



Cape Elizabeth Town Council Minutes

DRAFT Monday, September 10, 2018

7:00 p.m. Cape Elizabeth Town Hall

Council Chambers

Jessica L. Sullivan, Chairman
James M. "Jamie" Garvin
Caitlin R. Jordan
Penelope A. Jordan
Sara W. Lennon
Valerie A. Randall
Christopher M. Straw

The meeting was convened at 7:00 p.m. by Town Council Chairman Jessica L. Sullivan.

The Pledge of Allegiance to the Flag

Roll Call by the Town Clerk

All members of the town council were present except Councilor Lennon.

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

Town Council Reports and Correspondence

Councilor Straw reported on the recent MMA LPC (Legislative Policy Committee) meeting. Discussion topics included school funding and local revenue sharing. The priority for the LPC is local revenue sharing. Currently towns/cities receive 2% however in 2020 by law shares are scheduled to increase to 5%.

Councilor Garvin noted the upcoming ecomaine Open House on September 29. The open house begins at 8:00 a.m. and will include a tour and demonstrations. Interest citizens are encouraged to attend.

Councilor Penelope Jordan announced the first draft of the comprehensive plan is complete. A public forum will be held on October 30.

Chairman Sullivan received a note from resident Colette Howe; the note will be filed for the record.

Finance Committee Report

Councilor Garvin, chairman finance committee reviewed the dashboard through 8/31. Chairman Sullivan suggested adding revenue sharing to the dashboard.

Citizen Opportunity for Discussion of Items Not on the Agenda

Christopher Munz, 5 South Street again asked the town council to install or support (adopt a resolution) of the reinstatement of a gate where Aster Lane meets South Street.

Dan Glover, Westbrook, Archangel Committee

Mr. Glover represents the Archangel Committee and is seeking \$150 from the town to help bring images from the U.S. and Russia in the "Bridges of Friendship" photography exhibition.

**Page 2 Town Council Minutes
September 10, 2018**

Town Manager's Monthly Report

In preparing for tonight's manager's report I plan on being mindful of the items on this evening's agenda and the great amount of public interest for tonight's items. With that being said, I do have a significant announcement to make regarding Town staffing.

After almost forty years with the Cape Elizabeth Police Department, and eighteen years as our Chief, Neil Williams will be retiring as Chief of Police effective December 31, 2018. I would like to take the opportunity to be the first to thank Chief Williams for his dedication to the Town of Cape Elizabeth and its citizens and wish him only the best in the next phase of his life.

If you are in the Oakhurst section of Town, you will notice that Oakhurst Road will be closed between the Portland Water District Pumping Station and Rock Wall Lane between 7:30 a.m. and 6:30 p.m. today through Wednesday. The closure will allow a segment of the sanitary sewer main to be replaced.

At the August council meeting the council placed the regional collaboration question on the November ballot. The background information had initially identified the School Department would receive an estimated additional \$72,772 in funding, but since that initial estimate the Commissioner of Education has taken a revised interpretation of the subsidy and has applied an additional formula against the allocated funds, resulting in the school expecting to receive \$22,121 instead. Superintendent Wolfram provided this update to me so I could share this with the council. I have provided you with a letter from the Superintendent explaining this change.

Discussions are ongoing with the Historical Society on the re-use of the Spurwink School, as I have had three meetings with Jim Rowe and we have reviewed the facility. Last Friday I went through the building with local architect Josef Chalot, who will be providing me with additional information as we explore renovation options with the building.

Finally, I have some personnel announcements at Community Services to report. I am happy to inform the council that Kerry Kertes has joined our staff as Fort Williams Park Coordinator, Jane Anderson is onboard as our new senior program coordinator, and Peter Mullen is our new youth program coordinator. We would also like to welcome Kathy Maxwell as our new Deputy Clerk.

Review of Draft Minutes of August 13, 2018

Moved by Penelope A. Jordan and Seconded by Valerie A. Randall

ORDERED, the Cape Elizabeth Town Council approves the minutes of the meeting held on August 13, 2018 as written.

(5 yes) (0 no)

Presentation

Town Assessor Clinton Swett presented the proposed senior property tax relief program. Later in the agenda the town council will consider referring the proposal to the ordinance committee. The proposed program has been presented twice to the council; 4/9/2018 meeting and 5/1/2018 workshop.

Councilor Caitlin Jordan arrived.

**Public Hearing New Liquor License Application & Special Amusement Permit
The Well at Jordan's Farm**

Councilor Penelope Jordan recused herself from discussion and voting on this item as she is an owner of 21 Wells Road.

Councilor Caitlin Jordan disclosed she is a close friend of the 21 Wells Road Jordan Family and occasionally does business with The Well.

No objections were raised by the town council.

Chairman Sullivan opened the public hearing at 7:23 p.m.

John Voltz, 33 Philip Road supports the license and more farm to table opportunities.

After hearing no further comments, the hearing was closed at 7:24 p.m.

Item #123-2018 The Well at Jordan's Farm – Liquor License & Special Amusement Permit

Moved by Christopher M. Straw and Seconded by James M. Garvin

ORDERED, the Cape Elizabeth Town Council approves the malt, vinous and spirituous liquor license and special amusement permit for Well, LLC (Jason Williams) at The Well at Jordan' Farm, 21 Wells Road as presented.

(5 yes) (0 no) (1 abstention Councilor Penelope Jordan)

Public Hearing Establishment of an Energy Committee

Chairman Sullivan opened the public hearing at 7:28 p.m.

After hearing no comments, the hearing was closed.

Item #124-2018 Establishment of an Energy Committee

Moved by Penelope A. Jordan and Seconded by Christopher M. Straw

ORDERED, the Cape Elizabeth Town Council approves the recommendation of the ordinance committee to establish an energy committee.

Moved by Valerie A. Randall and Seconded by Christopher M. Straw

ORDERED, the Cape Elizabeth Town Council amends the motion to adopt the amendment to Chapter 4 Boards and Committees as follows:

(6 yes) (0 no)

SEC. 4-1-7 Establishment of Standing Boards and Committees

I. Energy Committee

1. Membership. The Energy Committee shall consist of seven (7) members.
2. Purpose: The purpose of the Energy Committee shall be to promote municipal and community energy efficiency, conservation, and sustainability goals.
3. Duties: The Energy Committee shall have the following duties and responsibilities:
 - a. Make recommendations to the Town Council of management approaches, policies, programs, and techniques now used by other municipalities in Maine and elsewhere that advance municipal and community energy efficiency, conservation, and sustainability goals.
 - b. Research, evaluate and recommend energy options that implement goals. Evaluation shall include an analysis of anticipated energy cost savings and return on investment.
 - c. Conduct public education and promote energy efficiency, conservation, and sustainable energy efforts and opportunities in our community.

- d. Collaborate with neighboring communities to pursue environmental sustainability and energy efficiency.

Original Motion as Amended (6 yes) (0 no)

Public Hearing Review of Proposed Settlement Agreement Relating to Paper Street Sections of Surfside Avenue

Introduction Attorneys Durward Parkinson, Susan Driscoll and Benjamin McCall

Chairman Sullivan opened the public hearing at 7:46 p.m.

George Foley, 9 Pilot Point Road supports acceptance of the paper streets, the original developer of Shore Acres always intended for the ocean access to be available to all residents.

Mary Ann Lynch, 2 Olde Colony Lane the proposed settlement is a very bad deal and only benefits abutters, mediation was flawed. This is a principal worth fighting for.

Ms. Lynch presented a letter from Anne Swift-Kayatta opposing the settlement agreement.

Tom Dunham, 11 Becky's Cove Lane supports the proposed settlement however is opposed to the \$500,000 being dedicated to land acquisition. The town should establish an endowment to benefit Fort Williams Park.

David Soley, Attorney representing one of the litigants. Litigation was brought because there was no settlement in sight. The proposed settlement agreement is a compromise and fair deal to all.

Richard Lemieux, 10 Wabun Road supports the proposed settlement agreement and vacating the 800' of Surfside Avenue. The settlement will allow the neighbors to heal and the town council to move onto other important matters.

Heather Bowns, 11 Wildwood Drive asked the town council to stop using taxpayer money for this purpose and accept the settlement agreement.

Paul Moson, 22 Trundy Road if the town council accepts the settlement agreement there will be more cost to litigation. Save Our Shoreline has started a Go Fund ME fund. Talk to the people, accept the paper street.

John Voltz, 33 Philip Road said more information is needed, there is no context to evaluate, what are the assessments. Citizens are not seeing both sides of the deal.

Mike Thorne, 15 High View Road asked when reviewing your life's work how will you feel? Take pride and preserve the 800'.

Leah Hobson, 20 Charles Road the settlement will set a precedent, won't be long until someone on Glen Avenue or Sea View Avenue decide to not want people walking over to Cliff House Beach. The value is worth more than \$500,000. People need to share and be a community.

**Page 5 Town Council Minutes
September 10, 2018**

Andrew Ingalls, 9 Waumbek Road there is plenty of space in the Trundy area. The path is rude and unnecessary. The people along Surfside Avenue are nice. Fighting the people is the wrong thing to do and worst use of funds. Not everyone in Shore Acres wants a path.

John Shumadine, attorney represents the other 4 land owners. It's a deal and compromise. The town faces a risk if it loses and how it loses. The case is not about private rights it's about the town's public rights however the town insisted in talking about the private rights in mediation. Private rights are protected by the agreement as an accommodation to meet the town halfway. Not interested in going back to renegotiate but have agreed if the town approves the settlement agreement there will be a facilitated discussion with the neighborhood to try to get to closure. Have the town settle and let the private parties figure things out.

Victoria Volent, 58 Cottage Farms Road spoke against settlement in a previous meeting not because of the price rather it seemed the town entered into mediation in a weak position rather than a position of strength. The town has many positions of strength. The risk created if the agreement is accepted is the precedence that will lead to further lawsuits from abutters of other controversial paper street extensions.

David Lourie, 189 Spurwink Avenue never have been to the site but urge the council to not take the deal, not compromise for money. As a taxpayer will pay a share of legal expenses in this case. The town has a good team of lawyers and a strong case. The court should consider the case based on the town's action since 1997 on the town's right to accept, extend or vacate – the town's previous decision to extend was never challenged.

Sandra Lunner, 33 Reef Road objects to the agreement based on false information. The survey is wrong and the property lines don't go to the ocean. Should everything be in question? Supports acceptance of the paper street.

Daryl Hemeon, 8 Avon Road avid user of the trail system and has waffled over a decision. Supports the agreement. The area isn't so much of a path, it's a backyard. It's become contentious because it's people's backyards. Families have moved from the area. Decorum needs to be achieved.

Jamie Wagner, 30 Hannaford Cove Road said the settlement agreement is a win-win for Cape Elizabeth. Further litigation will get expensive. \$500,000 can buy more land that is beneficial to more people.

Anita Petitt, 8 Katahdin Road has spent time gathering signatures relating to the disposition of shoreline access. Also has gathered signatures in favor of accepting Surfside Avenue and Atlantic Place paper streets. If the signatures gathered are considered a random sample, it appears a majority of citizens agree with accepting the paper streets. Participants in the public workshops this past February also suggest support of acceptance. Some things are worth fighting for. If accepted, the council has badly misread the mood of the town.

Deborah Murphy, 24 Pilot Point Road, President Shore Acres Improvement Association said there was a unanimous vote of the board to accept Surfside Avenue and Atlantic Place in its' entirety. Deemed vacations is the incorrect statute to use. The settlement agreement is a bad deal.

**Page 6 Town Council Minutes
September 10, 2018**

Jim Morra, 5 Waumbek Road the town received more signatures than any previous petition, to accept Surfside Avenue and Atlantic Place, the town needs to respond accordingly more than it has to previous petitions. Bring back the public's confidence in town government and reject the settlement proposal. If accepted a precedence will be set that the town can be bought. Bring to the voters in November.

Ray Shevenell, 189 Fowler Road the 800' is beautiful scenery and special part of the town. Reject the settlement agreement and accept the paper street extending it to the semicircle at the top of the cliff.

Deidre St. Louis, 10 Rand Road opposed to any agreement that will block the public having access to Surfside Avenue. Had a hard time finding all of the information on the town website and still have unanswered questions. \$500,000 is too low, did the town look at fair market value for an easement of an area the same size? Language describing the land is confusing and the map doesn't seem to agree with the language.

Maynard Murphy, 24 Pilot Point Road noted an email he sent to the council yesterday. There are holes in the settlement agreement, urges the council to reject the agreement and accept Surfside Avenue and Atlantic Place for future use.

Priscilla Armstrong, 18 Avon Road said the develop intended for all to pass over the paper streets. The town is giving away the land for not much money, Doesn't adequately protect those with deeded rights. Go back to the drawing board.

Polly Wilcox, 17 Cape Woods Drive, former Shore Acres resident. The town council doesn't have an easy job. Feels bad for personal attacks. Hopefully everyone can work together for a solution.

Jodi Breau, 5 Waumbek Road people change and properties change, a vote to vacate is forever. Stewart Wooden in a 1991 letter, 33 Trundy Road, as president of the Shore Acres Improvement Association advised lot owners in Shore Acres to sign a release deed to protect their implied and expressed rights to Surfside Avenue and protect property values. He was a champion for the neighbors' property rights, now living a 33 Pilot Point Road is one of 5 plaintiffs suing the town. The town could have vacated, the only thing that has changed is \$500,000 for the council's vote to vacate the paper street. Isn't this a legal bribe? If \$500,00 will get the council to vacate Surfside Avenue along the 5 properties, what amount does the council need to accept Surfside Avenue, Atlantic Place and Lighthouse Point Road? Bring to referendum and let the people decide.

Richard Bryant, 55 Spurwink Avenue representing Shore Acres Improvement Association. The Association opposes the settlement for two reasons; not comprehensive and doesn't protect the private property rights of other lot owners living in Shore Acres. Implied and express right owners, and fee owners along Surfside Avenue were not at the mediation table.

Jan Corey, 27 Trundy Road the town is being held hostage by 5 wealthy plaintiffs handing over valuable shoreline property. What is the rationale to accept the agreement other than to avoid litigation? Exercising fiduciary irresponsibility this will cause to open doors for further litigation. By accepting letting down the community you were elected to represent. No one has asked for money to be spent on this.

**Page 7 Town Council Minutes
September 10, 2018**

Tim Thompson, 6 Pine Ridge Road still think there is a better compromise. Accept the paper street and assure the owners it will not be placed on a trail map. What is the value of the land? The value should be known before the settlement agreement is accepted. This may set a precedence for problems with future paper street issues.

Daniel Harriman, 21 Kettle Cove Road has seen a tremendous pressure on waterfront access. There is right and wrong. When precedents are set they are sometimes cast in stone. The council has a tough decision considering fiscal responsibility and responsibility to all residents. As a taxpayer willing to pay to stand up for what is right. Putting a dollar amount may lose the point of what is right and what is wrong. Town council will have to decide or leave it up to us.

Robert Corey, 27 Trundy Road quoted Councilor Penny Jordan from 369 days ago that the town council's obligation is to protect town assets. Paper streets and shore access is a very, very large town asset that we should continue to protect.

After hearing no further comments, the hearing was closed at 9:14 p.m.

Item #125-2018 Review of Proposed Settlement Agreement Relating to Paper Street Sections of Surfside Avenue

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

ORDERED, the Cape Elizabeth Town Council schedules an executive session at the town council workshop on Monday, September 17, 2018 at 6:00 p.m. and schedules the vote at a special town council meeting on Wednesday, September 19, 2018 at 7:00 p.m. relating to the proposed settlement agreement between the Town of Cape Elizabeth and Imad Khalidi, David Leopold, Kara Leopold, Andrew Sommer, Susan Ross, Stewart Wooden, Julie Wooden and Pilot Point, LLC regarding paper street sections of Surfside Avenue to begin the deemed vacation process of a paper street section of Surfside Avenue.

(6 yes) (0 no)

Moved by James M. Garvin and Seconded by Valerie A. Randall

ORDERED, the Cape Elizabeth Town Council suspends the Town Council Rules to take up a new item after 10:00 p.m.

(6 yes) (0 no)

Item #126-2018 General Assistance Appendices

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

ORDERED, the Cape Elizabeth Town Council sets to public hearing on Wednesday, October 10, 2018 at 7:00 p.m. at the Cape Elizabeth Town Hall the General Assistance Ordinance Appendix (A – D) as recommended by the Maine Municipal Association effective October 1, 2018 – September 30, 2019.

(6 yes) (0 no)

Item #127-2018 Senior Property Tax Relief Program

Moved by James M. Garvin and Seconded by Caitlin R. Jordan

ORDERED, the Cape Elizabeth Town Council refers to the ordinance committee for review and recommendation a proposed senior property tax relief program.

(6 yes) (0 no)

Item #128-2018 Fund Transfer Approval for Fiscal Year 2018 and Fiscal Year 2019

Introduction – Mr. Sturgis

Moved by Valerie A. Randall and Seconded by Penelope A. Jordan

ORDERED, The Cape Elizabeth Town Council, having approved the Municipal Budget on May 15, 2017 for the Fiscal Year 2018 Budget and May 14, 2019 for the Fiscal Year 2019 Budget does hereby approve the identified fund transfers listed below for Fiscal Year 2018 and Fiscal Year 2019 in accordance with the Town Auditor’s recommendation.

(6 yes) (0 no)

Fiscal Year 2018 Fund Transfers:

Infrastructure Fund:	\$200,000
Portland Head Light Fund:	\$32,500
Sewer Fund:	\$92,000
Fort Williams Park Capital Fund:	\$77,000
Unassigned Fund Balance:	\$317,400

Fiscal Year 2019 Fund Transfers:

Infrastructure Fund:	\$100,000
Portland Head Light Fund:	\$ 12,000
Rescue Fund:	\$225,000
Fort Williams Park Capital Fund:	\$ 77,700
Unassigned Fund Balance:	\$500,000

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 Valerie A. Randall

ORDERED, the Cape Elizabeth Town Council adjourns at 10:11 p.m.

(6 yes) (0 no)

Respectfully Submitted,

Debra M. Lane, Town Clerk