

APPROVED MINUTES
Approved 5/27/09

KITTERY TOWN COUNCIL

May 11, 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, George Dow, Glenn Shwaery, Vice Chair Judith Spiller and Chairperson Jeffrey Thomson. Also present were Town Manager Jonathan Carter, Town Clerk Maryann Place, William Peirce, George Burke, Fred Hall, David Balkins, Debby Boyle, Recorder Chris Kudym, members of the press and others.

Chairperson Thomson noted that Councilor Grinnell had a work commitment that evening.

5. **THE KITTERY TOWN COUNCIL MOVES TO HEAR AN UPDATE ON THE MEMORIAL BRIDGE STUDY AND STIMULUS APPLICATION PROCESS.**

Chairperson Thomson made an adjustment to the agenda, stating that an update by the Town Manager on the Memorial Bridge Study and Stimulus Application process would be heard after the interviews scheduled for that evening.

6. **ACCEPTANCE OF MINUTES**

The Minutes of the April 27, 2009 Regular Meeting were accepted, as read.

The Minutes of the May 4, 2009 Special Meeting were accepted, as read.

7. **INTERVIEWS FOR THE ZONING BOARD OF APPEALS, PLANNING BOARD OR CABLE TELEVISION RATE REGULATION BOARD:**

William Peirce and George Burke, applicants for the Planning Board.

Chairperson Thomson indicated that after the applicants were interviewed, Council may decide to take action either that evening or at their next regular meeting.

William Peirce came to the podium and noted that his term with the Conservation Commission had come to an end and indicated that when he applied for a seat on the Planning Board, he had thought he was the only applicant. Mr. Peirce spoke about his environmental interests and the types of projects and ideas he would like to see the Planning Board take on but concluded by saying that if Mr. Burke wanted to take this job, he was inclined to let him do it.

George Burke came to the podium and stated he was primarily involved in commercial real estate and he and his wife had recently moved to Kittery from Kennebunkport where he had been involved in a lot of local chambers, rotaries and boards. Mr. Burke indicated he thought that

compared with others, the Planning Board was the most natural fit for him; he found real estate issues fascinating and the possibility of there being “tabloid fodder” connected with it added to its appeal to him.

COUNCILOR DOW MOVED TO APPOINT GEORGE BURKE TO THE PLANNING BOARD FOR THE REMAINDER OF MEGAN KLINE’S TERM, SECONDED BY VICE CHAIR SPILLER.

Town Manager Carter suggested they might want to touch base with Ms. Kline since there were some on-going applications she might want to finish or it might be less disruptive to have her finish and then to have the new person come on.

Councilor Dennett indicated he had no problem with that but under the most recent changes, Ms. Kline would serve until her successor was appointed and qualified. If there were a couple of cases she would like to continue until finished, he suggested that whoever was appointed not be sworn in until they were ready to make the switch-over.

The Manager noted there was a Planning Board meeting on Thursday night where they could perhaps get those questions answered.

Councilor Beers commented that he would favor this motion primarily because of Mr. Peirce’s statement that he might favor Mr. Burke’s application.

A ROLL CALL VOTE WAS TAKEN, AS FOLLOWS: FIVE IN FAVOR; ONE OPPOSED. MOTION PASSES 5/1, WITH COUNCILOR SHWAERY OPPOSED.

Councilor Dennett moved to nominate William Peirce. This motion failed due to the lack of a second.

8. INTERVIEW FOR THE FRISBEE RE-VITALIZATION COMMITTEE: Debby Boyle

Ms. Boyle came to the podium and stated she was very interested in seeing that the building did not remain empty. Ms. Boyle said she had lived in Kittery for 30 years and had participated in a lot of volunteer work, including having established the concession stand for Kittery Rec. basketball. She was now looking to serve in other areas, was presently a church clerk, and had a lot of experience serving on committees, including an international committee for the Women’s Missionary Union. Ms. Boyle said she would really like the opportunity to serve her Town.

5. *[Heard out of order]* THE KITTERY TOWN COUNCIL MOVES TO HEAR AN UPDATE ON THE MEMORIAL BRIDGE STUDY AND STIMULUS APPLICATION PROCESS.

Chairperson Thomson brought Council’s attention back to Item 5 and turned the floor over to the Manager.

Town Manager Carter said he thought it was important to bring Council and the community up to date as to what was transpiring regarding the Bridges. He referred to the April 27th DOT Connectivity Study meeting at Kittery Trading Post, said he had provided the Council with materials on that meeting and noted that a similar meeting was held at the Portsmouth High School. The Manager indicated that the Minutes of both meetings, as well as questions asked at those meetings,

could be found on the MDOT web page. A link had been placed on the Town website to the MDOT site so the general public could fully read about the study taking place and see all of the materials being distributed concerning the study.

The Manager stated he was on the Steering Committee. There were several other committees that also had representations from the Towns of Kittery and Portsmouth, as well as other area leaders. HNTB was the company heading up the study. The Manager said they were the same company that did the actual analysis of the Memorial Bridge and had set in motion the bid document so he was convinced they would do a very good job managing the study and, if nothing else, the data would be extremely useful to their community when it was done.

The major goal for MDOT in undertaking the study was to seek an alternative to the two Bridges with the lift span type mechanism that was costing the two states many millions of dollars to operate. The general public, however, had a real question as to whether there should be an alternative rather than fixing the Bridges and leaving them in place.

The Manager said on May 22nd he would be attending a Steering Committee meeting. He said that a rally with 250 to 260 people took place on April 28th at John Paul Jones Park and prior to the rally there had been an announcement that the National Trust had designated the Memorial Bridge one of the Country's 11th most endangered infrastructures. The Manager said they hoped to have a day in Augusta to meet with Legislators, as well as Commissioner Cole and representatives of the Governor's Office, to talk about the significance of the Bridges to the region.

The other aspect of what was going on was that presently in Augusta there were several groups wishing to move the idea of having the State apply for monies from the potential second stimulus program to go towards the fixing of the Memorial Bridge. The Manager said that New Hampshire's Governor called Gov. Baldacci to ask if a collaborative process could be jointly filed. Augusta was reluctant to join New Hampshire until they saw the Federal DOT rules, which should be out by the end of May or early June. Also, there were competing projects in the State of Maine, one of which was the bypass road in Presque Isle, a significant project for the DOT to undertake.

The Manager explained that there was a piece of legislation working its way through the Transportation Committee to the House, LD-736, which asked the Legislature to make it mandatory for the North/South Highway to move forward and attached to that was an Amendment asking that any and all stimulus funds coming to the State be used towards the bypass road around Presque Isle and Caribou. That component of the bill was being questioned by their Legislative delegation and they had been able to slow it down.

In closing, the Manager said that the Bridge had become a lightning rod for many people and he was very pleased with how the communities of Portsmouth and Kittery were responding to this issue.

9. PUBLIC HEARINGS

a. (050109-1) *THE KITTERY TOWN COUNCIL MOVES TO HOLD A PUBLIC HEARING ON THE RENEWAL APPLICATION FOR WEATHERVANE SEAFOODS, 31 BADGER'S ISLAND WEST, KITTERY, ME, FOR A MALT, SPIRITUOUS AND VINOUS LIQUOR LICENSE FOR WEATHERVANE BADGER'S ISLAND DECK, 31 BADGER'S ISLAND WEST.*

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

VICE CHAIR SPILLER MOVED TO APPROVE THE RENEWAL APPLICATION FOR WEATHERVANE SEAFOODS, 31 BADGER'S ISLAND WEST, KITTERY, ME, FOR A MALT, SPIRITUOUS AND VINOUS LIQUOR LICENSE FOR

WEATHERVANE BADGER’S ISLAND DECK, 31 BADGER’S ISLAND WEST, SECONDED BY COUNCILOR SHWAERY.

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

b. (050109-2) *THE KITTELY TOWN COUNCIL MOVES TO HOLD A PUBLIC HEARING ON AN APPLICATION FOR CINDY FRISBEE, 9 CHARLES HILL ROAD, KITTELY POINT, ME, FOR A MALT, SPIRITUOUS AND VINOUS LIQUOR LICENSE FOR CAP’N SIMEON’S GALLEY, 90 PEPPERRELL ROAD.*

Chairperson Thomson said that notice of this Public Hearing had appeared in the local printed media and opened the Public Hearing. Not receiving a response, the Chair closed the Public Hearing.

VICE CHAIR SPILLER MOVED TO APPROVE THE APPLICATION OF CINDY FRISBEE, 9 CHARLES HILL ROAD, KITTELY POINT, ME, FOR A MALT, SPIRITUOUS AND VINOUS LIQUOR LICENSE FOR CAP’N SIMEON’S GALLEY, 90 PEPPERRELL ROAD, SECONDED BY COUNCILOR BEERS.

Noting that the business known as Cap’n Simeon’s Galley was a Limited Liability Company using the name of Ninecins, LLC, Councilor Dennett requested that Ms. Frisbee write the LLC’s name on each of the applications and initial it. Councilor Dennett also noted that the State could do a much better job in making out these liquor applications, which were very misleading and very difficult, because with corporations, partnerships, LLC’s, etc., you really had to work hard to see where to put the answers.

A ROLL CALL VOTE WAS TAKEN ON THE APPLICATION, AS AMENDED, WITH ALL IN FAVOR. MOTION PASSES 6/0.

c. (050109-3) *THE KITTELY TOWN COUNCIL MOVES TO HOLD A PUBLIC HEARING ON AN APPLICATION OF NINECINS, LLC, 9 CHARLES HILL ROAD, KITTELY POINT, ME, FOR A SPECIAL ACTIVITY AMUSEMENT PERMIT FOR CAP’N SIMEON’S GALLEY, 90 PEPPERRELL ROAD.*

Chairperson Thomson said that notice of this Public Hearing had appeared in the local printed media and opened the Public Hearing. Not receiving a response, the Chair closed the Public Hearing.

COUNCILOR BEERS MOVED TO APPROVE THE APPLICATION OF NINECINS, LLC, 9 CHARLES HILL ROAD, KITTELY POINT, ME, FOR A SPECIAL ACTIVITY AMUSEMENT PERMIT FOR CAP’N SIMEON’S GALLEY, 90 PEPPERRELL ROAD, SECONDED BY VICE CHAIR SPILLER.

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

d. (050109-4) *THE KITTELY TOWN COUNCIL MOVES TO HOLD A PUBLIC HEARING ON AN APPLICATION OF NINECINS, LLC, 9 CHARLES HILL ROAD, KITTELY POINT, ME, FOR A VICTUALER’S LICENSE FOR CAP’N SIMEON’S GALLEY, 90 PEPPERRELL ROAD.*

Chairperson Thomson said that notice of this Public Hearing had appeared in the local printed media and opened the Public Hearing. Not receiving a response, the Chair closed the Public Hearing.

VICE CHAIR SPILLER MOVED TO APPROVE THE APPLICATION OF NINECINS, LLC, 9 CHARLES HILL ROAD, KITTERY POINT, ME, FOR A VICTUALER'S LICENSE FOR CAP'N SIMEON'S GALLEY, 90 PEPPERRELL ROAD, SECONDED BY COUNCILOR BEERS.

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

10. DISCUSSION

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

Fred Hall of 68 Old Dennett Road came to the podium and spoke to Council about reading in the local paper that Kittery would be increasing the amount of sewerage it would take from Eliot. Mr. Hall said he and his family lived right around the corner from the sewerage treatment plant and since it was built, they had not been able to get hooked up to it and yet people living miles away would be able to flush their toilets in their backyard. He thought there must be 200 homes from Spinney Way to Dennett Road to Old Dennett Road to the Eliot line to Martin Road where you could smell the plant in the summer but you couldn't use it. Mr. Hall said he wished the Council would think more about the residents of Kittery than about bringing in a neighboring town.

David Balkins came to the podium saying he had lived in Kittery for 30 years and noted that when the Rec. basketball league began, Debby Boyle had done a tremendous job with it every week for years and you couldn't get a better, more hard-working person.

Mr. Balkins also said he thought the State of Maine had thrown them under a bus concerning the Memorial Bridge.

The main reason he came Mr. Balkins said was the closing of Frisbee School, which he was in favor of. When he first came, the schools were deplorable but that had not seemed to harm his own children's learning process. Mr. Balkins couldn't see many of the concerns expressed by parents except perhaps the concern about separate bathrooms. He asked the voters of Kittery to vote against keeping Frisbee open.

Mr. Balkins finished with a story about segregation that highlighted the perspective of kids. One kid had asked the black man who was one of the young men that sat at a southern town's Woolworth's counter waiting to be served: "What were you going to order?" The reply was: "I had my eye on the pie." Mr. Balkins thought Kittery needed to have its eye on the pie, as well.

b. *CHAIRPERSON'S RESPONSE TO PUBLIC COMMENTS*

Addressing Mr. Hall, Chairperson Thomson said he certainly understood his frustration given where he lived to have access to that municipal service. The Chair noted that when the treatment plant was built, there had been certain conditions placed on Kittery regarding the Shipyard and the Town of Eliot. The Chair said they would be acting on a proposal later that evening and maybe, as part of that proposal, where the line was going so he and his neighbors might be able to take advantage of it once the line was constructed.

The Town Manager added that there was an existing contract with Eliot and, at Eliot's request, the Town was now enlarging the volume they would accept. Eliot had just voted to accept a TIF District, down 236, where they planned to put both water and sewer in. If they did that, the best connector into Kittery might be up through Mr. Hall's neighborhood so there would be a better chance to bring the lines into his area.

Chairperson Thomson thanked Mr. Balkins for his comments and said they would wait to see what folks decided in June.

11. UNFINISHED BUSINESS

Councilor Dennett said he understood the Village Residence ordinance that was to be heard that night was put off and asked if Council would like to vote another night? The Manager said he assumed it would be at their next meeting, May 27th, and they would advertise it appropriately.

CHAIRPERSON THOMSON MOVED TO HOLD A PUBLIC HEARING ON CHANGES TO THE VILLAGE RESIDENCE ZONING ORDINANCE ON WEDNESDAY, MAY 27, 2009, SECONDED BY COUNCILOR BEERS.

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

12. NEW BUSINESS

a. (050109-5) *THE KITTERY TOWN COUNCIL MOVES TO APPROVE THE DISBURSEMENT WARRANTS.*

Chairperson Thomson listed the following warrant articles:

Warrant No. 3	Enterprise/Gate Receipts	\$ 2,000.00
Warrant No. 18	School Nutrition Program	\$ 41,629.86
Warrant No. 20	School Accounts Payable	\$ 212,033.46
Warrant No. 90	Town Accounts Payable	\$ 360,289.46

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

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

b. (050109-6) *THE KITTERY TOWN COUNCIL MOVES TO GIVE PRELIMINARY APPROVAL TO THE ELIOT SEWER CONTRACT PENDING ELIOT'S ACCEPTANCE.*

Chairperson Thomson noted that Council had a copy of the Subcommittee's review, as well as a copy of the contract. If Council approved this contract, it would still have to go before the voters of the Town of Eliot in June.

Town Manager Carter explained the proposed contract in detail, with additional information provided by Councilor Beers.

COUNCILOR BEERS MOVED THAT THE KITTERY TOWN COUNCIL APPROVE AN INTER-MUNICIPAL AGREEMENT BETWEEN THE TOWN OF KITTERY AND THE TOWN OF ELIOT FOR WASTEWATER RECEPTION FROM ELIOT'S SEWERAGE SYSTEM, AS PRESENTED, CONTINGENT UPON APPROVAL BY THE VOTERS OF THE TOWN OF ELIOT ON JUNE 9, 2009 OR AT THEIR SPECIAL TOWN MEETING, SECONDED BY VICE CHAIR SPILLER.

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

c. *OTHER*

13. COMMITTEE AND OTHER REPORTS

a. *COMMUNICATIONS FROM THE CHAIRPERSON*

The Chair reminded Council that if they were available Saturday, May 23rd, they would be stepping off at 8:45 a.m. from the former Fire Station for the annual Memorial Day Parade.

b. *TOWN MANAGER'S REPORT*

Town Manager Carter noted he had included in the Council's packets an update on the existing Budget. They were facing a June 30th deadline and working very hard to achieve a Budget that ended in the black. Revenue receiving continued to fall forecasted amounts and they had taken steps to bring the operating budget in line with that, deferring 2½% of the expenditures and putting it to one side. They were proposing to take another \$75,000 from overlay, if Council agreed, and were working extremely hard to bring in all revenues they had control over. Presently, they were off \$487,000 in revenue receipts. With the 2½% and using the overlay in the amounts requested, they would have an offset of \$552,633. They hoped the gap would slow down and there was only a very small window of about \$70,000 with which they thought they could squeak by to make it to June 30th.

Regarding Ft. McClary, Council received a copy of a letter sent to the Friends of Ft. McClary as a result of the Safford School meeting with them. The Manager said he wrote a section of the letter that said if they were able to move the building and go through the planning process with the Planner, they would be exempted from the Planning Board and permits because it was a State parcel. He was notified by a Councilor that day that perhaps they should look at State Law that said if the Town had a consistent Comprehensive Plan and zoning was in compliance with that Plan, then the State was not exempted from obtaining permits. The Manager said he would amend that letter to state that the Friends would have to go through the normal process.

The Manager said that a while back, Council asked if the Town would assist the State with the cleanup of John Paul Jones Park. Some work was done and they got most of the loose storm debris off and then the Park Manager was able to do some of the raking and prepping himself. However some of the tree and bushes in the park remained damaged from ice storm. The Manager said that a group of arborists joined together to do volunteer work and spent a weekend at the Park making a real difference in how those trees and bushes looked and he wanted to thank them.

Vice Chair Spiller suggested that at some future date Council should talk about negotiating with the State to take over John Paul Jones Park; Chairperson Thomson concurred. The Manager suggested he ask the Public Works Commissioner to put together a budget to see what he believed it would cost to operate the Park; the Chair was reluctant to do that, thinking existing staff and equipment could absorb it.

c. *COMMITTEE REPORTS*

Shared Services Committee: Vice Chair Spiller indicated that a public workshop was scheduled for May 26th at 6:30 p.m. at Shapleigh School.

Councilor Beers said that the Shared Services Committee adopted a proactive stance for the possible construction of the additions and reconfiguration of the Shapleigh and Mitchell Schools and had requested an RFP for interested firms.

Capital Improvement Program Committee: Councilor Beers stated that the CIP Committee held a post first submission review session, established a process and developed a set of goals to continue the preparation of the overall program, culminating in presentations in September and October for the next fiscal year CIP requirements.

Wood Island: Vice Chair Spiller said that they had worked with a group of senior civil engineering students from UNH, along with their engineering firm, and she and the Manager had seen their completed report. They would come next Monday to report on their findings to the Council.

Chairperson Thomson asked the Manager about a couple of hardship abatements. The Manager said they were being confirmed and would happen around 7:00 after the presentation.

Councilor Shwaery commented that in retrospect he wished they hadn't altered the zoning ordinance that affected Safford School and before they invested another 100 man hours into this someone had to tell them how much it would cost to move it.

The Manager noted that they would be going to the voters in November with authorization to lease the building to them and the Town's actions would be over at that point.

14. ADJOURNMENT

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

MEETING ADJOURNED: 8:55 P.M.