



Cape Elizabeth Town Council Minutes

Monday, January 13, 2020

7:00 p.m. Council Chambers

Cape Elizabeth Town Hall

**Valerie A. Adams, Chairman
Valerie J. Deveraux
Jeremy A. Gabrielson
James M. "Jamie" Garvin
Caitlin R. Jordan
Penelope A. Jordan
Christopher M. Straw**

The meeting convened at 7:05 p.m. by Town Council Chairman Valerie A. Adams.

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 Penelope Jordan announced the ordinance committee meeting on Wednesday, January 15 at 7:30 a.m. in the Jordan Conference Room at town hall relating to short term rentals; interested residents are encouraged to attend.

Councilor Straw mentioned the U.S. Census Bureau's latest estimates from last month puts the under 5 years of age population in Cape Elizabeth the highest since 1990.

Chairman Adams encouraged interested residents to attend the ordinance committee meeting and follow the short term rental discussion.

Finance Committee Report

Mr. Sturgis reviewed the dashboard as of December 31, 2019.

Finance Chairman Garvin noted the town is 6 months into FY 2020. Last week the town manager provided an overview to the school building committee on the town's borrowing capacity. On January 29 at 7:00 p.m. in the Jordan Conference Room at town hall the town council and school board will receive the FY 19 audit results from Runyon Kersteen Ouellette.

Citizen Opportunity for Discussion of Items Not on the Agenda

None

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Town Manager's Monthly Report

Town Manager's Report January 13, 2020

Happy New Year to all. As the new year begins the staff is currently working on the early stages of the Fiscal Year 2021 budget. This includes capital planning, departmental operations, and review of revenues. As part of that review, I will be adding a review of the current fee structure for council review in the February agenda.

Public Works Director Malley and I recently met with the Town's Tree Warden, Todd Robbins, and the subjects were long range planning for tree maintenance in the Park, winter moth, and the Emerald Ash Borer, which is a new invasive pest affecting Ash trees. He reported that the Winter Moth is not as robust as we experienced the prior three years, but still requires vigilance. In terms of the Emerald Ash Borer, he is working with staff at the Thomas Memorial Library to provide an informational program in the near future.

The search for a new Library Director is underway, and the search committee will be reviewing the application packets received, scheduling first round interviews, and moving the process forward. Rachel Davis will serve as the interim Library Director once Kyle Neugebauer finishes his duties. We hope to have a new Director in place by mid to late February.

Thursday evening at 7 pm we will be hosting a public information session regarding the proposed new sidewalk sections in the Town Center. The first segment, planned for construction this spring will be from Cumberland Farms to the Methodist Church as part of the Municipal Partnership Initiative with the State Department of Transportation. The other two segments are planned for construction in two years, running from C-Salt to Fowler Road as part of a PACTS grant.

After many demonstrations and quotes for pricing, I have entered into an agreement with evogov for a complete redesign of the Town's website. This will take some time for migrating our archives and other content as well as a new design and format, but we are looking to have this completed before the end of the current fiscal year.

Finally, Tina Sweeney will be leaving the tax office at the end of January as she enters what we all wish is a long and happy retirement.

Respectfully submitted, Matthew E. Sturgis Town Manager

Presentation – Pond Cove Playground Committee – Follow Up

Lauren Glennon, members of the Pond Cove Playground Committee and students provided an overview of the newly constructed Pond Cove playground. The Committee thanked the town council for the total funding of \$100,000 to make this project possible.

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Review of Draft Minutes of the meeting held on December 9, 2019.

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

ORDERED, the Cape Elizabeth Town Council approves the minutes of the meeting held on December 9, 2019 as written.

(7 yes) (0 no)

Item #27-2020 Lease of Building #326 at Fort Williams Park

Public Comment

David Lourie, 189 Spurwink Avenue representing Ms Rachel Walls provided background of the sublease agreement between Behavioral Health Resources/Connie Jordan and Rachel Walls.

Eric Whitten, 16 Fairlawn Avenue South Portland, former subtenant of Behavioral Health Resources/Connie Jordan shared his 9-month experience (starting in 8/2016) learning the space had been leased to someone else before his agreement for a longer term has been satisfied.

Marianne Tarraza, 34 Broad Cove Road, former subtenant of Behavioral Health Resources/Connie Jordan said Ms. Jordan is not a good steward of the property and lessees of town-owned property should not be allowed to sublet to make money.

Jeffrey Whittaker, Former Cape Elizabeth resident said the building should be used for educational purposes and offered to educational groups. The town should be aware of who it does business with and one person shouldn't be able to lease the property to make money.

Victoria Browning Wyeth, Philadelphia, PA and Cushing, ME, friend of Ms. Walls said the talent and educational experience Ms. Walls has to offer to the community and students should be considered.

Rosemary Reid, Former town councilor, former resident and mother of Ms. Walls said the town council should take no action and enter into executive session to learn more about the matter. Ms Walls has paid the rent to date.

Rachel Walls, 16 Fenway Road, subtenant of Behavioral Health Resources/Connie Jordan said Ms. Jordan is in default of the lease. Her (Ms. Walls) rent has been paid to the district court and she is willing to pay the town directly, cure Ms. Jordan's default and pay the town tomorrow and take over the lease. It doesn't make sense to take off a revenue-generating building. The size of the building for the park manager may not be enough.

Town Attorney Michael Hill was present to answer questions.

Councilor Penelope Jordan disclosed she is a friend of Connie Jordan but not a close relative and she worked with Rosemary Reid years ago at UNUM.

Councilor Caitlin Jordan stated she doesn't know Connie Jordan.

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Mr. Sturgis provided an overview of the recommended action.

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

ORDERED, the Cape Elizabeth Town Council pursues the already served Notice of Termination of the Lease to Behavioral Health Resources, Inc.

(7 yes) (0 no)

Item #28-2020 Town Manager's Contract

Public Comment

Rosemary Reid, Former town councilor, non-resident said the town manager shouldn't take any action of a prior town manager without understanding the implications.

Introduction – Councilor Garvin

Moved by James M. Garvin and Seconded by Penelope A. Jordan

ORDERED, the Cape Elizabeth Town Council approves the employment contract between the Town of Cape Elizabeth and Matthew E. Sturgis, Town Manager for a term beginning January 30, 2020 and continuing until January 29, 2023 as presented.

(7 yes) (0 no)

See attachment.

Item #29-2020 Conservation Committee Report – 2019 Greenbelt Trail Projects

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

ORDERED, the Cape Elizabeth Town Council acknowledges receipt of the report from the Conservation Committee dated January 8, 2020 re: Eagle Scout Projects on the Greenbelt with thanks and appreciation to all of the Eagle Scout candidates who have volunteered on the town's Greenbelt Trail.

(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 Penelope A. Jordan

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

(7 yes) (0 no)

Respectfully Submitted,

Debra M. Lane, Town Clerk

Item #28-2020 Attachment (3 pages)

TOWN OF CAPE ELIZABETH
EMPLOYMENT AGREEMENT

Commented [1]:

Commented [2]:

WHEREAS, the Town of Cape Elizabeth, a municipal corporation duly organized and existing under the laws of the State of Maine, (hereinafter Town), by and through its Town Council (hereinafter Council), desires to retain the services of Matthew E. Sturgis, (hereinafter Manager) to serve as Town Manager, and

WHEREAS, Matthew E. Sturgis desires to accept employment as Town Manager, and the undersigned desire to reduce the terms of employment to writing;

NOW, THEREFORE, in consideration of the mutual covenants herein, the undersigned agree as follows:

1. **Obligation** - The Manager shall perform the functions and duties as set forth in applicable state statutes, including but not limited to 30-A MRS §2636 and the Cape Elizabeth Council-Manager Charter, Article III and the Town Code of Ordinances as the same currently exist or may be amended and such other legally permissible and proper duties and functions as the laws may impose or the Council may assign. The Manager agrees to well and faithfully serve the Town in said capacity and to devote his time, attention and energies to the performance of his duties hereunder to the best of his ability.

2. **Term** - The Town agrees to employ the Manager for a three (3) year term beginning January 30, ~~2020~~2017 and continuing until January 29, 2023 unless terminated pursuant to the terms of this Agreement or unless a specific term is provided for by a subsequent amendment to this Agreement. The Manager agrees to provide the Town with a minimum 45 days advance notice of his intention to terminate this agreement. The Council agrees to provide the Manager notice of their intention to commence negotiations for a successor agreement not less than ninety (90) days prior to expiration of this agreement.

3. **Performance Evaluation** - The Council shall provide the Manager with periodic opportunities to discuss Council-Manager relations and the performance of the Manager. As a minimum, the Council shall conduct an ~~annual performance employment evaluation prior to the first 6 month anniversary and an annual evaluation at the first year anniversary and every twelve (12) months, thereafter.~~

4. **Salary** - The Town agrees to pay the Manager for services provided pursuant to this Agreement a gross salary of One Hundred ~~Twenty Five Ten~~-Thousand ~~Nine Hundred~~ Dollars (\$~~125,900~~140,000) per year commencing on January 30, 202017. The Manager's salary shall be adjusted upward ~~3% annually with the to One Hundred Twelve Thousand Five Hundred Dollars (\$112,500) per year at the twelve (12) month anniversary date, upon~~ completion of a successful performance evaluation. The salary hereunder is payable at the same time and in the same manner as other employees of the Town. The Council and the Manager agree that a formal written evaluation of the Manager's performance as well as progress made on the list of goals and objectives, will serve as the primary determining factor in ~~subsequent~~ compensation increases. ~~after the first year of the contract.~~

5. **Termination** - If the Manager is terminated without cause ~~in the first year of employment~~, the Town shall provide a minimum severance payment equal to ~~three (3) month's salary at the then current rate of pay. If termination without cause is after the first year of employment, a minimum severance payment equal to four (4) month's salary at the then current rate of pay must be made. Severance payment in~~

~~subsequent years will increase by~~ one (1) month per year of service up to a maximum of six (6) months' severance. This severance must be paid in a lump sum. Other options may be agreed upon by the Manager and the Council. If the Manager is terminated because of a conviction of any illegal act, then the Council is not obligated to pay severance under this section. Termination with cause will be in accordance to Cape Elizabeth Town Charter and Maine State Statutes.

6. **Retirement** – The Town agrees to match the Manager's contribution up to ~~11.540~~% of the Manager's base salary into the International City Management Association Retirement Corporation, said amount on behalf of the Manager.

7. **Health Insurance** – The Town will provide medical insurance coverage offered by the Town, currently through the Maine Municipal Employees Health Trust, for the Manager and family. The Town will pay 80% of the premium for the medical insurance policy offered by the Town.

8. **Vacation** - The Town will provide twenty-four (24) days of vacation per year commencing on the date of this agreement. A maximum of ten (10) days may be carried over from one year to the next on the Manager's anniversary date.

9. **Sick Leave** – The Manager shall accumulate one (1) day per month for each month of employment up to a maximum of one hundred forty (140) days. The Manager will also be allowed to carry over sick leave earned as Assessor for the Town.

10. **Cell Phone** – The Town will provide a cell phone stipend of \$90.00 per month for the term of this contract.

11. **Automobile Allowance** – The Manager will be provided with an automobile allowance of \$400.00 per month in consideration of which he shall be responsible to provide his own transportation for all work related automobile travel. Throughout the term of employment, the Manager shall secure, and provide the Town with proof of automobile liability insurance with limits not less than:

- \$500,000 combined single limit OR
- \$250,000 for each person and
- \$500,000 each occurrence and
- \$250,000 property damage

Limits may be achieved by a primary policy or by a primary policy plus umbrella policy.

12. **Other Benefits** - The Manager shall also be eligible to receive any other benefits as the Town provides to its other employees.

13. **Public Official Liability Insurance** – The Town shall provide the Manager with Public Official Liability Insurance and any Bond required of the Town Manager, or any other position filled by the Town Manager subject to the provisions of State Statute, Town Charter and Town Ordinances.

14. **Professional Dues and Professional Development** – The Town hereby agrees to pay for the following expenses of the Manager for professional meetings and training programs: Membership dues and Annual Meeting of the International City Manager's Association (ICMA) and membership dues and meeting attendance at the Maine Town and City Manager's Association (MTCMA). Attendance at any other professional associations that the Manager and the Council deem to be in the best interests of the Town, are subject to Council approval.

15. General Provisions –

A. Except as expressly stated or otherwise provided for in this Agreement, the Manager is governed by the same customs, practices and policies governing other employees of the Town.

B. The parties acknowledge and agree that this Agreement was freely negotiated and entered into, and that in the event of a conflict between the provisions hereof and the provisions of any law or ordinance, the provisions of this Agreement prevail.

C. This Agreement may be amended or modified only in writing.

D. If any provision, or any portion thereof, contained in this Agreement is held to be unconstitutional, invalid, or unenforceable by a court of competent jurisdiction, the remainder of this Agreement, or portion thereof, is not affected thereby, and remains in full force and effect.

E. The provisions of this Agreement are governed by Maine law.

IN WITNESS WHEREOF, THE Town of Cape Elizabeth has caused this Agreement to be duly signed and executed on its behalf by the Council and Matthew E. Sturgis has signed and executed this Agreement on the ____ day of January, 20~~20~~17.

TOWN OF CAPE ELIZABETH

Matthew E. Sturgis

~~Valerie A. Adams, James M.~~ Council Chair

~~Valerie J. Deveraux, Katharine N. Ray,~~ Councilor

~~Jeremy A. Gabrielson, Patricia K. Grennon,~~ Councilor

~~James M. Garvin, Jessica L. Sullivan,~~ Councilor

~~Caitlin R. Jordan, Sara W. Lennon,~~ Councilor

~~Penelope A. Caitlin R.~~ Jordan, Councilor

~~Christopher M. Straw, Penelope A. Jordan,~~ Councilor

ATTEST: Debra M. Lane, Town Clerk

