

CAPE ELIZABETH TOWN COUNCIL MEETING
Special Meeting # 7-04-05
Wednesday, November 10, 2004
7:30 p.m.

Anne E. Swift-Kayatta, Chairman	14 Stone Bridge Road	X	767-5754	12/2005
David J. Backer	2 Rugosa Way	X	799-2397	12/2006
Carolyn M. Fritz	1 Stirrup Road	X	767-3737	12/2006
Mary Ann Lynch	2 Olde Colony Lane	X	767-5788	12/2007
Michael D. Mowles, Jr.	423 Ocean House Road	X	741-2552	12/2006
John E. "Jack" Roberts, Jr.	185 Fowler Road	X	767-4526	12/2005

Manager Michael McGovern X
Town Clerk Deborah Cabana 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").

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.

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 7:47 p.m.

(6 Yes)

Respectfully submitted,

Deborah S. Cabana
Town Clerk