

## MEMORANDUM

TO: Cape Elizabeth Town Council  
FROM: Michael K. McGovern  
DATE: September 24, 2014  
SUBJECT: Cottage Brook road and open space deeds

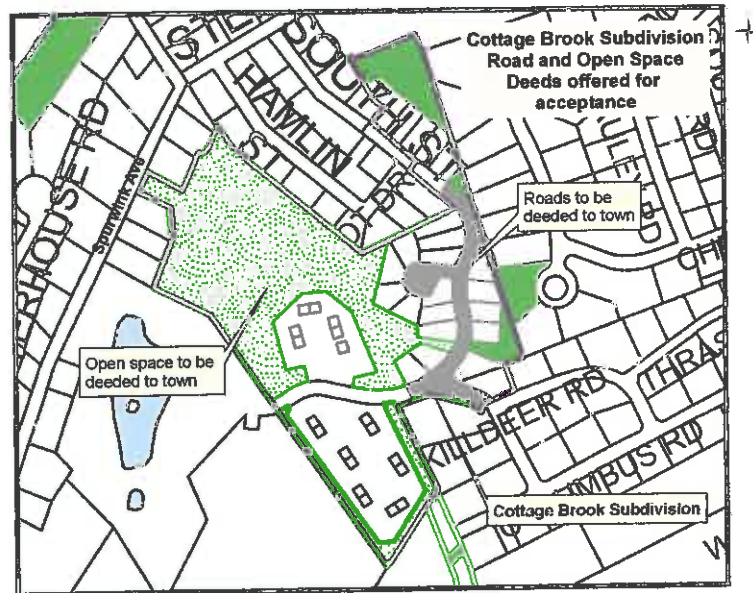
### Introduction

Cottage Brook was approved as the Spurwink Woods Subdivision by the Planning Board in 2006, with subsequent minor amendments up to 2010. As a major subdivision, Cottage Brook received "conditional municipal approval" from the town council on March 13, 2006, for all the proposed public roads and open space. Phase 1 of the subdivision has been completed and the first section of South Street plus open space has been accepted by the Town Council.

### Additional deeds offered for acceptance

At this time, Cottage Brook is completing the bulk of the public roads. These include almost all of South Street (now renamed Aster Lane) plus Franklin Circle and Chicory Way. These roads are located in Phase 2 and 3 of the subdivision.

Deeds for all of the remaining open space approved for Cottage Brook is also offered at this time. The open space includes the largest contiguous lot extending from South Street to Spurwink Ave, plus a walking trail strip around the easterly condominium lot that will create a critical connection between the subdivision open space and Hobstone open space to the south.



Prepared by the Planning Office: 9/24/2014

0 50 100 200 Feet

Documents enclosed

The proposed deeds for the roads and open space have been reviewed by Town Attorney Tom Leahy and are attached. Also enclosed are the minutes of the June 20, 2006 Planning Board meeting and the March 13, 2006 Town Council meeting.

The town council may want to note that a short remaining section of South Street, which is included in Phase 4, has not yet been built and will be submitted to the town council at a later date.

**QUITCLAIM DEED**

(RE: SOUTH STREET, COTTAGE BROOK, CAPE ELIZABETH, MAINE)

KNOW ALL PERSONS BY THESE PRESENTS, THAT **Spurwink Woods, LLC**, a limited liability company created and existing under the laws of the State of Maine and having its principal place of business in Cape Elizabeth, Maine (the "**Grantor**"), in consideration of One Dollar (\$1.00) and other valuable consideration paid by the **Town of Cape Elizabeth**, a municipal body, corporate and politic, having a mailing address of P.O. Box 6260, Cape Elizabeth, Maine 04107-0060 (the "**Grantee**"), the receipt whereof Grantor does hereby acknowledge, does hereby quitclaim, remise, release, bargain, sell and convey, without covenant, unto the said Grantee, its successors and assigns forever, a certain lot or parcel of land, together with the buildings thereon situated Cape Elizabeth, County of Cumberland and State of Maine, bounded and described as follows:

See the attached **Exhibit A**.

TO HAVE AND TO HOLD the same, together with all the privileges and appurtenances thereunto belonging, to the said Grantee, its successors and assigns forever.

IN WITNESS WHEREOF, the said Spurwink Woods, LLC has caused this instrument to be sealed and signed by \_\_\_\_\_, its \_\_\_\_\_ thereunto duly authorized, this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

Signed, Sealed and Delivered  
in the Presence of:

**Spurwink Woods, LLC**

\_\_\_\_\_  
Witness

By: \_\_\_\_\_  
Name:  
Its:

STATE OF MAINE  
Cumberland, ss.

\_\_\_\_\_, 20\_\_

Then personally appeared the above named \_\_\_\_\_, the \_\_\_\_\_ of said Spurwink Woods, LLC as aforesaid, and acknowledged the foregoing instrument to be his free act and deed in his said capacity, and the free act and deed of said company.

Before me,

\_\_\_\_\_  
Attorney at Law/Notary Public  
Printed Name: \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_

**EXHIBIT A**

(RE: SOUTH STREET, COTTAGE BROOK, CAPE ELIZABETH, MAINE)

A certain tract or parcel of land situated in the Town of Cape Elizabeth, County of Cumberland, and State of Maine, described as follows:

All of that portion of the road generally known as "South Street", including roads known as "Franklin Circle" and "Chicory Way", and also including the associated real estate located within the boundaries for such roadways as shown generally within the phase lines of Phase 2 and 3 (collectively the "**South Street Parcel**") on a certain plan entitled "Cottage Brook, Cape Elizabeth, Maine, Amended Subdivision Plat Plan (Sheet No. 1)", dated November 16, 2010, and recorded in Cumberland County Registry of Deeds in Plan Book 210, Page 414, as the same maybe further amended (the "**Plan**"), and which South Street Parcel is further identified and described as follows: (i) extending from the Northerly terminus of said South Street Parcel adjacent to Lot 5 as shown on the Plan and generally continuing Southerly and terminating at the phase line across South Street situated between Phases 3 and 4, which line and terminus is more particularly described as follows: Commencing at a point located at the Southwesterly corner of Lot 12 as shown on the Plan and extending southerly across South Street and more particularly along a course that is continued from and the same as the Westerly boundary of said Lot 12, to a point of intersection at the Southerly boundary of said South Street Parcel; and (ii) including all of the portions of the roads and associated real estate identified as "**Franklin Circle**" and "**Chicory Way**" within the bounds of said South Street Parcel as shown on the Plan.

The above South Street Parcel is conveyed subject to all matters disclosed on said Plan.

Meaning and intending to convey all right, title, and interest of the Grantor to such South Street Parcel as shown on the Plan.

**QUITCLAIM DEED**

(RE: OPEN SPACE, COTTAGE BROOK, CAPE ELIZABETH, MAINE)

KNOW ALL PERSONS BY THESE PRESENTS, THAT **Spurwink Woods, LLC**, a limited liability company created and existing under the laws of the State of Maine and having its principal place of business in Cape Elizabeth, Maine (the "**Grantor**"), in consideration of One Dollar (\$1.00) and other valuable consideration paid by the **Town of Cape Elizabeth**, a municipal body, corporate and politic, having a mailing address of P.O. Box 6260, Cape Elizabeth, Maine 04107-0060 (the "**Grantee**"), the receipt whereof Grantor does hereby acknowledge, does hereby quitclaim, remise, release, bargain, sell and convey, without covenant, unto the said Grantee, its successors and assigns forever, a certain lot or parcel of land, together with the buildings thereon situated Cape Elizabeth, County of Cumberland and State of Maine, bounded and described as follows:

See the attached **Exhibit A**.

TO HAVE AND TO HOLD the same, together with all the privileges and appurtenances thereunto belonging, to the said Grantee, its successors and assigns forever.

IN WITNESS WHEREOF, the said Spurwink Woods, LLC has caused this instrument to be sealed and signed by \_\_\_\_\_, its \_\_\_\_\_ thereunto duly authorized, this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

Signed, Sealed and Delivered  
in the Presence of:

**Spurwink Woods, LLC**

\_\_\_\_\_  
Witness

By: \_\_\_\_\_  
Name:  
Its:

STATE OF MAINE  
Cumberland, ss.

\_\_\_\_\_, 20\_\_

Then personally appeared the above named \_\_\_\_\_, the \_\_\_\_\_ of said Spurwink Woods, LLC as aforesaid, and acknowledged the foregoing instrument to be his free act and deed in his said capacity, and the free act and deed of said company.

Before me,  
\_\_\_\_\_  
Attorney at Law/Notary Public  
Printed Name: \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_

**EXHIBIT A**

(RE: OPEN SPACE, COTTAGE BROOK, CAPE ELIZABETH, MAINE)

A certain tract or parcel of land situated in the Town of Cape Elizabeth, County of Cumberland, and State of Maine, described as follows:

All of that portion of the real estate identified, bounded, and described as (i) "OPEN SPACE 9.90 AC." and (ii) "OPEN SPACE 41,754 SF (.96 AC)" ((i) and (ii) collectively the "**Open Space Area**") on a certain plan entitled "Cottage Brook, Cape Elizabeth, Maine, Amended Subdivision Plat Plan (Sheet No. 1)", dated November 16, 2010, and recorded in Cumberland County Registry of Deeds in Plan Book 210, Page 414, as the same maybe further amended (the "**Plan**").

The above Open Space Area is conveyed subject to all matters disclosed on said Plan, and subject to the terms and conditions of a certain Deed of Conservation Easement from the within Grantor to the within Grantee dated on near or even date herewith, to be recorded prior hereto in the Cumberland County Registry of Deeds.

Meaning and intending to convey all right, title, and interest of the Grantor to such Open Space Area as shown on the Plan.

**DEED OF CONSERVATION EASEMENT**  
**(Cottage Brook, Cape Elizabeth, Maine)**

THIS DEED OF CONSERVATION EASEMENT is made this \_\_ day of \_\_\_\_\_, 20\_\_ by **Spurwink Woods, LLC** a Maine limited liability company with a mailing address of 241 Ocean House Road, Cape Elizabeth, Maine 04107 (hereinafter "**Grantor**"), in favor of **Town of Cape Elizabeth**, a Maine municipal corporation having a mailing address of P.O. Box 6260, Cape Elizabeth, Maine 04107 (hereinafter "**Holder**").

WHEREAS this Deed of Conservation Easement is created pursuant to Title 33, Maine Revised Statutes, Sections 476 through 479-B, inclusive, as amended, and pursuant to Section 19-7-2 (D)(2), Common Open Space, of the Zoning Ordinance of the Town of Cape Elizabeth (the "**Zoning Ordinance**");

WHEREAS the Grantor holds title to certain real property situated in Cape Elizabeth, Maine (hereinafter referred to as the "**Protected Property**") and being all and the same premises identified as "OPEN SPACE 9.90 AC." on a plan entitled "Cottage Brook, Cape Elizabeth, Maine, Amended Subdivision Plat Plan (Sheet No. 1)", dated November 16, 2010, and recorded in Cumberland County Registry of Deeds in Plan Book 210, Page 414, as the same maybe further amended (the "**Plan**"); and

WHEREAS the Protected Property remains in a substantially undisturbed natural state and has significant aesthetic and ecological value, in particular, a significant wildlife habitat and an ecologically diverse area along the stream which traverses the premises; and

WHEREAS the Grantor and the Holder recognizing the value of the Protected Property as described above, have the common purpose of conserving the natural values of the Protected Property by the conveyance of a Conservation Easement over the Protected Property, which easement shall benefit, protect, and conserve the natural value of the protected Property, conserve and protect the indigenous animal and plant populations, and prevent the use or development of the Protected Property for any purpose of in any manner that would conflict with its natural scenic condition; and

NOW, THEREFORE, in consideration of the foregoing and the covenants, terms, conditions, and restrictions herein contained, the Grantor hereby GRANTS to the Holder, its successors and assigns, as an absolute and unconditional gift, forever and in perpetuity, with WARRANTY COVENANTS, a Conservation Easement in gross over the Protected Property as set forth herein and the rights of enforcement hereunder (the "**Conservation Easement**"), TO HAVE AND TO HOLD said Conservation Easement unto the said Holder and its successors and assigns forever.

**I. PURPOSE OF EASEMENT**

**Section 1. Purpose.** It is the purpose of the Easement to assure that the Protected Property will be retained forever in its natural undeveloped condition as open space and to prevent any use of the Protected Property that will significantly impair or interfere with the conservation values of the Protected Property, Grantor intends that this Easement will confine the use of the Protected Property to such activities as are consistent with the purpose of this Easement.

## II. USE OF THE PROPERTY

**Section 2.1. Permitted Uses.** The Protected Property shall be used only for conservation and low-impact outdoor recreation and educational activities by the general public that do not result in substantial alteration to the natural resources of the Protected Area. Low-impact outdoor recreation activities include, but are not limited to, nature study, picnicking, hiking, snowshoeing, pet walking, plant study, bird-watching, and, on designated trails as shown on the Plan, bicycling, horseback riding, and cross country skiing (collectively the “**Permitted Uses**”).

**Section 2.2. Restricted Uses.** As described below, the following uses are restricted or prohibited on the Protected Property (collectively the “**Restricted Uses**”):

(a) **Commercial and Mining Activities.** No commercial, industrial, quarrying or mining activities shall be permitted in the Protected Property.

(b) **Vehicles.** No motor vehicles of any kind, including recreational vehicles, all-terrain vehicles, motorcycles, dirt bikes, and snowmobiles shall be permitted on the Protected Property, except for the following: (i) in emergency and when necessary to accomplish the rights reserved by Grantor and Holder, their successors and assigns; and (ii) municipal Public Works vehicles shall be allowed on the trails located within the Protected Property, for the purpose of maintenance and repair of the trails and any related Trail Improvements.

(c) **Structures and Improvements.** No structures or improvements of any kind whatsoever shall be constructed on the Protected Property, except a walking path, boardwalks, or paths as designated on the Plan that are designed in keeping with the natural scenic quality of the Protected Property, and except as provided in Section 4.2 or otherwise as described herein.

(d) **Surface Alteration.** No filling, paving, dumping, excavation, or other alteration shall be made to the surface of the Protected Property other than the following: (i) alterations caused by the forces of nature; (ii) the surfacing of trails as provided herein with crushed stone, cinder, or other non-bituminous materials; and (iii) as otherwise provided in Section 4.2 or described herein. No vehicles may be stored on the property except that temporary storage of vehicles as may be required for permitted conservation or forest management activities on the protected Property shall be permitted. No dumping, storage or burial of refuse, soils, salt, sand or gravel or any waste materials is permitted on the Protected Property.

(e) **General.** Any activity on or use of the Protected Property inconsistent with the purposes of this Easement is prohibited.

(f) **Changes of Use or Management.** Pursuant to Section 19-7-2 (D)(2)(c) of the Zoning Ordinance, no changes in the use or management of the Protected Property as described herein shall be allowed without the approval of the Planning Board of the Town of Cape Elizabeth.

## III. RIGHTS OF THE HOLDER

**Section 3. Affirmative Rights of Holder.** To accomplish the purposes of this Easement the following affirmative rights are conveyed to Holder by this easement:

(a) **Protection.** The right to preserve and protect the conservation values of the Protected



Property.

(b) Right of Entry. Holder is granted the right to enter the Protected Property at any time for the purposes of monitoring the conditions and terms of this Conservation Easement, to undertake ecological or other studies of the Protected Property, and to exercise any other affirmative right hereunder, provided that the time and manner of such entry does not unreasonably interfere with the uses of the Property permitted hereunder or the quiet enjoyment of other lands of Grantor.

(c) Prevention and Restoration. The right to prevent any activity on or use of the Protected Property that is inconsistent with the purpose of this Easement and to require the restoration of such areas or features of the Protected Property that may be damaged by any inconsistent activity or use, pursuant to Paragraph 6.

(d) Enforcement. Holder is granted the right to enforce this Conservation Easement at law or in equity, including the right to require restoration in the event of a breach, provided, however, that naturally occurring changes or changes due to trespass or vandalism by individual members of the public shall not give rise to any right in the Holder to require restoration.

(e) Signage and Markers. Holder is authorized to install small, unlighted informational signs that identify Holder's contributions to and interests in the Protected Property, which mark the boundary of the Protected Property, which enhance public use of and appreciation of the Protected Property, and which promote appreciation of plant or animal life; such minor signage to be completed in a manner consistent with the goals of this Easement.

#### IV. RESERVED RIGHTS

**Section 4.1. General Rights Reserved by Grantor**. Grantor reserves to itself and to its representatives, successors, and assigns, all rights accruing from Grantor's ownership of the Protected Property, including the right to engage in, or permit or invite others to engage in, all uses of the Protected Property that are not expressly prohibited herein and are not inconsistent with the purpose of this Easement. Without limiting the generality of the foregoing, the following rights are expressly reserved:

(a) All Permitted Uses. The right of the Grantor, and Grantor's successors and assigns, and their guests, employees, and invitees, to use the Protected Property for any of the above Permitted Uses, or any other use that is not expressly prohibited above or destructive to the natural values to be conserved herein. Except as provided in Section 6.2, the Property shall not be transferred or conveyed to any other party without the written consent of the within Grantor and said Grantor's successors and assigns.

**Section 4.2. Structures and Improvements**. Grantor reserves the right for itself, and Grantor's successors and assigns, to locate minor structures or improvements within the Protected Property that enhance the opportunity for low-impact outdoor recreation. Such minor structures include all of the trails and related improvements shown on the Plan (the "Trail Improvements"), and specifically may include, but are not limited to the following:

(a) Signage. Small unlighted informational and interpretive signs including commemorative plaques and monuments, and trail markers.

(b) Trail Improvements. Trail improvements such as steps, trail bridges, boardwalks, culverts and water bars, and similar improvements designed to prevent soil erosion. Additionally, trails

may be surfaced with crushed stone, cinder, or other non-bituminous materials.

(c) **Barriers.** Barriers, low fences and rock walls to protect fragile areas or endangered species, important natural resources, ongoing environmental or archeological research, to assist with vegetation management or fire protection, or to block or discourage access by motorized vehicles.

**Section 4.3. Liability of Grantor and Holder.** Grantor and Holder each reserve the rights and protections against liability for injury to any person to the fullest extent of the law under the Recreational and Harvesting Use Liability Limitations set forth in Title 14 M.R.S.A. § 159-A, et seq. as amended, and successor provisions thereto, pursuant to the Maine Tort Claims Act, Title 14 M.R.S.A. § 8101, et seq., as amended and successor provisions thereto, and pursuant to any and all other applicable provisions of state and federal law.

## V. CUTTING OF TIMBER AND VEGETATION

**Section 5. Cutting of Timber and Vegetation Prohibited.** The destruction, cutting, or removal of standing timber, plants, shrubs, or other vegetation shall not be permitted, except however, there are retained in the Grantor and Grantor's successor and assigns the following rights:

(a) **Clearing and Restoration.** The right to clear and restore forest cover and other vegetation that is damaged or destroyed by the forces of nature, such as fire or disease, and when necessary to prevent the spread of disease.

(b) **Emergency.** The right to clear and restore forest cover and other vegetation, in the event of an emergency, when necessary to prevent the spread of fire.

(c) **Fallen or Dead Wood.** The right to gather, use, or remove fallen dead wood.

(d) **Selective Timber Harvesting.** The right to selectively cut or harvest standing timber, provided that such right is exercised in accordance with sound forestry and wildlife management practices and a timber harvesting plan is reviewed and approved by the Holder prior to the exercise of such right.

(e) **Tail Maintenance.** The right to cut and remove timber and other vegetation for the maintenance of trails and related Trail Improvements on the Protected Property.

## VI. OBLIGATIONS OF GRANTOR AND HOLDER, TRANSFER OF PROPERTY

**Section 6.1 Obligations of Grantor and Holder.** The Grantor and Grantor's successors and assigns agree to bear all costs and responsibility of operation, upkeep, and maintenance of the Protected Property that is either performed or expressly required by Grantor hereunder, and to pay any and all real property taxes and assessments levied by competent authority on the Protected Property and does hereby relieve, indemnify, and hold harmless the Holder therefrom. Holder shall indemnify and hold harmless the Grantor against any actions, claims or damages incurred or suffered by Grantor which arise from the gross negligence of Holder in connection with the exercise of any affirmative rights held by Holder hereunder.

**Section 6.2 Transfer of Property to Town.** Upon completion of the Trail Improvements by Grantor, Grantor shall convey the Property to the Town of Cape Elizabeth (the "Town") and the Town shall accept such conveyance, by Quitclaim (Release) Deed, and upon such conveyance the obligations

and responsibilities of Grantor with respect to the Property hereunder shall cease and terminate (herein the "Town Conveyance").

**Section 6.3. Rights after Town Conveyance.** Upon such Town Conveyance, all easements, restrictions and covenants hereunder, including without limitation the covenants herein relating to Permitted Uses and Restricted Uses, shall continue in perpetuity and shall run with the land, and the Town shall have and shall assume all the rights and obligations of Grantor hereunder.

## VII. GENERAL PROVISIONS

**Section 7.1. Headings.** The headings used in this Easement are inserted solely as a matter of convenience shall not be relied upon or used in construing the effect or meaning of any of the provisions herein.

**Section 7.2. Severability.** The provisions of this Easement shall be deemed independent and severable, and the invalidity or unenforceability of any provision or portion thereof shall not affect the validity or enforceability of any other provision or portion hereof unless such deletions shall be contrary to the purposes of this Easement.

**Section 7.3. Interpretation.** The provisions of this Easement shall be liberally construed in order to effect the conservation purposes of this Easement. If uncertainty should arise in the interpretation of these restrictions, judgment should be made in favor of conserving the Protected Property in its natural open, and scenic condition. This Easement shall be governed and construed according to the laws of the State of Maine.

**Section 7.4. Pronouns.** Wherever used, the singular number shall include the plural, the plural the singular and the use of any gender shall include all genders.

**Section 7.5. Termination of Rights and Obligations.** A party's rights and obligations under this Easement terminate upon transfer of the party's interest in the Easement or Protected Property, except that liability for acts or omissions occurring prior to transfer shall survive transfer, and the rights and obligations under this Easement shall benefit and/or be binding upon all transferee(s).

**Section 7.6. Holder Acknowledgment.** By acceptance of this Easement, the Holder acknowledges that Grantor has provided the Holder with sufficient information to determine the condition of the Protected Property as of the effective date hereof.

**Section 7.7. Successors and Assigns.** The covenants terms, conditions, and restrictions of this Easement shall be binding upon, and inure to the benefit of the parties hereto and their respective personal representatives, heirs, successors, and assigns and shall continue as a servitude running in perpetuity with the Protected Property.

**Section 7.8. Easement Subject to Prior Covenants and Restrictions.** Notwithstanding anything herein to the contrary, this Easement is granted subject to the covenants, terms, and conditions of the permits and approvals granted by the Town of Cape Elizabeth as evidenced by the Plan, and the terms and conditions of all other easements, declarations, and encumbrances of record.

IN WITNESS HEREOF, the undersigned \_\_\_\_\_, the duly authorized \_\_\_\_\_ of the said Grantor, has hereunto set his hand and seal this \_\_\_ day of \_\_\_\_\_, 20\_\_.

**SPURWINK WOODS, LLC**

\_\_\_\_\_  
Witness

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

STATE OF MAINE

COUNTY: \_\_\_\_\_; ss \_\_\_\_\_, 20\_\_

Personally appeared the above-named \_\_\_\_\_, the \_\_\_\_\_ of Spurwink Woods, LLC, and acknowledged the foregoing to be his free act and deed in said capacity and the free act and deed of said company.

Before me,

\_\_\_\_\_  
Attorney at Law/Notary Public  
Name: \_\_\_\_\_  
Commission expires: \_\_\_\_\_

**HOLDER'S ACCEPTANCE**

The above and foregoing Conservation Easement was authorized to be accepted by The Inhabitants of the Town of Cape Elizabeth, Holder as aforesaid, and the said Holder does hereby accept the foregoing Conservation Easement, by and through \_\_\_\_\_, its \_\_\_\_\_, hereunto duly authorized, this \_\_\_ day of \_\_\_\_\_, 20\_\_.

**THE INHABITANTS OF THE TOWN OF CAPE ELIZABETH**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

TOWN OF CAPE ELIZABETH  
MINUTES OF THE PLANNING BOARD

JUNE 20, 2006

7:00 PM TOWN HALL

Present: David Sherman, Chair  
Barbara Schenkel  
Peter Hatem  
Jack Kennealy

David Griffin  
John Siefried  
Paul Godfrey

Also present was Maureen O'Meara, Town Planner.

Mr. Sherman opened the meeting and asked for comments on the prior month's meeting. Hearing none, he asked for a motion.

Mr. Griffin made a motion to accept the minutes as submitted.

Mr. Kennealy seconded the motion. 7 in favor, 0 opposed.

Mr. Sherman reviewed correspondence and asked that anyone who wanted to ensure that their correspondence was received, to check with the Town Planner.

Mr. Sherman asked the Board to consider a site walk for an Ms. Ratigan concerning Alder St./Cheverus Rd.

A site walk will be held on Thursday, June 22<sup>nd</sup>, at 5:00 p.m.

CONSENT AGENDA

Manning Subdivision Amendment - Martha and Richard Manning are requesting an amendment to the Highlands Subdivision to expand the building envelope for the lot located at 2 Heritage Court to include a portion of the existing home, Sec. 16-2-5, Subdivision Amendment.

Mr. Sherman reminded the Board that if significant discussion is desired, the item would need to be removed from the Consent Agenda. Hearing none, he asked for a motion.

Mrs. Schenkel made the following motion:

BE IT ORDERED that, based on the plans and materials submitted and the facts presented, the application of Richard and Martha Manning for an amendment to the previously approved Highlands at Broad Cove Subdivision to amend the building envelope so that the existing home is completely within the building envelope for the lot located at 2 Heritage Court be approved.

Mr. Godfrey seconded the motion. 7 in favor, 0 opposed.

\*\*\*\*\*

Two Lights Professional Center Site Plan Extension - Wyley Enterprises, Inc. is requesting a 1-year extension of the site plan approval for Two Lights Professional Center, a mixed use office/residential building proposed to be constructed on Davis Point Rd, Sec. 19-9, Site Plan Extension.

Mr. Sherman reminded the Board that any substantive discussion would require removal from the Consent Agenda. Hearing none, he asked for a motion.

Mr. Siegfried made the following motion.

BE IT ORDERED that, based on the request submitted, the request of Wyley Enterprises to extend the approval for the Two Lights Professional Center, a 6,000 sq. ft. mixed use office/multi-family residential building to be located on Davis Point Rd, be extended to June 20, 2007.

Mr. Kennealy seconded the motion, 7 in favor, 0 opposed.

OLD BUSINESS

Mr. Sherman stated that public notice was not provided for the public hearing scheduled for the Elliot Private Accessway. He asked for a motion to table the item to the following month.

Mr. Kennealy made the following:

BE IT ORDERED that, based on the plans and materials submitted, the application of Don Elliot for a Private Accessway Permit and Resource Protection Permit to make the lot located at 43 Hannaford Cove a buildable lot and construct a driveway across an RP2 wetland be tabled to the July 18, 2006 meeting, at which time a public hearing will be held.

Mr. Godfrey seconded the motion. 7 in favor, 0 opposed.

\*\*\*\*\*

Spurwink Woods Subdivision - Spurwink Woods LLC is requesting Final Subdivision Review, Amendments to the previously approved Mitchell Highlands and South Portland Estates Subdivisions, and a Resource Protection Permit for Spurwink Woods, a 42 lot/unit subdivision located between Killdeer Rd and Dermot Drive, Sec. 16-2-4, Final Subdivision Review, Sec. 16-2-5, Subdivision Amendments, and Sec. 19-8-3, Resource Protection Permit.

John Mitchell, Mitchell & Associates, reviewed the most recent submission package. There is an Option A for the gate to be located on Chicory Way with proposed hammerhead turnaround, and is the preferred plan. This would allow connectivity to the Maxwell property. This would allow no traffic through to Columbus Road, and therefore, no traffic calming measures would need to be imposed and allows interconnectivity for pedestrians. A schematic sidewalk plan has been prepared for the Columbus neighborhood, as the Board requested. A revised metes and bounds description is included in the submission showing the revised open space.

Mr. Sherman reminded the that Board the Town Attorney was present if needed.

Tom Gorrill, Gorrill Palmer Associates, stated with the change of Option A, the traffic associated with the development would head towards the Spurwink/Stephenson intersection. There would be 33 vehicular trips entering, 18 exiting, equaling 51 trip ends during the peak hour, with none exiting at Columbus Road. He stated he did recommend some traffic mitigation at the Stephenson/Spurwink intersection.

Mr. Mitchell hoped the Board would take final action this evening.

Mr. Sherman stated that due to the referendum that passed, the Board should discuss placement of the gate, as some traffic calming issues would be moot, depending on gate placement.

Mr. Griffin stated he would be inclined to go with the gate on Chicory Lane.

Mrs. Schenkel stated that this is a landlocked piece of land, without good ingress or egress, and it is unfair to put all the traffic onto Stephenson St. and Spurwink Ave. The 510 extra cars, approximately, seems a lot on those tiny streets. She thought the fairest way to resolve the issue is to put the gate in the middle, so traffic would be split 50/50.

Mr. Sherman asked why she believed the trip end decreasing in the Stephenson area would be unfair.

Mrs. Schenkel stated she went back to the original study and it does not decrease traffic. It does eliminate cut-through traffic but will add homeowner traffic. She believes a better way to plan this development would be less lots, enforced boundaries and covenants, and require that trees remain, as the land will be clear cut. She believes Mitchell & Associates did a fantastic job, but this land locked piece of land did not require to be developed through open space development.

Mr. Hatem stated if Option B is chosen, there is nothing that stops movement of the gate in the future. He does not believe Chicory Lane is not the best choice.

Mr. Godfrey stated that if the loop connects through South Street, it would not be a cut through road, and believes sharing the burden of traffic should be shared between neighborhoods. He would choose Option B.

Mr. Siegfried stated he was inclined to choose Option B, with the flexibility to move the gate at a later date.

Mr. Hatem stated Option B puts sidewalks on the table, which is good planning for the Town.

Mr. Sherman stated, that if they are decreasing the peak hour trips at the Spurwink/Stephenson intersection, that is a plus. Side walks already exist on Dermot and Hamlin Streets. If the gate is placed on Chicory Lane, Mitchell Highlands will not be disrupted. He believes that they need to take in account for the future and option "a" is better planning for the Town of Cape Elizabeth.

Mr. Gorrill stated that if you look at the original proposal, without the gate, there was an assessment of cut-through traffic. With the gate, they reassigned the traffic for just the development, which increases the trip ends at Stephenson St. from 43 trip ends to 51. The potential cut through traffic has been eliminated.

Mr. Kennealy stated that Option B will create a further reduction at Stephenson St., and traffic will be divided between the two neighborhoods.

Mr. Sherman asked if part of the cut through traffic originate from Mitchell Highlands.

Mr. Gorrill stated yes. The plan that is currently proposed is a reduction of traffic from the plan that was approved.

Mr. Siegfried asked staff, how difficult is it to move the gate at a later date to create a loop?

Mr. Hatem said you would need to reserve that as part of the approval.

Ms. O'Meara responded that people that live next to the gate, love the gate and it would be difficult to relocate. They could easily put another gate next to the condominiums.

Mr. Siegfried ultimately likes the gate at Chicory Way.

Mr. Mitchell stated that multiple gates would be a bad idea. He believes that by placing the gate at Chicory Way, they will not be dividing Spurwink Woods, which he believes would be bad planning.

Mr. Sherman is concerned with multiple gates and dead end streets. He asked if it would be prudent to enter executive session with the Town Attorney.

Ms. O'Meara stated that if the Board wanted to receive confidential legal advice, they could retire to executive session. If the Board is looking for a legal opinion or a range of options, they do not need to enter executive session.



In the response to the question of how to revisit gate placement in the future, Mr. Michael Hill, Town Attorney, stated it would be difficult to place a gate with stipulations on movement elsewhere.

Mr. Godfrey asked why it would be difficult.

Mr. Hill stated that homeowners, 10 years from now, will state that they bought the property, with certain rights, that moving the gate will adversely affect. He believes you can legally make stipulations, but doesn't know if it would be legally binding 10 years from now. You would need to deal with the same issues that are difficult right now.

Mrs. Schenkel asked if there was any way to get Maxwell to agree to use the farm road to create a loop so there would be no need for Chicory Way.

Ms. O'Meara stated she has had conversations with the Maxwell family; however, they are at the very earliest stages of trying to decide what they want to do. She would not want the Planning Board to be perceived as trying to get a farming family to try and develop their property.

Mr. Sherman asked for a straw vote. There were 3 for option "b" and 3 for option "a". Mr. Godfrey was undecided.

Mr. Sherman suggested the Board take a break from this discussion and move to other issues.

Mr. Kennealy asked why Mr. Siegfried changed his vote from Option A to B?

Mr. Siegfried stated he would be against more gates.

Mrs. Schenkel asked if they had heard back from the EPA concerning Stormwater.

Mr. Mitchell stated everything is approved, and is just waiting to receive it.

Mr. Sherman asked about the issue that Mr. Keck brought up concerning the trail being impractical because it crosses the level lipspreaders.

Mr. Mitchell stated that was addressed at the last meeting. The trails do not cross the level lipspreaders.

Mr. Siegfried asked if the option of the town removing the raised crosswalk was removed.

Mr. Mitchell said no, but will remove it from the plan.

Mr. Godfrey asked about improvements at the Stephenson/Spurwink intersection with option "a".

Mr. Gorrill stated they had recommended a 3-way stop, trimming vegetation, and a flashing warning sign. The peer review indicated approval of the flashing light. He stated that 2 way stop could be implemented, with monitoring. This would be implemented under both options.

Mrs. Schenkel stated that a flashing light could be very annoying and would like to hear the abutter's opinion on it.

Mr. Sherman asked if it would be possible to deactivate the light after a certain hour.

Mr. Gorrill stated he would not recommend that, however, there are ways to minimize the effects on abutters. He did agree that was a legitimate concern.

Mr. Sherman asked what the vegetation trimming landscaping around the intersection would include.

Mr. Gorrill stated that they only had the flashing light on the submission.

Mrs. Schenkel read from Mr. Bryant's letter, where he would like a 2-way stop and a mirror placed for exiting his driveway.

Mr. Gorrill discussed traffic exiting and entering the Stephenson St. He stated more people would be turning left from Stephenson than turning right.

Mr. Godfrey was concerned with a stop sign on Spurwink Ave, as people would not expect a stop sign on a through roadway.

Mr. Sherman asked if that meant he would not be willing to vote for approval this evening.

Mr. Godfrey thinks a 2-way stop would be better and is concerned for safety and the flashing beacon. He believes this could be a potential safety issue.

Mr. Gorrill stated they are flexible, and would want monitoring of the situation.

Mrs. Schenkel stated, since there will be construction for a few years out, that monitoring could be in place.

Mr. Godfrey's concern, is who is responsible if the intersection is a safety concern?

Mr. Sherman asked Mr. Godfrey what his position was for gate placement.

Mr. Godfrey said he would be inclined to have the gate at Chicory Way, if the safety issue at the intersection could be mitigated.

Mr. Sherman asked the Board for other questions for the applicant.

Mr. Mitchell asked if they could address the stormwater issue.

Al Palmer, Gorrill Palmer, recapped the manner in which the DEP is reviewing the stormwater management plan. There are two different standards, from the Town and DEP and they need to meet both. There were new rules that came into effect from DEP; however, Spurwink Woods submission was submitted prior to new guidelines. In meeting with town staff and the DEP, it was determined that the level lipspreaders would be the best option for stormwater concerning quality and quantity.

Mr. Siegfried asked about fertilizers from homes and salt from the roads and its effects.

Mr. Palmer stated DEP standards don't regulate standards level of fertilizers used; they look at maintenance and operation of buffers to maintain water quality.

Mr. Godfrey asked if there would be a change in phasing of the project depending on gate placement.

Mr. Mitchell stated no.

Ms. O'Meara stated that the applicant intends to build phase 1 first, then phase 2 and 3 may be interchangeable.

Mrs. Schenkel asked about the gate design.

Mr. Mitchell consulted with Bob Malley, who wanted something similar to the Crescent Beach gate with a padlock.

Ms. O'Meara talked with town staff, and they do not want an electronic gate, as there are maintenance issues. The gate design submitted by the applicant is what town staff would recommend.

Mrs. Schenkel asked if the gate was steel.

Mr. Mitchell stated it is timber, with steel brackets.

Mrs. Schenkel asked if it is possible to keep the gate area as dirt to look as a driveway.

Mr. Sherman would be reluctant to do that, as it needs to be accessible to emergency vehicles.

Ms. O'Meara read from the Ordinance, which states it must be paved.

Mr. Sherman stated that each finding of fact must be voted on individually.

Mr. Godfrey would like to bring forward a condition of approval. He proposes, as a condition of approval, that the traffic improvements at the Spurwink/Stephenson intersection be reduced to a 2 way stop, the 1<sup>st</sup> stop being on Stephenson, exiting onto

Spurwink, and on the southbound Spurwink Ave approach, without a flashing beacon, if the Town Traffic Engineer agrees this would meet safety needs. If the Town Traffic Engineer agrees to monitoring to ensure if safety becomes an issue, the applicant will pay for alternate mitigation measures. These measures would include additional stop signs, flashing beacons, or relocation of the emergency gate. This would be monitored for 12 months after completion.

Mr. Siegfried would want the 3-way stop.

Mr. Sherman was inclined to go with the 3-way stop.

Mr. Kennealy asked what the standards were to define a dangerous intersection, short of fatalities.

Mr. Gorrill stated when there are sight line restrictions, or accident history, and there isn't any at this location.

Mrs. Schenkel asked the applicant to work with the abutter for mirror placement.

Mr. Gorrill agreed.

Mr. Sherman suggested Board members take turns with the Findings of Fact and asked Mr. Hatem to begin.

1. The proposed project is a clustered residential development with permanently preserved open space and these uses do not generally include discharges to the water or air that are regulated as pollution. The plan will not result in undue water or air pollution. The project does not include floodplain areas. The project will be served by public sewer instead of subsurface disposal systems. The plan includes construction of level lip spreaders that discharge storm water over a 100' wide naturally vegetated area intended to absorb and cleanse storm water flows before they are discharged into an existing RP1 designated wetland. The slope of the land and the creation of a 100' wide natural vegetation buffer will mitigate the impact of stormwater flow.

Motion made by Mr. Hatem, seconded by Mr. Griffin. 7 in favor, 0 opposed.

2. Based on the letter of the Portland Water District dated 9/21/05, the project has sufficient water available for the reasonably foreseeable needs of the subdivision.

Motion made by Mr. Godfrey, seconded by Mr. Hatem. 7 in favor, 0 opposed.

3. The plan includes a sediment and erosion control plan consistent with Best Management Practices. The plan will not cause an unreasonable soil erosion or reduction in the capacity of the land to hold water so that a dangerous or unhealthy condition may result.

Motion made by Mr. Kennealy, seconded by Mr. Hatem. 7 in favor, 0 opposed.

4. The applicants have submitted a traffic study prepared by Tom Gorrill, professional traffic engineer of Gorrill Palmer Engineering and dated 10/27/05, which analyzes the traffic to be generated by the proposed project. On behalf of the Town, Tom Errico, professional traffic engineer of Wilbur Smith Associates, conducted a peer review of the traffic analysis, dated 12/9/05, and found it consistent with standard traffic engineering practice. Both engineers found that, with recommended traffic improvements, the project would not create unsafe conditions. The plan will not cause unreasonable highway or public road congestion or unsafe conditions with respect to use of the highways, public roads or traffic patterns, alone or in conjunction with existing or contemplated road use;

Motion made by Mr. Siegfried, seconded by Mr. Griffin.

Mr. Godfrey asked that the motion be amended to applicant should be required to submit an updated traffic study, consistent with the option that is approved.

Mr. Hatem suggested this be added as a condition of approval once an approval motion is made. Mr. Godfrey agreed.

Mrs. Schenkel is voting against this, as she believes the intersection is unsafe 6 in favor, 1 opposed. (Schenkel).

5. Based on the recommendation of the Bob Malley, Town Public Works Director and Sewer Superintendent in his memo dated 3/31/06, the project will provide for adequate sewage waste disposal by utilizing the public sewer system.

Motion made by Mrs. Schenkel, seconded by Mr. Godfrey. 7 in favor, 0 opposed.

6. The 1989 Visual Resources Assessment Report conducted by the Town do not list the project area as a significant scenic area or vista. The project has been designed as an Open Space Zoning subdivision, resulting in conservation of most of the 12.58 acres of open space in its natural state as forest and wetlands. Soils and wetlands expert Dale Brewer, of Statewide Surveys Inc., submitted a written report and oral testimony that vernal pool habitat was not located on the property. No historic sites listed in the 1993 Comprehensive Plan are located on the property. The bulk of the wetland shorelines on the site, including all of the RP1 wetland, are located within the open space where public access will be permanently preserved. The project will not have an undue adverse effect on the scenic or natural beauty of the area, scenic vistas, aesthetics, wildlife habitat, historic sites or rare and irreplaceable natural areas; or any public rights for physical or visual access to the shoreline.

Motion made by Mr. Griffin, seconded by Mr. Kennealy.

Mrs. Schenkel is voting against as trees greater than 10" are being removed, which is against code.

6 in favor, 1 opposed. (Schenkel)

7. Based on the recommendation of the Town Manager Michael McGovern in his memorandum dated 10/28/05, the applicant has adequate financial and technical capacity to meet the above stated standards.

Motion made by Mr. Hatem, seconded by Mr. Godfrey. 7 in favor, 0 opposed.

9. The project, in whole or in part, is within 250 feet of a stream and wetlands as defined in the Zoning Ordinance. A DEP Stream Crossing permit has been issued and application for a Resource Protection Permit for wetland alterations is included in this application.

Motion made by Mr. Godfrey, seconded by Mr. Kennealy. 7 in favor, 0 opposed.

10. Based on the aquifer mapping in the 1993 Comprehensive Plan, no aquifer is located in the project area. The project will not, alone or in conjunction with existing activities, adversely affect the quality of ground water.

Motion made by Mr. Kennealy, seconded by Mr. Siegfried. 7 in favor, 0 opposed.

11. Based on the Federal Emergency Management Agency's Flood Boundary and Floodway Maps and Flood Insurance Rate Maps, the subdivision is not in a flood-prone area.

Motion made by Mr. Siegfried, seconded by Mr. Griffin. 7 in favor, 0 opposed.

12. Because the project employs a cluster design that reduces road and utility lengths, the project will promote energy conservation and efficiency.

Motion made by Mrs. Schenkel, seconded by Mr. Griffin.

Mrs. Schenkel is abstaining because she does not know if energy will be conserved or not. 5 in favor, 1 opposed (Godfrey), 1 abstained (Schenkel).

13. The Town Engineer has reviewed the project plans and made recommendations in numerous letters to the Planning Board to make the road designs for the project comply with the Road Classification Standards Table included in the Subdivision Ordinance. The Road Classification Standards table was created to implement the recommendations for road design in the 1993 Comprehensive Plan. The proposed roads conform to the Comprehensive Plan as adopted in whole or in part by the Town Council. At the direction of the Planning Board, the applicant has extended the right-of-way, but not the actual road surface, of South Street to extend to the abutting Maxwell property. Any traffic generated by future development of the

Maxwell property would be reviewed under the Subdivision Ordinance Traffic standards; therefore, analysis of possible additional traffic is premature and not needed at this time. The Board has required provision for the projection of roads or for access to adjoining property, whether subdivided or not.

Motion made by Mr. Griffin, seconded by Mr. Hatem. 7 in favor, 0 opposed.

14. The applicants have submitted a cut-through traffic study prepared by Tom Gorrill, professional traffic engineer of Gorrill Palmer Engineering dated 2/03/06, that analyzes cut through traffic that would occur if no emergency gate were installed between Mitchell Rd and Spurwink Ave. On behalf of the Town, Tom Errico, professional traffic engineer of Wilbur Smith Associates, conducted a peer review of the traffic analysis dated 2/15/06 and found it consistent with standard traffic engineering practice. Both engineers found that there would not be significant cut through traffic. The most recently submitted plans include the installation of an emergency access gate which would prohibit cut through traffic presently on Chicory Way, on the submission plan titled "Option A, Gate Plan". Local roads are laid out so that their use by through traffic is discouraged, and that roads are designed so as to provide safe, convenient and attractive access from the subdivision to previously existing or proposed public ways, and includes two or more means of such vehicular access.

Motion made by Mr. Hatem, seconded by Mr. Griffin.

Mr. Kennealy stated he was in favor of option "b", but will vote in favor of option "a" as because he believes it is a satisfactory. 5 in favor, 2 opposed (Schenkel,Hatem)

15. Based on the plans, which show preservation of naturally vegetated buffers and open space, and additional plantings where existing vegetation will not be preserved during construction, plants or other types of vegetative cover are preserved or placed throughout and around the perimeter of the proposed subdivision. They provide for an adequate buffer, reduction of noise and lights, separation between the subdivision abutting properties, and enhancement of its appearance.

Motion made by Mr. Godfrey, seconded by Mr. Kennealy.

Mr. Sherman stated that based on the site walk, that there would not be additional buffering needed. 6 in favor, 1 opposed (Schenkel)

16. No off-road parking lots, storage areas, rubbish disposal areas, or similar improvements exposed to public roads or to residential areas are proposed.

Motion made by Mr. Kennealy, seconded by Mr. Siegfried. 7 in favor, 0 opposed

17. The proposed roads have been reviewed by the Town Engineer and found in compliance with the Road Classification Standards Table. The Road

Classification Standards Table was created to promote road construction that preserves neighborhood character and consistent with the Comprehensive Plan. Proposed roads are laid out in an attractive manner, in order to enhance the livability and amenity of the subdivision, conform to existing topography, and minimize cuts and fills.

Motion made by Mr. Siegfried, seconded by Mr. Hatem. 7 in favor, 0 opposed.

18. Building envelopes have been created with setbacks from property lines, resulting in no shading of proposed or existing structures from adjacent structures. The proposed subdivision design has considered protecting and assuring access to direct sunlight and locating structures so as to minimize shading of either existing or proposed structures.

Motion made by Mrs. Schenkel, seconded by Mr. Siegfried. 5 in favor, 1 opposed (Schenkel), 1 abstained (Kennealy).

19. The subdivision is not designed as a traditional grid system. Block lengths do exceed 1,000 feet to suit the topography and character of the subdivision and to avoid an awkward road pattern or detrimental effect to adjacent property.

Motion made by Mr. Griffin, seconded by Mr. Godfrey. 7 in favor, 0 opposed.

20. Based on the comments of Police Chief Neil Williams in his memo dated 11/05/05, road names have been used which do not duplicate or may be confused with the names of existing roads.

Motion made by Mr. Hatem, seconded by Mr. Godfrey. 7 in favor, 0 opposed.

21. The applicant has submitted a storm water plan prepared by Gorrill Palmer Consulting Engineers, Inc. that has been reviewed and accepted by Town Engineer Steve Harding of Oest Associates as in compliance with the Town Storm Water Ordinance. The subdivision involves more than 10,000 square feet of impervious surface, paving, clearing or vegetative alteration and complies with the provisions and improvements for the control of storm water runoff governed by Chapter 18, Article II, Storm Water Control Ordinance. Drainage easements have been provided where channeling surface water within such subdivision on private property will require town maintenance.

Motion made by Mr. Godfrey, seconded by Mr. Kennealy. 7 in favor, 0 opposed.

22. In lieu of providing pedestrian easements, any area where trails are proposed will be conveyed to the Town of Cape Elizabeth in fee ownership.

Motion made by Mr. Kennealy, seconded by Mr. Siegfried. 7 in favor, 0 opposed.



23. For Open Space Zoning subdivisions located in the RC District, the minimum lot size is 7,500 sq. ft and the smallest proposed lot is 7,512 sq. ft. The lots are configured to orient to the proposed road. The area and width of lots conforms to the requirements of the Zoning Ordinance, including side lot lines at right angles or radial to road lines.

Motion made by Mr. Siegfried, seconded by Mr. Kennealy. 7 in favor, 0 opposed.

24. As shown on the plan, each property is provided with vehicular access to each lot by an abutting public or private road.

Motion made by Mrs. Schenkel, seconded by Mr. Kennealy. 7 in favor, 0 opposed

25. The project plan has been based on the Open Space Zoning Requirements, Sec. 19-7-2. Development is clustered on one side of the site and most of the 12.58 acres of open space is located on the other side of the project to maximize its value and protection as a natural area. Single family and condominium residential housing is proposed in an area of existing single family homes and undeveloped land. The cluster development has been designed, sited and laid out as to minimize disturbance of existing topography and ground cover, provide maximum usable natural or improved open space, reflect imaginative use of the site, and be compatible with any surrounding land uses and their character.

Motion made by Mr. Griffin, seconded by Mr. Godfrey.

Mr. Sherman stated he believes this to be an effective way to preserve open space.

Mrs. Schenkel disagrees that this is the right option for this piece of property, however, she does believe in Open Space Zoning.

5 in favor, 1 opposed, (Schenkel) 1 abstained (Kennealy).

26. Per the proposed plan and in an effort to blend the new development with the existing neighborhood, sidewalks and/or curbing have been provided where they are necessary for maintenance and public safety.

Motion made by Mr. Hatem, seconded by Mr. Siegfried. 7 in favor, 0 opposed.

27. 12.58 acres of open space, including the only RP1 wetland on the site, will be permanently preserved and donated to the Town. Through this open space dedication, the applicant, whenever practical, has preserved natural features such as water courses or bodies, existing trees of 10 inches or more in diameter (base height), marshes, swamps or other areas identified on the official wetlands map, open space, scenic points, historic spots, and unusual or striking topographic features which add to the attractiveness of the subdivision. The applicant has agreed to dedicate open space to the Town itself, conveyed through appropriate legal instruments, under review by the Town Attorney.

Motion made by Mr. Godfrey, seconded by Mr. Griffin. 5 in favor, 1 opposed, (Schenkel), 1 abstained (Kennealy).

28. The applicant will donate 12.58 acres of open space to the Town in compliance with the Open Space Zoning provisions, Sec. 19-7-2. The Open Space impact fee, alone requires an open space dedication of 12,937 sq. ft. per lot/unit or a total of 12.47 acres. The applicant will donate land to comply with the Open Space Impact Fee.

Motion made by Mr. Kennealy, seconded by Mr. Griffin. 7 in favor, 0 opposed.

29. Proposed deeds have been submitted that prohibit development on the donated open space. Common open space to be dedicated by the applicant shall be maintained to ensure that its use and enjoyment is not diminished or destroyed, with the applicant submitting written documents identifying that the Town shall own the land and be responsible for said maintenance.

Motion made by Mr. Siegfried, seconded by Mr. Griffin. 7 in favor, 0 opposed.

30. The plans show that the project will be served by public sewer and no subsurface disposal systems are proposed for the disposal of sewage for the development.

Motion made by Mrs. Schenkel, seconded by Mr. Godfrey. 7 in favor, 0 opposed.

31. No significant wildlife habitat has been identified by Dale Brewer, licensed soil scientist hired by the applicant, during his visits to the property. Mr. Brewer commented specifically that he had visited the site during April when vernal pools can be identified and he did not identify any vernal pools. The project makes adequate provision for the protection of wildlife habitat and fisheries areas, which may include but are not limited to maintenance of wildlife travel lanes, and the preservation and buffering of wildlife habitat areas from proposed development activities.

Motion made by Mr. Griffin, seconded by Mr. Godfrey.

Mrs. Schenkel stated that other than discussing vernal pools, she is not aware that they discussed this issue so she will abstain.

Ms. O'Meara stated that maps received from the State as part of the Comprehensive Plan work show that there is no critical life habitat.

Mrs. Schenkel agreed.

7 in favor, 0 opposed.

32. Based on the plans and the requirements of the Addressing Ordinance, the numbering of the individual residential dwelling units will be clearly visible. Signs clearly identifying the house numbers in each set of dwelling units will be placed along the road leading to each set of units.

Motion made by Mr. Hatem, seconded by Mr. Griffin. 7 in favor, 0 opposed.

33. The applicant has submitted letters from Central Maine Power, Time Warner Cable and the Portland Water District regarding provision of services to the subdivision. All utilities, including but not limited to the provision of water, gas (not applicable in this area of Cape Elizabeth) and electricity is adequate for the proposed development.

Motion made by Mr. Godfrey, seconded by Mr. Kennealy. 7 in favor, 0 opposed.

34. The proposed project, made up of single family homes, condominium units and open space, is harmonious with the surrounding single family neighborhoods and undeveloped land.

Motion made by Mr. Kennealy, seconded by Mr. Siegfried. 7 in favor, 0 opposed.

35. The adjacent Mitchell Highlands Subdivision, constructed in 1965 and 1966, was a 25± acre parcel, where 46 home lots were created and 1 acre of land was donated to the Town. The adjacent South Portland Estates neighborhood was recorded in 1925. 137 lots were created with an average lot size of 5,000 sq. ft. No open space was preserved and the majority of the lots are not developed. The proposed project, a 25± acre lot with 42 lots/units proposed and 12.58 acres of permanently protected open space is compatible with the density of the adjacent neighborhoods.

Motion made by Mr. Siegfried, seconded by Mr. Kennealy

Mr. Godfrey mentioned it should be 12.58 acres. Mr. Siegfried amended his motion. 6 in favor, 1 opposed (Schenkel).

36. The wetland alterations shown on the plan include culverts to maintain water flows where wetlands are altered. The project will materially obstruct the flow of surface or subsurface waters across or from the alteration area.

Motion made by Mrs. Schenkel, seconded by Mr. Godfrey. 7 in favor, 0 opposed.

37. Based on the Storm Water Management plan prepared and reviewed by professional, licensed civil engineers, the project will not impound surface waters or reduce the absorptive capacity of the alteration area so as to cause or increase the flooding of adjacent properties.

Motion made by Mr. Griffin, seconded by Mr. Siegfried. 7 in favor, 0 opposed.

38. Based on the Storm Water Management plan prepared by Gorrill Palmer Engineering and reviewed by Steve Harding, professional engineer with Oest Associates, the project will not increase the flow of surface waters across, or the discharge of surface waters from, the alteration area so as to threaten injury to the alteration area or to upstream and/or downstream lands by flooding, draining, erosion, sedimentation or otherwise.

Motion made by Mr. Hatem, seconded by Mr. Siegfried. 7 in favor, 0 opposed.

39. Based on the testimony and reports submitted by Dale Brewer, resulting from his visits to the project site, his training and experience in identifying sensitive wetland habitats and his conclusion that vernal pools do not exist on the site, the project will not result in significant damage to spawning grounds or habitat for aquatic life, birds or other wildlife.

Motion made by Mr. Godfrey, seconded by Mr. Kennealy. 7 in favor, 0 opposed.

40. The project does not propose to construct structures in wetland areas. Infrastructure that crosses wetlands is designed with a gravel base to support the structure, which has been reviewed and accepted by Town Engineer Steve Harding. The project will not pose problems related to the support of structures.

Motion made by Mr. Kennealy, seconded by Mr. Griffin. 7 in favor, 0 opposed.

41. The project area does not include coastal dunes or contiguous back dune areas.

Motion made by Mr. Siegfried, seconded by Mr. Godfrey. 7 in favor, 0 opposed.

42. The plans include preservation of open space to be preserved in its natural state through a conservation restriction included in the deed of the land to the Town. The project will maintain or improve ecological and aesthetic values.

Motion made by Mrs. Schenkel, seconded by Mr. Siegfried.

Mrs. Schenkel asked if this means maintain ecological value throughout, or just the open space.

Ms. O'Meara said that the findings states that the project meet the goals of preservation by providing the open space.

5 in favor, 2 opposed (Schenkel, Kennealy)

43. The plans show that no activity will occur within 100' of the RP1 wetland, except for trails, which are a permitted use in the RP1 buffer. The project will maintain an adequate buffer area between the wetland and adjacent land uses.

Motion made by Mr. Griffin, seconded by Mr. Godfrey. 7 in favor, 0 opposed.

44. The plans include an Erosion and Sediment Control Plan reviewed and found acceptable by Town Engineer Steve Harding. The project will be accomplished in conformance with the erosion prevention provisions of Environmental Quality Handbook Erosion and Sediment Control, published by the Maine Soil and Water Conservation Commission dated March 1986, or subsequent revisions thereof.

Motion made by Mr. Hatem, seconded by Mr. Griffin. 7 in favor, 0 opposed.

45. The Public Works Director, acting as Sewer Superintendent, and the Town Engineer have revised and found acceptable the sewer infrastructure construction plans. The project will be accomplished without discharging wastewater from buildings or from other construction into Wastewater Treatment Facilities in violation of Section 15-1-4 of the Sewage Ordinance.

Motion made by Mr. Godfrey, seconded by Mr. Kennealy. 7 in favor, 0 opposed.

46. The project plans include amendments to the South Portland Estates Subdivision and the Mitchell Highlands Subdivision to remove lots from those subdivisions and add that area to the Spurwink Woods Subdivision. Amended subdivision plans referencing the book and page of the original subdivision recording have been submitted for Planning Board signature. The Planning Board finds that these subdivision amendments do comply with the Subdivision Ordinance Standards, Sec. 16-1-1 and Sec. 16-3-1.

Motion made by Mr. Kennealy, seconded by Mr. Griffin. 6 in favor, 1 abstained (Schenkel)

47. The 1993 Comprehensive Plan includes a Growth Areas Map and a Rural Protection Areas Map. The Growth Areas Map includes the project site in an infill growth area. The Rural Protection Areas map shows areas where trails should be provided on lots that are not in designated Rural Protection areas. The Rural Protection areas map shows that 2 trails should be provided on the project site. Based on the trails proposed to be constructed by the applicant and deeded to the Town for public access, the Planning Board finds that the project conforms to the Comprehensive Plan Growth and Rural Areas maps.

Motion made by Mr. Siegfried, seconded by Mr. Godfrey.

Mr. Sherman stated this had been brought up by abutters.

Ms. O'Meara stated that this lot is clearly shown as a growth area on the Growth Areas Map.

7 in favor, 0 opposed.

48. The plans have been revised to eliminate 3 stormwater detention/retention basins in favor of utilizing level lip spreaders combined with a naturally vegetated buffer and an RP1 wetland. The application of older DEP regulations facilitates the substitution of basins for the level lip spreader approach, which has been encouraged by the DEP and supported by the Town Engineer's review. The Planning Board finds that the application of the older DEP Stormwater regulations does adequately protect natural resources and adverse impacts to downstream properties.

Motion made by Mrs. Schenkel, seconded by Mr. Griffin.

Mr. Hatem asked if this was approval for the old regulations.

Ms. O'Meara stated that the finding may be a little off, but either way the applicant is submitting a plan that addresses the quality.

7 in favor, 0 oppose.

49. The plans include preservation of 12.58 acres of open space, most of that forested. The open space will be permanently preserved through deed restriction and donated to the Town of Cape Elizabeth. The portion of the property to be developed is also forested and includes large mature trees. The proposed development will require the clearing of large trees greater than 10" in diameter. The Planning Board finds that the project plans do preserve natural features and existing trees of 10 inches or more in diameter whenever practical.

Motion made by Mr. Griffin, seconded by Mr. Siegfried.

Mr. Sherman asked about the requirement in the Ordinance concerning saving trees that are 10" in diameter.

Ms. O'Meara stated that the ordinance requires preservation of 10" trees whenever practical. It does not have exclusive prohibition of removal.

Mr. Kennealy asked what "whenever practical" meant.

Ms. O'Meara referred it to the Town Attorney.

Mr. Hill does not know of any case law concerning this, but 10" trees should be preserved wherever possible. If you couldn't place a home without taking down trees, the trees should be able to be removed. If a home can be placed, without removal of trees, then that should occur.

Mr. Kennealy said that this standard seemed soft. Mr. Hill agreed.

5 in favor, 1 opposed (Schenkel), 1 abstained (Kennealy)

Mr. Kennealy asked for a 3 minute break, Mr. Hatem so moved.

Mr. Hatem made the following motion:

THEREFORE, BE IT ORDERED that, based on the plans and materials submitted and the facts presented, the application of Spurwink Woods LLC for Final Subdivision Review, a Resource Protection permit and amendments to previously approved subdivisions for Spurwink Woods, a 42-unit subdivision, located between Dermot Drive and Killdeer Rd, be approved, subject to the following conditions:

1. That 20% of the tree budget be reserved and held by the Town till the end of year three after trees have been planted to pay for replacement of trees that die;
2. That the applicant submit final plans that include the installation of an emergency access gate, which would prohibit cut through traffic presently on Chicory Way on the submission plan titled "Option A-Gate Plan".
3. That a summary table of plantings on the condominium lot, including type, quantity and size at time of planting be added to the plans;
4. That deeds be submitted in a form acceptable to the Town Attorney and the Town Manager;
5. That the Applicant be required to submit a revised traffic study consistent with Option A;
6. That the traffic improvements for the Spurwink Avenue/Stephenson Street Intersection be a 3-way stop without a flashing beacon provided that the Town Traffic Engineer agrees that this will meet safety needs. The Applicant and Town Traffic Engineer will agree on a level of monitoring to ensure that if safety becomes an issue at this intersection, such as three or more accidents in a 12 month period that are attributable to the additional volume of traffic at this intersection, that the Applicant propose to the Town and pay for additional or alternative mitigation measures at this intersection. These mitigation measures may include additional signing, flashing beacons, or relocation of the emergency gate. The Town Traffic Engineer shall be responsible for making final safety threshold determination. Monitoring will be done 12 months following the completions of Phase 1 or at any time as directed by the Town;
7. That there be no alteration of the site nor issuance of a building permit until (1) a performance guarantee has been submitted in an amount acceptable to the Town Engineer, a form acceptable to the Town Attorney and all acceptable to the Town Manager and (2) all required state permits have been issued;
8. That the note that allows the crosswalk to be removed by the Town be deleted from the plans;

9. That boardwalks be constructed using 2 x 8 pressure treated wood supports and decking made of trex or 2 x 8 boards; and
10. That plans and materials be revised to reflect the above conditions prior to recording of the subdivision plat.

Mr. Sherman asked all in favor of the motion: 6 in favor, 1 opposed (Schenkel).

Mr. Sherman thanked the applicant for the hard work that went in to the project. He appreciated all the emails and correspondence from abutters.

Mr. Kennealy stated he thought this was a good development.

Mr. Sherman asked for a motion to adjourn.

Mrs. Schenkel made a motion to adjourn.

Mr. Hatem seconded the motion. 7 in favor, 0 opposed.

Meeting adjourned at 10:00 p.m.

Respectfully submitted,

Laurie Palanza



## CAPE ELIZABETH TOWN COUNCIL MINUTES

Regular Meeting # 5-2006

Monday, March 13, 2006

		Present	Absent
David J. Backer, Chairman	2 Rugosa Way	X	772-5845 ext 122 12/2006
Cynthia Dill	1227 Shore Road	X	767-7197 12/2008
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
Anne E. Swift-Kayatta	14 Stone Bridge Road	X	767-5754 12/2008
Town Manager Michael McGovern		X	
Town Clerk Deborah Cabana		X	

### Pledge of Allegiance to the Flag

#### Presentations: Nordic Ski Teams State Championships

*Chairman D. Backer* presented an award to the Cape Elizabeth Boys and Girls Nordic Ski Teams, recognizing their State Championships.

*Charles Kennedy and Hagos Tsadik of P.R.O.P.* – made a presentation to the Town of Cape Elizabeth, recognizing the People's Regional Opportunity Program's 40th anniversary, and their appreciation of Cape Elizabeth's dedication to children, families and seniors of this community.

*Nick Daly and Natasha Barritt, High School Representatives to the Town Council* – expressed their concern with the proposed budget spending cap of 3.4% and the negative impact it would have for the high school students.

#### Reports and Correspondence

*M. A. Lynch* – noted that Cape Elizabeth hosted the Regional One-Act Play Festival. Cape Elizabeth was chosen to advance to the state finals.

#### Town Manager's Report - None

#### Minutes of Meeting #4-2006 held February 13, 2006

Moved by P. McKenney and Seconded by C. Fritz

Ordered the Cape Elizabeth Town Council approve the minutes of meeting #4-2006 held February 13, 2006, as presented.

(7 Yes)

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

*Mary Townsend of 5 Pearl Street* – spoke on behalf of a large group of citizens who were present at the meeting, who opposed the 3.4% budget spending cap. They felt the limit would have a negative impact on the Cape Elizabeth schools with the potential of depreciating property values. They asked that the Town Council consider revising their previous promise to limit spending to the inflation rate of 3.4%.

*Bill DeSena of 11 Wainwright Drive* - was concerned with the proposed 3.4% limit. He suggested alternative solutions to raising taxes, such as implementing fees at the Fort Williams Park. He thought this would provide for better schools and retain the value of homes.

*Karen Abbott – first grade teacher at Pond Cove School* – spoke of how the proposed budget limits would affect the schools and asked the Council to revoke the 3.4% spending cap.

*David Weatherbie of 14 Stonegate* – stated that the school budget has been continuously reduced over the last several years and could not be reduced any further. He stated that he and other concerned citizens would not be silent any longer. He requested that the Council reconsider the commitment of the 3.4% spending cap.

**Public Hearing: Proposed Amendment to the Zoning Ordinance-Bisected Lots**

The Public Hearing opened at 8:08 p.m.

*Richard Bryant of 55 Spurwink Avenue* – stated that the only reason this amendment was being considered was to make the Spurwink Woods development possible. He asserted that it was bad public policy and exacerbates the short-cut traffic issue.

*Jim McFarlane of 4 Belfield Road* – is the developer of Spurwink Woods. He stated that it did not matter to him which way the Town Council decided regarding this amendment.

*Hank Andolsek of 7 Columbus Road* – urged the Council to implement a six month “hold” on any further approval of this project because there were too many unresolved issues. He felt that consideration of adjacent property owners has been seriously missing in this subdivision process.

*Paul Catsos of 33 Columbus Road* – requested that the Town Council not accept the proposal.

*Larry Sterne of 1 Columbus Road*– remarked that the proposed development would have a massive effect on his property in that he would lose his front yard. He felt that this proposal had been rushed through with no consideration on how it would impact the neighbors.

*Bill Bamford of 112 Spurwink Avenue* – spoke in favor of the proposed amendment. This would give more options to consider for possible future development of Maxwell Farm.

The public hearing closed at 8:21 p.m.

**Item# 64-2006 Proposed Amendment to the Zoning Ordinance-Bisected Lots**

Town Planner Maureen O’Meara was present at the meeting to answer questions.

C. Fritz, C. Dill and M.A. Lynch (Ordinance Committee Members) recommended approval of this proposed amendment.

Moved by M. A. Lynch and Seconded by M. Mowles

**Ordered the Cape Elizabeth Town Council approve the adoption of the proposed amendment to the Zoning Ordinance regarding bisected lots.**

(7 Yes)

**Item# 65-2006      Citizen Petition Re: Short-Cuts**

Moved by M. A. Lynch and Seconded by A. Swift-Kayatta

**Ordered the Cape Elizabeth Town Council send the citizen petition regarding short-cuts, as modified by the Town Attorney in his March 3<sup>rd</sup> letter, for a public vote on June 13, 2006.**

(7 Yes)

Moved by M. Mowles and Seconded by D. Backer

**Ordered the Cape Elizabeth Town Council adopt the citizen petition regarding short-cuts, as modified by the Town Attorney in his March 3<sup>rd</sup> letter.**

(2 Yes – M. Mowles and C. Fritz) (5 No)

**Item# 66-2006      Conditional Municipal Acceptance**

**Spurwink Woods Roads, Open Space and Easements**

Town Planner Maureen O'Meara was present at the meeting to answer questions.

*Richard Bryant of 55 Spurwink Avenue* – felt that the Town Council should not grant conditional approval at this time.

*Paul Driscoll, spoke on behalf of the developers of Spurwink Woods* – explained that conditional municipal approval of the proposed extension of South Street, Franklin Circle and Chicory Way, the proposed acceptance of 10.48 acres of open space and various easements is being requested. The standard procedure is for the Town Council to consider the conditional approval at this time and final acceptance occurs after the Planning Board grants final approval and the roads, trails, drainage and sewer structures are completely built to municipal standards.

Moved by M. Mowles and Seconded by P. McKenney

**Ordered the Cape Elizabeth Town Council adopt the conditional municipal acceptance of Spurwink Woods Road, Open Space and Easements.**

(5 Yes) (2 No – C. Fritz and D. Backer)

**Item# 67-2006      Proposed Amendment to the Subdivision Ordinance**

Councilor M. A. Lynch explained this proposed amendment clarifying the Planning Board's discretionary authority relating to traffic calming measures and giving the Planning Board the right to narrow the current minimum width of streets from 22 feet to 20 feet.

*Richard Bryant of 55 Spurwink Avenue* – suggested adding a gate to this proposed amendment, as another means of calming traffic.

Moved by M. A. Lynch and Seconded by M. Mowles

**Ordered the Cape Elizabeth Town Council approve the proposed amendment to the Subdivision Ordinance, as follows:**

Whereas, there are development proposals pending that have yet to receive final approval;

Whereas, such proposals will have an impact on traffic and traffic patterns;

Whereas, such impacts will affect the health and safety of town residents and those passing through town, including motorists, pedestrians, and cyclists;

Whereas, those traffic impacts will affect property values, unless mitigated;

Now, therefore, the Cape Elizabeth Town Council declares that the present situation constitutes an emergency, requiring that the Planning Board's powers to address traffic be clarified, NOW THEREFORE BE IT ENACTED, AS AN EMERGENCY ORDINANCE:

Amend 16-3-1 by adding the following at the end of the third sentence:

The Planning Board may require any reasonable means to discourage through traffic including stop signs, chicanes, sidewalks, landscaping, raised pedestrian crosswalks, roadways narrowed to 20 feet, esplanades, and any other reasonable method designed to calm traffic and discourage through traffic.

Applicability: Notwithstanding the provisions of 1 MRSA Sect. 302, this provision shall be applicable to any pending proceedings that have not received final approval at the time of enactment.

(6 Yes) (1 No – C. Fritz)

Moved by M. A. Lynch and Seconded by P. McKenney

**Ordered the Cape Elizabeth Town Council refer the approved emergency amendment of the Subdivision Ordinance to the Ordinance Committee.**

(7 Yes)

Moved by C. Fritz and Seconded by M.A. Lynch

**Ordered the Cape Elizabeth Town Council approve suspending the Town Council Rules to discuss Item ## 69-2006, 70-2006 and 71-3006 out of order.**

(7 Yes)

**Item# 69-2006            Malt and Vinous License Renewal**  
**Two Lights Enterprises, Inc, D/B/A Ocean House Pizza**  
**337 Ocean House Road**

**Public Comment - None**

Moved by M. Mowles and Seconded by P. McKenney

**Ordered the Cape Elizabeth Town Council approve the Malt, and Vinous licenses renewal for Ocean House Pizza.**

(7 Yes)

**Item# 70-2006            Quit-Claim Deed Request**

Moved by M. Mowles and Seconded by P. McKenney

**Ordered the Cape Elizabeth Town Council approve the request to authorize the Town Manager to sign a Quitclaim Deed to Wilson A. Busby, 22 Eastman Road, Map U27 Lot 004.**

(7 Yes)

**Item# 71-2006            Quit-Claim Deed Request**

Moved by M. Mowles and Seconded by C. Dill

**Ordered the Cape Elizabeth Town Council approve the request to authorize the Town Manager to sign a Quitclaim Deed to Robert B. Farley, Jr. & Joan E. Leaman, 44 Ocean View Road, Map U03 Lot 088.**

(7 Yes)

**Item# 68-2006            Proposed Amendment to the Zoning Ordinance**

Councilor C. Fritz explained this proposed amendment to the Zoning Ordinance.

Moved by C. Fritz and Seconded by C. Dill

**Ordered the Cape Elizabeth Town Council refer the proposed amendment to the Zoning Ordinance which would prohibit “formula” (no more than 25 branches) fast food and restaurants in the Town Center District, and Business District A and the Business District B to the Planning Board.**

Moved by M. Mowles to move the question

(4 Yes) (3 No – C. Dill, C. Fritz and M.A. Lynch)

Motion failed due to lack of 2/3 vote.

After continued discussion, the main motion failed.

(1 Yes – C. Fritz) (6 No)

Moved by C. Dill and Seconded by M. Mowles

**Ordered the Cape Elizabeth Town Council refer the proposed amendment to the Zoning Ordinance which would prohibit “formula” (no more than 25 branches) fast food and restaurants in the Town Center District, and Business District A and the Business District B to the Comprehensive Planning Committee.**

(7 Yes)

Moved by M. Mowles and Seconded by A. Swift-Kayatta  
**Ordered the Cape Elizabeth Town Council approve suspending the Town Council Rules to discuss Item ## 72-2006, 73-2006 and 74-2006 after 11:00 p. m.**  
**(6 Yes) (1 –No – D. Backer)**

**Item# 72-2006            Proposed Amendments to the Personnel Code**  
Moved by A Swift-Kayatta and Seconded by M. Mowles  
**Ordered the Cape Elizabeth Town Council adopt the proposed amendments to the Personnel Code.** (copy attached to the official minutes)  
**(7 Yes)**

**Item# 73-2006            Proposed Municipal and Special Funds Budgets**  
Moved by A. Swift-Kayatta and Seconded by M. Mowles  
**Ordered the Cape Elizabeth Town Council acknowledge receipt of the proposed FY 2007 Municipal and Special Funds Budgets and refer the documents to the Finance Committee for a review and recommendation.**  
**(7 Yes)**

**Item# 74-2006            Benchmarks**  
Moved by A. Swift-Kayatta and Seconded by M. Mowles  
**Ordered the Cape Elizabeth Town Council acknowledge receipt of the 2006 benchmark study.**  
**(7 Yes)**

**Citizen's Discussion of Items Not on the Agenda -**  
*Suzanne Murphy of 19 Olde Fort Road* – stated that she did not mind an increase in taxes because she supported the schools and felt that the 3.4% budget spending cap was too restrictive.

**Adjournment:**  
Moved by M. Mowles and Seconded by P. McKenney  
**Ordered the Cape Elizabeth Town Council adjourn at 11:15 p.m.**  
**(7 Yes)**

A True Copy Attest:

Deborah S. Cabana  
Town Clerk

Minutes approved by the Cape Elizabeth Town Council on April 10, 2006