



Cape Elizabeth Town Council DRAFT Minutes

Monday, August 10, 2020 – Zoom Online

6:30 p.m. Executive Session

7:00 p.m. (Following executive session, the remainder of the meeting will begin but not before 7pm.)

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 via Zoom, an online video and audio conferencing platform, was convened at 6:30 p.m. by Town Council Chairman Valerie A. Adams.

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

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 The section is repealed 30 days after the termination of the state of emergency.

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

Roll Call by the Town Clerk

All members of the town council were present.

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

The Pledge of Allegiance to the Flag

Item #107-2020 Executive Session Relating to Surfside Avenue Paper Streets Lawsuit

Public Comment

Sarah MacColl, 4 Avon Road encouraged the town council to accept the paper streets and construct a small path.

Jim Morra, 5 Waumbek Road supports the town council accepting the paper streets for the benefit of the majority of citizens.

**Page 2 Town Council Minutes Virtual COVID-19
August 10, 2020**

Richard Bryant, 55 Spurwink Avenue said the town did the right thing by defending its' rights. The town should push forward and accept the paper streets, move forward with a path and reach out to the litigants to receive feedback on the path.

George Foley, 9 Pilot Point Road said the original developer intended the paper streets be for public use. The town should accept the paper streets and put in a path as it was always intended – this is needed to heal the neighborhood.

Priscilla Armstrong, 18 Avon Road supports accepting the paper streets and the neighbors working together for a less obtrusive way.

Jodi Breau, 5 Waumbek Road, Facilitator for Save Our Shoreline (SOS) said the coalition has done a lot of work. The town should start the process to accept the paper streets with everyone working together to construct a footpath.

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

ORDERED, the Cape Elizabeth Town Council enters executive session at 6:45 p.m. pursuant to 1 M.R.S. §405 6 E to receive an update from the town's attorney Durward Parkinson relating to paper street sections of Surfside Avenue and the recent decision from the Maine Supreme Judicial Court Pilot Point, LLC et al. v. Town of Cape Elizabeth.

(7 yes) (0 no)

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

ORDERED, the Cape Elizabeth Town Council exits executive session and reenters public session at 7:14 p.m.

(7 yes) (0 no)

Town Council Reports and Correspondence

Chairman Adams reported an update will be provided at the September 14 meeting relating to the November 3 election. Also, election information will be posted to the town's website as it becomes available.

Councilor Deveraux, Appointments Committee Chairman reported applications for the newly-created ad-hoc Civil Rights Committee are being accepted. Online applications are available at www.capeelizabeth.com. The deadline to submit applications is 4:00 p.m. August 19.

Finance Committee Report

Councilor Garvin, Finance Chairman reviewed the dashboard ending July 31, 2020. Mr. Sturgis indicated excise taxes and Fort Williams Park revenues will be watched closely to see if there are trends toward reduced revenue. Recently Governor Mills announced reductions to the state budget; potential impacts to towns will be monitored.

Citizen Opportunity for Discussion of Items Not on the Agenda

George Foley, 9 Pilot Point Road asked when paper streets will appear on a council agenda.

Chairman Adams indicated paper streets may be added to an upcoming workshop agenda.

**Page 3 Town Council Minutes Virtual COVID-19
August 10, 2020**

Deborah Murphy, 24 Pilot Point Road thanked the town council for their work relating to paper streets and supports the acceptance of the streets.

Town Manager's Report

Community Services wrapped up their summer camp this past Friday. The final day was enjoyed with a bike rodeo and a visit by the ice cream truck. This was a very successful camp and we are grateful for the roughly 120 campers we had this summer. A special thank you to Kelly Phinney our camp director, Kathy Raftice, Community Services Director, and the staff for their creative efforts to provide this valued service to families. Last week I sent an email to the participants thanking them for participating in this year's program and for all their efforts to keep camp safe.

Today was the first day for Jay Reynolds, our new Director of Public Works. We are looking forward to a long and bright future with the Town.

The finance departments for both the Town and School Department are readying for the start of the annual financial audit, which will begin shortly. We are anticipating another strong financial report.

I am happy to report the turf field replacement project is complete ahead of schedule. Additionally, the track resurfacing and tennis court resurfacing projects are complete. While work on the sidewalk segment one continues to make great progress, with the new light poles installed this afternoon.

For residents looking to dispose of returnable bottles at the recycling center, we are now accepting their donations. We will be reviewing the status of the "swap shop" in September, so please stand by for future updates.

Respectfully submitted,

Matthew Sturgis
Town Manager

Review of Draft Minutes of the Following Virtual Meetings-

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

ORDERED, the Cape Elizabeth Town Council accepts the minutes of the meeting held on July 13, 2020 and the special meeting on July 20, 2020 as written.

(7 yes) (0 no)

Item #108-2020 The Well at Jordan's Farm Renewal Liquor License

Councilor Penelope Jordan recused herself from discussion and voting on this item as Jason Williams is a business partner with Jordan's Farm.

Councilor Caitlin Jordan disclosed her family does business with The Well.

Councilor Garvin disclosed his son is an employee of one of the partners.

**Page 4 Town Council Minutes Virtual COVID-19
August 10, 2020**

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

ORDERED, the Cape Elizabeth Town Council approves the renewal malt liquor (beer), wine and spirits licenses for Well, LLC, Jason Williams DBA The Well at Jordan's Farm located at 19 Wells Road as presented.

(6 yes) (0 no) (1 recusal Councilor Penelope Jordan)

Item #109-2020 Grant Authorization – Shore Road Rehabilitation Preliminary Design

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

ORDERED, the Cape Elizabeth Town Council authorizes a grant application to PACTS for the preliminary engineering design for the Shore Road Rehabilitation Project in the amount of \$172,000 with a 25% match provided by the town in the amount of \$43,000.

(7 yes) (0 no)

Item #110-2020 Referral to the Planning Board – Review of 2019 Comprehensive Plan Recommendation #86

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

ORDERED, the Cape Elizabeth Town Council refers to the planning board for review an amendment to the 2019 Comprehensive Plan Recommendation #86 to reflect the proposed amendments to limit short-term rental operations to primary residents.

(6 yes) (0 no) Councilor Gabrielson lost internet connection during the vote.

Item #111-2020 Village Green Flagpole Donations

Moved by James M. Garvin and Seconded by Valerie J. Deveraux

ORDERED, the Cape Elizabeth Town Council accepts the generous donations in the amount of \$1,134.00 each from Thomas Egan, Jeffrey Holden and James Huebener for the village green flagpole upgrade. On behalf of the Town of Cape Elizabeth, the Town Council thanks Mr. Egan, Mr. Holden and Mr. Huebener for their donations and acknowledges their community-spirit in upgrading the flagpole for the public to enjoy.

(7 yes) (0 no)

Item #112-2020 Consideration of Referring Ordinances Relating to the Fences to the Ordinance Committee

Moved by Valerie A. Adams and Seconded by Valerie J. Deveraux

ORDERED, the Cape Elizabeth Town Council refers for review a local ordinance regulating fence height and/or location to the ordinance committee.

(6 yes) (0 no) Councilor Gabrielson lost internet connection during the vote.

Item #113-2020 FY 2020 CIP Interproject Budget Transfers

Moved by James M. Garvin and Seconded by Valerie J. Deveraux

ORDERED, the Cape Elizabeth Town Council authorizes the FY 2020 budgetary transfer of \$82,003.13 from CIP project 0715-4005 PW Paving & Drainage Improvements; \$7,048.93 from 0715-4009 PW Roadway & Drainage Repair, \$114,086.61 PW Sidewalk Improvements; and \$48,002.55 from 0715-5325 PW Hill Way/Scott Dyer Road Phase 2 for a total transfer out of \$251,141.22 into CIP projects 0715-4006 PW Spurwink School Improvements \$1,000.00; 0715-4014 PW Sidewalk Repair and Pedestrian Improvements \$114,086.61; 0715-4036 Hemlock Hill Drainage Improvements \$51,117.45; 0715-5251 CC Rental Building Repairs \$3,746.12; 0715-5276 MS Athletic Field ADA Access \$31,624.56; 0715-5308 PW Rotary Mower Replacement \$1,563.93; and 0715-5339 PW Scott Dyer Road Improvements Phase 3 \$48,002.55 for a total transfer in of \$251,141.22.

(7 yes) (0 no)

Item #114-2020 Award Lease-Purchase Agreement with TD Equipment Finance for FY 2021 CIP Projects

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

ORDERED, the Cape Elizabeth Town Council awards a bid in the amount of \$1,035,100 for a lease-purchase contract to TD Equipment Finance, Inc. at a rate of 1.296% for fiscal year 2021 capital improvement projects; replacement of Hannaford Field, a replacement tool carrier for the public works department, 22 radios for the police department and a communications tower.

(7 yes) (0 no)

Item #115-2020 Authorization of the Order for the Lease-Purchase Agreement with TD Equipment Finance for FY 2021 CIP Projects

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

ORDERED, the Cape Elizabeth Town Council authorizes the following order as presented.

(7 yes) (0 no)

TOWN OF CAPE ELIZABETH, MAINE

Vote Authorizing Lease Purchase Agreement

with TD Equipment Finance, Inc.

Be it hereby voted by the Cape Elizabeth Town Council as follows:

VOTED: That the Town Council hereby authorizes the Town Manager, in the name of and on behalf of the Town, to execute and deliver a municipal lease purchase agreement with TD Equipment Finance, Inc. in the amount of \$1,035,100, and bearing interest at the rate of 1.296% per annum, with a term of not more than 5 years (the "Lease Agreement") to finance the following improvements (the "Projects"):

**Page 6 Town Council Minutes Virtual COVID-19
August 10, 2020**

	<u>Total Costs</u>	<u>Lease Financed Costs</u>
Hannaford Field Replacement	\$600,000	\$325,100
Tool Carrier Replacement (Public Works)	\$180,000	\$180,000
Police Radios (22)	\$166,000	\$160,000
Communications Tower	\$370,000	\$370,000
Total:	\$1,316,000	\$1,035,100

which Lease Agreement shall be in such form and contain such terms and conditions, not inconsistent herewith, as may be approved by the Town Manager, such approval to be conclusively evidenced by his execution thereof; provided that any obligation of the Town to make lease payments pursuant to such agreement shall be subject to annual appropriation approved by the Town as part of its annual budget.

VOTED: That the Town Manager is authorized to negotiate, execute, and deliver such other documents and certificates as may be necessary or appropriate in connection with the Lease Agreement which documents and certificates shall be in such form and contain such terms and conditions, not inconsistent herewith, as may be approved by the Town Manager, such approval to be conclusively evidenced by his or her execution thereof.

VOTED: That the Town Manager be and hereby is authorized and directed to covenant and certify on behalf of the Town that no part of the proceeds of the Lease Agreement, or the vehicles leased thereunder, shall be used directly or indirectly in any manner that would cause such Lease Agreement to be a “private activity bond” or an “arbitrage bond” within the meaning of Section 141 or Section 148 of the Internal Revenue Code of 1986, as amended.

VOTED: That to the extent available under Section 265(b)(2) of the Code, with the advice of Bond Counsel, the Lease Agreement may be designated by the Town Manager as a “qualified tax exempt obligation”.

VOTED: That if the actual cost of any Project differs from the estimated cost, whether due to completion, delay or abandonment of the Project or for any other reason, the Town Manager is authorized, in his discretion, to reallocate proceeds of the Lease Agreement to any other listed Project.

VOTED: That the Town Manager and the other proper officials of the Town (the “Authorized Representatives”) be and hereby are authorized and empowered in its name and on its behalf to do or cause to be done all such acts and things as may be necessary or desirable in order to effect the execution and delivery of the Lease Agreement in accordance with these votes.

**Page 7 Town Council Minutes Virtual COVID-19
August 10, 2020**

VOTED: That all prior actions of the Town in effectuating the Lease Agreement are hereby approved, ratified and authorized pursuant to and in accordance with the transactions contemplated by the Lease Agreement.

Item #116-2020 Carry Forward Balances from Fiscal Year 2020

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

ORDERED, the Cape Elizabeth Town Council authorizes the following carry forward balances as presented.

(7 yes) (0 no)

A. Authorize the following General Fund departmental balances be carried forward from FY 2020 into FY 2021:

1. Administration (0110)	\$ 3,000
2. ACP (0120)	18,884
3. Elections (0140)	35,000
4. Police (0210)	25,000
5. Library (0510)	6,000
6. Public Information (0530)	4,000
7. Parks (0640)	5,440
8. Fort Williams Park (0645)	33,000
9. Trees (0660)	<u>6,552</u>
Total General Fund Balances	<u>\$ 136,876</u>

B. Authorize Fort Williams Park CIP Fund account balances of \$197,000 be carried forward from FY 2020 into FY 2021.

C. Authorize Portland Head Light Fund account balance of \$26,235.66 be carried forward from FY 2020 into FY 2021.

Item #117-2020 Maine Municipal Association Annual Ballot

Moved by Jeremy A. Gabrielson and Seconded by James M. Garvin

ORDERED, the Cape Elizabeth Town Council authorizes the town manager to vote on behalf of the town council the slate of officers for the 2021 Executive Committee as presented by the Maine Municipal Association's Nominating Committee:

Vice-President – 1 Year Term (Vote for One)

James Bennett, City Manager, City of Biddeford

Executive Committee Members – 3 Year Term (Vote for Three)

Robert Butler, Chair of Selectboard, Town of Waldoboro

Terry Helms, Selectperson, Town of Grand Isle

Diane Hines, Town Manager, Town of Ludlow & Reed Plantation

(7 yes) (0 no)

**Page 8 Town Council Minutes COVID-19
August 10, 2020**

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

Continuation of Remote Meetings – As guidance is provided from the state, the council will monitor the status of returning to in-person meetings.

The Ralph Gould Award for citizenship will be discussed at a workshop starting at 6:30 p.m. prior to the September 14 meeting.

Adjournment

Moved by Jeremy A. Gabrielson and Seconded by Christopher M. Straw

ORDERED, the Cape Elizabeth Town Council adjourns at 8:22 p.m.

(7 yes) (0 no)

Respectfully Submitted,

Debra M. Lane, Town Clerk