's plan meets or exceeds the standards set forth in the EPA Lead Management Guidelines, to be confirmed by the Town Code Enforcement Officer's final certification of compliance in the record of this Application.
12. SRGC, as currently operated, is currently in compliance with Section 24-7-4 of the Ordinance, having provided the Town with a Certificate of Liability Insurance in the aggregate amount of \$3,000,000 and with the Town named as "Additional Insured."
13. SRGC, as currently operated, is found to be exempt from the noise mitigation provisions of Section 24-5-2, as an existing Shooting Range Facility at the time of adoption of the Ordinance.

Page 4 Town Council Minutes
October 14, 2015

14. SRGC is found to be in compliance with Shot Containment provisions Section 24-5-1 upon its completion of the recently applied for improvements designed for the 25-yard range by Richard F. LaRosa, Architect, to be confirmed by the Town Code Enforcement Officer's final certification of satisfactory completion in the record of this Application. This finding is limited at this time to the 25-yard range. Use of live ammunition at the remainder of the existing Shooting Range Facility beyond the 25-yard range, including the 50-yard and 100-yard ranges, shall remain suspended pending such further design and implementation of improvements that are certified by a reputable safety instructor to result in 100% shot containment for such portions of the applicant's Shooting Range Facility, as confirmed at such time by the Town Code Enforcement Officer's final certification of satisfactory competition in the record of this Application.

Public Comments

Tammy Walter, 1095 Sawyer Road, President Spurwink Rod & Gun Club said much has changed in Cape Elizabeth since the gun club was founded in the 1950's including land use, demographics and population however what has not changed is the founding father's desire to provide better conditions for the safety of sportsmen. Ms Walter outlined the gun clubs' activities and civic involvement and reaffirmed the club's desire for safety.

Tony Alves, 19 Eastman Road spoke about safety. The gun club has "a 100% safety record of inquiry and death despite a police record of one bullet found in a home in Cross Hill. There is no proof of where the bullet came from." Perhaps neighbors should help the gun club as they work to alleviate the concerns of the neighbors.

Jim Richard, 9 Cross Hill Road said "3 houses have been shot and one accidental discharge at the range that actually struck somebody that was documented by Mr. Mayone in the IFW application so let's get the record straight safety is a real issue." Time to deal with the facts, the drawings as is don't meet the requirements, take into consideration as the council votes on the issue.

Ed Nadeau, 9 Apple Tree Lane said except for shooting guns the community activities of the gun club don't have anything to do with the application. "We are not trying to shut down the club all we want is a safe range." Moved into Cross Hill knowing the gun club was there, but all changed 5 years ago and it has become a larger facility, "the scale has changed." Safety concerns need to be addressed in conformance with the LaRosa report.

Moved by James T. Walsh and Seconded by Jessica L. Sullivan to allow the continuation of public comment for an additional 15 minutes.
(6 yes) (0 no)

Clint Jackson, 10 Robinson Road, South Portland and member of the Spurwink Rod & Gun Club said the key word is safety, particularly with the new law allowing concealed weapons without a permit. A facility is needed for training and practice with everyone being concerned about the carrying laws.

Jonathan Good, Ashborne Court South Portland and member of the Spurwink Rod & Gun Club spoke at the last meeting. It's time to make a decision and approve the license. "You've heard all of the arguments, you have a range committee; I see no reason to not issue the license" according to the LaRosa plan.

Ty Matheson, South Portland and member of the Spurwink Rod & Gun Club asks the council to grant the license to the gun club for the members to be able to safety use the club "as intended" for 60 years.

Page 5 Town Council Minutes
October 14, 2015

Eric Stephanus, 2 Tiger Lily Lane said the “misunderstandings and drama” may be the misunderstanding of the difference between the rod and gun club and firing range, it’s not the same thing; they are distinct. The gun club would continue even if the town council did not license the firing range. Listen to the Cape Elizabeth constituents and not grant the license until all of the deficiencies are fixed.

Mark Mayone, Past President Spurwink Rod & Gun Club referred to the MAI Environmental report regarding (2) surface water samples from the gun club’s property. People need a place to practice shooting safety.

Cathy Kline, 66 Cross Hill Road said the gun club should continue social gatherings and community service and encourages the town council to hold off on licensing until safety concerns are addressed entirely.

Mark Doering, 10 High View Road and member of the Spurwink Rod & Gun Club applauds the town council and town manager for bringing in a third party expert to make the gun club as safe as possible. The gun club brought in the same expert to address safety. The license should be granted and range opened once safety concerns are addressed.

Ralph Romano, 12 Tiger Lily Lane said improvements need to be made before shooting continues. “Although not all the safety requirements have been met yet, they will be soon with the progress they are making and the license should be granted when all conditions are met.” The town and residents who bought in Cross Hill didn’t think the gun club was unsafe or the development wouldn’t have been allowed to be built. The ordinance requires the applicant to pay for engineering and other professional services related to the licensing of the range. The gun club should reimburse the town for the \$8,000 paid to Mr. LaRosa. The decision should have been made in public whether to charge the gun club.

Alexa Ward, 1095 Sawyer Road wanted to clarify that licensing the gun club and resuming live fire are two different things. The gun club can be licensed conditioned upon all of the safety improvements being met.

Ben McDougal, Code Enforcement Officer clarified what happens if the license is granted. There are 4 points requiring the CEO’s oversight in the conditional approval; security, maintenance, shot containment and lead management. Certified professionals will assist the CEO in all 4 points.

Vote - Findings of Fact
(6 yes) (0 no)

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

ORDERED, the Cape Elizabeth Town Council based on the above Findings of Fact approves the License Application of Spurwink Rod & Gun Club, conditioned upon the final certifications being made by the Town Code Enforcement Officer of each of the matters set forth above in the record of this Application.
(6 yes) (0 no)

Item #116-2015 Public Hearing: Annual Update of General Assistance Appendices

Annual Update of General Assistance Appendices

Chairman Ray opened the public hearing at 8:24 p.m.
After hearing no comments the hearing was closed.

Intro – Mr. McGovern

Moved by Martha MacAuslan and Seconded by Caitlin R. Jordan

ORDERED, the Cape Elizabeth Town Council adopts the MMA Model Ordinance General Assistance Appendices A – D for the period October 1, 2015 – September 30, 2016 as presented.
(6 yes) (0 no)

Item #117-2015 Public Hearing: Proposed Land Use Amendments and Update Sewer Service Area Map and Transfer of Development Rights Map

Proposed Land Use Amendments and Updated Sewer Service Area Map and Transfer of Development Rights Map

Intro – Maureen O'Meara, Town Planner

Chairman Ray opened the public hearing at 8:46 p.m.
After hearing no comments the hearing was closed.

Moved by Jessica L. Sullivan and Seconded by Martha MacAuslan

ORDERED, the Cape Elizabeth Town Council approves the proposed land use amendments, including changes to Chapter 16 Subdivision Ordinance and Chapter 19 Zoning Ordinance, and amendments to the sewer service area map and the transfer of development rights map as presented.
(6 yes) (0 no)

Item # 118-2015 Village Green Zoning Amendment Proposal

Intro – Peter Curry, Planning Board Chairman

Moved by Jessica L. Sullivan and Seconded by James T. Walsh

ORDERED, the Cape Elizabeth Town Council refers the planning board's recommended amendments to Chapter 19 Zoning Ordinance relating to village greens to the ordinance committee.
(6 yes) (0 no)

Item # 119-2015 Report from the Ordinance Committee on the Special Events Ordinance

Intro – Jessica Sullivan, Ordinance Committee

Moved by Caitlin R. Jordan and Seconded by Jessica L. Sullivan

ORDERED, the Cape Elizabeth Town Council sets to public hearing on Wednesday, November 4, 2015 at 7:00 p.m. at the Cape Elizabeth Town Hall proposed zoning ordinance provisions to Chapter 19 Zoning Ordinance relating to holding for a fee non-family/non friends large rental events in residentially zoned areas. A zoning overlay map is also part of the proposal.
(6 yes) (0 no)

Item # 120-2015 Review of Boards and Commissions Ordinance

Moved by Martha MacAuslan and Seconded by Caitlin R. Jordan

ORDERED, the Cape Elizabeth Town Council refers to the ordinance committee Chapter 4 Boards and Commissions ordinance for a general review and updating.
(6 yes) (0 no)

Item # 121-2015 Updated Pavement Management Plan

Intro – Robert Malley, Director of Public Works

Moved by James T. Walsh and Seconded by Patricia K. Grennon

ORDERED, the Cape Elizabeth Town Council acknowledges receipt of the updated pavement management plan as presented.
(6 yes) (0 no)

Item # 122-2015 Update of Pay Classification Plan

Intro – Mr. McGovern, Town Manager

Moved by Jessica L. Sullivan and Seconded by Patricia K. Grennon

ORDERED, the Cape Elizabeth Town Council approves the updated Pay Classification Plan as recommended by the town manager to adjust each amount by the 2.5% adjustment already approved in the current budget as presented.
(6 yes) (0 no)

Item # 123-2015 2015 Goals – Update on Progress

The council reviewed the progress on the 2015 goals. No action was taken.

Item # 124-2015 Appointments Committee Report

Intro – Councilor MacAuslan, Appointments Committee Chairman

Moved by Martha MacAuslan and Seconded by Patricia K. Grennon

ORDERED, the Cape Elizabeth Town Council approves the recommendation of the Appointments Committee to appoint John K. Craford, 97 Stonybrook Road to fill an unexpired term on the Zoning Board of Appeals. The term is effective immediately and expires 12/31/2016.

(6 yes) (0 no)

Item # 125-2015 Request From Councilor Walsh

Intro – Councilor Walsh

Moved by James T. Walsh and Seconded by Jessica L. Sullivan

ORDERED, the Cape Elizabeth Town Council reviews revenue opportunities at Fort Williams Park as a 2016 town council goal.

(6 yes) (0 no)

Citizen Opportunity for Discussion of Items Not on the Agenda

None

Adjournment

Moved by Patricia K. Grennon and Seconded by Martha MacAuslan

ORDERED, the Cape Elizabeth Town Council adjourns at 9:35 p.m.

(6 yes) (0 no)

Respectfully Submitted,

Debra M. Lane, Town Clerk

Page 9 Town Council Minutes
October 14, 2015

Future Meetings: Topics are subject to change so please check www.capeelizabeth.com for updates.

October 19, 2015	Update on Recycling Center Study Paper Streets Recommendations Update on 2015 Citizen Survey that was Included in the Tax Bills
October 26, 2015	Future Use of the former Thomas Mem. Library Building Town Cell Coverage Annual Meeting with Auditors
November 4, 2015	Regular Monthly Town Council Meeting
November 18, 2015	Annual Town Council Organizational Caucus Orientation of New Council Members Review of 2016 Meetings Calendar Report on Citizen Input for Town Council Goals for 2016
December 1, 2015	Discussion of Town Council Goals for 2016