

APPROVED MINUTES

KITTERY TOWN COUNCIL

October 26, 2009

Council Chamber

1. CALL TO ORDER

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

2. INTRODUCTORY

Chairperson 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, Ann Grinnell, George Dow, Vice Chair Judith Spiller and Chairperson Jeffrey Thomson. Also present were Town Manager Jonathan Carter, Recorder Ashley Rodier, members of the press and others.

5. ACCEPTANCE OF MINUTES

The minutes of October 14, 2009 were accepted, as amended.

6. INTERVIEWS FOR THE ZONING BOARD OF APPEALS AND PLANNING BOARD:

- Zoning Board of Appeals (Craig Wilson up for re-appointment)
Craig Wilson

Chairperson Thomson asked Mr. Wilson to give Council an idea of why he wanted to continue on the ZBA and what he brought to the Board. Mr. Wilson indicated that he thought that they had a good working board and that he fit in well with the board. He continued that he had a good working knowledge of the policies, procedures and ordinances. Mr. Wilson noted that he enjoyed being on the board and thought that it was part of his civic responsibility. Councilor Grinnell asked if he had been on the board for three years. Mr. Wilson responded that he did not think so and thought that he had been appointed to an unexpired term. Councilor Grinnell noted that she had heard good things about the board and was glad that he wanted to continue being on the board. Councilor Beers wanted to express that he had faced the ZBA over a dozen times over the past year and he respected and admired their methods of deliberation and that Mr. Wilson was a

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big part of that. Councilor Beers continued that he had also had the opportunity to have Mr. Wilson's participation in various ordinance reviews and respected his insight, judgment and recommendation and that he would heartily endorse his reappointment. The Chair asked when the appointment would expire and Councilor Dennett noted that it would expire on November 1, 2012.

COUNCILOR GRINNELL MOVED THAT THE KITTERY TOWN COUNCIL REAPPOINT CRAIG WILSON TO THE ZONING BOARD OF APPEALS TO A TERM THAT ENDS 11/1/2012, SECONDED BY COUNCILOR BEERS.

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

- Planning Board (to fill the unexpired term of D. Scott Mangiafico until 11/30/10)
 - Rhonda Pomerleau
 - Scott A. Lincoln

Chairperson Thomson noted that there was a vacancy on the Planning Board for a term that will expire on November 30, 2010. The Chair noted that first up would be Rhonda Pomerleau of 32 Stevenson Road in Kittery who was seeking appointment to the Planning Board. Chairperson Thomson asked Ms. Pomerleau to explain her interest and asked what she thought that she could bring to the Planning Board. Ms. Pomerleau noted that she was a resident of Kittery, a business owner and operator and that she was very interested in the future of Kittery. She continued that she thought that serving on the Planning Board would give her the opportunity to help and assist in the shaping and future of Kittery by making sure that the development of the land was consistent with the codes. She indicated that it would give her the opportunity to be more involved with the town which was something that she wanted to do. Councilor Spiller asked if her schedule would permit her to attend the meetings which Ms. Pomerleau answered in the affirmative. Councilor Spiller indicated that Ms. Pomerleau had checked off that she had not attended any of the Planning Board meetings and asked if she was aware of the scope and depth of the work involved. Ms. Pomerleau answered that she had scanned and reviewed some of the meeting minutes and agendas and had read up on the zoning ordinances and had tried to keep up with them. Vice Chair Spiller asked if she was familiar with the Comprehensive Plan as it pertains to what the Planning Board does. Ms. Pomerleau indicated that she was to an extent and if she was appointed to the Board she would learn. Councilor Beers asked if she had any experience from her business related to building, construction, development, planning or things in that arena. Ms. Pomerleau noted that she had a janitorial business and she did not have any experience in those areas but that she was willing to learn. Councilor Dow noted that he had witnessed over the past years an injection or likes and dislikes and that the Planning Board deals with the ordinances as they are written and the scope of those ordinances towards the project that they are looking at and wanted to know how she would base her decisions as

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she reviewed the projects that would come before her. Ms. Pomerleau responded that she would base her opinions on her co-board members, what she had learned and was told at the meetings and that she never based her opinions for her own personal benefit. Councilor Grinnell asked how long Ms. Pomerleau had been a resident of Kittery. Ms. Pomerleau answered that she had been a resident for the past 5 years. Councilor Grinnell asked if she had ever visited the Planning Department which Ms. Pomerleau responded that she had not.

Chairperson Thomson then asked Scott Lincoln to come to the podium and explain why he wanted to be on the Planning Board and what he hoped to be able to bring to the Board. Mr. Lincoln noted that he was raised in the area and he and his wife had purchased a home on Sterling Road in 1993. He continued that he had doubled the size of his home and was the general contractor on that project. Mr. Lincoln indicated that he did planning in the manufacturing sector and he realized that it was a different area than growth planning and land use planning but he felt that he could be impartial, open minded and un-biased and work from the tools such as ordinances and statutes that are in place. Mr. Lincoln indicated that he would like to take an active role in the protection, preservation and improvements of the quality of life for the community. Vice Chair Spiller asked if Mr. Lincoln thought that he would be able to attend all of the meetings. Mr. Lincoln responded that he had reached a point in his life where he had more available time and he had more life experience from other jobs and tasks that he had over the years. Vice Chair Spiller asked if he had attended any of the Planning Board meetings. He answered that he had not but he followed a lot of the town meetings through the minutes and agendas and that he was aware of some of the projects going on in town. Vice Chair Spiller asked if he was familiar with the Comprehensive Plan. Mr. Lincoln stated that he had read it a couple of times and that he had learned a lot each time he had read it. Councilor Dow noted that Planning Board members were going out and reviewing plans and asked about his flexibility. Councilor Dow indicated that he greatly appreciated that the two candidates wanted to be involved in the community and that they were important positions and wanted to make sure that there was understanding that there was extensive knowledge required and a lot of learning involved and wanted to know if he could commit to the time involved. Mr. Lincoln indicated that he could commit to the time that was required to be on the Board and that he was currently the manager of a family business and had a lot of flexibility. Councilor Grinnell asked if he had ever been to the Planning Department. Mr. Lincoln responded that he had been in the Planning Department for prints and permits and to ask questions while he was doing construction. Councilor Beers wanted to thank Mr. Lincoln for his extremely well articulated resume which gave a broad scope of professional experience and noted that there was a large amount of experience in planning and attention to detail which were the types of activities that were crucial to development application and review of in the context of a very complex ordinance.

COUNCILOR BEERS MOVED THAT THE KITTERY TOWN COUNCIL APPOINT SCOTT A. LINCOLN TO FILL THE UNEXPIRED TERM OF D. SCOTT MANGIAFICO UNTIL 11/30/2010, SECONDED BY COUNCILOR GRINNELL.

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Councilor Beers expressed his thanks and compliments to both of the applicants for applying and that serving on town boards and committees is an important part of the community and few people step forward to apply. Councilor Dow noted that in getting ready to sit on a board it was important to try to understand the other members on the board and it was important to go in with open eyes and that it was a very important position.

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

7. PUBLIC HEARING

a. *(100209-1) THE KITTELY TOWN COUNCIL MOVES TO HOLD A PUBLIC HEARING TO REPEAL APPENDICES A, B AND C OF THE GENERAL ASSISTANCE ORDINANCE, WHICH BECAME EFFECTIVE OCTOBER 1, 2008 AND ADOPT THE REVISED MMA MODEL ORDINANCE GA APPENDICES A, B AND C FOR THE PERIOD OF OCTOBER 1, 2009 – OCTOBER 1, 2010. THE GA ADMINISTRATOR IS AUTHORIZED TO BEGIN USING THE NEW REVISED APPENDICES AS OF OCTOBER 1, 2009.*

Chairperson Thomson noted that notification of this public hearing had appeared in the local printed media on October 17, 2009. The Chair asked Kathy Pretter the general assistance administrator to explain further why this was necessary. Ms. Pretter noted that the amounts go up each year and in order to use the new amounts they had to repeal the old amounts and then vote to have the new amounts. The Chair noted that this was done annually in October and asked if the town had any control over the sums that were placed in the various lines for assistance. She answered that the town did not and that it was state mandated.

COUNCILOR BEERS MOVED THAT THE KITTELY TOWN COUNCIL REPEAL APPENDICES A, B AND C OF THE GENERAL ASSISTANCE ORDINANCE, WHICH BECAME EFFECTIVE OCTOBER 1, 2008 AND ADOPT THE REVISED MMA MODEL ORDINANCES GA APPENDICES A, B AND C FOR THE PERIOD OF OCTOBER 1, 2009 – OCTOBER 1, 2010 AND AUTHORIZE THE GA ADMINISTRATOR TO BEGIN USING THE NEW REVISED APPENDICES AS OF OCTOBER 1, 2009, 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)

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Don Gagnon of 33 Pinkhams Lane came to the podium and wanted to thank Council for their support relative to the Ben Perry Memorial Dedication Service. He noted that it had taken place at Traip Academy and that Council had voted a year ago to help out and give some funds to make that happen. He noted that Council's name was on a plaque at Traip Academy and thought that it was a great moment to show the cooperation of the school and the town and wanted to thank Council again for making it happen.

b. Chairperson's response to public comments

9. UNFINISHED BUSINESS

Councilor Beers noted that there was the ongoing issue with the Eliot sewer contract and the more recent publicity which in his opinion was of an unacceptable sort and at his behest as a member of the negotiating team he had asked the Manager to make contact with the officials there to get the issues aired out and get them behind them. He continued that the meeting was scheduled for the next week and presumed that they would come to some sort of terms or clarification and understanding with the Town of Eliot and would report the results there from.

Councilor Grinnell noted that she had asked the Manager to print out the selection procedures for Council appointments. She continued that this was an agenda item at the last meeting and that it had been postponed until the entire council was present and that she had understood that it was going to be an agenda item that evening and since it was not she wanted to bring it up. Councilor Grinnell indicated that she thought that one of the major problems with the selection procedure was what is done when an applicant's name comes to the top of the list and for whatever reason they decline. She continued that there was no written policy about what should happen to that person's name and she believed that Council should try to write something in to the selection procedure so that everyone knew what happened when a person declined. Councilor Dow indicated that he agreed with that whole heartedly and it was his understanding that in the past an individual would be asked when they got to the top of the list and for whatever reason declined but would ask to stay at the top of the list and that the next time there was an opening they would be asked again first. He continued that he believed that the practice should be that when someone is asked and if they can not do it at that time, they should be asked if they want to stay on the list and if so they would be moved to the bottom of the list. Councilor Dow noted that some might think that might be unfair because there might be circumstances that would not allow that person at that time but there have been several boards who have had an application for a long time and have not been able to move forward but would have been able to if the names had come off the top of the list. Councilor Dow stated that he agreed that there should be a uniform policy and it would make it a lot easier for the Town Clerk. Councilor Grinnell stated that she agreed that if someone is not available at that time they should not stay on the top of list. She continued that the person could either go to the bottom of the list or their name could be taken off the list and that person could reapply and it could be done either way.

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Councilor Grinnell read the current procedure for appointments and that was the section that needed to be changed where people would go to the bottom of the list or they would have to reapply. Councilor Dow stated that having people reapply would be a good idea as some of the applications were very out of date and there are so many things that could change over the years. Chairperson Thomson indicated that he was not necessarily agreeing but asked if someone was first on the list and there was an opening but they were going to be out of commission due to a medical issue and it was a situation like that would the person have to go to the bottom of the list or reapply or would there be certain circumstances such as a medical emergency they could be kept on the top of the list. Councilor Dow noted that he saw the Chair's point but then they would have to establish a policy on what was an acceptable excuse and what was not. Vice Chair Spiller stated that she did not think that Council wanted to be in the business of deciding what a good excuse was and that there was only one board with a long waiting list. She continued that she did not think that being put on the bottom of the list was that bad considering the lists were not very long and that if people really wanted to serve on the board they would only end up waiting six months to a year to get on. Councilor Beers stated that he was a believer in the spirit and intent of term limitations and thought that was a feature that should be incorporated across the board. He continued that if there were applicants and a person has reached a term limitation then people on the list would have the opportunity to move up which would avoid people being on a list for a long period of time. Councilor Beers continued that if there were no applicants and someone wished to exceed a nominal term limitation they should be allowed to do so. Councilor Beers stated that Council will entertain the annual visitation of its policy on November 9th and he intended to bring forward a suggestion for various changes and it may be appropriate to consider this policy in that context and that he would be happy to draft language that Council could consider at that point. The Chair indicated that this issue would be postponed until there was a full Council and that it would be looked at on November 9th.

Councilor Grinnell indicated that relative to the Frisbee Revitalization Group and that she was a Council representative on that group and as this was her last meeting she wanted Council to discuss how they felt about what was going to happen to her seat on the committee and what would happen to Chairperson Thomson's seat if he was not reelected. She indicated that she had the wording for the formation of the committee and it stated that it would consist of 7 members, 3 Council members and 4 citizens and wanted to know if she could stay on the committee or if she was off as she was no longer on Council. The Chair noted that there was precedence for an individual who was the Council's representative on a committee to stay on as the Council representative after that person has left the Council. Vice Chair Spiller indicated that while she appreciated the contributions of both Councilor Grinnell and Chairperson Thomson to the committee, she thought that if they said that councilors could continue after their term, there would only be one councilor on the committee and that was not the intent. She continued that as much as she would like to see both of them continue she thought that it would be unwise to move in that direction. Councilor Dow indicated that his concern was that he would want sitting Council to have access to sitting on the committee but not knowing what their availability would be, he could not see having both Councilor Grinnell and Chairperson Thomson stay on the committee. He continued that he thought that they

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should wait on this issue and see who is available on the sitting council and if no one is available then maybe they should look at changing the formation of the committee but did not think that it would be fair to decide that now not knowing who the sitting council was going to be. The Chair indicated that this might be decision that should wait until November 9th. Councilor Grinnell indicated that she did not understand Councilor Dow's thought process in regards to this issue. Councilor Dow indicated that for Council to take away the opportunity from the councilors and to have already assigned those seats to current councilors was unfair. Councilor Grinnell indicated that she thought that the Council sitting that evening should make the decision and that they would have to change the charge if they wanted Councilor Grinnell and Chairperson Thomson on there and asked why they should wait to change the charge. Chairperson Thomson indicated that the committee was not meeting again until November 19th and that Council sitting on November 9th could decide what to do at that time. Councilor Dennett indicated that there was a possibility that there would be four new councilors and that they could not take away from them as the majority to do what they thought was best and thought that it go to the 9th. Councilor Beers indicated that he agreed that this should be a question answered sitting by the next council. The Chair indicated that this issue would be discussed on November 9th.

Councilor Grinnell indicated that she was also working with the Wood Island Committee and that she would appreciate Council allowing her to work on that project. Chairperson Thomson asked if anyone had any objections to that. There were none.

Councilor Grinnell stated that she would like to speak to the public. She indicated that she wanted to thank the residents of Kittery for letting her sit on the Council for 9 years. She continued that she believed that this was her civic duty to sit on Council and she was thankful that she did it. Councilor Grinnell indicated that Councilor Dow had said earlier in the night that few people step forward to serve and that she wished that it was not true because she did believe that it was her civic duty and wished that other people in the town felt the same because it was a wonderful experience and you learn a lot, work hard and it was a responsibility as a citizen to step forward and help out. She continued that it was a duty that each person has and she was thankful that the residents had allowed her to serve.

Councilor Dow stated relative to Councilor Grinnell that they had some differences over the past years but thought that over the past couple of years it had changed for the good and he was very happy for that. Councilor Dow thanked Councilor Grinnell for her service and thought that the town was a better place because of that and it was his hope that she continue to be vigilant in the community and continue to bring forth ideas, thoughts and concerns on things that they were doing.

Vice Chair Spiller wanted to express her thanks to Councilor Grinnell as well.

10. NEW BUSINESS

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a. *(100209-2) THE KITTERY TOWN COUNCIL MOVES TO APPROVE THE DISBURSEMENT WARRANTS.*

Chairperson Thomson read the disbursement warrants which included Warrant No. 2 for the Enterprise/Gate Receipts in the amount of \$1,290.00, Warrant No. 9 for the School Nutrition Program in the amount of \$10,468.27, Warrant No. 8 for the School Accounts Payable in the amount of \$515,599.92 and Warrant No. T10-17 in the amount of \$1,010,856.55. Chairperson Thomson asked Vice Chair Spiller if she had reviewed the school warrants and in appropriate format for signature which she answered in the affirmative. Chairperson Thomson then asked Councilor Beers if he had reviewed the town warrants and if they were in appropriate format for signature which he answered in the affirmative.

COUNCILOR BEERS MOVED THAT THE KITTERY TOWN COUNCIL APPROVE THE DISBURSEMENT WARRANTS, SECONDED BY COUNCILOR SPILLER.

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

b. *(100209-3) THE KITTERY TOWN COUNCIL MOVES TO APPOINT A REPRESENTATIVE TO SERVE ON THE SUPERINTENDENT OF SCHOOLS SEARCH COMMITTEE.*

Chairperson Thomson indicated that School Committee Member and Co-Chair of the Superintendent Search Committee, Kim Bedard, had contacted Town Manager Carter to request that the Council committing consider appointing a Council member to the Search Committee. Councilor Grinnell stated that she wanted to thank the School Committee for coming to Council to ask for a representative on the Committee and that having a Council member on the committee was a good idea.

COUNCILOR GRINNELL MOVED THAT THE KITTERY TOWN COUNCIL APPOINT VICE CHAIR SPILLER TO SERVE ON THE SUPERINTENDENT OF SCHOOLS SEARCH COMMITTEE, SECONDED BY COUNCILOR DOW.

Councilor Dennett asked if appointed would the appointee accept the position which Vice Chair Spiller indicated that she would. The Chair noted that he was going to vote against this. He continued that it was not having Vice Chair Spiller serve on the Committee but that he was of the opinion that the School Committee was heading in a direction that was reckless, not financially prudent, and that the community was going to hear some disturbing news regarding state funding in the next couple of weeks. The Chair then stated that he thought that the School Committee should take some more time before moving in that direction. Chairperson Thomson indicated that given the uncertainty of the financial times and the ramifications that are going to be coming down regarding the next years and given the dialogue that seems to beginning with SAD 35

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about exploring a tuitioning relationship with them, he thought that it would be more prudent for the School Committee to be looking for an interim appointment for a year. He continued that there were a number of retired superintendents and school administrators that lived in the area and to bring someone in on a contractual basis until there is a clearer picture on what the financial situation is going to be regarding education funding and direction would be a far more prudent course to be followed. Councilor Beers asked if this was the first time that the School Committee had asked for a Council representative to serve on a superintendent search committee. The Chair responded that it was not and that he was on one back in 1990 as a member of the Council. Councilor Beers noted for his own articulated reasons he was going to oppose the motion as well. Councilor Grinnell noted that she hoped that Council would pass this motion because Council had been building a relationship with the School Committee for at least the 9 years that she had been on Council and not in those years had the School Committee asked for someone from Council sit on a Committee with them. She continued that the Council representative could say and do what they wanted when they went to the meetings but to be invited to be part of this and to turn it down she believed would make ill feelings in the town. Councilor Dow stated that the superintendent search was not solely dedicated to a K-12 situation and that it could be K-8. He continued that he would hate to see the opportunity of inclusion lost and that it would be an opportunity to be a part of this.

A ROLL CALL VOTE WAS TAKEN WITH COUNCILOR BEERS AND CHAIRPERSON THOMSON OPPOSED. MOTION PASSES 4/2.

c. (100209-4) THE KITTERY TOWN COUNCIL MOVES TO ACCEPT THE RESIGNATION OF DOUGLAS W. MUIR FROM THE PLANNING BOARD EFFECTIVE OCTOBER 31, 2009.

The Chair then read Mr. Muir's resignation letter.

COUNCILOR BEERS MOVED THAT THE KITTERY TOWN COUNCIL ACCEPT THE RESIGNATION OF DOUGLAS W. MUIR FROM THE PLANNING BOARD EFFECTIVE OCTOBER 31, 2009 AS PRESENTED WITH GENUINE REGRET AND SIGNIFICANT KUDOS FOR HIS YEARS OF EXEMPLARY SERVICE, SECONDED BY COUNCILOR DENNETT.

The Chair then stated that the Town Manager would send a letter expressing the Council's thanks to Mr. Muir for his 6 years on the Planning Board.

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

d. (100209-5) THE KITTERY TOWN COUNCIL MOVES TO ESTABLISH THE HOLIDAY PARADE AS A TOWN EVENT, SPONSORED BY THE KIWANIS CLUB OF THE SEACOAST, TO BE HELD ON SATURDAY, DECEMBER 5, 2009 AT 3:00 P.M.

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AND TO APPOINT THE FOLLOWING KIWANIS MEMBERS AS THE OFFICIAL PARADE COMMITTEE: NORM LEON, GORDON MILLETT AND GLEN PHILBROOK.

The Chair noted that the parade would follow the usual route from Post Office Square and ending at the John Paul Jones Park for the tree lighting.

VICE CHAIR SPILLER MOVED THAT THE KITTEERY TOWN COUNCIL ESTABLISH THE HOLIDAY PARADE AS A TOWN EVENT, SPONSORED BY THE KIWANIS CLUB OF THE SEACOAST, TO BE HELD SATURDAY, DECEMBER 5, 2009 AT 3:00 P.M. AND TO APPOINT KIWANIS MEMBERS NORM LEON, GORDON MILLETT AND GLEN PHILBROOK AS THE OFFICIAL PARADE COMMITTEE, SECONDED BY COUNCILOR GRINNELL.

The Chair took a consensus with all in favor.

e. (100209-6) THE KITTEERY TOWN COUNCIL MOVES TO APPOINT A REPRESENTATIVE TO MEET WITH THE CHAIR OF THE PERSONNEL BOARD TO INTERVIEW PAGE A. MEAD FOR HIS RE-APPOINTMENT TO THAT BOARD UNTIL 11/10/12.

The Chair noted that Councilor Dow was next on the list.

COUNCILOR DENNETT MOVED THAT THE KITTEERY TOWN COUNCIL APPOINT COUNCILOR DOW TO MEET WITH THE CHAIR OF THE PERSONNEL BOARD TO INTERVIEW PAGE A. MEAD FOR HIS REAPPOINTMENT TO THE PERSONNEL BOARD UNTIL 11/10/12, SECONDED BY VICE CHAIR SPILLER.

The Chair took a consensus with all in favor.

f. (100209-7) THE KITTEERY TOWN COUNCIL MOVES TO SCHEDULE A DATE FOR A PUBLIC HEARING TO AMEND THE MUNICIPAL CODE, SECTION 10.08.020 STOP INTERSECTIONS DESIGNATED TO ADD A STOP SIGNS ON HIGHPOINTE CIRCLE AT NORTON ROAD AND ON DEVON WOODS AT WILSON ROAD.

The Chair noted that both of the locations had been reviewed by the Chief of Police and that the hearing was recommended to be scheduled for November 9, 2009.

COUNCILOR BEERS MOVED THAT THE KITTEERY TOWN COUNCIL SCHEDULE A HEARING ON NOVEMBER 9, 2009 TO AMEND THE MUNICIPAL CODE, SECTION 10.08.020 WITH REFERRAL TO THE ORDINANCE REVIEW COMMITTEE AND EXPECTED REPORT PRIOR TO THE HEARING, SECONDED BY COUNCILOR DOW.

A roll call vote was taken with all in favor.

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g. (102009-8) THE KITTERY TOWN COUNCIL MOVES TO HEAR AN UPDATE FROM THE TOWN MANAGER ON PROGRESS WITH THE PUBLIC WORKS BOND PROJECTS AND FINANCING OF THE SCHOOL PROJECT.

The Town Manager stated that he was pleased update Council on the bond projects that entail four projects that amount to a projected \$7,675,000.00. He continued that the four projects were two school additions that were being treated as two separate projects before the Planning Board, the salt shed at the Public Works Department, and an office complex at the Public Works Department. Town Manager Carter noted that all of the projects were at different stages and that they were opening bids for the office complex and the salt shed on October 28th at 2:00 and 3:00 P.M. respectively and that the bids were expected to come in budget. He continued that they have heard from the School Department that they have hired an architectural firm and have worked with the architect to get to the point where applications are in the works for the Planning Board and they should be at a point where submittal would be later in the fall with completion of the Planning Board permitting process by the end of May or early June so that selection of the contractor can be made and construction started in the summer of 2010. Town Manager Carter stated that with the signing of the architectural firm, working was commencing and payment to the firm was underway along with expected payment of the salt shed and office complex within a six month period. Town Manager Carter noted that the work for the School Department projects would be around \$600,000.00 and they were projecting that they were going to need \$1,200,000.00 by July authorized in bonds. Town Manager Carter noted that they had been given through the bond ordinance that Council had passed in April authority of the Treasurer to move forward with bond anticipation notes and interim financing and that he had been working with the business manager and the bond counsel and bond broker and they were set to release a bond anticipation note into the marketplace the next day for opening on November 4, 2009 and settlement on November 18, 2009. Town Manager Carter indicated that he wanted to bring this to Council for an update and a progress report to make sure that he was on the same wave of thinking that Council was regarding the projects and the amount of money that the town was about to interim receive. Councilor Dennett stated that this issue caused him some concerns and thought that the outcome might result in internal distress. He continued that he was not addressing the two Public Works projects and that it was strictly relative to the \$7,000,000.00 for the upgrades and expansions of Mitchell and Shapleigh. He stated that he felt that this put the School Department in a very difficult position. Councilor Dennett then asked if they spent the \$7,000,000.00 for the work on Shapleigh and Mitchell and Traip Academy students go to SAD 35, Kittery would as a result have two expanded schools and an empty Traip Academy and have spent \$7,000,000.00 plus tuitioning fees to SAD 35. He continued that he had no particular interest one way or the other on the issue of whether Traip stays open or if Shapleigh and Mitchell are expanded and that his issue is what sort of a mess would Kittery have if it spends \$7,000,000.00 to expand two schools and Traip ends up being closed and that was a conceivable possibility and in fact a very large probability. Councilor Beers noted that he shared Councilor Dennett's concern and had a second concern which was with respect to the bond ordinances passed in April. He continued that he did not at that point in time

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oppose those measures and that apriority approval of contingency funds and expenditure should remain in the hands of Council. He stated that any further bonding issues he would face in the future he would argue against extremely hard. Councilor Beers continued that he was uncomfortable due to the uncertain dynamics of the school issues approving expenditure of funds at that time. Councilor Dow noted that while he understood Councilor Dennett's concerns due to the issue with Traip, it was done after the citizens voted for the expansion and the removal of the children from Frisbee School into an environment that was scheduled to be completed in a certain timeframe and that the citizens voted in favor of that bond with the understanding that Council having approved it and brought it to the voters, that Council would respect the voters and would not leave their children in a situation where a timeframe on tuitioning could take 2-3 years. He continued that he believed that Council needed to look at that they were saying to the residents that they do not care how the vote went down and that something else had come to the table and that they were not concerned with their children being in a certain situation for a timeframe of 2-3 years. Councilor Beers stated that he disagreed with Councilor Dow's perspective and that his position had nothing to do with respecting the integrity of the voters' choice. He continued that anything that Council has done it can undo and if a subsequent truth comes to light that casts a different perspective on a consideration it was only prudent to take it into consideration. Councilor Beers stated that people can only make decisions based on their best knowledge and understanding that they have at any given time and if subsequent truths become evident it was best to take the time and have a greater deal of understanding in moving forward. Vice Chair Spiller noted that she shared Councilor Dennett's anxiety about this situation and that she sense was what happens with Traip was still very unresolved and that it was in the early exploratory stage and that they needed to move ahead in a state of uncertainty. Councilor Dennett indicated that from a technical point of view he did not think that at the time that the voters approved this there was any real idea that Traip was going to be an issue and that they were dealing with different parameters then they were dealing with then. He continued that when the residents authorized Council to issue bonds it did not force Council to issue those bonds. Councilor Beers asked Town Manager Carter what the implications of a two week delay would be. Town Manager Carter responded that he would have to go back to the bond people but that he thought that they could pull the sale and it could be picked back up on November 9th. He continued that unfortunately it would add to the town's cash flow problems and that the architects are in the process of preparing in invoice for work completed for at least \$100,000.00 and that it would replicate itself. Town Manager Carter indicated that he did not know what their contract read or if there was a penalty clause or if the project would be shut down. He continued that he thought that they could hold out for two more weeks. Councilor Beers asked if the architects invoice would be due at the end of that week. Town Manager Carter indicated that they would be getting the first invoice if it had not already been received. Councilor Beers asked if they had any information forthcoming from the School Committee regarding the expenditure of the funds or the nature of the contract. Town Manager Carter indicated that he had not been given a copy of the contract. Councilor Dow asked if it was submitted as part of the warrant. The Chair noted that it would have been its own warrant. The Chair then asked if there was a way that it could go forward but for a reduced amount. Town Manager Carter noted that he would rather wait the two

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weeks and then do a full complete \$1,200,000.00 in bonds because it would set them up to get the applications to the Planning Board to get the permits and if they reached that milestone, then they could go to permanent financing once they knew the construction costs in June and move forward. He continued that if they deviated from the schedule too much they would lose the construction season that next summer and there was a very tight window. Councilor Dow noted in regards to the contract that was developed by the Building Committee which was signed and approved by the School Board and that the architects had been acting in good faith based on the contract that this process would be moving forward. Councilor Dow stated that a lot of things had been put in place and that wheels had started to turn and moving forward in good faith. Councilor Dennett noted that he hoped that if there was a delay of two weeks there could be communication with the school department and school committee to ask if they were still comfortable going forward with the projects realizing what the implications could be. Councilor Beers stated that he wanted to remind Council and the public that the question of tuitioning students to Marshwood was an effort engaged in and stimulating by the Kittery School Committee and SAD 35 and whether interested parties in favor or disfavor were not part of their deliberation or consideration in pursuing that avenue. He continued that the suggestion that the timetable previously noted of 2-3 years was outright speculation and a reasonably competent body could accomplish it by September of 2010. Councilor Beers stated that he felt it was reasonable to delay the question until there was some response from the School Committee where they recognized and accepted the potential consequences of their actions. Councilor Beers noted that in regards to Councilor Dow's comment, that he would loathe finding out how the taxpayers would feel if they spent \$7,000,000.00 unnecessarily and that they owed themselves the prudence and endorsement from the School Committee that they are willing to pursue this avenue. Councilor Dow stated that he would allow this matter to go forward to the School Committee. Chairperson Thomson stated that if they could wait two weeks, it was his understanding that revised figures would be coming from the Department of Education by the November 9th meeting reflecting their outlook for the current fiscal year and the next few out, and he thought that it would be prudent of Council and the School Committee to have that additional piece of information to enter into their discussion and decision process. Councilor Dennett indicated that they would leave this item with the Manager to communicate with the School Committee about the issues raised.

h. (100209-9) THE KITTERY TOWN COUNCIL MOVES TO APPROVE AN AMENDED AGREEMENT EFFECTIVE NOVEMBER 1, 2009 BY AND BETWEEN NORTHEAST HOUSING LLC AND THE TOWN OF KITTERY AND AUTHORIZES THE TOWN MANAGER TO SIGN THE AGREEMENT.

Chairperson Thomson indicated that there was a memo from the town manager regarding the five year agreement that they had with the Navy regarding the naval housing in Admiralty Village. Town Manager Carter stated that he wanted to highlight the items for the public. He continued that the Navy, over five years ago, privatized the leased housing that was on their bases and that there were 200 units of housing and a former town manager had negotiated with the other two towns, Topsham and Brunswick which also have naval housing, a contract with Council allowed to be signed and that five

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years was up. He continued that the renewal was only with the Town of Kittery as the air station was closing in Brunswick. Town Manager Carter indicated that they had achieved with the assistance of the town attorney and Chairperson Thomson was to raise the base payment per unit by 10% and have added a minimum on the CPI increase and put the CPI increase in a table in the CPI system to be in the town's favor. He continued that they had added the rental unit that had not been in the contract as a paying unit and the renewal period was for a five year period. Town Manager Carter noted that they would see an increased amount per year and that going forward the CPI would be a minimum of 1% and a maximum of 4%. Town Manager Carter stated that there was a fire back over the summer and they lost 8 units and the unit number would be down to 192 units but if you added the rental housing office it would be 193 and that they would be paying on 193 until and if they return the 8 units to the leasing pool. Councilor Beers suggested that the agreement documentation was extremely well done but it appeared that it represented a covenant on the properties in question and wanted to know if it was recorded with the Registry of Deeds. Town Manager Carter responded that he did not believe so. Councilor Beers then asked if they knew how long the Balfour Beatty Military Investments, LLC would possess the contract as manager of the contract. Town Manager Carter replied that they were the recent recipient of a buyout of Northeast Housing, LLC and that they were the new owners and that it sounded as if they were in it for the contractual term and that their business seemed to be healthy. He continued that they could possibly be acquired tomorrow or ten years from now. Councilor Beers indicated that he had asked that question as he was familiar with the concept in several respects in that management contracts do expire, that they are competitively bid periodically and there may be a successor and presumably this contract would be through the agreement period but it may or may not be and they needed to be certain of that consideration because they could be executing a contract with someone who does not exist in three or four years. He continued that if it was as the Manager suggested and it becomes another corporate entity it should include the passage that the agreement was good for heirs, successors and assigns or whatever legal language was appropriate would relate to any successor contractor, contractor or corporate entity.

COUNCILOR BEERS MOVED THAT THE KITTELY TOWN COUNCIL APPROVE AN AMENDED AGREEMENT EFFECTIVE NOVEMBER 1, 2009 BY AND BETWEEN NORTHEAST HOUSING, LLC AND THE TOWN OF KITTELY AND AUTHORIZE THE TOWN MANAGER TO SIGN THE AGREEMENT CONTINGENT UPON INCORPORATION OF A SUCCESSOR PASSAGE, SECONDED BY COUNCILOR GRINNELL.

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

i. (100209-10) THE KITTELY TOWN COUNCIL MOVES TO GIVE APPROVAL TO PROJECT GRADUATION TO COLLECT DONATIONS AT THE SOLID WASTE FACILITY ON NOVEMBER 28, 2009.

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The Chair noted that Project Graduation has requested a fundraising tollbooth to be allowed at the transfer station as had been approved in past years from 9:00 A.M. to 3:00 P.M. on November 28, 2009.

COUNCILOR GRINNELL MOVED THAT THE KITTERY TOWN COUNCILOR GIVE APPROVAL TO PROJECT GRADUATION TO COLLECT DONATIONS AT THE SOLID WASTE FACILITY ON NOVEMBER 28, 2009, SECONDED BY COUNCILOR BEERS.

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

j. *OTHER*

There was none.

11. COMMITTEE AND OTHER REPORTS

a. *Communications from the Chairperson*

Chairperson Thomson noted that there was a Special Meeting scheduled for November 16, 2009 at 6:15 P.M. to discuss the union contracts that will be expiring next July in order to provide some input and guidance to the manager. He continued that after the Special Meeting there would be a workshop for the FY '11 budget in order to begin the dialogue.

b. *Town Manager's Report*

Town Manager Carter stated that the grant went through with the Brownfield EPA Program at the Southern Maine Regional Planning and that the tank was being removed at the Pepperrell Cove pier.

Town Manager Carter indicated that he got a call from the State, through the Maine Geologic Office that Boone Island will probably be selected as the test site for the wind project.

Town Manager Carter wanted to remind people that Trick or Treating was scheduled for October 30th.

Town Manager Carter stated that as they had heard from Don Gagnon, that they had celebrated Ben Perry's memorial climbing wall that was given by Timberland and was put up by many people in the town. He continued that he was pleased that Council had donated some money to make that a reality and that it was a wonderful facility and that it was something to be proud of.

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Town Manager Carter wanted to report to Council that there was a challenge with the parking restrictions at Seapoint Beach and that there was a gentleman who was challenging his parking ticket and has a court date and he believes that his constitutional rights have been denied. He continued that they had filed it with their insurance company who was supplying defense and that the individual who was challenging the issue was an attorney from New Hampshire.

Town Manager Carter noted that the tax bills should be out by the end of that week and were due December 10th and they were urging people to help out and pay early.

Town Manager Carter indicated that relative to the Public Works Department commissioner search, that they were going to be interviewing that Friday and then would be interviewing that afternoon for the head mechanic for the Public Works garage.

Town Manager Carter stated that Candidates Night had taken place on October 19th and that it had been replayed and was going to be replayed again on October 30th at 7:00 P.M., October 31st at 12:00 P.M. and 7:00 P.M., November 1st at 12:00 P.M. and 7:00 P.M. and on November 2nd at 7:00 P.M. He continued that the election would take place on November 3, 2009.

Town Manager Carter noted that at the next Council meeting at the urging of Chairperson Thomson, Commissioner Cole at the Maine DOT and his chief engineer would be at a special workshop at 6:15 P.M. to go through the issues with the Memorial Bridge. He continued that the NH DOT was doing likewise in Portsmouth that same evening.

c. Committee Reports

The Chair noted that the Frisbee Revitalization Committee would be meeting on November 18, 2009 and that a request for proposal for engineering expertise and services had been prepared by the manager and was out and due back around that time. He continued that the parties that are interested in the site are having continued dialogue.

Chairperson Thomson and Vice Chair Spiller then presented a plaque to Councilor Grinnell and stated that it was from the residents of Kittery with sincere gratitude in recognition of her invaluable service to the town as a town councilor from 2000 to 2009. Councilor Grinnell indicated that she greatly appreciated it.

12. ADJOURNMENT

The Chair took a consensus to adjourn the meeting, with all in favor.

MEETING ADJOURNED: 9:25 P.M