



Cape Elizabeth Town Council

DRAFT Minutes March 14, 2022

7:00 p.m.

Town Hall Council Chambers

Jeremy A. Gabrielson, Chairman
Nicole Boucher
Susan A. Gillis
Caitlin R. Jordan
Penelope A. Jordan
Gretchen R. Noonan
Timothy S. Reiniger

Chairman Gabrielson convened the meeting at 7:00 p.m.

Roll Call by the Town Clerk

All members of the town council were present.

Debra M. Lane, Town Clerk

Matthew E. Sturgis, Town Manager

The Pledge of Allegiance to the Flag

Town Council Reports and Correspondence

Councilor Noonan reported she spoke with Nate Perry, Cape Elizabeth Fishermen's Alliance regarding access to the water at Kettle Cove/Crescent Beach.

Councilor Penelope Jordan, member of the Portland Jetport Noise Abatement Committee asked for any comments or input from residents. The committee's next meeting is 4/6.

Councilor Reiniger, member MMA Legislative Policy Committee has been monitoring LD 2003 "An Act To Implement the Recommendations of the Commission To Increase Housing Opportunities in Maine by Studying Zoning and Land Use Restrictions," which MMA opposes.

Finance Committee Report

Finance Chairman Boucher reviewed the financial dashboard through February 28, 2022. Revenues and expenditures are tracking as anticipated. Municipal budget review workshops will be held on March 21 and March 24.

Update on the State of Maine's Plans on Improvements for Kettle Cove State Park

Gary Best, Regional Manager for Maine State Parks provided an update on Kettle Cove and Crescent Beach regarding water access, commercial and recreational activity, parking on the beach. The state is at square one. Currently there are no projects. The state has been looking at recreational boat access for years. New federal monies may be available. *If* a project is identified it will be at least two years before completion. The state will hold public meetings to obtain input and determine if a project is needed. It is hopeful/anticipated meetings will begin this summer.

Mr. Best said there would be no displacement of commercial fisherman access. Need to determine needs and objectives for all users, taking into consideration of wildlife and natural resources. The state is talking about moving away from vehicles on the beach. What are ways to meet objectives? Do we need recreational vehicle access, if so where – Kettle Cove or Crescent Beach?

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Kurt Shoener, Manager of Kettle Cove, Crescent Beach and Two Lights State Park attended.

Public Comment

Tim Thompson, 6 Pine Ridge Road said commercial fishermen represent small businesses in town. Access to the water is high priority from the Comprehensive Plan. The town should obtain an easement from the state for access.

Ernie Tweedie, 230 Fowler Road said the boat launch and ability to take traps in and out must be considered. The town should help the state financially if needed.

Nate Perry, 10 Pine Ridge Road, Cape Elizabeth Fishermen's Alliance noted the Harbor Committee's Report and Comprehensive plan prioritizing access to the water. Need an explanation of why the state plan changed. What is the process for input to the state? What users will decide the outcome? Make certain all users are involved the balance the needs.

Daniel Harriman, 21 Kettle Cove said his grandfather and heirs were assured access to the beach – to the Crescent Beach side. Some commercial fishermen fish off Crescent Beach. The Kettle Cove side is already at capacity. It is challenging for fishermen to get out of the water and get their fish to market quickly.

Gene Wiggins, 7 Kettle Cove Road was pleased with the town's proposal for a launch. Two launching site are needed for commercial fishermen and recreational users.

Working with the state, the town planned for a new public boat access. Since the state has pulled back to square one, the town's plan is on hold. The plan is available for a future project if needed.

Update from Dr. Christopher Record, Superintendent on the Status of the School Building Project

Dr. Christopher Record provided an overview of the status of the school building project. The council will be asked at the 4/11 meeting to approve a bond for the schematic design. This design will provide better cost, systems and design information. Having the schematic design will provide residents a better understanding of the project, whether they are for or against it prior to the vote. It is recommended the vote be held November 2022 (rather than June 2022).

For the April meeting, the council has asked for the project's annual tax impact to taxpayers and the trending increases of the school budget.

Public Comment

Tom Dunham, 11 Becky's Cove Lane said it is difficult to budget construction costs in this market. Because of the impact to taxpayers, do not see the project passing. Consider breaking down the project in phases starting with the cafetorium and security concerns.

Tim Thompson, 6 Pine Ridge Road, Member of the Building Oversight Committee suggests adding another community member to the committee. With grant monies, some projects such as security are being done and should be complete by the fall of 2022.

Citizen Opportunity for Discussion of Items Not on the Agenda
None

Town Manager's Monthly Report
Matthew E. Sturgis, Town Manager

Town operations have been active over the past month. We have gone out to bid on three public works projects, one affordable housing study request, and a review of the wireless infrastructure in Cape Elizabeth.

Over the next six weeks, the storm-water drainage projects at Kettle Cove and Surf Road will begin. The work will be performed by Gorham Sand and Gravel. Notice will be sent by mail to the surrounding neighborhoods in advance of each project's start. Both projects will be paid by the proceeds of the American Rescue Plan funds.

The Willow Brook culvert replacement also had a successful bidding process, with Shaw Brothers the successful bidder. The project has a restricted construction window due to environmental considerations. This project will be undertaken in July to comply with the regulations. Notice of this project will also be mailed to the abutting properties in advance of the start.

The wireless infrastructure project continues, with a formal reporting out on the project requested to the council for a presentation on April 20th if that can be scheduled by the council.

Version 2 of the request for proposals for the affordable housing study resulted in seven responses. Staff has organized all of the responses for review, with a request for a brief council meeting on Wednesday, March 16th after the workshop with the Scarborough council to provide direction on review and selection recommendations to the council for action at the April council meeting.

The Shore Road improvement project planning continues, with staff in the process of meeting with the commercial property owners along the corridor. Staff is in the process of planning a public hearing to review the current progress, take input and comment, and make additional adjustments, with a plan to present to the council later this spring.

Review of Draft Minutes of the Meeting held on February 14, 2022

Moved by Penelope A. Jordan and Seconded by Gretchen R. Noonan
ORDERED, the Cape Elizabeth Town Council approves the minutes of the meeting held on February 14, 2022 as written.
(7 yes) (0 no)

Consent Calendar – Item #54-2022 – Item #57-2022

Item #56-2022 and #57-2022 were removed from the consent calendar.

Moved by Gretchen R. Noonan and Seconded by Caitlin R. Jordan
ORDERED, the Cape Elizabeth Town Council approves the consent calendar Item #54-2022 and Item #55-2022 as follows.
(7 yes) (0 no)

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Item #54-2022 Request for Uses at Fort Williams Park - 2022

ORDERED, the Cape Elizabeth Town Council approves the recommendation of the Fort Williams Park Committee for the following uses at Fort Williams Park, as presented.

Cape Elizabeth Little League - 2022 Season Opening 3/19/2022 (Field consideration)
Walk to Cure Arthritis Walk - Saturday, May 28, 2022
Cape Elizabeth High School Graduation - Sunday, June 12, 2022
Family Fun Day - Saturday, June 18, 2022
Making Strides Against Cancer Walk - Sunday, October 16, 2022

Item #55-2022 Receipt of Audit Results FY 2021

ORDERED, the Cape Elizabeth Town Council acknowledges receipt of the results of the FY 2021 Annual Financial Statements ending June 30, 2021 and accompanying reports prepared by Runyon Kersteen Ouellette.

Item #56-2022 Interaccount Transfer – Assessing Software Contract

Intro – Mr. Sturgis

Moved by Penelope A. Jordan and Seconded by Susan A. Gillis

ORDERED, the Cape Elizabeth Town Council authorizes the following interaccount transfer to pay for assessing software needed for the revaluation project: \$5,100.00 from 0170-1032 (Employee Benefits: Vacation-Sick Accruals) \$14,140.00 from 0170-1033 (Employee Benefits: Salary-Wage Adjustments) \$760.00 from 0120-2062 (ACP: Misc. Contracts) and the transfer in of \$20,000.00 to 0120-2067 (ACP: Contract Svc: Assessor Software).
(7 yes) (0 no)

Item #57-2022 Transfer of Budget Appropriation for the Revaluation Project

Introduction – Mr. Sturgis

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

ORDERED, the Cape Elizabeth Town Council authorizes that \$99,000 of funds in account 2000-5102 Kettle Cove Boat Launch Relocation Project and \$45,000 from 2030-4052 Library Improvements Project be transferred to 2090-4117 Tax Revaluation Project for a total transfer of \$144,000 to fund the revaluation project. The unexpended balance at June 30, 2022 will automatically carry forward into FY 2023.
(4 yes) (3 no Councilors Boucher, Gillis and Reiniger)

Public Hearing Request for New Liquor License – Tostones Café

Chairman Gabrielson opened the public hearing at 8:38 p.m.

The owner of the café was present. Chairman Gabrielson welcomed the new business.

After hearing no comments, the hearing was closed at 8:39 p.m.

Item #58-2022 Request for New Liquor License – Tostones Café

Moved by Jeremy A. Gabrielson and Seconded by Nicole Boucher

ORDERED, the Cape Elizabeth Town Council following a public hearing does hereby approve the request of Adaime & Rea LLC DBA Tostones Cafe located at 337 Ocean House Road for a new restaurant malt liquor (beer), wine and spirits liquor license as presented.

(7 yes) (0 no)

Item #59-2022 Review of the Proposed Memorandum of Understanding Between the Town of Cape Elizabeth and Cape Community Arena Group

Moved by Caitlin R. Jordan and Seconded by Susan A. Gillis

ORDERED, the Cape Elizabeth Town Council approves the draft proposed Memorandum of Understanding Between Town of Cape Elizabeth and Cape Community Arena Group with the amendment of deleting VII. Dispute Resolution. CCAG will name a project lead (VI. Oversight of the partnership and primary participants) upon signing. The town attorney and representation for CCAG have reviewed the draft.

(7 yes) (0 no)

See attachment.

Item #60-2022 Refer the Task of Drafting the Charge for the Ad Hoc Affordable Housing Committee to the Appointments Committee

Moved by Nicole Boucher and Seconded by Susan A. Gillis

ORDERED, the Cape Elizabeth Town Council tasks the Appointments Committee to draft a charge for an ad hoc affordable housing committee for council review and action.

(7 yes) (0 no)

Item #61-2022 Consideration to Refer Parking on Reef Road to the Ordinance Committee

Moved by Penelope A. Jordan and Seconded by Timothy S. Reiniger

ORDERED, The Cape Elizabeth Town Council refers to the Ordinance Committee parking and traffic concerns on Reef Road with a recommendation back to the town council.

(7 yes) (0 no)

Item #62-2022 Refer the FY 2023 Municipal Budget to the Finance Committee

Moved by Nicole Boucher and Seconded by Gretchen R. Noonan

ORDERED, the Cape Elizabeth Town Council refers the proposed town manager's municipal budget for FY 2023 (July 1, 2022 – June 30, 2023) to the finance committee for review.

(7 yes) (0 no)

Item #63-2022 Consideration of Extending the Limited Emergency for Remote Meetings

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

ORDERED, the Cape Elizabeth Town Council extends the limited emergency to allow for remote meetings until June 1, 2022.

(7 yes) (0 no)

See attachment.

Item #64-2022 Enter into Executive Session to Consider a Property Tax Abatement

Moved by Nicole Boucher and Seconded by Gretchen R. Noonan

ORDERED, the Cape Elizabeth Town Council pursuant to 1 M.R.S. Section 405 6F enters into executive session at 9:02 p.m. to consider a request for a property tax abatement due to hardship or poverty.

(7 yes) (0 no)

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

ORDERED, the Cape Elizabeth Town Council exits executive session and reenters public session at 9:13 p.m.

(7 yes) (0 no)

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

ORDERED, the Cape Elizabeth Town Council grants a property tax abatement due to hardship or poverty in the amount of \$2338.56.

(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

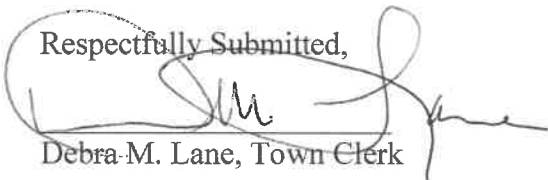
Adjournment

Moved by Caitlin R. Jordan and Seconded by Susan A. Gillis

ORDERED, the Cape Elizabeth Town Council adjourns at 9:14 p.m.

(7 yes) (0 no)

Respectfully Submitted,


Debra M. Lane, Town Clerk

**Memorandum of Understanding
Between Town of Cape Elizabeth and Cape Community Arena Group**

This Memorandum of Understanding (“MOU”) is entered into on _____ (the “Effective Date”) to memorialize a non-binding agreement between the Town of Cape Elizabeth (the “Town”) and Cape Community Arena Group (“CCAG”), collectively known as the “Parties.”

I. Goal of the MOU

This MOU builds upon the momentum developed by CCAG and the Town’s joint ice rink collaboration behind Town Hall, with the goal of delivering Cape residents a more reliable year-round recreation, entertainment, and education facility that does not require capital investment from the Town. The facility has been named Cape Community Arena (“CCA”). Through CCA’s covered, open-air design, the project is meant to further build community, blend in with the beauty of Gull Crest, and integrate seamlessly with the existing playing fields and Public Works complex. CCAG supports the Town’s comprehensive plan commitment to planning for population growth, ensuring Cape Elizabeth will continue to be a desirable place to live, and enhancing our outdoor recreational areas. CCAG believes that CCA aligns well with this commitment.

II. Term of the MOU

The term of the MOU (“MOU Period”) will commence on the Effective Date and continue until Cape Elizabeth’s Town Council (the “Council”) authorizes a Notice to Proceed for CCAG to begin construction and the Town and CCAG enter into a formal, binding written agreement to define the terms of the construction period and the donation/transfer of CCA at project commissioning. Said agreement will supersede this MOU. If authorization of the Notice to Proceed and execution of the written agreement are not completed within 24 months of the Effective Date, this MOU shall expire. Amendments to this MOU may be made via mutual written agreement by both Parties.

III. Roles & Responsibilities

During the MOU Period, the Parties will work together to develop the final scope of the CCA project. The Parties are entering into this MOU in good faith, and final project approval is contingent on satisfactory completion of the milestones outlined in **Appendix A**. CCAG is solely responsible for all costs throughout the approval process. As applicable, CCAG shall maintain adequate insurance coverages for any work conducted on the property (“Property”) depicted in **Appendix B** during the MOU Period.

IV. Site Access and Land Use Permitting Authorization

Upon entering into this MOU, the Town grants CCAG site access for the Property depicted in **Appendix B** during the MOU Period for the purpose of conducting on-site surveys necessary for design and permitting of the CCA project. The Town also agrees to provide CCAG with Right, Title or Interest in the Property for the purpose of submitting applications to regulatory agencies. Adding to the Council’s (5-2) vote on February 14th that granted CCAG permission to enter the Planning Board queue and meet informally with the Cape Elizabeth Planning Board (and applicable Town staff) to gather requirements for the Planning Board process, this MOU memorializes Council’s full authorization of CCAG to begin the permitting process for CCA (and

the Pilot referenced below) with applicable local, state, and federal agencies having jurisdiction over the projects, including, but not limited to the Cape Elizabeth Planning Board and the Maine Department of Environmental Protection.

Approval to begin the permitting process does not convey formal approval of, or commitment to approve the CCA project by the Council. Prior to submitting any applications to regulatory agencies for CCA, CCAG and the Town will work together to organize and meet with key stakeholders and experts needed to ensure a mutually agreed upon project design. Any and all modifications to the Property will require review and approval by the Town.

V. Pilot Project

Pending all necessary approvals, the CCA project is expected to be in operation by November 2023, at the latest. While CCA is in planning, also pending all necessary approvals, CCAG will deliver a pilot project (the “Pilot”) on the Property in form of a temporary regulation-size refrigerated ice rink, to be operational by November 2022, at the latest, and operate through the winter of 2022/2023. At the end of the season, the temporary rink will be removed, and the land will be restored accordingly, in anticipation of CCA. Just like CCA, the Pilot will require land use approval from local, state, and federal agencies having jurisdiction over the Pilot.

Like with CCA, prior to construction of the Pilot, CCAG must receive a separate Notice to Proceed following a majority vote of the Council. An acceptable statement of financial capability must be provided to the Town Manager, in accordance with the site plan review submission requirements in Section 19-4-4.C.2.q of the Cape Elizabeth Zoning Ordinance, prior to the Council issuing a Notice to Proceed. Like with CCA, all approvals and construction related expenses for the Pilot will be the responsibility of CCAG. A third party will manage operation and maintenance of the Pilot, which will be arranged and funded by CCAG. At the Town's full discretion, the Town may make contributions to the operation and maintenance of the Pilot e.g., snow removal, utilities, etc.

Benefits of the Pilot are as follows:

- Much is expected to be learned by CCAG and the Town from such a walk-before-you-run project, namely operation/programming for an ice rink and site dynamics on the Property.
- CCAG and the Town will have additional time to plan CCA (e.g., design, permitting, operating model, revenue plan, third-party involvement, etc.), all of which would be done concurrently with planning, installation, and operation of the Pilot.

VI. Oversight of the partnership and primary participants

Each party shall appoint a lead person to serve as an official contact during the MOU Period to provide oversight and coordination in carrying out this MOU. Initial project leads are the Town Manager of Cape Elizabeth and _____ of Cape Community Arena Group, however, they may appoint secondary individuals to lead specific activities described in **Appendix A**.

Town of Cape Elizabeth

Cape Community Arena Group

By: _____

By: _____

Name: Matt Sturgis

Name:

Title: Town Manager

Title:

Date:

Date:

**Order Declaring a Limited Emergency
Adopted by the Cape Elizabeth Town Council
August 30, 2021**

Revised October 13, 2021 to Extend Until December 31, 2021

Revised December 13, 2021 to Extend Until March 31, 2022

Revised March 14, 2022 to Extend Until June 1, 2022

WHEREAS, in the Spring of 2021 the COVID-19 Pandemic had seemed to be coming to an end with the advent of vaccines and good vaccination rates, but instead infection rates, and new variants, hospitalizations, and deaths from the COVID-19 virus have been increasing in recent months; and

WHEREAS, in the two (2) weeks between July 14 and July 28, 2021, the rate of COVID-19 infections confirmed by testing have more than doubled in the United States, and those trends continue; and

WHEREAS, on July 1, 2021, in the State of Maine, the average daily case total was 22.1;

WHEREAS, since that time the rate of COVID-19 infections confirmed by testing in the State of Maine has increased at a significant rate to an average number of 67.1 daily cases as of July 27, 2021, for an increase of 203.6 percent, and those trends continue; and

WHEREAS, a majority of the new infections in the United States and the State of Maine involve the Delta variant, a highly contagious SARS-CoV-2 virus strain; and

WHEREAS, the Delta variant has increased transmission, the severity of COVID-19 infections based on hospitalization and case fatality rates, and decreased susceptibility to therapeutic agents; and

WHEREAS, the Delta variant represents 47.6 percent of all sequenced samples collected in July in the State of Maine; and

WHEREAS, as a result of the Delta variant and the increase in COVID-19 infections, the United States Centers for Disease Control and Prevention announced on July 27, 2021, that fully vaccinated individuals should wear masks in indoor public settings in parts of the country that are experiencing a substantial or high transmission of COVID-19; and

WHEREAS, the Maine Center for Disease Control and Prevention similarly announced on July 28, 2021, that masks are recommended to be worn by fully vaccinated individuals in public indoor settings in almost all Maine counties, including Cumberland County; and

WHEREAS, the risk of COVID-19 virus transmission from vaccinated individuals to unvaccinated individuals (for example children under 12) remains unknown; and

WHEREAS, as a result of the above-described situation, the Town Manager has determined that masks must be worn by staff and visitors to all Town buildings; and

WHEREAS, Town buildings have adequate ventilation under normal circumstances, but does not provide sufficient space to socially distance the number of members that may potentially attend meetings, and every effort has been made to secure an appropriate venue; and

WHEREAS, the technology infrastructure and processes currently exist to continue to continue to allow remote participation in and public access to Town Council, Board, and Committee meetings in accordance with Maine law; and

WHEREAS, the Town of Cape Elizabeth is committed to continuing to provide opportunities for public engagement which are accessible and safe; and

WHEREAS, all Town of Cape Elizabeth boards and committees have or will be adopting the Remote Participation Policy as authorized in 1 M.R.S. section 403-B;

NOW, THEREFORE, BE IT ORDERED AND DECLARED by the Cape Elizabeth Town Council that a limited emergency continues to exist within the Town of Cape Elizabeth; and

BE IT FURTHER ORDERED, that as a result of the declared limited emergency and the existence of an “emergency or urgent issue” as described above, pursuant to 1 M.R.S. section 403-B and the Town of Cape Elizabeth’s recently adopted Remote Participation Policy, being physically present for meetings in Cape Elizabeth Town buildings is not practicable at this time, and therefore allows that all Town of Cape Elizabeth boards, committees, and other groups may conduct meetings by remote technology/methods only until the limited emergency is terminated; and

BE IT FURTHER ORDERED, that as a result of this declared limited emergency, the existence of an “emergency or urgent issue,” the fact that Town buildings may be unable to provide adequate social distancing for full public physical access to meetings, and in order to be consistent with board and committee meetings, the Town Council hereby strongly recommends that all other Town boards and committees also continue to meet by remote technology/methods only in accordance with the requirements of the Town’s adopted policy; and

BE IT FURTHER ORDERED that this Order is enacted as an Emergency so that it may take effect immediately, with an expiration of October 15, 2021.

Revised March 14, 2022 to extend until June 1, 2022.