

APPROVED MINUTES

KITTERY TOWN COUNCIL

December 28, 2005

Council Chamber

1. CALL TO ORDER

Chairperson Ann Grinnell called the meeting to order at 7:00 p.m.

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 Jeffrey Brake, Matt Brock, Frank Dennett, George Heilshorn, Judith Spiller, Glenn Shwaery and Chairperson Ann Grinnell. Answering the roll for the Planning Board were Members Ernest Evancic, Janet Gagner, Ron Ledgett, Scott Mangiafico, Doug Muir and Chairman Russell White. Also present were Town Manager Jon Carter, Town Clerk Maryann Place, Representative Walter Wheeler, Fire Chief O'Brien, Recorder Chris Kudym, Bob and Maria Barth, George Dow, George Lombardi, Lisa Comeau, George Cherry, Leisa Muccio, Jonel Leake, Evan Leake, Priscilla Guy, K-CAP Director, Ilona Johnson, K-CAP Treasurer, Logan McColl, Sharon Levesque, Danielle Warner, members of the press and others.

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

6. PUBLIC HEARINGS

a. (120205-1) *THE KITTERY TOWN COUNCIL MOVES TO HOLD A JOINT PUBLIC HEARING WITH THE PLANNING BOARD TO RECEIVE COMMENTS CONCERNING THE VOTER PETITION SUBMITTED TO THE TOWN CLERK ON NOVEMBER 10, 2005 UNDER SEC. 11.02 OF THE TOWN CHARTER TO AMEND SEC. 16.12.070 VILLAGE RESIDENTIAL (VR) ZONE, (B) PERMITTED USES AND (C) SPECIAL EXCEPTIONS, AS SET FORTH IN THE LAND USE AND DEVELOPMENT CODE.*

Chairperson Grinnell said this had been advertised in the local paper and that copies of the amendments were available for members of the audience. The Chair said this was a Public Hearing being held as a formality by State Law, that the Town had to hold two Public Hearings on this Petition to Amend the Ordinance. One Public Hearing had already been held on this Petition at which the Council received many comments and at the meeting before that, during the public comment section, 25 people had spoken on this matter. The Chair reminded people that their comments had become written documents as part of the Minutes and asked that people not repeat themselves if they had spoken at one of the past two hearings. She said that whatever happened that night, the Town would vote on this item and one other item at a Special Election on January 24, 2006 and asked Chairman White if he had any comments.

Chairman White convened the Planning Board meeting, saying that the roll had been taken and the first item on their agenda had already been read into the record. Other than that, he had no comments.

Chairperson Grinnell asked if any Councilors had comments before she opened the Public Hearing and Councilor Dennett explained that ordinarily they would not be required to hold two public hearings for this one item but because of a conflict between State Law and the Town Charter, merely because of a timing issue, they had to have two. He said Council agreed to hold a public referendum vote on January 24, but should the Council pass either or both of these items prior to that time, then the referendum on either or both of these items would not be held. He said he did not see that happening but just in case the Council decided they wanted to, then, for technical reasons, it would not be legal unless this hearing was held.

Chairperson Grinnell said that at the end of the Hearing and after public comment, she believed it was only the Planning Board that would be voting tonight and asked Town Manager Carter for confirmation. The Manager said that was correct but, as had been stated, this was a formality; the Planning Board would review it and make a recommendation to the Council. Planning Board Chairman White said that was his understanding as well. He then requested a Point of Order, asking Chairperson Grinnell if at the conclusion of this item and while they remained convened, the Board could fulfill its annual requirement for elections and the Chair answered yes.

Chairperson Grinnell opened the Public Hearing on the Petition for Amending the Ordinance. Pat Cherry of Kittery Point came to the podium, saying Community Center opponents greatly exaggerated when they told people there would be no more Emery Field when two and a half acres would remain of green spaces for picnics, ball playing and dog walking; most of the trees would be saved and many more native species planted. She said that the rate of run-off would be the same and had been approved by the Maine Department of Environmental Protection. Ms. Cherry began to speak about the location of the entrances to the new building, that they were not on the through streets.

Chairperson Grinnell asked Ms. Cherry to stop for a moment and explained that in order to have an efficient meeting, the Council was only hearing comments on the two underlined items in the Petition and No. B.6, which was added; this was not about the Community Center at all, only about the Ordinance. Chairperson Grinnell read the two changes this Public Hearing was addressing. Under 16.12.070.B.6, she said, this was to be added to the Ordinance: “any and all buildings shall not exceed 5,000 square feet of total floor area,” meaning that the Ordinance would be changed to read that no building would be built in this zone that was larger than 5,000 square feet. Also, this would be added to C.5 under Special Exceptions: “any and all buildings shall not exceed 5,000 square feet of total floor area.” In addition, they wanted to delete under C under Special Exceptions: “schools, educational facilities or hospital that occupies less than 3,000 square feet of floor area.” The Chair explained that those were the only three items that this Hearing was about.

Maria Barth came to the podium and said that, in her opinion, this was a very thinly veiled attempt to block the Community Center. Speaking directly to the wording of the ballot question, which she felt was an illegal ballot question according to the Charter because it addressed two issues: Question 1, if we accept it, we don’t want schools or a hospital, etc.; Question 2, the floor area being limited to 5,000 square feet, so you couldn’t be for one and against the other. Ms. Barth said that placing a 5,000 square foot limit on buildings meant they could not have cluster housing or any kind of apartment houses, that there were a multitude of things that could not be built with that floor area. Ms. Barth said that although she thought it was an illegal ballot question, if it had to go to a vote, she supported the Community Center but expressed puzzlement about how a Council

action could be overturned and put to a referendum vote when a vote had already happened. She expressed hope that the Planning Board especially would think long and hard about what this would do for the neighborhood since it had been found nationally that property values went up when something like a community center was built. Ms. Barth expressed frustration in the sense that neither the Council nor the Town Attorney had been to make this process clear to those people who were trying hard to understand.

George Dow of Kittery Point came forward and said he thought a 5,000 square foot limit was very shortsighted and did not meet the growing needs of the Town. Mr. Dow said Lewis Road was a prime example of the Town's residential expansion and those children and families would need a place to go. Chairperson Grinnell asked him to stay on point and Mr. Dow said his comments were about the 5,000 square foot limitation. He said that since Council had no choice but to send it out to a vote, he supported that action, which would give the majority of voters the opportunity to shoot it down.

Bob Barth of Kittery Point approached the podium and said he resented the interruption of individuals when they referred to the Community Center on this issue because if it were not for the Community Center proposal, this never would have come up. Chairperson Grinnell said she understood but that the Hearing had nothing to do with the Community Center. Mr. Barth disagreed, saying it had everything to do with it but people were not being allowed to express that.

George Lombardi, 105 Manson Avenue in the Village, came to the podium and said the Town Council should approve the Petition. Mr. Lombardi said they were not really asking for anything except to have things remain the same, he didn't think zoning laws should be changed to suit developers. He said he agreed with some of the other people there who wanted it sent out to a vote because he believed everyone would be very surprised at the number of people that would vote in favor of the Petition.

Lisa Comeau, Admiralty Village, came to the podium, thanking people for giving their time and, addressing Mr. Barth, said she agreed with him. Chairperson Grinnell asked Ms. Comeau to address her comments to the Council and Ms. Comeau said she agreed with Mr. Barth; this was a very difficult situation and it was very difficult to separate the Petition from the Community Center. Ms. Comeau said she believed people were assembled tonight because some wrong things had been done in the Town of Kittery; the zoning of old Admiralty Village had been changed for a developer and she questioned whether it was dangerous to set such a precedence, allowing a different use when that use was not in harmony with existing uses. She said she was at the Planning Board meeting that changed the zone in order to allow York Hospital to set up shop in the Village via a Special Exception. Ms. Comeau said she had pleaded with them not to do it but they hadn't listened. There were many other changes they discussed that night that they took out and she thanked them, but still they left in the one piece that would spell the ruin of the Village. Ms. Comeau said she couldn't let that happen and had felt forced to look for other ways to stop it. She said that the United States Constitution allowed the citizens of Kittery to put forth a Petition. Ms. Comeau stated that hundreds of voters had gratefully signed a Petition to send the Rec Center back to the drawing board by repealing its funding, as well as another Petition to change the zoning back to the residential zoning that it once was. She said that for more insurance she added the piece that limited the size of any building to 5,000 square feet and that the Rec Center was presently the largest building in the Village, with most homes no larger than 1,000 square feet.

Chairperson Grinnell reminded Ms. Comeau that at the beginning she had asked that people not repeat themselves and that all the things she had said at the last two meetings were certainly on the record, so if she would not repeat herself and make her point, they could move on. Ms. Comeau said she was a little confused and asked the Chair to help her to understand some of the actions of

some people in the Town. She said she had already pointed out the zoning change in Admiralty Village allowing York Hospital to gain a foothold there and she wanted to ask why the Town even had actual zones intended to protect the quality of life?

Chairperson Grinnell began to speak and Ms. Comeau said she was asking a question and had every right to ask a very important question whether it was answered or not. Chairperson Grinnell suggested she wait until the public comment section of the meeting and Ms. Comeau said her question related to the issue at hand. Ms. Comeau asked why did they have zones intended to protect the quality of life if they meant nothing, if they were just going to be ignored? She then asked why would the question of allowing this York Hospital Special Exception go before the voters before the zoning in the Village would even allow such a use? Did that mean, she asked, that the traffic study that was performed... Chairperson Grinnell told Ms. Comeau she was getting off the point... Ms. Comeau asked did that mean the vote for the York Hospital Special Exception was illegal? Chairperson Grinnell said they were not addressing that tonight. Ms. Comeau asked if it meant that changing the zone was an afterthought and, if so, maybe researching the Deed was never a thought at all. It looked to her like people could do what they wanted and asked if that was how they did things in this Town, with a lack of regard for the law, the zoning, for the Comp. Plan?

Ms. Comeau said that all of this pointed to one outcome: it appeared to her that Kittery was not afraid of a huge, complicated, multifaceted lawsuit. Chairperson Grinnell began to speak and Ms. Comeau said she brought some valuable information with her that the Council would be interested in.

Councilor Brock addressed the Chair, saying he would like to make a Point of Order. He said he believed the rules the Chair had laid out for everyone else who spoke was to stay specifically on the proposed changes to the Ordinance and if those were the rules, everyone should be complying with the same rules and this was going way far afield. Councilor Brock said he thought if this was allowed, then other people should be able to come up and speak as broadly as this and that it was not addressing what he thought was in front of the Council tonight. Ms. Comeau said that was the difficulty they had – they were both related - and she was trying to speak specifically to the zoning change on the Petition and the ramifications it had.

Chairperson Grinnell suggested to Ms. Comeau that she speak on subject for two more minutes and Ms. Comeau said that was fair enough. She said she had a Legal Opinion from the Town Attorney dated April 19, 2005 that talked about commercial use of the Rec Center and asked if the Legal Opinion stated that the Rec Center was a commercial use, would that mean that the physical therapy unit would be a commercial use as well? If that were the case, since York Hospital Physical Therapy needs a Special Exception to come into the Village, then the commercial use would not be allowed in that residential zone. Ms. Comeau said there was confusion as to what was allowed and what was legal. Also, she said, and this was very important, she had a copy of an email she received from Steve Pelletier at York Hospital to Town Manager Jon Carter and it appeared from that email that York Hospital played a very important part in drafting the new language for the Admiralty Village Zone. Chairperson Grinnell told Ms. Comeau she had 15 seconds. Ms. Comeau said, basically, what she wanted to say to the Council was it was wrong to change the zoning of a residential neighborhood to allow a development that was out of character and out of use.

George Cherry came to the podium and said there was an excellent reason to change the zoning to allow a building larger than 5,000 square feet because after many years of working on a recreation center that suited the needs of the people of Kittery, they came up with a center that was that large or a little larger and if they were going to have a really serviceable community center, it had to be able to be that big. He said they worked and worked and worked on it and they produced a splendid facility. Mr. Cherry said the tail was wagging the dog when a community that voted to

have it was not allowed to have it and he just wished that Community Center was within walking distance of his house in Kittery Point. He said it would help property values, not destroy them, it would be great for that community and for any community to have a facility like that and there was nothing sinister about having physical therapy in that Center, it was not income producing, it was for the sake of people who needed physical therapy and was related to recreational center use. Mr. Cherry questioned standing up and alleging it was going to destroy their community when, in fact, a community center like that enhanced community, improved it and he just wished it was within walking distance of his house.

Leisa Muccio came forward to say she wanted it on the record that there was a basketball game that night so there were a lot of Rec Center supporters who could not come. Speaking specifically to limiting the center to 5,000 square feet, she said it was not big enough, they needed a full size gym, an exercise room, and a weight room. Ms. Muccio said she had told Council before that 36% of Kittery's kids K-12 were overweight and the CDC said that 61% of the adults were overweight. She said that 40% of Mainers were going to die of cardiovascular disease and for the first time since records were kept, the life expectancy of the students in Kittery was decreasing because of weight related issues. Ms. Muccio said the current facility was not large enough and did not have sufficient facilities to provide programs that the older kids and adults needed. She asked the Council not to pass the 5,000 square foot Ordinance but to let it go back to the voters who had already spoken.

Chairperson Grinnell closed the Public Hearing and turned the meeting over to Planning Board Chairman White. Chairman White said the Planning Board would now conduct their deliberations and that his recollection was that at their last hearing a Petition came in on this item and it was the same item that was before them. He said that No. 1, the Ordinance that was proposed to be amended was something they just worked on a couple of months ago; No. 2, there was now a pending application before them involving that Ordinance and for those reasons, he would prefer to see the Planning Board take no position on this Petition, particularly because it was going to go to the voters who were the ones that should determine what happened here. Chairman White asked if there was other discussion and Mr. Ledgett said that in regards to the Comprehensive Plan, there was merit in placing size restrictions and that was the tool they used when they approved the Special Exception. Mr. Ledgett said, however, in those deliberations, they had not considered a size restriction for buildings outside the residences nor considered any size restrictions on schools or governmental buildings so this was certainly a legitimate issue before the Board and Town. Chairman White asked if he meant in terms of looking at the Comp. Plan and Mr. Ledgett said the Comp. Plan was pretty clear that they were supposed to maintain the size and character of the structures in the Village District and this was the area they had considered for the Special Exception to be added but did not consider it for a governmental building, so it remained an open area. Chairman White said he thought they allowed small-scale school, educational and hospital type use. Mr. Ledgett said yes but, after comments they received, they put restrictions on it so a question remained whether those other buildings should be restricted as well. After further discussion, Chairman White asked if there was a motion. Hearing none, the Chair asked if there were any recommendations. Hearing none, Chairman White said there was no position the Planning Board expressed on this issue.

The Planning Board then addressed the matter of elections. Chairman White nominated himself as Chairman, seconded by Mr. Ledgett. Mr. Mangiafico was nominated as Vice Chairman by Ms. Gagner, seconded by Mr. Muir. A voice vote on both nominations was taken at one time, with all in favor. Nominations confirmed 5/0. Chairman White made a motion to adjourn, seconded by Mr. Ledgett.

PLANNING BOARD MEETING ADJOURNED 7:40 P.M.

b. (120205-2) *THE KITTERY TOWN COUNCIL MOVES TO HOLD A PUBLIC HEARING TO RECEIVE COMMENTS REGARDING THE RELEASE OF FUNDS IN THE AMOUNT OF \$12,000 FROM THE TOWN GRANT MATCH ACCOUNT TO MATCH THE STATE OF MAINE GOVERNOR'S GRANT OF \$12,000 FOR THE CONTINUATION OF K-CAP (KITTERY CHEMICAL AWARENESS & PREVENTION) UNTIL JUNE 30, 2006 FOR A TOTAL OF \$24,000, AS APPROVED BY THE VOTERS ON THE JUNE 14th SECRET BALLOT VOTE AS ARTICLE 11.*

Chairperson Grinnell said this was advertised in the local paper and opened the public hearing. Representative Walter Wheeler approached the podium, telling the Council that he had heard K-CAP would be closing due to lack of funds so he brought the Governor down to take a look at it. When the Governor came, he had been very impressed with what they did. The Governor then surprised him with a \$12,000 commitment, asking that the Town commit the same amount. Mr. Wheeler said he told the Governor he would bring it up to the Council. He said he hoped Council would approve it because he thought it was a great way to keep kids off the street and he was behind the program 100%.

Evan Leake, 9 Chauncey Creek Road, Kittery Point, said he was 11 years old and thought K-CAP was a very nice place because there were 16 or more kids going everyday which meant 16 or more kids less on the streets. He said they taught kids how not to do drugs with fun activities so they enjoyed it and wanted to go there and \$12,000 was a little price to pay when it would cost more for kids doing drugs.

Jonel Leake, 9 Chauncey Creek Road, Kittery Point said she was there to ask the Council to provide the matching \$12,000 for K-CAP. She said K-CAP was a great place, that it did keep kids off the street and gave them a safe place to go to after school. The program also provided anti-drug, anti-alcohol and anti-smoking education with fun programs the kids actually enjoyed doing while, at the same time, they were learning. Ms. Leake said the program provided parents opportunities to discuss these issues with kids because they came home and talked about everything they learned; they had great role models at K-CAP. There were individuals who were willing to share their stories about what alcohol or drug abuse had done to their families and this had a great impact on the kids. Ms. Leake said \$12,000 was a very small price to pay. Ultimately, if K-CAP closed, she said, the cost to Kittery would be much greater.

Logan McCall said he thought the Council should provide K-CAP with the money because everyone goes there; it was really fun. He said it taught people to be alcohol free and it was anti-drugs. Over 20 people go there at least each day and he thought they should provide them with the money because they did a great job.

Danielle Warner came to the podium and said she had been going to this program for three years; that when she started, she really was not such a nice kid but Shawna, Priscilla and all of them showed her what it was like to have friends without having to do drugs. She said she could go there and just hang with her friends and no one could hurt her. I hope it gets to stay open because it helps a bunch of kids and it's already helped me. Thank you for listening.

Sharon Levesque came forward and said that was her daughter and when she spoke, she spoke the truth. When she first started going to K-CAP, she was a very angry child, angry at the world. Without Priscilla and Shawna, Ms. Levesque said she didn't know where her daughter would be today; they have been a great influence on her. Ms. Levesque said she could send her children to day care but going to day care with six-week-old children to six year old children didn't provide the positive feedback that they needed and they have gotten from K-CAP. If the facility

closes, she said, she didn't know what she would do and what direction her kids would end up going in.

Lisa Comeau came forward and said she was really glad to be able to speak in support of what she saw as an absolutely selfless effort on the part of some really decent human beings to make Kittery a better place for their young people. She said when she first moved here and she told other people who didn't live here that Kittery had something like K-CAP, they found it very hard to believe. Ms. Comeau said children were welcome in that center, they didn't need any money, they didn't need to be accompanied by a parent, they received one on one help with homework when needed, it was like a second home to them. K-CAP, she said, created positive things for the Town without costing them anything and the things they managed to do on a shoestring budget fed by donations was an amazing example that could be followed. Ms. Comeau said they had a climbing wall there and a bar where kids could get something to eat; her kids have done their community service there and all the kids in the Town can go there and fulfill their community service hours and learn about providing public service and about being selfless helping Priscilla and Shawna. Ms. Comeau said she hoped the Council would not only match that grant but also, if possible, give more.

Chairperson Grinnell closed the Public Hearing.

CHAIRPERSON GRINNELL MOVED TO APPROVE THE RELEASE OF FUNDS IN THE AMOUNT OF \$12,000 FROM THE TOWN GRANT MATCH ACCOUNT TO MATCH THE STATE OF MAINE GOVERNOR'S GRANT OF \$12,000 FOR THE CONTINUATION OF K-CAP (KITTERY CHEMICAL AWARENESS & PREVENTION) UNTIL JUNE 30, 2006 FOR A TOTAL OF \$24,000, AS APPROVED BY THE VOTERS ON THE JUNE 14th SECRET BALLOT VOTE AS ARTICLE 11, SECONDED BY COUNCILOR HEILSHORN.

Chairperson Grinnell asked for discussion and Councilor Dennett asked Town Manager Carter if they had a written commitment from the State for \$12,000. The Manager said he had received a verbal commitment from the Governor himself and Representative Wheeler, the liaison in this matter. Councilor Dennett said he didn't mind putting up the money but he would hate for the State not to match it and received assurance from Representative Wheeler they would have it. Councilor Dennett said, since they were dealing with Town money, he would like to see the books and had been having a hard time getting the 2005 General Ledger books. He then asked to speak to Mrs. Guy directly, asking her to explain the problem, was it running out of grant money? Mrs. Guy said that there wasn't any more grant money.

Chairperson Grinnell invited Priscilla Guy to come up to the podium. Mrs. Guy told the Council they had applied for every grant that had ever been out and, normally, they were always low on funds, not knowing if they would be able to pay their rent from month to month and it was just miracles that somehow it happened. Now, however, there was no more light at the end of the tunnel as far as grants go because there were no more drug free monies, which had always been the source of their grants and how they had been supported, but the new government didn't have that anymore. The other grants they had written for they just didn't seem to get, the competition was so immense and now it was just a chaos because in the second week of October they heard they didn't qualify for a big grant out of Washington they had been sure they would get. She said there were so many people that applied for it, it was impossible for them to even screen them all. Mrs. Guy said that was why they had to advertise this right now because then they knew there was absolutely nothing coming in for them to continue even until June. She said they had been very concerned

because it was an awful thing at Christmas time to tell kids and parents there was no place for those kids to go in the middle of year. That was why they just went ahead and asked for more and thank you to Mr. Wheeler, our Representative, who got the Governor to come down; it was a great honor. But, no, there was nothing. Mrs. Guy said the Governor did say that he didn't want this center to ever close and that he wanted the State, the Town, and the schools and us to work together to keep this open on a long-term basis. Mrs. Guy said she would like to tell one story about a single parent who started bringing her teenagers a couple years ago and could only work part time because she didn't have anybody to watch the girls and she didn't want to leave two teenage girls hanging around at home alone. When she discovered our center and the girls loved to come in, she wrote us a letter and said that for the first time in their life she qualified to buy a house because with the girls being safe in the center, she could work full time and it qualified her to get the loan for a house. Mrs. Guy said there were just so many things that had happened from this situation; it had just grown. But, no, there were no funds for them to have but she was hopeful that when they worked with the State, with Mr. Wheeler as their liaison; the Governor said he wanted at least two people from up there to come down and work with them for the goal and the funds. So it was very, very encouraging, it was a miracle again, that's the only way she could answer it. Councilor Dennett said that was okay, it explained a lot of unanswered questions and she had answered the questions and for that he thanked her.

Chairperson Grinnell said she and Council Shwaery had been there when the Governor came and he had been very impressed by K-CAP. She said the Governor told her he had said to the Manager he would put in \$12,000 if the Town put in \$12,000 and I told him I would do all I could to get the Council to match that figure. The Chair told Mrs. Guy she was glad she had mentioned this went until June and that Mr. Wheeler would be their liaison because it wasn't like the Governor was putting in the \$12,000 and then walking away. Mrs. Guy said no, the Governor had made everyone promise to have that go on. She said she would never forget December 2 as long as she lived and thanked them all very much.

Councilor Spiller said she certainly was supportive of supplying them this money but her concern was July 1 and wondered what they in the Town could do to help them raise money. Mrs. Guy said they did a lot of fund raising, that now they were planning a big auction on February 3 and they had two bands volunteering their time for a big fundraiser on January 14. They were always on going with fund raising. People brought them things and they had big yard sales. Mrs. Guy said people had questioned their location because the rent was so high but the kids can get there, they can walk to it from school and plus they had four buses that left kids off right at the center and parents picked them up after work. She said she had looked at a lot of beautiful centers before they took this but they were far out of the way; what they had was just perfect for their situation. They had AA meetings every morning where 30 to 40 people went - that's the recovery and they just celebrated six years of doing it. On Saturday night there was an AA meeting and a lot of young people went there, that's their social life. Mrs. Guy said they had Head Start moms that came to the computer room and adult education had a teacher that went in two mornings a week and taught computer to the people so they could do jobs on the computer at home without needing a babysitter. If they had babies they come to the center and school kids who needed to do community service to graduate could walk to the center from school and baby sit; the kids were getting their service in and moms were learning. It's a win/win situation for our Town and then they had a teacher that came in Tuesday and Thursday mornings to teach English language.

Councilor Spiller said that with all those things going on, it seemed there would be opportunities for federal funding and she wondered if the Town Manager could help them look at a comprehensive after school program that would position them to go after federal funding.

Councilor Shwaery said he certainly would support the match but the July 1st deadline also loomed in his mind. This would be a short term patch and unless they rethought in subsequent budgets the way they gifted to other nonprofits, they were going to have to involve a lot of people with expertise they probably didn't have sitting at this Council. He suggested that to anyone watching this or reading about it in the paper, here was an excellent opportunity to do some pro bono work and perhaps help to investigate some of these federal grants that could be applied for, probably with more success with a professional grant writer. Councilor Shwaery said he knew they had secured two people to work pro bono for this auction so people were stepping forward.

Mrs. Guy thanked him and said that after reading about their need for money in Sunday's paper, the Chief Executive of the Fuller Foundation called her first thing Monday morning saying that his trustees came in and said they had to help these people, they cannot close that center and he said we can't give you grant funds, which we knew because we're not in their district, but they wanted to help because everything they give grants for we were doing. She said they were very complimentary and sent them a check for \$2,500 with no strings attached to do with what we needed or wanted and a lot of people came forward, the Rotary, the Lions with \$1,500 at a time to keep us going. Mrs. Guy said everything they had was from the community and she thanked the Council and everyone very, very much for their support.

A ROLL CALL VOTE WAS TAKEN TO APPROVE THE RELEASE OF \$12,000 FROM THE TOWN GRANT MATCH ACCOUNT TO MATCH THE STATE'S GRANT OF \$12,000 FOR K-CAP, WITH ALL IN FAVOR. MOTION PASSES 7/0.

c. (120205-3) THE KITTERY TOWN COUNCIL MOVES TO HOLD A PUBLIC HEARING TO RECEIVE COMMENTS REGARDING THE RELEASE OF FUNDS IN THE AMOUNT OF \$5,937 FROM THE TOWN GRANT MATCH ACCOUNT TO ADD TO THE GALEN COLE FAMILY FOUNDATION GRANT IN THE AMOUNT OF \$4,000 FOR THE FIRE DEPARTMENT'S THERMAL IMAGING EQUIPMENT FOR A TOTAL COST OF THE EQUIPMENT OF \$9,937, AS APPROVED BY THE VOTERS ON THE JUNE 14TH SECRET BALLOT VOTE AS ARTICLE 11.

Chairperson Grinnell said this was advertised in the local paper and opened the Public Hearing. Receiving no response, the Public Hearing was closed.

COUNCILOR SHWAERY MOVED TO APPROVE THE RELEASE OF FUNDS IN THE AMOUNT OF \$5,937 FROM THE TOWN GRANT MATCH ACCOUNT TO ADD TO THE GALEN COLE FAMILY FOUNDATION GRANT IN THE AMOUNT OF \$4,000 FOR THE FIRE DEPARTMENT'S THERMAL IMAGING EQUIPMENT FOR A TOTAL COST OF THE EQUIPMENT OF \$9,937, AS APPROVED BY THE VOTERS ON THE JUNE 14TH SECRET BALLOT VOTE AS ARTICLE 11, SECONDED BY CHAIRPERSON GRINNELL.

Councilor Dennett said this unit was apparently \$9,937, of which they were getting \$4,000 in grant money, and the Agreement indicated they would pay \$3,000 by June 30 and \$2,937 back to the Foundation by November 1. He suggested that inasmuch as the authority of the grant matched money technically might expire as of July 1, 2006, that they expend the whole amount at once and not carry it over into another fiscal year and, presuming the Foundation would agree, pay a total of \$5,937 by June 30 to keep it within the current fiscal year. Town Manager Carter said he would support that and if Council released the money tonight, they could cut the check within the next few weeks; the image camera was available and expected to be shipped very shortly. Fire Chief

O'Brien said they were expecting delivery of the imager sometime next week. Chairperson Grinnell said she would certainly agree with Councilor Dennett's and the Manager's suggestion.

Councilor Shwaery asked if the Chief could explain the function of this imager and how it fit into what they had. Chief O'Brien said about six years ago they raised approximately \$50,000 and bought two cameras with accompanying equipment plus a four year warranty on them and, like everything else on a warranty, at the end of the warranty, they seemed to start breaking down. Two of their current cameras went through a white out condition where the screen went blank and the older a camera was, the less chance there was of recovering a screen. The last one they just repaired was \$1,037 so they were starting to show their age. The Chief said they got used consistently, not just for structural fires but they were used for chimney fires, fires in walls, they got used by police looking for somebody running through the woods, things like that. When the Galen Cole Family Fund came along, the Chief said this presented an opportunity to start putting them into a replacement program to replace them as they got older. Councilor Shwaery said that another question he had was on the second page where it had various terms and conditions regarding the \$4,000 donation that we maintain the camera, insure it, etc. and was that currently in their budget? Chief O'Brien said yes, he believed they had between \$7,400 and \$7,900 in the thermal imaging account that was left over from the purchase of the first two and any repairs for the cameras had come out of that money, not out of any other maintenance account, and included batteries, repairs to them and training they recently had. That money was there specifically to maintain these.

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

d. (120205-4) *THE KITTERY TOWN COUNCIL MOVES TO HOLD A PUBLIC HEARING ON THE RENEWAL APPLICATION FROM LUIS VALDEZ, 2 BLUE HERON DRIVE, PORTSMOUTH, NH FOR A MALT AND VINOUS LIQUOR LICENSE FOR LOCO COCO'S TACOS, 36 WALKER STREET, KITTERY.*

Chairperson Grinnell said this was advertised in the local paper and opened the Public Hearing. Receiving no response, the Public Hearing was closed.

COUNCILOR HEILSHORN MOVED TO RENEW THE APPLICATION OF LUIS VALDEZ, 2 BLUE HERON DRIVE, PORTSMOUTH, NH FOR A MALT AND VINOUS LIQUOR LICENSE FOR LOCO COCO'S TACOS, 36 WALKER STREET, KITTERY, SECONDED BY COUNCILOR SHWAERY.

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

7. DISCUSSION

- a. *DISCUSSION BY MEMBERS OF THE PUBLIC (Three minutes per person)*
- b. *CHAIRPERSON'S RESPONSE TO PUBLIC COMMENTS*

8. UNFINISHED BUSINESS

Chairperson Grinnell said she had one item; she would like to say, for herself, that the opinions expressed at the podium when people spoke to the Council were just those persons' own personal opinions and even though they may sound like they were stating fact, they were only opinions of the people that were speaking. The Chair said that some of the things said tonight she found offensive but that was just their opinion.

9. NEW BUSINESS

a. (120205-5) *THE KITTERY TOWN COUNCIL MOVES TO AUTHORIZE THE TOWN MANAGER TO SIGN A CONSTRUCTION MANAGEMENT AGREEMENT BETWEEN THE TOWN OF KITTERY AND OEST ASSOCIATES FOR THE CONSTRUCTION OF THE TWO NEW FIRE STATIONS.*

Town Manager Carter said that tonight they had in front of them an opportunity to move the two fire stations forward. Presently, the status of the fire stations was as follows: Kittery Point was ready to proceed, a building permit would be needed, and they would hear later tonight that they were moving forward on a new septic system for that facility. The Gorges Road Station was moving forward to the Planning Board for a hearing on January 26 and was expected to be moved through that process that evening, maybe with one more meeting. Presently, the Manager said, they were at a point where bidding was essential to move the schedule forward in the construction of these two buildings. Town Manager Carter said this Council had talked about construction management and how it might work and they were suggesting that in order to get the bidding moving, they needed to have this construction management service contract put in place. He said that, along with the Fire Chief, he could answer any questions they had and that, once signed, this contract would carry the project from the bidding all the way through to the final punch list.

Chairperson Grinnell asked if there were any questions for the Chief and Councilor Dennett had a question on the contract. He said that on the cover letter from Mr. Oest to Mr. Carter of December 21 they propose construction management services per the attached Exhibit A and charge \$121,200. On their Exhibit A, it indicated that one full time superintendent would be provided for both construction sites but on Exhibit B, which outlined items involving extra costs above the quoted \$121,000, the first item apparently was the superintendent so the question became was the superintendent included within that \$121,200 or on top of that? Town Manager Carter said if the Council did approve this item this evening, he would get a clarifying letter from Oest but the Chief explained that it was all-inclusive. Chief O'Brien said they believed that superintendent was someone the general contractor would have on site. The construction manager works for us, the superintendent works for the general contractor. We hire him to make sure the plan gets carried out. Mr. Carter is right we will make sure it is fully clarified that \$121,000 puts a man on site whenever work is done. Councilor Dennett said that normally he would shy away from having the architect be the construction manager, but after an extremely positive experience with the Shapleigh School, he would buy into this. Chief O'Brien said he appreciated that and, in his opinion, Oest was an outstanding company to work with.

COUNCILOR DENNETT MOVED TO AUTHORIZE THE TOWN MANAGER TO SIGN A CONSTRUCTION MANAGEMENT AGREEMENT BETWEEN THE TOWN OF KITTERY AND OEST ASSOCIATION FOR THE CONSTRUCTION OF THE TWO NEW FIRE STATIONS, PROVIDED THAT A WRITTEN AGREEMENT FROM OEST IS RECEIVED BY THE TOWN INDICATING THAT THE AMOUNT OF \$121,200 INCLUDES THE SALARY AND DIRECT EXPENSES FOR THEIR SUPERINTENDENT, SECONDED BY CHAIRPERSON GRINNELL.

Councilor Dennett said that the only provision would be if it came back that this \$121,200 did not cover this person, then it had to come back to Council.

Councilor Shwaery had more questions for Chief O'Brien. In the cover letter it said they were estimating nine months and he wondered if that was simultaneous. Chief O'Brien said yes, they were looking at breaking ground on Gorges Road on March 6. The Kittery Point Station was in a more difficult position because he had to tear the building down and not having a place to provide adequate fire protection in the winter time, they would start that around the first of April. He said the heavy equipment would come in and do Gorges Road, pick itself up, move down and then tear down the existing building and do the site work down there. The Chief said they had a plan for what to do with fire apparatus while that was in place so they would be built simultaneously. Councilor Shwaery asked if the superintendent was going to be on site on both projects and the Chief answered yes. Councilor Shwaery said that on Exhibit B where they got charged for extra items, who owned them at the end of the day, such as cameras, computers, printers? The Chief said that was all stuff provided by the general contractor to do his business. Councilor Shwaery said that maybe the general contractor had final accountability but there seemed to be escape clauses regarding when contractor's requirements weren't being fulfilled. The Chief said that both the Town Manager and Town Attorney had looked at the Agreement and, as far as he knew, accepted it. Town Manager Carter said either party could walk away from this if they didn't like what they were doing, but that this was going to be a very fast project and they simply needed to keep the lines of communication open.

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

Town Manager Carter said another part of that issue was the option to put the Community Center bid as an option on the fire station program. He said he spoke with Oest and they were in agreement that it could be worked in as an option, that they could get a price and it would not interfere with any prices for the fire stations but would give the option if a contractor bid on all projects to see what savings might be out there. Also, it would be clearly stated in the bid specs that the Community Center may or may not move forward. The Manager said the cost of doing this would be approximately \$2,000. Councilor Brock wanted to confirm that the Town would not be committed if they went forward with that and the Manager said that was correct, it would have to come back to Council, go through the Planning Board and the whole nine yards. The Manager said that along with the possibility of savings, it would also get the Community Center a little bit ahead if everything were approved for them to move forward. Councilor Dennett asked if the \$2,000 was for Oest to do a study and the Manager said no it would not be a study but it would be their work to add the Community Center into their bid specs. We're not moving forward with construction management services at this time for the Community Center but what they would do, almost on an ala carte basis, would be to add the Community Center bid specs that were done and add it into the bid package of the fire project. Councilor Dennett said that if the Rec Center survived the two Petitions, they might be in a good position to save money and if it didn't, the \$2,000 went down the tubes.

Councilor Shwaery said he had another similar question on timing. His understanding was that the referendum vote on the zoning and bonding issues for the Rec Center would be taking place on January 24 and the Public Hearing for the fire stations with the Planning Board was after that, January 26. How critical was it to move on this now? Town Manager Carter said in order for the timetable to work, it was important that it go out to bid within the next few weeks before the January 26 Hearing. It was possible, he said, and they hoped that final determination on the fire station would be no more than the first meeting in February if not the meeting on January 26 if time permits. Councilor Shwaery asked if then they would have building permits and everything else

they needed for the fire stations? The Fire Chief said yes, everything was done except for the Planning Board Hearing and added that Katrina did them no justice but the country was recovering, the prices of steel were coming down and right now contractors were once again looking for work. The Chief said he had respect for Mr. Hennessey of Oest who said they had to go out now and get these bids before the summer time.

Chairperson Grinnell asked the Manager if he needed a consensus from the Council to spend the \$2,000 to proceed with his idea and the Manager answered yes. The Chair said she thought it was a good idea to spend the \$2,000 because they could end up in the plus if the Rec Center stayed in and they could get a better price, but if the Rec Center failed, they were out the \$2,000.

Councilor Dennett requested a five-minute recess.

A recess was called at 8:42 p.m.

Meeting was called back to order 8:47 p.m.

Chairperson Grinnell called for a consensus to authorize the expenditure of \$2,000 to have Oest price out the Community Center.

Councilor Dennett asked Town Manager Carter about the source of funds and the Manager said they would go to the Friends of the Rec Committee for some money and also look in the Building Account for any further money and come up with the rest through some ingenuity, but if he couldn't come up with that, he would have to come back to Council. The Manager also said that the \$2,000 was not a set figure, it would depend on the time Oest spent working on it. Councilor Dennett said if the Manager was to approach the Friends of the Rec Center and they put up money, he would have no objection to having him proceed forward, with that stipulation. Chairperson Grinnell asked Councilor Dennett if he was looking for outside sources to come up with the entire amount and Councilor Dennett said he was not comfortable putting Town money into it at this point because it was so nebulous.

Councilor Brock said it was uncertain but it also sounded like they needed to spend a little bit to potentially save a lot if the Rec Center goes forward and, given the various funding sources, they should authorize him to proceed and, if necessary, spend the money because they may end up saving the Town a great deal of money down the road. Chairperson Grinnell said that was what they needed a consensus on.

A VOICE VOTE WAS TAKEN TO AUTHORIZE THE EXPENDITURE OF \$2,000 FOR OEST ASSOCIATES TO PRICE OUT PROPOSED NEW COMMUNITY CENTER, WITH THE FOLLOWING RESULT: SIX IN FAVOR, ONE OPPOSED. MOTION PASSES 6/1, WITH COUNCILOR DENNETT OPPOSED.

b. (120205-6) *THE KITTERY TOWN COUNCIL MOVES TO APPROVE THE DISBURSEMENT WARRANTS.*

Chairperson Grinnell said she had Town Warrant No. 50, Town Accounts Payable in the amount of \$195,563.95.

COUNCILOR HEILSHORN MOVED TO APPROVE THE DISBURSEMENT WARRANTS, SECONDED BY COUNCILOR SPILLER.

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

c. (120205-7) *THE KITTELY TOWN COUNCIL MOVES TO REAPPOINT HEATHER ROSS AS LOCAL PLUMBING INSPECTOR UNTIL 12/31/06.*

COUNCILOR SHWAERY MOVED TO REAPPOINT HEATHER ROSS AS LOCAL PLUMBING INSPECTOR UNTIL 12/31/06, SECONDED BY CHAIRPERSON GRINNELL.

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

d. (120205-8) *THE KITTELY TOWN COUNCIL MOVES TO REAPPOINT JIM NOEL AND ROCHELLE BISHOP AS ALTERNATE LOCAL PLUMBING INSPECTORS UNTIL 12/31/06.*

COUNCILOR HEILSHORN MOVED TO REAPPOINT JIM NOEL AND ROCHELLE BISHOP AS ALTERNATE LOCAL PLUMBING INSPECTORS UNTIL 12/31/06, SECONDED BY CHAIRPERSON GRINNELL.

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

e. (120205-9) *THE KITTELY TOWN COUNCIL MOVES TO REAPPOINT JOHN COPLEY AS ALTERNATE LOCAL PLUMBING INSPECTOR UNTIL 12/31/06.*

COUNCILOR SHWAERY MOVED TO REAPPOINT JOHN COPLEY AS ALTERNATE LOCAL PLUMBING INSPECTOR UNTIL 12/31/06, SECONDED BY CHAIRPERSON GRINNELL.

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

f. (120205-10) *THE KITTELY TOWN COUNCIL MOVES TO REAPPOINT JIM NOEL AND ROCHELLE BISHOP AS ASSISTANT CODE ENFORCEMENT OFFICERS UNTIL 12/31/06.*

COUNCILOR HEILSHORN MOVED TO REAPPOINT JIM NOEL AND ROCHELLE BISHOP AS ASSISTANT CODE ENFORCEMENT OFFICERS UNTIL 12/31/06, SECONDED BY COUNCILOR BRAKE.

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

g. (120205-11) *THE KITTELY TOWN COUNCIL MOVES TO REAPPOINT JOHN COPLEY AS ASSISTANT CODE ENFORCEMENT OFFICER FROM 1/1/06 - 12/31/06.*

CHAIRPERSON GRINNELL MOVED TO REAPPOINT JOHN COPLEY AS ASSISTANT CODE ENFORCEMENT OFFICER FROM 1/1/06 - 12/31/06, SECONDED BY COUNCILOR HEILSHORN.

Councilor Brock questioned the title of Assistant Code Enforcement Officer, asking if it was the same as an alternate and not a second position. Town Manager Carter said no, it was an Assistant Code Enforcement Officer, they didn't have alternative Code Enforcement Officers.

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

h. (120205-12) *THE KITTELY TOWN COUNCIL MOVES TO APPOINT A REPRESENTATIVE TO MEET WITH THE CHAIRMAN OF THE PERSONNEL BOARD TO INTERVIEW KENNETH PALMER FOR HIS APPOINTMENT TO THAT BOARD AS AN ALTERNATE MEMBER UNTIL _____, 2009.*

CHAIRPERSON GRINNELL MOVED TO APPOINT COUNCILOR HEILSHORN TO MEET WITH THE CHAIRMAN OF THE PERSONNEL BOARD TO INTERVIEW KENNETH PALMER FOR HIS APPOINTMENT TO THAT BOARD AS AN ALTERNATE MEMBER UNTIL _____, 2009, SECONDED BY COUNCILOR BRAKE.

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

i. (120205-13) *THE KITTELY TOWN COUNCIL MOVES TO APPOINT A REPRESENTATIVE TO MEET WITH THE CHAIRMAN OF THE MARY SAFFORD WILDES TRUST TO INTERVIEW FRANK CROTTY FOR HIS REAPPOINTMENT TO THAT BOARD UNTIL 2/28/09.*

CHAIRPERSON GRINNELL MOVED TO APPOINT COUNCILOR SHWAERY TO MEET WITH THE CHAIRMAN OF THE MARY SAFFORD WILDES TRUST TO INTERVIEW FRANK CROTTY FOR HIS REAPPOINTMENT TO THAT BOARD UNTIL 2/28/09, SECONDED BY COUNCILOR HEILSHORN.

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

j. (120205-14) *THE KITTELY TOWN COUNCIL MOVES TO APPROVE THE APPLICATION FROM THE KITTELY OUTLET ASSOCIATION FOR FIVE REQUESTED DATES FOR TOWN-WIDE SIDEWALK SALES EVENTS FOR 2006.*

COUNCILOR DENNETT MOVED TO APPROVE THE APPLICATION FROM THE KITTELY OUTLET ASSOCIATION FOR FIVE REQUESTED DATES FOR TOWN-WIDE SIDEWALK SALES EVENTS FOR 2006, SECONDED BY COUNCILOR SHWAERY.

Councilor Shwaery asked if these sales were governed by 5.32.050 or 5.32.060 because 5.32.060A stated there could only be four sidewalk sales a year. Town Manager Carter explained there was a typo in the Ordinance, which had been brought to their attention.

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

k. (120205-15) *THE KITTELY TOWN COUNCIL MOVES TO ACCEPT A CHECK IN THE AMOUNT OF \$500 FROM STANLEY TANGER AND MARI HOELL FROM TANGER OUTLET CENTERS OF NEW ENGLAND TO BE PLACED IN THE NEW KITTELY FIRE DEPARTMENT FIRE STATION ACCOUNT.*

CHAIRPERSON GRINNELL MOVED TO ACCEPT A CHECK IN THE AMOUNT OF \$500 FROM STANLEY TANGER AND MARI HOELL FROM TANGER OUTLET CENTERS OF NEW ENGLAND TO BE PLACED IN THE NEW KITTEERY FIRE DEPARTMENT FIRE STATION ACCOUNT, SECONDED BY COUNCILOR HEILSHORN.

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

1. (120205-16) *THE KITTEERY TOWN COUNCIL MOVES TO SCHEDULE A PUBLIC HEARING FOR JANUARY 9, 2006 TO RECEIVE COMMENTS ON AN APPLICATION FOR A COMMUNITY DEVELOPMENT BLOCK GRANT TO FUND A PORTION OF THE SENIOR CENTER AREA OF THE PROPOSED NEW COMMUNITY CENTER.*

COUNCILOR HEILSHORN MOVED THE DATE OF JANUARY 9, 2006 FOR A PUBLIC HEARING TO RECEIVE COMMENTS ON AN APPLICATION FOR A COMMUNITY DEVELOPMENT BLOCK GRANT TO FUND A PORTION OF THE SENIOR CENTER AREA OF THE PROPOSED NEW COMMUNITY CENTER, SECONDED BY CHAIRPERSON GRINNELL.

Town Manager Carter thanked the Chair for the opportunity to discuss this Community Development Block Grant. He said there had been a requirement for them to submit a prequalifying round of who they were and what they were trying to do with the money; they were reviewed and within the last week or two received word that they made the threshold to submit for the grant money. The Manager said they a very short window of opportunity was provided to submit an application for a very highly competitive amount of State money, which was decreasing each year and so, in speaking with the Rec Director, they, being the Friends of the Rec Center, agreed to pay for the grant writer to take a crack at putting a professionally done grant application into the State and the Manager felt they should try to meet the Public Hearing dates; the grant had to be submitted by January 13 and so January 9 was the last opportunity because of the timing of advertising and so forth that they could possibly hold this Public Hearing. He said they thought it might be worth the risk to attempt this; just like the bidding situation, they were making every attempt to reduce the cost of the Community Center. The Manager said if they were successful, the \$300,000, or whatever it was they might be able to get, would help with the cost of the overall Community Center and hopefully save them money.

Councilor Shwaery said he agreed they needed to move hastily since January 9 was Monday and the grant would be due Friday, the 13th, but before this went ahead, he would ask if the part of the Community Center that this grant would pay for had to be a dedicated senior center because there was nothing in the building plans that called for seniors only. Town Manager Carter said no, it was a senior designated area for such things as Meals on Wheels and senior activities. Councilor Shwaery asked, but it could be a multi-use room and the Manager answered yes.

Chairperson Grinnell said her question was why did they have to have a Public Hearing to write for a grant and the Manager explained they wanted as much community input into the grant application as possible and in the ad they would be placing in the paper was the fact that they would only have an abstract by the time of publication and people would come in wanting to look at this and it would be an abstract. The Manager said they were working around the clock to get this thing put together.

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

m. Other

Councilor Spiller asked Council's indulgence, since it might be unfinished business or new business; it was new to her. She said the Port Authority appeared to be in the process of developing their own definition of marina outside of what her understanding of what the procedures were. Councilor Spiller said there had been a notice in the paper about a hearing on definitions and the Minutes indicated they were moving ahead with that.

Town Manager Carter explained what he knew about the situation was that the KPA held a Public Hearing at their last meeting. The Hearing, he said, was continued and the issue that was continued was the development of their regulations to incorporate a marina and several other definitions; they were continuing it as of tomorrow night, Thursday. The Manager said that the way he understood this to work was there should be a working relationship with the Planning Board that both groups coordinate their definitions. There is a representative from the Planning Board assigned to the KPA and there were supposed to be lines of communications going back and forth so these sorts of definitions difficulties were not out there. The Manager said, as Councilor Spiller knew, the KPA was not under his purview or the Council's and so it made it fairly difficult to enter into a discussion with them other than to suggest that what they were doing would only add fuel to the fire in regards to what was happening in the community. With that said, the Chairman of the KPA had reasons for trying to define the marina aspect because it went to a number of applications they may be seeing before them and he felt strongly that this was a way to determine what was a marina and what was not a marina for their working. As to a community pier or marina or whatever it was, that was still out there open for discussion. The Manager said he could tell her that the Town Attorney and himself were extremely aware of the tension between the Planning Board and the KPA, the unresolved issues that were still out there with the Planning Board with the Pier, the number of hearings that had been held on this one situation, and the delays it had caused all the different projects that came before the Planning Board. For all that, he said, he didn't have a good answer for her inquiry other than to indicate that they had mentioned the concerns to the Chair of the KPA, who was going to do what he thought was necessary, and that they were trying to develop an administrative "ordinance," if you will, that might help in the future with the direction of permits that came through to the KPA. The Manager said they put a preliminary administrative process in place because when he first got here, it became apparent there was no traffic person directing where these applications were going. The process they now had in place was that applications for private piers and wharfs went to the Town Planner, who then determined if there was a shore land violation or problem. If there was, then it was directed to the Code Enforcement Officer or to the Planning Board to resolve that problem first before it went to the KPA. If there was no problem, then it went directly to the KPA and they did their research and process. Certainly, the pier permitting was something done through the State, through the Submerged Land Lease and through a number of different organizations and, he said, the KPA served a very valuable function trying to organize and maintain all that.

Councilor Brock said that was a lot of information but he still had a concern. He appreciated the efforts the Manager and the Town had taken to work with the Port Authority to reach a consensus on the process, but it sounded like the Port Authority might be going ahead without that coordination. Councilor Brock said that, ultimately, the question was who had the authority to regulate various kinds of piers, such as private piers and if it was the position of the Town (which could be clarified by the Town Attorney) that it was up to the Town, the Planning Board and, ultimately, the Council to set the definitions of what was a permissible pier? For

example, he said, was a Brier's type pier permissible within the Town of Kittery? He said that determining if that was the decision of the Town or the Port Authority was a very important question. Councilor Brock said it would be helpful to have time to resolve this in a more cooperative manner but, ultimately, if the Port Authority forced the issue, he thought they needed to meet with the Town Attorney and not allow something to go forward that was legally infirm or at least questionable. Councilor Brock told the Manager to emphasize to the Port Authority that the Council wanted to work with them but if they wanted to go their own way, then Council needed to evaluate their options.

Chairperson Grinnell said she completely agreed with Councilor Brock and her understanding of what the Manager had said was that by the Port Authority taking the actions they were taking, without consensus from the Planning Board, they were adding fuel to a fire. Chairperson Grinnell said they had met with the Port Authority and discussed this and it felt like since they met with them, they were just going to go ahead and do what they wanted to do because they felt they had that prerogative, so did Council need to meet with the Town Attorney about who really had the authority to issue those permits?

Town Manager Carter said the Town Attorney was working to develop a proposal to Council that would bring both the Planning Board and the KPA together in an administrative process that would hopefully work these sorts of things out. The major problem here, he said, was communications and the willingness of these two groups to work together. The Manager said he thought if the temporary process that was in place right now had been in place with Brier's, it might have helped to speed up the decisions but, of course, that was hindsight. It was, he said, a situation that was very difficult. Brier's is a model of a pier not too dissimilar to what had been approved over at Shepherd's Cove. The Manager said it was a controversial issue that added fuel to the overall situation and what he could tell the Council was that he and the Town Attorney were now probably going to come back sooner rather than later with this proposal.

Councilor Brock said he appreciated that and thought there were two issues: one was who had the authority to decide whether a Brier's should or shouldn't be in the Town of Kittery; and on the basic question of authority, hopefully they could get a consensus between the Town, the Town Attorney and the Port Authority. He hoped they could do it by consensus, but if they could not and, for example, if the Port Authority went ahead and promulgated regulations allowing certain kinds of piers to be built within the Town without coming through Council, then they had to know very soon from the Town Attorney was that something the Council had agreed the Port Authority had the authority to do. If not, he said, then Council should be prepared to assert their authority. Councilor Brock said he was not trying to also add fuel to the fire but didn't want the Council to be passive in this if the Port Authority was going ahead without first getting this authority issue worked out.

Town Manager Carter said the KPA was a legislative body, which was legislated to do public piers and wharfs, they ran the moorings and had a budget that was approved by Council. He said that when it came to private piers and wharfs, their ability to review was granted through the zoning ordinance and the tables in the zoning ordinance had them listed. The Manager said that what had emerged over the history were practices that were probably objected to at this point but that had gone on for years. He said he thought the only way that this would come to a resolution was for the Council to sit down with both Boards and work through it with the Town Attorney in a way that met everyone's needs because KPA served a valuable function. It was questionable, he said, whether they should still be legislated or not but it was a situation where that group had the knowledge and several on that committee could tell you every single pier and wharf in this community. This institutional knowledge, he said, worked for the community and should not be lost.

Chairperson Grinnell said she understood all the things he was saying and wished that yesterday, the Planning Board, Port Authority, the Town Attorney and Council all sat down together but that didn't happen. She said that if the Port Authority could hear her speaking right now she would ask that they not proceed tomorrow with their definitions before they all sat down together. Chairperson Grinnell suggested that they sit down together next week and ask them to postpone what they're doing – let's sit down now not later.

Town Manager Carter said what he could do was to develop a letter tomorrow morning to the Chair of the KPA asking that they again extend their decision making until an opportunity could be put together for these three Boards to sit down.

Chairperson Grinnell said she would really like that to happen and received agreement from the Council. The Chair said this was really important and overdue and that she took as much responsibility as she could, saying she should have promoted this more after their meeting.

Councilor Brake said the Council had discussed many things, a lot of which had to do with money, and he wanted to suggest that the Town could be receiving more funds than it currently was from the solid waste disposal facility; funds that could be used for some of those things that were coming up before them. He offered to produce some paperwork in that regard and Chairperson Grinnell asked if he would like to put it on the agenda and when. Councilor Brake said he had a lot of information for them and a date in February would be good. Chairperson Grinnell asked that it be marked for the first meeting in February.

10. COMMITTEE AND OTHER REPORTS

a. *COMMUNICATIONS FROM THE CHAIRPERSON*

Chairperson Grinnell said they had received the current form for the Manager's evaluation and a sample form, which had been used by the Town of Wells. One thing that the Vice Chair had talked about was to look at this form to see if they could revamp it and the Manager will have been here one year on February 28 so it will be time to do his evaluation and she wondered if Council would entertain the idea of updating the evaluation form.

Councilor Brock said he had no problem updating the form but would like to know the Town Manager's opinion concerning what he thought was an appropriate form. Town Manager Carter said he hadn't had a good opportunity to look over what Council had been using and he had been using the other one, which had been in use for a number of nonprofits and municipalities. He said he was sure there were better ones out there and he could look around for them and perhaps Councilor Spiller had something over at the university that was used for administrators but, he said, it really didn't matter. Council needed to look at all the functions that were listed in the Charter under his duties and make sure whatever tool they used for the evaluation touched on the qualities and performances that were in that job description, as well as some outside criteria they thought was important so, as long as they felt comfortable with it, whatever they finally came up with would be fine with him.

Chairperson Grinnell asked how Council would like to proceed and if anyone had access to other evaluation formats they might consider or did they want to look at just these two? After discussion, it was decided that Councilors Shwaery and Spiller would send copies of other evaluation forms to the Town Office for distribution by Barbara and Chairperson Grinnell said they could then discuss the format they wanted to use.

Chairperson Grinnell said a second item she had for discussion was concerning the Kittery Foreside Design Committee. She said they had discussed it twice as part of their agenda and the last time Councilor Dennett felt that the Committee was an advisory committee to the Planning

Board and not a committee to be set up by the Council. The Chair wanted to suggest that they send a letter to the Planning Board saying that the Design Committee was an arm of that Board, it was not a committee that needed to have a charge and all such things they had talked about; it was a group that would help the Planning Board. She said they could give the Board a list of people who wanted to be on it, they could set the group up for a year and that the Council really had nothing to do with it. The Chair said she had individually discussed it with Councilor Dennett and a few other Councilors as well as with the Manager and she wanted to know how Council felt about it.

Councilor Shwaery said his only question was if the Board had the authority to establish an advisory group that could truly hold up an application and the Chair said she believed they did. Town Manager Carter said, as they discussed at the last meeting, this ordinance also was involved with the Code Enforcement Officer and a number of different areas with this voluntary review board. The Manager thought it was worth a shot if the Planning Board was willing to appoint these people but he still felt strongly it should only be for a year and then to have a reevaluation at the end of that time.

Councilor Brock said he was for whatever process could get this going forward because the Planning Board needed help. Chairperson Grinnell said she thought this volunteer group of people could help them and said she would send the applications to the Board and directed the Manager to send the Planning Board a letter outlining the thoughts of Council.

b. *TOWN MANAGER'S REPORT*

Town Manager Carter said his report was summarized in their packets. The Fuel and More Program that had been started in the community under the leadership of Kathy Pridham, the General Assistance Coordinator, had raised almost \$5,000 and they really appreciated everyone's donations. Their goal was \$10,000 so they were well under way. They had spent \$1,979.25, leaving a balance of \$2,932.75. Eleven families had been assisted with oil, propane or electricity from this account. The Manager said donations could be made to Fuel and More Program, in care of the Town of Kittery, Post Office Box 808, Kittery.

The Manager said they had been notified that the Homeland Defense Grant that the Fire and Police Chiefs had been working on, the final phase of radio equipment upgrading, had been received. Although not the total amount requested, the Town received \$113,766, which was the largest grant awarded in York County. He said they would be bringing this to Council later in order to move this equipment forward and it might be as early as January 9 due to lead time in ordering. This was a major project and he wanted to congratulate the Fire and Police Chiefs on this, it should greatly enhance public safety communications in the community. The Manager said when they came back to Council, they would demonstrate, through a diagram or written document, how this whole group of radio and microwave equipment and hand held portables will work together.

The Manager said the next item was the announcement of the bid acceptance for the Kittery Point Fire Station septic system. It had been awarded to Grover and it was a difficult bid to analyze and he wanted to congratulate Chief O'Brien for his analysis.

The next item was the Town Hall telephone answering system improvements. They recognized that the general public was growing frustrated in not being able to reach them as quickly as they might like. The major problem was that the two part time receptionists left their employment for different reasons. They chose to look at alternatives when they left including a contractual answering service that they were looking at that would answer and then transfer the calls to the right extensions and parties as well as a technical solution, which was similar to what you heard when you called for airline tickets or FedEx, a synthesized voice directing you to the right

party. These were what they were looking at rather than rehiring two part time people who, in his mind, were not able to answer all the calls effectively all the time. They were actively working on this, the Town Clerk was participating in reviewing this and they hoped to have a solution in a very reasonable time.

The Manager said he wanted to wish everybody a Happy New Year!

Chairperson Grinnell said she had noticed the outside counter had been moved and asked the Manager to explain to people what was going on. Town Manager Carter said they were working on a much larger customer service program. One of the things that was fairly disruptive was if they were not going to have a receptionist, there shouldn't be a table there that might indicate to people that somebody would be returning at some point. Their plan was to dismantle that and put it upstairs in the attic where if things went back hiring two people, they could bring it back down. They would disengage the computer out there, wall mount the phone and rearrange the furniture so there was more of an entrance hallway for people.

The Town Clerk was working on was obtaining those wall-mounted sleeves you could put information in so it would become more of a service area. They had also determined that people were missing the major payment or function areas when they came in; their signage was not good and he had enlisted some professional interior design people to help with understanding some of what they should be doing.

Third, in the Land Use Development area there was a three quarter wall that was in there when you walked in and they were examining bringing that wall down to where it would become a service counter because right now, it was extremely awkward. They were also moving the General Assistance room from the inner office of the Land Use end of it to where the Harbor Master and elections were presently, right inside the door of the Land Use. With the advent of elections being centralized in a State database and the new equipment the State had given the Town Clerk, her operations could be moved totally into her office in a different secured area. The Harbor Master's files could be moved into a secured area so that would free up the small office for other activities.

The Manager said they planned to move their two clerical people's desks in the Land Use side so they were facing the counter area and they were beginning to talk with the Land Use staff about how they could determine different hours for when people could make appointments and for walk in traffic, have periods of time where they could get their work done when there were no appointments, but work toward being open more in order to be able to help people in a more efficient way than what was happening presently.

Chairperson Grinnell thanked the Manager and said she also wanted to wish all the Councilors and everyone watching a Happy New Year.

11. ADJOURNMENT

CHAIRPERSON GRINNELL MOVED TO ADJOURN, SECONDED BY COUNCILOR SHWAERY, WITH ALL IN FAVOR.

MEETING ADJOURNED AT 9:45 P.M.