

CAPE ELIZABETH TOWN COUNCIL MINUTES
Regular Meeting # 9-2009
Cape Elizabeth Town Hall
Monday, May 11, 2009
7:30 p.m.

Roll Call by the Town Clerk Pro-Tem

	Present			
James S. Rowe, Chairman	x	127 Oakhurst Road	799-5825	12/2009
David J. Backer	x	2 Rugosa Way	253-0529	12/2009
Penelope A. Jordan	x	349 Fowler Road	671-5341	12/2010
Sara W. Lennon	x	54 Cranbrook Drive	741-5139	12/2009
Paul J. McKenney	x	5 Katahdin Road	899-0045	12/2010
David S. Sherman, Jr.	x	74 Hunts Point Road	749-2668	12/2011
Anne E. Swift-Kayatta	x	14 Stone Bridge Road	767-5754	12/2011

Michael K. McGovern, Town Manager X
Debra M. Lane, Town Clerk, Absent due to election preparation

The Pledge of Allegiance to the Flag

Town Council Reports and Correspondence

Councilor Swift-Kayatta reported that the final meeting of the Town Council Communications Working Group was held earlier in the day and a report will be on the June 8, 2009 Town Council agenda. She also indicated that she had just returned from a conference in Louisville, Kentucky of the National League of Cities Risk Management Training Program as a representative of the Maine Municipal Association Risk Management Program Board of Directors.

Chairman Rowe gave an update on the Sports Done Right Committee. Cape Elizabeth will be certified as a “Sports Done Right” community. He praised School Board member Karen Burke and all of the committee members for their work on this program and noted that the CEHS Boys Basketball team had won the sportsmanship award at the recent regional basketball tournament.

Citizen Opportunity for Discussion of Items Not on the Agenda- None

Town Manager’s Report

The town manager updated the meeting on the status of the implementation of the street lighting reduction effort. A list of lights to be removed is on the Town website.

Review of Minutes of Meeting held April 30, 2009

Moved by David S. Sherman, Jr., Seconded by Anne E. Swift-Kayatta and voted to approve the minutes of the April 30, 2009 special meeting as presented. (7 Yes - 0 No)

Public Hearing- Zoning Ordinance Amendments and Zoning Map- BA Zone

Ordinance Committee Chair Sara Lennon provided a brief overview of the proposed changes. Chairman Rowe opened the public hearing at 7:38 p.m.

Public Comments

Lynne Beal of 1 Crescent Road supports 553 Shore Road being in the BA Zone. She noted new standards proposed for the BA zone are much more detailed than the current standards.

Joseph Foley of 511 Ocean House Road commended the Ordinance Committee for their concern of the residents of the community. He appreciates the new performance standards being proposed.

Chris Straw of 597 Shore Road believes the design standards are well thought out. He pointed out several drafting concerns. He is concerned with several permitted uses including repair garages.

Jacqueline Cottrell of 8 Whaleback Way commented that 553 Shore Road has been admirably restored. In order for the property to be viable, it needs to be in a business zone.

Julie Barnes of 84 Ocean House Road co-manages Rudy's. She commended the Ordinance Committee for its work. She would like to see restaurants to be able to serve until 10:00 p.m. and would like additional seats to be permitted at a counter.

Mary Page of Two Lights Road and the owner of Rudy's said that her property asked for the wetlands setback to be changed in 2003. The BA wetland setback change needs to be implemented. She said that some of the changes are spot zoning as they affect only Rudy's and the Jordan's garden center property.

Elizabeth Monaghan, the owner of 537 Shore Road, said property should be zoned at its highest and best use and we should encourage small business. Traffic volume would be very light.

Peggy McGehee of Perkins Thompson law firm represents David Sanford, Joyce Wilson Sanford and Jane Waning Nicholas. She said the proposed standards are going to reduce the current standards allowing non-permitted uses. Buffers are eliminated and setbacks are reduced. The uses will undermine neighborhood quality and the integrity of the neighborhood needs to be maintained.

Laura Lynch of 880 Shore Road is in support of the zoning change. It is important to support local business.

Anne Bosworth of Old Fort Road supports the rezoning of 553 Shore Road so that businesses in the area may thrive.

Nancy Whiting Sears of 17 Linwood Street would like to have a bed and breakfast in Cape Elizabeth but is concerned about the parking. She loves Rudy's and supports what they are asking for.

Gail Schmader of 511 Ocean House Road commended the Ordinance Committee for their deliberate and thoughtful compromises. She appreciates language which protects the integrity of adjacent neighborhoods. She supports the 100 foot buffer zone from adjacent neighborhoods. She supports the limits on hours and limits on outdoor service.

Fern Orr of 505 Ocean House Road said she agrees with the comments made by Gail Schmader.

Stephen Popp of Woodland Road does not support the rezoning of 553 Shore Road. He said that the traffic would be very dangerous and that the Town and individual elected and appointed officials would be personally liable if any incident occurred. This would be the largest expansion of Cape Elizabeth business in history.

Kathy Johnson of 12 Arrow Point Road is in favor of rezoning 553 Shore Road. As the former owner of a retail gift shop, she believes such businesses make excellent neighbors. Small shops make small towns special.

David Sanford of 1 Charles Road said there are clear differences between what is allowed in a business zone and what is allowed in a residential zone. 553 Shore Road is embedded in a residential neighborhood. The cost to the residential neighborhood is too much to allow. All of the abutters are opposed to the rezoning and 46 of 48 signed a petition. Once the property is rezoned, a successor business may come along that might be objectionable.

Emily Materson of 2 Charles Road said the back of 553 Shore Road is almost on the property line. The proposal will have an adverse impact on the values of adjacent properties.

Carl Best of 12 Pond View Road fully supports the performance standards and the design requirements.

Eric Hansen of 7 Cragmoor believes that the BA zone should be expanded into 553 Shore Road.

Winslow Pillsbury of 1278 Sawyer Road said the Shore Road BA zone is a zone of small businesses. The highest and best use of 553 Shore Road is for it to be zoned business.

Jennifer Bornick of 26 Old Fort Road supports allowing business at 553 Shore Road. She likes to shop local businesses.

Harry Hardy of 6 Charles Road said the entire neighborhood feels that it is not being listened to and that the Town Council should focus on the views of the neighbors who have a more direct interest than those who live further away.

Glenn Rudberg of 13 High Bluff Road supports the rezoning of 553 Shore Road. The lot is surrounded by businesses.

Ann Clark of 618 Shore Road support the rezoning of 553 Shore Road. The area already has commercial zoning. She supports small businesses coming into Cape Elizabeth.

Andrew Ingalls of Shore Acres and the owner of the building behind Rudy's strongly urges approval of the density change.

Emily Bugbee of 31 Cottage Farms Road feels unsafe without sidewalks in the BA zone on Shore Road and does not support the rezoning.

Joyce Wilson Sanford thanked the Ordinance Committee for its work. She supports maintaining the current zoning. It is a totally different view if you are driving by on Shore road from the view you have from Charles Road.

Skip Murray of 20 Grover Road and the owner of a gravel pit said a business can co-exist with a residential neighborhood as long as the conditions and approvals are met and people work together.

Joyce Freeman of 3 Charles Road said that when the owner of 553 Shore Road bought they property, it was a residential property. The Town Council should put itself in the shoes of the neighbors.

David Freeman of 3 Charles Road noted that the people who support the rezoning do not live in the immediate area. Some short term renters of 553 Shore Road have not been good neighbors.

Maureen Humiston of 44 Warren Avenue will not enjoy 553 Shore Road being changed to a business use. She said that if she wished to be behind a business, she would have bought a home behind a business.

John Vallely of 31 McAuley Road supports rezoning of 553 Shore Road and the changes that assist Rudy's.

Carl Pearson of Fowler Road said Rudy's should be allowed to be open later. This is picking on one business. The BA zone near Rudy's has different character than the BA zone on Shore Road.

Tim Thompson of 6 Pine Ridge Road thanked the Ordinance Committee for its work. He supports the business at Rudy's and has rental property on Shore Road. Business space is in demand on Shore Road. Businesses are quieter at night than residences.

Ed Materson of 2 Charles Road said once the zoning is changed someone can come in and change the use.

John Mitchell, a landscape architect, represents Lee Wilson. He said his client wishes a mixed use building with a boutique retail shop, a small office and a studio apartment. Mixed use adds vitality to a neighborhood. The proposed language is very restrictive and consider impacts on adjacent neighborhoods.

Carl Dittrich of Ocean House Road said the Town needs to support business. We should not need to drive out of town to secure services.

Lee Wilson of 82 Two Lights Road is the owner of 553 Shore Road. She began this process 4 years ago. We make it nearly impossible to start new businesses in Cape Elizabeth.

Peggy McGehee of Perkins Thompson pointed out that 551 Shore Road is half in a business zone and half in a residential zone.

Jamie Wagner of 30 Hannaford Cove Road is concerned with the definition of a restaurant. The 25% limit on alcohol sales would prohibit bars. It would be convenient to have a bar in Cape Elizabeth.

Peter Cotter of Ocean House Road said Rudy's will have more restrictions than Murray's gravel pit.

Chairman Rowe closed the public hearing at 9:13 p.m.

Item# 97-2009 Zoning Ordinance Amendments and Zoning Map

Moved by David J. Backer and seconded by Penelope A. Jordan and voted to table proposed amendments to the zoning ordinance and the zoning map relating to the BA zone to the June 8, 2009 meeting and to have a Town Council workshop to review and discuss the public hearing comments prior to June 8th. (7 Yes - 0 No)

Item# 98-2009 Shoreland Zoning and Zoning Map Amendments

Moved by David S. Sherman, Jr. and seconded by Anne E. Swift-Kayatta and voted to refer to the Ordinance Committee proposed amendments to the Zoning Ordinance and to the zoning map as recommended by the Planning Board to ensure compliance with the State Mandatory Shoreland Zoning. (7 Yes - 0 No)

Item# 99-2009 Solid Waste Ordinance

Moved by Anne E. Swift-Kayatta and seconded by Paul J. McKenney and voted to set a public hearing for Monday, June 8, 2009 at 7:30 p.m. at the Town Hall on proposed revisions to the Health and Sanitation Ordinance providing for a substitute Article II relating to solid waste and recycling. (7 Yes - 0 No)

Item# 100-2009 Town Center Intersection

Moved by James S. Rowe and seconded by Paul J. McKenney and voted to table Item # 100 to the November Town Council meeting. (4 Yes – 3 No)

Yes: Rowe, McKenney, Swift-Kayatta and Backer

No: Jordan, Lennon and Sherman

Item# 101-2009 Ottawa Road Pump Station Combined Sewer Overflow

Moved by Anne E. Swift-Kayatta and seconded by Sara Lennon and voted to authorize the town manager to sign an agreement with the City of South Portland and the Portland Water District to coordinate plans to address the combined sewer overflow on Drew Road at the South Portland/Cape Elizabeth line. (7 Yes - 0 No)

Item# 102-2009 Underground Buried Cable Permit

Moved by Anne E. Swift-Kayatta and seconded by Paul J. McKenney and voted to authorize the town manager to sign a Central Maine Power request for an underground utility permit in the right of way for a buried cable on Old Ocean House Road for approximately 50 feet near Boat Cove Road. (7 Yes - 0 No)

Citizen Opportunity for Discussion of Items Not on the Agenda- None

Chairman Rowe announced that Jim Huebener has agreed to chair the Memorial Day observances and thanked Jim Cox for his past services as chairman.

He also announced the following future meetings and events.

May 12, 2009 Citizen School Budget Validation Vote

May 14, 2009 Workshop Agenda
Alternative Energy Committee and Energy Audit results
US Mayors' Climate Protection Agreement Resolution (Cool Cape)

June 8, 2009 Town Council Meeting

June 15, 2009 Workshop Tentative Agenda
Shore Road Pathway Committee Report
Goddard Mansion Report
Council Goal Status Report

July 13, 2009 Town Council Meeting

August 10, 2009 Town Council Meeting

Moved by Paul J. McKenney and seconded by Anne E. Swift-Kayatta and voted to adjourn at 9:39 p.m. (7 Yes - 0 No)

Respectfully submitted,

Michael K. McGovern
Clerk Pro-Tem