



## **Cape Elizabeth Town Council**

**Minutes Monday, August 14, 2017**

**7:00 p.m.**

**Cape Elizabeth Town Hall**

James M. "Jamie" Garvin, Chairman  
Patricia K. Grennon  
Caitlin R. Jordan  
Penelope A. Jordan  
Sara W. Lennon  
Katharine N. Ray  
Jessica L. Sullivan

**The meeting was convened at 7:00 p.m. by Town Councilor Chairman James M. "Jamie" Garvin.**

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

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

All members of the town council were present.

Debra M. Lane, Town Clerk  
Matthew E. Sturgis, Town Manager

Maureen O'Meara, Town Planner was present through Item #115-2017.

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

Chairman Garvin stated the rules of conduct and decorum at council meetings. He also reviewed the process of reconsideration of Item #100-2017 from the 7/10/2017 meeting which appears as Item #115-2017 on this agenda.

Councilor Penelope Jordan encouraged citizens to get involved in the comprehensive plan committee's online comment section of the town's website. Citizen input is requested throughout the committee's work as they develop their recommendations. The next meeting is Wednesday, 8/16 at 7:00 p.m. in the Jordan Conference Room at town hall.

Councilor Grennon announced the next meeting of the ordinance committee on Tuesday, 8/15 at 12:00 p.m. in the Jordan Conference Room at town hall. The agenda will include polystyrene foam and plastic bags solid waste ordinance and domestic fowl ordinance amendment.

### **Finance Committee Report**

Councilor Sullivan, Finance Chairman reviewed the dashboard as of 7/31/2017. The schools have received \$319,554 more in state subsidy than originally estimated. Per the council's vote on the budget the additional funding will go toward property tax relief.

Mr. Sturgis stated the FY 2017 audit is almost complete; no major comments in the management letter are anticipated. He also outlined the overlay and reviewed the updated proforma for FY 2018.

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

None

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**Town Manager's Monthly Report**

Town Manager's Report  
August 14, 2017

The past month was an active month, filled with some very positive developments. There were major infrastructure improvements being completed and begun, grants for future pedestrian safety improvements secured, taxes committed, and other accomplishments.

The major infrastructure improvements in town were the completion of the recycling center upgrades. The \$1.4 million dollar project began in April, and is now up and fully operational. On August 3<sup>rd</sup> a formal opening took place, with several council members, recycling committee members, and solid waste and recycling long range planning committee members in attendance. There are a couple of minor outstanding items to be completed, but the facility is now ready for use.

The road improvement project on Scott Dyer Road and Hill Way is also underway. The work on Scott Dyer Road will consist of some sanitary sewer replacement, new curbing, and some miscellaneous drainage improvements. Hill Way will experience more extensive work, with a full reconstruction of the road base, replacement of the sidewalk, and replacement of the water main.

The Scott Dyer Road work is expected to be completed by the start of school, but there will be disruptions of traffic on Hill Way as that work is more extensive. This is phase one of a two phase project, with extensive reconstruction of Scott Dyer Road to Spurwink planned for 2019.

The Town was recently awarded a Portland Area Comprehensive Transit System grant for sidewalk construction along Route 77 from the Pond Cove Shopping center, south to the Fowler Road intersection. This was part of a multi-municipality project, as we partnered with South Portland and Portland. This construction is planned for 2020, with the local match funding partially provided by Town Center TIF revenues.

Property tax bills will be in the mail this week. The new tax rate is \$18, and this is eight cents less than anticipated. Contributing to the lower than expected tax rate is growth in new value from new construction and additional revenue from the State for education funding. Residents will also see an increase in their homestead exemption.

Finally, the Town Offices will be closed this Thursday. The day will be used to provide annual mandatory safety training, sexual harassment training, and video display training. After the morning programming, staff will go to the picnic shelter at the Fort for an employee appreciation luncheon. We will have the opportunity to thank employees and celebrate milestones of employment.

Respectfully submitted,

Matthew Sturgis  
Town Manager

Chairman Garvin thanked all the departments and volunteers for their work on the TD Beach to Beacon 10K Road Race. Congratulations to all those who participated.

**Presentations**

**Speed and Volume Data Collection** performed by VHB on Shore Road, Broad Cove Road, Fowler Road, and Mitchell Road. Presented by Tony Grande, PE Director of Transportation and Engineering.

Present – Chief Neil Williams

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Public Comments

Matt Todaro, 29 Broad Cove Road, Broad Cove Traffic & Speed Committee Chairman appreciates and supports the town's traffic calming measures in Broad Cove. The committee would like to work with the town to continue to look for solutions and are willing to allocate resources to assist.

Chris Straw, 597 Shore Road said the testing period of the study on Shore Road was during the Family Fun Day parade so he cautioned to keep in the mind when the data is reviewed for the average speed on Shore Road. Are the average speeds based on a "handful of days" during the middle of the week or does it include all 7 days. Often speeding traffic is from people out of town, on the weekends heading to Fort Williams. Due to the uniqueness of Fort Williams should data include testing from weekends.

Chairman Garvin disclosed his wife is a board member of the Fort Williams Park Foundation.

Moved by Jessica L. Sullivan and Seconded by Penelope A. Jordan

ORDERED, the Cape Elizabeth Town Council accepts the recusal from Chairman Garvin on discussion and voting on the Fort Williams Park Foundation proposed Cliff Walk improvements.  
(6 yes) (0 no)

Councilor Sullivan served as chairman pro-tem.

**Proposed Cliff Walk Improvements at Fort Williams Park** by the Fort Williams Park Foundation. Presented by Lynn Shaffer, Fort Williams Park Foundation and James McCain, Arboretum Director.

Item #121-2017

Moved by Katharine N. Ray and Seconded by Patricia K. Grennon

ORDERED, the Cape Elizabeth Town Council approves the 2017 projects of the Fort Williams Park Foundation for improvements to the Cliff Walk as outlined. The projects total \$56,969 to be funded by the Foundation. Future plans and projects are to be reviewed and approved by the town council.

Moved by Patricia K. Grennon and Seconded by Caitlin R. Jordan

ORDERED, the Cape Elizabeth Town Council suspends the Rules of the Town Council to take Item #121-2017 out of order.

(6 yes) (0 no) (1 abstention Chairman Garvin)

Moved by Katharine N. Ray and Seconded by Patricia K. Grennon

ORDERED, the Cape Elizabeth Town Council identifies Item #121-2017 and returns to the motion.  
(6 yes) (0 no) (1 abstention Chairman Garvin)

**Comprehensive Planning Committee Status Report** – Presented by Maureen O'Meara, Town Planner.

**Review of Draft Minutes of July 10, 2017 and Draft Minutes of August 7, 2017**

Moved by Sara W. Lennon and Seconded by Jessica L. Sullivan

ORDERED, the Cape Elizabeth Town Council approves the minutes of the meeting held on July 10, 2017 and the special meeting on August 7, 2017 as written.  
(7 yes) (0 no)

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Moved by Jessica L. Sullivan and Seconded by Katherine N. Ray

ORDERED, the Cape Elizabeth Town Council suspends the Rules of the Town Council to take Item ##115 & 116 out of order.

(2 yes) (5 no Chairman Garvin, Councilors C. Jordan, P. Jordan, Lennon and Sullivan)

**Item #111-2017      Ocean House of Pizza Liquor License Renewal**

Moved by Caitlin R. Jordan and Seconded by Penelope A. Jordan

ORDERED, the Cape Elizabeth Town Council approves the malt and vinous liquor license for C.A.G. Pizza, Inc. dba Ocean House of Pizza located at 337 Ocean House Road as presented.

(7 yes) (0 no)

**Public Hearing      Request for Tower Overlay District – 19 Wells Road**

Chairman Garvin opened the public hearing at 8:08 p.m.

Intro – Victor Manougian and Paul Peckens Representing Global Signal Acquisitions

After hearing no comments the hearing was closed at 8:16 p.m.

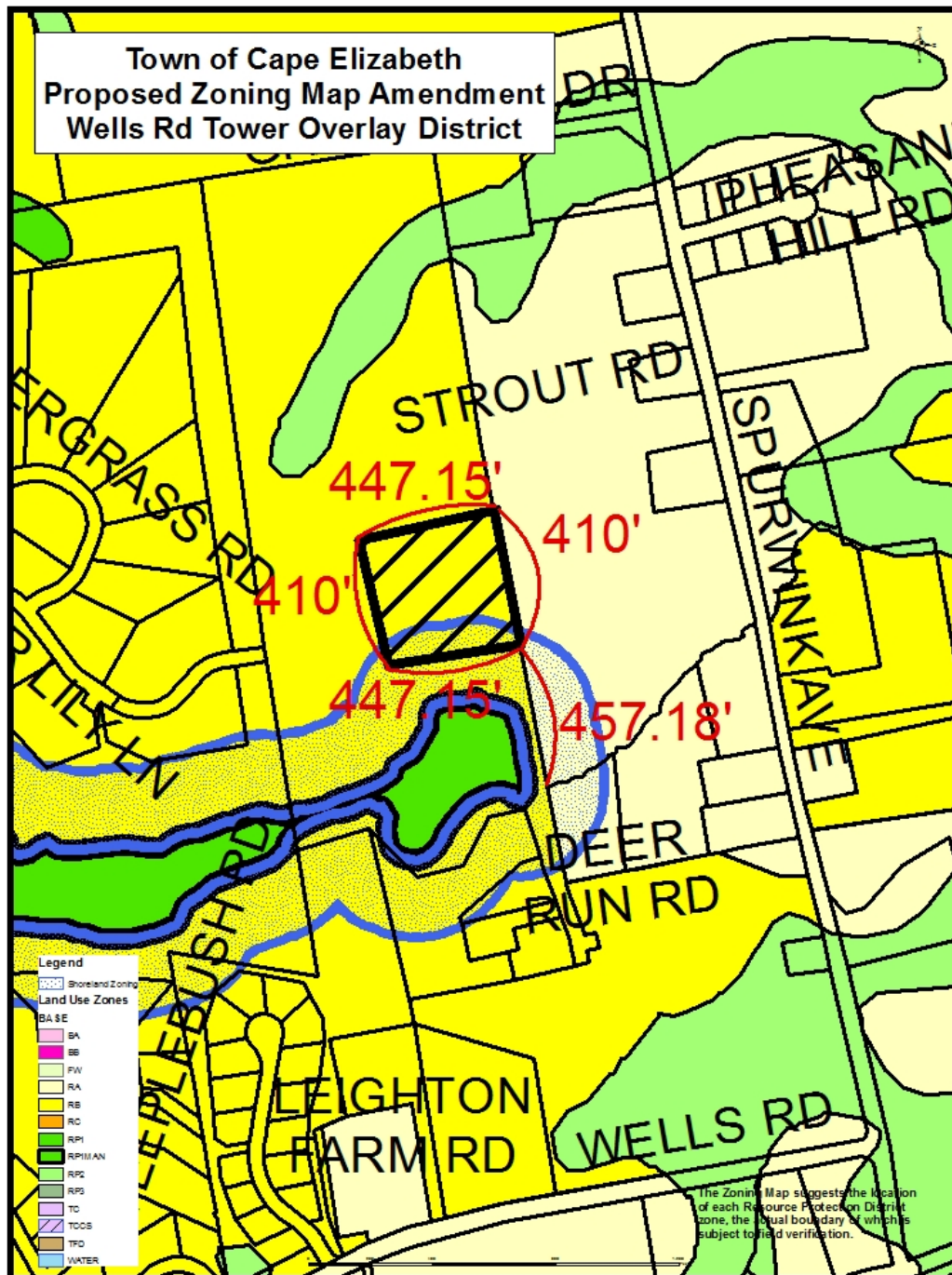
**Item #112-2017      19 Wells Road Tower Overlay District Zoning Map Amendment**

Moved by Caitlin R. Jordan and Seconded by Sara W. Lennon

ORDERED, the Cape Elizabeth Town Council approves the recommendation of the ordinance committee to amend the zoning map to include a tower overlay district at 19 Wells Road, Map R05 Lot 30 as presented.

(6 yes) (0 no) (1 recusal Councilor Penelope Jordan)

See below.



**Public Hearing      Proposed Amendment to Sec. 19-7-2 Open Space Zoning, Section D Open Space Design Standards – Agricultural Easement Amendment**

Chairman Garvin opened the public hearing at 8:17 p.m.

Kira Wigoda, 7 Fox Hill Road suggests postponing action on the item to allow for more public input.

Larry Sterne, 1 Columbus Road said there is no pending lawsuit so there is no need to rush. What does this change mean and what is the impact to the community?

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Jim Morra, 5 Waumbek Road suggested sending back to the ordinance committee with a meeting in the evening so the public can attend. This change benefits the developer not the community.

Diane Sterne, 1 Columbus Road said there seems to be more questions, don't rush. The proposal benefits the developer. Haven't heard of compelling reasons to change.

Becky Fernald, 313 Mitchell Road said this is being rushed and there are still unanswered questions. This is not a simple clarification and has long term consequences. Send back to the ordinance committee for further review.

After hearing no further comments the hearing was closed at 8:28 p.m.

**Item #113-2017      Agricultural Easement Amendment**

Intro – Councilor Grennon, Chairman Ordinance Committee and Town Planner Maureen' O'Meara

Moved by Caitlin R. Jordan and Seconded by Penelope A. Jordan

ORDERED, the Cape Elizabeth Town Council approves the recommendation of the ordinance committee to amend the Zoning Ordinance Sec. 19-7-2 Open Space Zoning, Section D Open Space Design Standards as presented.

(6 yes) (1 no Councilor Lennon)

**Draft**  
**Agricultural Easement**  
**Zoning Ordinance Amendment**

**SEC. 19-7-2. OPEN SPACE ZONING**

**D.      Open Space Design Standards**

In addition to other standards of this Ordinance and of the Town's Subdivision Ordinance, the following design standards shall apply.

***1. Land to be preserved as open space***

- c. Preservation priorities. Consistent with the standards set forth above, the land within the residential development to be preserved as open space shall be determined using the following priorities, in the order that they appear. To the extent priorities that are higher on this list are met by the proposed open space provisions in a residential development, the landowner shall have satisfied the requirements of this subsection even if the proposed open space design does not preserve lower priorities.
- ii. Agriculture. In a manner that preserves active agricultural fields for agricultural use. The agricultural land to be preserved as open space must meet the requirements of "farmland" as that term is defined in the Farm and Open Space Tax Law, 36 M.R.S.A. Sections 1101-1121, but does not need to be registered under this state program. The agricultural land to be preserved under this subsection shall be deemed to meet the requirements of "farmland" if it is

part of a parcel or parcels that meet the farmland definition referenced above, even though the agricultural land to be preserved does not independently meet all the criteria in the definition.

**4. Other Design Elements**

**6. Density Bonus for additional Public Benefit**

- b. Density Bonus. The total density bonus allowed under the provisions in Sec. 19-7-2 (E), shall not exceed thirty percent (30%) of the base density determined for each zoning district. The base density for subdivisions and multiplex housing in the RB District is determined in Sec. 19-7-2 (C)(1). Any combination of the following density bonuses may be proposed.
  - i. Agricultural land. When agricultural land is permanently preserved in compliance with Sec. 19-7-2 (D), Open Space Design Standards, a density bonus of one (1) unit per thirty-thousand (30,000) square feet of agricultural land preserved may be applied to the development. The agricultural land to be preserved as open space may be located on the development parcel or anywhere in the Town and must meet the requirements of “farmland” as that term is defined in the Farm and Open Space Tax Law, 36 M.R.S.A. Sections 1101-1121, but does not need to be registered under this state program. The agricultural land to be preserved under this subsection shall be deemed to meet the requirements of “farmland” if it is part of a parcel or parcels that meet the farmland definition referenced above, even though the agricultural land to be preserved does not independently meet all the criteria in the definition.

**Public Hearing                      Proposed Ordinance to Prohibit Retail Marijuana Establishments & Social Clubs**

Chairman Garvin opened the public hearing at 8:39 p.m.  
After hearing no comments the public hearing was closed.

**Item #114-2017                      Marijuana Regulations**

Intro – Councilor Grennon, Ordinance Committee Chair

Moved by Patricia K. Grennon and Seconded by Katharine N. Ray

ORDERED, the Cape Elizabeth Town Council approves the recommendation of the ordinance committee to approve a stand alone marijuana ordinance that prohibits recreational marijuana cultivation, manufacture, testing, retail sales and social clubs as presented.  
(6 yes) (1 no Councilor Penelope Jordan)

Moved by Patricia K. Grennon and Seconded by Sara W. Lennon

ORDERED, the Cape Elizabeth Town Council extends the marijuana moratorium to September 14, 2017 in order to ensure the moratorium continues until the new ordinance becomes effective 30 days from now.  
(7 yes) (0 no)

**TOWN OF CAPE ELIZABETH ORDINANCE PROHIBITING RETAIL MARIJUANA  
ESTABLISHMENTS AND RETAIL MARIJUANA SOCIAL CLUBS**

**Section 1. Authority.**

This Ordinance is enacted pursuant to the Marijuana Legalization Act, 7 M.R.S.A. c. 417; and Municipal Home Rule Authority, Me. Const., art. VIII, pt. 2; and 30-A M.R.S.A. § 3001.

**Section 2. Definitions.**

For purposes of this Ordinance, retail marijuana establishments, including retail marijuana stores, retail marijuana cultivation facilities, retail marijuana products manufacturing facilities and retail marijuana testing facilities, and retail marijuana social clubs are defined as set forth in 7 M.R.S.A. § 2442.

**Section 3. Prohibition on Retail Marijuana Establishments and Retail Marijuana Social Clubs.**

Retail marijuana establishments, including retail marijuana stores, retail marijuana cultivation facilities, retail marijuana products manufacturing facilities, and retail marijuana testing facilities, and retail marijuana social clubs, are expressly prohibited in the Town of Cape Elizabeth, whether as a principal use, accessory use, or otherwise.

No person or organization shall develop or operate a business in the Town of Cape Elizabeth that engages in retail or wholesale sales of a retail marijuana product, as defined by 7 M.R.S.A. § 2442.

Nothing in this Ordinance is intended to prohibit any lawful use, possession or conduct pursuant to the Maine Medical Use of Marijuana Act, 22 M.R.S.A. c. 558-C.

**Section 4. Effective date; duration.**

This Ordinance shall take effect immediately upon enactment by the municipal legislative body unless otherwise provided and shall remain in effect until it is amended or repealed.

**Section 5. Penalties.**

This Ordinance shall be enforced by the municipal officers of the Town of Cape Elizabeth or their designee. Violations of this ordinance shall be subject to the enforcement and penalty provisions of 30-A M.R.S.A. § 4452.

**Section 6. Relationship with Other Ordinances.** Whenever a provision of this Ordinance is inconsistent with another provision of any other ordinance of the Town of Cape Elizabeth, regulation, or statute, the more restrictive provision shall control.

**Section 7. Validity and Severability.** Should any section or provision of this Ordinance be declared by any court to be invalid, such a decision shall not invalidate any other section or provision of this Ordinance.



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**Item #115-2017      Reconsideration of Item #100-2017 held July 10, 2017**  
**Paper Street Technical Assessment**

Intro – Councilor Penelope Jordan requesting reconsideration of Item #100-2017 from the July 10, 2017 Town Council Meeting.

Moved by Penelope A. Jordan and Seconded by Sara W. Lennon

ORDERED, the Cape Elizabeth Town Council reconsiders Item #100-2017 from the July 10, 2017 Town Council Meeting.

**Public Comment**

Priscilla Armstrong, 18 Avon Road appreciates the action to reconsider.

Gail Krusec, 8 Lighthouse Point Road asked for the Lighthouse Point Road paper street to be separated from Surfside Avenue and Atlantic Place. Vacate Lighthouse Point Road.

Mitchell Waxman, 9 Bayberry Lane and Conservation Committee asked the town council to review the report.

Jim Morra, 5 Waumbek Road said to bring the issue of paper streets to the voters.

Nicole McCarthy, 9 Salt Spray Lane said there are two topics, the greenbelt and paper streets. Are the deeded rights to Surfside Avenue/Atlantic Place still protected?

Paul Moson, 22 Trundy Road supports the motion to reconsider.

Mitchell Lench, 15 Lighthouse Point Road said there is no reason to “dump a trail” onto Lighthouse Point Road. It’s time to make a decision.

Mark Fleming, 54 Hunts Point Road encouraged the process is separated between Lighthouse Point Road and Surfside Avenue/Atlantic Place. Paper streets and trails are separate.

Richard Bryant, 55 Spurwink Avenue is opposed to the July 10 vote; supports the motion to reconsider. Lighthouse Point Road and Surfside Avenue/Atlantic Place are separate issues.

Nancy Marshall, 10 Wildwood Drive supports the motion to reconsider.

Mary Ann Lynch, 2 Old Colony Lane thanked Councilor Penelope Jordan for the motion to reconsider. The council must vote to retain the rights of the paper streets.

Jeff Monroe, 11 Katahdin Road said there is always an opportunity for compromise and people working together. Supports the motion to reconsider.

Deborah Murphy, 24 Pilot Point Road thanked the council for their consideration. Most people in the neighborhood have pulled together.

Maynard Murphy, 24 Pilot Point Road supports the reconsideration and the acceptance of Surfside Avenue and Atlantic Place.

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Susan Johnston, 2 Lighthouse Point Road said Lighthouse Point Road and Surfside Avenue/Atlantic Place have different issues. Can they be separated?

Tim Thompson, 6 Pine Ridge Road thanked the town council for the reconsideration.

Vote: (7 yes) (0 no)

**Item #100-2017**

Moved by Caitlin R. Jordan and Seconded by Penelope A. Jordan

ORDERED, the Cape Elizabeth Town Council moves to take the necessary steps to vacate the following proposed unaccepted ways (also known as “paper streets”), pursuant to 23 M.R.S. §3027, which may include the provision of proper notice to the Planning Board, as well as to all lot owners on applicable recorded subdivision plans and their mortgages of record:

<u>ID#</u>	<u>Name/Location</u>
U12-5	Surfside Avenue
U12-8	Atlantic Place
U15-1	Lighthouse Point Road

(0 yes) (7 no Chairman Garvin, Councilors Grennon, Lennon, C. Jordan, P. Jordan, Sullivan and Ray)

Moved by Penelope A. Jordan and Seconded by Patricia K. Grennon

ORDERED, the Cape Elizabeth Town Council acknowledges receipt of the Paper Streets Technical Assessment and sets a workshop with the Conservation Committee for September 6, 2017 to discuss the report.

(7 yes) (0 no)

**Item #116-2017**

Following the vote of the town council to rescind the vote to take the necessary steps to vacate the paper streets known as Surfside Avenue, Atlantic Place and Lighthouse Point Road Item #116-2017 is moot.

**Item #117-2017      Maine Municipal Association – Voting Ballot**

Intro – Mr. Sturgis

Moved by Jessica L. Sullivan and Seconded by Penelope A. Jordan

ORDERED, the Cape Elizabeth Town Council approves the proposed MMA slate of officers for 2018 for Vice President and MMA Executive Committee as presented.

(7 yes) (0 no)

Vice President

Mary Sabins, Town Manager, Town of Vassalboro

Executive Committee (Directors)

James Bennett, City Manager, City of Biddeford

Jill Duson, At-Large Councilor, City of Portland

Gary Fortier, Councilor, City of Ellsworth

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**Item #118-2017      Workshop with Fort Williams Park Committee**

Intro – Chairman Garvin

Moved by Sara W. Lennon and Seconded by Patricia K. Grennon

ORDERED, the Cape Elizabeth Town Council sets Monday, September 18, 2017 at 7:00 p.m. to workshop with the Fort Williams Park Committee to discuss many issues facing Fort Williams Park.  
(7 yes) (0 no)

**Item #119-2017      Re-Authorization of the Spurwink School Re-use Committee**

Intro – Chairman Garvin

Moved by Jessica L. Sullivan and Seconded by Penelope A. Jordan

ORDERED, the Cape Elizabeth Town Council re-authorizes the Spurwink School Reuse Committee to remain active until December 31, 2017 so they may finalize their report and recommendations for this facility.  
(7 yes) (0 no)

**Item #120-2017      Town Manager Evaluation**

Due to the lateness of the hour, it was a consensus of the town council to not take action on Item #120-2017 and to reschedule the evaluation of the town manager at a later date.

**Citizens may at this point in the meeting raise any topic that is not on the agenda that pertains to Cape Elizabeth local government.**

None

**Adjournment**

Moved by Caitlin R. Jordan and Seconded by Sara W. Lennon

ORDERED, the Cape Elizabeth Town Council adjourns at 9:50 p.m.  
(7 yes) (0 no)

Respectfully Submitted,

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Debra M. Lane, Town Clerk

