



Cape Elizabeth Town Council

Minutes Monday, February 8, 2021

7:00 p.m.

Zoom Online

James M. "Jamie" Garvin, Chairman
Nicole Boucher
Valerie J. Deveraux
Jeremy A. Gabrielson
Caitlin R. Jordan
Penelope A. Jordan
Gretchen R. Noonan

The meeting via Zoom, an online video and audio conferencing platform, was convened at 7:00 p.m. by Chairman Garvin.

In response to the recent outbreak of Coronavirus Disease 2019 (COVID-19) Governor Mills signed [LD 2167, An Act To Implement Provisions Necessary to the Health, Welfare and Safety of the Citizens of Maine in Response to the COVID-19 Public Health Emergency](#), which is now PL 2019, c. 617.

Part G enacts Title 1, section 403-A, Public proceedings through remote access during declaration of state of emergency due to COVID-19. It authorizes conducting public proceedings through telephonic, video, electronic or other similar means of remote participation with specific conditions. The section is repealed 30 days after the termination of the state of emergency.

The Cape Elizabeth Town Council will meet as necessary to continue the town's work via an online platform as allowed by State authorization during the state of emergency due to COVID-19. The platform will allow for public comment as outlined in the Town Council Rules. The public is reminded they should continue to provide questions and comments to the town council relating to business of the town via email or mailing correspondence to their attention to town hall.

Roll Call by the Town Clerk

All members of the town council were present.

Debra M. Lane, Town Clerk
Maureen O'Meara, Town Planner
Matthew E. Sturgis, Town Manager

The Pledge of Allegiance to the Flag

Town Council Reports and Correspondence

Councilor Gabrielson noted correspondence he received from the Board of the Cottage Brook Condominium Association asking for a review of the gate at Aster Lane. It was a consensus that the matter be scheduled to a future town council workshop.

Finance Committee Report

Finance Chairman Jeremy Gabrielson noted budget workshops will begin in March. The financial dashboard and reports through January 31, 2021 were reviewed.

Presentation

Chrissy Adamowicz from the Natural Resources Council of Maine (NRCM) presented an overview of the Extended Producer Responsibility (EPR) initiative. Municipalities are asked to consider adoption of a resolution supporting the proposed law that will be before the legislature this session.

Citizen Opportunity for Discussion of Items Not on the Agenda
None

Town Manager's Monthly Report

Thank you to Councilors Deveraux and Noonan and Planning Board Chairman Jim Huebener for attending last week's Municipal Stormwater Workshop.

Budgets have been received from department heads. Later in the agenda is an opportunity for high-level guidance from the town council as budget preparations continue.

Last week collective bargaining began with the Cape Elizabeth Police Benevolent Association and Teamster Local Union No. 340 representing Public Works Employees. Contracts should be signed by the start of the new fiscal year.

Matthew E. Sturgis

Review of Draft Minutes of the Meeting Held on January 11, 2021

Moved by Penelope A. Jordan and Seconded by Gretchen R. Noonan

ORDERED, the Cape Elizabeth Town Council approves the minutes of the virtual meeting held on January 11, 2021 as written.

(7 yes) (0 no)

Without objection, Item #47-2021 was taken out of order.

Mr. Tonkovich thanked the town council for the opportunity and was available to answer questions.

Item #47-2021 Request for Street Name Change – Waltman Way to Tanglewood Place

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

ORDERED, the Cape Elizabeth Town Council approves the request of Steve & Marsha Tonkovich to change the street name of Waltman Way to Tanglewood Place pursuant to Chapter 22 Addressing Ordinance and in accordance with Section 22-7-1 Notification and Inspection.

(7 yes) (0 no)

**Item# 32-2021 Tabled from January 11, 2021 – Authorization of Transfer Funds –
Account Series 0640 - 0660**

Finance Director John Quartararo provided an overview.

Moved by Valerie J. Deveraux and Seconded by Jeremy A. Gabrielson

ORDERED, the Cape Elizabeth Town Council takes Item #32-201 off the table from January 11, 2021.

Without objection.

Moved by Jeremy A. Gabrielson and Seconded by Gretchen R. Noonan

ORDERED, the Cape Elizabeth Town Council approves \$594,457 of the approved FY 2021 budget from the following divisions; Parks (0640), School Grounds (0641), Fort Williams Park (0645), and Trees (0660) be transferred to a new division Parks and Grounds (0330) under the control of the Public Works Department; \$24,400 of the approved FY 2021 budget in division 0640 be transferred to a new CIP project in department 0715 titled "Greenbelt Trail Improvements" under the control of the Town Planner with advice of the Conservation Committee; and the remaining \$113,643 in division 0645 Fort Williams Park be under the control of Community Services.

(7 yes) (0 no)

Public Hearing Short Term Rental Amendments

Chairman Garvin opened the public hearing at 7:59 p.m.

Lisa Chanzit, 36 Lawson Road – If it isn't feasible to ban STR's, approve the proposed amendments as a compromise. STR's are a commercial business in a residential neighborhood providing a financial benefit only to a few while compromising neighborhoods.

Jim Kerney, 1015 Shore Road – There are always "a few bad eggs." Property owners should have the opportunity to rent their properties occasionally. The restrictions in the proposed amendments go too far.

Sarah Morrisseau, 55 Richmond Terrace – If unhosted rentals are not banned, the proposed amendments should be approved as a compromise. There will still be issues, hopefully less, but they will not go away. The council is asked to ban unhosted rentals.

Doug Dransfield, 48 Richmond Terrace - STR's are disruptive to a neighborhood. STR's invite anyone, unsupervised.

Julie Armstrong, 32 Lawson Road - Supports the requirement of no more than one rental within a 7-day period. Stays should include use by family and friends. 42 rental nights are too many. The property rights of all should be protected.

Victoria Volent, 58 Cottage Farms Road - Supports the requirement of no more than one rental within a 7-day period, and the property must be an owner's primary residence. Unhosted rentals should be banned as that is where the problems lie; 4 votes of the council are needed to do so.

Zev Myerowitz, 12 Hill Way Unit A, hosted STR - Agrees with the sentiments of everyone regarding unhosted rentals. STR's are a commercial use in a residential district and there needs to be a compromise. Doesn't see the use allowed in commercial zones so there should be allowances in the appropriate zone.

Tim Hebda, 55 Richmond Terrace - If unhosted rentals are not banned, the proposed amendment should be approved as a compromise. Favors property as primary residence, cap on the number of days allowed to rent, no more than one rental within a 7-day period, good neighbor guidelines, stays should include use by family and friends.

Cindy Doucette, 43 Richmond Terrace,- Unhosted STR 2012-2019. Renters must sign a rental agreement. There have been no issues with neighbors. 42 days is too short. Must continue to rent in order to stay. Questions – What is meant by the 7-day requirement? When will permits be available?

Deborah King, 125 Old Ocean House Road - One of the best things is trying to keep people from out of state buying property to rent short term. Hosted are the least problems. Rent a bedroom in my house. Renters bring an advantage to the community, support the restaurants as they don't have cooking facilities here. Limiting guests to one set per week will hurt the few hosted as people coming to hosted want to come for a couple of days – it's a different kind of vacation.

Ann Marie Laduzenski, 32 Richmond Terrace - Favors banning unhosted STR's. Rentals should change to a longer stay. The proposed new project in the town center should be changed into a hotel which would provide for those needing short term rentals.

Steven Eppinger, 13 Ocean Avenue - The town doesn't need to compromise. Decide which is more important - character of the town and neighborhoods or commercial use for a few.

Jennifer Aronson, 27 Lawson Road – Any neighborhood could experience what has gone on in Richmond Terrace and Lawson Road. Doesn't like the risk of strangers in the neighborhood. Supports the compromise if STR's are not banned.

Peggy Kasilowski, 6 Boathouse Lane – Unhosted STR's are in the neighborhood. Renters don't read the rules, and don't supervise the children. People are buying properties just to rent. Supports the 42-day limit.

Scott Rockwell, 119 Old Ocean House Road, hosted STR – Concerned that weight has not been given to those who have in-home hosted STR's. Requests the council to remove the one guest per 7-day period requirement. Entry cost of \$500 for a permit is too expensive. The ordinance micromanages our lifestyle and revenue.

David & Kate Parisi, 503 Ocean House Road, hosted STR attached to the house – Unhosted rentals should be heavily regulated. Have had no issues with neighbors.

Craig Cooper, 150 Ocean House Road – Asked the council to consider honoring existing contracts for those who had to cancel in 2020 due to the pandemic and have rescheduled for 2021.

Sarah Laduzenski, 201 Delano Park – What is the revenue stream to the town? Will business taxes or fees be charged?

After hearing no further comments, the hearing was closed at 8:56 p.m.

Item# 42-2021 Short Term Rental Amendments

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

ORDERED, the Cape Elizabeth Town Council tables Item #42-2021 Short Term Rental Amendments to the March 8, 2021 Town Council meeting. It is anticipated the town council will vote on the amendments on March 8.

(7 yes) (0 no)

Public Hearing Comprehensive Plan Amendment – Recommendation #86

Chairman Garvin opened the public hearing at 8:57 p.m.
After hearing no comments, the hearing was closed.

Item #43-2021 Comprehensive Plan Amendment – Recommendation #86

Moved by and Seconded by

ORDERED, the Cape Elizabeth Town Council tables Item #43-2021 Comprehensive Plan Amendment – Recommendation #86 to the March 8, 2021 Town Council meeting. It is anticipated the town council will vote on the amendment on March 8.

(7 yes) (0 no)

#86 Restrict Short Term Rentals (STR) to protect the peaceful quiet enjoyment of neighborhoods and preserve housing stock. Limited STR activity associated with primary residency, or in lower density portions of town, may be allowed within a permit structure that allows tracking of activity and funding for enforcement.

Public Hearing Fence Amendments

Chairman Garvin opened the public hearing at 8:59 p.m.
After hearing no comments, the hearing was closed.

Item #44-2021 Fence Amendments

Moved by Jeremy A. Gabrielson and Seconded by Penelope A. Jordan

ORDERED, the Cape Elizabeth Town Council adopts amendments to Chapter 19 Zoning Ordinance related to fence amendments Sec. 19-1-3. Definitions and Sec. 19-7-12. Fences and Corner Clearances as presented.

(7 yes) (0 no)

See attachment.

Public Hearing Town Farm District Parking Amendment

Chairman Garvin opened the public hearing at 9:01 p.m.
After hearing no comments, the hearing was closed.

Item #45-2021 Town Farm District Parking Amendment

Moved by Penelope A. Jordan and Seconded by Valerie J. Deveraux

ORDERED, the Cape Elizabeth Town Council adopts amendments to Chapter 19 Zoning Ordinance relating to Town Farm District parking amendments Sec. 19-6-10 Town Farm District (TF) as presented.

(7 yes) (0 no)

See attachment.

**Public Hearing Boards and Committees Amendment Relating to the Supervision of the
Bottle Shed Located at the Recycling Center**

Chairman Garvin opened the public hearing at 9:03 p.m.
After hearing no comments, the hearing was closed.

**Item #46-2021 Boards and Committees Amendment Relating to the Supervision of the
Bottle Shed Located at the Recycling Center**

Chairman Garvin thanked the members of the ad-hoc Bottle Shed Committee (Officer David Galvan, Adrienne Murphy and Melanie Thomas). Mr. Garvin noted this should not be seen as not appreciating the work, time and effort of the committee. Former Councilor Christopher Straw brought he matter forward. It does make sense to bring the functionality under the auspices of the Recycling Committee.

Moved by Nicole Boucher and Seconded by Gretchen R. Noonan

ORDERED, the Cape Elizabeth Town Council amends Chapter 4 Boards and Committees to add:

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

H. Recycling Committee

3. d. Establish policies to manage the Bottle Shed Charitable Donation Program and determine charitable disbursements.

(7 yes) (0 no)

**Item #48-2021 Set to Public Hearing Traffic Ordinance Parking Amendments – Kettle
Cove at Crescent Beach and Sea View Avenue/Glen Avenue**

Moved by Penelope A. Jordan and Seconded by Valerie J. Deveraux

ORDERED, the Cape Elizabeth Town Council sets to public hearing on Monday, March 8, 2021 at 7:00 p.m. via Zoom ordinance committee recommendations relating to Chapter 13 Traffic Ordinance parking amendments to Kettle Cove at Crescent Beach and Sea View Avenue/Glen Avenue. It is anticipated the town council will vote on March 8.

(7 yes) (0 no)

Item #49-2021 Acceptance of Village Green at Ocean House Commons

Introduction – Mr. Sturgis

It is recommended condition #5 of the draft motion be stricken concerning easement rights to the town for the installation of a new connection to the existing Ocean House Commons domestic water line for the purpose of serving a future irrigation system to be installed by the town for a portion of the Village Green. Speaking with the owner's representative, it is unknown if there is capacity in the current water line; additional testing is needed. If there is not, options may be an additional line or tap from town hall. The irrigation system will be addressed in the FY 2022 budget. At this time, the town and owner agree to remove that provision.

Moved by Jeremy A. Gabrielson and Seconded by Gretchen R. Noonan

ORDERED, the Cape Elizabeth Town Council accepts the Village Green at Ocean House Commons with the following conditions, and authorizes the town manager to sign the property deed on behalf of the Town as reviewed and approved by the town's attorney. Said acceptance removes condition #5 in the draft motion.

1. The developer's team shall undertake remedial steps to address the spacing gap between the bottom of the light poles and the top of the concrete light pole bases for the four lights along Ocean House Road.
2. The developer's team shall finalize the As-Built Plan of the Village Green improvements and install all Village Green property monumentation as shown on the approved plan.
3. The developer's team shall replace the four dead plantings by June 30, 2021 as have been previously identified.
4. The Town shall install additional plantings by June 30, 2021 in the location of electrical panel in accordance with the agreed upon plan developed by Sebago Technics.
5. The developer's team shall repair by June 30, 2021 the storm drain pipe elevation entering the overflow catch basin from the Type F catch basin which receives flow from Focal Point #1.

(7 yes) (0 no)

**Item #50-2021 Consideration of Referring to the Planning Board Amendments to the
Town Center District as Proposed with a New Multi-Family Development**

Introduction – Town Planner Maureen O'Meara,

The developer (Szanton Company) is requesting adjustments to the Town Center District in order for proposed project to move forward; increase in density and height, building footprint alteration and allowance for residential (not commercial) on the first floor. Through the process, the town (planning board and town council) will determine if the changes are consistent with the overall Town Center District and Comprehensive Plan.

Public Comment

Timothy Pollick, 46 Broad Cove Road – Why is this even being considered, it can end here. Not a single point has been met by the developers. The developer can't fulfill the building development that the town agreed upon. This needs to die here.

Jon Baldwin, 1 Peppergrass Road – Agrees with the previous speaker. The project doesn't meet any requirement nor does it enhance the town or town center. Low income housing is important in any community. Zoning laws are set up to protect the entire town and this doesn't even come close.

Rosemary Townsend, 7 Fieldstone Road – How does a one-bedroom apartment meet the needs of low income families? Will the number of people allowed be limited?

Tim Thompson, 6 Pine Ridge Road – Favors the referral to the planning board. Not necessarily in favor or not of the project but favors the referral to start the conversation understanding, from working on the Comprehensive Plan, that affordable housing in Cape Elizabeth is a challenge. Whether or not this project makes it through the test it provides additional conservation on perhaps finding a solution that works. One bedrooms may provide housing for seniors allowing them to stay in town and then their home becomes available for a young family.

Zev Myerowitz, 12 Hill Way Unit A – Agrees with the previous speaker that we must have the conversation about affordable housing. Disappointed that the developer is asking for 4 variances. Amount of hoops I had to go through to enrich the community I live and work in, having a conversation for 4 variances doesn't sit well. Against the project as it stands now. Ordinances exist for a reason.

John Voltz, 33 Philip Road – Supports sending the item to the planning board. The biggest risk now that the village green is constructed is that it is not built out and a risk that affordable housing may never be built. Project is at an early stage, there will be a lot of give and take. At the workshop this was the type of project that people were talking about for a vibrant town center. So if changes are needed for this to happen, they should be looked at.

Sarah Laduzenski, 201 Delano Park – A vibrant town center is important for Cape Elizabeth. Taking commercial use from the first floor takes away from it. Is this a 55 + project? One-bedroom apartments will prohibit families.

Chairman Garvin said a current clause in the purchase and sale agreement is 55+. It would be up to the developer to change the age restriction.

Greg Shinberg, Shinberg Consulting, Owner's Representative for Dr. Jacobson - Have been working with the Szanton Company on the purchase and sale. Can say with confidence, we have come to an agreement that there is flexibility on the age restriction to open it up to other age groups.

Moved by Penelope A. Jordan and Seconded by Jeremy A. Gabrielson

ORDERED, the Cape Elizabeth Town Council refers to the planning board development of Town Center Affordable Housing Amendments. The amendments should preserve Town Center requirements to the extent feasible while also permitting an affordable housing project that provides a substantial public benefit. Recommended amendments should be returned to the town council by April 30, 2021. In addition, staff is directed to develop TIF District and Shared Parking proposals to be completed by May 1, 2021 for town council consideration.
(7 yes) (0 no)

Moved by Jeremy A. Gabrielson and Seconded by Gretchen R. Noonan

ORDERED, the Cape Elizabeth Town Council suspends the Town Council Rules to take new items up after 10:00 p.m.
(7 yes) (0 no)

Item #51-2021 FY 2022 Budget – Preliminary Parameters

Mr. Sturgis provided an update. FY 2022 budgets have been submitted from department heads. The proposed municipal budget will be delivered to the town council by March 5, 2021.

The budget anticipates an increase in parking fees at Fort Williams Park; anticipating increased travel from where we were in the pandemic last year. Optimistically looking for some bus and trolley traffic which was non-existent last year. Looking for building permits to moderate. Based on early information regarding the Governor's budget, revenue sharing will increase. Operationally looking for budgets to be conservative which is the general practice. When possible changes from lessons learned during the pandemic. CIP projects will be recommended particularly some that were placed

on hold last year e.g. loader for the public works department and replacement of Engine 2 for the fire department. Maximum benefit to the town with minimal impact to tax rate.

Item #52-2021 2021 Town Council Goals

Public Comment

John Voltz, 33 Philip Road – Appreciate the new way the goals are laid out that are strategic. Hope this format will be used going forward. Think about what is the baseline and know what you are measuring against. Not all have a baseline but many will. This will help when you check back from time to time throughout the year. Also allows to link more tightly with the budgeting process.

Moved by Penelope A. Jordan and Seconded by Nicole Boucher

ORDERED, the Cape Elizabeth Town Council tables the vote on Item #52-2021 to the March 8, 2021 town council meeting following an additional workshop on Monday, February 22, 2021 at 7:00 p.m. via Zoom.

(7 yes) (0 no)

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 Jeremy A. Gabrielson and Seconded by Caitlin R. Jordan

ORDERED, the Cape Elizabeth Town Council adjourns at 10:19 p.m.

(7 yes) (0 no)

Respectfully Submitted,

Debra M. Lane, Town Clerk

SEC. 19-1-3. DEFINITIONS

Fence: Any permanent partition or barrier more than twelve (12) inches in height from the natural grade (or the top of a retaining wall if a fence is placed on such wall) bordering or parallel to and within five (5) feet of a lot line that in whole or in part defines the boundaries of said lot. A retaining wall or landscaping material such as hedges shall not be considered a fence. Fences located within the interior of a lot which do not serve to define a lot boundary, such as, but not limited to, fences that enclose dog runs, play areas, pools, tennis courts, etc., are not subject to regulation pursuant to this ordinance except for any portion of such fence that borders or is parallel to and within five (5) feet of a lot line.

Height, fence: The vertical distance measured from the natural grade of the ground at the location where the fence is erected (or from the top of a retaining wall if a fence is placed on such wall) to the top of the fence section or panel. Fence supports such as posts, columns, piers or pilasters, as well as gates and arbors may exceed the height restriction contained in this ordinance by not more than twelve (12) inches. In cases where the top of the fence section or panel is curved, the height shall be calculated using the average of the highest and lowest points on the top of the fence section or panel. A clearance of up to 4" from the ground to the bottom of the fence panel shall not be included in the measurement of fence height.

SEC. 19-7-12. **FENCES AND** CORNER CLEARANCES

A. Fence Height. The height of a fence located within 5' of the property line in or adjacent to the Residence A, B or C zoning districts shall not exceed eight feet (8') in height. The height of fences necessary for public athletic facilities, such as but not limited to softball diamonds or tennis courts, shall be permitted at heights in conformance with established recreation standards. Any existing fence that does not conform with the requirements of this section shall be considered nonconforming. Replacement of an existing fence shall comply with this section.

B. Corner Clearances. On a corner lot in any district, no fence, wall, hedge, or other planting more than three and a half (3 ½) feet in height shall be erected, placed or maintained within the three-sided area formed by the intersecting street lines and a line joining them at points which lie twenty (20) feet distant from the point of intersection, measured along said street lines.

Item #45-2021 Attachment

SEC. 19-6-10. TOWN FARM DISTRICT (TF) (Effective November 13, 1999)

A. Purpose

The Town Farm District includes the area west of Spurwink Avenue formerly known as the “Poor Farm” and an area extending from Spurwink Ave 100’ to the east. The Town Farm District is intended to preserve the upland portion of the Town Farm. The historic boundaries of the Town Poor Farm also include the Spurwink Marsh, extending to Sawyer Rd. The land is undeveloped open space comprised of rolling fields, treed ridge lines, and the Spurwink River and Spurwink Marsh. The purpose of this district is to recognize and protect the special nature of the Town Farm as an area representing historic, cultural, scenic, natural, and open space qualities which should continue. The Town Farm embodies rural character and is integral and essential to the Town and the Greenbelt. The scenic significance of the Town Farm is discussed in more detail in a town report entitled an Assessment of the Visual Resources of Cape Elizabeth, Maine, dated February 1989. The Town Farm District is created to preserve these features for the benefit of the public.

B. Permitted Uses

The following uses are permitted in the Town Farm District:

1. The following resource-related uses:

- a. Agriculture
- b. Vegetation Management
 - 1. Mowing
 - 2. Tree maintenance
 - 3. Brush clearing
 - 4. Other vegetation management activities necessary to maintain and enhance views and scenic quality.

2. ~~Parking~~Reserved

3. The following nonresidential uses:

- a. Informal Recreation
- b. Education and scientific research
- c. Nature trails, catwalks and footbridges
- d. Snowmobile touring

D. Prohibited Uses

All uses not specifically allowed as permitted or conditional are prohibited within this district. In addition, the following uses are expressly prohibited:

- 1. ~~Reserved~~Parking
- 2. Organized sports involving teams with coaches, uniforms or established schedules
- 3. Athletic playing fields
- 4. New structures
- 5. Telecommunication towers
- 6. Public bathrooms or rest facilities

F. Site Plan Review

The following uses and activities shall be subject to site plan review by the Planning Board, according to the terms of Article IX, Site Plan Review, prior to issuance of any building permit, plumbing permit, or other permit:

1. Public utilities/essential utility services
2. Any construction allowed under the Portland Water District Lease
3. Parking
- ~~4~~3. Any other use or activity listed in Sec. 19-9-2, Applicability, as requiring site plan review.