

APPROVED MINUTES
Approved on February 23, 2009

KITTERY TOWN COUNCIL

February 9, 2009

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, Glenn Shwaery, Vice Chair Judith Spiller and Chairman Jeffrey Thomson. Also present were Town Manager Jonathan Carter, Town Clerk Maryann Place, Sewer Dept. Supt. Steve Tapley, Business Manager Sheri Rockburn, Russell Plante, Nicole Baker, Beverly Gregory, Leslie Gregory, Planning Board Chair Russell White, Recorder Chris Kudym, members of the press and others.
5. **ACCEPTANCE OF MINUTES**
The Minutes of January 12, 2009 were accepted, as amended.
6. **INTERVIEWS FOR THE ZONING BOARD OF APPEALS, PLANNING BOARD OR CABLE TELEVISION RATE REGULATION BOARD - None**
7. **PUBLIC HEARINGS**
8. **DISCUSSION**
 - a. ***DISCUSSION BY MEMBERS OF THE PUBLIC (Three minutes per person)***
Russell Plante came to the podium to comment on the first item of the Council's Agenda under Unfinished Business, the proposed amendments to Ch. 16.28 of the Land Use and Development Code, Article XII, Conservation of Kittery Wetlands. The proposed amendments included deleting language recently approved by voter referendum that empowered the Kittery Conservation Commission (KCC) to deny a wetlands permit for a variety of reasons. Mr. Plante read from a prepared statement, which he requested be included as part of the Minutes of this meeting. In his statement, Mr. Plante emphasized that the core issue was whether the Town Council should approve to remove language the Planning Board had deleted when the people of Kittery had voted to include it.

Addressing Mr. Plante, Chairman Thomson indicated that he thought it would be best to address the points that were raised in the general discussion portion of the ordinance change itself under Unfinished Business.

Nicole Baker of 119 Rogers Road came forward saying she had come to the meeting that night because she had been informed by a friend that some of the hard work they had done was very likely

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to be undone without anyone knowing it. Ms. Baker said a core group of people had worked very hard on some ordinance changes they thought would be beneficial to the Town. After much “pavement pounding” they submitted petitions that were not accepted due to a technicality. They went back to Phase 1 with more pavement pounding and gained even more signatures, submitted it again, went before the Board and had the petitions denied. Feeling the support was there, they pushed to get it on a referendum to let the people decide if these ordinance changes they had worked so hard for deserved to be on the Town’s books permanently. They were voted in and hardly less than a year ago were put on the books.

Ms. Baker noted that the Planning Board had the thankless job of trying to sift through all the information they were given to make sense of these ordinances and commit them to the permanent books and she truly appreciated the efforts they made. What she did not appreciate, however, was when they submitted “fixes” and changes to the ordinances for the final vote, trying to slide in a blatant omission of an already voted in ordinance change by the people of this Town through the Town Council. Ms. Baker asked, was that legal, she didn’t know; was it ethical, she highly doubted it. The ordinance changes that were passed concerning input from the KCC to deny a wetlands permit based on non-compliance had been proposed by them to help improve the way the Town operated, as well as having Town Boards and Committees work together cohesively, not against each other.

Ms. Baker said the way the Board had submitted the ordinances for Council’s vote was wrong. If the Council accepted the changes as presented, they were empowering the Board to submit and omit changes at will, without consequence for their actions. Why should this be allowed to happen? How could a group of people that had worked so hard for a goal have it undone by another group of people that were supposedly working towards the same goals? Ms. Baker strongly suggested that the Council think about the wording, or lack thereof, of the ordinance changes that had been submitted before they voted, they could be denying a voice that was concerned only for the Town’s environment a chance to be heard, perhaps leading to detrimental changes for their future.

Beverly Gregory, 11 Dunlea Avenue, came forward to let the Council know that, as a voter in the Town of Kittery, she was appalled by what the Planning Board was trying to do. Everyone tried to get the people in the Town to vote and this, she said, was like a slap in the face; they voted on something and the Board just turned their back on it.

b. *CHAIRPERSON’S RESPONSE TO PUBLIC COMMENTS*

9. UNFINISHED BUSINESS

a. (120108-2) *THE KITTERY TOWN COUNCIL MOVES TO ADOPT THE PROPOSED AMENDMENTS TO CHAPTER 16.28 OF THE LAND USE AND DEVELOPMENT CODE, ARTICLE XII, CONSERVATION OF KITTERY WETLANDS, FOLLOWING A PUBLIC HEARING ON DECEMBER 8, 2008 AND REFERRAL TO COMMITTEE FOR REVIEW.*

Chairman Thomson indicated that the Review Committee had been made up of Councilors Dennett, Shwaery and Beers, Chairman White, Mr. Muir and Ms. Kline of the Planning Board, Earledean Wells from the KCC, as well as Town Planner Sandra Mowery. The Chair asked if there was some input from the Council members that served on the Committee regarding the document before them and Councilor Beers proposed a motion for discussion.

COUNCILOR BEERS MOVED THAT THE TOWN OF KITTERY HEREBY ORDAIN REVISIONS TO TITLE 16, LAND USE AND DEVELOPMENT CODE ZONING ORDINANCE, SECTIONS 16.08.120, DEFINITIONS, 16.12.040, RURAL RESIDENCE, 16.12.050, SUBURBAN RESIDENCE, 16.12.055, KITTERY POINT VILLAGE,

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16.12.060, URBAN RESIDENTIAL ZONE, 16.12.070, VILLAGE RESIDENCE, 16.12.100, LOCAL BUSINESS, 16.12.101, LOCAL BUSINESS, 16.12.110, COMMERCIAL AND 16.12.130, MIXED USE; TABLE 16.12 REVISED AND RENUMBERED TO BE TABLE 16.28 AND MOVED TO THAT SECTION; ARTICLE XII, CONSERVATION OF KITTERY WETLANDS, INCLUDING VERNAL POOLS, ITS INDEX AND SECTIONS 16.28.380 THROUGH 16.28.500; ARTICLE XIII, RULES GOVERNING SPECIAL SITUATIONS FOR SETBACKS, ITS INDEX AND SECTIONS 16.28.510 THROUGH 16.28.540; THE APPENDICES INDEX AND APPENDIX N, WETLANDS PRESERVATION FEE, AS PRESENTED, SECONDED BY VICE CHAIR SPILLER.

Councilor Beers explained that the Committee met on three occasions where there was extensive exchange of documentation and review over all. In addressing the language, they chose as a group to concur unanimously with everything that would be presented, with three exceptions. They considered the nature of these particular issues, the enforcement provision related to the Conservation Commission and two other minor items, should be sent to Council with the majority opinion, as presented. They were, however, prepared to offer amendments to the main motion with respect to those minority considerations. It was also notable with particular respect to the enforcement provision that they had concurrence from not only the Planning Board and the Chair of the Conservation Commission but also had the Town Attorney's legal opinion that that particular provision was not enforceable and did not meet many of the characteristics of implementation of an ordinance to achieve the purpose for which the voters approved it. That was why, although he held the minority opinion, he personally chose not to argue the point further but allow it to come before the entire Council for consideration.

Councilor Shwaery noted that, as a member of that sub-committee, he had missed the very last meeting where consensus was given but would agree with everything except the major concern of enforcement. He thought the posture had been since the Townspeople voted for this, even though it had been proved to be troublesome from the perspective of the Town Attorney and from the Planning Board in terms of being enforceable, he thought it was up to the voters to remove this portion and then for Council to craft something that enhanced it or at least spoke to the spirit of what the population voted for that was enforceable. Councilor Shwaery said he agreed with Councilors Beers and Dennett and was certainly willing to support an amendment to keep 490 as originally written.

Councilor Beers indicated he had been prepared to address this based on an amendment motion, as suggested by Councilor Shwaery. However, the consideration was that this was a voter enacted passage despite the legal and technical flaws and, in his view, he considered it more appropriate to be left in the document as it currently existed and for the Planning Board to bring forth, in conjunction with the Conservation Commission, a warrant article for consideration in June that would resolve the matter in the spirit and intent of the will of the voters, as well as being legally and technically compliant.

Councilor Grinnell asked if they could first resolve the two minor issues.

COUNCILOR DENNETT MOVED TO AMEND THE MAIN MOTION, AS FOLLOWS: UNDER CHAPTER 16.28.410, SECTIONS G AND H BE AMENDED TO ELIMINATE REFERENCE TO SEVEN CUBIC YARDS IN EACH AND TO REVERT BACK TO TEN CUBIC YARDS IN EACH, SECONDED BY COUNCILOR BEERS.

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A ROLL CALL VOTE WAS TAKEN, AS FOLLOWS: FIVE IN FAVOR; TWO OPPOSED. MOTION PASSES 5/2, WITH COUNCILOR GRINNELL AND CHAIRMAN THOMSON OPPOSED.

Chairman Thomson referred Council back to the main motion, as amended, asking if there was any further discussion and Councilor Dennett said he would like to make a motion.

COUNCILOR DENNETT MOVED REINSTATEMENT OF THE FOLLOWING WORDING: “16.28.490, ENFORCEMENT. ENFORCEMENT OF THE PROVISIONS OF THIS ARTICLE SHALL BE IN ACCORDANCE WITH CHAPTER 16.16, ADMINISTRATION AND ENFORCEMENT. THE KITTEERY CONSERVATION COMMISSION (KCC) IS EMPOWERED TO DENY A WETLANDS PERMIT FOR THE APPLICANT’S FAILURE TO MEET THE REQUIREMENTS OF ARTICLE XII OF THE KITTEERY LAND USE AND DEVELOPMENT CODE ZONING ORDINANCE; TO SUBMIT NECESSARY INFORMATION AND PLANS REQUESTED BY THE KCC; TO MEET THE DESIGN SPECIFICATIONS; PERFORMANCE STANDARDS; AND TO AVOID OR PREVENT UNACCEPTABLE SIGNIFICANT OR CUMULATIVE AFFECTS UPON THE WETLAND RESOURCE AREAS OR INTERESTS PROTECTED BY THE KITTEERY LAND USE AND ZONING ORDINANCES; OR WHERE IT FINDS THAT NO CONDITIONS ARE ADEQUATE TO PROTECT SUCH VALUES AND INTERESTS. (ORD. 3a-07(PART):LAND USE AND DEV. CODE §7.12.12, 1994)” AND TO DELETE THE LAST PART OF THE ARTICLE, WHICH READS: “THE PROVISIONS OF THIS ARTICLE XII, CONSERVATION OF KITTEERY WETLANDS, INCLUDING VERNAL POOLS, ARE TO BE ADMINISTERED AND ENFORCED PURSUANT TO THE PROVISIONS OF CHAPTER 16.16, ADMINISTRATION AND ENFORCEMENT. (LAND USE AND DEV. CODE §7.12.12,1994),” SECONDED BY COUNCILOR BEERS.

Councilor Dennett stated that, in theory at least, one of the most important liberties that we enjoyed in this Country was the right of the voters to express their positions through referenda to: enact, in many cases, new ordinances or laws; to repeal old ones; or to amend those, plus or minus, that already existed. The Article that the motion intended to delete was passed by referendum in June of 2007 passed by a vote of 539 in the affirmative and 394 in the negative and came to the ballot by petition of the voters. Councilor Dennett said he disagreed with it in its legality, he did not find any reason for its existence in State Statute, in their local Charter or ordinances and from what he had gleaned from others it was probably unenforceable. However, the overriding factor was it was introduced and passed by the voters and he would rather have a bad law passed that way than a good one by the Council.

Councilor Shwaery said he would agree with Councilor Beers’ approach that they would only have to live with this for a few months, hopefully, and that a warrant article could be put on the June ballot to replace it.

Leslie Gregory of 11 Dunlea Avenue came to the podium and said he had been a resident of Kittery for almost 60 years and was one of the ones who went out and worked for the petition to have that referendum put on the ballot. Mr. Gregory said he could not see anybody going by the general

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consensus of the people because it was worded wrong and thought the intent ought to be kept even if it was a little troublesome.

Chairman Thomson said he was a little hesitant to vote for something he knew the Town Attorney had said would create some difficulty but he had to fall down on the side that it was brought to ordinance format via a Town wide vote and what flaws it had would have to be corrected by that means as well.

Councilor Shwaery reminded Council of something Councilor Beers brought up when they talked about the Zoning Board, this section only referred to wetlands permits and didn't have anything to do with wetland setbacks.

A ROLL CALL VOTE WAS TAKEN ON COUNCILOR DENNETT'S AMENDMENT, WITH ALL IN FAVOR. MOTION PASSES 7/0.

A ROLL CALL VOTE WAS TAKEN ON THE MAIN MOTION, AS AMENDED, WITH ALL IN FAVOR. MOTION PASSES 7/0.

b. *OTHER*

10. NEW BUSINESS

a. (020109-1) *THE KITTERY TOWN COUNCIL MOVES TO RECEIVE THE FY'08 AUDITS FOR THE TOWN, AS PRESENTED FROM THE AUDITOR.*

Chairman Thomson stated that a workshop had been held at 6:00 p.m. that evening with the auditors where a number of questions had been posed and answered to the satisfaction of those present and documents had been received.

COUNCILOR GRINNELL MOVED TO RECEIVE THE FY'08 AUDITS FOR THE TOWN, AS PRESENTED FROM THE AUDITOR, SECONDED BY VICE CHAIR SPILLER.

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

b. (020109-2) *THE KITTERY TOWN COUNCIL MOVES TO APPROVE THE DISBURSEMENT WARRANTS.*

Chairman Thomson listed the following warrant articles:

Warrant No. 12	School Nutrition Program	\$ 32,256.62
Warrant No. 15	School Accounts Payable	\$ 290,273.36
Warrant No. 64	Town Accounts Payable	\$ 683,057.10

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

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

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c. (020109-3) *THE KITTEERY TOWN COUNCIL MOVES TO APPROVE AND SIGN A RESOLUTION PROVIDING FOR SALE OF BOND ANTICIPATION NOTES FOR PHASE II OF THE WASTEWATER TREATMENT PROJECT.*

Town Manager Carter indicated that Stan Tapley, Superintendent of the Sewer Department and Sheri Rockburn, the Business Manager, were present at the meeting and they were coming before the Council to ask for their assistance in moving a refinancing of the initial Bond Anticipation Note (BAN) of \$3.4 Million. They had a bond that the taxpayers allowed to be used for the upgrade of the sewer plant that was financed through the USDA for \$3.4 Million. USDA Regulations were such that they would not permanently finance the work until all of the project had been completed and so the standard format to make the work complete was to use money from a Bond Anticipation Note. The Town had had a BAN since the Town voted to accept the USDA Bond for the \$3.4 Million, with the expectation that the work would be completed by late March of this year. Weather set in so they had not completed the building that housed the centrifuge and, even though it was more than likely to be done by March 30th, they were leaning on the side of caution to ask for a refinancing of the Bond to make sure they met that deadline.

Secondly, the work to retrofit the piping in the sewer lines to eliminate leakage would be out to bid this week and work would be done in the spring. Even though they could work around the USDA in having them set aside that, they had come to the conclusion with the USDA that it would be better to refinance the BAN, have it come due on September 30th and make sure all of the work would be completed so that the permanent financing could kick in so they were asking for another six months of a BAN. They had engaged Morris & Cabot to arrange the sale, who has put the specs together; they worked with their Bond Counsel, who has prepared the Resolution and Opinion; and they were being rated again by Standards & Poor's for that issue Thursday and the sale would take place if the Council allowed for the BAN to be refinanced. The Manager also said that they suspected to get a better rate than the initial BAN with Citizens Bank at 3.6%.

Chairman Thomson read the Resolution Providing for Sale of Bond Anticipation Notes for Phase II Wastewater Treatment Project, a copy of which to be included with the Minutes of this meeting.

VICE CHAIR SPILLER MOVED TO APPROVE THE RESOLUTION, AS READ, SECONDED BY COUNCILOR GRINNELL.

Councilor Dennett requested an editorial change within the document and the Chair indicated they would simply take out the letter "A" that had been included in the reference to "M.R.S. §5772."

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

d. (020109-4) *THE KITTEERY TOWN COUNCIL MOVES TO RE-APPOINT DONNA STOBBS TO THE PERSONNEL BOARD UNTIL 11/28/11.*

Councilor Shwaery noted that he and Chairman Palmer highly recommended this appointment.

COUNCILOR SHWAERY MOVED TO RE-APPOINT DONNA STOBBS TO THE PERSONNEL BOARD UNTIL 11/28/11, SECONDED BY COUNCILOR DOW.

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

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e. (020109-5) *THE KITTERY TOWN COUNCIL MOVES TO APPROVE THE PROPOSED AMENDMENTS TO COUNCIL RULES.*

Chairman Thomson said that a Council Rules sub-committee (Councilors Dennett and Beers) had been hard at work reviewing their current Rules since November and had brought forth a number of recommendations.

COUNCILOR BEERS MOVED TO APPROVE THE PROPOSED AMENDMENTS TO COUNCIL RULES, AS PRESENTED, SECONDED BY COUNCILOR DOW.

Councilor Dennett noted that Council Rules stated they could be not acted on until presented at one meeting and laid over until the next. Councilor Beers acknowledged that Rule and pointed out the need for a motion to be made in order for a discussion to be held.

Referring to the proposed amendments, Councilor Beers indicated that editorial changes had been made for the purpose of clarification and the principal substantive changes included the designation of a specified edition of Roberts Rule of Order; the incorporation of a report format for action decisions to the Council; and the consideration for a Councilor particularly addressed in the public discussion portion of the Agenda to be accorded an opportunity to respond if queried directly and if that Councilor so desired.

Vice Chair Spiller proposed an amendment to the motion.

VICE CHAIR SPILLER MOVED TO AMEND THE MOTION, AS FOLLOWS: IN EVERY PLACE WHERE “CHAIRPERSON” HAD BEEN STRUCK OUT AND REPLACED BY “CHAIRMAN” THAT IT REVERT BACK TO “CHAIRPERSON,” SECONDED BY COUNCILOR GRINNELL.

Councilor Grinnell stated that she could not comprehend why that change had been put in there at all and Councilor Beers replied that, according to Roberts Rules, the terminology, whether male or female, was properly “Chairman,” who when addressed in person or in documentation would be referred to as “Mr. Chairman” or “Madam Chairman.” Councilor Grinnell said she just did not agree with that and, Roberts Rules or not, this was just so wrong.

Councilor Dennett said he was not sure they were headed in the right direction within the right timeframe. They seemed to be involved in making motions on something that properly, he didn’t think, could lie before this Council for action for two weeks. It was okay for it to come and be presented and general questions asked but he didn’t believe there could be any action taken on this, plus or minus, until two weeks from that night.

Chairman Thomson asked the maker and seconder of the proposed amendment if they would be so kind as to withdraw their proposed action for that evening; Vice Chair Spiller and Councilor Grinnell agreed to withdraw their motion.

CHAIRMAN THOMSON MOVED THAT, PURSUANT TO CURRENT COUNCIL RULES, ACTION ON THE PROPOSED RULES CHANGES BE POSTPONED UNTIL THE REGULAR MEETING OF FEBRUARY 23, 2009, SECONDED BY COUNCILOR BEERS.

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Councilor Grinnell asked if they voted for this and took it off the table, would they have a discussion on it that night and the Chair replied, no, discussion would take place at the next regular meeting.

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

f. *OTHER*

Councilor Dennett said he understood there had been a lot of comments going around about budgets, tax reductions, etc. and it looked like it would be a tough season. He said he would like to broach this subject for Council's consideration in the not too far distant future. Many people in Town seemed to have lost sight of the fact that the School Budget was now being approved by the voters. However, if the voters of this community were required to vote on the School Budget this year in June, he would very much like to see a preference section on the ballot. This was not without precedent and would essentially say on one question, this is the School Budget, do you vote yes or no? If you voted no, why did you vote no? Budget too high?/Budget too low? Councilor Dennett said they might find a good use for that preference and he suggested they consider using that type of format on the ballot; he would leave it open for people to think about and discuss at some future date.

11. COMMITTEE AND OTHER REPORTS

a. *COMMUNICATIONS FROM THE CHAIRMAN*

Chairman Thomson made the following request to the community: York Hospital had an "Advisor Program," which was a group of citizens representing the communities that the Hospital serviced that served as "patient experience advisors." They met, he thought, once a month with Administrators of the Hospital to discuss Hospital policies, programs and services that were offered in the surrounding communities to see what perhaps the Hospital could be doing differently so as to bring an increased service level to a particular community. It was a pretty common practice now in the medical field and York Hospital was currently looking for a representative from the Town of Kittery to serve on this Advisor Board. The Chair indicated that his wife was the Coordinator of the Board so if anyone (not necessarily with a lot of experience) was interested, please contact him via e-mail or drop a note to Town Hall and he would see that the Hospital contacted them.

Councilor Shwaery asked about the time commitment involved and the Chair replied he believed it was one morning meeting a month, which typically lasted an hour or an hour and a half.

b. *TOWN MANAGER'S REPORT*

Town Manager Carter referred Council to their copy of an updated Budget for FY'09, which, he said, they were continuing to monitor. The numbers for seven months should show them being at 58% collected and they were off by 6% at this point.

The Manager noted that the Shared Services Committee would meet tomorrow at 4:30 p.m.

Town Manager Carter reminded Council that the Town Clerk would be in charge next week.

The Chair asked the Manager if they had received any resumes for the Revitalization Committee? The Manager said yes, that after the announcement they had a flurry of six or seven applications. The Manager said he hoped people understood the application form was on the website under Community News and they could fill it out on line and submit it. He noted that the Council should have a great group of people to look through.

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Town Manager Carter said he should also say there was a vacancy on the Planning Board, which was a very important Board, and they still did not have any applications.

The Manager reported that Friday night he attended the Annual Meeting of the Maine Chiefs of Police and at that meeting the Chief of the Year Award was presented to Kittery Police Chief Ed Strong.

c. COMMITTEE REPORTS

12. ADJOURNMENT

COUNCILOR SHWAERY MOVED TO ADJOURN, SECONDED BY VICE CHAIR SPILLER, WITH ALL IN FAVOR.

MEETING ADJOURNED: 8:10 P.M.