

**CAPE ELIZABETH TOWN COUNCIL MEETING**  
**Regular Meeting # 4-04-05**  
**Monday, September 13, 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**

**Presentation of Ralph T. Gould Award to Charles F. "Chuck" Wilson**

*There was a reception at 7:00 p.m. in the William H. Jordan Conference Room in honor of Charles F. "Chuck" Wilson, the Ralph T. Gould Award recipient.*

*Chairman Swift-Kayatta presented the Ralph T. Gould Award to Charles F. "Chuck" Wilson.*

**Reports and Correspondence**

*Councilor M. Mowles* congratulated Andrew Marston and Keegan Toot for their recent accomplishment of Eagle Scout. He also stated that the Football Boosters were raffling \$100 tickets for a Jeep and encouraged people to support the sports program.

**Town Manager's Report**

*Manager McGovern* stated that he met earlier today with the Personnel Advisory Committee (PAC) and later with the Department Heads. Consistently, there has been an increase in expectations and demands for municipal services. There is a great concern for being able to meet those expectations, if the voters approve the 1% Tax Cap initiative.

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

**Minutes of Meeting #3-04-05 held August 9, 2004**

Moved by M. Lynch and Seconded by M. Mowles

**Ordered the Cape Elizabeth Town Council approve the minutes of meeting #3-04-05, held August 9, 2004.**

(7 Yes)

**Item # 34-04-05      Action related to paper streets in Shore Acres**  
**Tabled on August 9, 2004 to September 13, 2004 meeting**  
**Moved by J. McGinty and Seconded by C. Fritz**  
**Ordered the Cape Elizabeth Town Council remove from the table item #34-04-05.**  
**(7 Yes)**

*Town Planner Maureen O'Meara* suggested that Katahdin Road Extension be amended to vacate all but 50 75 feet of this road, excluding from the vacation the portion of the road where a common driveway is located off High View Road.

*Manager McGovern* stated that Dr. Mette was concerned with the proposed vacation of Elizabeth Road. In the past, additional consideration has been given if there were possible objections to the street vacations.

Moved by J. McGinty and Seconded by J. Roberts

**ORDERED: The Municipal Officers of the Town of Cape Elizabeth, County of Cumberland, State of Maine, hereby Order the vacation of a portion of certain proposed ways shown upon a subdivision plan named "Shore Acres" and recorded in the Cumberland County Registry of Deeds, Plan Book 12, Page 45 as follows:**

1. **OVERLOOK LANE. That portion of Overlook Lane bounded and described as follows: On the east commencing at the easterly sideline of land now or formerly owned by Thomas Pinansky ("Pinansky") and described in a deed recorded in said Registry in Book 16629, Page 326; on the north by the southerly bound of land of said Pinansky; on the west by Katahdin Road Extension as depicted on said plan of Shore Acres, a portion of the easterly bound of which is the extension of the westerly bound of said Pinansky land in a southerly direction to a point at land now or formerly of Allen M. MacDuffie and Sheila G. Mayberry (MacDuffie/Mayberry") and described in a deed recorded in said Registry in Book 17676, Page 32; and on the south by said land of MacDuffie/Mayberry and of Pinansky.**
2. **Reference is made to an Agreement As To Mutual Restrictions and Covenants dated July, 2004, by and between Pinansky, owner of certain real property described in a deed recorded in said Registry in Book 16629, Page 326, and MacDuffie/Mayberry, owners of certain real property described in a deed recorded in said Registry in Book 17676, Page 32, regarding certain building restrictions and set-back requirements. Said Agreement is to be recorded herewith.**
3. **Reference is also made to a Declaration of Restrictive Covenants Dated July, 2004, executed by said Pinansky regarding access to Lot #133 as shown on said Plan of Shore Acres. Said Declaration to be recorded herewith**

4. Reference is also made to an Easement Deed from said Pinansky to the Town of Cape Elizabeth dated July, 2004, granting an easement to the Town for pedestrian and emergency access. Said Easement Deed is to be recorded herewith
5. KATAHDIN ROAD EXTENSION. That portion of Katahdin Road Extension commencing 75 ft. southerly from the intersection of Katahdin Road Extension and High View Road to the intersection of Katahdin Road Extension and Trundy Road, all as shown on said Plan of Shore Acres recorded in said Registry in Plan Book 12, Page 45.
6. Excepting and reserving from this vacation order with respect to Katahdin Road Extension is a pedestrian easement over the entire length and width of Katahdin Road Extension as shown on said Plan of Shore Acres together with the right to construct, repair, replace and utilize the same as a pedestrian trail for recreation access use and to construct such stairs, bridges, boardwalks and erosion control measures as the Town may deem necessary and advisable in its sole discretion; and
7. Excepting and reserving from this vacation order are any rights of the Portland Water District for the operation, maintenance, repairing and replacement of a waterline within Katahdin Road Extension and Overlook Lane.

The Municipal Officers have determined that no damages shall be paid to each lot owner or other person having an interest in either Overlook Lane or Katahdin Road Extension. The petitioners for the proposed vacation shall pay for all copying, postage, recording and legal costs incurred by the Town of Cape Elizabeth incidental to this Order.

(7 Yes)

Item# 44-04-05      Request to partner with the Cape Elizabeth Land Trust  
                         Tabled on August 9, 2004 to September 13, 2004 meeting.  
                         Moved by D. Backer and Seconded by J. McGinty  
Ordered the Cape Elizabeth Town Council remove from the table item #44-04-05.

(7 Yes)

*Manager McGovern* stated that the closing for the property next to the town hall has still not occurred.

Moved by M. Lynch and Seconded by M. Mowles  
Ordered the Cape Elizabeth Town Council to table item #44-04-05 until the December 13, 2004 Town Council Meeting.

(7 Yes)

**Item # 45-04-05 Resolution on Tax Cap Proposal**

Moved by M. Lynch and Seconded by J. Roberts

**Resolved, the Cape Elizabeth Town Council urges a "No" vote on the Palesky initiative because its statewide passage will result in chaos and confusion due to the initiative's unclear and likely unconstitutional language, a loss of decision making control at the municipal level, and substantial adverse impacts on the ability of towns and cities to provide adequate municipal and school services to their residents.**

**(6 Yes) (1 No) – J. McGinty opposed**

Moved by M. Mowles and Seconded by J. McGinty

**Resolved, the Cape Elizabeth Town Council pledges that if the Palesky initiative is defeated the Council will use 100% of any net additional revenue that the town receives from the state as the result of the June 2004 statewide school funding referendum, to reduce the property taxes of property owners in Cape Elizabeth. However, if the Palesky initiative is approved, any net additional revenue that the town receives from the state as the result of the June 2004 statewide school funding referendum will in whole or in part be utilized for maintaining existing school programs and services to mitigate the loss of property tax revenue.**

**(7 Yes)**

Moved by M. Lynch and Seconded by J. McGinty

**Resolved, the currently elected members of the Cape Elizabeth Town Council individually commit themselves to limit spending in the next three years to a level not more than the rate of the consumer price index, with the exception of voter approved debt and an allowance for additional school enrollment and population growth.**

**(6 Yes) (1 No) – J. Roberts opposed**

**Item # 46-04-05 Voter Ratification of Municipal Debt**

The tax cap initiative on the November 2, 2004 ballot provides that the tax cap limit of 1% of valuation shall not apply to all debt approved by the voters prior to July 1, 1999 or to any bonded indebtedness for the acquisition or improvement of real or personal property approved on or after July 1, 1999 by 2/3<sup>rd</sup> of the vote cast by voters voting on the proposition in a general election. Cape Elizabeth citizens have approved debt a number of times, but as general elections are held only in November in even numbered years, it appears that the statewide vote within the Palesky initiative would remove the local decision impact of the prior votes. **It is proposed to give Cape Elizabeth voters an opportunity to ratify all of our previously authorized debt so that it is outside the cap limit.**

Referenda Issue	Election Date	Yes Votes	No Votes	% Voter Turnout	Subject to Cap
Sewer Expansion \$1,900,000	Jan 29, 1985	1225 <b>64.44%</b>	790	28.0%	No Pre 1999
Middle School Renovations \$11,700,000	Nov 2, 1993	1982 <b>52.43%</b>	1798	50.8	No Pre 1999
Swimming Pool Expansion \$2,200,000	Nov 3, 1998	3186 <b>75.03%</b>	1060	57.0%	No General Election
High School Improvements \$7,930,000	Nov 4, 2003	3356 <b>70.19%</b>	1425	62.0%	Yes Not General Election
Pond Cove School Improvements \$1,520,000	Nov 4, 2003	3450 <b>72.75%</b>	1292	62.0%	Yes Not General Election
<b>Existing Debt That was Council Approved Per Charter</b>					
Project	Year Issued	Original Issue Amount	6/30/04 Balance	Final Maturity	Subject To Cap
Northern Sewer	1978	1,692,000	401,305	2008	Yes
Northern Sewer	1978	417,000	119,657	2008	Yes
Southern Sewer	1986	375,000	75,000	2006	Yes
Misc. Capital Improvements	1998	300,000	200,000	2015	Yes
Public Works etc.	1999	3,500,000	2,800,000	2019	Yes
Police, Fire, Land	2000	4,100,000	3,440,000	2021	Yes
Community Center	2002	1,500,000	1,420,000	2022	Yes

Moved by D. Backer and Seconded by J. Roberts

**Ordered the Cape Elizabeth Town Council shall submit the following to be voted on at the November 2, 2004 municipal election:**

**Shall the Following Question Be Approved: “Shall the Town of Cape Elizabeth’s currently outstanding and authorized debt which has not previously been approved by the voters in a general election, including direct debt of \$25,189,962 , and all contingent debt and overlapping debt, be ratified and approved?”**

(7 Yes)

### TREASURER'S CERTIFICATE

The undersigned Treasurer of the Town of Cape Elizabeth hereby certifies:

1. The intent of this question is to ask whether the Town's already authorized and outstanding debt will be ratified and approved by the voters as an exemption to the proposed statewide tax cap. It does not authorize any new debt. Any debt already exempt from the statewide tax cap if enacted will remain exempt regardless of the outcome of the vote on this question.
2. The total amount of general obligation debt of the Town of Cape Elizabeth outstanding on June 30, 2004 was \$17,499,962
3. The total amount of general obligation debt (including any notes in anticipation thereof) of the Town of Cape Elizabeth authorized, but unissued, was \$9,450,000 on June 30, 2004 of which \$3,725,000 was issued in August 2004 and \$1,000,000 interest free is being issued in the Fall of 2004, as part of \$9,450,000 approved by the voters in a non-general election on November 4, 2003.
4. The interest cost associated with the Town's outstanding debt as of June 30, 2004 was \$5,642,099 to maturity, which would result in a total cost of principal, and interest to be paid at maturity of \$23,142,061. During the period July 1, 2004 to June 30, 2005, \$1,550,619 in principal is being retired and \$703,348 in interest is being paid. School debt of \$4,725,000 being issued in FY 2005 will incur an interest expense of \$1,438,570 to maturity. The remaining school debt authorization of \$ 4,725,000 approved by the voters on November 3, 2003 is anticipated to be issued in 2005.
5. The contingent and overlapping debt of the Town of Cape Elizabeth includes a \$670,875 share of the debt of Cumberland County, \$1,063,000 of the Portland Water District Wastewater Fund debt, \$1,775,384 of the Portland Water District Water Fund debt, \$2,630,980 of the Regional Waste Systems, Inc. Incinerator debt and \$246,233 of the Regional Waste Systems, Inc. Material Recycling Facility debt.

The foregoing represents an estimate of costs associated with the Town's already issued and outstanding debt and all authorized debt. Such estimates may change due to market conditions. The validity of the voters' ratification of this debt shall not be affected by any errors in the foregoing figures. The ratification by the voters is conclusive and the validity of the ratification of the Town's debt is not affected by reason of any variance of actual costs from the figures provided above.

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Treasurer, Town of Cape Elizabeth

**Item # 47-04-05      Formal Approval of School Project Interest Free Loan**

Moved by M. Mowles and Seconded by D. Backer

**Ordered that the Cape Elizabeth Town Council authorize borrowing of up to \$1,000,000 from the school revolving renovation fund.**

**VOTED: That the Cape Elizabeth Town Council hereby authorizes the borrowing by the Town from the School Revolving Renovation Fund under the Maine School Facilities Finance Program in an amount not to exceed \$1,000,000, such sum being a portion of the \$7,930,000 of indebtedness previously approved by the Town Council by resolution dated July 14, 2003, and subsequently approved by the voters of the Town of Cape Elizabeth by referendum vote on November 4, 2003.**

**VOTED: That the Treasurer, on behalf of the Town be authorized to execute and deliver a Loan Agreement with the Maine Municipal Bond Bank for the loan authorized by the preceding vote, such Loan Agreement to be in such form, not inconsistent herewith, as the Treasurer may approve by his execution thereof.**

**VOTED: That all of the provisions of the resolution of the Town Council dated July 14, 2003, shall remain in full force and effect and shall apply to the loan and Loan Agreement authorized by the preceding votes.**

(7 Yes)

**Item # 48-04-05      Setback in the BB Zone**

Moved by C. Fritz and Seconded by M. Lynch

**Ordered the Cape Elizabeth Town Council refer to the Planning Board a request from HMH Limited Partnership, LLC d/b/a Inn-by-the-Sea to amend the zoning ordinance to reduce the front setback in the BB zone from 100 feet to 50 feet.**

(7 Yes)

**Item # 49-04-05      Correction of an Assessment Irregularity**

Moved by M. Lynch and Seconded by J. McGinty

**Ordered the Cape Elizabeth Town Council approve the abatement of taxes in the amount of \$8,071.16 for Robert A. G. and Millicent Monks for FY 2003 taxes.**

(7 Yes)

**Item # 50-04-05 Proposed “Denver Boot” Ordinance**

Moved by M. Lynch and Seconded by M. Mowles

**Ordered the Cape Elizabeth Town Council refer to the ordinance committee an amendment to the traffic ordinance that would permit the use of “Denver boots” to ensure the collection of 4 or more past due parking tickets.**

(7 Yes)

**Item # 51-04-05 Sewer Lien Release**

Moved by C. Fritz and Seconded by J. McGinty

**Ordered the Cape Elizabeth Town Council authorize the Town Manager to sign a Quit-Claim Deed to release an old sewer lien that should have been released several years ago to CV Partners II.**

(7 Yes)

**Item # 52-04-05 Approval of Warrant for November Municipal Ballot Questions**

Moved by C. Fritz and Seconded by M. Lynch

**Ordered the Cape Elizabeth Town Council approve the Warrant for the November municipal ballot questions, as presented.** (copy attached)

(7 Yes)

**Item # 53-04-05 Approval of warden and deputy warden for November 2, 2004 election**

Moved by C. Fritz and Seconded by M. Lynch

**Ordered the Cape Elizabeth Town Council re-appoint Sharon J. Gower as the Warden for the November 2, 2004 election and Deborah S. Cabana as the Deputy Warden.**

(7 Yes)

**Item # 54-04-05 Approval of members of the voter registration appeals board**

Moved by M. Lynch and Seconded by C. Fritz

**Ordered the Cape Elizabeth Town Council appoint John Walker, 2 Birch Knolls as the regular Democratic Committee member, Gregory Toot, 4 Spoonrift Lane as the alternate Democratic Committee member, Reid Jones, 42 Scott Dyer Road as the regular Republican Committee member, and Marjorie Dunham, 495 Spurwink Road as the alternate Republican Committee member to the Registration Appeals Board for three-year terms to expire September 29, 2007.**

(7 Yes)



**Item # 55-04-05      Approval of voting credentials for the MMA annual meeting**  
Moved by M. Lynch and Seconded by C. Fritz

**Ordered the Cape Elizabeth Town Council designate Chairman A. Swift-Kayatta as the official voting delegate and Councilor J. Roberts as the alternate voting delegate for Cape Elizabeth to the Maine Municipal Business meeting which is scheduled to be held, Wednesday, October 6, 2004, 11:00 a.m., at the Augusta Civic Center, Augusta, Maine.**

(7 Yes)

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

**Adjournment**

Moved by M. Lynch and Seconded by J. McGinty

**Ordered the Cape Elizabeth Town Council adjourn at 9:51 p.m.**

(7 Yes)

**Respectfully submitted,**

**Deborah S. Cabana  
Town Clerk**