

CAPE ELIZABETH TOWN COUNCIL MEETING
Regular Meeting # 19-04-04

Monday, May 9, 2005

7:30 p.m.

Present

Absent

Anne E. Swift-Kayatta, Chairman	14 Stone Bridge Road	X	767-5754	12/2005
David J. Backer	2 Rugosa Way	X	772-5845 ext 122	12/2006
Carolyn M. Fritz	1 Stirrup Road	X	767-3737	12/2006
Mary Ann Lynch	2 Olde Colony Lane	X	232-1048	12/2007
Paul J. McKenney	5 Katahdin Road	X	899-0045	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

Minutes of Meetings # 16-04-05 & # 17-04-05 & 18-04-05

Moved by M. Lynch and Seconded by P. McKenney

Ordered the Cape Elizabeth Town Council approve the minutes of meetings # 16-04-05, 17-04-05 and 18-04-05.

(7 Yes)

Reports and Correspondence:

Chairman A. Swift-Kayatta had three items she wanted to comment on:

1. The S.P./C.E. Rotary Club won the annual spelling bee, noting that the Town Council team lasted about half way through the event before being eliminated.
2. The Spurwink Church Study Committee will be meeting soon. The Town Council representatives will be Councilor C. Fritz and Councilor P. McKenney.
3. The members of the working group regarding the land dispositions policy will have their first meeting this Wednesday (May 11th) at 4:00 p.m. in the Town Manger's office.

Councilor C. Fritz noted that Regional Waste Systems has simplified our citizens sorting methods for recycling materials from 3 sorts to 2 sorts - one for paper products and one for containers. All paper and paperboard products (including cereal & other light weight cardboard boxes, mail, office paper, magazines, catalogs, newspaper, inserts, phone books, paper bags, cardboard milk & juice cartons can now be placed into one recycling container. The container sort includes all types of containers marked with a #1 and #2 plastic on the bottom, water bottles, milk jugs, detergent & bleach bottles, clear or colored glass, metal cans, aluminum foil, trays and cans and empty aerosol cans should be placed in the other recycling containers. New signs will be appearing soon on the silver bullets at the dump and behind town hall. Regional Waste Systems is receiving record income from recycling materials which helps offset the cost of handling our trash. Councilor Fritz encouraged all residents to recycle as much as possible with this new easier sorting method and reduce waste handling costs.

Town Manager's Report:

Manager McGovern spoke about the Financial Benchmarks among 10 communities. He highlighted various areas of interest regarding Cape Elizabeth's status in the report.

Citizens Discussion of Items Not on the Agenda - None

Item # 160-04-05 Municipal, School, Community Services and County Budgets
Moved by D. Backer and Seconded by M. Lynch

Ordered, the Cape Elizabeth Town Council, having held a public hearing on Monday, April 25, 2005, does hereby adopt the General Fund Budget for Fiscal Year 2006 with gross expenditures of \$27,354,387 and gross revenues of \$6,939,779 and with the amount of \$20,662,908 to be raised from taxation, and to fix Tuesday, October 4, 2005, and Tuesday, April 4, 2006, as the dates upon each of which one-half of such tax is due and payable, with interest to accrue upon taxes due and unpaid after each such date at the rate of seven and three quarters percent (7.75%) per annum. In accordance with 36 M.R.S.A. Section 506, the Tax Collector and Town Treasurer are authorized to accept prepayment or decline prepayment of taxes not yet committed or prior to any due date and pay no interest thereon. In accordance with 36 M.R.S.A. Section 506-A, a taxpayer who pays an amount accepted by the tax collector and town treasurer in excess of that finally assessed shall be repaid the amount of overpayment plus interest from the date of overpayment at the minimum annual rate per annum set by the State of Maine.

This certifies that the FY 2005 tax commitment for municipal and community services excluding overlay was \$4,370,369. The new Maine Statute governing municipal property tax levies permits an increase in spending equal to the percentage growth in statewide average personal income and the percentage adjustment in valuation resulting from growth. The average statewide increase in personal income was 2.58% in 2004. The Cape Elizabeth Tax Assessor has determined that the increase in local valuation from growth is 1.55%. The sum of both is 4.13%. A 4.13% increase from the FY 2005 tax commitment permits a municipal and community services tax levy limit of \$4,550,865. This adopted budget provides for a municipal and community services FY 2006 tax commitment of \$4,550,000.

Ordered, the following amounts are hereby fixed as the gross appropriation for each department and agency for Fiscal Year 2006:

	Education	\$17,554,204
	Community Services	910,784
	County Government	889,244
110	Administration	477,094
120	Assessing/Codes/Planning	292,817
130	Town Council	4,100
135	Legal and Audit	63,500
140	Elections	11,328
150	Boards and Commissions	18,255
160	Insurance	71,500
170	Employee Benefits	768,100
180	Debt Service	1,042,262
210	Police Department	908,442
215	Animal Control	12,900
220	Dispatching	249,422
225	WE Team	21,745
230	Fire Department	241,684
240	Misc. Public Protection	149,692
250	Emergency Preparedness	2,043
310	Public Works Department	863,740
320	Refuse Disposal	804,579
410	Human Services	30,733
510	Library	364,300
520	Contributions	10,450
530	Public Information	35,022
600	Facilities Management	127,124
610	Town Hall	21,480
615	Library Building	21,920
620	Town Center Fire Station	16,146
630	Police Station	33,000
635	Cape Cottage Fire Station	4,004
640	Parks & Town Lands	49,356
641	School Grounds	105,091
645	Fort Williams Maintenance	115,915
655	Richards Pool/Fitness Center	377,675
660	Trees	18,064
710	Intergovernmental	20,000
715	Capital Projects	646,672
Total		\$27,354,387.00

Ordered, the Cape Elizabeth Town Council hereby accepts the categories of funds listed below as provided by the State of Maine:

Category	Estimated Amount
Revenue Sharing	713,000
General Assistance	2,000
Veterans Exemption Reimbursement	10,500
Tree Growth Reimbursement	3,000
Local Road Assistance	95,000
Other State Funds	?
Homestead Tax Relief	As established by Maine Legislature
Adult Education Subsidy:	24,000
State Education Subsidy:	2,168,585
Title IA:	91,868
Title IIA:	54,552
Title IID:	3,343
Title IVA:	7,908
Title V:	9,293
Local Entitlement:	365,085

VOTED: State/Local EPS Funding Allocation. That the Town of Cape Elizabeth appropriate \$14,124,440.68 for the total cost of funding public education from kindergarten to grade 12 as described in the Essential Programs and Services Funding Act and that the Town of Cape Elizabeth raise \$10,056,137.00 as the Town’s contribution to the total cost of funding public education from kindergarten to grade 12 as described in the Essential Programs and Services Funding Act in accordance with the Maine Revised Statutes, Title 20-A, section 15688.

Explanation: The Town’s contribution to the total cost of funding public education from kindergarten to grade 12 as described in the Essential Programs and Services Funding Act is the amount of money determined by state law to be the minimum amount that the Town must raise in order to receive the full amount of state dollars.

VOTED: Non-State Funded Debt Service. That the Town of Cape Elizabeth raise and appropriate \$1,697,541.00 for the annual payments on debt service previously approved by the legislative body for non-state-funded school construction projects, non-state funded portions of school construction projects and minor capital projects in addition to the funds appropriated as the local share of the Town’s contribution to the total cost of funding public education from kindergarten to grade 12.

Explanation: Non-state-funded debt service is the amount of money needed for the annual payments on the Town's long-term debt for major capital school construction projects and minor capital renovation projects that are not approved for state subsidy. The bonding of this long-term debt was previously approved by the voters or other legislative body.

VOTED: Additional Local Funds. That the Town of Cape Elizabeth raise and appropriate \$3,221,686.00 in additional local funds, which exceeds the State's Essential Programs and Services funding model by \$1,321,967.21

The Board of Education recommends \$3,221,686 for the following reasons: The state's funding model does not support all of the costs of the schools because it includes only those costs considered essential by the new state Essential Programs and Services (EPS) model.

Explanation: The additional local funds are those locally raised funds over and above the Town's local contribution to the total cost of funding public education from kindergarten to grade 12 as described in the Essential Programs and Services Funding Act and local amounts raised for the annual debt service payment on non-state-funded school construction projects and the non-state-funded portion of school construction projects and minor capital projects that will help achieve the Town's budget for educational programs.

VOTED: Total School Budget Summary. That the Town of Cape Elizabeth authorize the Board of Education to expend \$17,554,204 for the fiscal year beginning July 1, 2005 and ending June 30, 2006 from the Town's contributions to the total cost of funding public education from kindergarten to grade 12 as described in the Essential Programs and Services Funding Act, non-state-funded school construction projects, additional local funds for school purposes under the Maine Revised Statutes, Title 20-A, section 15690, unexpended balances, tuition receipts, state subsidy and other receipts for the support of schools.

VOTED: Adult Education. That the Town of Cape Elizabeth appropriate for Adult Education, the sum of \$910,784 and the Town of Cape Elizabeth raise as the local share, the sum of \$149,845

VOTED: School Special Funds. That the town of Cape Elizabeth hereby appropriates, in addition to the school budget amounting to \$17,554,204, the sum of \$1,114,025, said amount being the estimated amount expected to be received as revenues from the school lunch program, Title IA, Title IIA, Title IID, Title IV A, Title V and Local Entitlement Funds. If the actual revenues shall be less than the appropriated funds, then the appropriation shall be lowered to an equivalent level.

In addition the State of Maine directly assumes the cost for the employer share of teacher retirement. The estimated amount is \$1,659,551.

(7 Yes)

Moved by D. Backer and Seconded by M. Lynch

Ordered the Cape Elizabeth Town Council vote Items #161-04-05 through Item #167 04-05 en bloc.

(7 Yes)

Moved by D. Backer and Seconded by M. Mowles

Ordered the Cape Elizabeth Town Council having held a public hearing on Monday, April 25, 2005, does hereby adopt the Fiscal Year 2006 Budgets for Items #161-04-05 through Item #167-04-05.

Item # 161-04-05 Sewer Fund Budget

Ordered the Cape Elizabeth Town Council, having held a public hearing on Monday, April 25, 2005 does hereby adopt the recommended Fiscal Year 2006 Budget for the Sewer Fund with expenditures of \$1,350,090 and revenues of \$1,444,000.

Item # 162-04-05 Riverside Cemetery Fund Budget

Ordered the Cape Elizabeth Town Council, having held a public hearing on Monday, April 25, 2005 does hereby adopt the recommended Fiscal Year 2006 Budget for the Riverside Cemetery Fund with expenditures of \$43,595 and revenues of \$49,400.

Item # 163-04-05 Spurwink Church Fund

Ordered the Cape Elizabeth Town Council, having held a public hearing on Monday, April 25, 2005 does hereby adopt the recommended Fiscal Year 2006 Budget for the Spurwink Church Fund with expenditures of \$10,390 and revenues of \$10,300.

Item # 164-04-05 Fort Williams Park Capital Fund

Ordered the Cape Elizabeth Town Council, having held a public hearing on Monday, April 25, 2005 does hereby adopt the recommended Fiscal Year 2006 Budget for the Fort Williams Park Capital Fund with expenditures of \$37,555 and revenues of \$37,555.

Item # 165-04-05 Thomas Jordan Fund

Ordered the Cape Elizabeth Town Council, having held a public hearing on Monday, April 25, 2005 does hereby adopt the recommended Fiscal Year 2006 Budget for the Thomas Jordan Fund with expenditures of \$24,300, and revenues of \$25,000.

Item # 166-04-05 Rescue Fund

Ordered the Cape Elizabeth Town Council, having held a public hearing on Monday, April 25, 2005 does hereby adopt the recommended Fiscal Year 2006 Budget for the Rescue Fund with expenditures of \$151,932 and revenues of \$155,000.

Item # 167-04-05 Portland Head Light Fund

Ordered the Cape Elizabeth Town Council, having held a public hearing on Monday, April 25, 2005 does hereby adopt the recommended Fiscal Year 2006 Budget for the Museum at Portland Head Light Fund with expenditures of \$492,279 and revenues of \$527,700.

(7 Yes)

Item # 168-04-05 BA Wetlands Amendment Report from Ordinance Committee

Town Planner Maureen O'Meara was available to explain this item and answer questions.

Councilor D. Backer requested that he be recused from voting on this item, as he felt this item was a possible conflict of interest.

Moved by P. McKenney and Seconded by J. Roberts

Ordered the Cape Elizabeth Town Council recuse Councilor D. Backer from voting on item # 168-04-05.

(5 Yes) (1 No – M. Mowles)

Moved by J. Roberts and Seconded by P. McKenney

Ordered the Cape Elizabeth Town Council set a public hearing for Monday, June 13, 2005 at 7:30 p.m. on the proposed amendments to the Zoning Ordinance that would provide an opportunity for wetland setbacks to be reduced from 250' to 100' for properties in the BA District

(5 Yes) (1 No – J. Roberts)

Item # 169-04-05 Storm water Ordinance Report from Ordinance Committee

Moved by J. Roberts and Seconded by C. Fritz

Ordered the Cape Elizabeth Town Council set a public hearing for Monday, June 13, 2005 at 7:30 p.m. on the proposed amendments to the Conservation Ordinance relating to storm water. The bulk of the proposed revisions are to come into compliance with new state and federal storm water regulations.

(7 Yes)

Item # 170-04-05 Bond Resolution for Sewer Rehabilitation Project

Moved by M. Lynch and Seconded by M. Mowles

Ordered the Cape Elizabeth Town Council authorize expenditure of up to \$5,400,000 for improvements, to the town's sewer system and the issuance of up to \$5,400,000 in bonds to finance such expenditure

VOTED: That the Cape Elizabeth Town Council hereby authorizes the expenditure of up to \$5,400,000 for improvements to the Town's sewer system, including construction of new sewer lines, manholes, pump stations and related road, sidewalk and curbing construction and reconstruction, related equipment, and for costs and expenses related thereto, including design, engineering and study costs.

VOTED: Pursuant to the provisions of Section 5772 of Title 30-A of the Maine Revised Statutes and all other authority thereto enabling, and in order to provide funds for the sewer project authorized by the foregoing vote and the costs and expenses related thereto, the Town Council of the Town of Cape Elizabeth hereby authorizes the Treasurer to borrow on behalf of the Town up to \$5,400,000 in principal amount.

VOTED: That in order to effect the borrowing heretofore authorized, the Treasurer be and hereby is authorized to prepare, issue and sell notes or bonds of the Town in the aggregate principal amount not to exceed \$5,400,000, such notes or bonds to be signed by the Treasurer, countersigned by the Chairman of the Town Council and attested by the Town Clerk.

VOTED: The form, maturity, interest rate and other details of said notes or bonds shall be as determined by the Treasurer and the Chairman of the Town Council by their execution thereof, but shall have a final maturity not later than 20 years from date of issuance, and shall not be inconsistent with the provisions hereof. Such notes or bonds and any notes issued in anticipation thereof may be issued as callable notes or bonds in the discretion of the Treasurer and Chairman of the Town Council.

VOTED: That the Treasurer and the Chairman of the Town Council are hereby authorized on behalf of the Town to borrow money in anticipation of the issuance of said notes or bonds by the issuance and sale of notes and renewal notes in anticipation thereof, such notes and renewal notes to be in such form, have such maturity and bear interest at such rate as may be approved by the Treasurer and Chairman of the Town Council by their execution thereof.

VOTED: That the Chairman of the Town Council, the Treasurer and Clerk, and other proper officials of the Town be, and hereby are, authorized and empowered in its name and on its behalf, to do or cause to be done all such acts and things as may be deemed necessary or desirable in order to effect the issue and delivery of said bonds and notes hereinbefore authorized in the foregoing resolutions.

VOTED: That the Town covenants and certifies that no part of the proceeds of the issue and sale of the notes and bonds authorized to be issued by the foregoing resolutions (including any notes and bonds in renewal thereof) shall be used, directly or indirectly, to acquire any securities or obligations, the acquisition of which would cause such notes or bonds to be "arbitrage bonds" within the meaning of Section 148 of the Internal Revenue Code of 1986, as amended (the "Code").

VOTED: That the Treasurer of the Town be authorized to covenant on behalf of the Town and for the benefit of the holders of the notes and bonds, that the Town will take whatever steps, and refrain from taking any action, as may be necessary or appropriate to ensure that interest on the notes and bonds will remain exempt from federal income taxes.

VOTED: That said notes and bonds are hereby designated "qualified tax exempt obligations" under Section 265(b)(2) of the Code.

VOTED: That this Bond Resolution shall constitute the Town's official declaration of intent for purposes of Section 1.150 of the Internal Revenue Regulations, and to the extent that any costs of the sewer project are paid by the Town from the general fund or other fund, such payments may be reimbursed from the proceeds of said notes or bonds.

VOTED: That the notes and bonds authorized by this Bond Resolution may, if so determined by the Treasurer, be combined with any other notes or bonds duly authorized by the Town of Cape Elizabeth and together issued as a single bond issue in the aggregate amount of the notes and bonds so authorized.

VOTED: The investment earnings on the proceeds of the Bonds and notes hereinbefore authorized, if any, and the excess proceeds of such Bonds and notes, if any, be and hereby are appropriated for the following purposes, such proceeds to be held and applied in the following order of priority:

- 1. To any costs of the project in excess of the principal amount of the Bonds and notes;**
- 2. If issued on a tax-exempt basis, in accordance with applicable terms and provisions of the Arbitrage and the Use of Proceeds Certificate delivered in connection with the sale of the Bonds and notes,**
- 3. To pay debt service on the Bonds.**

(7 Yes)

Item # 171-04-05 Acceptance of Regional Trails Grant

Moved by J. Roberts and Seconded by C. Fritz

Ordered the Cape Elizabeth Town Council accept the \$15,000 grant and that the town manager be authorized to sign the documents required from the grant source and further authorize the town manger expenditure of the funds once received.

(7 Yes)

Item # 172-04-05 Proposed Change in Greenbelt Trail

Moved by M. Lynch and Seconded by P. McKenney

Ordered the Cape Elizabeth Town Council approve the request of Jeffrey and Vicki Kennedy to transfer and to abandon a section of the greenbelt between the Powell and the Hagmann properties on Bowery Beach Road and that the town manager be authorized to sign the necessary documents upon receiving a certification from the town engineer that the new greenbelt trail off Golden Ridge Lane has been built in accordance with the December 16, 2003 approved planning board plan for the Golden Ridge Subdivision.

(4 Yes) (3 No – A. Swift-Kayatta, C. Fritz, J. Roberts)

* *Councilor J. Roberts stepped out of the meeting at 9:53 p.m.*

**Item # 173-04-05 Use of Fort Williams Park for Family Fun Day on June 18th,
Rain date of June 25th**

Moved by M. Mowles and Seconded by P. McKenney

Ordered the Cape Elizabeth Town Council approve the use of Fort Williams Park for Family Fun Day on June 18th, Rain date of June 25th.

(6 Yes)

**Item # 174-04-05 Use of Fort Williams Park for Pond Cove Field Days on
June 6-9, 2005 from 9:00 a.m. to 11:15 a.m.**

Moved by P. McKenney and Seconded by M. Mowles

Ordered the Cape Elizabeth Town Council approve the use of Fort Williams Park for Pond Cove Field Days on June 6-9, 2005 from 9:00 a.m. to 11:15 a.m.

(6 Yes)

Item # 175-04-05 Approval of Proposed Use of \$1,200 in Marion Chase Fund

Moved by M. Mowles and Seconded by P. McKenney

Ordered the Cape Elizabeth Town Council approve the expenditure of up to \$1,200 from the Marion Fund as follows: \$900 for 2 arm chairs, \$170 for two lamps and \$100 for delivery of the above.

(6 Yes)

Item # 176-04-05 Proposed Finance Committee Revision to FY 2005 School Budget

Moved by D. Backer and Seconded by M. Lynch

Ordered the Cape Elizabeth Town Council amend the FY 2005 School Budget to provide for total expenditures of \$16,605,861 and total revenues of \$2,232,163 and the amount of \$14,373,698 to be raised from taxation. This motion adds \$50,000 to expenditures and to revenues to reflect the action of the Cape Elizabeth School Board in their final adoption of the FY 2005 school budget. The amount from taxation is not changed.

(6 Yes)

Item # 177-04-05 Proposed Abatement of Personal Property Taxes

Moved by M. Lynch and Seconded by M. Mowles

Ordered the Cape Elizabeth Town Council abate \$338.52 in FY 2002 personal property taxes and \$358.18 in FY 2003 personal property taxes in unpaid taxes from 517 Ocean House Road, the previous owner of Cape Variety did not pay the personal property tax and to also abate \$1.42 in FY 2004 personal property taxes assessed to John F. Hayes, a previous owner of 249 Ocean House Road.

(6 Yes)

Item # 178-04-05 Proposed Revisions to the Returned Checks Policy

Moved by P. McKenney and Seconded by M. Mowles

Ordered the Cape Elizabeth Town Council approve the Returned Checks Policy as proposed. (Copy attached to the official minutes)

(6 Yes)

* *Councilor J. Roberts returned to the meeting at 10:02 p.m.*

Item # 179-04-05 Proposed Change to Zoning Board By-laws

Moved by M. Lynch and Seconded by P. McKenney

Ordered the Cape Elizabeth Town Council refer the proposed changes to the Zoning Board By-laws back to the Zoning Board to prepare for Council consideration.

(7 Yes)

**Item # 180-04-05 Proposed Resolution Authorizing Town to do business with
Bangor Savings Bank**

Moved by P. McKenney and Seconded by M. Mowles

**Ordered the Cape Elizabeth Town Council authorize the Town to do business with Bangor
Savings Bank and to approve the corporate resolution.**

(7 Yes)

Citizen's Discussion of Items Not on the Agenda - None

Adjournment

Moved by P. McKenney and Seconded by M. Mowles

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

(7 Yes)

Respectfully submitted,

Deborah S. Cabana
Town Clerk