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TOWN COUNCIL MEMBERS

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David J. Backer	12/2006	2 Rugosa Way
Anne Swift-Kayatta , chairman	12/2005	14 Stone Bridge Road
Carol Fritz	12/2006	1 Stirrup Road
Mary Ann Lynch	12/2007	2 Olde Colony Lane
John (Jack) E. Roberts Jr.	12/2005	185 Fowler Road
Vacant	12/2007	
Michael D. Mowles, Jr.	12/2006	423 Ocean House Road

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Draft Agenda

Cape Elizabeth Town Council Agenda

December 13, 2004

7:30 p.m.

Cape Elizabeth Town Hall

Roll Call by the Town Clerk

Pledge of Allegiance to the Flag

Reports and Correspondence

Town Manager's Report

Citizens' Discussion of Items not on the Agenda

Minutes of Meeting #6-04-05 held November 8, 2004 and

Meeting # 7-04-05 held November 10, 2004

Item # 72-04-05 Public Hearing and Possible Action on Amendments to the Traffic Ordinance

The Ordinance Committee proposed amendments to the Traffic Ordinance include penalties for traffic infractions including a recommendation to permit the use of immobilization devices.

Item # 73-04-05 Public Hearing and Possible Action on BB Zone Front Setback

The Ordinance Committee has recommended a proposal to reduce the front setback in the BB District from 100' to 50' .

Item # 74-04-05 Ordinance Committee Recommendation

The Ordinance Committee is recommending a public hearing be set for Wednesday, January 12, 2005 at 7:30 p.m. at the Cape Elizabeth Town Hall on proposed amendments to the zoning ordinance regarding the BB District and an amendment to the zoning map. The amendments include rezoning the gravel pit on Fowler Road from the RA District to the BB district and expanding the BB District to make earthwork activities a permitted use.

Item # 75-04-05 Ordinance Committee Recommendation

The Ordinance Committee is recommending a public hearing be set for Wednesday, January 12, 2005 at 7:30 p.m. at the Cape Elizabeth Town Hall on proposed amendments to the zoning ordinance which would define the term "multifamily" and add multifamily as a permitted use in the BA District.

Item # 76-04-05 Appointments Committee Recommendation

The Appointments Committee will be recommending the filling of positions on boards and commissions.

Item # 77-04-05 Registrar of Voters

I recommend the appointment of Deborah S. Cabana as Registrar of Voters to serve for a two year term beginning January 1, 2005.

Item # 78-04-05 Special Election Warrant

The town clerk is recommending approval of the warrant for the January 11, 2005 special municipal election.

Item # 79-04-05 Special Election Warden

The town clerk is recommending the appointment of Deborah S. Cabana as the warden for the January 11, 2005 special municipal election.

Item # 80-04-05 Riverside Cemetery Rules

The Riverside Cemetery trustees are recommending amendments to the rules of the cemetery changing the amount of payment if the cemetery reacquires a burial right from a burial right deed owner.

Item # 81-04-05 Acceptance of Gifts and Bequests

Each December the Town Council formally accepts all gifts and bequests given during the preceding twelve months.

Item # 82-04-05 Fort Williams Park Forestry Report

It is recommended that the town council acknowledge receipt of the report from the Fort Williams Advisory Commission and note that the report will be a planning guide for the management of the forestry and arboricultural resources at Fort Williams Park.

Item # 83-04-05 Public Safety Answering Point

The town manager would like to present a brief update and answer questions on ongoing discussions with South Portland and Scarborough regarding establishing a joint public safety answering point.

**Item # 84-04-05 Report from the Town Attorney re:
Town Owned Lots**

The town manager recommends that based upon the December 2, 2004 letter from the town attorney, that planning proceed for the possible disposition of Lots U3-92 and 94 on Ocean View Road, Lot U32-12 on Mitchell Road, Lots U29-44 and 45 on South Street and Lot U3-125 on Stonybrook Road. It is recommended that further study towards possible lot sales be concluded at this time on the following lots:

- U41-9 on McKenney Point Road and R-3, Lot A10 on Alewife Brook Road as both lots have minimal value but may have shore rights that could have a beneficial purpose in future years
- U29-42 and 43 on South Street as they may be unmarketable at this time per the town attorney
- A portion of Lot U21-12 as the town apparently only owns a half interest in the lot.

Citizens Discussion of Items Not on the Agenda

Adjournment

DRAFT MINUTES

CAPE ELIZABETH TOWN COUNCIL MEETING

Regular Meeting # 6-04-05

Monday, November 8, 2004

7:30 p.m.

ROLL CALL BY THE TOWN CLERK

Councilor	Term Expires	Address	Telephone	Present	Absent
David J. Backer	12/2006	2 Rugosa Way	799-2397	X	
Ann E. Swift-Kayatta	12/2005	14 Stone Bridge Road	767-5754	X	
Carol Fritz	12/2006	1 Stirrup Road	767-3737	X	
Mary Ann	12/2007	2 Olde	741-2709	X	

Lynch		Colony Lane		
John E. "Jack" Roberts	12/2005	185 Fowler Road	767-4526	X
Michael D. Mowles, Jr.	12/2006	423 Ocean House Road	741-2552	X*

TOWN STAFF

Manager Michael McGovern				X
Deborah Cabana, Town Clerk				X

Roll Call by the Town Clerk

Pledge of Allegiance to the Flag

Reports and Correspondence

Councilor J. Roberts noted a recent article in the newspaper about a volunteer fire fighter who was injured on the job. He requested that the Town Manager report back to the Council with information about the benefits entitled to a fire fighter in Cape Elizabeth in the event of an injury on the job.

Councilor D. Backer recently attended a Planning Board meeting. He stated that he was impressed with the commitment of the members who serve on the various boards and committees for the town.

Councilor M. Lynch thanked the staff and volunteers involved with the recent Presidential Election.

Chairman A. Swift-Kayatta stated how grateful she was for the statewide defeat of the Palesky 1% tax cap citizen initiative. She thanked the citizens in Cape Elizabeth who served on the Tax Cap Task Force and the information they made available for the citizens to consider when voting on this question.

Town Manager's Report

Manager McGovern said he appreciated the citizens' vote on the local referendum question that approved existing and previously authorized municipal debt. Additionally, he recognized the participation of the various municipal departments that cooperatively administered the recent Presidential Election under

the leadership of the Town Clerk.

Citizens' Discussion of Items not on the Agenda -

Eric Peterson (leader of a boy scouts group attending the meeting) inquired about the voter participation at the election. The Town Clerk responded that 6404 voters, representing 80.45% of the registered voters, participated in the Presidential Election.

* Councilor Mowles arrived at 7:35 p.m.

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Minutes of Meeting #5-04-05 held October 13, 2004

Moved by D. Backer and Seconded by J. Roberts

Councilor D. Baker noted a couple of typographical errors to be corrected.

Ordered the Cape Elizabeth Town Council approve the minutes of meeting #5-04-05 held October 13, 2004.

(6 Yes)

Item # 65-04-05 Public Hearing and Action Re: Open Space Provisions

Town Planner Maureen O'Meara was available to explain this item and answer questions.

Councilor D. Backer requested that he be recused from voting on this item, as he has abstained from voting on this issue at previous Town Council and Ordinance Committee meetings.

Moved by J. Roberts and Seconded by C. Fritz

Ordered the Cape Elizabeth Town Council recuse Councilor D. Backer from voting on item #65-04-05.

(6 Yes)

The Public Hearing opened at 7:45 p.m.

John Mitchell of Mitchell Associates represented the Bothels. He stated that approval of the proposed amendment would allow the Bothels to finalize the master plan of their property.

The Public Hearing closed at 7:47 p.m.

Moved by M. Lynch and Seconded by M. Mowles

Ordered the Cape Elizabeth Town Council approve the proposed

amendments to the Zoning Ordinance regarding open space provisions in phased developments.

(5 Yes)

Item # 66-04-05 Report from the Ordinance Committee

Moved by C. Fritz and Seconded by J. Roberts

Ordered the Cape Elizabeth Town Council schedule a public hearing for Monday, December 13, 2004, at 7:30 p.m. on proposed amendments to the Traffic Ordinance regarding penalties for traffic infractions including a recommendation to permit the use of immobilization devices (Denver boots)

(5 Yes) (1 No - M. Mowles)

Item # 64-04-05 (Tabled October 13, 2004)

Request to adopt a policy relating to the general fund undesignated fund balance

Moved by D. Backer and Seconded by M. Mowles

Ordered the Cape Elizabeth Town Council remove from item #64-04-05 from the table.

(5 Yes) (1 No - M. Lynch)

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November 8, 2004

Moved by J. Roberts and Seconded by C. Fritz

Ordered the Cape Elizabeth Town Council shall seek to maintain a general fund undesignated fund balance of 8.33% of annual general fund operating revenues, which percentage is equivalent to revenues anticipated in an average one month period.

If the targeted undesignated fund balance is exceeded, 50% of any excess funds shall be used to reduce the tax commitment in the next budget to be considered by the town council. The remaining 50% shall be placed in a capital reserve fund to replace equipment and/or to undertake needed infrastructure improvements.

During any year when the undesignated fund balance is less than its target level, the town council shall attempt to increase, as a percentage of operating revenues, the undesignated fund balance. As long as the undesignated fund balance is below the target level, the undesignated fund balance shall not be used to support the annual budget or other capital needs if doing so will result in the undesignated fund balance being a lower percentage of operating revenues than in the previous year.

Moved by M. Mowles and Seconded by C. Fritz

Ordered the Cape Elizabeth Town Council to amend the motion so that the second paragraph reads:

If the targeted undesignated fund balance is exceeded, 100% of any excess funds shall be used to reduce the tax commitment in the next budget to be considered by the town council

(5 Yes) (1 No - J. Roberts)

Ordered the Cape Elizabeth Town Council approves the main motion as amended.

(4 Yes) (2 No - M. Mowles and M. Lynch)

Item # 67-04-05 BB Zone Front Setback

Town Planner Maureen O'Meara was available to explain this item and answer questions.

Moved by M. Lynch and Seconded by M. Mowles

Ordered the Cape Elizabeth Town Council schedule a public hearing for Monday, December 13, 2004, at 7:30 p.m. on proposed amendments to the Zoning Ordinance to reduce the front setback in the BB District from 100' to 50".

(6 Yes)

Item # 68-04-05 Fort Williams Charitable Foundation Amendments

Moved by C. Fritz and Seconded by J. Roberts

Ordered the Cape Elizabeth Town Council approve the proposed amendments to the Fort William Charitable Foundation as presented. (A copy of their proposal is attached to the official minutes.)

(6 Yes)

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Item # 69-04-05 Ordinance Committee Chairman and Special Election

Moved by D. Backer and Seconded by M. Mowles

Ordered the Cape Elizabeth Town Council appoint John E. (Jack) Roberts as Chairman of the Town of Cape Elizabeth Ordinance Committee.

(6 yes)

Moved by M. Mowles and Seconded by J. Roberts

Ordered the Cape Elizabeth Town Council schedule a special municipal election on January 11, 2005 and reschedule the January 10, 2005 Town Council meeting to January 12, 2005.

(6 Yes)

Manager McGovern requested that the Town Council suspend the rules to take an item out of order. It has been requested that the 7th Annual Beach to Beacon Road Race be scheduled for Saturday, August 6, 2005.

Moved by M. Lynch and Seconded by C. Fritz

Ordered the Cape Elizabeth Town Council suspend the rules to take an item out of order.

(6 Yes)

Item # 70-0405 Request to schedule the 7th Annual Beach to Beacon Road Race

Moved by D. Backer and Seconded by J. Roberts

Ordered the Cape Elizabeth Town Council authorize the 7th annual Beach to Beacon Road Race to be scheduled for August 6, 2005.

(6 Yes)

Citizens' Discussion of Items not on the Agenda - None

Manager McGovern stated that he enjoyed working with Councilor John McGinty and appreciated that he always came to the town council meetings well prepared. He wished Mr. McGinty well.

Adjournment

Moved by J. Roberts and Seconded by D. Backer

Ordered the Cape Elizabeth Town Council adjourn at 9:15 p.m.

(6 Yes)

Respectfully submitted,

Deborah S. Cabana

Town Clerk

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CAPE ELIZABETH TOWN COUNCIL MEETING

Special Meeting # 7-04-05

Wednesday, November 10, 2004

7:30 p.m.

ROLL CALL BY THE TOWN CLERK

Councilor	Term Expires	Address	Telephone	Present	Absent
David J. Backer	12/2006	2 Rugosa Way	799-2397	X	
Ann E. Swift-Kayatta	12/2005	14 Stone Bridge Road	767-5754	X	
Carol Fritz	12/2006	1 Stirrup Road	767-3737	X	
Mary Ann Lynch	12/2007	2 Olde Colony Lane	741-2709	X	
John E. "Jack" Roberts	12/2005	185 Fowler Road	767-4526	X	
Michael D. Mowles, Jr.	12/2006	423 Ocean House Road	741-2552	X	

TOWN STAFF

Manager Michael McGovern	X
Deborah Cabana, Town Clerk	X

Roll Call by the Town Clerk

Pledge of Allegiance to the Flag

Item # 71-04-05 Fire Pumper Lease

Manager McGovern explained that last November the town council authorized the town manager to award a bid for a replacement of a 33 year old fire pumper and for the town manager to sign a lease purchase agreement in the form prepared by the lessor and as approved by the town attorney. The lawyers

and the bankers now need more language adopted by the town council and have provided a lease agreement for the town council signatures. Manager McGovern informed the town council that three bids had been received of an interest rate for the lease amount of the fire pumper. Gorham Savings Bank was awarded the bid of 3.41%.

Moved by M. Lynch and Seconded by M. Mowles

WHEREAS, on November 10, 2003, the Town of Cape Elizabeth, Maine at a Town Council Meeting duly authorized the Town Manager, on behalf of the Town, to enter into a lease-purchase agreement (the "Lease Agreement") for the purpose of acquiring a new fire pumper (the "Equipment"); and

WHEREAS, the Town has taken the necessary steps, including any legal bidding requirements, under applicable law to arrange for the acquisition of such Equipment.

NOW, THEREFORE, it is hereby:

VOTED: That the Town Council hereby authorizes, designates and confirms the Town Manager to execute and deliver the Lease Agreement with a stated principal amount not to exceed \$190,000, with such amendments and revisions as he may negotiate, and any related documents necessary to the consummation of the transactions contemplated by the Lease Agreement (the "Financing Documents").

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VOTED: That the acquisition of the Equipment, under the terms and conditions to be provided for in the Lease Agreement, is necessary, convenient, in the furtherance of, and will at all times be used in connection with, the Town's governmental and proprietary purposes and functions and are in the best interests of the Town, and no portion of the Equipment will be used directly or indirectly in any trade or business carried on by any person other than a governmental unit of the State on a basis different from the general public.

VOTED: That the Town certifies that it has not issued or effected the issuance of, and reasonably anticipates that it shall not issue or effect the issuance of, more than ten million dollars (\$10,000,000) of tax-exempt obligations during the 2004 calendar year, and hereby designates the lease of the Equipment to which the Lease Agreement pertains as a "qualified tax-exempt obligation," as defined by Section 265(b)(3) of the Internal Revenue Code of 1986, as amended.

VOTED: That the Town covenants that it will perform all acts within its power which are or may be necessary to insure the maintenance of its legal status as being a duly organized and

existing entity under the laws of the State, which status is the basis for the interest portion of the rental payments coming due under the Lease Agreement to at all times remain exempt from federal income taxation under the laws and regulations of the United States of America as presently enacted and construed or as hereafter amended.

VOTED: That the Treasurer be and hereby is authorized to covenant, agree and certify on behalf of the Town that no part of the proceeds of the Lease Agreement authorized to be entered into by these Votes shall be used, directly or indirectly, to acquire any securities or obligations, the acquisition of which would cause such Lease Agreement to be an "arbitrage bond" within the meaning of Section 148 of the Internal Revenue Code of 1986, as amended (the "Code").

VOTED: That the Treasurer be and hereby is authorized to covenant, agree and certify on behalf of the Town and for the benefit of the lessor under the Lease Agreement that the Town will file any required reports and take any other action that may be necessary or appropriate to ensure that interest paid pursuant to the Lease Agreement will remain exempt from federal income taxation, including without limitation, the filing of information returns and reports with the Internal Revenue Service and the payment of any rebate due to the United States of America, and that the Town will refrain from taking any action that will cause interest paid pursuant to the Lease Agreement to be subject to federal income taxation.

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VOTED: That the Treasurer, Town Manager and Clerk and other proper officers of and officials of the Town (the "Authorized Representatives") be and hereby are authorized and empowered to do all such acts and things, and to execute, deliver, file, approve, and record all Financing Documents as may be necessary or advisable, with the advice of counsel for the Town, to carry out the provisions of these Votes in connection with the acquisition of the Equipment, the execution and delivery by the Town of the Lease Agreement.

VOTED: That if any of the Authorized Representatives who have signed or sealed any Financing Document shall cease to be such Authorized Representative before the Financing Documents so signed and sealed shall have been actually authenticated or delivered by the Town, such Financing Documents nevertheless may be authenticated, issued, and delivered with the same force and effect as though the person or persons who signed or sealed such Financing Documents had not ceased to be such Authorized Representative; and also any such Financing Documents may be signed and sealed on behalf of the Town by those persons who, at the actual date of the execution of such Financing Documents,

shall be the proper officers and officials of the Town, although at the nominal date of such Financing Documents any such person shall not have been such Authorized Representative.

VOTED: That if the Authorized Representatives, or any of them, are for any reason unavailable to approve and execute the Lease Agreement or any of the other Financing Documents, the person or persons then acting in any such capacity, whether as an assistant, a deputy, or otherwise, is authorized to act for such official with the same force and effect as if such official had himself/herself performed such act.

(6 Yes)

Adjournment

Moved by M. Mowles and Seconded by M. Lynch

Ordered the Cape Elizabeth Town Council adjourn at 7; p.m.

(6 Yes)

Respectfully submitted,

Deborah S. Cabana

Town Clerk

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