

**APPROVED MINUTES**  
**Approved on January 26, 2009**

**KITTERY TOWN COUNCIL**

**December 22, 2008**

**Council Chamber**

1. **CALL TO ORDER**

Chairman Jeffrey Thomson called the meeting to order at 7:00 p.m.

2. **INTRODUCTORY**

Chairman Thomson read the Introductory.

3. **PLEDGE OF ALLEGIANCE**

The Chair led those present in the Pledge of Allegiance.

4. **ROLL CALL**

Answering the roll were Councilors Gary Beers, Frank Dennett, George Dow, Ann Grinnell and Chairman Jeffrey Thomson. Also present were Town Manager Jonathan Carter, Town Clerk Maryann Place, Fire Chief David O'Brien, CEO Heather Ross, KCC Chair Earldeen Wells, Rick Preti, Recorder Chris Kudym, members of the press and others.

Chairman Thomson indicated that both Vice Chair Spiller and Councilor Shwaery had notified him that they would not be present.

5. **ACCEPTANCE OF MINUTES**

The Minutes of November 24, 2008 were accepted, as amended.

6. **INTERVIEWS FOR THE ZONING BOARD OF APPEALS, PLANNING BOARD OR CABLE TELEVISION RATE REGULATION BOARD - None**

7. **PUBLIC HEARINGS**

a. (120208-1) *THE KITTERY TOWN COUNCIL MOVES TO HOLD A PUBLIC HEARING TO RELEASE FUNDS IN THE AMOUNT OF \$582 FROM THE GRANT MATCH RESERVE ACCOUNT AS THE TOWN'S MATCH TO THE FEMA FIRE GRANT OF \$11,068 FOR SAFETY EQUIPMENT. THE TOTAL GRANT IS \$11,650.*

Chairman Thomson stated that this grant had been awarded to the Town through the fine efforts of the Fire Chief. Notification of this Public Hearing had been published in the local printed media on Monday, December 15<sup>th</sup>. The Chair opened the Public Hearing and not receiving a response, he then closed the Public Hearing.

**COUNCILOR BEERS MOVED TO RELEASE FUNDS IN THE AMOUNT OF \$582 FROM THE GRANT MATCH RESERVE ACCOUNT AS THE TOWN'S MATCH TO THE FEMA FIRE GRANT OF \$11,068 FOR SAFETY EQUIPMENT, SECONDED BY COUNCILOR GRINNELL.**

**A ROLL CALL VOTE WAS TAKEN, WITH ALL IN FAVOR. MOTION PASSES 5/0.**

Approved on 1/26/09

b. (120208-2) *THE KITTERY TOWN COUNCIL MOVES TO HOLD A PUBLIC HEARING ON THE RENEWAL APPLICATION OF TIMOTHY ZIMMERMAN, 122 HALEY ROAD, KITTERY, FOR A TAXICAB BUSINESS LICENSE FOR KITTERY CAB COMPANY, 122 HALEY ROAD.*

Chairman Thomson stated that notification of this Public Hearing was published in the local printed media on Monday, December 15<sup>th</sup> and opened the Public Hearing. Hearing no response, the Chair then closed the Public Hearing.

**COUNCILOR DOW MOVED TO APPROVE THE RENEWAL APPLICATION OF TIMOTHY ZIMMERMAN, 122 HALEY ROAD, KITTERY, FOR A TAXICAB BUSINESS LICENSE FOR KITTERY CAB COMPANY, 122 HALEY ROAD, SECONDED BY COUNCILOR BEERS.**

**A ROLL CALL VOTE WAS TAKEN, WITH ALL IN FAVOR. MOTION PASSES 5/0.**

## 8. DISCUSSION

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

Earldeen Wells, Chairman of the Kittery Conservation Commission, came to the podium stating that the KCC had requested a reconsideration of a wetland setback reduction granted by the Zoning Board of Appeals on November 25, 2008. The Miscellaneous Appeal was for a reduction of a wetland setback from 100 feet to 36 feet for a subsurface wastewater disposal system for property on Gee Road. The ZBA reviewed the reconsideration request on December 9, 2008 and chose not to reconsider their decision as no new evidence was being submitted that had not already been submitted by the KCC. Ms. Wells stated the KCC maintained that the ZBA was in error in granting any wetland setback reductions on this property since Kittery Ordinance 16.12 clearly stated that a 100-foot setback was required for a wetland greater than one acre in size. The ZBA granted the Miscellaneous Appeal with several conditions, which Ms. Wells detailed. She said that, in the opinion of the KCC, these conditions did not provide the wetland protection intended by 16.12.

Ms. Wells indicated the KCC continued to maintain that the ZBA had been in error according to the Kittery Land Use and Development Code: 16.24.050.1, which required a one-year wait before bringing another appeal before the ZBA; 16.28.090, which stated that two or more combined contiguous non-conforming lots would be deemed as one lot; and 16.28.140, which stated that a legal non-conforming building that was damaged or removed must be rebuilt, within the same dimensions, within 12 months.

Ms. Wells stated that the Kittery Conservation Commission was requesting permission from the Town Council to dispute the Kittery Zoning Board of Appeals' decision to grant a Miscellaneous Appeal to reduce the wetland setback requirement on Map 65, Lot G-1, in a Maine Court.

### b. *CHAIRPERSON'S RESPONSE TO PUBLIC COMMENTS*

Understanding that any Court appeal had to be made within 45 days from the ZBA 's decision of November 25<sup>th</sup>, Council agreed to hold a special one-item agenda meeting at 6:30 p.m., January 5, 2009.

Councilor Dennett's two concerns were: putting the Town Attorney in an untenable position between the KCC and the ZBA; and the question of whether or not the KCC had legal standing to bring such an action.

Approved on 1/26/09

Town Manager Carter indicated that they were on the eve of the whole zoning issue and wetlands being modified and spending thousands and thousands of dollars on this issue when it was being amended was, in his opinion, not the best use of funds.

9. UNFINISHED BUSINESS

Councilor Dow wondered how a decision was made concerning which Board, the KCC or the ZBA, would benefit from Town Attorney representation and the Manager explained that Atty. McEachern had already been involved with the CEO on this case with the ZBA so a second attorney would have to be consulted.

Councilor Beers noted that the KCC had presented a well-researched and well-articulated argument and it was his understanding that they were required by Statute, as well as by voter authority, to have certain empowerment regarding wetlands. Since the KCC was the only body charged with conserving such wetlands on behalf of the Town, there had to be some avenue to pursue assurance of the Town trust within their own ordinances. With that, Councilor Beers' question was, if Council approved the KCC's request to file an appeal with the Court on January 5<sup>th</sup> and the deadline for such an appeal was January 9<sup>th</sup>, was three days enough time for an adequate filing to be made? The Manager indicated that a simple preliminary filing was all that would be needed.

Chairman Thomson had a couple of items. First, at their last meeting, there was an action item requesting Council to support an application to place Memorial Bridge on the National List of the 11 Most Endangered List of Historic Places that the Chair thought had been brought by an individual, non-Kittery resident and which he thought had been kind of hasty; the application had actually come from the Portsmouth Historical Society through Mr. Candee. Since then, there had been a couple of newspaper articles indicating that the States had gotten together to fund a study to look at options, one of which was the option of having one bridge, an idea that the Chair thought would be harmful to both communities, Portsmouth and Kittery, in terms of land-taking. The Chair also indicated a concern about taking an action that would possibly delay necessary work for Bridge maintenance.

**CHAIRMAN THOMSON MOVED THAT COUNCIL RECONSIDER ITS ACTION OF DECEMBER 8, 2008 TO PLACE THE MEMORIAL BRIDGE OF 11 MOST ENDANGERED LIST OF HISTORIC PLACES, SECONDED BY COUNCILOR DENNETT.**

**A ROLL CALL VOTE WAS TAKEN, WITH ALL IN FAVOR. MOTION PASSES 5/0.**

**CHAIRMAN THOMSON MOVED THAT COUNCIL SUPPORT THE APPLICATION OF THE PORTSMOUTH HISTORICAL SOCIETY, THROUGH DR. RICHARD CANDEE, TO PLACE THE MEMORIAL BRIDGE OF 11 MOST ENDANGERED LIST OF HISTORIC PLACES, SECONDED BY COUNCILOR DENNETT.**

**A ROLL CALL VOTE WAS TAKEN, WITH ALL IN FAVOR. MOTION PASSES 5/0.**

The Chair's other issue was that he was curious if there was any available information on where they stood as far as December tax collections this year compared to the last couple of years. The Manager stated that 95.7% had been collected for FY-08 and 95.1% in FY-09 for the same period.

10. NEW BUSINESS

Approved on 1/26/09

a. (120208-3) *THE KITTERY TOWN COUNCIL MOVES TO HEAR A PRESENTATION FROM FAIRPOINT COMMUNICATIONS AND CONSIDER SIGNING A MEMORANDUM OF UNDERSTANDING FOR A TRIAL VIDEO AS PART OF THEIR FAST SYSTEM.*

Rick Preti, a Senior Vice President for Fairpoint Communications, came to the podium to explain Fairpoint's proposal for a trial of a new video service technology they would like to bring to the Northern New England area. The purpose of the trial was to gain important feedback relative to the new technology, looking to support a sustainable business model over the long-term, as a competitive alternative, using a fiber optic system. Mr. Preti detailed several benefits of the system and indicated that their plan was to begin a 90-day trial starting February 1<sup>st</sup> and ending April 30<sup>th</sup>, using 100 homes within three communities (Kittery, Portsmouth, Eliot). Their ultimate goal was to stimulate competition to improve video services by offering quality service and products at competitive pricing. Mr. Preti said they would like the Council to consider authorizing a Memorandum of Understanding as a method of doing something on an interim basis prior to applying for a full franchise agreement.

Chairman Thomson asked how trial homes would be chosen and Mr. Preti said they had already received over 150 calls and e-mails from volunteers. He said that generally it would be pretty random, however, firstly, they needed to make sure that the fiber optic was available to the premise. They would also be looking for a widely mixed sampling of households.

Responding to various questions from Council, Mr. Presti indicated that: there were about 4,000 homes they knew they could service at this point and they would be providing public television; that this system could handle phone, internet and tv; that a written agreement would exist between Fairpoint and the parties involved in the trial; and the program material, agreement and survey questions with results would be made available to Council.

Town Manager Carter noted that he had consulted with the Town Attorney, who said it was fine, as well as with the Cable Regulatory Board Chairman, who endorsed the trial.

**COUNCILOR BEERS MOVED TO AUTHORIZE THE TOWN MANAGER TO SIGN A MEMORANDUM OF UNDERSTANDING FOR A TRIAL VIDEO AS PART OF THEIR FAST SYSTEM WITH FAIRPOINT COMMUNICATIONS FOR A 90-DAY TRIAL, COMMENCING FEBRUARY 1, 2009, AS PRESENTED TO COUNCIL, SECONDED BY COUNCILOR GRINNELL.**

**A ROLL CALL VOTE WAS TAKEN, WITH ALL IN FAVOR. MOTION PASSES 5/0.**

b. (120208-4) *THE KITTERY TOWN COUNCIL MOVES TO SCHEDULE A PUBLIC HEARING TO APPROPRIATE A SUM NOT TO EXCEED \$50,000 FROM UNENCUMBERED SURPLUS FOR THE PURPOSE OF UNDERTAKING PHASE TWO OF THE KITTERY SCHOOL DEPARTMENT RECONFIGURATION PLAN, IN ACCORDANCE WITH SEC. 6.09(1) OF THE KITTERY TOWN CHARTER.*

**COUNCILOR BEERS MOVED TO SCHEDULE A PUBLIC HEARING TO APPROPRIATE A SUM NOT TO EXCEED \$50,000 FROM UNENCUMBERED SURPLUS FOR THE PURPOSE OF UNDERTAKING PHASE TWO OF THE KITTERY SCHOOL DEPARTMENT RECONFIGURATION PLAN, IN**

Approved on 1/26/09

**ACCORDANCE WITH SEC. 6.09(1) OF THE KITTELY TOWN CHARTER, SECONDED BY COUNCILOR DOW.**

Councilor Beers indicated that throughout the documentation provided, the title “Reorganization Study Phase II” had been used. However, the Shared Services Committee clearly agreed that the next stage and the concept moving forward was justification for a “reconfiguration planning effort.”

**A ROLL CALL VOTE WAS TAKEN, WITH ALL IN FAVOR. MOTION PASSES 5/0, WITH A HEARING DATE SET FOR JANUARY 12, 2009.**

c. (120208-5) *THE KITTELY TOWN COUNCIL MOVES TO APPROVE THE DISBURSEMENT WARRANTS.*

Chairman Thomson listed the following warrant articles:

Warrant No. 9.	School Nutrition Program	\$ 14,643.40
Warrant No. 12	School Accounts Payable	\$ 338,667.33
Warrant No. 50	Town Accounts Payable	\$ 419,137.88

**CHAIRMAN THOMSON MOVED TO APPROVE THE DISBURSEMENT WARRANTS, SECONDED BY COUNCILOR DOW.**

**A ROLL CALL VOTE WAS TAKEN, WITH ALL IN FAVOR. MOTION PASSES 5/0.**

d. (120208-6) *THE KITTELY TOWN COUNCIL MOVES TO ACCEPT HILL CREEK DRIVE AS A TOWN ROAD, IN ACCORDANCE WITH SEC. 16.32.240 OF THE LAND USE AND DEVELOPMENT CODE.*

This matter was removed from the agenda; no action was taken.

e. (120208-7) *THE KITTELY TOWN COUNCIL MOVES TO RE-APPOINT HEATHER M. ROSS AS CODE ENFORCEMENT OFFICER UNTIL 12/31/09.*

“Being an all too frequent thorn in the Code Enforcement Officer’s side as a regular customer,” Councilor Beers said it gave him great pleasure to make the following motion:

**COUNCILOR BEERS MOVED TO RE-APPOINT HEATHER M. ROSS AS CODE ENFORCEMENT OFFICER UNTIL 12/31/09, SECONDED BY COUNCILOR GRINNELL.**

**A ROLL CALL VOTE WAS TAKEN, WITH ALL IN FAVOR. MOTION PASSES 5/0.**

f. (120208-8) *THE KITTELY TOWN COUNCIL MOVES TO RE-APPOINT ROCHELLE BISHOP AS ASSISTANT CODE ENFORCEMENT OFFICER UNTIL 12/31/09.*

**COUNCILOR BEERS MOVED TO RE-APPOINT ROCHELLE BISHOP AS ASSISTANT CODE ENFORCEMENT OFFICER UNTIL 12/31/09, SECONDED BY COUNCILOR DOW.**

**A ROLL CALL VOTE WAS TAKEN, WITH ALL IN FAVOR. MOTION PASSES 5/0.**

Approved on 1/26/09

g. (120208-9) *THE KITTELY TOWN COUNCIL MOVES TO RE-APPOINT JOHN COPLEY AS ASSISTANT CODE ENFORCEMENT OFFICER UNTIL 12/31/09.*

**COUNCILOR BEERS MOVED TO RE-APPOINT JOHN COPLEY AS ASSISTANT CODE ENFORCEMENT OFFICER UNTIL 12/31/09, SECONDED BY COUNCILOR GRINNELL.**

**A ROLL CALL VOTE WAS TAKEN, WITH ALL IN FAVOR. MOTION PASSES 5/0.**

h. (120208-10) *THE KITTELY TOWN COUNCIL MOVES TO RE-APPOINT HEATHER M. ROSS AS LOCAL PLUMBING INSPECTOR UNTIL 12/31/09.*

**COUNCILOR BEERS MOVED TO RE-APPOINT HEATHER M. ROSS AS LOCAL PLUMBING INSPECTOR UNTIL 12/31/09, SECONDED BY COUNCILOR GRINNELL.**

**A ROLL CALL VOTE WAS TAKEN, WITH ALL IN FAVOR. MOTION PASSES 5/0.**

i. (120208-11) *THE KITTELY TOWN COUNCIL MOVES TO RE-APPOINT ROCHELLE BISHOP AS ALTERNATE PLUMBING INSPECTOR UNTIL 12/31/09.*

**COUNCILOR BEERS MOVED TO RE-APPOINT ROCHELLE BISHOP AS ALTERNATE LOCAL PLUMBING INSPECTOR UNTIL 12/31/09, SECONDED BY COUNCILOR GRINNELL.**

**A ROLL CALL VOTE WAS TAKEN, WITH ALL IN FAVOR. MOTION PASSES 5/0.**

j. (120208-12) *THE KITTELY TOWN COUNCIL MOVES TO RE-APPOINT JOHN COPLEY AS ALTERNATE PLUMBING INSPECTOR UNTIL 12/31/09.*

**COUNCILOR BEERS MOVED TO RE-APPOINT JOHN COPLEY AS ALTERNATE LOCAL PLUMBING INSPECTOR UNTIL 12/31/09, SECONDED BY COUNCILOR GRINNELL.**

**A ROLL CALL VOTE WAS TAKEN, WITH ALL IN FAVOR. MOTION PASSES 5/0.**

k. (120208-13) *THE KITTELY TOWN COUNCIL MOVES TO RE-APPOINT MARYANN PLACE AS THE REGISTRAR OF VOTERS UNTIL 12/31/10.*

**COUNCILOR BEERS MOVED TO RE-APPOINT MARYANN PLACE AS THE REGISTRAR OF VOTERS UNTIL 12/31/10, SECONDED BY COUNCILOR DOW.**

**A ROLL CALL VOTE WAS TAKEN, WITH ALL IN FAVOR. MOTION PASSES 5/0.**

l. (120208-14) *THE KITTELY TOWN COUNCIL MOVES TO APPOINT A REPRESENTATIVE TO MEET WITH THE CHAIR OF THE BOARD OF ASSESSMENT REVIEW TO INTERVIEW DUDLEY BIERAU FOR HIS RE-APPOINTMENT TO THAT BOARD UNTIL 11/30/11.*

Approved on 1/26/09

**COUNCILOR DENNETT MOVED TO APPOINT COUNCILOR GRINNELL TO MEET WITH THE CHAIR OF THE BOARD OF ASSESSMENT REVIEW TO INTERVIEW DUDLEY BIERAU FOR HIS RE-APPOINTMENT TO THAT BOARD UNTIL 11/30/11, SECONDED BY COUNCILOR DOW.**

**A UNANIMOUS VOICE VOTE (5/0) WAS TAKEN. MOTION PASSES 5/0.**

m. (120208-15) *THE KITTERY TOWN COUNCIL MOVES TO ACCEPT THE GRANT FROM THE NEW HAMPSHIRE ESTUARIES PROJECT – UNIVERSITY OF NEW HAMPSHIRE AWARDED TO THE TOWN IN CONJUNCTION WITH THE SPRUCE CREEK 319 GRANT TO UNDERTAKE AN “OPTICAL BRIGHTENER STUDY OF SPRUCE CREEK” IN THE AMOUNT OF \$7,975 AND LOCAL MATCH OF \$8,400 FOR A TOTAL GRANT COST OF \$16,375.*

Town Manager Carter explained that this was the work of the Spruce Creek 319 group and was the first grant funded through the New Hampshire Estuaries Program. The Manager said the Estuaries Program, located at the University of New Hampshire, told him that this was the best grant application they had received. The local match referred to work “in kind” so no funds were involved.

**COUNCILOR DOW MOVED TO ACCEPT THE GRANT FROM THE NEW HAMPSHIRE ESTUARIES PROJECT – UNIVERSITY OF NEW HAMPSHIRE AWARDED TO THE TOWN IN CONJUNCTION WITH THE SPRUCE CREEK 319 GRANT TO UNDERTAKE AN “OPTICAL BRIGHTENER STUDY OF SPRUCE CREEK” IN THE AMOUNT OF \$7,975 AND LOCAL MATCH OF \$8,400 FOR A TOTAL GRANT COST OF \$16,375, SECONDED BY COUNCILOR BEERS.**

**A ROLL CALL VOTE WAS TAKEN, WITH ALL IN FAVOR. MOTION PASSES 5/0.**

n. *OTHER*

Councilor Grinnell confirmed her understanding that if Council appropriated \$50,000 from unencumbered surplus for the schools at the scheduled Public Hearing for that purpose, no further money could be taken from that account for the schools within one calendar year.

Councilor Dow referred to the recent ice storm and asked if there was a way for Kittery citizens to find out where they should go for shelter in such an emergency and if there was such a shelter in Kittery.

Town Manager Carter noted that this had been a great test of their system and just that day they had a meeting with the District Manager of CMP and worked through some issues with Bob Bowman, EMA Director, the Fire Chief, the Police Chief and himself. The Manager said the Red Cross had also been hit by the economy and they were spread very thin. Kittery was part of both the Great Bay Chapter and the Portland Chapter. It was the Red Cross that funded shelters and, through the efforts of the Fire and Police Chiefs, they were beginning to train Town volunteers to be certified in shelter management so they could open their own shelter, perhaps at the Gorges Road Fire Station or Shapleigh School and that day they had asked for a supply of 50 cots, which will be stored at the Fire Station.

Fire Chief O’Brien added that the key was being eligible for Red Cross funding, which meant they had to be certified and insured. The Chief also noted that they had to figure out a way to be able to get to people who had special needs and put together a list so they knew how to get to people.

Approved on 1/26/09

The Manager praised the response and work of CMP. He then read aloud a memo to re-define comments he made at a meeting with Gov. Baldacci that seemed to have been misconstrued via an article in Foster's Daily Democrat to make sure there was no misunderstanding by either the State or CMP regarding any negative feedback from Kittery.

## 11. COMMITTEE AND OTHER REPORTS

### a. *COMMUNICATIONS FROM THE CHAIRPERSON*

On behalf of the Council, Chairman Thomson thanked the Manager, the Police Chief, the Fire Chief, the DPW, and the Sewer Department for all the excellent work they did during the ice storm.

The Chair asked members of the Council to start thinking about moving forward on their end regarding the Frisbee School site. He said that he and the Vice Chair had attended a School Committee meeting last week where there was discussion that they might be exiting that building sooner rather than later and maybe as early as this June. Calling to mind the history of the Solid Waste Facility, the Chair said it was time for them to put together a working group to look at the site, drawing on the expertise within the community.

### b. *TOWN MANAGER'S REPORT*

Town Manager Carter wished everybody Happy Holidays. The Manager said he was very proud of their Fire and Police Departments; they never stopped during the storm and over the weekend, with about 20 inches of snow, the Highway Department did a great job keeping roads clear.

The Manager stated that Fairpoint had previously been to their community to begin marketing through the use of ice cream trucks and because of their success had returned to the community, presenting a check for \$500 in appreciation. The Manager recommended that Council accept the check and perhaps put it toward the Fuel and More Program.

**COUNCILOR DOW MOVED THAT, ON BEHALF OF THE TOWN OF KITTEERY, COUNCIL ACCEPT A CHECK IN THE AMOUNT OF \$500 FROM FAIRPOINT COMMUNICATIONS, PLACING THOSE FUNDS IN THE FUEL AND MORE ACCOUNT, SECONDED BY COUNCILOR GRINNELL.**

**A ROLL CALL VOTE WAS TAKEN, WITH ALL IN FAVOR. MOTION PASSES 5/0.**

Town Manager Carter noted that he served on the York County Community College Foundation, which had issued its Spring '09 scholarships. A \$400 scholarship funded through Ocean Bank had been awarded to Patricia Corseau and a \$200 scholarship funded through the Kittery Lions Club had been awarded to Kyra Morse.

The Manager said that the KEAC Committee had been awarded a Cool Schools for Maine Grant. This was a School Committee issue but was done through the Kittery Energy Advisory Committee working on behalf of both the Town and the Schools to promote energy causes.

Chairman Thomson said he was still looking for the yogurt container receptacle at the Solid Waste Facility and the Manager said he would be willing to take them. The Chair also questioned the 1,008 laptop computers listed in their material and it was thought this must be a typo of some kind.

Approved on 1/26/09

*c. COMMITTEE REPORTS*

12. ADJOURNMENT

**COUNCILOR GRINNELL MOVED TO ADJOURN, SECONDED BY COUNCILOR DOW, WITH ALL IN FAVOR.**

***MEETING ADJOURNED: 8:33 P.M.***