

**CAPE ELIZABETH TOWN COUNCIL AGENDA**  
**Regular Meeting # 9-2011**  
**Cape Elizabeth Town Hall**  
**Monday, June 13, 2011**  
**7:30 p.m.**

**Roll Call by the Town Clerk**

<b>David S. Sherman, Jr., Chair</b>	<b>Term Expires 12/2011</b>	<a href="mailto:dsherman@dwmlaw.com">dsherman@dwmlaw.com</a>
<b>Frank J. Governali</b>	<b>Term Expires 12/2013</b>	<a href="mailto:frank.governali@capeelizabeth.org">frank.governali@capeelizabeth.org</a>
<b>Caitlin R. Jordan</b>	<b>Term Expires 12/2013</b>	<a href="mailto:caitlin.jordan@capeelizabeth.org">caitlin.jordan@capeelizabeth.org</a>
<b>Sara W. Lennon</b>	<b>Term Expires 12/2012</b>	<a href="mailto:slennon@maine.rr.com">slennon@maine.rr.com</a>
<b>Jessica L. Sullivan</b>	<b>Term Expires 12/2012</b>	<a href="mailto:jsullivan08@maine.rr.com">jsullivan08@maine.rr.com</a>
<b>Anne E. Swift-Kayatta</b>	<b>Term Expires 12/2011</b>	<a href="mailto:aeskay@maine.rr.com">aeskay@maine.rr.com</a>
<b>James T. Walsh</b>	<b>Term Expires 12/2012</b>	<a href="mailto:jim.walsh@capeelizabeth.org">jim.walsh@capeelizabeth.org</a>

**The Pledge of Allegiance to the Flag**  
**Town Council Reports and Correspondence**  
**Citizen Opportunity for Discussion of Items Not on the Agenda**  
**Town Manager’s Report**

Review of Minutes of [May 9, 2011 Meeting](#)

**Public Hearing:** [The Local Buzz Liquor License Application](#)

**Public Comment:** [The Good Table Renewal Liquor License Application](#)

**Item# 98-2011 The Local Buzz**

The Local Buzz is applying for its first malt, vinous and spirituous license. It has had a malt and vinous license.

**Item# 99-2011 The Good Table**

The Good Table is applying for a renewal malt, vinous and spirituous license.

**Item# 95-2011 [Town Center Plan Update](#) and [Map](#) (Tabled May 9, 2011)**

Councilor Sullivan will update the Town Council on the Town Center review.

**Item# 100-2011 Bond Refinancing [Bond Schedules](#)**

TOWN OF CAPE ELIZABETH, MAINE  
TOWN COUNCIL VOTE AUTHORIZING THE ISSUANCE OF  
UP TO \$1,910,000 OF GENERAL OBLIGATION REFUNDING BONDS

WHEREAS, the Town has outstanding certain 2001 General Obligation bonds (the “2001 Bonds”) which were issued to pay the costs of construction and improvement of Town Center Public Safety buildings, improvements to school playgrounds, acquisition of and renovation of the Community Center and land acquisition; and

WHEREAS, the 2001 Bonds maturing in the years 2012 to 2021, in the principal amount of \$1,910,000 (the “Callable Bonds”) are subject to early redemption on or after April 5, 2011; and

WHEREAS, it appears that refunding of the outstanding 2001 Bonds would result in a significant net present cash flow savings to the Town and that it is, therefore, advisable to issue bonds of the town to refund the outstanding 2001 Bonds.

NOW, THEREFORE, it is

VOTED: That 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 for the refunding of the outstanding 2001 Bonds and the costs and expenses related thereto, including interest to the redemption date and call premium, if any, the Town Council of the Town of Cape Elizabeth hereby authorizes the Treasurer to borrow on behalf of the Town up to \$1,910,000 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 bonds of the Town in the aggregate principal amount not to exceed \$1,910,000, such bonds to be signed by the Treasurer, countersigned by the Chairman of the Town Council and attested by the Town Clerk.

VOTED: That the form, maturity, interest rates and other details of said bonds shall be as determined by the Treasurer and the Chairman of the Town Council by their execution thereof, but shall have their respective final maturity not later than the respective final maturity for the Callable Bonds and shall not be inconsistent with the provisions hereof. Such bonds may be issued as callable bonds, at the discretion of the Treasurer and Chairman of the Town Council.

VOTED: That the proceeds of such bonds shall be used to pay the principal, interest and call premium on the Callable Bonds.

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 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 issued.

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

**Item # 101-2011 Bond Resolution for Land Acquisition**

TOWN OF CAPE ELIZABETH, MAINE  
TOWN COUNCIL VOTE AUTHORIZING EXPENDITURE OF UP TO \$200,000  
FOR LAND ACQUISITION TO PRESERVE OPEN SPACE  
AND THE ISSUANCE OF UP TO \$200,000 IN BONDS  
TO FINANCE SUCH EXPENDITURE

VOTED: That the Cape Elizabeth Town Council hereby authorizes the expenditure of the sum of \$200,000 for land acquisition to preserve open space.

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 project authorized by the foregoing vote, the Town Council of the Town of Cape Elizabeth hereby authorizes the Treasurer to borrow on behalf of the Town up to \$200,000 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 \$200,000, 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 projects 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: That the investment earnings on the proceeds of the borrowed funds, if any, and the excess proceeds of the borrowing, 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 projects in excess of the principal amount of the bonds or notes issued therefor;
2. In accordance with applicable terms and provisions of the Arbitrage and Use of Proceeds Certificate delivered in connection with the sale of the bonds or notes including, to the extent permitted thereunder, to the Town’s Land Acquisition Fund.

### **Item # 102-2011 Proposed Partnership with Cape Elizabeth Land Trust**

#### Draft Motion

The Cape Elizabeth Town Council does hereby allocate \$150,000 from the Land Acquisition Fund and \$200,000 from the proposed bond authorized in Item # 101-2011, with the funds to be placed in an account committed for a partnership with the Cape Elizabeth Land Trust (CELT) for CELT’s planned acquisition of 63+- acres of land known as Robinson Woods II. The total municipal donation of \$350,000 may be expended by the Town Manager at the time the property is acquired provided the Town of Cape Elizabeth receives a public access easement in a form acceptable to the Town Attorney and provided all other funds needed by CELT for the acquisition are obtained. If the property is not acquired in conformance with the May 2011 purchase and sale agreement between CELT and the Robinson Family, LLC, the \$350,000 shall become unassigned within the Town of Cape Elizabeth Land Acquisition Fund.

### **Item # 103-2011 Report from Fort Williams Advisory Commission**

From the Fort Williams Advisory Commission

At the FWAC meeting last Thursday, we arrived at a final recommendation regarding fees for tour buses and trolleys.

We determined that all tour buses, whether related to a cruise ship or arriving randomly, should be charged \$40.00. We also determined the trolley company should be assessed a seasonal charge of \$1,500 for each trolley. In the past we understand there have been 3 trolleys which made runs to Fort Williams from Commercial Street. Assuming last year's total of 784 buses, we would generate gross income of \$31,360 from buses and \$4,500 from trolleys, for a total of \$35,860.

We further determined that we would not assess a charge for camp and recreation program buses. Since municipal rec. programs are not for profit operations, commission members felt we should not institute a fee for such visits. We also agreed not to charge the small buses and vans which may be operated by elderly care facilities such as Village Crossings, Piper Shores or the South Portland Housing Authority.

This recommendation is for 2012.

**Item # 104-2011 [Ordinance Committee Growth Areas Recommendation](#)**

The following actionable items are recommended based upon the recommendations of the Ordinance Committee

- The Town Council hereby refers to the Planning Board a recommendation from the Ordinance Committee to remove Turkey Hill Farm (R03-20) and the Loveitt heirs parcel (R01-2) as growth areas.
- The Town Council hereby amends the charge to the Future Open Space Preservation Committee to include a thorough review of growth areas, including a review of the definition of growth areas, and the areas designated as growth areas within the context of expected growth, all within their review of open space. This review shall include a meeting or meetings where public comment is solicited at the determination of the Future Open Space Preservation Committee. The committee is also authorized to meet through December 31, 2012 which is an extension from April 8, 2012.
- The Ordinance Committee also recommends the Town Council adopt the following “Statements of Agreement.”

Statements of Agreement

1. Not all development is sprawl.<sup>1</sup>
2. Compact growth, with clustering of homes and permanent open space preservation requirements, uses less land.
3. Cape Elizabeth is a suburb, with rural character<sup>2</sup> in some areas, and a town center.
4. Some farmland and woodlands may be included in Growth Areas.
5. Providing municipal services to properly planned compact development usually costs less than providing municipal services to sprawl development.
6. The Town should be proactive in planning for development that may occur.

7. The current growth management/zoning structure has had generally good results, but needs fine-tuning in the current environment. Note the number of new units expected during the Comprehensive Plan planning period has been recalculated from the 2007 estimates and the Town Council should revise those numbers to expect a lower amount of growth anticipated.
8. Town growth areas should include the RC (infill) and the Town Center.
9. In general, growth areas should not include the “signature” or premier areas that embody community character. The Town Center could be considered a signature area and is considered a growth area.
10. Growth areas should be designated based on the following factors:
  - a. Proximity to infrastructure such as but not limited to: public sewer, existing neighborhoods, public open space and pedestrian facilities.
  - b. Generally should not include “prime farmland,” as shown on the state agricultural soils inventory included on the agricultural resources map in the Comprehensive Plan, but may include farmland.
  - c. Should not include significant natural resources such as but not limited to:
    - RP1 wetlands,
    - RP1 wetland buffers,
    - RP3 100-year floodplains,
    - moderate or high value wildlife habitats as mapped by the Maine Department of Inland Fisheries and Wildlife (these areas are already included in the RP1 and RP1 buffer)
    - Coastal high hazard areas (already included in the 75’ Shoreland Zoning no-build setback)
  - d. Growth areas may include RP2 wetlands, floodplain (as long as no new buildings are proposed in the floodplain), wildlife habitat areas where some disturbance still preserves wildlife habitat values.
11. The Town should not adopt agricultural zoning for farmland areas that restricts uses of the land to agriculture.

<sup>1</sup> Sprawl is a type of development that is auto-dependent, low-density and not related to planned growth strategies.

<sup>2</sup> Practice Community Character article

**Item # 105-2011 [Appointments Committee Recommendation](#)  
Planning Board**

Josef Chalot 12 Channel View Road

Unexpired term to December 31, 2011

**Trustees of the Thomas Memorial Library**

Lee Rutty 1 Birchwood Road

Unexpired Term to December 31, 2012

**Item # 106-2011 [Maine House of Representatives District 121 Vacancy](#)**

It is recommended the Town Council request Governor Paul LePage to schedule a special election to fill the vacant District 121 seat in the Maine House of Representatives and that the communication to Governor LePage recommend he choose November 8, 2011 as the date for the special election.

**Item # 107-2011 Proposed Revised FY 2011 Budget Appropriations**

Account	Department	Original	Revised	Difference	Explanation
130	Town Council	\$ 500	\$ 3,000	\$ 2,500	Growth Projection Study
135	Legal and Audit	\$ 53,000	\$ 75,000	\$ 22,000	Addt Legal Fees
410	Human Services	\$ 45,485	\$ 55,000	\$ 9,515	General Assistance Program
610	Town Hall	\$ 25,300	\$ 26,300	\$ 1,000	Heat
615	Library Building	\$ 25,340	\$ 30,000	\$ 4,660	Heat
620	Town Center Fire Station	\$ 15,775	\$ 18,000	\$ 2,225	Heat
710	Intergovernmental Assessments	\$ 967,351	\$ 968,416	\$ 1,065	MMA and GPCOG Dues
		\$ 1,132,751	\$ 1,175,716		
	Increase			\$ 42,965	
170	Employee Benefits	\$ 944,361	\$ 901,396	\$ (42,965)	Health Insurance
	Decrease		\$ (42,965)		

**Item # 108-2011 Proposed FY 2011 Designated Fund Balances**

1102001	Telephone System	50,000	
1102016	Records Preservation	3,677	
1202011	GIS Improvements	19,741	
2104002	Police Department Donations	10,528	
3102039	Public Works Pavement Markings	17,625	
3202004	Recycling Promotion	4,140	
5104001	Library Project	46,845	
5205053	Family Fun Day	2,000	
6404114	Greenbelt Trails	6,519	
6452019	Fort Williams Park Tree Planting	10,000	
6602010	Tree Planting	3,132	
7154004	Police Cruiser Replacement	5,000	
7154009	Roadway and Drainage Repairs	306,064	Includes \$222,839 Per Budget
7154013	Sidewalk Improvements	4,258	
7154111	Town Hall Structural Repairs	32,176	
7154114	Election Equipment	16,000	
7154117	Revaluation	13,363	
7154143	Public Works Building Repairs	10,500	
7155225	Municipal Energy Projects	6,700	
7155226	Shore Road Path	161,000	
7155232	Fort Williams Park Master Plan	40,000	
7155233	Future Open Space Study Committee	25,000	
	Fire Dept Breathing Apparatus	11,500	
7254227	Fuel Donation Account	826	
	Pool Boiler as Part of School Boiler Project	40,000	
	Budgeted Use of Undesignated Surplus	350,000	
		1,196,594	
	Rescue Unit Purchase	164,000	

**Item # 109-2011 [Mutual Aid Agreement](#)**

It is proposed to approve a new fire mutual aid agreement with the Town of Scarborough.

**Item # 110-2011 [County Hazard Mitigation Plan](#) **Link to Cover Letter Only****

The communities of Cumberland County are being asked to adopt a new Cumberland County Hazard Mitigation Plan. The file is 58.75 MB and 198 pages and may be found here:

[Caution: Link to Large File](#)

**Citizen Opportunity for Discussion of Items Not on the Agenda**

[May 31, 2011 Financial Reports](#)

**Adjournment**

**Public Participation at Town Council Meetings**

After an item has been introduced, any person wishing to address the council shall signify a desire to speak by raising their hand or by approaching the lectern. When recognized by the chairman, the speaker shall give his or her name and address or name and local affiliation, if the affiliation is relevant, prior to making other comments. All remarks should be addressed to the Town Council. Comments shall be limited to three minutes per person; however, the time may be extended by majority vote of councilors present. For agenda items that are not formally advertised public hearings, the time for public comments is limited to 15 minutes per agenda item. This time may be extended by a majority of the Town Council. The chairman may decline to recognize any person who has already spoken on the same agenda item and may call on speakers in a manner so as to balance debate. Once the Council has begun its deliberations on an item, no person shall be permitted to address the Council on such item.

**Speaking at the meeting on topics not on the agenda at regular Council meetings**

Persons wishing to address the Council on an issue or concern local in nature not appearing on the agenda may do so at a regular Town Council meeting before the town manager's report and/or after the disposition of all items appearing on the agenda. Any person wishing to address the Council shall signify a desire to speak by raising their hand or by approaching the lectern. When recognized by the chairman, the speaker shall give his or her name and address or name and local affiliation if the local affiliation Council. Comments in each comment period shall be limited to three minutes per person and 15 minutes total; however, the time may be extended by majority vote of councilors present.

**Decorum**

Persons present at Council meetings shall not applaud or otherwise express approval or disapproval of any statements made or actions taken at such meeting. Persons at Council meetings may only address the Town Council after being recognized by the chairman.