



Cape Elizabeth Town Council

DRAFT Minutes Monday, September 12, 2022

7:00 p.m.

Town Hall Council Chambers

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

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

Roll Call by the Town Clerk

All members of the town council were present except Councilor Gretchen Noonan.

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

The Pledge of Allegiance to the Flag

Town Council Reports and Correspondence

Councilor Boucher noted the outreach program, and appropriateness of providing information, relating to the school project referendum in an effort to provide citizens with the facts about the project.

Finance Committee Report – Finance Chair Nicole Boucher

Mr. Sturgis reported parking revenues at Fort Williams Park are ahead of projections which may be contributed to the increase in parking fee rates and/or number of vehicles.

Overview of General Assistance Ordinance

Harrison Deah, Director of GA/Social Services for the City of Westbrook

Mr. Deah provided an overview of the general assistance program, housing challenges and process to amend the model ordinance. The town council will workshop the item in October.

Update on the Revaluation

Clinton Swett, Town Assessor

Mr. Swett provided an overview and timeline of the revaluation project. Examples were given on the potential impact on taxes with increased valuation and lower mil rate and potential tax impact if the school project referendum passes.

Citizen Opportunity for Discussion of Items Not on the Agenda

None

Town Manager's Report – Matthew E. Sturgis

Mr. Sturgis reported on the new Stay Connected feature on the town's website. Anyone interested in receiving updates may sign up and select interested topics so when there is an update they receive notification. This enhances the RSS feed option.

Page 2 Town Council Minutes
September 12, 2022

Review of Draft Minutes

August 8, 2022 Regular Meeting

August 22, 2022 Special Meeting

Moved by Timothy S. Reiniger and Seconded by Nicole Boucher

ORDERED, the Cape Elizabeth Town Council approves the minutes of the meetings held on August 8, 2022 and August 22, 2022 (special) as written.

(6 yes) (0 no)

Public Hearing Proposed Amendments to Chapter 19 Zoning Ordinance Relating to Food Truck Amendments

Chair Gabrielson opened the public hearing at 8:09 p.m.

After hearing no comments, the hearing was closed.

Item #135-2022 Proposed Amendments to Chapter 19 Zoning Ordinance Relating to Food Truck Amendments

Present – Maureen O’Meara. Town Planner

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

ORDERED, the Cape Elizabeth Town Council approves amendments to Chapter 19 Zoning Ordinance relating to food truck amendments as recommended by the Planning Board.

(6 yes) (0 no)

See attachment.

Item #136-2022 Consideration of Revised Memorandum of Understanding with Cape Community Arena Group

Present – CCAG Members Jay Brandeis, Julie Furth and Michael Tadema-Wielandt

Public Comment

Tim Thompson, 6 Pine Ridge Road great example of everyone working in concert and what can be attained by the town.

Moved by Nicole Boucher and Seconded by Caitlin R. Jordan

ORDERED, the Cape Elizabeth Town Council approves the Memorandum of Understanding Between Town of Cape Elizabeth and Cape Community Arena Group for a temporary ice rink at Gull Crest as outlined in the draft agreement 9/12/2022.

(6 yes) (0 no)

See attachment.

Page 3 Town Council Minutes
September 12, 2022

**Item #137-2022 Recommendation from the Diversity, Equity & Inclusion Committee
Relating to Language in the Town Council Rules**

Moved by Nicole Boucher and Seconded by Penelope A. Jordan

ORDERED, the Cape Elizabeth Town Council approves the recommendation of the Diversity, Equity & Inclusion Committee to amend the Town Council Rules to make the language gender neutral.

(6 yes) (0 no)

See attachment.

**Item #138-2022 Consideration of Easement Agreement with CRC Communications, LLC
DBA Otelco**

Present – Terrance Turner, GoNetSpeed (formerly Otelco)

Moved by Penelope A. Jordan and Seconded by Nicole

ORDERED, the Cape Elizabeth Town Council approves the Easement Agreement with CRC Communications, LLC D/B/A GoNetSpeed (formerly Otelco) for Town property at 320 Ocean House Road to install a fiber base station as described.

(6 yes) (0 no)

See attachment.

**Item #139-2022 Consideration of Appointments Committee Recommendation –
Nomination to Ad-Hoc Housing Diversity Study Committee**

Moved by Nicole Boucher and Seconded by Timothy S. Reiniger

ORDERED, the Cape Elizabeth Town Council appoints Curtis Kelly, 374 Mitchell Road to serve on the Ad-Hoc Housing Diversity Study Committee.

(6 yes) (0 no)

**Item #140-2022 LD 2003 An Act To Increase Housing Opportunities in Maine – Letter of
Concern**

Public Comment

Jessica Sullivan, 441 Mitchell Road caution to the Ordinance Committee to make changes to the Zoning ordinance so quickly. Wait to see how the next legislature deals with the law. What is the rush?

Tim Thompson, 6 Pine Ridge Road shares the concerns of Ms. Sullivan. What is the rush? Wait to see what citizens have to say about affordable housing and wait for feedback in Augusta.

No action taken.

Page 4 Town Council Minutes
September 12, 2022

Item #141-2022 Corporate Resolution – Camden National Bank

Moved by Nicole and Seconded by Timothy S. Reiniger

ORDERED, the Cape Elizabeth Town Council approves a corporate resolution with Camden National Bank that will allow the Town of Cape Elizabeth to maintain a relationship with the bank and further authorizes Matthew E. Sturgis, Town Manager, Debra M. Lane, Town Clerk and John Quartararo, Finance Director as account signers.

(6 yes) (0 no)

See attachment.

Item #142-2022 Executive Session – Consideration of Property Tax Abatement Due to Hardship

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

ORDERED, the Cape Elizabeth Town Council enters executive session at 8:56 p.m. pursuant to 1 M.R.S. §405 6F. to consider a request for the abatement of property taxes due to hardship.

(6 yes) (0 no)

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

ORDERED, the Cape Elizabeth Town Council exits executive session and reenters public session at 9:11 p.m.

(6 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 Penelope A. Jordan and Seconded by Susan A. Gillis

ORDERED, the Cape Elizabeth Town Council adjourns at 9:11 p.m.

(6 yes) (0 no)

Respectfully Submitted,

Debra M. Lane, Town Clerk

Food Truck Amendments

(6-7-2022) (Approved by Town Council 09-12-2022)

Chapter 11 Health and Sanitation

Article 1. Foods and Food Service Establishments

REPEAL Article 1

Chapter 19, Zoning Ordinance

SEC. 19-1-3. DEFINITIONS

For the purposes of this Ordinance, the following terms, words, and phrases shall have the meanings given herein. All words not defined herein shall carry their customary and usual meanings. Words used in the present tense shall include the future tense. Words used in the singular shall include the plural. Where so indicated by the text, these definitions also include substantive regulations. Where reference is made to Town or State laws, ordinances, or regulations, each reference to a particular law, regulation, or section shall include all amendments and successor sections.

Accessory Use: A use that is incidental and subordinate to the principal use. The principal use shall not become subordinate to accessory uses, when aggregated. A Food Truck (as defined below) may be considered an accessory use, if limited as follows:

1. The Food Truck(s) shall be parked on private property, or parked on municipal property if approved as part of a school or municipal activity;
2. No private property shall host Food Truck activity for more than five (5) days per calendar year;
3. Food Truck operations shall be limited to the hours of 7:00 am - 10:00 pm Sunday - Thursday, and 7:00 am - 11:00 pm Friday and Saturday;
4. Food Truck patrons shall be limited to guests of the property and not the general public, except that in the Town Center District, Business A and Business B Districts, and Fort Williams Park District, and on municipal property, Food Trucks may be open to the general public;
5. The Food Truck(s) has a current state health permit, to be verified by the private property owner; and
6. The Food Truck shall be removed from the site daily at the close of business.

Food Truck: A motor vehicle, trailer or like conveyance capable of being transported from place to place which is constructed to contain, store, prepare and properly preserve food for sale and/or distribution, and does not include tables and/or seating.

Restaurant: An establishment where food and drink are prepared, served, and sold to customers for consumption primarily on the premises. The sale of alcohol shall account for less than 50% of total annual sales.

SEC. 19-7-14. TEMPORARY ACTIVITIES AND EVENTS

A. Community Events

Temporary uses of a community or nonprofit nature such as festivals, fairs, carnivals, and similar events may be permitted in any district by vote of the Town Council, notwithstanding the provisions of this Ordinance. Such temporary use shall not be contrary to the objectives of this Ordinance. A vote by the Council allowing such temporary use shall not be deemed a change in the zoning and shall apply to the specific event or activity only for its stated duration.

B. Food Truck Special Use Permit

1. One or more Food Trucks may be allowed as a temporary event with the issuance of a Food Truck special use permit by the Town Council. A complete Food Truck special use permit application must be submitted by the applicant prior to the deadline for the town council meeting. A Food Truck special use permit is not required for:
 - a. A Food Truck operating as an accessory use as defined in Sec. 19-1-3;
 - b. Food Trucks at Fort Williams Park; or
 - c. Food Trucks operating on the school campus as part of a school event with permission from the school superintendent.
2. The following information shall be submitted:
 - a. A complete Food Truck special use application form including the name and contact information of applicant; name and contact information of the nonprofit community group that is partnering with and benefitting from the Food Truck if the Food Truck is proposed on town property; and application fee;
 - b. Written permission of the property owner to park Food Truck(s) on private property, or public property if located on public property not owned by the Town of Cape Elizabeth;

c. The property location, plan showing the parking space where the Food 3 Truck(s) will be parked, and days and hours of operation of the Food Trucks;

d. Description of power supply for the Food Truck(s), and any proposed on-site 6 utility connections; and

e. A written description of how the Food Truck special use permit request 9 complies with the standards in Sec. 19-7-14 (B)(4).

3. The permit application shall be circulated to the police chief, fire chief, code 12 enforcement officer, community services director and the school 13 superintendent, who shall provide comments to the Town Council.

4. The Town Council shall issue a permit when the application demonstrates 16 compliance with the following standards:

a. A Food Truck special use permit may only be issued for the following 19 properties:

i. Town property. A permit may be issued on property owned by the 22 Town of Cape Elizabeth listed below. The Food Truck operation shall be 23 affiliated with and benefit a non-profit community group operating in 24 the Town of Cape Elizabeth. Each community group shall be limited to 25 no more than twenty (20) days per calendar year on Town property. 26 The Town properties where a permit may be issued are:

•Town Hall (320 Ocean House Rd);

•Gull Crest (Spurwink Ave);

•Lions Field (221 Ocean House Rd) limited to two (2) Food Trucks and 31 only available if affiliated with the Little League;

•Plaisted Park (985 Shore Road), limited to one (1) Food Truck and only 33 available if affiliated with the Little League;

•Community Center (343 Ocean House Rd);

•Fire Station (2 Jordan Way), limited to one (1) Food Truck and only available if affiliated with the Cape Elizabeth fire department;

•Police Department (325 Ocean House Rd), and only available if affiliated with the Cape Elizabeth police department;

•Thomas Memorial Library (6 Scott Dyer Rd); and

•Spurwink Church (533 Spurwink Ave).

ii. Commercial District. A permit may be issued on private property 43 located in the Town Center District, Business A District or Business B 44 District. Food Truck activity on the property shall be limited to no more

than twenty (20) calendar days per year. No more than five (5) Food Trucks may be operated on the property each calendar day.

- iii. Large property. A permit may be issued on private property that is at least ten (10) acres in size. Food Truck activity on the property shall be limited to no more than twenty (20) calendar days per year. No more than five (5) Food Trucks may be operated on the property each calendar day.

b. Each Food Truck shall be parked in a parking space on the property. When the property has a parking lot, the Food Truck must be parked in an existing parking space(s).

c. Food Truck hours shall be limited to the hours of 7:00 am - 10:00 pm Sunday - Thursday, 7:00 am - 11:00 pm Friday and Saturday. The Food Truck(s) must be removed from the site daily at the close of business.

d. The Town Council may consider the cumulative impact of Food Truck special use permits granted in the same location on public health, safety and general welfare grounds and may deny a permit where a Food Truck parked on town property may interfere with municipal operations.

Attachment Item #136-2022 September 12, 2022

**Memorandum of Understanding
Between Town of Cape Elizabeth and Cape Community Arena Group
Approved by the Town Council September 12, 2022**

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." This MOU supersedes the original MOU entered into March 14, 2022.

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 ("NTP") for CCAG to begin construction of CCA 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 NTP and execution of the written agreement are not completed within 36 months of the Effective Date, this MOU shall expire. Amendments to this MOU may be made via mutual written agreement by both Parties. Despite the non-binding nature of this MOU, Section VIII is binding with respect to the Liability provision contained therein.

III. Termination

Either party hereto may terminate this MOU without cause at any time, upon at least one hundred and twenty (120) days written notice.

IV. 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. Property is defined as the Area of Interest in **Appendix B**.

V. 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 the 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.

VI. Pilot Project

Pending all necessary approvals, the CCA project is expected to be in operation by November 2024, 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 the form of a temporary 150'x85' refrigerated ice rink, to be operational by early December 2022, at the latest, and operate through the winter of 2022/2023 ("Year 1"). At the end of the skating season (slated for March 2023), the temporary rink will be removed, and the land will be restored accordingly. The Pilot was granted site plan approval by Cape Elizabeth's Planning Board on August 12, 2022 (select images from the approved site plan can be found in **Appendix C**).

Like with CCA, prior to construction of the Pilot, CCAG must receive a separate NTP following a majority vote of the Council, which this MOU will memorialize if fully executed. It is the intention of both the Town and CCAG to run the Pilot for a second year during the winter of 2023/2024 ("Year 2"). Year 2 will entail a 200'x85' refrigerated ice rink, and the site will be prepped to accommodate both project lengths beginning October 1st 2022.

For Year 1, an acceptable statement of financial capability was provided to the Town Manager on July 19, 2022, in accordance with the site plan review submission requirements in Section 19-4-4.C.2.q of the Cape Elizabeth Zoning Ordinance. Like with CCA, all approvals and construction and removal related expenses for the Pilot will be the responsibility of CCAG. An insured third party(s) will manage operation and maintenance of the Pilot, which will be arranged and funded by CCAG and its funding partner. Pilot electrical expense for Year 1 will also be paid for 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 from inside the rink and its perimeter. However, the Town does agree to remove snow from the Gull Crest parking lot and provide the Pilot with water

during Year 1. The Town also agrees to include the Pilot under its existing insurance policy. CCAG shall maintain adequate insurance coverage for any work conducted on the Property during the Pilot and to cover any gap in the Town's insurance policy during the Pilot operation. There will be no revenue plan for Year 1 of the Pilot, yet it is CCAG's intention for such a plan to be executed in Year 2. CCAG and its funding partner will establish the Pilot's daily and weekly skating schedule and coordinate this schedule with the Town and all key users of the project.

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 and revenue generation 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 Year 1 and/or Year 2 of the Pilot.

VII. 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 the Board Secretary of Cape Community Arena Group; however, they may appoint secondary individuals to lead specific activities described in **Appendix A**.

VIII. Liability

CCAG bears sole responsibility for any willful misconduct, negligent act, error, or omission of CCAG or anyone for whom CCAG is legally responsible that arises out of or is in connection with CCAG's use of the Property. The Town shall not be liable for said willful misconduct, negligent acts, errors, or omissions of CCAG or anyone for whom CCAG is legally responsible.

Town of Cape Elizabeth

Cape Community Arena Group

By: _____

By: _____

Name: Matt Sturgis

Name:

Title: Town Manager

Title:

Date:

Date:

Appendix A

MOU Period Milestones

Upon formal approval of CCA by majority vote of the Council, NTP to construction will be issued by the Council upon completion of the following milestones:

- a. CCA Business Plan completion by CCAG, which includes:
 - ⇒ Project economics, describing detailed project revenue and operating expenses, inclusive of, but not limited to such elements as electricity, water, sewer, mechanical maintenance, reserves for replacement, insurance, etc., and an operational pro-forma of revenue and expenses with a three-year anticipated forecast.
 - ⇒ A plan describing the operation and maintenance of the facility by a third party (either CCAG or an entity identified by CCAG that is not owned by the Town of Cape Elizabeth) to be provided to the Council. Such a plan will describe the roles and responsibilities of the third party in the operation and maintenance of the facility and all associated improvements.
 - ⇒ In the event the Council pursues formal acceptance of CCA as a Town facility, a transition plan shall be written, outlining the project donation and transfer from CCAG to the Town. The plan details will include CCAG providing funds sufficient for two (2) years of operating and maintenance expense-coverage and to the extent required by the Town, CCAG will provide a plan to remain active and available for the same two (2) year period to support the Town in managing the facility.
- b. CCA Permitting process completion by CCAG, which includes:
 - ⇒ Planning Board Approval
 - ⇒ Maine DEP Approval and any other State and Federally required approvals.
- c. Sufficient funds raised by CCAG to complete CCA construction, demonstrated by providing an acceptable statement of financial capability 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.
- d. CCA Construction Period and Asset Transfer Agreement(s) completed by CCAG and Town.

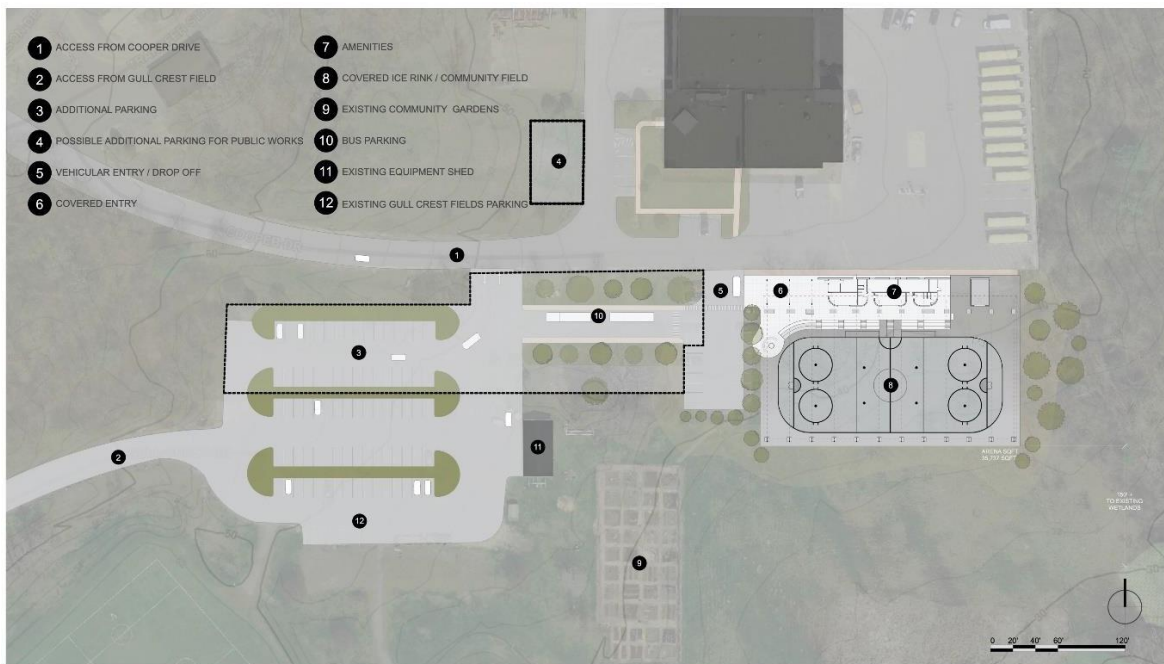
Appendix B

CCA Area of Interest & Conceptual Site Plan

CCA Area of Interest in blue (note: general and not exact)

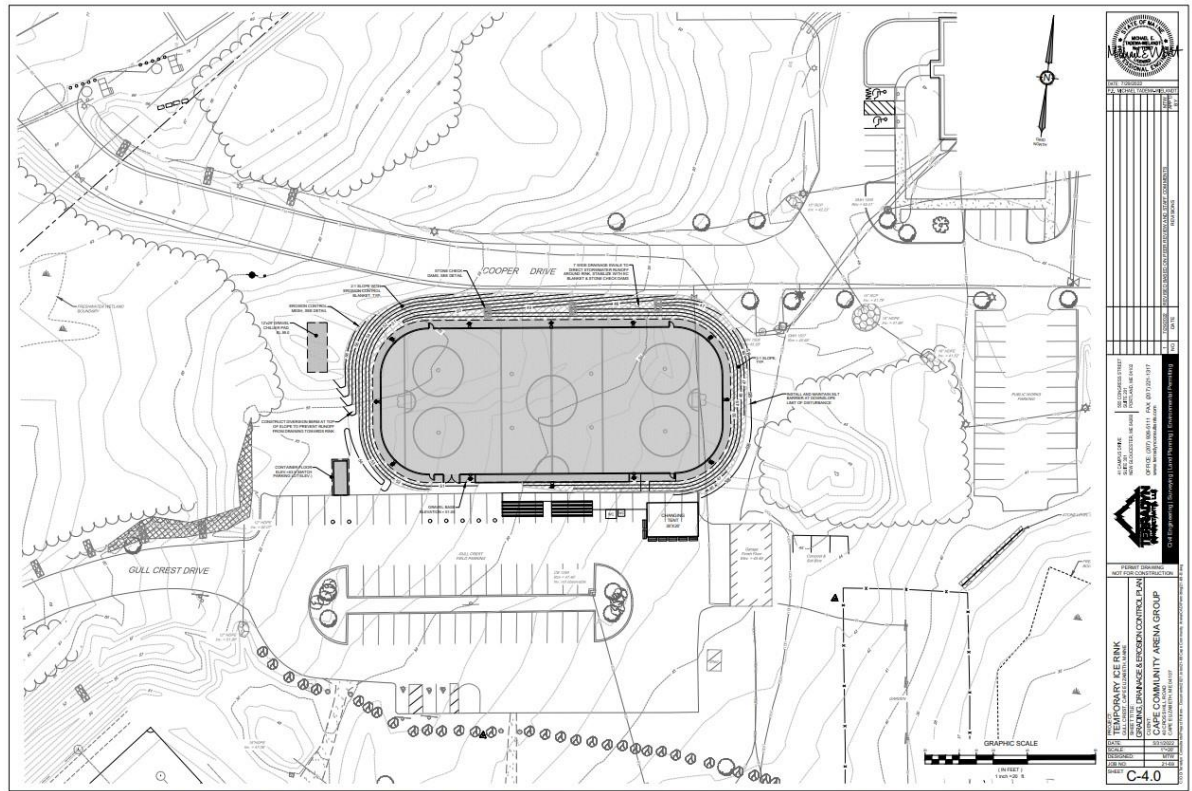
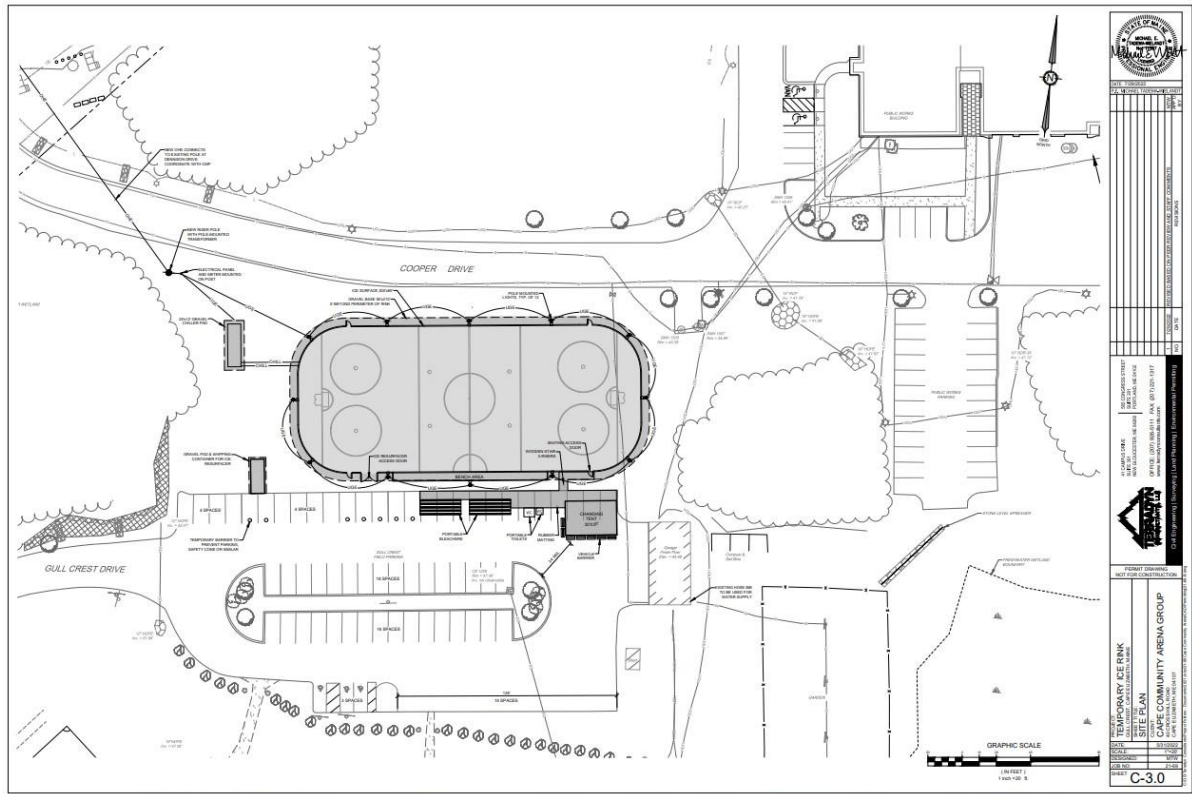


CCA Conceptual Site Plan (note: access from Cooper Dr not currently contemplated)



Appendix C

Approved Pilot Site Plan



Attachment Item #137-2022 September 12, 2022

Town of Cape Elizabeth

Town Council Rules

Approved December 13, 2022 – Recommended Edits DEI 08 10 2022-Town Council Approved 09 12 2022

Article I Scheduling of Meetings

Section 1. Regular meetings Regular meetings of the Cape Elizabeth Town Council are held in the Town Hall at 7:00 p.m., on the second Monday of each calendar month. When the meeting date falls on a holiday, the regular meeting is held on the following Wednesday, at the same time and place. The date and/or location of any regular meeting may be changed by an order or resolve passed at a previous meeting upon the vote of five members of the council, provided, however, that any change in date will still provide for one regular meeting in each month. Any meeting may be postponed by the chairman chairperson due to severe inclement weather. The chairman chairperson shall reschedule the meeting to the earliest possible date.

Section 2. Special meetings Special meetings may be called by the chairman chairperson, and in case of the chairman chairperson's absence, disability, or refusal, special meetings may be called by three members of the Town Council. Notice of such meeting shall be served in person, electronically by e-mail, by telephone communication directly to the Town Council member or left at the residence of each member of the Town Council at least 48 hours before the time for holding said special meeting, unless all members of the council sign a waiver of said notice. An e-mail notice shall not serve as the sole notice unless prior to the meeting the recipient acknowledges receipt of the e-mail. The call for said special meeting shall set forth the matters to be acted upon and nothing else shall be considered at such special meeting.

Article II Agenda and Meeting Preparation

Section 1. Deadline to submit materials No item shall be in order for action at any meeting of the Town Council unless such item shall be filed in the office of the town clerk on or before noon of the first business day of the month for the regular meeting of the Town Council, and before noon of the business day prior to the day of any other meeting.

Section 2. Agenda preparation The town manager, with the advice and consent of the chairman chairperson shall prepare the agenda, which shall include the order of business. Any Town Council member or the town manager may sponsor items to be included in the agenda. The agenda may include reports from municipal boards and commissions that recommend Town Council action. Unless otherwise provided by ordinance, items submitted from citizens or others for inclusion in the agenda must be sponsored by a Town Council member or by the town manager. Sponsorship of an agenda item by the town manager or by a Town Council member shall not be deemed to be support on the merits of the sponsored item.

Section 3. Consent calendar The agenda may include a consent calendar providing for multiple items to be considered en bloc. When any item is included as part of a proposed consent calendar, any Town Council member may ask for any item to be considered separately. At the discretion of the chairman chairperson, any item removed from the consent calendar may be considered before or after the consideration of the items remaining on the consent calendar.

Section 4. Agenda order The order of the agenda for meetings shall be as follows:

Convening by the Chairman Chairperson

Roll Call by the Town Clerk

The Pledge of Allegiance to the Flag

Presentations of any Town Council Recognitions

Town Council Reports and Correspondence
Other Reports on the Advance Agenda not Requiring Council Action
Citizens Discussion of Items Not on the Agenda-1st Opportunity
Town Manager's Report
Review of Minutes of Previous Meetings
Public Hearings
Agenda Items
Citizens Discussion of Items Not on the Agenda-Second Opportunity
Agenda Items Requiring Executive Sessions
Adjournment

Following any public hearing the Town Council shall consider the subject of the public hearing prior to moving forward to any additional item on the agenda.

Section 5. Agenda distribution The agenda shall be distributed to the members of the Council and made available to the public by the Wednesday preceding the date of the regular Council meeting and as soon as possible before a time set for any other meeting. Agendas shall be posted on the municipal website concurrent with distribution to the Town Council. Background material on issues before the Town Council shall be submitted electronically whenever feasible. Background material available electronically shall be posted on the municipal website unless the material relates to an item to be reviewed in non-public session.

Section 6. No new items after 10:00 p.m. No new item may be taken up for consideration at a Town Council meeting after 10:00 p.m.

Section 7. If meeting does not have a quorum If a meeting is adjourned because of the lack of a quorum, at least 24 hours notice of the time and place of holding another meeting shall be given to all members who are not present at the meeting from which adjournment is taken, unless such absent members sign a waiver of said notice.

Section 8. Electronic presentations Any person desiring to include as part of a presentation any material that requires projection shall provide the presentation to the town clerk by noon of the date of any meeting so that the presentation may be preloaded and ready to project. A copy of the presentation will also be maintained as a public record.

Article III Participation at Meetings and Conduct of Meetings

Section 1. Types of meetings. The Town Council meets in either business meeting format or workshop meeting format.

Section 2. Workshop Meetings The purpose of a workshop meeting is primarily for council dialogue involving reports and proposals from council members, committees and staff that may be considered at later Town Council meetings. The Town Council may give guidance to the chairman chairperson and to staff at workshop meetings but no decisions may be made that require formal votes. Notwithstanding the prior sentence, the Town Council may vote on procedural motions at a workshop meeting to determine a conflict of interest, to enter into executive session and to adjourn. Prior to Town Council discussion on any item, members of the public may speak on each agenda item for not more than three minutes each and up to a total of 15 minutes. If there are more speakers than the time available, the chairman chairperson may allocate the speaking time in order to balance the debate. The public participation portion shall conclude when the Town Council begins its discussions.

Section 3. Rules of order and debate The chairman chairperson presides over all meetings of the Town Council. No one shall speak until recognized by the chairman chairperson. When speaking, the member shall respectfully address the chairman chairperson, confine discussion to the question under debate, and avoid personalities. No member speaking shall be interrupted by another, but by a call to order, to correct a mistake or by the chairman chairperson if there are technical issues with sound or video equipment.

The chairman chairperson shall preserve decorum and order, may speak to points of order in preference to other members, and shall decide all questions of order subject to an appeal to the council by motion regularly seconded, and no other business shall be in order until a question on appeal is decided.

The ~~chairman~~ chairperson or a designee of the ~~chairman~~ chairperson shall summarize every item on the agenda following its reading by title.

The ~~chairman~~ chairperson shall call for and declare all votes, but if any member doubts a vote, the ~~chairman~~ chairperson shall cause a return of the members voting in the affirmative and in the negative without debate. When a roll call is taken, the roll is called in alphabetical order, except that the ~~chairman~~ chairperson shall be the final member to vote.

Every motion shall be reduced to writing, if the ~~chairman~~ chairperson shall so direct.

Any member may require the division of a question.

When a question is under debate, the ~~chairman~~ chairperson shall receive no motion but to:

- (1) adjourn
- (2) lay on the table
- (3) postpone to a day certain
- (4) refer to a committee or some administrative official
- (5) amend
- (6) postpone indefinitely, or
- (7) move the previous question

Motions shall have precedence in the order written above.

The ~~chairman~~ chairperson shall consider a motion to adjourn as always in order except on immediate repetition; and that motion, and the motion to lay on the table, or to take from the table, shall be decided without debate.

A motion for referral to a committee or administrative official, until it is decided, shall preclude all amendments of the main question.

All questions relating to priority of business to be acted upon shall be decided without debate.

In all cases where the parliamentary proceedings are not determined by the foregoing rules and orders, "Robert's Rules of Order," latest edition, shall be taken as authority to decide the course of proceedings.

After a vote is taken, it shall be in order for any member who voted on the prevailing side of a vote to have a reconsideration thereof at the same, or the next stated meeting, but not afterwards; and when a motion of reconsideration is decided, that vote shall not be reconsidered.

Upon the motion for the previous question being made and seconded, the ~~chairman~~ chairperson shall put the question in the following form: "Shall the main question be now put?" And all debate upon the main question shall be suspended until the motion for the previous question shall be decided. After the adoption of said motion for the previous question by a majority vote, the sense of the council shall be forthwith taken upon all pending amendments, and then upon the main question.

No debate shall be allowed on a motion for the previous question. Neither is it susceptible of amendment. All questions or order arising incidentally thereon must be decided without discussion whether appeal be had from the chair or not.

Section 4. Public Participation at Regular Town Council Meetings The public is welcome to participate at Town Council business meetings. The participation may take the following forms:

a. Participation at a public hearing and on other agenda items

b.

After an item has been introduced, any person wishing to address the council shall signify a desire to speak by raising ~~his or her~~ their hand or by approaching the lectern. When recognized by the ~~chairman~~ chairperson, the speaker shall give ~~his or her~~ their name and address or name and local affiliation, if the affiliation is relevant, prior to making other comments. All remarks should be addressed to the Town Council. Comments shall be limited to three minutes per person; however, the time may be extended by majority vote of councilors present. For agenda items that are not formally advertised public hearings, the ~~chairman~~ chairperson or a majority of the Town Council may limit the total time of public comments to 15 minutes per agenda item. This time may be extended by a

majority of the Town Council. The chairman chairperson may decline to recognize any person who has already spoken on the same agenda item. Once the council has begun its deliberations on an item, no person shall be permitted to address the council on such item.

If the Town Council has previously held within ninety days a public hearing on a similar item, the chairman chairperson or a council majority may limit or dispense with public comment at subsequent meetings when the item is considered.

b. Speaking at the meeting on topics not on the agenda

Persons wishing to address the council on an issue or concern local in nature not appearing on the agenda may do so before the town manager's report and/or after the disposition of all items appearing on the agenda.

Any person wishing to address the council shall signify a desire to speak by raising his-or-her their hand or by approaching the lectern. When recognized by the chairman chairperson, the speaker shall give his-or-her their name and address or name and local affiliation if the local affiliation is relevant prior to making other comments. All remarks should be addressed to the Town Council. Comments in each comment period shall be limited to three minutes per person and 15 minutes total; however, the time may be extended by majority vote of councilors present.

Issues raised during the non-agenda item comment period may be immediately responded to with brief answers by the chairman chairperson or by the town manager. After each comment period, the chairman chairperson will indicate that each person who did not receive an immediate response will receive a follow-up response no later than one week from the meeting. Copies of responses will be provided to all Town Council members.

Section 5. Decorum Persons present at council meetings and workshop meetings shall not applaud or otherwise express approval or disapproval of any statements made or actions taken at such meeting. Persons at business meetings may only address the Town Council after being recognized by the chairman chairperson and only at the lectern.

Section 6. Conflict of interest Each Town Council member shall disclose any potential conflict of interest immediately after the chairman chairperson introduces an item. The council member shall briefly explain their reason why they believe they may have a conflict of interest. The balance of the Town Council members after reviewing applicable statutes may by majority vote determine if the member has a conflict. If any member of the Town Council believes that another member has a statutory conflict of interest, they may raise a point of order at any time and the Town Council shall immediately suspend business to resolve the issue. If any member discovers part way into a discussion that they may have a conflict of interest, the council member may raise a point of order and the Town Council shall immediately suspend business to resolve the issue. All resolutions of conflict of interest issues may be by majority vote of the remaining Town Council members and after citing applicable statutory provisions. If the same issue is to be discussed at subsequent meetings, the recusal need not be revoted. The chairman chairperson will announce to those present the previous decision to recuse the council member.

Section 7. Members must vote Unless a Town Council member has been recused from voting for reason of conflict of interest, the Town Council member must vote when the yeas and nays are called.

Section 8. Suspension of rules The rules shall not be dispensed with or suspended unless five of the members of the council consent thereto. No rule or order shall be amended or repealed without notice, in writing, being given at the preceding meeting.

Article IV Miscellaneous Provisions

Section 1. Committees At the commencement of the council year, or as soon thereafter as possible, there shall be chosen the following committees, each committee to consist of such members of the council as the Town Council may designate:

1. Finance Committee
2. Appointments Committee
3. Ordinance Committee

The members of the council to serve on the appointments committee and ordinance committee shall be chosen by the council by a majority vote. All members of the council shall serve on the finance committee. Each member of the council, other than the ~~chairman~~ chairperson, shall serve on either the appointments committee or the ordinance committee, and the ~~chairman~~ chairperson shall be ex-officio a member of all standing committees. The chairperson of each of the Finance Committee, the Appointments Committee and the Ordinance Committee shall also be chosen by the full council by majority vote.

Section 2. When votes are effective All Town Council votes are effective immediately except that ordinance adoptions and amendments are effective as provided in the municipal charter.

Section 3. ~~Chairman~~ Chairperson In the absence of the ~~chairman~~ chairperson, the finance committee chairperson shall assume the responsibilities of the ~~chairman~~ chairperson. If both are absent, the remaining council members shall choose a ~~chairman~~ chairperson pro-tem who shall have the responsibilities of the ~~chairman~~ chairperson. The "~~chairman~~ chairperson" each year may ask that the position instead be referred to as "Town Council Chair," "Town Council Chairwoman," or "Town Council Chairperson." The Town Council shall respect the wishes of the incumbent ~~chairman~~ chairperson.

Section 4. Orientation Between the annual municipal election and the 2nd Monday in December, the current ~~chairman~~ chairperson assisted by the town manager shall organize an orientation session for any newly elected councilors and any continuing councilors who may wish to attend.

Section 5. Partisanship "The Council-Manager Charter of the Town of Cape Elizabeth" provides that elections for Town Council shall be conducted on a non-partisan basis and without party designations on the election ballot. To retain the non-partisan nature of the council, council members and others are asked to refrain from making statements announcing political party events or making other comments of a political partisan nature.

Section 6. Technology The Town Council utilizes technology to enable more access to local government. The use of messaging technology during Town Council meetings shall be limited to ensure that Town Council deliberations are conducted openly.

Revised: 12/10/1979, 5/14/1985, 12/9/1985, 2/8/1988, 5/25/1988, 10/11/1989, 6/10/1991, 12/9/1991, 6/9/2003, 12/11/2006, 1/8/2007, 8/9/2010, 12/12/2011, 12/9/2013, 4/9/2018, 9/12/2022

After recording, please return to:

GoNetSpeed
ATTN: Legal Dept.
396 Griffin Road, Suite 110
Bangor, ME 04401

EASEMENT AGREEMENT

The Town of Cape Elizabeth, ME, with a mailing address of 320 Ocean House Road, Cape Elizabeth, ME 04107 (“Grantor”), being the owner in fee simple of certain property located in the Town of Cape Elizabeth, County of Cumberland, State of Maine, more particularly described in Exhibit A attached hereto (the “Property”), for consideration paid, the receipt and sufficiency of which are hereby acknowledged, does hereby grant to **CRC COMMUNICATIONS, LLC D/B/A GONETSPEED**, a Delaware Limited Liability Company, with a mailing address of 56 Campus Drive, New Gloucester, ME 04260 (“Grantee”), its successors and assigns forever, the following perpetual, exclusive, assignable easement and right-of-way in, to, upon, over and under the portion of the Grantor’s Property described in Exhibit A attached hereto (the “Easement Area”).

The rights conveyed within the Easement Area include the right construct, reconstruct, operate, maintain, repair, replace and remove telecommunications facilities including, but not limited to, poles, cabinets, conduit, cables, lines, backup electrical sources and fuel, fencing, concrete pads, wiring, electrical connections and any necessary equipment and appurtenances (the “Communication Facilities”); the right to access, use, construct, maintain, relocate, repair, and replace overhead and underground communication, gas, and electrical utilities, including but not limited to conduit, cables, poles, pipes wires and all other equipment necessary for the provision of utilities to the Communications Facilities; the right to transmit data and information to and from said Communication Facilities; and the right, but not the obligation, to clear and dispose of trees and other growth in, on, or around the Easement Area that, in Grantee’s sole discretion, may interfere with the access, construction, reconstruction, operation, maintenance, repair, replacement and/or removal of Grantee’s Communications Facilities; Grantee shall have the obligation to maintain the Communications Facilities, including any fencing, in good and safe condition and appearance;

Grantee shall have the right to enter upon Grantor’s Property at any time for the purposes of accessing the Easement Area with all persons, vehicles, machinery, equipment, and tools necessary to construct, maintain, operate, repair, rebuild and remove the Communications Facilities.

Grantor covenants and agrees that it will not excavate below the surface of the ground, erect, or maintain or permit the erection or maintenance of any permanent or temporary structure, of any kind or nature, within the Easement Area, any or all of which in the sole opinion of the Grantee would endanger or interfere with the exercise of any of the rights or privileges herein conveyed.

The Communications Facilities and all other improvements constructed or installed by Grantee shall remain the property of Grantee and be removable at the option of the Grantee. If at such time Grantee determines that it no longer needs to maintain the Communications Facilities on Grantor’s

Property, Grantee shall remove the Communications Facilities and shall execute and record a termination of this Easement.

The rights and obligations set forth herein shall be binding upon and inure to the benefit of the parties hereto, and their respective successors and assigns.

IN WITNESS WHEREOF, the Grantor has hereunto set his and seal the day and year written below.

GRANTOR:

Town of Cape Elizabeth, ME

By: _____

Printed Name: Matthew Sturgis, Town Manager_____

Date: _____

STATE OF MAINE

County of Cumberland, ss. _____, 2022

Then personally appeared the above-named Matthew Sturgis and acknowledged the foregoing instrument to be his/her/their free act and deed.

Before me,

Notary Public

Print Name:_____

My Commission Expires:_____

Exhibit A

A certain lot, or parcel of land, being an easement for communications facilities and associated equipment, located northeasterly of Ocean House Road, in the Town of Cape Elizabeth, County of Cumberland, State of Maine, being bound and described as follows:

Beginning northeasterly of Ocean House Road at a proposed #5 rebar w/cap stamped "NCS 2080" located S 74°20'00" E, 9.43' from the southerly corner of land now or formerly (N/F) of KLS, LLC, as described in Book 25269, Page 331;

THENCE: S 18°38'22" E, through land of the Grantor, 20.00', to a proposed #5 rebar w/cap stamped "NCS 2080";

THENCE: S 71°21'38" W, through land of said Grantor, 20.00', to a proposed #5 rebar w/cap stamped "NCS 2080";

THENCE: N 18°38'22" W, through land of said Grantor, 20.00', to a proposed #5 rebar w/cap stamped "NCS 2080";

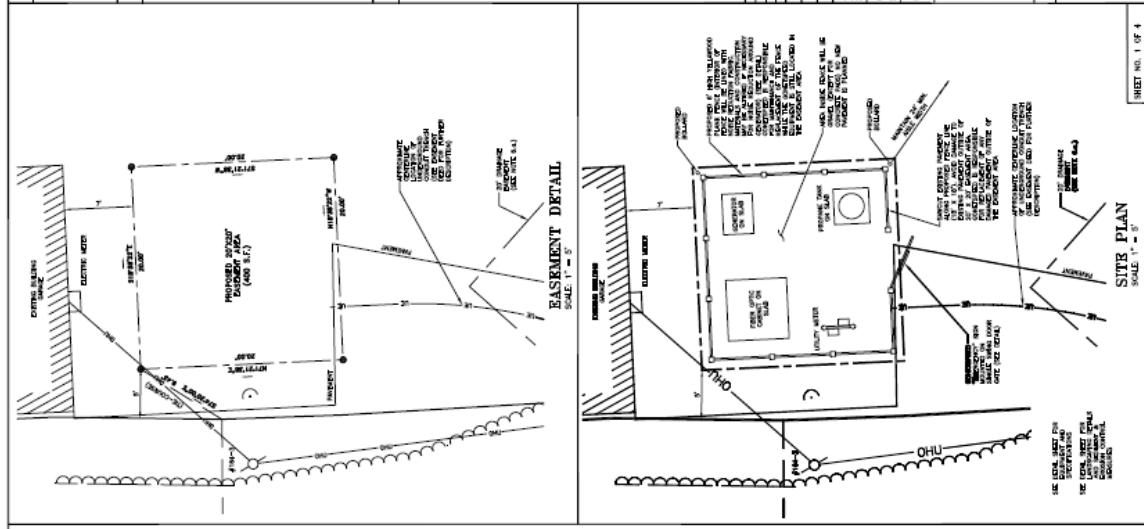
THENCE: N 71°21'38" E, through land of said Grantor, 20.00', to the POINT of BEGINNING.

The above described easement contains 400 square feet, more or less.

The bearings for the above described easement are based on Maine Coordinate System of 1983, West Zone, Grid North.

The above described easement is shown on plan entitled "Easement Survey, 320 Ocean House Road, Cape Elizabeth, Maine", by Northeast Civil Solutions, Inc., dated June 13, 2022, NCS Project No. 42707.

Meaning and intending to describe an easement over the property conveyed in deed to Town of Cape Elizabeth from William J. Dyer, dated June 18, 1897, recorded in Book 652, Page 134 and in a deed to Town of Cape Elizabeth from Charles H. Robinson and Rebecca C. Robinson, dated May 4, 1927, recorded in Book 1265, Page 074, Cumberland County Registry of Deeds.



Attachment Item #141-2022 September 12, 2022**(Approved by the Town Council 09-12-2022)****RESOLUTION**

GOVERNMENTAL ENTITY

CAMDEN NATIONAL BANK

800-860-8821 I CamdenNational.bank I Member FDIC

GOVERNMENTAL ENTITY NAME AND ADDRESS

TOWN OF CAPE ELIZABETH

320 OCEAN HOUSE RD CAPE ELIZABETH, ME 04107-2400

Initial Resolution.

DATE OF RESOLUTION	ACCOUNT NUMBER	Tax Identification Number

By signing below, we certify to Camden National Bank ("Financial Institution") that: we are the Town Manager and Finance Director of the above named Governmental Entity ("Entity"), validly chartered and operating under the laws of the State of Maine; the following is a true and complete copy of the Resolution, properly adopted at a duly called open legal meeting of the officers of the Entity held on _____ in accordance with the charter of the Entity, if any; this Resolution is contained in the minutes of that meeting and that such Resolution is still in force and effect and has not been amended or rescinded, and was and still is in accordance with the charter of the Entity, if any; the Financial Institution has been provided a true and complete copy of the charter of the Entity, if any, as in effect as of the date of this Resolution; provided below are the correct names, titles, and genuine signatures of the persons authorized to exercise the powers provided in the Resolution ("Authorized Signers"); and the Financial Institution may rely upon our certification as to our authority to execute this Resolution and to make the representations in this Resolution.

IT IS RESOLVED:**The Authorized Signers shall possess the powers indicated as contained in this Resolution.**

DEPOSITORY ACCOUNT. Perform the following activities in regards to the depository account(s) indicated above in the name of the Entity, subject to any terms and conditions governing the account(s), including:

- **Account Opening and Maintenance.** Open and maintain the Entity account(s).
Number of signers required: 1
- **Make Deposits.** Make deposits to the Entity account(s).
Number of signers required: 1
- **Endorsements.** Endorse for negotiation, negotiate, and receive the proceeds of any negotiable instrument, check, draft, or order for the payment of money payable to or belonging to the Entity, by writing, stamp, or other means permitted by this Resolution without the designation of the person endorsing.
Number of signers required: 1
- **Make withdrawals.** Make withdrawals from the Entity account(s) in any manner permitted by the account(s) regardless whether such action will create or increase an overdraft of the involved account.
Number of signers required: 1
- **Transfer Funds.** Transfer funds from the Entity account(s) in Financial Institution to any account whether or not held at this Financial Institution and whether or not held by this Entity and execute any agreements related to such transfers.
Number of signers required: 1
- **Approve, Endorse, Guarantee and Identify Payees.** Approve, endorse, guarantee, and identify the endorsement of any payee or any endorser of any negotiable instrument, check, draft, or order for the payment of money whether drawn by the Entity or anyone else and guarantee the payment of any negotiable instrument, check, draft, or order for the payment of money.
Number of signers required: 1
- **Delegate Authority.** Delegate to others the authority to approve, endorse, guarantee, and identify the endorsement of any payee or endorser on any negotiable instrument, check, draft, or order for the payment of money and to guarantee the payment of any such negotiable instrument, check, draft, or order for the payment of money.
Number of signers required: 1

SAFE DEPOSIT BOX. Lease a Safe Deposit Box(es) with Financial Institution, make inspections of, deposits to and removals from the Box(es), and exercise all rights and be subject to all responsibilities under the Lease.
Number of signers required: 1

NIGHT DEPOSITORY. Enter into a Night Depository Agreement with Financial Institution and exercise all rights and be subject to all responsibilities under the Agreement.

Number of signers required: I

LOCKBOX. Enter into a Lockbox Agreement with Financial Institution and exercise all rights and be subject to all responsibilities under the Agreement.

Number of signers required: I

DEBIT CARD/ACCESS CARD. Apply for, receive and utilize debit, automated teller machine cards, or other access devices to exercise those powers authorized by this Resolution or other Resolutions then in effect.

Number of signers required: I

CASH MANAGEMENT. Enter into a Cash Management Agreement with Financial Institution, and exercise all rights and be subject to all responsibilities under the Agreement.

Number of signers required: I

IT IS FURTHER RESOLVED THAT:

DESIGNATED DEPOSITORY. Financial Institution is designated as a depository for the funds of the Entity and to provide other financial accommodations indicated in this Resolution.

AUTHORIZED SIGNER'S POWERS. Authorized Signers are authorized to make any and all other contracts, agreements, stipulations, and orders which the Authorized Signers may deem advisable for the effective exercise of their powers.

SIGNATURES. The Financial Institution shall be indemnified and held harmless by the Entity for any claims, expenses, damages, or attorney fees resulting from the honoring of any signature, authorized by this Resolution, or refusing to honor any signature not so authorized, regardless of whether or not such signature was genuine, if such signature reasonably resembles the specimen provided to the Financial Institution. The Financial Institution shall also be permitted to rely upon non-signature security and verification codes which it provides to or receives from an Authorized Signer and shall be indemnified and held harmless by the Entity for any claims, expenses, damages, or attorney fees resulting from their use.

IMPROPER ENDORSEMENT. Any negotiable instrument, check, draft, or order for the payment of moneys not clearly endorsed by an Authorized Signer may be returned to the Entity by the Financial Institution. The Financial Institution, in its sole discretion, alternatively may endorse on behalf of the Entity any negotiable instrument, check, draft, or order for the payment of money not clearly endorsed in order to facilitate collection. Financial Institution shall have no liability for any delay in the presentment or return of any negotiable instrument, check, draft, or order for the payment of money which is not properly endorsed.

DISPOSITION OF FUNDS. When withdrawal or transfer powers are granted to an Authorized Signer, the Financial Institution is directed and authorized to act upon and honor withdrawal or transfer instructions issued and to honor, pay, transfer from, and charge to any depository account(s) of the Entity, all negotiable instruments, checks, drafts, or orders for the payment of money so drawn when signed consistent with the Resolution without inquiring as to the disposition of the proceeds or the circumstances surrounding the issuance of the negotiable instrument, check, or order for the payment of money involved, whether such negotiable instruments, checks, drafts, or orders for the payment of money are payable to the order of, or endorsed or negotiated by any Authorized Signer signing them or any Authorized Signer in their individual capacities or not, and whether they are deposited to the individual credit of or tendered in payment of the individual obligation or account of any Authorized Signer signing them or of any other Authorized Signer.

PRIOR ENDORSEMENTS. All negotiable instruments, checks, drafts, or orders for the payment of money deposited with prior endorsements are guaranteed by the Entity.

PRE-RESOLUTION TRANSACTIONS. All actions by Authorized Signers in accordance with this Resolution but before the adoption of this Resolution are approved, ratified, adopted, and confirmed by the Entity.

WARRANTY. That the Financial Institution may rely upon the certification as to the Entity authority to execute this Resolution and make the representations in this Resolution.

NOTIFICATION OF CHANGES. The Entity shall notify Financial Institution in writing at its address shown above in advance of any changes which would affect the validity of any matter certified in this Resolution.

REVOCATION AND MODIFICATION. An act ("Act") to modify, terminate, amend or replace this Resolution will not immediately affect the ability of the Financial Institution to rely upon this Resolution. The Act shall not affect any action by the Financial Institution in reliance on this Resolution before the date the Act becomes effective as set forth in the next sentence. An Act will not become effective until all of the following occur: (a) Financial institution receives written notification of the Act in a form and substance satisfactory to the Financial Institution and (b) the Financial Institution has had a reasonable period of time to act upon such notification. Until the Act is effective, this Resolution shall remain in full force and bind the Entity, its legal representatives, heirs, successors and assigns.

DESIGNATIOAN OF AUTHORIZED SIGNERS
NAM TITLE

AUTHORITY
CODE/LIMITATIONS

Account Opening and Maintenance;
Lease Safe; Night Depository; Lockbox;
Debit Card/Access Card; Cash
Management; Make Deposits;
Endorsements; Make Withdrawals;
Transfer Funds; Approve, Endorse,
Guarantee and Identify Payees; Delegate
Authority

Account Opening and Maintenance;
Lease Safe; Night Depository; Lockbox;
Debit Card/Access Card; Cash
Management; Make Deposits;
Endorsements; Make Withdrawals;
Transfer Funds; Approve, Endorse,
Guarantee and Identify Payees; Delegate
Authority

By signing this Resolution, we acknowledge reading, understanding, and agreeing to all of its provisions and certify, personally and on behalf of the Entity that all statements made in this Resolution are true and correct.

Date

Date

Date

Date