

CAPE ELIZABETH TOWN COUNCIL MEETING
Regular Meeting # 16-03-04
Monday, April 12, 2004
7:30 p.m.

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

Student Representative	Schuyler Armstrong	X	
Student Representative	Brean Flynn		X
Manager Michael McGovern		X	
Town Clerk Deborah Cabana		X	

Roll Call by the Town Clerk

Councilor D. Backer arrived at 7:32 p.m.

Councilor M. Mowles arrived at 7:36 p.m.

Pledge of Allegiance to the Flag

Reports and Correspondence

Councilor Swift-Kayatta noted that the Finance Committee had conducted three budget hearings, two of which were televised. She reminded the public that the Finance Committee would meet this Wednesday at 7:30 p.m. to consider the school budget. This meeting will be televised.

Town Manager's Report

Manager Michael McGovern indicated he had no report.

Presentation to Girl's Class A State Championship Swim and Diving Team

Chairman Lynch made a presentation to the swim team captain, Kerry Kertes and members of the Swim and Diving Team.

Minutes of Meeting # 14-03-04 held March 8, 2004

Minutes of Meeting # 15-03-04 held March 18, 2004

Councilor C. Fritz requested that the minutes of March 18, 2004 be amended to reflect that "Councilor C. Fritz arrived at 7:20 p.m." *due to scheduling of simultaneous meeting at RWS.

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

Ordered the Cape Elizabeth Town Council approve the minutes of meeting #14-03-04 held March 8, 2004 and the minutes of meeting #15-03-04 held March 18, 2004, as amended.

(7 yes) (0 no)

Citizens' Discussion of Items not on the Agenda - None

Item # 105-03-04 (Tabled March 8, 2004) 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.

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

Ordered the Cape Elizabeth Town Council remove item #105-03-04 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 from the table.

(7 yes) (0 no)

Moved by D. Backer and Seconded by M. Mowles

Ordered the Cape Elizabeth Town Council not approve the creation of a tower overlay district as shown on the maps prepared by the Planning Office dated February 4, 2004 and April 7, 2004, but does encourage the Sprague Corporation and interested cellular parties to review in the coming weeks the creation of a tower overlay district in the vicinity of the so called "ridge" in the area of Bowery Beach road/Fowler Road/Charles E. Jordan Road.

(6 yes) (1 no) J. McGinty

Moved by C. Fritz and Seconded by J. Roberts

Ordered the Cape Elizabeth Town Council request the Town Manager to gather the following updated information on cell phone technology to provide cell phone service and meeting public safety needs:

- A selection of wireless communication ordinances from Maine and elsewhere that provide cell phone service through "stealth" technology.
- Comprehensive information and examples on "stealth" techniques including benefits and disadvantages.
- A contour map of Cape Elizabeth.
- Structures in Cape Elizabeth (public and private) that could be used as alternatives to new cell towers to relay signals.

And report back to the Town Council for a workshop.

(7 yes) (0 no)

Item# 118-03-04 Public Hearing and consideration of a recommendation from the ordinance committee to prohibit parking on the southwesterly side of Fenway Road.

Public Hearing opened at: 7:58 p.m.

- John Herrick – Chairman of the Conservation Commission – reminded the Town Council that residents of this area who attended a public forum, conducted by the Conservation Commission, expressed that they were in favor of parking on one side of Fenway Road.
- Fred Brown – 16 Fenway Road – questioned if the proposed amendment were approved, how would the ordinance be enforced? He was concerned that there be access for emergency vehicles and suggested that the southwesterly side of Fenway Road be posted "No Parking."
- Dian Joyce – 2 Fenway Road – noted that this road is very busy with just the people who live on Fenway Road. There are only 16 homes and a lot of children on this "dead-end street." She invited Councilors to visit the area.

- Jim Sullivan – 1 Fenway Road – noted that he had submitted a letter from Frank Fulhan to the Town Council. Mr. Sullivan hoped that the proposed amendment was not approved because he believed the residential area would become a “parking lot.”
- Sandra Brown – 16 Fenway Road - circulated pictures she had taken this winter of the snowmobile use in the area. She was frustrated that people park on Fenway Road and permit their dogs to run loose.

The Public Hearing closed at: 8:07 p.m.

Moved by D. Backer and Seconded by C. Fritz

Ordered the Cape Elizabeth Town Council approve the recommendation from the Ordinance Committee to prohibit parking on the southwesterly side of Fenway Road.

(5 yes) (2 no) J. Roberts and M. Mowles

Item # 112-03-04 (Tabled March 18, 2004) 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 A. Swift-Kayatta and J. McGinty

Ordered the Cape Elizabeth Town Council remove 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 from the table.

(7 yes) (0 no)

Members of the Council expressed concern about the Town Council approving this contract prior to the Building Committee approving the contract.

Moved by M. Lynch and Seconded by M. Mowles

Ordered the Cape Elizabeth Town Council table item #112-03-04 until the Special Town Council meeting of April 14, 2004 at 7:00 p.m.

(7 yes) (0 no)

**Item # 119-03-04 Action to call a special municipal election on Tuesday, June 8, 2004
concurrent with the state primary to fill a vacancy on the Cape
Elizabeth School Board.**

TOWN OF CAPE ELIZABETH
MUNICIPAL SPECIAL ELECTION
WARRANT
TUESDAY, JUNE 8, 2004

County of Cumberland, ss.

To Neil R. Williams, a constable of Cape Elizabeth. You are hereby directed to notify the voters of Cape Elizabeth of the election described in the warrant.

Voting for one member of the School Board to serve an unexpired term until June 13, 2005.

Election to be held on Tuesday, June 8, 2004, at the Cape Elizabeth High School gymnasium.

Polls open at 7:00AM and close at 8:00PM. Absentee ballots may be processed at the following times: 7:00 AM, 10:00 AM, 2:00 PM, 6:00 PM and 8:00 PM (Pursuant to M.R.S.A. Title 21-A Section 759 sub 7). The Cape Elizabeth Town Democratic Committee, the Cape Elizabeth Town Republican Committee and the Green Independent Party have been notified, in writing, of the absentee ballot process. The Registrar of Voters is available to accept new registrations and corrections to the voter list at Town Hall, 320 Ocean House Road. Town Hall is open Mondays 7:30AM - 5:00PM, and Tuesday - Friday, 7:30AM - 4:00PM. Proof of residency and identity is required.

Moved by M. Mowles and Seconded by C. Fritz

Ordered the Cape Elizabeth Town Council approve the warrant for a special election to fill a vacancy on the Cape Elizabeth School Board caused by the resignations of Richard West. Nomination papers will be available from Tuesday, April 13, 2004 until May 5, 2004 at 4:00 p.m.

The Town Council expressed appreciation to Richard West for his service to the Cape Elizabeth School Board and hoped that he would consider serving on other committees in the future.

(7 yes) (0 no)

- Item # 120-03-04 Action to approve the warrant for the May 4, 2004 municipal election and action to appoint the election warden and the deputy warden for calendar year 2004.**

TOWN OF CAPE ELIZABETH
MUNICIPAL ELECTION
WARRANT
TUESDAY, MAY 4, 2004

County of Cumberland, ss.

To Neil R. Williams, a constable of Cape Elizabeth. You are hereby directed to notify the voters of Cape Elizabeth of the election described in the warrant.

Voting for two members of the Town Council to serve a term until June 11, 2007.

Voting for two members of the School Board to serve a term until June 11, 2007.

Election to be held on Tuesday, May 4, 2004, at the Cape Elizabeth High School gymnasium.

Polls open at 7:00AM and close at 8:00PM. Absentee ballots may be processed at the following times: 7:00 AM, 10:00 AM, 2:00 PM, 6:00 PM and 8:00 PM (Pursuant to M.R.S.A. Title 21-A Section 759 sub 7). The Cape Elizabeth Town Democratic Committee, the Cape Elizabeth Town Republican Committee and the Green Independent Party have been notified, in writing, of the absentee ballot process. The Registrar of Voters is available to accept new registrations and corrections to the voter list at Town Hall, 320 Ocean House Road. Town Hall is open Mondays 7:30AM - 5:00PM, and Tuesday - Friday, 7:30AM - 4:00PM. Proof of residency and identity is required.

Moved by J. McGinty and Seconded by J. Roberts

Ordered the Cape Elizabeth Town Council approve the Municipal Warrant for May 4, 2004. Polls open at 7:00AM and close at 8:00PM. It is further ordered to approve Town Clerk Cabana's appointment of Henry C. Adams as Election Warden and Deborah S. Cabana as Deputy Warden for calendar year 2004.

(7 yes) (0 no)

- Item # 121-03-04 Action to appoint Deborah S. Cabana as the new Registrar of Voters.**

Moved by C. Fritz and Seconded by D. Backer

Ordered the Cape Elizabeth Town Council appoint Deborah S. Cabana as Registrar of Voter for the Town of Cape Elizabeth for a term until January 1, 2005.

(7 yes) (0 no)

Item # 122-03-04 Action to approve the list of election clerks as submitted by the political parties following their recent caucuses.

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

Ordered the Cape Elizabeth Town Council appoint the following election clerks as presented.
Terms to expire May 1, 2006.

Election Clerk Nominations - Democrats

Rebecca Millett
Mary Townsend
Frances Stone
Loraine Staszko
Judith Simonds
Karen Dunfey
Anna Davis
June C. Berry
Mary Jane Mullen
Norma Wadman
Pamela Anderson
Mark Russell

Election Clerk Nominations - Republican

Barbara Adams
Jane Harley
Audrey Jordan
Marguerite Hallowell
Mary Rivotto
Frances Mitchell
Evelyn Strom
Elizabeth Berry

(7 yes) (0 no)

Item # 123-03-04 Action to approve the annual dog warrant.

Moved by C. Fritz and Seconded by J. McGinty

Ordered the Cape Elizabeth Town Council approve the 2004 Municipal Warrant For Prosecuting Unlicensed Dog Owners-Keepers, as presented.

Moved by M. Mowles and Seconded by D. Backer

To amend the motion by allowing a 72-hour "grace period" for unlicensed dog owners/keepers of the \$25.00 warrant fee.

Motion Fails (2 yes) (5 no) C. Lynch, C. Fritz, J. McGinty, J. Roberts and A. Swift-Kayatta

The main motion carries (5 yes) (2 no) M. Mowles and D. Backer

Item # 124-03-04 Action upon a recommendation from the appointments committee to fill a vacancy on the zoning board of appeals.

Moved by C. Fritz and Seconded by J. Roberts

Ordered the Cape Elizabeth Town Council approve the Appointments Committee recommendation to appoint Leonard M. Gulino of 5 Park Circle to the Zoning Board of Appeals. Mr. Gulino will fill the unexpired term of Jack Kennealy until December 31, 2004.

(7 yes) (0 no)

Item # 125-03-04 Action upon a report from the town manager regarding consolidating public safety dispatching with the City of South Portland.

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

Ordered the Cape Elizabeth Town Council accept the recommendations of the Police Chief, Fire Chief and the Town Manager to not consolidate public safety dispatching with the City of South Portland and to retain the local dispatch center in Cape Elizabeth.

Chairman Lynch pointed out that the summary of savings would be minimal. The average taxpayer would save an estimated \$8.37 cents per year or less than two tenths of one percent of their estimated FY 2005 average tax bill of \$4,282.00.

(7 yes) (0 no)

Item # 126-03-04 Action upon a report from the town manager recommending that a workshop agenda item be scheduled at a later date on the possible sale of certain town owned land.

Moved by C. Mowles and Seconded by J. Roberts

Ordered the Cape Elizabeth Town Council schedule a workshop agenda at a later date on the possible sale of certain town owned land.

(7 yes) (0 no)

Item # 127-03-04 Action upon a recommendation emanating from a council workshop regarding the possible installation of a traffic signal and other improvements at the entrance road to Cape Elizabeth High School.

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

Ordered the Cape Elizabeth Town Council hereby approves an application to PACTS for a new traffic signal and related improvements (Engineer's estimated cost of \$168,000) at the intersection of Ocean House Road and the entrance to Cape Elizabeth High School. If the project is approved by PACTS and is included in the Biennial Transportation Improvement Program (BTIP) the local share shall be allocated from the Town Roadway Drainage Improvement account.

If the project is not approved in the next PACTS BTIP, the cost of the traffic light and other improvements shall be bonded as an amendment to the calendar year 2005 school bond with the cost to re-paid through the municipal budget over the succeeding five years. A formal resolution authorizing the bond amendment is to be approved by the town council prior to the bond issuance; or

If the school project should receive bids under budget and the entire project is under budget, the town council would look favorably upon a recommendation from the school building committee recommending that the signal and other improvements be paid for in total or in part through unspent allocations within the school bond. If this latter option occurs, the portion of the cost of the light and other improvements shall be incorporated into the bonds previously authorized and the amortization of the cost shall be in the school budget. Any amount bonded in excess of the original authorization shall be amortized for a period of not more than five years and shall be repaid through appropriations in the municipal budget.

If the citizens of the State of Maine should approve any limitation upon communities to levy taxes or to authorize bonds, this vote shall be automatically revoked and the town council will consider options available to Cape Elizabeth.

(5 yes) (2 no) C. Fritz and J. McGinty

Item # 128-03-04 Action upon a recommendation from the ordinance committee recommending that no action be taken regarding a citizen request to regulate certain activities by commercial vehicles in residential neighborhoods.

Moved by D. Backer and Seconded by J. McGinty

Ordered the Cape Elizabeth Town Council approve the recommendation from the Ordinance Committee recommending that no action be taken regarding a citizen request to regulate certain activities by commercial vehicles in residential neighborhoods.

(7 yes) (0 no)

Item # 129-03-04 Action to refer to the Planning Board a request to amend the zoning ordinance to provide that undeveloped space on a subdivision plan could be designated as being for future development.

Moved by C. Fritz and Seconded by J. Roberts

Ordered the Cape Elizabeth Town Council allow Councilor D. Backer to recuse himself from this item due to a potential conflict of interest.

(6 yes) (0 no)

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

Ordered the Cape Elizabeth Town Council refer to the Planning Board a request to amend the zoning ordinance to provide that undeveloped space on a subdivision plan could be designated as being for future development.

Town Planner Maureen O'Meara was present at the meeting to answer questions and gave a brief overview of this proposal.

(5 yes) (1 no) C. Fritz

Item # 130-03-04 Action to refer to the Planning Board a request to amend the zoning ordinance to provide that mixed-use developments may occur in the Business District A. (the BA zone).

Moved by J. Roberts and Seconded by J. McGinty

Ordered the Cape Elizabeth Town Council refer to the Planning Board a request to amend the zoning ordinance to provide that mixed use developments may occur in the Business District A (the BA zone).

Town Planner Maureen O'Meara was present at the meeting to answer questions and gave a brief overview of this proposal.

(5 yes) (2 no) M. Mowles and C. Fritz

Item # 131-03-04 Action on a recommendation from the Riverside Cemetery Trustees to adjust fees.

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

Ordered the Cape Elizabeth Town Council approve the proposed recommendation from the Riverside Cemetery Trustees to adjust lot prices, burial fees and foundation fees at the Riverside Memorial Cemetery.

(7 yes) (0 no)

Item # 132-03-04 Action on a recommendation from the Riverside Cemetery Trustees to close the cemetery for burials on Labor Day and Thanksgiving Day.

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

Ordered the Cape Elizabeth Town Council approve the recommendation from the Riverside Cemetery Trustees to close the cemetery for burial on Labor Day and Thanksgiving Day.

(7 yes) (0 no)

Item # 133-03-04 Action upon a recommendation from the public works director to request PACTS to review for possible funding the installation of a traffic signal at Route 77, Scott Dyer Road and Shore Road.

Moved by D. Backer and Seconded by M. Mowles

Ordered the Cape Elizabeth Town Council approve the recommendation from the public works director to request PACTS to review for possible funding the installation of a traffic signal at Route 77, Scott Dyer Road and Shore Road.

Public Works Director Robert Malley was present to answer questions and gave a brief explanation of this proposal.

(4 yes) (3 no) C. Fritz, J. McGinty and A. Swift-Kayatta

Item # 134-03-04 Action upon a recommendation from the public works director to request PACTS to review for possible funding the full depth reconstruction of Spurwink Avenue from the Spurwink Church to the entrance to the Purpoodock Club.

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

Ordered the Cape Elizabeth Town Council approve the recommendation from the public works director to requests PACTS to review for possible funding the full depth reconstruction of Spurwink Avenue from the Spurwink Church to the entrance to the Purpoodock Club.

Public Works Director Robert Malley was present to answer questions and gave a brief explanation of this proposal.

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

To amend the motion to explore expanding the paved shoulder to accommodate pedestrian traffic access.

The amendment carries (7 yes) (0 no)
The main motion as amended carries (7 yes) (0 no)

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

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

(7 yes) (0 no)

Item # 135-03-04 Action to amend the charge of the School Building Committee.

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

Ordered the Cape Elizabeth Town Council amend the current charge of the School Building Committee as follows: “The School Building Committee shall remain in existence beyond the award of bids, and shall work in conjunction with the School Superintendent in seeing both the Pond Cove addition and the High School renovation through to substantial completion, as defined in the respective construction documents for each project. All change orders to the scope of the work, in excess of \$20,000 and not of an emergency nature, shall be approved by the Building Committee.”

(7 yes) (0 no)

Citizens Discussion of Items Not on the Agenda - None

Adjournment

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

Ordered the Cape Elizabeth Town Council adjourn at 10:37 p.m.

(7 yes) (0 no)

Respectfully submitted,

Deborah S. Cabana
Town Clerk