

CAPE ELIZABETH TOWN COUNCIL MEETING
Regular Meeting # 2-04-05
Monday, July 12, 2004
7:30 p.m.

		Present	Absent	
Anne E. Swift-Kayatta, Chairman	14 Stone Bridge Road	X	767-5754	6/2005
David J. Backer	2 Rugosa Way	X	799-2397	6/2006
Carolyn M. Fritz	1 Stirrup Road	X	767-3737	6/2006
Mary Ann Lynch	2 Olde Colony Lane	X	767-5788	6/2007
John W. McGinty	86 Brentwood Road	X	767-0139	6/2007
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

Manager Michael McGovern X
Town Clerk Deborah Cabana X

Roll Call by the Town Clerk

Pledge of Allegiance to the Flag

Reports and Correspondence:

Councilor M. Lynch suggested that the South Portland/Cape Elizabeth Chambers be provided with information regarding the impact of the proposed 1% Tax Cap Palesky Citizen Initiative, if the voters should pass it this November.

Councilor M. Mowles stated that the Annual Family Fun Day was successful and thanked those who were involved in organizing the event.

Councilor J. Roberts encouraged people to get involved with the Beach to Beacon event, because volunteers were still needed.

Town Manager's Report:

Manager McGovern noted that he was not at the last Town Council meeting and thanked Debra Lane for her assistance in his absence. He stated that he appreciated working with former Town Council Chairman Lynch during the last year and looked forward to working with new Chairman Swift-Kayatta.

Citizens' Discussion of Items not on the Agenda – None

Minutes of Meeting #1-04-05 held June 14, 2004

Moved by C. Fritz and Seconded by M. Mowles

Councilor D. Backer noted the following corrections:

Councilor McGinty recently attended a meeting at the Greater Portland Council of Governments and noted that there ~~was a reduction of 5% in their budget~~ will be a 5% reduction of dues for Cape Elizabeth.

David Sawyer, a South Portland resident, commented on a few things that he felt the Council should know regarding the Maine Supreme Court's recent ~~reversal~~ remand of the Planning Board's approval of the Blueberry Ridge Subdivision.

Chairman A. Swift-Kayatta noted the following corrections:

Ordered the Cape Elizabeth Town Council that Carolyn M. Fritz is the Town of Cape Elizabeth Representative to Greater Portland Council of Governments ~~Executive Committee~~ General Assembly and that John E. (Jack) Roberts, Jr. will serve as the Alternate of said ~~assembly committee~~.

Ordered the Cape Elizabeth Town Council table item #13-04-05 until July 12, 2004 for purposes of obtaining more information, the cost of the appeal and the likelihood of the success of the appeal.

(7 Yes)

Ordered the Cape Elizabeth Town Council approve the minutes (as corrected) of meeting #1-04-05, held June 14, 2004.

(7 Yes)

Public Hearing: Parking on Fenway Road

Public Hearing opened at: 7:43 p.m.

- Dian Joyce – 2 Fenway Road – has lived 22 years at this location and stated that parking has never been a problem.
- Fred Brown – 16 Fenway Road – was pleased with the current parking restriction on one side. He felt if parking were permitted on both sides, there could be safety issues and was concerned about adequate space for access of emergency vehicles.
- Frank Fulhan – 11 Fenway Road – has been a resident on Fenway Road since 1972. In 32 years he has not experienced problems with parking, although he felt that a residential area should not become a parking area for Great Pond.
- James Hewes – 10 Fenway Road – urged the Council to repeal the ordinance and allow parking on both sides of the road. He suggested that a parking area be considered on the Sprague property between the grange hall and Crescent Beach.
- Kathryn Rolston – 13 Fenway Road – asked that the current ordinance be repealed.

Public Hearing closed at: 7:50 p.m.

**Item# 23-04-05 Parking on Fenway Road
 Consideration of striking Sec 13-2-3 q. of the Code of Ordinances**

Moved by M. Lynch and Seconded by M. Mowles

Ordered the Cape Elizabeth Town Council repeal Section 13-2-3 (q) of the Code of Ordinances pertaining to no parking on the southwesterly side of Fenway Road.

(7 Yes)

Item# 13-04-05 Consideration of Gull Crest Master Plan DEP Permit Easements

Moved by C. Fritz and Seconded by M. Mowles

Ordered the Cape Elizabeth Town Council take item 13-04-05 off the table.

(7 Yes)

Manager McGovern stated that, with permission of the Council Chairman, Preti-Flaherty was retained to help with the process. Specifically, Ms. O’Callaghan was in touch with three different DEP officials at the Land and Water Bureau including the local office and the director of the bureau. She also contacted the other permitting authority, the Army Corps of Engineers. With her knowledge of the law, she pursued for the Town, the use of an exemption in the law that does not require mitigation for “public education boardwalks”. The DEP had indicated that they would agree to grant us the public education exemption. We would then be required to file a modification to our permit with information supporting our position that it is a public education boardwalk. There was a remote possibility that the staff could reconsider and find our modification inadequate, and then we would be in a position to appeal the decision on the modification. The Army Corps of Engineers had also indicated that our permit with them would not jeopardized, as they did not have the mitigation requirement in our permit. Today, however, the Town Planner was informed from the DEP that they might be having second thoughts of approving the exemptions. Mr. McGovern suggested that he still be authorized to file a modification to the DEP permit to provide that the boardwalk be designated as being for public education purposes.

Councilor Lynch was concerned that the deadline had passed to file an appeal. The Town had received legal advice indicating that an exemption would be granted. An appeal was not filed to the DEP because we thought we had assurance of their approval.

Moved by J. Roberts and Seconded by M. Lynch

Ordered the Cape Elizabeth Town Council authorize the Town Manager to file a modification to the DEP permit to provide that the boardwalk be designated as being for public education purposes.

(7 Yes)

Item# 24-04-05 Cellular Tower Overlay Districts

Moved by M. Lynch and Seconded by M. Mowles

Ordered the Cape Elizabeth Town Council set a public hearing for Monday, August 9, 2004 at 7:30 pm at the Cape Elizabeth Town Hall with proper notice thereof on the proposed tower overlay district on the Fowler Road/Bowery Beach Road, thus completing the review originally commenced at the December 8, 2003 Town Council meeting and subsequently reviewed and acted upon by the Planning Board.

(7 Yes)

Moved by M. Lynch and Seconded by M. Mowles

Ordered the Cape Elizabeth Town Council accept the recommendation of the Planning Board to not establish a tower overlay district at the proposed Shore Acres site.

(7 Yes)

Item# 25-04-05 Paper Streets- Shore Acres

Moved by M. Mowles and Seconded by M. Lynch

Ordered the Cape Elizabeth Town Council receive the report from the Planning Board and set a public hearing for Monday, August 9, 2004 at 7:30 pm at the Cape Elizabeth Town Hall with proper notice thereof to consider paper street vacations in Shore Acres pertaining to Overlook Lane, Elizabeth Road, and Katahdin Road Extension.

(7 Yes)

Item# 26-04-05 Sewer Fund Deficit Avoidance

Moved by C Fritz and Seconded by D. Backer

Ordered the Cape Elizabeth Town Council set a public hearing for Monday, August 9, 2004 at 7:30 pm at the Cape Elizabeth Town Hall with proper notice thereof to consider a proposed increase in the monthly minimum sewer fee from \$26.50 to \$31.50 per month, a 3% increase in the incremental rate from \$4.00 per 100 cubic feet of measured water usage to \$4.12 and a \$300.00 increase in the sewer connection fee.

(7 Yes)

Item# 27-04-05 Appointments to Boards and Commission Policy

Moved by D. Backer and Seconded by C. Fritz

Ordered the Cape Elizabeth Town Council consider repealing paragraph 8 of the Standing Policy relating to Appointments to Standing Boards and Commissions which states: 8. *Members of the Planning Board may not concurrently serve as members of the Governing Board of the Cape Elizabeth Land Trust.*

(0 Yes) – (7 No)

Item# 28-04-05 Approval of Balances to Be Carried Forward into FY 2005.

Moved by M. Mowles and Seconded by J. Roberts

Ordered the Cape Elizabeth Town Council approve the balances carried forward as proposed by the Town Manager and that an additional \$10,000 be included for the Family Fun Day.

(1 Yes) M. Mowles – (6 No)

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Moved by M. Lynch and Seconded by J. McGinty

Ordered the Cape Elizabeth Town Council approve the balances carried forward as proposed by the Town Manager.

Donated Funds

2104002 & R0611 Police Donation Fund	\$	2,340	
7155103 High School Dugout Fund	\$	3,650	
GL 6006 Friends of the Library	\$	294	
GL 6008 Zimpritch Fund	\$	8,650	
GL 8075 Royles Library Fund	\$	1,905	
GL 8077 Lebensfeld Fund	\$	4,143	
GL 8080 M.J. Chase Fund	\$	25,384	
GL 8081 B. Chase Fund	\$	35,050	
GL 2010 Police Employee Recognition	\$	3,578	
GL 2011 Community Liaison Program Donation	\$	1,721	
GL 2012 Police Donation-Bikes	\$	370	
GL 5808 Ronald Fritz Memorial Bench Fund	\$	446	
GL 6004 Library Trust	\$	85,406	
R0503 Library Gifts	\$	3,225	
7200104 Thermal Imaging Camera Fund	\$	4,129	
R0400 Greenbelt Donation	\$	2,500	
R0617 Playground Donation	\$	3,685	
	\$	186,476	

Appropriated Funds

7154001 Fire Vehicle Replacement	\$	91,744	
7154004 Cruiser Replacement	\$	3,566	
7154011 Police Radio Repairs	\$	3,000	
7154052 Thomas Memorial Library Cupola	\$	4,000	
7154124 Day One Boiler Replacement	\$	7,700	
7154114 Greenbelt Account	\$	38,805	
7154125 EPA Stormwater Mandate	\$	6,814	
7154009 Roadway Improvements	\$	73,364	
7154010 Sidewalk Improvements	\$	8,013	
1202011 GIS Grant Match	\$	6,590	
	\$	243,596	

Other

Use of Surplus-Succeeding Year	\$	210,000	
Prepaid Community Services Summer Program	\$	30,180	Comm. Svcs. Fund
Debt Stabilization Fund	\$	25,795	
GL 270 Soda Fund	\$	234	
GL-Various All Development Escrow Accounts			
Fort Williams Park Bench Care Fund	\$	25,000	Fort. Capital Acct.

(6 Yes) – (1 No) M. Mowles

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Item# 29-04-05 MMA Officer Ballot
Moved by J. McGinty and Seconded by J. Roberts
Ordered the Cape Elizabeth Town Council cast the ballot as presented.
(7 Yes)

Item# 30-04-05 Consideration of a recommendation from the Appointments Committee recommending the filling of a vacancy on the Board of Trustees of the Thomas Memorial Library.
Moved by M. Mowles and Seconded by J. Roberts
Ordered the Cape Elizabeth Town Council approve the appointment of Nancy McGlynn to the Thomas Memorial Library Trustees for an unexpired term to expire 12/31/2005.
(7 Yes)

Item# 31-04-05 Use of Roadway/Drainage Carry Forward Balance
Moved by J. Roberts and Seconded by M. Lynch
Ordered the Cape Elizabeth Town Council undertake a cooperative approach with the City of South Portland to remove a combined sewer overflow from Trout Brook by creating separate sewer and drainage systems on Stillman Street with the Town's estimated expense of \$65,530 being allocated from the FY 2004 the roadway/drainage carry forward balance.
(7 Yes)

Item# 32-04-05 Proposed Charter Amendment
Moved by M. Lynch and Seconded by M. Mowles
Ordered the Cape Elizabeth Town Council set a public hearing for Monday, August 9, 2004 at 7:30 pm at the Cape Elizabeth Town Hall with proper notice thereof to consider a proposed charter amendment to move the May municipal election to November.
(6 Yes) – (1 No) C. Fritz

**ORDER FOR PUBLIC NOTICE AND HEARING ON
PROPOSED AMENDMENTS TO THE CAPE ELIZABETH TOWN CHARTER**

The Town Council has determined, under 30-A M.R.S.A. §2104, that amendments to the Cape Elizabeth Town Charter shall be considered related to:

1. Changing municipal elections from May to November.
2. Clarifying the induction date for new Town Council members and School Board members as a result of a change in the municipal election date.
3. Providing for extensions of terms of existing Town Council members and School Board members to provide at least a three year term to coincide with the change in municipal election date.
4. Changing the deadline to file nomination papers from 45 days to 60 days prior to election day.
5. Changing the deadline to file objections to nomination papers based on change of submission deadline.

It is hereby ORDERED that a public hearing shall be held to consider the proposed amendments on August 9, 2004. At least seven (7) days prior to the hearing, a notice of hearing shall be publicized in the *Portland Press Herald*, which is a newspaper having general circulation in the Town of Cape Elizabeth. The notice shall contain the text of the proposed amendments, and a brief explanation of the proposed amendments. The Town Council shall conduct the hearing.

**PROPOSED AMENDMENTS TO THE CAPE ELIZABETH TOWN CHARTER
with brief explanation thereof (with language to be eliminated ~~struck-out~~ and
language to be added underlined)**

Amendment 1

ARTICLE VII

Nominations and Elections

Sec. 1. Municipal elections. Commencing in the year 1987~~2005~~, the regular election for the members of the Town Council and the School Board shall be held on the first Tuesday after the first Monday in December~~November~~. ~~In each subsequent year the regular election for the members of the Town Council and the School Board shall be held on the first Tuesday in May.~~ All elections shall be conducted on a non-partisan basis and without party designations on the election ballot. The terms of those Town Councilors and School Board members in office on January 1, ~~1988~~2005, shall expire on the second Monday of ~~June~~December next following completion of their three years in office provided their successor has been elected and qualified. ~~following the second anniversary of the commencement of such terms, except those terms expiring in 1988 shall expire on July 1.~~

EXPLANATION

This amendment would change the date of municipal elections from the first Tuesday in May (as has been applicable in Cape Elizabeth by Charter since 1987) to the first Tuesday following the first Monday in November. It is expected this will result in a greater voter turnout for municipal elections. Larger nearby cities have made a similar change in the past and voters will be aware of such local elections. When state and national elections are held in a given year, this date will coincide with such elections. It is also expected to reduce cost and volunteer time by combining such local elections with state and national elections, when applicable.

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Amendment 2

ARTICLE II

Town Council

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Sec. 5. Induction of council into office. Commencing in year 2005, The town council shall meet at the usual place for holding meetings on the second Monday in ~~June~~December following the regular municipal election, ~~except in 1987 they shall meet on the second Monday in December, and in 1988 they shall meet on July 1,~~ and at said meeting the councilors-elect shall be sworn to the faithful discharge of their duties by the Town Clerk or by a notary public.

EXPLANATION

This amendment would be necessary if the first amendment passes so that the newly elected town council members would be inducted at the next regular town council meeting following their election.

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Amendment 3

ARTICLE IV

Department of Education

Sec. 3. Organization and Quorum. ~~Commencing in year 2005,~~ the members of the school board shall meet for organization on the second Monday in ~~June~~December following the regular municipal election, ~~except in 1987 they shall meet for organization on the second Tuesday in December, and in 1988 shall meet for organization on July 1.~~ A and at said meeting the members elect shall be sworn to the faithful discharge of their duties by the Town Clerk or by a notary public, and a record made thereof. The majority of the whole number of the school board shall be a quorum.

EXPLANATION

This amendment would be necessary if the first amendment passes so that the newly elected school board members would be inducted at the next regular school board meeting following their election.

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Amendment 4

ARTICLE VII

Nominations and Elections

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Sec. 2. Nomination. Registered voters of the town shall be nominated for the council or school board only by the use of nomination papers in accordance with the statutes of the State of Maine, provided nevertheless, that notwithstanding anything contained in said statutes to the contrary, including without limitation, 30-A M.R.S.A. §2528(4)(C) and (D), completed nomination papers must be filed with the town clerk during business hours by the 60th day prior to election day. They must be accompanied by the written consent of the person proposed as a candidate agreeing:

- (1) to accept the nomination if nominated;
- (2) not to withdraw; and
- (3) if elected at the municipal election, to qualify as such municipal officer or school board member.

A nomination paper that complies with the above requirement is valid unless a written objection to it is made to the town council by the 2nd day following the deadline for submission of a nomination paper. All other provisions of 30-A M.R.S.A. §2528 not inconsistent with the foregoing remain applicable, including 30-A M.R.S.A. §2528(4)(E).

EXPLANATION

This amendment is proposed to increase voter participation, particularly by qualified absentee voters, and to allow for a more orderly processing of nominations, ballot preparation and submission of absentee ballots. Currently, the Town Charter incorporates state statutes governing the nomination procedures for the Town Council and School Board. 30-A M.R.S.A. §2528(4)(A) provides in part that the Town Clerk shall make nomination papers available to prospective candidates during the 40 days before the filing deadline. 30-A M.R.S.A. §2528(4)(C) provides in part that completed nomination papers must be filed with the Town Clerk during business hours by the 45th day prior to election day, together with the written consent of the person proposed as a candidate. Under Home Rule, the town could change the filing deadline from 45 days to 60 days. This would provide two additional weeks to process nomination papers and absentee ballots. State law (21-A M.R.S.A. §752) requires that absentee ballots be printed and available to voters at least thirty (30) days before an election. The current state deadline of 45 days for filing nomination papers allows only approximately two weeks to create and order ballots printed and have those delivered and available at least 30 days before an election. If state ballots are made available to town clerks in advance of the current 30 day deadline, state law requires that statewide ballots for absentee voters be mailed out immediately, even if municipal absentee ballots were not ready, creating greater cost and confusion. This has been required by the state to try to accommodate the many military and overseas voters. The last proposed change is to keep a two day objection period now contained in 30-A M.R.S.A. §2528(4)(D) from the deadline of submission of nominations papers, but to adjust it based upon the new deadline if the above change in amendment 4 passes.

Citizens' Discussion of Items not on the Agenda – None

Adjournment

Moved by M. Lynch and Seconded by D. Backer

Ordered the Cape Elizabeth Town Council adjourn at 10:25 p.m.

(7 Yes)

Respectfully submitted,

**Deborah S. Cabana
Town Clerk**