

**CAPE ELIZABETH TOWN COUNCIL MEETING**  
**Regular Meeting # 14-03-04**  
**Monday, March 8, 2004**  
**7:30 p.m.**

**Present**

<b>Mary Ann Lynch, Chairman</b>	<b>2 Olde Colony Lane</b>	<b>X</b>	<b>767-5788</b>	<b>6/2004</b>
<b>David J. Backer</b>	<b>2 Rugosa Way</b>	<b>X</b>	<b>799-2397</b>	<b>6/2006</b>
<b>Carolyn M. Fritz</b>	<b>1 Stirrup Road</b>	<b>X</b>	<b>767-3737</b>	<b>6/2006</b>
<b>John W. McGinty</b>	<b>86 Brentwood Road</b>	<b>X</b>	<b>767-0139</b>	<b>6/2004</b>
<b>Michael D. Mowles, Jr.</b>	<b>423 Ocean House Road</b>	<b>X</b>	<b>741-2552</b>	<b>6/2006</b>
<b>John E. "Jack" Roberts, Jr</b>	<b>185 Fowler Road</b>	<b>X</b>	<b>767-4526</b>	<b>6/2005</b>
<b>Anne E. Swift-Kayatta</b>	<b>14 Stone Bridge Road</b>	<b>X</b>	<b>767-5754</b>	<b>6/2005</b>

<b>Student Representative</b>	<b>Schuyler Armstrong</b>	<b>X</b>
<b>Student Representative</b>	<b>Brean Flynn</b>	<b>X</b>
<b>Manager Michael McGovern</b>		<b>X</b>
<b>Town Clerk Jacqueline Coy</b>		<b>X</b>

**Roll Call by the Town Clerk**

**Pledge of Allegiance to the Flag**

**Reports and Correspondence**

Councilor Roberts reported that the Fire Department held their annual Lobster Stew dinner. Councilor McGinty was one of the workers in the kitchen. It was a sold out event, and everyone enjoyed the meal.

Councilor Swift-Kayatta, Finance chairman, reminded us that budget season is upon us. All Finance meetings will be televised this year, the first one being on April 1, 2004, at 7:30 p.m. in the council chambers. The following meetings are April 5, April 6, April 14, April 28. The public hearing and adoption will be on May 10, 2004.

Town Clerk Jackie Coy reminded us that nomination papers were still available for Town Council and School Board. The deadline for returning papers is March 19, 2004 at 4 p.m.

**Town Manager's Report**

Manager McGovern passed on his report due to many items on the agenda.

**Minutes of Meeting # 13-03-04 held February 9, 2004**

Moved by D. Backer and Seconded by J. Roberts

Ordered the Cape Elizabeth Town Council approves the minutes of meeting #13-03-04 held February 9, 2004.

(7 yes)(0 no)

**Citizens' Discussion of Items not on the Agenda - None**

**Item # 104-03-04          Approval of the town manager's appointment of Deborah S. Cabana as  
Town Clerk of Cape Elizabeth, Maine effective March 29, 2004**

Manager McGovern gave overview of Ms. Cabana's credentials and highly recommended her for the appointment.

Moved by M. Mowles and Seconded by J. McGinty

Ordered the Cape Elizabeth Town Council approves the Town Manager's appointment of Deborah S. Cabana as Town Clerk of Cape Elizabeth, Maine effective March 29, 2004.

(7 yes)(0 no)

**Item # 105-03-04          Public hearing on issues relating to cellular coverage and public safety  
communications and action on a recommendation for a proposed  
"Tower Overlay District" in the area of Route 77 near Sprague Hall.**

Town Planner Maureen O'Meara gave history and overview of the project.

Public Hearing opened at 7:49 p.m.

- Eleanor Guare- 301 Fowler Road: Asked by resident Susan Long to present petition with over 100 signatures against the tower stating that the tower will only increase coverage in sparsely populated areas and not address the problem in Broad Cove and Fort Williams; it is in conflict with the Comprehensive Plan of 1993; it would have impact on significant wildlife habitat.
- Seth Sprague- In behalf of the Sprague Corporation: is in favor of the project because of safety issues for the Fire and Police department; convinced of a community need; and the Sprague Corp. will get a financial benefit to offset the higher taxes and conserve their property.
- Heidi Hansen- 313 Fowler Road: against the project stating the safety issues came up after the cellular people, and that residents on Fowler Road do not need the coverage.
- Paul Woods, Jr.- 20 Running Tide Road: for the project stating that cell phones are a necessity and a vital part of this town, not only for public safety; a tower should also be considered at Fort Williams; people rely on cell phones and will rely on them more down the road.
- Richard Berman- 1021 Shore Road: against the project stating the private businesses want the tower and the landowner wants the zone change-safety issues were an afterthought; keep the area rural and preserve the historical values.
- Bill Frick- LLC International Corp. speaking for US Cellular: Easy to say-not in my backyard- supports the residents that comment on this issue; explained the who, where, what, when and why cell towers are constructed and needed.
- Bill Hewitt- 113 Fowler Road: found LLC's speech informative, but overbearing.
- Dennis Gallagher- 357 Fowler Road: stated that technology is changing rapidly and is concerned that this tower may be obsolete shortly.
- Preshash Suman- 89 Starboard Drive: is a resident and works for LLC International; has been on this project design for almost a year; stated that this tower covers the maximum area coverage; Town will support higher rates of service for years to come; Every individual deserves the right to cellular service.
- Schuyler Armstrong- 18 Avon Road: has no cell service at her home. The Fire Chief spoke at the last meeting stating that safety issues are front and center when you cannot get the service.

- Elizabeth Skyeck- 14 Fenway Road: asked what happened to the issue in Shore Acres, and what did we do before cell phones?
- Carl Dittrich- 500 Ocean House Road: against the project stating that we can use landline phones, and if necessary, are only a minute away from cell phone coverage.
- Dave Dalessandri- 7 Susan Road: Why approve a new site when one has been approved at the transfer station?
- Bob Siegel- 17 Brook Road: against the project stating that without the service, it is inconvenient, but not life and death; will everyone get coverage with this?
- Gail Parker- 317 Fowler Road: concerned because she has so many questions and what will it do to the rural character?
- Tom Guare- 301 Fowler Road: against the project
- Tom Carrellas- 297 Fowler Road: against the project; appreciates Mr. Sprague's comments and how he will be compensated compared to the people directly next to the tower.
- Mark Stanfield- 329 Fowler Road- stated we do not have all the answers-needs more discussion; scenic area should be left alone per comprehensive plan; should have an independent engineering company do research.
- Greg Davis- 235 Bowery Beach Road: against the project; it would be looming over his house, doesn't think we need it because we have 80% of coverage now.

Public Hearing closed at 9:03 p.m.

Moved by A. Swift-Kayatta and Seconded by D. Backer

Ordered the Cape Elizabeth Town Council accepts proposal of the Planning board for proposed Tower Overlay District on Route 77 near Sprague hall.

Motion withdrawn by A. Swift-Kayatta

Moved by A. Swift-Kayatta and Seconded by M. Mowles

Ordered the Cape Elizabeth Town Council tables #Item 105-03-04, Tower Overlay District, until the April 12, 2004 meeting, and discuss this at the workshop on March 18, 2004.

(6 yes)(1 no) C. Fritz

**Item # 106-03-04      Action on proposal to lease additional space at 343 Ocean House Road to Cape Mortgage, Co. LLC.**

Moved by J. Roberts and Seconded by C. Fritz

Ordered the Cape Elizabeth Town Council allows Councilor M. Mowles to recuse himself from this item due to conflicting interests.

(6 yes)(0 no)

Moved by A. Swift-Kayatta and Seconded by C. Fritz

Ordered the Cape Elizabeth Town Council authorizes the town manager to sign the addendum on behalf of the Town of Cape Elizabeth to lease additional space at 343 Ocean House Road to Cape Mortgage, Co. LLC.

(6 yes)(0 no)

**Item # 107-03-04      Action on a request to rezone the gravel pit on Fowler Road. It is recommended that this item be referred to the Planning Board.**

Manager McGovern gave summary of request from L. P. Murray & Sons, Inc. and Carol A. Murray.

Moved by M. Mowles and Seconded by J. McGinty

Ordered the Cape Elizabeth Town Council refers to the Planning Board the request to rezone the gravel pit on Fowler Road.

(7 yes)(0 no)

**Item # 108-03-04      Action on a request from the Thomas Memorial Library Trustees to approve revised by-laws.**

Moved by A. Swift-Kayatta and Seconded by M. Mowles

Councilor Backer suggested that in Article 3, Section 1, that the last line be eliminated: that in Article 7, Section 1, that a “d” be added to the word provide.

Ordered the Cape Elizabeth Town Council approves the revised by-laws of the Thomas Memorial Library with amendments.

(7 yes)(0 no)

**Item # 109-03-04      Action on a request from Thomas Pinansky to vacate a portion of the paper street known as Overlook Lane**

Moved by J. Roberts and Seconded by A. Swift-Kayatta

Ordered the Cape Elizabeth Town Council recommends that the request from Thomas Pinansky to vacate a portion of the paper street known as Overlook Lane be referred to the Planning Board and for the board to review all the paper streets in the immediate area and to seek input from the abutters.

(7 yes)(0 no)

**Item # 110-03-04      Action to accept a gift of a quit-claim deed for property located at the end of Fenway Road.**

Moved by M. Mowles and Seconded by A. Swift-Kayatta

Ordered the Cape Elizabeth Town Council accepts a gift of a quit-claim deed for property located at the end of Fenway Road by Antonio C. Palanza.

(7 yes)(0 no)

**Item # 111-03-04      Consideration of a recommendation from the ordinance committee to prohibit parking on the southwesterly side of Fenway Road. A public hearing is recommended to be scheduled on April 12, 2004.**

Moved by D. Backer and Seconded by J. McGinty

Ordered the Cape Elizabeth Town Council recommends the addition of a new Sec. 13-2-3(q) to the Traffic ordinance to prohibit parking on the southwesterly side of Fenway Road, and recommends a Public Hearing to be scheduled on April 12, 2004.

(7 yes)(0 no)

**Item # 112-03-04      Action upon a request from the School Building Committee to hire Payton Construction Co. Corp. as the construction manager for the high school project.**

Moved by M. Lynch and Seconded by J. McGinty

Ordered the Cape Elizabeth Town Council authorizes the Superintendent of Schools be and hereby authorized to execute and deliver a contract for Construction Management services with Payton Maine Corporation (“Payton”) for the high school renovation project, which contract shall be in a form acceptable to the Superintendent of Schools and which shall also provide for the development of a Guaranteed Maximum Price that adequately provided for completion for the project within the \$7,930,000 budget approved by the voters.

Motion withdrawn by M. Lynch

Manager McGovern gave input that it was unusual for the manager not to see any kind of a contract. Chairman Lynch said she had asked for some kind of contract that showed a breakdown of numbers.

Moved by C. Fritz and Seconded by J. Roberts

Ordered the Cape Elizabeth Town Council tables the request from the School Building Committee to hire Payton Construction Co. Corp. as the construction manager for the high school project until the March 18, 2004 workshop, after which there will be a Special Town Council meeting.

(7 yes)(0 no)

**Item # 113-03-04      Action upon a recommendation from the appointments committee regarding vacancies on the planning board, the recycling committee and the community services advisory commission.**

Moved by C. Fritz and Seconded by M. Mowles

Ordered the Cape Elizabeth Town Council accepts the recommendation from the appointments committee regarding vacancies on the planning board, the recycling committee and the community services advisory commission as follows:

Planning Board-            Jack Kennealy, 16 High View Road  
to fill the unexpired term of Andy Charles until 12/31/2006.

Recycling Committee- Alina Perez-Smith, 14 Littlejohn Rd.  
To fill the unexpired term of Ronald Scott until 12/31/2004.

Community Services Advisory Commission- Loralee Schaedel, 1  
Wainwright Drive

To fill the unexpired term of Elizabeth Rosen until 12/31/2004

(7 yes)(0 no)

**Item # 114-03-04      Action upon a recommendation from the Fort Williams Advisory Commission to approve the use of Fort Williams Park for Pond Cove Field Days on June 1-4 with June 7 as a rain date.**

Moved by C. Fritz and Seconded by A. Swift-Kayatta

Ordered the Cape Elizabeth Town Council approves the use of Fort Williams Park for Pond Cove Field Days on June 1-4 with June 7 as a rain date.

(7 yes)(0 no)

**Citizens Discussion of Items Not on the Agenda - None**

**Request to add Item # 116-03-04 and take the item out of order**

Moved by A. Swift-Kayatta and Seconded by J. McGinty

Ordered the Cape Elizabeth Town Council adds Item # 116-03-04 and take that item out of order.

(7 yes)(0 no)

**Item # 116-03-04      Acknowledge receipt of FY 2005 Manager's Budget**  
Moved by J. McGinty and Seconded by A. Swift-Kayatta  
Ordered the Cape Elizabeth Town Council acknowledges receipt of the FY 2005  
Manager's budget and refers the budget to the Finance Committee.  
(7 yes)(0 no)

**Item # 115-03-04      Request to enter executive session to discuss litigation and in particular  
Ram's Head v. the Town of Cape Elizabeth**  
Moved by A. Swift-Kayatta and Seconded by J. Roberts  
Ordered the Cape Elizabeth Town Council enters Executive session at 10:30 p.m.  
(7 yes)(0 no)  
Moved by J. McGinty and Seconded by M. Mowles  
Ordered the Cape Elizabeth Town Council exits Executive session at 10:57 p.m.  
(7 yes)(0 no)

**Adjournment**  
Moved by A. Swift-Kayatta and Seconded by J. McGinty  
Ordered the Cape Elizabeth Town Council adjourns at 11:00 p.m.  
(7 yes)(0 no)

Respectfully submitted,

Jacqueline N. Coy  
Town Clerk