

## CAPE ELIZABETH TOWN COUNCIL MINUTES

### Regular Meeting # 8-2008

Monday, April 14, 2008

7:30 p.m.

#### Roll Call by the Town Clerk

				Present
Mary Ann Lynch, Chairman	2 Olde Colony Lane	232-1048	12/2010	X
David J. Backer	2 Rugosa Way	253-0529	12/2009	X
Cynthia Dill	1227 Shore Road	767-7197	12/2008	late
Sara W. Lennon	54 Cranbrook Drive	741-5139	12/2009	X
Paul J. McKenney	5 Katahdin Road	899-0045	12/2010	X
James S. Rowe	127 Oakhurst Road	799-5825	12/2009	X
Anne E. Swift-Kayatta	14 Stone Bridge Road	767-5754	12/2008	X

Town Manager Mike McGovern

X

Town Clerk Ruth Noble

X

Pledge of Allegiance to the Flag

Minutes of Meeting # 6 held March 3, 2008 and # 7 held March 25, 2008

Motion to accept: A. Swift-Kayatta

Second: J. Rowe.

Vote: 6 in favor – 0 opposed.

#### Reports and Correspondence

Chairman Lynch recognized the recent passing of former long-term citizen and Town Councilor Henry Berry III, and spoke of his many involvements and accomplishments.

- **Update on Gull Crest Nordic Ski Trails**

Mussey Barton and Dave Roberts, Co-chairs of the committee, reported on the ongoing phases of the project to the present status of the Gull Crest Nordic Ski Trail system.

\*\*Councilor Dill arrived at 7:45pm

- **Update from Cape Elizabeth Farm Committee**

Penny Jordan spoke on behalf of the committee, recognized many dedicated members who were present, and reported on their accomplishments to date and goals for continued success and public awareness.

Chairman Lynch was pleased to announce that the Cape Elizabeth Recycling Committee has reported that the town's recycling rate is up just over 30% for the month of February.

Councilor Swift-Kayatta reported on her recent attendance of the National League of Cities business meeting and from that experience, she was able to express her confidence that representatives from Congress, Senate and U.S. Representatives proved to have an awareness of important municipal issues and she thanked them for the work they do.

Councilor Swift-Kayatta thanked Councilor Dill for arranging the tax forum that took place on March 13<sup>th</sup> and was pleased to take part in the informational session.

Councilor Swift-Kayatta gave an update on the Thomas Memorial Library Study Committee and described their current effort to seek a library consultant through an RFP process.

Lastly, Councilor Rowe reported that the Spurwink Meeting House Committee will meet Thursday to consider proposals for the restoration project.

### **Town Manager's Report**

None for the period.

### **Citizens Discussion of Items Not on the Agenda**

None for the period.

### **Item # 50-2008      Proposed Zoning Ordinance Amendments to Regulate Bars and Taverns**

Chairman Lynch explained it is her proposal to refer the regulation of bars and taverns to the Planning Board for a zoning amendment.

M. Kreitz, 524 Ocean House Road, expressed his belief that failure to enact regulation will negatively impact residential compatibility and property values and create public safety issues.

J. Foley, 511 Ocean House Road, would like to see the location of bars or taverns restricted to the Town Center business district.

J. Snerson, 7 Salt Spray Lane, stated an opinion that the town center is the only fit location for bars or taverns.

D. Fishbein, 19 Salt Spray Lane, called for additional regulation of bars in the downtown Business District and stricter liquor licensing definitions by ordinance.

P. Babcock, expressed concerns with the town's legacy if the town does not address strict regulations of bars and taverns.

G. Schmader, 511 Ocean House Road, agreed there is a need for regulation and urged the Council to continue their work to address neighborhood concerns.

L. Baade, 501 Ocean House Road, encouraged the Councils continued careful consideration to protect quiet residential neighborhoods.

B. Strauss, 501 Ocean House Road, said although he enjoys having a neighborhood diner he sees a bar as being a detriment.

C. Best, 12 Pond View Road, expressed concern that an existing business could impact his property values and wants to see discussions continue.

C. Dittrich, 500 Ocean House Road, spoke in support of Rudy's of the Cape as a social hub, advocating on behalf of the proprietors who wish to expand the current operation.

M. Page, 172 Two Lights Road, proprietor of Rudy's of the Cape, explained her position as a business owner who is faced with zoning restrictions that currently limit plans to expand and therefore make it possible to remain in business.

D. Babcock, 503 Ocean House Road, spoke to the importance of keeping with the comprehensive plan when making decisions that will impact the neighborhood and benefit the town.

J. Corey, with a financial interest in property at 509 Ocean House Road, expressed concern with expanded hours of operation that has been proposed at Rudy's of the Cape.

F. Orr, 505 Ocean House Road, wants to see neighborhood maintained.

**MOTION: A. Swift-Kayatta to refer this item to the Planning Board.  
SECOND: D. Backer.**

Discussion: Councilor Swift-Kayatta said significant citizen interest in this issue is her reason for making this referral and she wants to hear the thoughts of the Planning Board.

Councilor Dill questioned whether the Town Councils somehow approved this application in error.

Chairman Lynch responded that her referral is driven by the potential need for regulation where none currently exists. For clarity, she stated she does not have strong feelings where bars should or should not be located but she feels discussion of this matter is timely and she does want to keep it fair.

Mr. McGovern briefly explained the background of Mrs. Page's request to expand her operation.

Councilor McKenney said he personally does not favor a bar in town and he hopes communication between neighbors and business owner can be helpful in resolving differing perspectives and build consensus.

Councilor Backer supports the motion to send this to the Planning Board.

**VOTE: 7 in favor – 0 opposed.**

**Item # 51-2008      Proposed Riverside Cemetery Fee Adjustments**

**MOTION: J. Rowe to approve proposed fee adjustments for 2008 as recommended by the Board of Trustees of Riverside Memorial Cemetery.**

**SECOND: S. Lennon.**

**VOTE: 7 in favor – 0 opposed.**

**Item # 52-2008      Fort Williams Park Use Request**

**MOTION: C. Dill to approve use of Fort Williams Park by Pond Cove Elementary School for their “Field Day” on June 9-12, 2008.**

**SECOND: A. Swift-Kayatta.**

**VOTE: 7 in favor – 0 opposed.**

**Item # 53-2008      Annual Dog Warrant**

**MOTION: J. Rowe to approve the annual municipal warrant for prosecuting owners and keepers of unlicensed dogs.**

**SECOND: S. Lennon.**

**VOTE: 7 in favor – 0 opposed.**

**Item # 54-2008      Regional Forensic Lab-Report from Finance Committee**

**MOTION: J. Rowe to approve that the Town of Cape Elizabeth enter into a regional agreement for a new forensic laboratory to be located at the Portland Police headquarters as recommended by the Finance Committee.**

**SECOND: D. Backer.**

**VOTE: 7 in favor – 0 opposed.**

**Item # 55-2008      FY 2009 Proposed Municipal Budget**

Finance Committee Chairman Rowe thanked Mr. McGovern for having prepared the power point presentation which enhanced his presentation of the FY2009 Municipal Budget.

**MOTION: J. Rowe to accept the report of the Finance Committee on the proposed FY 2009 municipal budget and to schedule a public hearing on Monday, May 12, 2008 at 7:30 p.m. at the Cape Elizabeth Town Hall on the proposed budget recommending \$8,802,090 in expenditures (increase of \$286,700 or 3.37%) \$3,450,500 in revenues from sources other than the property tax (decrease of \$217,060 or 5.92%) with \$5,351,590 to be borne by taxation (increase of \$503,760 or 10.39%) with a projected tax rate of \$4.04 per thousand dollars of assessed valuation.**

**SECOND: P. McKenney.**

**VOTE: 7 in favor – 0 opposed.**

**Item # 56-2008            FY 2009 Proposed Education Budget**

**MOTION:** J. Rowe to accept the report of the Finance Committee on the proposed FY 2009 Cape Elizabeth School Department budget and to schedule a public hearing on Monday, May 12, 2008 at 7:30 p.m. at the Cape Elizabeth Town Hall on the proposed budget recommending \$19,656,037 in expenditures (increase of \$864,415 or 4.6%) \$3,445,812 in revenues from sources other than the property tax (increase of \$211,326 or 6.53%) with \$16,210,225 to be borne by taxation (increase of \$653,089 or 4.20%) with a projected property tax rate of \$12.24 per thousand dollars of assessed valuation.

**SECOND:** P. McKenney.

**VOTE:** 4 in favor – 3 opposed. (Lennon, Rowe, Swift-Kayatta)

**MOTION:** J. Rowe to combine approval of items # 57-2008 - #66-2008.

**SECOND:** D. Backer.

**VOTE:** 7 in favor – 0 opposed.

**MOTION:** J. Rowe to approve budget items #57 – 2008 - #66 – 2008 as presented in the packets.

**SECOND:** S. Lennon.

**VOTE:** 7 in favor – 0 opposed.

**Item # 57-2008            FY 2009 Proposed Cumberland County Assessment**

Ordered to accept the report of the Finance Committee on the proposed FY 2009 Cumberland County Assessment and to schedule a public hearing on Monday, May 12, 2008 at 7:30 p.m. at the Cape Elizabeth Town Hall on the proposed Cumberland County Assessment amounting to \$1,010,011 which is an increase of \$73,791 or 7.88% all to be borne by taxation with a projected property tax rate of \$.76 per thousand dollars of assessed valuation.

**Item # 58-2008            FY 2009 Proposed Community Services Budget**

Ordered to accept the report of the Finance Committee on the proposed FY 2009 Community Services budget and to schedule a public hearing on Monday, May 12, 2008 at 7:30 p.m. at the Cape Elizabeth Town Hall on the proposed budget recommending expenditures of \$1,080,963 (increase of \$104,727 or 10.73%), non-property tax revenues of \$922,690 (increase of \$98,454 or 11.94%) with \$158,272 to be borne by property tax (increase of \$6,273 or 4.13%) with a projected property tax of \$.12 per thousand dollars of assessed valuation.

**Item # 59-2008            FY 2009 Proposed State/Local Homestead Exemption Budget**

Ordered to accept the report of the Finance Committee on the proposed FY 2009 Homestead Exemption budget and to schedule a public hearing on Monday, May 12, 2008 at 7:30 p.m. at the Cape Elizabeth Town Hall on the proposed budget for the local share of the State Homestead Exemption program which amounts to a proposed expenditure of \$232,000 which is a decrease from last year of \$8,000 or 3.33%. The local share of \$232,000 is all borne by taxation and amounts to a projected tax rate of \$.18 per thousand dollars of assessed valuation.

**Item # 60-2008          FY 2009 Proposed Rescue Fund Budget**

**Ordered to accept the report of the Finance Committee on the proposed FY 2009 Rescue Fund budget and to schedule a public hearing on Monday, May 12, 2008 at 7:30 p.m. at the Cape Elizabeth Town Hall on the proposed Rescue Fund budget recommending expenditures of \$202,787 (decrease of \$20,550 or 9.2%) and with projected revenues of \$168,000.**

**Item # 61-2008          FY 2009 Proposed Sewer Fund Budget**

**Ordered to accept the report of the Finance Committee on the proposed FY 2009 Sewer Fund budget and to schedule a public hearing on Monday, May 12, 2008 at 7:30 p.m. at the Cape Elizabeth Town Hall on the proposed Sewer Fund budget recommending expenditures of \$1,435,322 (decrease of \$72,826 or 4.8%) and with projected revenues of \$1,515,000.**

**Item # 62-2008          FY 2009 Proposed Spurwink Church Fund Budget**

**Ordered to accept the report of the Finance Committee on the proposed FY 2009 Spurwink Church budget and to schedule a public hearing on Monday, May 12, 2008 at 7:30 p.m. at the Cape Elizabeth Town Hall on the proposed Spurwink budget recommending expenditures of \$13,244 (increase of \$2,204 or 20%) and with projected revenues of \$3,000.**

**Item # 63-2008          FY 2009 Proposed Riverside Cemetery Budget**

**Ordered to accept the report of the Finance Committee on the proposed FY 2009 Riverside Cemetery budget and to schedule a public hearing on Monday, May 12, 2008 at 7:30 p.m. at the Cape Elizabeth Town Hall on the proposed Riverside Cemetery budget recommending expenditures of \$46,678 (increase of \$2,372 or 5.4%) and with projected revenues of \$ 46,678.**

**Item # 64-2008          FY 2009 Proposed Fort Williams Park Capital Budget**

**Ordered to accept the report of the Finance Committee on the proposed FY 2009 Fort Williams Park Capital budget and to schedule a public hearing on Monday, May 12, 2008 at 7:30 p.m. at the Cape Elizabeth Town Hall on the proposed Fort Williams Park Capital budget recommending expenditures of \$31,688 (decrease of \$1,062 or 3.0%) and with projected revenues of \$28,000.**

**Item # 65-2008          FY 2009 Proposed Portland Head Light Budget**

**Ordered to accept the report of the Finance Committee on the proposed FY 2009 Portland Head Light budget and to schedule a public hearing on Monday, May 12, 2008 at 7:30 p.m. at the Cape Elizabeth Town Hall on the proposed Portland Head Light budget recommending expenditures of \$517,410 (increase of \$26,134 or 5.3%) and with projected revenues of \$532,400.**

**Item # 66-2008          FY 2009 Proposed Thomas Jordan Trust Budget**

**Ordered to accept the report of the Finance Committee on the proposed FY 2009 Thomas Jordan Trust budget and to schedule a public hearing on Monday, May 12, 2008 at 7:30 p.m. at the Cape Elizabeth Town Hall on the proposed Thomas Jordan**

**Trust budget recommending expenditures of \$35,000 (no change) and projected revenues of \$35,525.**

**Item # 67-2008          Requested Ordinance Amendment**

Chairman Lynch asked to recuse herself from the vote due to a personal relationship with Attorney McGehee who was present to speak on the item.

Chairman Lynch stepped down and Councilor Rowe took the Chair.

**MOTION: D. Backer to accept the recusal of Chairman Lynch.**

**SECOND: S. Lennon.**

**Vote: 6 in favor – 0 opposed**

Attorney McGehee of Perkins/Thompson representing the Filliettaz family, property owners on Shore Road, addressed the Council with her client's request to exclude flagpoles from the definition of structure and to provide a side yard and rear yard setback of five feet for flagpoles. The Council is asked to refer this item to the Planning Board.

The Council heard from Attorney Vaniotis representing Dr. Nelson, Shore Road property owner who opposes the request for an ordinance amendment.

Dr. Nelson, Shore Road, addressed the Council to state his position as an abutter who opposes an ordinance amendment that would exclude flagpoles as structures.

**MOTION: A. Swift-Kayatta to refer this item to the Planning Board.**

**SECOND: C. Dill.**

Discussion: Although it was concluded that in the past the ordinance has lacked enforcement in the area of placement, Councilors offered differing opinions as to whether or not the law should be altered or to address a single dispute.

**VOTE: 2 in favor – 4 opposed**

**(Backer, Lennon, McKenney, Rowe)**

Discussion: Mr. McGovern recommended that the Council make a finding of fact that it is either legally faulty or conflicts with state law or that is clearly contradictory to established town policy.

**MOTION: D. Backer to make a formal finding that the requested ordinance change is clearly contrary to established town policy.**

**SECOND: P. McKenney**

Discussion: Mr. McGovern recommended having the Town attorney draft findings of fact so that it is sustainable with the majority of the Council.

Councilor Backer withdrew his motion in favor of tabling this item until the next regular meeting at which time the recommended findings of fact will be presented.

**MOTION: C. Dill to table discussion until May 12.**

**SECOND: D. Backer**

**VOTE: 6 in favor – 0 opposed.**

Councilor Lennon left at 10:05pm.

Chairman Lynch resumed as Chair.

**Item # 68-2008 Election Preparation**

**MOTION: A. Swift-Kayatta to reappoint Sharon Gower as warden and appoint Ruth Noble as Deputy Warden for all 2008 elections and to approve the nominations of the political parties for election workers to serve as presented. The warrant for the June 10, 2008 General/Referendum election was approved as well.**

**SECOND: C. Dill**

**VOTE: 6 in favor – 0 opposed.**

**Citizens Discussion of Items Not on the Agenda**

None for the period.

**Adjournment – 10:10 pm.**

**MOTION: P. McKenney**

**SECOND: D. Backer**

**VOTE: 6 in favor – 0 opposed.**

Respectfully submitted,

Ruth M. Noble  
Town Clerk