

**APPROVED**

**KITTERY TOWN COUNCIL**

**October 12, 2005**

**Council Chamber**

1. **CALL TO ORDER**

The meeting was called to order at 7:00 p.m. by Chairperson Ann Grinnell.

2. **INTRODUCTORY**

Chairperson Grinnell read the Introductory.

3. **PLEDGE OF ALLEGIANCE**

Chairperson Grinnell led those present in the Pledge of Allegiance.

4. **ROLL CALL**

Answering the roll were Councilors Frank Dennett, Matt Brock, Glenn Shwaery, Rich Balano, George Heilshorn, Leo Guy and Chairperson Ann Grinnell. Also present were Planning Board Members Ron Ledgett, Scott Mangiafico, Doug Muir, and Chairman Russell White, Town Manager Jon Carter, Town Clerk Maryann Place, Town Planner Jim Noel, Fire Chief David O'Brien, Recorder Chris Kudym, Susan Emery, Gary Litzenberger, Debbie Driscoll, George Lombardi, Lisa Comeau, Brett Patten, Kathleen Barry, and others.

5. **ACCEPTANCE OF PREVIOUS MINUTES**

Councilor Dennett called attention to the first page, second paragraph up from the bottom where Chief Strong was explaining his recommendation to have C Zone encompassed by the A Zone and Councilor Dennett believed he wanted the C Zone to be within the B Zone, which allowed minimum shooting. On Page 2, two lines down, "Grey" Boat Harbor Road needed to be changed to "Brave" Boat Harbor Road; in the second paragraph, "Remmick's" should be spelled with one "m" and "Pie Cock Road" should be "Picott Road." Also on Page 2, in the last paragraph, the cite reference should be changed to 30-A.MRSA.3011. On Page 3, last paragraph, Councilor Dennett believed the reference to "naval officers" should be changed to "Department of Defense officers" and one line up from bottom the word "elect" should be changed to "appoint" traffic officers.

Chairperson Grinnell questioned Councilor Dennett about the correction on Page 1 saying she believed that the B Zone was where there was no shooting at all and Councilor Dennett suggested they check to find out but perhaps the phrase mentioning no shooting should be removed.

Councilor Shwaery pointed out that on Page 5, reference to "Seaport Beach" should be changed to "Seapoint Beach."

The Minutes, as amended, were accepted. Minutes of the Council's Special Meeting of October 3, 2005 were also accepted.

6. **INTERVIEWS FOR PLANNING BOARD, ZONING BOARD OF APPEALS AND/OR CABLE TELEVISION RATE REGULATION BOARD: None.**

7. **THE KITTERY TOWN COUNCIL MOVES TO HEAR AN UPDATE FROM FIRE CHIEF DAVID O'BRIEN REGARDING THE INSURANCE SERVICES OFFICE**

PUBLIC PROTECTION CLASSIFICATION CHANGE FOR THE TOWN OF  
KITTERY.

Fire Chief Dave O'Brien came to the podium and said he wanted to share with the Council, as well as the citizens of Kittery, the success the Fire Department had in regards to their recent ISO Classification survey. Chief O'Brien explained that ISO provides information used by local insurance companies to determine rates. Based on a 1 to 10 rating system, with 1 being the best and 10 the worst, Kittery currently had a 6/9 rating. The "6" rating applied to water supply districts, while the 10 applied to the non-water supply districts. Working through an ISO representative and after a six-month process of conducting intensive tests, Kittery's classification dropped to a straight "5," which included areas such as Wilson Road, Betty Welch Road, Bartlett Road, High Pasture Road and farther down by Brave Boat Harbor Road, all of which were previously classified "9." The Chief said he did not know precisely how this drop would affect insurance rates since Councilor Dennett explained that each individual insurance company had their own way of doing things, but going from a "9" to a "5" was quite a drop for the Town. The Chief said that the impact on insurance rates might be felt more by businesses than by residents and that the ISO would be advising insurance companies of the classification change within the next 30 days but would be assigning an effective date of February 1, 2006. The Chief said there were areas the Department could improve in and they had plans to invite the ISO back for another review when they felt they were ready. Very few volunteer/call departments achieved a "4" level, the Chief said, so Kittery was now in the upper 20% in the nation with a "5" rating.

Chairperson Grinnell asked if there were any questions and Councilor Heilshorn congratulated the Chief. Chief O'Brien thanked the Council and said that the guys had worked very hard to achieve this, getting better each time. Councilor Shwaery also congratulated the Chief and asked if homeowners and businesses needed to call their insurance companies concerning the rating change and the Chief said no, the insurance companies would be advised. Chief O'Brien also said there would be an article in the Kittery Quarterly. Chairperson Grinnell said they could come down to the Department's pancake breakfast and say congratulations in person. The Chief thanked the Council.

8. PUBLIC HEARINGS

a. (100105-1) *THE KITTERY TOWN COUNCIL MOVES TO HOLD A PUBLIC HEARING ON AND HEREBY ORDAINS AMENDMENTS TO CHAPTER 2.24 PERSONNEL CLASSIFICATION PLAN, AMENDING SEC.2.24.250 BOOKKEEPER, 2.24.040 DEPUTY TREASURER AND ADDING SECTION 2.24.035, JOB DESCRIPTION FOR ASSISTANT TOWN CLERK.*

Chairperson Grinnell asked Town Manager Carter to give the audience an overview. Town Manager Carter thanked the Chair and explained that this Public Hearing was a requirement of the ordinance, which required that any change of job description had to go through the Personnel Board and then brought before the Council with the Board's recommendations. Town Manager Carter said that the changes involved creating an Assistant Town Clerk position, which would be filled by elevating an existing staff person's position. That position would be financed by a budgeted stipend. This person would have the responsibility of being a "back-up" when and if the Town Clerk and Deputy Town Clerk were out of the building or busy, and also have the ability to make decisions out on the floor.

Town Manager Carter said that in regard to the other two positions, Deputy Treasurer and Bookkeeper, what they were doing was following through from their budget process and making the Deputy Treasurer a supervisor of the finance office in the back, which would include the positions of Bookkeeper and Accountant, instead of having these two positions supervised by the Treasurer/Town Manager. The Manager said that the Bookkeeper also maintained accounts for the Sewer Department.

COUNCILOR BALANO MOVED TO APPROVE AMENDMENTS TO CHAPTER 2.24 PERSONNEL CLASSIFICATION PLAN, AMENDING SEC.2.24.250 BOOKKEEPER, 2.24.040 DEPUTY TREASURER AND ADDING SECTION 2.24.035, JOB DESCRIPTION FOR ASSISTANT TOWN CLERK, SECONDED BY CHAIRPERSON GRINNELL.

Councilor Dennett asked Town Manager Carter about item B.5 under Assistant Town Clerk, which read, "serves as a Deputy Registrar" and suggested that "of voters" be added.

COUNCILOR DENNETT MOVED TO AMEND ITEM B.5 CONTAINED IN THE JOB DESCRIPTION OF ASSISTANT TOWN CLERK TO READ: "SERVES AS A DEPUTY REGISTRAR OF VOTERS, SECONDED BY COUNCILOR BALANO. A ROLL CALL VOTE WAS TAKEN WITH ALL IN FAVOR. MOTION PASSES 7/0.

Chairperson Grinnell asked if there was further discussion on the main motion and Councilor Shwaery asked if the Assistant Town Clerk would be stationed at the Town Office and Town Manager Carter said yes, on the floor she would be a front line individual. Councilor Shwaery asked if the Council was required to indicate in all these descriptions, for insurance purposes, the ability to lift a certain number of pounds. Town Manager Carter said that it had been in the descriptions since they were written because they were expected to lift books, chairs, paper, etc. Councilor Shwaery asked if that meant boxes of paper and Town Manager Carter said that the boxes were broken down so that just individual reams of paper needed to be carried. Councilor Shwaery asked about the possibility of a person in the supervisory role having less experience than the Bookkeeper and Town Manager Carter said he understood the purpose was to just bring them into supervisory alignment and were not reviewing and/or amending anything of substance other than that.

A ROLL CALL VOTE WAS TAKEN ON THE ORIGINAL MOTION WITH ALL IN FAVOR. MOTION PASSES 7/0.

Chairperson Grinnell said that they had been asked to suspend Council Rules and take up New Business Item No. 11 d and e before continuing with the Public Hearings. The Chair received a consensus from the Council to do so.

11. d. (100105-7) *THE KITTERY TOWN COUNCIL MOVES TO APPROVE/SIGN CERTIFICATE OF NOTICE TO THE TOWN CLERK IN ACCORDANCE WITH M.R.S.A. 30-A, SUBSECTION 4352,10(B) COUNCIL SIGNED CERTIFICATE OF NOTICE TO THE TOWN CLERK IN COMPLIANCE WITH MRSA TITLE 30-A, SUBSECTION 4352, 10(B) REGARDING NOTICE OF PROPOSED ZONING*

*CHANGES IN THE LOCAL BUSINESS, AND LOCAL BUSINESS-1 ZONING DISTRICTS, WITH CORRESPONDING ZONING BOUNDARY MAPS.*

COUNCILOR BALANO MOVED TO APPROVE/SIGN CERTIFICATE OF NOTICE TO THE TOWN CLERK IN ACCORDANCE WITH M.R.S.A. 30-A, SUBSECTION 4352,10(B) REGARDING NOTICE OF PROPOSED ZONING CHANGES IN THE LOCAL BUSINESS AND LOCAL BUSINESS-1 ZONING DISTRICTS, WITH CORRESPONDING ZONING BOUNDARY MAPS, SECONDED BY COUNCILOR SHWAERY. A ROLL CALL VOTE WAS TAKEN WITH ALL IN FAVOR. MOTION PASSES 7/0.

e. (100105-8) *THE KITTEERY TOWN COUNCIL MOVES TO APPROVE/SIGN CERTIFICATE OF NOTICE TO THE TOWN CLERK IN ACCORDANCE WITH M.R.S.A. 30-A, SUBSECTION 4352, 10(B) COUNCIL SIGNED CERTIFICATE OF NOTICE TO THE TOWN CLERK IN COMPLIANCE WITH M.R.S.A. TITLE 30-A, SUBSECTION 4352, 10(B) REGARDING NOTICE OF PROPOSED ZONING CHANGES IN THE VILLAGE RESIDENTIAL, WITH CORRESPONDING ZONING BOUNDARY MAP.*

COUNCILOR SHWAERY MOVED TO APPROVE/SIGN CERTIFICATE OF NOTICE TO THE TOWN CLERK IN ACCORDANCE WITH M.R.S.A. 30-A, SUBSECTION 4352, 10(B) REGARDING NOTICE OF PROPOSED ZONING CHANGES IN THE VILLAGE RESIDENTIAL, WITH CORRESPONDING ZONING BOUNDARY MAP, SECONDED BY COUNCILOR BALANO. A ROLL CALL VOTE WAS TAKEN WITH ALL IN FAVOR. MOTION PASSES 7/0.

Chairperson Grinnell said that they would now go back to Item No. 8.b and asked the Planning Board to come forward. Planning Board members Ron Ledgett, Doug Muir, Mr. Mangiafico and Chairman Russell White came forward and took their seats.

b. (100105-2) *THE KITTEERY TOWN COUNCIL MOVES TO HOLD A JOINT PUBLIC HEARING WITH THE PLANNING BOARD TO RECEIVE COMMENTS ON AMENDMENTS TO THE LOCAL BUSINESS (LB) AND LOCAL BUSINESS-1 (LB-1) ZONING DISTRICTS, ALONG WITH THE CORRESPONDING ZONING BOUNDARY MAPS OF THE LAND USE & DEVELOPMENT CODE.*

Chairperson Grinnell said that this had been advertised in the Portland Herald on September 28 and October 5 and opening the Public Hearing asked if there was anybody in the audience who would like to address the Council and the Planning Board.

Ms. Susan Emery of Mitchell School Lane approached with a concern about the two parts of Local Business in Kittery Point, Lewis Square and the Frisbee Market area, regarding one of the special exceptions that had been added - hotel. Her concern was that the Code didn't put any limits on it. Ms. Emery wanted to address her concerns for Kittery Point Village and Admiralty Village, both of which had neighborhood conservation designations. Ms. Emery said she understood she was talking about two small areas, however, she heard someone at the last

meeting suggest a possible LB-2 Zone as something different than the other two zones and wondered about that.

Ms. Emery said that she remained concerned about the fact that a hotel remained in the proposal without any limits to size and felt that this was inconsistent with the Comprehensive Plan where the objective was to maintain the current development pattern and character. Chairperson Grinnell thanked Ms. Emery.

Mr. Gary Litzenberger came to the podium asking why the Planning Board had changed the zone designation on 640 feet of his property rather than the 740 he had asked for and wondered if it had been a mistake.

Ms. Debbie Driscoll came to the podium saying that she also had been at the last meeting and, along with Mr. Litzenberger, wondered what the reasoning was behind rezoning the area around Route 1. She also wanted to ask about the policy concerning people stepping down from meetings if they had an interest in what was going on. As mentioned at the last meeting, Ms. Driscoll suggested that changes should be put in an order that was easier for people to comprehend what was allowed. She said she was all for anything they could do to promote business in Kittery, however, she felt that some of what was being allowed into these zones would result in the Town getting what they didn't want instead of what they did want.

Chairperson Grinnell asked if anybody else wanted to address LB or LB-1 and receiving no response, closed the Public Hearing. She then asked the Planning Board to address the issues that were brought to the podium.

Chairman White said they would do their best. He began by saying that some of the decisions or choices made might have seemed arbitrary but they were not, they were simply an imperfect product; the Board was trying to improve things, not make them worse.

Chairman White said he would first address Ms. Emery's concerns, saying that it had been their consensus that the more zones they created, the harder it would be to understand and that their thought had been a natural exclusion process would occur in certain areas. Chairman White said also, they had made hotel and inn uses a special exception, which would require a higher review process and they thought that would protect the nature of those two areas of concern.

Mr. Mangiafico said that they would potentially create another zone, perhaps a maritime zone there, and because of the size of that zone, he didn't see anything like a hotel going in there.

Chairman White said he would move on to Mr. Litzenberger's questions, saying that once again, he thought the boundary designation they came up with was an imperfect decision; they were trying to make it mostly conforming without putting other residential lots into nonconforming status – so there were interests to balance – as far as where the line was drawn exactly, the Board factored in a 50-foot zone boundary extension allowance so that the line actually could be extended further onto his property if he came and applied for a different use. That would also offer protection to the other Old Post Road residents.

Responding to Ms. Driscoll, Chairman White spoke to the policy of conflicts of interest and said he wasn't sure what that question was meant to address, that they generally followed the advice of the Town Attorney and it was his understanding that if the issue was raised, it was up

to the sitting Board to first, determine if there was an issue and second, to determine whether there was a conflict of interest with a particular item for a sitting member. He said that was their policy and they were guided by the wisdom of the Town Attorney. Chairman White said that Ms. Driscoll also commented on the order of uses and he didn't remember why they were different, except that they weren't changing an existing ordinance or changing as little as possible; he would welcome comments from Ms. Driscoll about which uses had not been clear. Ms. Driscoll said that she thought they had done a very good job at trying to add uses and she appreciated their looking at those.

Chairman White asked if the Board had any other comments and Mr. Ledgett said that on the issue of conflicts of interest, the Town Attorney had issued a letter, a copy of which could probably be obtained from Jim Noel or the Town Manager and would also be included in the Planning Board's handbook that was now being prepared.

Chairperson Grinnell said at this time the Council would ask the Planning Board to make a recommendation to the them concerning LB and LB-1. Chairman White asked the Planning Board if there were any comments they wanted to make other than what had been made. Mr. Mangiafico said he thought about what Ms. Emery brought up and that they did need to add a size to the hotel and he wanted to make sure they had a consensus that they were going to let the land size determine the use. Mr. Muir said they were all business districts and he thought what they had struck a good balance. Mr. Mangiafico said that Ms. Emery was right as far as consistency with the Plan. He said he guessed they had been looking at consistency not with the Plan but with the size and consistency of the zones. Mr. Mangiafico further said they could always look at the Frisbee Market area (since that was the larger area) at a later time, as they had previously discussed. Chairman White said he thought their recommendation was to adopt these and leave it to the Council.

Councilor Dennett said that perhaps a member of the Council would need to step down with regard to one of the zones but not both and asked if they could be divided. Chairperson Grinnell asked if he would like to make a motion for one of those and Councilor Dennett said no. Councilor Guy said that when they voted on Main Street, which fell into the LB Zone, he would be stepping down and abstaining from dialogue.

**COUNCILOR SHWAERY MOVED TO ADOPT AMENDMENTS TO THE LOCAL BUSINESS (LB) ZONING DISTRICT, ALONG WITH THE CORRESPONDING ZONING BOUNDARY MAP OF THE LAND USE & DEVELOPMENT CODE, SECONDED BY COUNCILOR BALANO.**

Chairperson Grinnell asked for discussion and Councilor Dennett said he had one very minor change in the introductory language on LB where it referenced Pepperrell Road and Pepperrell Terrace. He said that, unlike Saco, who spelled Pepperrell with one "r," it should have an added "r," so he wanted to make a motion to that effect.

**COUNCILOR DENNETT MOVED TO CHANGE THE SPELLING OF PEPPERRELL ROAD AND PEPPERRELL TERRACE IN THE LB ZONE INTRODUCTORY LANGUAGE FROM "PEPPERELL" TO "PEPPERRELL," SECONDED BY**

COUNCILOR BALANO. A ROLL CALL VOTE WAS TAKEN WITH THE FOLLOWING RESULT: 6 IN FAVOR, 1 ABSTENTION. MOTION PASSES.

Councilor Dennett continued, saying that a reference to the line going down to Maple Avenue had been totally left out and he would like to move to amend the wording.

COUNCILOR DENNETT MOVED TO AMEND THE WORDING OF THE FIRST SENTENCE OF THE INTRODUCTORY OF LOCAL BUSINESS (LB) AFTER THE WORDS "INCLUDING THE TRAFFIC CIRCLE" AS FOLLOWS: "PLUS THE EAST SIDE OF OLD POST ROAD FROM THE TRAFFIC CIRCLE TO A POINT 740 FEET SOUTH OF THE CENTER LINE OF MAPLE AVENUE."

Councilor Dennett said he realized that the Board and the Council were somewhat different in that the Board went by metes and bounds and the Council went by maps. He felt that they should change that some day but thought the wording needed to be there because he would hate to have to rely on the zone map without some reference. Councilor Shwaery said that the recommendation was not for 740 feet and Councilor Dennett disagreed.

MOTION SECONDED BY COUNCILOR SHWAERY.

Councilor Brock asked Planning Board Chairman White what the basis was for using 640 feet and Chairman White said that when they looked at the map, they realized 740 feet would very likely impact future properties since that area has a high potential of both commercial and residential uses; they were bringing in four additional lots, two of which wanted the change but the others would have something done to them they didn't want. Councilor Dennett addressed the Chair saying that he understood two lots did not ask for it but apparently, neither did they object to it; there had been enough publicity that if someone did not want it, they would be there advising them so. Discussion continued. Councilor Brock addressed the Chair, saying that he thought what property owners thought about the change was important but it was not the only important thing, that it was the job of the Planning Board to see the broader view and it sounded like they had done that. Discussion commenced on Councilor Dennett's motion. Councilor Balano said that there had been a public hearing where folks' concerns were raised and the Planning Board went back and made an adjustment, albeit not the exact adjustment that was called for, but what was, in their view, in keeping with the Comprehensive Plan so he guessed he would support the Planning Board's recommendation in its entirety and not amend this proposal.

Chairperson Grinnell said she had not been at a workshop Councilor Dennett had referred to and needed some clarification, asking if after the workshop everyone had been at 740 feet? Mr. Mangiafico said that the decision had been split; that he had wanted to use 300 feet on the west side of Route 1, which would encompass most of Mr. Litzenberger's lot in the LB and the upper end keep on Old Post Road, so 640 feet had been a compromise so as not to affect as many existing residences. Chairman White said that at the joint workshop of the Planning Board and the Council, they used a map on which they drew a line, which changed three different times. The current line leaves the "notch" on the property that extends to the south out of the LB District and leaves it in the Residential District. To answer the Chair's question, what they agreed on was based on the desire to provide a buffer between the Commercial District and the LB and the existing residential neighborhood. Chairperson Grinnell asked if there was further discussion. Chairman White clarified that there was the 640 feet and then there was a 50-foot

leeway so that it could be 690 feet. He went on to say that Mr. Litzenberger would have to request that. Councilor Balano questioned the wording of the proposed amendment. Chairperson Grinnell said that the amendment to vote on said 740 feet. Councilor Balano asked if it was worded 740 feet or 640 feet and Chairperson Grinnell confirmed 740 feet. Councilor Dennett said he would propose another motion.

COUNCILOR DENNETT MOVED TO AMEND THE WORDING OF THE FIRST SENTENCE OF THE INTRODUCTORY OF LOCAL BUSINESS (LB) AFTER THE WORDS "INCLUDING THE TRAFFIC CIRCLE" AS FOLLOWS: "PLUS THE EAST SIDE OF OLD POST ROAD FROM THE TRAFFIC CIRCLE TO A POINT 640 FEET SOUTH OF THE CENTER LINE OF MAPLE AVENUE," SECONDED BY COUNCILOR SHWAERY.

Councilor Brock confirmed that the Motion was consistent with the Planning Board's decision and Chairperson Grinnell asked if there was any further discussion.

A ROLL CALL VOTE WAS TAKEN WITH ALL VOTING MEMBERS IN FAVOR, WITH COUNCILOR GUY ABSTAINING. AMENDMENT PASSES AS FOLLOWS: 6 IN FAVOR, 0 OPPOSED, 1 ABSTENSION.

Councilor Dennett said there was one final item and drew attention to Page 3 of the proposal listed under No. 2) Roofs where it called for roof colors to be muted. His concern was that there was nothing that indicated what was meant by "muted." Councilor Dennett said that this paragraph directs people to the Design Handbook and when you looked at the Design Handbook, it said to see the Land Use and Development Code for specific requirements, so there seemed to be a closed loop here. He also raised a concern that this issue had applied to the mixed-use zone and now it popped up in the LB and LB-1 Zones without any guidelines from the Design Handbook, which was a publication that had not been approved by the Council. Councilor Dennett thought this would be a horrible mess for the CEO so he wanted to move that muted roof colors be deleted.

COUNCILOR DENNETT MOVED THAT THE WORDING CONTAINED IN THE PROPOSED AMENDMENT TO LOCAL BUSINESS (LB) REFERENCING ROOFS: "ROOF COLORS MUST BE MUTED (SEE DESIGN HANDBOOK FOR EXAMPLES)" BE DELETED, SECONDED BY CHAIRPERSON GRINNELL.

Councilor Brock said that he heard Councilor Dennett make two points in this regard and thought perhaps there needed to be further clarity about what a muted roof color was but, in general, he thought people saw it as being consistent with the zones in which they appeared and that it was a good thing. He did not believe they wanted a HoJo orange roof in their Town and liked what the Planning Board had recommended. Councilor Brock said that perhaps the Planning Board could clarify what was meant by a muted roof color. Chairman White said that they had talked about this issue and actually had hoped they could simply slip it through. He said that perhaps they could make a list of what they did not want - like screaming orange or yellow - that it was like you knew it when you saw it, and he found that people's perception of color (what was bright and what was not) proved to be different.

Chairman White said that the proposal was certainly an imperfect product but he didn't think they could propose something tonight; that they could work on it and come back before the Council with any problem areas. Mr. Ledgett said that the Board controlled the Design Handbook so they could get rid of any reference to sending people back to the Code and he agreed with Councilor Dennett that they should let it stand on its own. He said the other thing was that they considered the mixed-use zone as a standard to move forward, not other zones, so in some places they thought it appropriate and others not. Chairperson Grinnell suggested that they could leave in roof colors must be muted and not say to see Design Handbook. Mr. Ledgett said no, they could fix the Design Handbook and not say to go back to the Code.

Councilor Dennett said the only problem he saw as that until there was a totally specific and understandable parameter, the CEO was still going to go crazy if there was anything out of the ordinary. He reiterated that the Handbook guidelines were simply that, guidelines, and had not been approved by Council, so if the applicant says, I'm putting on such and such a color and the CEO has only the word "muted" to go on, they were certainly asking for trouble. Chairperson Grinnell said she was still a little stuck as to the Handbook. Chairman White said he thought it was a good recommendation to change the Handbook describing what they meant by muted and supposed people could say, well, this is not an ordinance, but he thought they should leave the reference to the Handbook and send back to the ordinance in that particular instance.

Councilor Balano said that looking at all the references, there were a lot of references to go to the Design Handbook, so he liked the Planning Board recommendation, since muted would mean something slightly different to everyone, so he thought it made sense to leave it as is and let the Board make a change to the Handbook. Councilor Shwaery said that it was not possible to define muted because it was subjective and he was really not confident leaving that subjectivity up to one person, the CEO. He said he was all for protecting roof colors not being vibrant.

Chairperson Grinnell asked if there was any further discussion and Council Heilshorn asked if Council could have a commitment from the Planning Board that they would look for a color chart and make that part of the Handbook; the Planning Board agreed. Chairperson Grinnell asked if there was further discussion and said that the amendment was to remove the sentence that roof colors must be muted.

**A ROLL CALL VOTE WAS TAKEN. DUE TO LACK OF MAJORITY VOTE,  
MOTION FAILS AS FOLLOWS: 1 APPROVED, 5 DENIED, 1 ABSTENSION.**

Chairperson Grinnell asked if there was any further discussion on the main Motion. Councilor Guy abstained from voting on this Motion and sat out. Councilor Brock asked the Chair if he could pose a question to Ms. Emery and Chairperson Grinnell said yes, he could. Councilor Brock asked Ms. Emery concerning her suggestion of limitations in size did she have a proposal in that regard? Ms. Emery said no, she thought that was within the Planning Board's expertise.

Council Shwaery then said to Planning Board Chairman White that he understood they had essentially three areas that were similar but not identical and there was an intention for future growth, which worked in some zones but in smaller areas there was eventually a problem. He wondered if there was some way, without creating a whole separate zone, to ensure protection for the smaller zones. He said he looked at what they had done in Downtown Portsmouth and would be concerned, even in special exceptions, to allow that in the Kittery Point area.

Chairman White said he didn't see how that could be done without breaking it out and making it a micro small zone area. He said that to his knowledge there was a bed and breakfast in that area that had been there for years and that was the type of use that would fit into that zone. If someone came to them with a hotel or motel plan, there simply was no room to put one in since they had height limitations and setbacks. He said that in Portsmouth there were no setbacks so they could actually go right to the lot line with the building, whereas it would be impossible to put any large hotel or motel in that zone.

Councilor Brock asked Chairman White how many stories were allowed and Chairman White said that there was a building height limitation of 40 feet. Mr. Ledgett explained that the Board put the use in special exception, which would automatically bring the case before the Zoning Board for review, and the way to think about it was to look "down stream." A number of communities, he said, had gone from "special exception" to "conditional use" and then provided performance standards for specific use and they hadn't gone there yet but what they were doing was relying on special exception to characterize whatever project needed further review; so in their efforts to improve the Code, there were more perfect steps they could take but their judgment here had been they were getting enough protection at this juncture. Could they do a better job? Yes, and would continue to work toward a more perfect solution. Councilor Brock said, so this is a step toward that perfect solution? Mr. Ledgett said yes and Councilor Brock thanked him.

**A ROLL CALL VOTE WAS TAKEN ON THE MOTION TO ADOPT THE AMENDMENTS TO THE LOCAL BUSINESS (LB) ZONING DISTRICT, WITH ALL VOTING MEMBERS IN FAVOR. MOTION PASSES AS FOLLOWS: 6 IN FAVOR, 0 OPPOSED, 1 ABSTENSION.**

**COUNCILOR SHWAERY MOVED TO ADOPT THE AMENDMENTS TO THE LOCAL BUSINESS-1 (LB-1) ZONING DISTRICT, ALONG WITH THE CORRESPONDING ZONING BOUNDARY MAP OF THE LAND USE & DEVELOPMENT CODE, SECONDED BY COUNCILOR BALANO.**

Councilor Dennett said that he would like to first make this one motion concerning Page 3 of the proposal.

**COUNCILOR DENNETT MOVED THAT THE WORDING CONTAINED IN THE PROPOSED AMENDMENT TO LOCAL BUSINESS-1 (LB-1) REFERENCING ROOFS: "ROOF COLORS MUST BE MUTED (SEE DESIGN HANDBOOK FOR EXAMPLES)" BE DELETED, SECONDED BY COUNCILOR GUY.**

Councilor Dennett said he would leave it to his fellow councilors to decide. Councilor Heilshorn said he just wanted to say that he found himself more afraid of what would happen if they took it out rather than if they left it in. Councilor Dennett asked him what his fear was and Councilor Heilshorn replied HoJo orange. Councilor Dennett mentioned the beauty of places like the Czech Republic, which had many colorful roofs. He didn't find colorful roofs objectionable and thought that would rather remind people of old European styles. Councilor Balano said that the philosophy was interesting but would say they were not the Czech Republic, they were Maine and they were trying to keep the character of Maine which brought to mind Cape Cod style buildings, muted roof colors, white houses and he respectfully disagreed. He

said he had seen bigger cities with orange roofs and colorful facades and things but they were not that. Councilor Guy asked, are we saying that if I was in the LB-1 Zone and wanted to go with a colorful shingle and was conforming in every respect, I wouldn't be able to put the color roof I wanted on my own home?

A ROLL CALL VOTE WAS TAKEN. DUE TO LACK OF MAJORITY VOTE, MOTION FAILS AS FOLLOWS: 2 IN FAVOR, 5 OPPOSED, 1 ABSTENSION.

Chairperson Grinnell called for a vote on the original motion to adopt amendments to LB-1.

A ROLL CALL VOTE WAS TAKEN, WITH ALL IN FAVOR. MOTION PASSES 7/0.

*c. (100105-3) THE KITTERY TOWN COUNCIL MOVES TO HOLD A JOINT PUBLIC HEARING WITH THE PLANNING BOARD TO RECEIVE COMMENTS ON AMENDMENTS TO THE VILLAGE RESIDENTIAL (VR) ZONING DISTRICT, ALONG WITH THE CORRESPONDING ZONING BOUNDARY MAP OF THE LAND USE & DEVELOPMENT CODE.*

Chairperson Grinnell said that this had been advertised in the Portland Herald and she would now open the Public Hearing and anyone who wished to address the Council and the Planning Board should please go to the podium.

Susan Emery returned to the podium. Ms. Emery said that they were again speaking about neighborhood conservation designations and areas that were relatively fully developed. She noted that the proposed amendment reinforced the intention to maintain residential character so she did not see adding a hospital as fitting into the description by the Comprehensive Plan for this area so she would be opposed to adding a hospital. Ms. Emery said she was greatly concerned about putting a hospital in an area with many children and small roads. She also had great concerns about elder care, nursing and convalescent homes, although she thought it might be a matter of scale and something like an elder care facility where people resided might fit if it were not too large but she really didn't see how a hospital would fit. Ms. Emery said she would greatly appreciate the Board speaking to that point.

Ms. Emery said "what you allowed, you got" because they saw this happen at Badger's Island where the Town zoned for condos and that's what they're getting. Changes were made in the Kittery Foreside and now they're getting some things the people of the Foreside Committee didn't want. Ms. Emery said she would ask the Planning Board and Council to look at additions and assume they would get them and maybe get a lot of them. There was, she said, a "knock down" mindset that was prevalent so if one thought well, there's not much to develop, we have seen with Badger's and Foreside, buildings were removed and moved - so whatever you zone for, whatever is most profitable, is what you're going to get and is this what we want?

George Lombardi came to the podium saying he had lived on the corner of Manson and Admiralty Village for 27 years and in Kittery for 30. Mr. Lombardi said that he actually knew his neighbors and that they already had a facility for elderly care at the top of the hill and had just started to build off of Bush Street multi residential establishments, so he didn't know where they

would fit something that took 10,000 feet unless you destroyed the neighborhood by buying up several lots side by side. He also said that they had unfinished sidewalks that caused problems for his family and so he took issue with almost all the changes.

Lisa Comeau came to the podium saying she had been a proud private property owner for one decade and counting. Ms. Comeau said she wanted to congratulate Susan, who had said "you get what you zone for," and Ms. Comeau said she prayed the Council would keep that in mind. She said she wanted to ask why people couldn't simply leave Admiralty Village alone? Why were they there discussing changing a residential neighborhood to give business owners and developers an opportunity to come in and ruin it? Ms. Comeau said this looked to her like another attempt to come into Admiralty Village and completely change the character of a residential area forever. She said they didn't need a convenience store and when she did errands she could walk down a wooded path and that was why she bought her house more than ten years ago. Ms. Comeau wanted to call attention to the existing language that stated that the purpose of this zone designation was to recognize the specialness of neighborhoods like Admiralty Village and if the Board thought improvements were needed, to give them sidewalks. She said it was an old fashioned neighborhood and that was the way they wanted it to remain. Ms. Comeau also voiced concerns about opening the floodgates to non-profit organizations that could work their way around zoning requirements and end up creating a mixed-use zone. Ms. Comeau ended by saying what she would ask would be that, as they considered this, to ask themselves how they would feel if they lived in Admiralty Village and opened the Portland Herald and read that someone was planning to open a convenience store next to your house? She asked that common sense wisdom be used in the decision to change the character of Admiralty Village forever and please not to do it.

Brett Patten came to the podium and said he had been at previous meetings on LB and LB-1 but did not speak because he agreed completely with them. However, he said, citizens then did not have the opportunity to defend their opinions. He said although he hadn't spoken on LB and LB-1, there had been many amendments and if one of them had passed that he had a problem with, he would not have had a chance to defend his property. Mr. Patten said this would not be his last meeting and if there was an amendment passed by the Council and all of sudden it affected him, he would like to have time to present his case.

Kathleen Barry came forward and said the reason she bought her house was because it was a neighborhood and she could bring up her daughter there. She did not understand the extent of what potentially affected where she lived but she had put enough money into her house and would hate to have different businesses move in and take that away. Ms. Barry wondered about her legal options and asked if they were saying she could turn her residence into a multi residential home? If business is allowed in there, she said, she would want an opportunity to be able to afford to get out of there.

Chairperson Grinnell said they would try to answer that question for her.

Debbie Driscoll came forward and said she appreciated very much what Lisa Comeau had said, that the changes could change the Village forever. Ms. Driscoll wanted to address what they were saying about 5,000 square feet under special exception becoming 10,000 square feet because of the Rec Center and as much as she would like to see a rec center, if it came to ruining

an area, it was not a good exchange. She also spoke to the issue of parking, which she really didn't think people had looked into and she was so afraid that they were going to get themselves into something they couldn't get out of in that area.

Chairperson Grinnell then closed the Public Hearing and Councilor Dennett suggested that a recess be called. *Meeting recessed at 8:48 p.m.*

*Meeting resumed at 9:02 p.m.* Planning Board Chairman White said he would like to generally address some of the comments that had been made and then the Board would discuss any changes they might make. Chairman White said that the proposals to the existing ordinance did not have commercial uses listed, that none had been added and no convenience store or other retail uses were added to that zone. In response to other comments centering around the Comprehensive Plan and its intent and purpose, the additions the Board made were what they had hoped fell into those definitions but they might have gotten that wrong and he thought that in order to respond to this, some fundamental policy changes might be needed, which would be by Council.

Chairman White said that with regard to permitted uses, items 1 through 5 were exactly the same, the only change was item 6 and he asked the Board if they wanted to change item 6. Mr. Mangiafico said that 5,000 sq. ft. was a large area. There was some discussion concerning how the Board arrived at 5,000 sq. ft. Mr. Ledgett said he believed York Hospital's recommendation had been for 4,000. Town Planner Noel said it was 2,500.

Mr. Mangiafico said that they should first make sure everyone was comfortable with the use of hospital and schools. Mr. Muir said that he thought item 6 had been created out of a previous 5. He said they thought it was small enough but the view had not been unanimous that it was a good decision. Mr. Ledgett said that originally, it was proposed to add a special exception that included what now is item 6, then they received comments that the proponents of the Recreation Center and the deal with York would prefer to have it as a permitted use and they decided that if it was small enough, they could do that but some of us thought it was not a good idea and some did. He wondered if they should move item 6 back to special exceptions and then just deal with permitted use or should they consider that a fully permitted use of 5,000 sq. ft. for those three? There was discussion concerning how these facilities benefited the particular communities they were in.

Chairman White said he would not be opposed to leaving it to the Council to make a policy change that would create a second level of review with the Zoning Board of Appeals since sometimes their criteria were different from theirs and the intention would be to provide more protection to the community. Mr. Ledgett said he would agree with that but felt they needed to talk about 5,000 sq. ft. vs. 2,500 sq. ft. Chairman White said, in other words, change the intensity level. Mr. Ledgett said that when they decided on that number, they didn't want to encourage acquisition of dwelling units to put in that kind of facility and they came up with 5,000; that was a judgment call, he said, it could be smaller.

Mr. Muir said he thought it was less desirable to put item 6 under special exceptions and thought it should be left as permitted use. Also, changing the number he didn't think was a good idea because they were really talking about one proposal and changing the ordinance for that one proposal didn't make sense to him. Chairman White said they were also talking about other facilities and Mr. Muir said that, in any case, he thought this was an issue for the Council.

Chairperson Grinnell suggested that they could move item 6 to special exceptions, which would then eliminate item 5 under special exceptions. Mr. Ledgett said originally, it was all in

special exceptions and if they moved item 6 to special exceptions, did they want to deal with the three options? Chairman White said he didn't think he wanted to get behind one personally and that he would move to go to special exceptions. Mr. Ledgett asked, and strike item 5? Mr. Mangiafico said he would agree and Mr. Muir added he would support that.

Chairman White said that with regard to the need for affordable housing, there were a couple of apartment buildings that were adjacent to Admiralty Village and a couple that had been renovated that were, by definition, affordable housing and the Navy housing also addressed affordable housing. He wondered if adding that as a permitted use would then encourage tear down of the duplex family neighborhood and suggested putting a size limitation on that. He said the reason he was not in favor of removing it entirely was because it was called for in the Plan. Mr. Ledgett said he would like to re-raise the question of size limitations on multi-use residential; the core issue being tearing down existing single family and two unit dwellings. Mr. Mangiafico said that 4,000 sq. ft. would still be needed so density would not be increased; that you're never going to eliminate the potential but you haven't added to the density at all. Mr. Ledgett said so, item 4 stays, item 5 is struck and that brings us to 6. Chairman White said he was not going to argue about getting rid of item 6 and asked if there was any other business before they put it back to Council for deliberation.

Councilor Shwaery explained that, as the Council rep to the Rec Center Planning Committee, the reason he suggested hospital needed to be added to this zone was to afford York Hospital the square footage they needed, otherwise the rec center would have to go before the Zoning Board to prove their case. The reason he wanted two levels was so that if in two years York Hospital finds they needed another office, they would have to go back and take another look at it. He was not sure where 5,000 sq. ft. came from when they asked for 2,500, which was what he had pushed for. Councilor Shwaery said that if this permitted use, everyone needed to understand that the rec center would have to go before the Board of Appeals. Chairman White said that another way would be to remove the word hospital. Councilor Shwaery said he was just adding comments before they made deliberations. Chairman White asked if he had received the email sent to him and Councilor Shwaery said that it was the footage he was concerned with and he didn't like the term hospital. Chairman White asked how about outpatient hospital facility. Councilor Shwaery said that obviously, there was concern of the public here to take into consideration and if they could exclude that and allow a physical therapy center, then he thought they could please all parties.

Councilor Heilshorn suggested they keep B.6 where it was and keep C.5 where it was but change the numbers so that in B.6, the number would be 2,500 sq. ft., so that in C.5, 5,000 would change to 2,500 and 10,000 would change to 5,000 and, again, keep the smaller size in permitted uses. He said that would cut special exceptions in half, but keeps it in there so there is potential for limited expansion and the scale is still fairly discretionary. Chairman White said his suggestion would be 3 for lower and 6 for upper.

Chairman White said that he thought their job as a Planning Board tonight was laying out what the Board was addressing – a fundamental policy question. If you go back and eliminate everything and keep the neighborhood as is, that's a policy question and he was not sure it was within the Comprehensive Plan to do nothing, so if they could address some improvements without destroying the neighborhood, that's what they would like to do.

Chairperson Grinnell said the Council was waiting to hear what the Board was going to do and Chairman White asked the Board if they wanted to take out item 6, restore item 5 and basically change size but leave it as is? Mr. Ledgett said that the point had already been made that the reason item 6 was there was because the Town clearly voted to have York Hospital as a

component of the Rec Center within the Comprehensive Plan's direction and the direction of the citizens of the Town. Chairman White said okay, they would implement that; they would choose 5,000 sq. ft. because that was small enough to protect the residential character of the neighborhood. The comments they got tonight were really raising the concern that that was too big a number, there were real houses out there that would be jeopardized if permitted use was that size. He said that he personally did not see a problem with the Rec Center and York Hospital because what was distinctively different about it was that it brought with it the voters of the Town so there was no question about its appropriateness. Mr. Mangiafico said that the question was, was the vote appropriate for that site and that's why he would like to keep it in special exception. Chairman White said they could recommend either way and the Council might not agree. Mr. Ledgett asked what they were going to move and Chairman White said he would limit permitted use to five and move item 6 to special exceptions, move item 6 up and strike item 5. Chairman White asked for a consensus and gave the meeting over Council.

Chairperson Grinnell thanked Chairman White and asked if someone would like to make a motion.

**COUNCIL SHWAERY MOVED TO ADOPT AMENDMENTS TO THE VILLAGE RESIDENTIAL (VR) ZONING DISTRICT, ALONG WITH THE CORRESPONDING ZONING BOUNDARY MAP OF THE LAND USE & DEVELOPMENT CODE, SECONDED BY COUNCILOR BALANO.**

Chairperson Grinnell said she would make an amendment.

**CHAIRPERSON GRINNELL MOVED TO AMEND THE AMENDMENTS TO THE VILLAGE RESIDENTIAL (VR) ZONING DISTRICT BY MOVING ITEM 6 UNDER PERMITTED USES TO SPECIAL EXCEPTIONS AND DELETING NUMBERS 5 AND 6 IN SPECIAL EXCEPTIONS, SECONDED BY COUNCILOR SHWAERY.**

Chairperson Grinnell asked for discussion and Councilor Dennett said that he would like to share his opinion that this had been tough on the Planning Board, tough on the citizens and tough on the Council and it was all the fault of the Maine Legislature who, in their infinite wisdom, gave them a Comprehensive Plan that says every ten years the State will come and say you can't leave anything the same. So, what we are seeing, in his opinion, and a lot more to come in different zones, we will continue to see. He would agree with many of the speakers that they had a very unique Town but in seven more years, they may need to go through this again so, all of those who had complaints and problems, think about getting rid of their legislators and life would be good again.

Councilor Balano said he heard comments specific to square footage and was not sure if they had the opportunity to discuss it now. Chairperson Grinnell said they had to wait until they voted on the amendment. Councilor Balano asked, so, I can't make an amendment to an amendment? Councilor Dennett said yes, he could. Councilor Balano said that was what he thought and right now there was an amendment to move item 6 to special exceptions and delete items 5 and 6. Chairperson Grinnell said she just thought it was cleaner and if he wanted to amend the footage, he could do that. Councilor Brock said he had concerns similar to those of Councilor Balano concerning the footage. He was concerned about using the 5,000 sq. ft. number since the York Hospital proposal was for 2,500 and, though he understood that they didn't vote to the foot, he still had issues with it. Council Brock also said that what the voters of

Kittery had asked for was an outpatient facility. He said he was a little uncomfortable voting as it was proposed so he wanted to again raise the question, was it appropriate to amend again to eliminate the size, even as a special exception? Chairperson Grinnell asked if he would like to amend the amendment and Councilor Brock said yes, he would.

**COUNCILOR BROCK MOVED TO AMEND ITEM 6 IN THE AMENDMENT TO THE AMENDMENTS TO THE VILLAGE RESIDENTIAL (VR) ZONING DISTRICT BY STRIKING THE 5,000 SQUARE FEET ALLOWANCE AND REDUCING THAT NUMBER TO 3,000 SQUARE FEET, SECONDED BY COUNCILOR BALANO.**

Chairperson Grinnell asked if there was discussion on that amendment to the amendment and Councilor Dennett asked Council Brock for a little more background on changing 5,000 to 3,000, presuming it ultimately would go into special exception zoning. Councilor Brock said he was considering what it would take for the York Hospital facility to be built in that area because that's what the voters said they wanted but he was very concerned about the tear downs because the higher square footage you allow, the more it would encourage that process.

Councilor Heilshorn said that generally speaking he was in line with everybody on this but had to voice a concern which went back to why item 6 winds up not permitted uses; they were going to add more hoops the Rec Center had to jump through. He asked if they were talking about just a hearing before the Zoning Board, when would it be? Were there more people? Were they stalling this essentially? He said his idea of changing the number in 6 was to avoid adding extra steps to this process. Councilor Brock said that if the only issue was the York Hospital facility, he might agree with keeping it in permitted uses but as Councilor Balano had said, this was a general ordinance, which would apply not only to York Hospital but also to a school and/or additional facilities. He said that as a special exception, it would also allow members of the community to voice their concerns. Councilor Balano called for a Point of Order – they were talking about 5,000 to 3,000, they would have an opportunity to move it to special exception. Councilor Heilshorn said that his original intent was not to have to make the Rec Center go before the Zoning Board but hearing the concerns that had been voiced, he would move this to special exception. His intent, he said, was just to give York Hospital what they needed and not a great deal more and, therefore, he would support going from 5,000 to 3,000. He also said he thought it would be a fairly simple procedure to go before the Zoning Board because they had town voters behind them so it would be hard for the Zoning Board to deny them. In the future, if they found they needed to expand, he thought they needed to revisit the ordinance and have Admiralty Village people weigh in on it.

Chairperson Grinnell asked if there were any additional discussions on the Amendment to the Amendment and Councilor Dennett said very quickly, that this was a case where contract zoning would have worked well. Councilor Shwaery said he might not be so protective about this if the term hospital wasn't so general. Councilor Dennett said that perhaps Councilor Shwaery would like to move the amend the term hospital to outpatient clinic or something like that. Planning Board Chairman White said how about patient medical facility and Town Manager Carter suggested Wellness. Chairperson Grinnell asked if Council wanted to vote on the 3,000 sq. ft. in the amended motion.

**A ROLL CALL VOTE WAS TAKEN WITH ALL IN FAVOR. MOTION PASSES 7/0.**

Chairperson Grinnell said so, in item 6, the 5,000 has been changed to 3,000 by that vote and now we will go back to the amendment where item 6 is moved to special exceptions and items 5 and 6 in special exceptions are deleted.

**A ROLL CALL VOTE WAS TAKEN WITH ALL IN FAVOR. MOTION PASSES 7/0.**

Chairperson Grinnell said now we are back to the main motion and asked if there was further discussion. Councilor Heilshorn said he had a concern with C.4, multi-unit residential dwellings. He said he would like to hear more on that, he wasn't sure if what they heard about restrictions from other directions would be enough to prevent the dreaded "chicken coop" phenomenon, and maybe he would throw out a limit of eight units just as a point of discussion. Councilor Dennett said he would have to resist that, he thought Chairman White said multi-units were being encouraged and if we took that out, all military houses would be made nonconforming. He said also that one person said she was confused and might want to change hers. Also, he said, remembering the 4,000 square foot minimum permit, he thought there was a safe guard in there already. Councilor Shwaery said he would add that this was a parallel situation to the hotel in LB and he thought the setbacks and parking spaces would be prohibitive and in the same way you could put a hotel in Lewis Square but it wouldn't be a big hotel and most people wouldn't economically entertain the idea. Councilor Heilshorn said his concern was, were there enough? Councilor Brock said he shared Councilor Heilshorn's concern, that the Comprehensive Plan said a lot of things and multi-units should be encouraged but not to the extent of knocking down existing houses and asked what prohibits that with no size limits on multi-unit dwellings, he had heard things that might apply but nothing definitive. Councilor Shwaery said he would just mention that it was not their role to prohibit because it was in the Plan. He said it was in special exception so they had to rely on that special exception if people wanted to buy two lots and tear them down. Chairperson Grinnell said then they would have to have 8,000 square feet to put two houses back. There was further discussion concerning multi-unit residences in the area and Councilor Heilshorn asked if someone could tell him what the larger number of units were in that particular area. Councilor Dennett said everything was a duplex except for the military housing which might be four to six. Councilor Heilshorn said he was not saying they go against the Plan or get rid of multi-unit housing but if the biggest conglomeration was six, he didn't see the problem with setting a limit because it didn't sound likely that someone would buy up a log of homes but the potential of it bothered him. Councilor Dennett said they had shore lands zoning but the biggest problem was when the military put housing in, let the area but still retained ownership of the land. Notwithstanding what they liked or disliked, it was Maine law that required that all their ordinances agree with their Comprehensive Plan and when they got into something that showed inconsistency, they would be in court.

**COUNCILOR BALANO MOVED TO EXTEND THE MEETING TO NO LATER THAN 11:00 P.M., SECONDED BY COUNCILOR SHWAERY. A ROLL CALL VOTE WAS TAKEN WITH ALL IN FAVOR. MOTION PASSES 7/0.**

Councilor Guy said he wanted to make a quick statement, that out of the hundreds of people in the areas affected by these amendments, they had three that live there here tonight who had something to say and made a significant impact to protect their neighborhood – good job!

A ROLL CALL VOTE WAS TAKEN WITH ALL IN FAVOR. MOTION PASSES 7/0.

9. DISCUSSION

a. *DISCUSSION BY MEMBERS OF THE PUBLIC (three minutes per person)*

Chairperson Grinnell asked if anyone had comments. Debbie Driscoll said she would just like to say they all did a great job.

Judy Spiller of Kittery Point said she was a candidate for Town Council and hoped she would deliberate as wisely as she had seen the Council deliberate tonight. She said she understood they would be holding a candidate's evening and wanted to thank them for doing this.

Lisa Comeau said she would like to thank all of them; it was so heartwarming to see them actually listening to what the people were saying. She said she did wish they could have changed that hospital to something more specific but you guys rock. She also said she wanted to thank the Planning Board, she knew they worked hard on the amendments and she was sorry to have chopped them up, but that was democracy.

Chairperson Grinnell asked the Planning Board if they would like to adjourn and they did so.

b. *Chairperson's response to public comments*

Chairperson Grinnell said if no other members of the public had anything, they were going to move on and fly through their agenda.

10. UNFINISHED BUSINESS – None

11. NEW BUSINESS

a. (100105-4) *THE KITTERY TOWN COUNCIL MOVES TO APPROVE THE DISBURSEMENT WARRANTS.*

Chairperson Grinnell said she had the Town warrant.

COUNCILOR DENNETT MOVED TO APPROVE THE DISBURSEMENT WARRANT, SECONDED BY COUNCILOR SHWAERY. A ROLL CALL VOTE WAS TAKEN, WITH ALL IN FAVOR. MOTION PASSES 7/0.

b. (100105-5) *THE KITTERY TOWN COUNCIL MOVES TO APPOINT JOYCE TOBEY AS WARDEN AND SANDRA LUTTS AS DEPUTY WARDEN AND APPROVE THE OPENING OF THE POLLS AT 8:00 A.M. FOR THE NOVEMBER 8<sup>TH</sup> STATE REFERENDUM AND MUNICIPAL ELECTION, AS RECOMMENDED BY THE TOWN CLERK.*

COUNCILOR BALANO MOVED TO APPOINT JOYCE TOBEY AS WARDEN AND SANDRA LUTTS AS DEPUTY WARDEN AND APPROVE THE OPENING OF THE POLLS AT 8:00 A.M. FOR THE NOVEMBER 8<sup>TH</sup> STATE REFERENDUM AND MUNICIPAL ELECTION, AS RECOMMENDED BY THE TOWN CLERK, SECONDED BY COUNCILOR HEILSHORN. A ROLL CALL VOTE WAS TAKEN, WITH ALL IN FAVOR. MOTION PASSES 7/0.

c. (100105-6) *THE KITTERY TOWN COUNCIL MOVES TO APPROVE/SIGN THE MUNICIPAL WARRANT FOR THE NOVEMBER 8<sup>TH</sup> MUNICIPAL ELECTION.*

COUNCILOR HEILSHORN MOVED TO APPROVE/SIGN THE MUNICIPAL WARRANT FOR THE NOVEMBER 8<sup>TH</sup> MUNICIPAL ELECTION, SECONDED BY CHAIRPERSON GRINNELL. A ROLL CALL VOTE WAS TAKEN, WITH ALL IN FAVOR. MOTION PASSES 7/0.

d. *(REVIEWED OUT OF ORDER)*

e. *(REVIEWED OUT OF ORDER)*

f. (100105-9) *THE KITTERY TOWN COUNCIL MOVES TO APPOINT JOHN MC CARDLE TO THE SHELLFISH CONSERVATION COMMITTEE UNTIL 4/1/06 (replacing Jeff Hazen).*

Councilor Heilshorn addressed the Chair, saying that “Jack” McCardle was a good interview, that they had a great talk and he highly recommended him, hence he would move the appointment.

COUNCILOR HEILSHORN MOVED TO APPOINT JOHN MC CARDLE TO THE SHELLFISH CONSERVATION COMMITTEE UNTIL 4/1/06, SECONDED BY COUNCILOR SHWAERY.

Chairperson Grinnell said she had already interviewed someone to take Jeff Hazen’s place so how come he was being replaced again? Town Clerk Maryann Place said she would have to check on it. Chairperson Grinnell said she really needed to have that checked because she definitely remembered his being replaced. In the meantime they would move on to item g.

g. (100105-10) *THE KITTERY TOWN COUNCIL MOVES TO SCHEDULE A PUBLIC HEARING ON OCTOBER 24<sup>TH</sup> TO RECEIVE COMMENTS ON PERMITTING A ONE YEAR DEMONSTRATION TO REMOVE THE TIDAL RESTRICTION IN SPRUCE CREEK AT U.S. ROUTE ONE, AS PROPOSED BY THE SPRUCE CREEK ASSOCIATION.*

COUNCILOR DENNETT MOVED TO SCHEDULE A PUBLIC HEARING ON OCTOBER 24<sup>TH</sup> TO RECEIVE COMMENTS ON PERMITTING A ONE YEAR DEMONSTRATION TO REMOVE THE TIDAL RESTRICTION IN SPRUCE CREEK AT U.S. ROUTE ONE, AS PROPOSED BY THE SPRUCE CREEK ASSOCIATION, SECONDED BY COUNCILOR HEILSHORN. A ROLL CALL VOTE WAS TAKEN, WITH ALL IN FAVOR. MOTION PASSES 7/0.

h. (100105-11) *THE KITTERY TOWN COUNCIL MOVES TO APPOINT A REPRESENTATIVE TO MEET WITH THE CHAIRMAN OF THE BOARD OF ASSESSMENT REVIEW TO INTERVIEW DUDLEY BIERAU FOR HIS RE-APPOINTMENT TO THAT BOARD UNTIL 11/30/08.*

Councilor Dennett suggested they could hold on h and i and go on until they heard about the other.

j. (100105-13) *THE KITTERY TOWN COUNCIL MOVES TO APPROVE THE REQUEST FROM PROJECT GRADUATION TO HOLD A VOLUNTARY TOLL BOOTH AT THE SOLID WASTE TRANSFER FACILITY ON SATURDAY, OCTOBER 22<sup>ND</sup> FROM 9:00 A.M. TO 3:00 P.M.*

COUNCILOR DENNETT MOVED TO APPROVE THE REQUEST FROM PROJECT GRADUATION TO HOLD A VOLUNTARY TOLL BOOTH AT THE SOLID WASTE TRANSFER FACILITY ON SATURDAY, OCTOBER 22<sup>ND</sup> FROM 9:00 A.M. TO 3:00 P.M., SECONDED BY CHAIRPERSON GRINNELL. A ROLL CALL VOTE WAS TAKEN, WITH ALL IN FAVOR. MOTION PASSES 7/0.

k. (100105-14) *THE KITTERY TOWN COUNCIL MOVES TO SCHEDULE A PUBLIC HEARING FOR OCTOBER 24<sup>TH</sup> TO AMEND CHAPTER 13.04 SEWER SERVICE SYSTEM, SEC. 13.04.360, COLLECTION OF ASSESSMENTS AND CHARGES, CHANGING THE PERIOD OF RE-PAYMENT FROM 30 YEARS TO 10 YEARS TO BE CONSISTENT WITH MRSA 30-A, SUBSECTION 3444, COLLECTION OF ASSESSMENTS.*

COUNCILOR BALANO MOVED TO SCHEDULE A PUBLIC HEARING FOR OCTOBER 24<sup>TH</sup> TO AMEND CHAPTER 13.04 SEWER SERVICE SYSTEM, SEC. 13.04.360, COLLECTION OF ASSESSMENTS AND CHARGES, CHANGING THE PERIOD OF RE-PAYMENT FROM 30 YEARS TO 10 YEARS TO BE CONSISTENT WITH MRSA 30-A, SUBSECTION 3444, COLLECTION OF ASSESSMENTS, SECONDED BY COUNCILOR GUY. A ROLL CALL VOTE WAS TAKEN, WITH ALL IN FAVOR. MOTION PASSES 7/0.

l. (100105-15) *THE KITTERY TOWN COUNCIL, PURSUANT TO 30-A M.R.S.A., SUBSECTION 3442, OF THE STATE STATUTE AND SECTION 13.04.350 OF THE KITTERY TOWN CODE, MOVES THAT THE OWNERS OF LAND BENEFITED BY THE SEWER PROJECT ON MAIN STREET, OTIS AVENUE, JONES AVENUE, DAME STREET, WENTWORTH STREET AND CENTRAL AVENUE BE ASSESSED A SEWER BETTERMENT FEE, USING 50% UNIT, 25% FRONTAGE AND 25% LOT SIZE. A COPY OF THE NOTICE TO THE TOWN CLERK BY THE MUNICIPAL OFFICERS WITH EXHIBIT A AND A COPY OF ASSESSMENT CALCULATIONS ARE HEREBY ATTACHED AND BECOME A PART OF THESE MINUTES. FURTHER, IN ACCORDANCE WITH SAID POLICY, THE KITTERY TOWN COUNCIL ESTABLISHES NOVEMBER 14<sup>TH</sup>, 2005 AT 7:00 P.M. AS THE DATE FOR THE PUBLIC HEARING.*

CHAIRPERSON GRINNELL MOVED THAT THE OWNERS OF LAND BENEFITED BY THE SEWER PROJECT ON MAIN STREET, OTIS AVENUE, JONES AVENUE, DAME STREET, WENTWORTH STREET AND CENTRAL AVENUE BE ASSESSED A SEWER BETTERMENT FEE, USING 50% UNIT, 25% FRONTAGE

AND 25% LOT SIZE AND ESTABLISHES NOVEMBER 14<sup>TH</sup>, 2005 AT 7:00 P.M. AS THE DATE FOR THE PUBLIC HEARIN, SECONDED BY COUNCIL BALANO. A ROLL CALL VOTE WAS TAKEN, WITH ALL IN FAVOR. MOTION PASSES 7/0.

m. Other

Chairperson Grinnell asked if there was any other new business and Council Shwaery said he had one item – that a valid point was brought up by someone who spoke tonight about procedure of the Public Hearings. He said they had a Public Hearing for amendments to an ordinance and the public is allowed to weigh in on what they had been mailed and then the Council could make changes that the public had no say in. He said that at some point they might want to consider changing that procedure in the future.

Councilor Dennett said that people on Gerrish Island were shooting tops of trees in a no shooting zone. Town Manager Carter thanked Councilor Dennett for raising that; the Park Service had come down to speak with them about their plans. A concern had been raised about the existence of a particular type of bug, the “wooly aphid,” which might be living in the tops of trees located in that area. Since that area was a no shooting zone except for police officers or law enforcement, the inspecting party hired an off-duty police officer to discharge his weapon at the tops of the trees, which would then be taken for expert examination. The Manager said that it was part of a state program that went to the health and safety of the area. Councilor Dennett asked if they had received any complaints and Town Manager Carter said he had not heard any. Councilor Dennett thanked the Manager and said he would check with the Police Department.

12. COMMITTEE AND OTHER REPORTS

a. *COMMUNICATIONS FROM THE CHAIRPERSON*

Chairperson Grinnell asked Town Manager Carter if he was going to bring up Candidates Night and the Manager said he deferred that to Madam Chair. Chairperson Grinnell said they were going to have a Candidates Night on the 24<sup>th</sup> at 6:00 p.m., one hour before the Council meeting and they would have to ask Mr. Carter to make sure that the three people running for Town Council and the two people running for the School Committee were sent an invitation. She said that Jeff Thomson was going to be the moderator and Friday she and Mr. Carter were going to meet with him about format so if they had any input, they could let them know.

b. *TOWN MANAGER’S REPORT*

Town Manager Carter said they had a workshop with the Planning Board tomorrow evening and he had materials for the Council for that meeting, which would be at 6:15 p.m.

The Town’s annual household hazardous waste day was October 29. There are requirements that those that wish to participate must register with the Public Works Department by calling 439-0333, so he would urge people to take advantage to get rid of hazardous waste they may have at their residences. They can go to the transfer station and should have a reservation time so they don’t have to wait in line. Councilor Balano asked if the reservation was required and Town Manager Carter said yes, it was.

Town Manager Carter said they had a request from Troup 307 to use Fort Foster on November 4 through 6 for a “camperee,” which was a camp-out they did on a regular basis and

the Park Commission has no problem. The Manager asked how Council would like to proceed on that and Chairperson Grinnell asked for a consensus from the Council, which was given.

Town Manager Carter said that on Friday of this week, Governor Baldacci would be speaking at an event up at the College in Wells at 7:30 p.m. and he believed he put something in everyone's packet. He knew some were going and he would also be going in case anyone would like a ride up.

*c. COMMITTEE REPORTS*

The Manager said they were working with the 236 Corridor Study Group and that a couple of meetings ago, he had indicated there was a desire by the Corridor Committee to get together and discuss the Department of Transportation Study and that would be held October 26 at 6:00 p.m. at the South Berwick Town Hall and as that date grows closer he would have Barbara call to see if they could car pool up and who might be going.

In mid November, they would be invited to get together with the Portsmouth City Council to discuss the Memorial Bridge project and they would need to get a head count on that. Councilor Dennett asked if anything could be brought up at that meeting and Town Manager Carter said it was his understanding that what they wanted to do was before a Public Hearing was held, they wanted input from elected municipal officials. Councilor Dennett said that someone might wish to speak about the border sign. Town Manager Carter said New Hampshire was going to be running this project so he was not sure that would work so well.

The Manager said he just wanted to point out they were working out triple "e" and mosquito issues. Also, the cable committee had been working diligently with Comcast and they were hoping for some resolution by year end.

Councilor Dennett said it would be best to put the remaining three items over until next meeting so they could then be addressed. Councilor Heilshorn asked if it would be reasonable to allow John McCardle to participate in the Shellfish Conservation Committee before then.

13. ADJOURNMENT

COUNCILOR BALANO MOVED TO ADJOURN AT 10:20 P.M., SECONDED BY COUNCILOR DENNETT. A ROLL CALL VOTE WAS TAKEN, WITH ALL IN FAVOR.