

**CAPE ELIZABETH TOWN COUNCIL MINUTES**

**Regular Meeting # 6-2011**

**Cape Elizabeth Town Hall**

**Monday, April 11, 2011**

**Roll Call by the Town Clerk**

**Present    Absent**

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

**The Pledge of Allegiance to the Flag**

**Town Council Reports and Correspondence**

Appointments Committee Chair Jessica Sullivan reported a vacancy on the Thomas Memorial Library Trustees, an unexpired term until 12/31/2012. Interested residents may apply online or obtain an application from the Town Clerk. The deadline to file applications is Wednesday, April 20, 2011.

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

**Town Manager's Report**                  None

**Review of Minutes of Meetings Held March 14, and March 21, 2011**

Moved by Anne E. Swift-Kayatta and Seconded by Caitlin R. Jordan

Ordered the Cape Elizabeth Town Council approves the minutes of meeting #4-2011 held March 14, 2011 and special meeting #5-2011 held March 21, 2011 as presented.

(7 yes) (0 no)

**Item #62-2011                  Proposed Fiscal Year 2012 Budget**

**Public Comment Period on the Fiscal Year 2012 Budget**

Intro - Finance Chair Sara Lennon

7:36 p.m.

Chair Sherman invited public comments on the fiscal year 2012 budget.

Dan Fishbein, 6 Hunts Point Road

Mr. Fishbein congratulated the Town Council and School Board on the proposed budgets. He is in favor of the budget as presented.

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Jana Zimmerman, 81 Oakhurst Road

Ms. Zimmerman supports the school budget. She commended the school board and superintendent on the process; “solution based.”

7:39 p.m.

After hearing no further public comments Chair Sherman asked for a motion.

Moved by Sara W. Lennon and Seconded by James T. Walsh

Ordered the Cape Elizabeth Town Council approves the recommendation of the Town Council Finance Committee to set a public hearing for Monday, April 25, 2011 at 7:30 p.m. at the Cape Elizabeth Town Hall on the proposed general fund budget for FY 2012. Actual tax rates are set by the assessor based upon the adopted budget. Amounts may be changed following the public hearing.

(7 yes) (0 no)

	FY 2011 BUDGET	FY 2012 BUDGET	\$ Change FY 11 to FY 12	% Change FY 11 to FY 12
<b>EXPENDITURES</b>				
TOWN SERVICES	\$ 8,539,687	\$ 8,919,979	\$ 380,292	4.5%
COUNTY ASSESSMENT	\$ 947,600	\$ 992,047	\$ 44,447	4.7%
SCHOOL DEPARTMENT	\$ 20,676,971	\$ 21,124,690	\$ 447,719	2.2%
COMMUNITY SERVICES	\$ 186,993	\$ 186,993	\$ -	0.0%
Local Homestead Exemption	\$ 185,000	\$ 173,000	\$ (12,000)	-6.5%
	\$ 30,536,251	\$ 31,396,709	\$ 860,458	2.8%
<b>REVENUE</b>				
TOWN SERVICES	\$ 3,152,500	\$ 3,380,900	\$ 228,400	7.2%
SCHOOL DEPARTMENT	\$ 3,346,636	\$ 3,078,489	\$ (268,147)	-8.0%
TOTAL	\$ 6,499,136	\$ 6,459,389	\$ (39,747)	-0.6%
<b>NET TO TAXES</b>				
TOWN SERVICES	\$ 5,387,187	\$ 5,539,079	\$ 151,892	2.8%
COUNTY ASSESSMENT	\$ 947,600	\$ 992,047	\$ 44,447	4.7%
SCHOOL DEPARTMENT	\$ 17,330,335	\$ 18,046,201	\$ 715,866	4.1%
COMMUNITY SERVICES	\$ 186,993	\$ 186,993	\$ -	0.0%
Local Homestead Exemption	\$ 185,000	\$ 173,000	\$ (12,000)	-6.5%
TOTAL	\$ 24,037,115	\$ 24,937,320	\$ 900,205	3.7%
<b>TAX RATES (Rounded to nearest ¢)</b>				
TOWN SERVICES	\$ 4.01	\$ 4.06	\$ 0.05	1.2%
COUNTY ASSESSMENT	\$ 0.70	\$ 0.73	\$ 0.03	4.3%
SCHOOL DEPARTMENT	\$ 12.89	\$ 13.22	\$ 0.33	2.6%
COMMUNITY SERVICES	\$ 0.14	\$ 0.14	\$ -	0.0%
OVERLAY				
SUBTOTAL	\$ 17.73	\$ 18.15	\$ 0.42	2.4%
Local Homestead Exemption	\$ 0.13	\$ 0.13	\$ -	0.0%
TOTAL	\$ 17.86	\$ 18.28	\$ 0.42	2.4%
TAX RATE VALUATION BASIS	1,345,000,000	1,365,000,000	\$ 20,000,000	1.5%

**Item# 63-2011 Proposed Fiscal Year 2012 Special Funds Budgets**

Moved by Sara W. Lennon and Seconded by James T. Walsh

Ordered the Cape Elizabeth Town Council approves the recommendation of the Town Council Finance Committee to set a public hearing for Monday, April 25, 2011 at 7:30 p.m. at the Cape Elizabeth Town Hall on the proposed special funds budgets for FY 2012. Amounts may be changed following the public hearing.

(7 yes) (0 no)

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	<b>Budget</b>	<b>Budget</b>	<b>\$ Change</b>	<b>% Change</b>
<b>Expenditures</b>	<b>FY 2011</b>	<b>FY 2012</b>	<b>11 to 12</b>	<b>11 to 12</b>
Cape Elizabeth Rescue Fund	\$ 339,786	\$ 180,746	\$ (159,040)	-78.4%
Cape Elizabeth Sewer Fund	\$ 1,548,095	\$ 1,491,717	\$ (56,378)	-3.9%
Spurwink Church Fund	\$ 10,589	\$ 10,847	\$ 258	1.9%
Riverside Cemetery Fund	\$ 46,713	\$ 49,190	\$ 2,477	5.3%
Fort Williams Park Fund	\$ 44,702	\$ 31,621	\$ (13,081)	-41.2%
Portland Head Light Fund	\$ 530,780	\$ 529,525	\$ (1,255)	-0.2%
Thomas Jordan Fund	\$ 35,535	\$ 35,535	\$ -	0.0%
Infrastructure Imp. Fund.	\$ 88,000	\$ -	\$ (88,000)	100.0%
Community Services Fund	\$ 1,063,638	\$ 1,070,494	\$ 6,856	
<b>Total Budget</b>	<b>\$ 3,707,838</b>	<b>\$ 3,399,675</b>	<b>\$ (308,163)</b>	<b>-13.5%</b>
<b>Revenues</b>	<b>Revenues</b>	<b>Revenues</b>	<b>11 to 12</b>	<b>11 to 12</b>
Cape Elizabeth Rescue Fund	\$ 170,000	\$ 170,000	\$ -	0.0%
Cape Elizabeth Sewer Fund	\$ 1,565,000	\$ 1,625,300	\$ 60,300	3.9%
Spurwink Church Fund	\$ 1,500	\$ 4,200	\$ 2,700	180.0%
Riverside Cemetery Fund	\$ 33,000	\$ 38,000	\$ 5,000	15.2%
Fort Williams Park Fund	\$ 45,000	\$ 80,325	\$ 35,325	78.5%
Portland Head Light Fund	\$ 532,200	\$ 542,200	\$ 10,000	1.9%
Thomas Jordan Fund	\$ 35,535	\$ 35,535	\$ -	0.0%
Infrastructure Imp. Fund.	\$ 25,000	\$ 25,000	\$ -	0.0%
Community Services Fund	\$ 1,063,638	\$ 1,070,494	\$ 6,856	0.6%
<b>Total Revenues</b>	<b>\$ 3,470,873</b>	<b>\$ 3,591,054</b>	<b>\$ 120,181</b>	<b>3.5%</b>

**Item# 64-2011      Rooster Review Request**

Intro - Jim Huebener, Planning Board

Moved by Jessica L. Sullivan and Seconded by Sara W. Lennon

Ordered the Cape Elizabeth Town Council acknowledges receipt of the Planning Board report that recommends the issue of roosters not be dealt with within the Zoning Ordinance and refers the issue to the Ordinance Committee.

(6 yes) (1 no Councilor Jordan)

**Item# 65-2011      Fort William Park Group Use Request  
USCG Change of Command Ceremony**

Present – Lt. K.M. Beck, U.S. Coast Guard

Moved by Anne E. Swift-Kayatta and Seconded by Jessica L. Sullivan

Ordered the Cape Elizabeth Town Council approves the recommendation of the Fort Williams Advisory Commission for the United States Coast Guard Sector New England to use the green in Fort Williams Park next to Portland Head Light for a change of command ceremony with a reception to follow on Friday, June 24, 2011 as presented. The approval includes the request to serve beer and wine at the noon reception.

(7 yes) (0 no)

**Item# 66-2011      Fort William Park Group Use Request**  
**Wedding Reception**

Moved by James T. Walsh and Seconded by Anne E. Swift-Kayatta

Ordered the Cape Elizabeth Town Council accepts the refusal of Councilor Jordan from discussion and voting on Item #66-2011. Councilor Jordan is the sister of Tucker Jordan.  
(6 yes) (0 no)

Intro – Tucker Jordan, Applicant  
Bill Nickerson, Fort Williams Advisory Commission

Present – Mark Tibbetts, Representative of the tent company

Chair Sherman recognized Mr. Huebener for public comments.

Jim Huebener, 13 Kettle Cove Road

Mr. Huebener has performed at wedding ceremonies in Fort Williams Park and wanted to clarify that wedding ceremonies are allowed with permission, if required.

Moved by Jessica L. Sullivan and Seconded by Anne E. Swift-Kayatta

Ordered the Cape Elizabeth Town Council denies the request of Tucker Jordan the use of the green in Fort Williams Park next to Portland Head Light for a wedding reception on Saturday, June 4, 2011.

(4 yes) (2 No Councilor Governali and Councilor Lennon)

**Item# 67-2011      Acceptance of Drainage Easement**  
**1175 Shore Road Nominee Trust**

Moved by Jessica L. Sullivan and Seconded by Sara W. Lennon

Ordered the Cape Elizabeth Town Council accepts with appreciation to the Trustees an easement from the 1175 Shore Road Nominee Trust for a drainage easement at 1175 Shore Road as requested by the Town as presented.

(7 yes) (0 no)

**DRAINAGE EASEMENT**

**KATHRYN L. BARBER**, of Cape Elizabeth, Maine, and **THOMAS E. PECKHAM, ESQ.**, of Marblehead, Massachusetts, both **TRUSTEES** of the **1175 SHORE ROAD NOMINEE TRUST** under Declaration of Trust dated November 6, 2007, with a mailing address c/o Thomas E. Peckham, Esq., Bingham McCutchen LLP, One Federal Street, Boston, Massachusetts, 02110 (“**Grantors**”), owners of the real property and improvements more particularly described in the Deed (as defined herein) (“**Grantors’ Property**”) for consideration paid to its full satisfaction from the **TOWN OF CAPE ELIZABETH**, a municipal body, corporate and politic with a principal office at, and a mailing address of, 325 Ocean House Road, Cape Elizabeth, Maine 04107 (“**Grantee**”), do hereby give, grant, bargain and confirm unto Grantee a non-exclusive, perpetual easement to construct, install, inspect, maintain and replace storm water drainage infrastructure, including, but not limited to, pipes, pumps, culverts and catch basins (collectively, the “**Drainage Infrastructure**”), and to drain stormwater into, on, over, through and across, so much of Grantors’ Property on Shore Road in the Town of Cape Elizabeth, County of Cumberland and State of Maine, as shown on Site Plan, attached hereto as **EXHIBIT A** and also as described in **EXHIBIT B** attached hereto and made apart hereof (the “**Easement Area**”), subject to the terms and conditions set forth herein.

Grantee shall have the right to enter upon and disturb the Easement Area, only to the extent necessary to construct, install, inspect, maintain and replace the Drainage Infrastructure, including the stockpiling of earth and construction materials; provided, however, Grantee agrees to restore the Easement Area and the Grantors’ Property, including any disrupted pavement, lawns, shrubs or trees to their condition prior to installation of the Drainage Infrastructure by Grantee to the extent reasonably possible. Entry upon Easement Area by Grantee, or by its respective employees, agents, contractors and permittees, shall be at their sole risk, and Grantee hereby indemnifies, releases and holds Grantors harmless from and against any and all liability, loss, cost, damage or expense, including, without limitation, court costs and/or reasonable fees related to litigation or alternative dispute resolution and reasonable attorneys’ fees, incurred by Grantors on account of any injury (including death) of any person or any damage to property occurring or alleged to have occurred which arises out of or in connection with (i) Grantee’s or its respective employees’, agents’, contractors’ or permittees’ use of the rights and easements with respect to the Easement Area granted herein or (ii) Grantee’s breach under this Drainage Agreement.

Grantee shall not dispose of or otherwise discharge, and shall not permit any other person or entity to dispose of or otherwise discharge, any “hazardous substance” or “hazardous waste” (as those terms are used or otherwise defined in the Environmental Laws, as herein defined) into the Drainage Infrastructure or the Easement Area. Grantee shall promptly comply, at its sole cost and expense, with all applicable Environmental Laws (as defined herein) (including, without limitation, the reasonable out-of-pocket costs and expenses of the site investigations and of the removal and remediation of such hazardous substance or hazardous wastes). Grantee hereby agrees to defend, indemnify and hold Grantors harmless from and against any and all claims, losses, liability, damages and expenses (including, without limitation, site investigation costs, reasonable removal and remediation costs and reasonable attorneys’ fees and disbursements)

arising out of or in connection with Grantee's failure to comply with the provisions of this section. The term "**Environmental Laws**" shall mean all statutes, regulations, codes and ordinances of any federal, state or local governmental entity, authority, agency and/or department relating to (i) air emissions, (ii) water discharges, (iii) air, water or ground pollution or (iv) any other environmental or health matter, including, but not limited to, the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. Section 9601 et seq. and the regulations promulgated thereunder.

Grantee shall promptly pay when due the entire cost of all work done by Grantee, its agents and assigns that affects the Drainage Infrastructure and shall keep the Easement Area free of all liens for labor or materials. Should mechanics', materialmen's or other liens be filed against the Easement Area or any part of Grantors' Property by reason of the actions of or failure to act by Grantee, Grantee shall pay, bond or vacate such liens within ten (10) days of receiving actual notice of such liens. If such a lien or liens are not promptly paid or satisfied, Grantors shall have the right, at their option, to pay such lien, and Grantee shall promptly reimburse Grantors, upon demand, for such payment, together with expenses, charges, interest and attorneys' fees incurred by Grantors in connection with such lien or liens.

Notwithstanding the foregoing, in the event the discharge from the Drainage Infrastructure shall exceed the bounds of the Easement Area, Grantee shall, at its sole cost and expense, promptly and without delay, repair any and all damage caused to Grantors' Property and shall take such preventative measures which are required to preclude any future damage to Grantors' Property, including, but not limited to, developing and improving the Easement Area, to Grantors' reasonable satisfaction, to prevent any further discharge from the Drainage Infrastructure outside of the Easement Area.

Grantors hereby reserve to their successors and assigns, as the case may be, the right to use the Easement Area and the lands of the Grantors adjacent to the Easement Area for any use and purpose which does not in any way interfere with the use of said Easement Area by the Grantee in the exercise of the easement rights herein granted.

By acceptance of this grant, the Town of Cape Elizabeth covenants and agrees to the terms set forth herein.

This Drainage Easement may be executed in multiple counterparts, all of which together shall constitute one and the same original instrument.

Reference may be made to deed from Augustus Barber and Marjorie Barber to Kathryn L. Barber and Thomas E. Peckham, Trustees of the 1175 Shore Road Nominee Trust under Declaration of Trust dated November 6, 2007, which deed is recorded in the Cumberland County Registry of Deeds in Book 25611, Page 72 (the "**Deed**").

*[Remainder of Page Intentionally Blank]*

**Item # 68-2011      Warrant for School Budget Validation Vote**

Moved by Jessica L. Sullivan and Seconded by James T. Walsh

Ordered the Cape Elizabeth Town Council approves the warrant for the May 10, 2011 school budget validation vote as presented.

(7 yes) (0 no)

**TOWN OF CAPE ELIZABETH  
SCHOOL BUDGET VALIDATION REFERENDUM  
WARRANT  
TUESDAY, MAY 10, 2011**

County of Cumberland, ss.

To Neil R. Williams, a constable of Cape Elizabeth. You are hereby directed to notify the voters of Cape Elizabeth of the election described in the warrant.

**School Budget Validation Referendum**

YES      Do you favor approving the Town of Cape Elizabeth school budget for the upcoming school  
NO      year that was adopted at the latest school budget meeting of the Town Council?

**The following is a non-binding expression of opinion for the consideration of the School Board and Town Council.**

I find the school budget adopted at the April 25, 2011 Town Council's school budget meeting to be:

TOO HIGH  
ACCEPTABLE  
TOO LOW

Election to be held on Tuesday, May 10, 2011, at the Cape Elizabeth High School Gymnasium.

Polls open at 7:00 a.m. and Close at 8:00 p.m.

Absentee Ballot Processing:

Absentee ballots will be processed on Election Day, on the hour every hour until close, beginning at 7:00 a.m. The Cape Elizabeth Town Democratic Committee, the Cape Elizabeth Town Republican Committee and State Green Independent Party have also been notified, in writing, of the absentee ballot process.

The Registrar of Voters is available to accept new registrations and corrections to the voter list on Election Day at the polls and prior to Election Day at Town Hall, 320 Ocean House Road. Town Hall is open Mondays 7:30 a.m. - 5:00 p.m. and Tuesday - Friday, 7:30 a.m. - 4:00 p.m. Proof of residency and identity is required.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_

Municipal Officers of Cape Elizabeth, Maine  
Dated at Cape Elizabeth this 11<sup>th</sup> day of April 2011.

A true copy. Attest: \_\_\_\_\_ Constable    Attest: \_\_\_\_\_ Town Clerk

The warrant and specimen ballots shall be posted at least 7 days prior to the election.

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**Item # 69-2011      Quit Claim Deed  
971 Shore Road**

Moved by Anne E. Swift-Kayatta and Seconded by Sara W. Lennon

Ordered the Cape Elizabeth Town Council authorizes the Town Manager to sign a quit-claim deed to the Estate of Virginia Wieland for property at 971 Shore Road, Map U06 Lot 094.  
(7 yes) (0 no)

**Item # 70-2011      Riverside Cemetery Trustees 2011 Work Plan**

Moved by Sara W. Lennon and Seconded by Caitlin R. Jordan

Ordered the Cape Elizabeth Town Council acknowledges receipt of the Riverside Memorial Cemetery Trustees 2011 Work Plan as presented.  
(7 yes) (0 no)

**Riverside Memorial Cemetery Trustees  
2011 Work Plan**

The goal of the Riverside Memorial Cemetery Trustees is to maintain the integrity of the Riverside Memorial Cemetery through upholding the rules and regulations which have been developed over many years.

The Trustees will hear the needs and requests of Cape Elizabeth residents, their families and non-residents. Requests to purchase lots and approve the buy back of lots are based on the rules and past decisions and precedents set throughout many years.

In May 1993 the Master Plan of the Riverside Memorial Cemetery was adopted. The document has guided the Trustees and the town in developing the cemetery through 5 phases. Before the town embarks on the 5<sup>th</sup> and final phase, the Trustees would like to update the plan. The cost and scope of work will be reviewed with Mohr & Seredin, the original authors of the plan, before the update is approved.

The Trustees will work with town staff as the update of the Master Plan is developed particularly as it relates to future years budget, lots prices, and rules and regulations.

The Trustees look forward to a productive and exciting year as they look carefully to the future of the Riverside Memorial Cemetery.

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

**Item # 71-2011      Executive Session Request**

Moved by Anne E. Swift-Kayatta and Seconded by Sara W. Lennon

Ordered the Cape Elizabeth Town Council enters into executive session at 8:55 p.m., in conformance with 1MRSA §405 6 C and F, to discuss land acquisition/disposition issues and to review an application for an abatement of taxes due to hardship.  
(7 yes) (0 no)

Councilor Lennon left at 9:59 p.m.

Moved by Anne E. Swift-Kayatta and Seconded by Jessica L. Sullivan

Ordered the Cape Elizabeth Town Council exits executive session and reenters public session at 10:02 p.m.  
(6 yes) (0 no)

Moved by Anne E. Swift-Kayatta and Seconded by Jessica L. Sullivan

Ordered the Cape Elizabeth Town Council grants the request for an abatement of real estate taxes due to hardship in the amount of \$3086.46.  
(6 yes) (0 no)



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**Adjournment**

Moved by James T. Walsh and Seconded by Anne E. Swift-Kayatta  
Ordered the Cape Elizabeth Town Council adjourns at 10:05 p.m.  
(6 yes) (0 no)

Respectfully Submitted,

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Debra M. Lane, Town Clerk

<b>Town Council Meetings in 2011</b>	<b>Workshop Meetings</b>
April 25	
May 9	May 2
June 13	June 6
July 11	
August 8	
September 12	September 6
October 12	October 3
November 14	November 7
December 12	December 5