

APPROVED MINUTES
Approved on September 22, 2008

KITTERY TOWN COUNCIL

August 25, 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 Jeffery Brake, Frank Dennett, Ann Grinnell, Glenn Shwaery, Vice Chair Judith Spiller and Chairman Jeffrey Thomson. Also present were Town Manager Jonathan Carter, Town Clerk Maryann Place, Susan Emery, Gil Robert, Recorder Chris Kudym, cable television and others.

Chairman Thomson indicated that Councilor Dow was not present due to a business commitment. He also welcomed Councilor Grinnell back and again expressed the Council's sympathy for her recent bereavement.

The Chair then requested Town Manager Carter to provide an update on the Public Works employee who had been injured last week. The Manager stated that last Thursday James Nightingale, a long-time Public Works employee, was traveling home after work and was involved in a very serious accident. The situation was an extreme one and Mr. Nightingale had been air lifted to Boston where he underwent numerous operations. He was now listed in stable condition but still required many, many months of rehabilitation to hopefully bring him back to where he was before the accident. Working with the family and members of the Public Works Department, the Town has set up an account – the James Nightingale Fund - at Ocean Bank, 17 Walker Street, Kittery, where donations can be made. All monies will be used by the family to offset the expenses of travel to and lodging in Boston.

Mr. Nightingale is presently at the Brigham and Women's Hospital in ICU and they hoped to have more information later in the week. The Manager said that their prayers went out to the family and he hoped the community would rally for him.

5. **ACCEPTANCE OF MINUTES**

The Minutes of August 11, 2008 were accepted, as amended.

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

7. **PUBLIC HEARING**

a. (080208-01) *THE KITTERY TOWN COUNCIL MOVES TO HOLD A PUBLIC HEARING ON THE RENEWAL APPLICATION OF DELTA AMUSEMENT, INC., 182 STATE ROAD, KITTERY, FOR A MALT, SPIRITUOUS AND VINOUS LIQUOR LICENSE FOR NAVY YARD BAR & BILLIARDS, 182 STATE ROAD.*

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Chairman Thomson opened the Public Hearing and not receiving a response, closed the Public Hearing.

VICE CHAIR SPILLER MOVED TO APPROVE THE RENEWAL APPLICATION OF DELTA AMUSEMENT, INC., 182 STATE ROAD, KITTEERY, FOR A MALT, SPIRITUOUS AND VINOUS LIQUOR LICENSE FOR NAVY YARD BAR & BILLIARDS, 182 STATE ROAD, SECONDED BY COUNCILOR SHWAERY.

Councilor Dennett pointed out two pieces of technically incorrect information contained in the application.

A ROLL CALL VOTE WAS CALLED, WITH ALL IN FAVOR. MOTION PASSES 6/0.

b. (080208-02) *THE KITTEERY TOWN COUNCIL MOVES TO HOLD A PUBLIC HEARING ON THE APPLICATION OF MAC'S CONVENIENCE STORES, LLC, P.O. BOX 347, COLUMBUS, IN, FOR A VICTUALERS LICENSE FOR CIRCLE K, 103 U.S. ROUTE 1 BYPASS.*

Chairman Thomson indicated that notification of this item had been published in the local printed media on Friday, August 13th and opened the Public Hearing. Not receiving a response, the Chair then closed the Public Hearing.

COUNCILOR SHWAERY MOVED TO APPROVE THE APPLICATION OF MAC'S CONVENIENCE STORES, LLC, P.O. BOX 347, COLUMBUS, IN, FOR A VICTUALERS LICENSE FOR CIRCLE K, 103 U.S. ROUTE 1 BYPASS, SECONDED BY VICE CHAIR SPILLER.

A ROLL CALL VOTE WAS TAKEN, WITH ALL IN FAVOR. MOTION PASSES 6/0.

8. DISCUSSION

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

Susan Emery of Kittery Point came to the podium to ask Council if they would consider a wooden seasonal ramp across the rocks to the main beach at Fort Foster. Ms. Emery indicated she had offered to speak to the Council on behalf of many older people who were concerned about their safety crossing the rocks. She stated that years ago, when she was on the Council, this same topic had come up for discussion but she didn't recall why it hadn't gone forward. Ms. Emery said they all wanted Fort Foster to be totally natural but she could envision something at the main beach that sat on the rocks just in the summer and was removed in the winter so people could easily get across the rocks without falling and which would allow access for wheelchairs. Ms. Emery said she was asking this be put on the agenda for discussion next year and would also certainly encourage people at home to contact the Council.

Gil Robert, 8 Elizabeth Lane, Kittery Point, came forward to discuss the need to get a Building Permit to paint your house. Last week he had started painting his house and on the second day, he received a Violation Notice from the CEO saying that he needed a Permit. He was irate when he went to see CEO Heather Ross (who was an exceptional person and to whom he would be apologizing when he saw her tomorrow because of his unprofessionalism). CEO Ross explained that the Town was enforcing the \$1,000 and above property improvements, which included home maintenance. He paid

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the fee, estimated \$500 on the application and got the Permit. When his wife went to pick up the Permit the next day, she was told that because of the \$500 estimate, they didn't need a Permit.

Mr. Robert said that what frustrated him was having to pay \$4.00 a gallon for heating oil, having a very cold winter projected so everyone was out taping up their houses to save on fuel costs, and then they had a CEO looking at every property with a ladder up checking to see if they had Permits. In his development, he said, there were about 32 houses and right now eight of them had ladders on them with people doing something.

His other frustration was that in Bartlett Farms they had what they called a derelict house with a property owner who didn't take care of her property and it looked like a crack house. The garage door was half off and there were animals going in and out, including coyotes, and the woman stayed in her house with the windows shut even on the hottest days.

Mr. Robert said that he had been the head of a State Agency in Florida and he fully appreciated what the Town was going through trying to make ends meet but to fully implement this Ordinance, that apparently had not been fully implemented in the past for such things as painting, he thought it was wrong to go around violating people without at least first telling them that you were going to do it.

Lastly, being a resident of Kittery for eight years, Mr. Robert said he was very concerned and somewhat annoyed that they didn't look at the Kittery outlets for an appropriate special tax or an increase in the mill rate. He knew there was legislation that had to be changed and he knew it was a long road to do something like that but they were not doing anything and he wondered what legislative agenda they had right now, if any; there were grants available on the Federal, State and local levels and they just had to be hammered. The malls were really where he thought the opportunities were because that was where their money was and he didn't see them doing anything.

Mr. Robert thanked the Council for their time and indicated he would be back next week with a Petition from the Bartlett Farms residents concerning the derelict house to see if the Council could help them in any way.

b. CHAIRPERSON'S RESPONSE TO PUBLIC COMMENTS

Addressing Ms. Emery, Chairman Thomson indicated that he referred an e-mail he had received concerning that same issue to the Manager for response. Town Manager Carter explained that the Park Commission was planning to put into their revised Five-Year Management Plan the creation of an ADA handicapped accessible access point to the beach. The area had already been looked at and they would be doing some survey work, as well as approaching the DEP as to the best way to do it.

Addressing Mr. Robert, the Chair explained that the Building Permit issue was one that Council had discussed at length and the Manager could explain the rationale of the value of less than \$1,000.

Regarding the valuation of the mall issue, the Chair said Mr. Robert was sort of singing to the choir. In the past, they had attempted begin the process of trying to get a local option sales tax through the Legislature, which was a very tough nut to crack. Other than that, there was no way to his knowledge that commercial property could have a valuation structure different than residential under current State Law. The Council heard his concerns in that area but it was one that Councils over the years had wrestled with going back to 20+ years ago when the malls first started to arrive and the perception was that they would generate much more in property tax revenue than they had because of the types of structures, which for the most part were unfinished shells; that was an issue that could be discussed at further length.

The Chair then referred to the Manager concerning the Building Permit issue. Town Manager Carter stated that when they revised the Building Permits, they included a waiver for anything under \$5,000 in maintenance with a \$25.00 fee being charged for assessment purposes but anything under \$1,000 did not need a Permit.

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Concerning the malls, the Manager said the Assessors Office had done a fairly thorough study two years ago and the malls were paying ten percent of the property taxes in the community. The problem was it was a lot more 20 years ago when the State had their inventory tax and personal property tax. Now the personal property tax has been cut in half so right now, for the entire Town, they received \$30,000 in personal property taxes and they relied on the property tax from that one mile stretch. The Manager noted that the Town belonged to an organization called the Service Center Association in which they participated to create legislation or attempted to lobby for legislation that would bring more money back to the service center communities to offset those impacts and, as the Chair said, it was an up-hill battle because the folks in power were mainly from rural Maine and they couldn't get it through the Legislature that they were sending hundreds of millions of dollars up there through sales tax and they got not even one-tenth of one percent back in revenue sharing dollars so it was very frustrating.

Lastly, the Manager stated that if there was a situation on Bartlett Road, he would be very interested in knowing about it and his team would attempt to analyze it to see what could be done to deal with it; this was the first he had heard about a derelict house and he would be happy to work on that.

Mr. Robert said he appreciated that and also understood what was being said about the Legislature and thought it should be an on-going process to do whatever they could. The Manager said he thought that Senator Bowman and State Representatives Wheeler and Hill would love to hear from him.

9. UNFINISHED BUSINESS

Councilor Shwaery said he saw Townspeople enjoying Seapoint Beach the last two Sundays and he hadn't seen any parking violations. However, on Chauncey Creek Road, on the straight part with the guardrail on the right, cars were parked two to three feet out onto the pavement making it so only one car could go through at a time so it basically became a one-way street and he didn't know why they continued to tolerate that. He noticed this summer a couple full time residents had moved in within the last 30 to 60 days and since some residents who had been here for eight years still had an out-of-state registration, he hoped they would have a zero tolerance on that.

Councilor Shwaery also asked if they would have a discussion on the letter received from Commissioner Gendron and Chairman Thomson noted that he thought the Manager had provided them with a copy of it because of the article that appeared in the newspaper and it was obviously an issue the School Committee had to deal with. Councilor Shwaery commented that, realizing some things are taken out of context in the newspaper, to bash Augusta didn't seem to be in their best interest. It was a School Committee issue but the amount of money Augusta decided to send them was a Council issue so they were not completely out of the loop on this.

10. NEW BUSINESS

a. (080208-3) *THE KITTERY TOWN COUNCIL MOVES TO APPROVE THE DISBURSEMENT WARRANTS.*

Chairman Thomson listed the following warrant articles:

Warrant No. 2	School Accounts Payable	\$ 41,862.96
Warrant No. 2	Dedicated Maintenance Acct.	\$ 44,378.00
Warrant No. 16	Town Accounts Payable	\$ 450,235.28

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COUNCILOR SHWAERY MOVED TO APPROVE THE DISBURSEMENT WARRANTS, SECONDED BY COUNCILOR BRAKE.

Town Manager Carter indicated that one of the Town Warrants had been adjusted to reflect a partial payment.

A ROLL CALL VOTE WAS TAKEN, WITH ALL IN FAVOR. MOTION PASSES 6/0.

b. (080208-4) *THE KITTERY TOWN COUNCIL MOVES TO APPOINT JOAN CASTELLANO TO THE PORT AUTHORITY AS A FULL MEMBER UNTIL 8/31/13.*

Chairman Thomson stated that he had met with Ms. Castellano and the Chairman of the Port Authority and the appropriate form had been signed.

Having received some criticism in the newspaper for making motions that were inappropriate for a Chairman, Chairman Thomson was reticent to make a motion on this item. Councilor Dennett stated that, according to their Rules, the Chair was entitled to all the privileges of membership so he would say, particularly in this case where the Chair had conducted the interview, it would be the Chair's option.

CHAIRMAN THOMSON MOVED TO APPOINT JOAN CASTELLANO TO THE PORT AUTHORITY AS A FULL MEMBER UNTIL 8/31/13, SECONDED BY COUNCILOR DENNETT.

A ROLL CALL VOTE WAS TAKEN, WITH ALL IN FAVOR. MOTION PASSES 6/0.

c. (080208-5) *THE KITTERY TOWN COUNCIL MOVES TO SCHEDULE A PUBLIC HEARING TO AMEND TITLE 8 OF THE KITTERY TOWN CODE TO ADD CHAPTER 8.10, NON-STORMWATER DISCHARGE ORDINANCE.*

Town Manager Carter stated that the enclosed sample ordinance would be finalized for the Public Hearing and indicated to Councilor Dennett that any editing problems could be addressed to the Town Planner.

COUNCILOR DENNETT MOVED THE DATE OF SEPTEMBER 8, 2008 FOR A PUBLIC HEARING TO AMEND TITLE 8 OF THE KITTERY TOWN CODE TO ADD CHAPTER 8.10, NON-STORMWATER DISCHARGE ORDINANCE, SECONDED BY COUNCILOR BRAKE.

Councilor Shwaery suggested that the word stormwater be standardized in the text as one word.

A ROLL CALL VOTE WAS TAKEN, WITH ALL IN FAVOR. MOTION PASSES 6/0.

d. (080208-6) *THE KITTERY TOWN COUNCIL MOVES TO SCHEDULE A PUBLIC HEARING ON PROPOSED AMENDMENTS TO TITLE 16, LAND USE AND DEVELOPMENT CODE, SEC. 16.16.050(D) – NOTICE OF VIOLATION AND ORDER AND SEC. 16.16.050(I) – PENALTIES AS RECOMMENDED BY THE PLANNING BOARD.*

COUNCILOR GRINNELL MOVED THE DATE OF SEPTEMBER 8, 2008 FOR A PUBLIC HEARING ON PROPOSED AMENDMENTS TO TITLE 16, LAND USE AND

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DEVELOPMENT CODE, SEC. 16.16.050(D) – NOTICE OF VIOLATION AND ORDER AND SEC. 16.16.050(I) – PENALTIES AS RECOMMENDED BY THE PLANNING BOARD, SECONDED BY VICE CHAIR SPILLER.

A ROLL CALL VOTE WAS TAKEN, WITH ALL IN FAVOR. MOTION PASSES 6/0.

e. (080208-7) *THE KITTERY TOWN COUNCIL MOVES TO SCHEDULE A PUBLIC HEARING ON A PETITION SUBMITTED IN ACCORDANCE WITH SECTION 11.02 OF THE TOWN CHARTER TO AMEND TITLE 16 OF THE KITTERY LAND USE AND DEVELOPMENT CODE.*

Responding to Chairman Thomson’s question about the origin of this Petition, Town Manager Carter explained that the Petitioner has had an issue for several years with his residence and an accessory dwelling unit, believing that accessory dwelling units should be available to rent out for additional income. He had been to the ZBA where he lost and took the issue to the Planning Board. The Planning Board indicated that over time they would look at this issue but it was not a high priority. The Petitioner felt that with the upcoming election where a large turnout was expected, he would move forward with the Petition in a timely manner and that was what brought it before the Council.

COUNCILOR GRINNELL MOVED THE DATE OF SEPTEMBER 8, 2008 FOR A PUBLIC HEARING ON A PETITION SUBMITTED IN ACCORDANCE WITH SECTION 11.02 OF THE TOWN CHARTER TO AMEND TITLE 16 OF THE KITTERY LAND USE AND DEVELOPMENT CODE, SECONDED BY VICE CHAIR SPILLER.

Councilor Shwaery raised a number of concerns about Council’s ability to take action on this Petition and asked if they would receive any input from the Planning Board. Town Manager Carter indicated that the Petitioner had spoken to the Planning Board several times. The Manager said the Town Planner had indicated that this was something she could not support because of the types of issues Councilor Shwaery raised and she had urged the Petitioner to be patient and work through some sort of update to the dwelling accessories use issue in the Code but he didn’t want to wait and had felt it was something that needed to move forward. Town Clerk Place noted she had provided a copy of the Petition to both the Town Planner and the CEO.

A ROLL CALL VOTE WAS TAKEN, WITH ALL IN FAVOR. MOTION PASSES 6/0.

f. (080208-8) *THE KITTERY TOWN COUNCIL MOVES TO APPROVE AN APPLICATION FOR A POLE PERMIT #08-1001-31130-087 FROM CENTRAL MAINE POWER TO REPLACE A UTILITY POLE ON STATE ROAD.*

VICE CHAIR SPILLER MOVED TO APPROVE AN APPLICATION FOR A POLE PERMIT #08-1001-31130-087 FROM CENTRAL MAINE POWER TO REPLACE A UTILITY POLE ON STATE ROAD, SECONDED BY COUNCILOR SHWAERY.

A ROLL CALL VOTE WAS TAKEN, WITH ALL IN FAVOR. MOTION PASSES 6/0.

g. *OTHER*

Councilor Brake had a check in the amount of \$200.00 for the Recycling Scholarship Fund.

11. COMMITTEE AND OTHER REPORTS

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a. *COMMUNICATIONS FROM THE CHAIRPERSON*

Chairman Thomson read a letter he received, as Chairman, dated August 7, 2008 from the Maine Town and City Management Association, which recognized the certification of Town Manager Carter.

A few weeks ago, the Chair said he and the Manager discussed some concerns regarding the FY-10 Budget. The Chair asked the Manager to start of the process of utilizing the staff to compile information for the Council to look at. The Chair also requested that a workshop be scheduled for the Council to meet with the School Committee on Monday, September 29. Hopefully, the information needed would be available so they could begin the process very early on, given the state of the economy and revenue streams, so they could develop a strategy without feeling rushed and emotional in the spring.

b. *TOWN MANAGER'S REPORT*

Town Manager Carter reported that there was no press coverage that night but he wanted to update the Council on the Route 1 project. Because of finances and delays, they were going to see this project in a two-construction season. That was the best they could hope for and was something that would bring additional concerns in 2009. Quite a bit of drainage work would be done this fall; in the spring and summer of 2009 the road and sidewalk construction work would take place. Both the Shaw Brothers and the State would undertake traffic controls; work would comply with their noise ordinance and should commence within the next ten days. Things would get dicey in the spring and summer of 2009 since this roadwork would coincide with the Memorial Bridge work so traffic would be the major issue. The Manager said they had expressed their concerns to the DOT, who would hopefully coordinate some of these issues with NHDOT.

Councilor Shwaery asked if Kittery police would be doing traffic details and the Manager said it was not mandatory but it had been strongly suggested that in heavy traffic areas their people, along with a car, flashing lights, etc., be used.

Councilor Grinnell asked if they decided where they were going to start and if they would be ripping up the whole road in the fall? The Manager said they had not yet decided their starting point and no, they would not tear up the whole road but it was hard to say how much would be torn up because a new water main would be going in.

Chairman Thomson asked if the pipe and drainage work would start next week and the Manager replied that the sequence of some of the work had not been decided.

Town Manager Carter asked Council to consider coming to the next Council meeting at 6:00 for a workshop on energy related projects that might be on that evening's agenda.

The Manager said that they were close to being ready to talk about the Frisbee School and its use as a community center and what other possible uses there might be. They had received an opinion from Bond Counsel concerning moving the bond issue to a different location and had received a letter from the Town Attorney indicating the Frisbee School Deed was free from anything that would prohibit its re-use. The Manager asked when Council would like to entertain ideas from the public or how they would like to move forward.

Chairman Thomson said he envisioned having an evening that had been advertised where they met to discuss ideas. They could then review those and make a recommendation for a study group. After discussion, September 17 seemed to work.

Town Manager Carter said he wanted to thank the Council for his ability to attend the Maine Town and City Managers Institute this year. Chad Burbank, their intern, had a very educational time

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and sent Council his thanks as well as he was due back at college next week. The Chair said he was sure that Mr. Burbank was very helpful this summer in a lot of areas and the Manager replied that he was the first intern that had actually fulfilled a lot of projects that he had been given.

Councilor Shwaery asked the Manager about the agenda for the Planning Board meeting that appeared to be three workshops in a row. Manager Carter noted that the Council was not expected to attend the wetlands workshop but their attendance was requested for feedback purposes on the zoning map and the fence ordinance.

c. COMMITTEE REPORTS

12. ADJOURNMENT

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

MEETING ADJOURNED: 8:08 P.M.