

APPROVED MINUTES

KITTERY TOWN COUNCIL

November 28, 2005

Council Chamber

1. CALL TO ORDER

The meeting was called to order at 7:05 p.m. by Chairperson Ann Grinnell.

2. INTRODUCTORY

Chairperson Grinnell read the Introductory.

3. PLEDGE OF ALLEGIANCE

Chairperson Grinnell led those present in the Pledge of Allegiance.

4. ROLL CALL

Answering the roll were Councilors Jeffrey Brake, Matt Brock, Frank Dennett, George Heilshorn, Judith Spiller, Glenn Shwaery and Chairperson Ann Grinnell. Also present were Town Manager Jon Carter, Town Clerk Maryann Place, Town Attorney Duncan McEachern, Planning Board Members Russell White, Chair, Ron Ledgett, Ernest Evancic, Doug Muir, Janet Gagner, Scott Mangiafico, Megan Kline, Town Planner Jim Noel, Recorder Chris Kudym, Lucille Milhorn, Edith Niles, Wilma Wheeler, Mildred Leland, Howard Moulton, Kathryn Davis, Audrey Wilkinson, Eva Reyka, Bill Pagum, Alfred Mareki, Susan Emery, William Bailey, George Vonney, Lisa and Jay Comeau, Sandra McDonough, Leisa Muccio, George Lombardi, Walter Wheeler, members of the press and others.

5. EXECUTIVE SESSION

CHAIRPERSON GRINNELL MOVED TO CLOSE THE EXECUTIVE SESSION,
SECONDED BY COUNCIL SHWAERY.

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

6. ACCEPTANCE OF PREVIOUS MINUTES

At Councilor's Dennett's request and unanimous consensus vote, this item was moved to the end of the meeting.

7. INTERVIEWS FOR PLANNING BOARD, ZONING BOARD OF APPEALS AND/OR
CABLE TELEVISION RATE REGULATION BOARD

REAPPOINTMENT OF RUSSELL WHITE TO THE PLANNING BOARD UNTIL 11/30/08.

Chairperson Grinnell asked Mr. White to come to the podium and then asked if Council had any questions for him. Councilor Dennett said to Mr. White that as far as he could ascertain, he had been a member of the Planning Board since October of 1990 and asked if he realized that in requesting this reappointment he again offered himself as a sacrifice? Mr. White said, certainly. Councilor Dennett said, so this is done of your own free will and accord? Mr. White said there was no explanation, he had no social life and Councilor Dennett thanked him. Chairperson Grinnell said to Mr. White that she had not realized he had been on the Board since 1990 and, now

that the Charter had changed, she didn't think someone could stay on forever and asked him if this was his second term. Mr. White said he had one more after this, that he could do six more years if he wanted to and was reappointed. Chairperson Grinnell said, these three years and then you can do it one more time and Mr. White said yes. Chairperson Grinnell asked if there were other questions and Councilor Shwaery asked Mr. White if it was his intent to remain as Chair, if so voted. Mr. White said it was the will of the Board as to what happened and Councilor Shwaery asked if he was comfortable with that. Mr. White said if no one else wanted to do it, that would be fine.

CHAIRPERSON GRINNELL MOVED THE REAPPOINTMENT OF RUSSELL WHITE TO THE PLANNING BOARD UNTIL 11/30/08, SECONDED BY COUNCILOR SHWAERY.

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

REAPPOINTMENT OF MEGAN RYAN KLINE TO THE PLANNING BOARD UNTIL 11/30/08.

Ms. Kline came to the podium and Chairperson Grinnell asked how long she had been on the Board. Ms. Kline said it was probably 1998 or so. Chairperson Grinnell asked if Council had any questions and there were none.

CHAIRPERSON GRINNELL MOVED THE REAPPOINTMENT OF MEGAN RYAN KLINE TO THE PLANNING BOARD UNTIL 11/30/08, SECONDED BY COUNCILOR HEILSHORN.

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

Chairperson Grinnell thanked Ms. Kline for all her time and Councilor Dennett reminded the appointees to be sworn in again for the record.

8. PUBLIC HEARINGS

a. (110205-1) *THE KITTERY TOWN COUNCIL MOVES TO HOLD A PUBLIC HEARING ON, AND HEREBY ORDAINS, AMENDMENTS TO SEC. 9.04.020 FIREARMS – UNLAWFUL DISCHARGE.*

Chairperson Grinnell recognized Town Manager Carter who said that in reviewing this and, based on how they advertised it, there was a technical issue involved and he would ask the Council to re-advertise. The Manager said they would have the proper paperwork available for the Council and the public. Chairperson Grinnell said she would move to have the hearing at the first meeting in December and Councilor Dennett suggested a later meeting since there would be a lot of work to do on this and whoever was drafting it might want to have a little assistance.

CHAIRPERSON GRINNELL MOVED TO POSTPONE THE PUBLIC HEARING ON AMENDMENTS TO SEC. 9.04.020 FIREARMS – UNLAWFUL DISCHARGE TO JANUARY 9, 2006, SECONDED BY COUNCILOR SHWAERY.

Chairperson Grinnell asked for discussion and Councilor Brock said that there were people who had come to tonight's meeting to provide comments on this ordinance and asked Town Manager Carter for clarification of the reason for postponement - was it because the Manager understood there to be a legal problem with the notice? Town Manager Carter responded that it was a little more than that. He said that in a workshop and the work they had done to date, the Police Chief was proposing almost a replacement ordinance and, technically, it was a new ordinance. The Manager said they had advertised it as an amendment to the ordinance, so that was one technical problem right there, both public hearing wise, as well as the fact that the document itself said amendment on it. The other issue was that it was in a format that was difficult to understand what was being replaced and what was new. The Manager said he thought they could do a better job showing that for the public. Councilor Brock thanked him. Councilor Shwaery asked Town Manager Carter if it was their intent to replace the ordinance or amend it and the Manager said they seemed to like what the Chief put forth and they wanted what he had put forth in their last workshop to be the amendment and if that was the case, it did, in practicality, replace the other ordinance.

A ROLL CALL VOTE WAS TAKEN ON THE MOTION TO POSTPONE A PUBLIC HEARING ON FIREARMS AMENDMENTS TO JANUARY 9, 2006, WITH ALL IN FAVOR. MOTION PASSES 7/0.

b. (110205-2) *THE KITTERY TOWN COUNCIL MOVES TO HOLD A PUBLIC HEARING ON THE RENEWAL APPLICATION FROM RAYMOND E. HIGGINS, 109 BARTLETT ROAD, KITTERY POINT, FOR A JUNKYARD PERMIT FOR 109 BARTLETT ROAD.*

Chairperson Grinnell opened the public hearing, saying this had been advertised in the Portsmouth Herald and asked if anyone wanted to address this issue. There being no response, Chairperson Grinnell closed the public hearing and asked the pleasure of the Council.

COUNCILOR SHWAERY MOVED TO APPROVE THE RENEWAL APPLICATION FROM RAYMOND E. HIGGINS, 109 BARTLETT ROAD, KITTERY POINT, FOR A JUNKYARD PERMIT FOR 109 BARTLETT ROAD, SECONDED BY COUNCILOR HEILSHORN.

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

c. (110205-3) *THE KITTERY TOWN COUNCIL MOVES TO HOLD A JOINT PUBLIC HEARING WITH THE PLANNING BOARD TO RECEIVE COMMENTS CONCERNING THE VOTER PETITION SUBMITTED TO THE TOWN CLERK ON NOVEMBER 10, 2005 UNDER SEC. 11.02 OF THE TOWN CHARTER TO AMEND SEC. 16.12.070 VILLAGE RESIDENCE (VR) ZONE, (B) PERMITTED USES AND (C) SPECIAL EXCEPTIONS, AS SET FORTH IN THE LAND USE AND DEVELOPMENT CODE.*

Chairperson Grinnell asked the members of the Planning Board to come forward and informed the public there were copies of the Petition available on the table. The Chair said that this was a joint public hearing with the Planning Board and the Town Council and it had been advertised in the Portsmouth Herald. Chairperson Grinnell read the Petition as follows: "Petition for Amendment of Ordinance - We, the undersigned registered voters of Kittery, Maine, hereby acknowledge reviewing the attached Petition to amend the Village Residential Zone 16.12.070.B.6

and C.5 in the Land Use and Development Code and willingly sign this Petition.” Chairperson Grinnell said that this Petition was to amend Section 16.12.070 of the Village Residential Zone and on the copies they were looking at, the items that would be changed, if this Amendment were to pass, were as follows: under (B) Permitted Uses, there would be added No. 6 that stated “any and all buildings shall not exceed 5,000 square feet of the total floor area;” another amendment would be to delete, under Section C, No. 5, Special Exceptions, the words “schools, educational facilities or hospitals that occupied less than 3,000 square feet of floor area;” and added under Special Exceptions, No. 5, “any and all buildings shall not exceed 5,000 square feet of total floor area.” There’s one other addition: “Notwithstanding the provisions of 1.MRSA, Sec. 302 and regardless of the date on which it is approved by the voters, this amendment shall be effective as of 8/22/04 and shall govern any and all applications for the permits or approvals required under the Land Use and Development Code of the Town of Kittery, Maine that were or have been pending before any officer, board or agency of the Town of Kittery, Maine on or at any time after August 22, 2004.” Chairperson Grinnell said those were the items that this public hearing was for and opened the public hearing for the Council now and asked Chairman White to open it for the Planning Board.

Chairman White called the Planning Board into session, with the following members answering the roll: Russell White, Doug Muir, Ron Ledgett, Ernest Evancic, Janet Gagner, Scott Mangiafico and Megan Kline. Chairman White said the roll had been taken and they had one item, which was the joint public hearing with the Town Council on the item that had been stated by the Chair and they would proceed with that public hearing.

Chairperson Grinnell asked members of the audience to raise their hands if they wanted to address this issue and twelve people raised their hands. The Chair addressed the audience, saying that in a public hearing the public had the right to address the Council and the Planning Board but that the Council and Planning Board also had the right to have an efficient meeting. Chairperson Grinnell then asked Council to discuss putting a limit of three minutes on anyone who wanted to speak. Councilor Dennett said he would find that most objectionable. The public, he said, had an undeniable right to take their time and express their views, but that the Chair certainly had the right, if people were being repetitive, to admonish them to finish up as rapidly as possible. Chairperson Grinnell said she understood but disagreed with Councilor Dennett, saying she thought the residents would be articulate and would like to ask them to not repeat what other people had said, to stick to the topic, and to refrain from personalities - since this was principle above personalities. Chairperson Grinnell said she would be willing to limit each speaker to four minutes, asking if there were any other comments from Council. Councilor Brock said he thought it had been appropriate to find out how many people wanted to speak and if everyone in the room had wanted to speak, he would have been inclined to support a time limit, however, since 12 people wanted to speak, he was in favor of letting them speak. He said he agreed with Councilor Dennett’s suggested limitation concerning repetition but not to put a time limit on; he would not favor a restriction. Chairperson Grinnell asked if there were any other Councilors who had comment and hearing none, said that since she couldn’t get support on that idea, she would reiterate what she thought were fair guidelines for this public hearing. The Chair said she would ask that when at the podium, people addressed the Council and not the audience; that they give their name and address; and that they address only the items she just read. Chairperson Grinnell said that would be a judgment call on her part and if she thought they were wavering from that topic, she would use the gavel. The Chair then opened the public hearing and invited members of the audience to approach the podium.

George Lombardi, 105 Manson Avenue, said he was an abutter and wanted to take this time to ask the Town Council to support the Petition. Chairperson Grinnell said thank you; she liked his style.

Bill Bailey, 28 Tenney Hill Road, Kittery Point, said he was there in support of both Petitions. He said they were being asked to assume a \$3.5 Million debt. The Chair interrupted Mr. Bailey, saying they were talking about any and all buildings not exceeding 5,000 square feet and not about the bond, the budget or the Rec Center. Mr. Bailey said he found all these things were linked together and he couldn't address the size of the building without addressing why he was addressing the size of the building. Mr. Bailey said the reasons he was addressing it was because of deed issues, pollution issues, and they had been told their last vote was a final vote when there was a pending traffic study. He said they were being asked to fix what works, to spend \$7 Million when we're asking fuel aide for the needy. Mr. Bailey said it may be okay for folks in the money to have a fancy new one of what they already had, but it was a slap in the face for people in need and that he was sorry to deviate from the Chair's request.

Susan Emery, 5 Mitchell School Lane, said she was asking that the Petition be accepted, because she believed it was consistent with the Comprehensive Plan Update. She said that, specifically, Admiralty Village Residential was one of the two areas in the Plan Update in the Neighborhood Conservation Designation; that these were relatively fully developed residential neighborhoods where the objective was to maintain the current development and character while accommodating limited new residential construction. Ms. Emery said she was reading all this from the Comprehensive Plan and that it didn't say anything about a school, educational facility or hospital. Specific to Admiralty Village Residential within this area, the density and character of new residential development should be consistent with the existing development pattern and allowed uses in this area should include single family, two-family and multi-family housing, community and public uses and similar low intensity uses. Business uses, including non-profit, were not included. Also, Ms. Emery said that, in her opinion, the 5,000 square feet, keeping it to that, spoke to the low intensity aspect of what was intended in this zone. Ms. Emery said under "Transportation" in the Plan, the roads in this area... Chairperson Grinnell interrupted Ms. Emery saying transportation was not an item. Ms. Emery said this did relate to this in the sense of the Comprehensive Plan regarding intensity of use; these were more intense uses because they would bring in more traffic and that related to about three points from the transportation part of the Comprehensive Plan. In that area, she said, the roads were local roads where the traffic volumes were supposed to be minimal or there were collector roads, which were for local traffic only. Ms. Emery said that the goals and policies in that section of the Plan said to maintain and improve the capacity of the arterial and collector road network in a manner consistent with the neighborhoods and maintains a scenic character. She said that going back to the Admiralty Village definition, "older residential" "low intensity" and "similar to existing patterns" were words used to make sure that new development did not overburden the road network, did not create safety problems or impact existing residential neighborhoods and that many of the Village residents believed this would impact their neighborhood, so she was asking that the change in the Ordinance be accepted.

Bill Pagum, 8 Cromwell Street, said he just wanted to say he supported the Petition and hoped they enacted it.

Mr. Mitsui, 15 Pepperrell Road, said he had some background in planning and was speaking in opposition to the Petition. He said he would like to suggest that accepting this Petition would be extremely shortsighted on the part of the Town of Kittery. Mr. Mitsui said he understood and, to a great extent, sympathized with the idea that Admiralty Village should be

maintained in a very similar character as it had been for a long time but, on the other hand, he wanted to remind people that in the best days of the Navy Yard, the Village was populated a lot more, implying there was a lot more traffic, a lot more people and so on... Chairperson Grinnell interrupted Mr. Mitsui, asking him to stick to the 5,000 square feet. Mr. Mitsui said, specifically then, he thought it was shortsighted to limit what could be built in that area in terms of the square footage and that the existing Community Center was slightly over 5,000 square feet so had this Petition come a number of years ago, this building would not have been built. Mr. Mitsui said the Town should think in terms of developing amenities that would attract people outside of the Town and to nurture the vitality of the old parts of this Town because Kittery was relatively limited in Town owned land and he suggested that limiting this to 5,000 square feet or less would be extremely short sighted.

Leisa Muccio, 4 Central Avenue, said, sticking to this particular topic and not necessarily the 5,000 square feet, but under Special Exceptions, No. 5, deleting school, educational facility or hospital, she wanted to remind everybody that last spring 77% of the voters voted in favor of the Rec Center and York Hospital entering into a partnership where the Hospital would build and rent space there. Ms. Muccio said that to delete school, educational facility or hospital would be contrary to the will of 77% of the voters. She said that as regards a statement made about intensity of traffic, she wanted to bring up that at a meeting of the Zoning Board of Appeals, Mr. Pelletier from the Hospital indicated that in terms of the hospital's use, there would be approximately four patients per hour...A point of order was asked for and Ms. Muccio said that she was responding to Ms. Emery's comment, and she also wanted to say it had been in the papers a lot that proponents of... Chairperson Grinnell interrupted Ms. Muccio for being off topic and Ms. Muccio said thank you and sat down.

Lisa Comeau, 33 Halstead Street in the Village, came to the podium and thanked the Council and Planning Board for being there. Chairperson Grinnell asked for a five minute recess.

A Recess was called at 7:42 p.m.

The Meeting was called back to order at 7:50 p.m.

Chairperson Grinnell reminded everyone to stay on topic. Ms. Comeau wondered if there was some particular reason why a recess had been called when she got up to speak and asked people to imagine how it had made her feel and she just wanted to say that. Ms. Comeau continued, again giving her name and address and saying they were all here regarding two Petitions, one of which they would discuss right now, a Petition to amend the Village Residential zoning. She said the reason it came about was because the Planning Board had a meeting to change the Village Residential zoning and there were a lot more changes that were proposed to the zoning and she was glad to have been at that meeting and to have been listened to. What wound up staying was under Special Exceptions – they had bumped it from Permitted Use to Special Exceptions: school, educational facility or hospital that occupies less than 3,000 square feet of floor area and she was very disappointed that it was allowed even under Special Exception. From there she said she learned that this would support the addition of a physical therapy facility in the Rec Center and obviously this zone change would support something like that. She said she realized she had to do something about this because she didn't feel that the Village was the place for a hospital, school or educational facility. For a long time they did have a business but now it was strictly residential. Ms. Comeau said she had many people come and support and sign this Petition and that on both Petitions she obtained approximately 850 names and she thought that this smacked of the zoning change they were trying to undo and that they were changing the zoning of

a residential neighborhood to allow a development to happen that was not in character, in scale, in use or in compliance with the density of the neighborhood. Ms. Comeau said their Petition called to strike the possibility of there being a large school, educational facility or hospital, keeping the Village strictly residential and added a piece saying any and all buildings of 5,000 square feet of floor area because, according to her records and the late traffic study conducted, the findings were based on the size of the rec building, 4,860 square feet -that was the number used for the traffic study - so the 5,000 square feet allowed the Rec Center to remain at the present size and enlarge slightly more and we wanted to make sure it went far enough back to keep our neighborhood residential and to keep buildings within the character and scale of the neighborhood. Ms. Comeau said she didn't understand why Town Officials would want to get into the habit of changing zoning to facilitate a development that didn't belong in a residential neighborhood. Their homes in the Village, she said, were really the only thing they had. She said there had been a lot of talk about a Deed that had to do with this zoning because attached to that Deed they found a map of the Village neighborhood and it was very clear what the 'Town Forefathers' intent had been. The lots were clustered together and a field was left for the people to use. Ms. Comeau said that, basically, what they hoped was that the Petition be allowed to stand, the zoning change to stand so the Village Residential Zone could remain strictly a residential neighborhood without a commercial enterprise, without added traffic and allow the Village to remain what it was, a little neighborhood.

Peter McCloud, 46 Norton Road, said he would like to address the Council and Planning Board concerning changing the Village Residential Zone to allow a hospital to operate in that zone, which was not in keeping with the history of that zone. He said that a school, educational facility or hospital were not compatible uses. Mr. McCloud said that the amendment language used in the Petition to limit the size of buildings to 5,000 square feet to be built in this zone was to protect the character of the neighborhood and he felt this was not unreasonable to ask. He said that by voting to accept the Amendment to Ordinance, they would save \$5,000 of taxpayers' money. He said that the Council, by Charter, was empowered to enact the Amendments tonight and they needed to enact the proposed Amendment to the zone; a wrong could be righted. The Village Residential Zone should be a place where the residents can reside as intended. Mr. McCloud asked that they please vote to approve the Amendments and save taxpayers \$5,000.

Lucille Milhorn, 4 Williams Avenue, said she was dead set against this Petition and hoped the Planning Board and Town Council would carry forth what the majority of the Town voted for.

John McDonough, 26 Rogers Road, said he would like to remind people that when it came to limiting square footage, what they were really doing was denying the kids of the area something they could use. He said his son had gotten injured a number of times and that while the facility may be called a hospital or leased by the hospital, it wasn't a hospital, it was a physical therapy area. Mr. McDonough said his kids used the current Rec Center, which he said needed a lot of repair. He said that to limit the use is to limit the growth of Kittery and he encouraged them to knock down this Petition.

George Dow said he was in opposition to the Petitions. He said that in regards to the Petition and its size, he thought it was too limiting. The current Rec Center, he said, is almost 5,000 square feet now and they offer a huge amount of services, such as father/daughter dances that pack the streets. Mr. Dow said that the community continues to grow with new residences on Lewis Road, there will be more families, more kids and he didn't know how the Department would service them out of its current size. Mr. Dow said we talk about businesses, the Community Center was developed and approved by the voters and York Hospital came on that 5,000 square footage, it is not a business. He said when talking about business in a residential area, and asked what the other half of Philbrick Avenue was, which was owned by GHA, who can

now rent those properties to the public. If that's not a business, he would like to have some clarification on what a business was. Mr. Dow said he would ask that they knock these down and send it back to voters.

Kathryn Davis, 44 Woodlawn Avenue, said she was for this Petition and asked that they please pass it.

Bob Guay identified himself as the Chairperson of the Community Center Building Committee and lived at 45 Betty Welch Road but that for the first 20 years of his life, he had lived at 12 MacDougall Street in the Village and he would love to have a facility like this and wished they had one when he lived in the Village. Mr. Guay said that, as Chairman, he would ask the question, what process did they not follow? Chairperson Grinnell told Mr. Guay he had to stay on the Amendment, the 5,000 square feet and the things that were underlined. Mr. Guay said he would talk about the 5,000 square feet and that he had noticed that Vision Appraisal was listed at 5,728 square feet. In terms of the Special Exceptions, they had spent a lot of time with the Planning Board and with the Council and felt they were appropriate for this zone. He said he would like to have it explained to the 77% of the voters what parts of the Charter were allowing this to be turned around.

Judy Mitsui, 15 Pepperrell Road said she was against these Amendments and primarily because she was aware that the Building Committee had looked all over Town... Chairperson Grinnell interrupted Ms. Mitsui, saying that was not the discussion. Ms. Mitsui said that if they kept this to 5,000 square feet, the project wouldn't happen here; that was her only statement. She said she was terrified of not having a place in Kittery where people could gather.

Mark Patroska, 6 Halstead Street, said he lived the first ten years of his life in the Village and the last 20 on Halstead Street and wondered if anyone had talked to the people who lived in the Village to see how they felt about it. The Forefathers, he said, had the forethought to leave this space alone, it was the only space where people can gather and be with their families if they want to have a picnic; it was a ball field when I grew up and it's the only space left available in the Village. Mr. Patroska said the proposal was far too big for this area and took away all the free space. He wondered why did they have to pay for the free stuff they already had and why did the Forefathers in the Deed say that this was for public use only and not for a hospital and not for a Recreation Department that was too big for them to handle; let's keep the one we have.

Chairperson Grinnell asked if there was anyone else and hearing no response, closed the Public Hearing.

Councilor Dennett said that he had a request that would benefit everyone because there seemed to be a great deal of confusion as to how this arose, it's legality and where the Charter fit in. He said that, at the Chair's pleasure, he thought it would be beneficial for the Town Attorney to advise them concerning the legal aspects and Chairperson Grinnell said fine.

Town Attorney Duncan McEachern came to the podium. and said the legal basis for these Petitions were grounded in the Charter. The Charter allows citizens to oppose an Ordinance provided they could get a sufficient number of signatures. He said that under the Charter, if someone opposes an ordinance with a sufficient amount of names on that petition, they could bring it before the Council and the Council then had to adopt the ordinance or send it out for a public vote and that was quite procedurally correct under our Charter. Also, if the Council adopted an ordinance, you could go out with sufficient enough names to overrule the ordinance they adopted and get it on the ballot. Mr. McEachern said they had used these processes before, these voter petitions, on several occasions and that was the procedure being followed. He said it was up to the Council now to either adopt this proposed ordinance or send it on to special election and that at any time before the special election, they could adopt it if they wished. Mr. McEachern

said there was nothing unusual about this procedure and wondered if the Council had any particular questions?

Chairperson Grinnell said she did and her first question was about this Petition, which had been presented to them by the public and not generated by the Council, so she asked if it was correct that there was no room for them to amend this Amendment? Mr. McEachern said that was precisely right and that amendments to the Petition could be made by the Town's Attorney, but only minor changes that did not alter the substance of the Ordinance, otherwise, it would be up to the Town Attorney and his view of what should be in it and that was too much authority for any one person. So, he said, the Ordinance comes to Council as presented unless the Attorney finds something clearly unconstitutional, then it would either be adopted by this Council or it goes to a public vote and he thought any attorney who determined the constitutionality of a petition should err in favor of sending it to the people. Mr. McEachern said he didn't think any attorney should stand in the way of a petition with sufficient names from going before the public and also, the fact that an ordinance was adopted in a special election didn't mean that the ordinance was home free; there could be challenges once the ordinance was adopted, the same as when this Council adopted an ordinance, someone could challenge it, but there would have to be sufficient reason. The fact that it was initiated by a voter-initiated procedure, he said, went only to the method of getting it before either the Council for adoption or to a public election for adoption; then it became similar to any other ordinance, subject to any challenge. Mr. McEachern said that to answer the Chair's question, Council didn't have any leeway here. Chairperson Grinnell said she wanted to make sure she it correct – first, this would be in the Planning Board's hands and then the Council's hands, but she wanted to understand their options. Were their options to move this Ordinance, second it, deliberate and then vote on it; if they voted yes, it became an ordinance and if they voted no, it automatically goes to the public? Mr. McEachern said that he suspected if they adopted it, in which case it became an ordinance within 30 days, then if there were any challenges to it, they would be made; that's your first option – to adopt it. Your next option, he said, was to set up a special election. Chairperson Grinnell said then we have a third option, which would be that we don't move it, don't second it, then set a date for a public hearing. Mr. McEachern said, in regard to options, they could either adopt this as an ordinance as presented or take no action, in which case, under the Charter, a special election would be set up within 60 days from today. Chairperson Grinnell said, so we do have the choice not to take any action at all and then it would go for a public vote? Mr. McEachern answered that if they took no action, they would proceed to set up for a time for a municipal special election to present this to the voters. Chairperson Grinnell thanked the Town Attorney and recognized Councilor Shwaery who had one more question.

Councilor Shwaery said to the Town Attorney that since it had been submitted to them as a Petition for Amendment to an Ordinance and was in the format of an amendment just like the firearms amendment they had looked at and they were striking and adding, his question was whether it was an amendment or a whole ordinance? Mr. McEachern said it was an ordinance within itself; it's an amended ordinance and the effect of the Council adopting it would be to amend Section 5 and 6 under Special Exceptions. Councilor Shwaery thanked him and Chairperson Grinnell asked if there were any more questions for the Town Attorney. No questions were brought forth and the Chair said it was now time for the Planning Board to choose what they would like to do.

Chairman White addressed the Board saying that, just as a preliminary matter, they had a couple of choices, as well – they could discuss and deliberate, then make a motion; if no motion was made, they could forward it to the Council without any Board action. He then asked if anyone wanted to say anything? Mr. Mangiafico said his question might be for the Town

Attorney and concerned No. 6 in Permitted Uses and No. 5 in Special Exceptions. He said that these were more like design standards and if Council were to adopt this, could they move that to the Design Standards section because it in no way talked about use, it was talking about size and he thought doing that was simply procedural. Town Attorney McEachern said that if the Council adopted it, they should adopt it as-is; he said there was a procedure to go through if they wanted to change it but they didn't have a lot of leeway, they either adopted it or moved it to a public vote. Discussion followed concerning the Board have been guided by the Comprehensive Plan because of the comments they had received tonight, as well as their having discussions surrounding low intensity uses. Chairman White said there had been a lot of process and he certainly took the lesson that no matter what they did, the Town Council would do something else and asked if there was any more discussion or any motions? Hearing none, Chairman White said they would hand it back to the Council with no action from the Planning Board.

Chairperson Grinnell thanked the Planning Board and then recognized Councilor Dennett.

COUNCILOR DENNETT MOVED TO SET A DATE OF JANUARY 24, 2006 TO SEND THE VOTER PETITION SUBMITTED TO THE TOWN CLERK ON NOVEMBER 10, 2005 TO AMEND SEC. 16.12.070 VILLAGE RESIDENCE (VR) ZONE, (B) PERMITTED USES AND (C) SPECIAL EXCEPTIONS, AS SET FORTH IN THE LAND USE AND DEVELOPMENT CODE, TO VOTERS FOR REFERENDUM DECISION, SECONDED BY COUNCILOR SHWAERY.

Chairperson Grinnell said she would be abstaining from this vote. Councilor Brock said he would like to make a comment on the motion, that he agreed this should go back to the voters; the options the Council had was approve it or send it to the voters and the voters decided this issue before and he thought it was up to them again, consistent with the Charter process, to make the decision. He said he thought it was inappropriate and improper for this Council to try to intervene in that. Having said that, he said he wanted to make sure there was not a legal problem, which he had heard raised in a couple of comments; there had been reference to restrictions in the Deed and he would ask if it was the opinion of the Town Attorney if this was a matter that required further legal review? He said they should have an opinion so they didn't go through a whole voter process and then find out that there was a problem with that. Councilor Brock said he was open to suggestions about how they sequenced it; he was supportive of it going to the voters but wanted to make sure they were doing it in a manner that was lawful, at least in the opinion of Town Counsel and asked Attorney McEachern if he had an opinion about the Deed issue? Town Attorney McEachern said he had read the Deed and that it was quite clear, that it said for public use only and no other use. Unless the Deed was amended, he said, then it was an issue that would have to be dealt with. Town Manager Carter addressed Councilor Brock and said he was working with the Town Attorney on this issue and they hoped to bring some sort of opinion back to Council very shortly. Councilor Brock thanked the Manager and said, subject to that, he would support having it go back to the voters.

Councilor Shwaery said that he only would add, for clarification, that once the Deed was researched, that this would weigh in the way the people vote on January 24th, if this motion passes.

Chairperson Grinnell asked if there was further discussion and Councilor Heilshorn said he would like to say he was feeling somewhat uncomfortable voting because of the Deed issue – until it was clear, not just to us but to the public, he wasn't sure how comfortable he felt about that. Town Manager Carter said, unfortunately, they had a time frame within the Charter to deal with and he believed that within the next two weeks, they would have an opportunity to have that

opinion. Councilor Dennett said the Manager was correct, that there were 60 days from tonight to hold a referendum, if Council so desires. He said that by State Law, absentee ballots must be available for at least 30 days prior to that date, which brought them down to December 24th, roughly. The Town Clerk, he said, had to have time to get those prepared and if voting machines were used, they had to be programmed; it wasn't something that went into motion immediately. Councilor Dennett said that if something came out of the Deed that said we can't even hold a referendum, there was still time, presuming that happened within the next two to three weeks, to stop the process; we're not into any big time money until right down to crunch time, but he thought they should at least set the date and they could reverse that if they had to in the next couple of weeks. Councilor Heilshorn thanked him for the clarification.

Councilor Brock said he agreed, he thought they needed to go forward given the deadlines in the Charter but, having said that, he was not prepared to comment on what was appropriate action by the Council based on whatever the Deed may find. He thought they should get a legal opinion, see where they were and go from there.

Town Attorney McEachern said he thought it made sense for them to proceed on but they should bear in mind that the bottom line was they had to have a usable piece of property. He said he saw nothing inconsistent with going in both directions because they did have time limits here and that would be his recommendation: they proceed on and at the same time, the other issues had to be clarified.

Chairperson Grinnell asked if there was anything else and Councilor Shwaery said he didn't see the inconsistency here because if there were Deed restrictions, that would speak to C.5 and the other restrictions about the 5,000 square feet didn't have a lot to do with the Deed, so he didn't see a great deal of conflict here in proceeding in a parallel fashion, going forward both ways.

Chairperson Grinnell asked for any other comments and receiving none, requested a roll call vote.

A ROLL CALL VOTE WAS TAKEN ON THE MOTION TO SET JANUARY 24, 2006 AS THE DATE FOR A VOTER REFERENDUM ON THE VOTER PETITION CONCERNING THE VR ZONE AS FOLLOWS, SIX IN FAVOR, ZERO OPPOSED AND ONE ABSTENSION. MOTION PASSES 6/0/1, WITH CHAIRPERSON GRINNELL ABSTAINING.

Town Manager Carter reminded the Chair that she was going to suggest another joint public hearing. Chairperson Grinnell said she didn't think she was the best person to explain the legality of why they were going to have another joint public hearing. Town Attorney McEachern said that with regard to this Petition, they had just complied with the Charter by having the joint public hearing that was required by the Zoning Ordinance itself and an amendment to an ordinance engages the Planning Board and they have to have a public hearing on it and the Council had to have a public hearing on an amendment to an ordinance. Since this was a Zoning Ordinance, quite separately, there was a State Statute that had it's own notice requirements and that Statute called for public notice twice at least 13 days coming before the public hearing so, in some instances, you could have had all of these public hearings together but, in this particular case, the zoning, since it originated with a voter petition, you had only 30 days to get in gear so there wasn't enough time to satisfy the State Statute on the notice requirements so the Planning Board will now have another public hearing which will be noticed, maybe joint with the Council if they wished, on the very issue that you just had a public hearing on and, again, the reason why you

would have two is that you're trying to satisfy two different sets of rules, one is our Charter and Zoning Ordinance and one is the State Law. The State Law requires a longer notice period that could not be satisfied within our Charter period so we went ahead to satisfy the Charter. Now, he said, there would be another public hearing on that same 5,000 square foot issue to satisfy the State Statute so if that ordinance is eventually adopted by the public, it would not get challenged on the notice issue, both the State Statute and our local Charter and Ordinance notice requirements would have been satisfied. This might sound like it's a lot of legal technicality but those things become important if there is a challenge.

The Council and Planning Board discussed a possible date for a joint public hearing, setting the date of December 28, 2005. Councilor Dennett addressed the Chair, saying that they had another public hearing, which was for the Council only, that also was based on a voter petition, and wondered if the Town Attorney could explain to the public the concept of this one, which was completely different from the first one. Chairperson Grinnell confirmed the date of December 28, 2005 for a joint public hearing with the Planning Board, after which the Planning Board adjourned. *Planning Board adjourned at 8:26 p.m.*

d. (110205-4) *THE KITTERY TOWN COUNCIL MOVES TO HOLD A PUBLIC HEARING TO RECEIVE COMMENTS CONCERNING THE VOTER PETITION, SUBMITTED TO THE TOWN CLERK ON NOVEMBER 10, 2005, TO REPEAL THE ORDINANCE AS FOLLOWS: "THE ORDINANCE ENACTED BY THE TOWN COUNCIL VOTE OF AUGUST 23, 2004 ORDAINING THE ISSUANCE OF BONDS IN A TOTAL AMOUNT NOT TO EXCEED \$3.5 MILLION FOR THE PURPOSE OF CONSTRUCTING AND EQUIPPING A NEW COMMUNITY CENTER IS HEREBY REPEALED EFFECTIVE NOVEMBER 8, 2005."*

Chairperson Grinnell said that this was advertised in the local paper and read the Petition as follows: "We, the undersigned voters of the Town of Kittery, Maine, acting under provisions of Article XI, Sec. 11.02, entitled Petition for Enactment of Ordinance of the Town Charter, hereby propose enactment of the following new ordinance: The ordinance enacted by the Town Council Vote of August 23, 2004, ordaining the issuance of 'Bonds in a total amount not to exceed \$3.5 Million for the purpose of constructing and equipping a new community center' as attached hereto, is hereby repealed effective November 8, 2005." Chairperson Grinnell said this public hearing was on that ordinance and would open the public hearing by asking the Town Attorney to answer Councilor Dennett's question and then asking the audience, who did a superb job before, to stay on topic and not repeat what had been said before.

Town Attorney McEachern said that, as he had said before, the Charter provided the mechanism to overrule something that had been adopted and also to propose new ordinances. What they did in the last Petition was attempt to create a new ordinance amending the Zoning Ordinance on the 5,000 square foot issue; here, they're attempting to pass a new ordinance and the procedure was the same: to get enough names, which had been done – the names were collected and certified by the Town Clerk – so then that Petition comes back to the Council. The Council is given the same choice, they can accept it as written or take no action and then it proceeds to a special election held for voters to vote on it. He said that, again, if it went to a municipal vote and was adopted, it could then very well be challenged, like any other ordinance and adopting it didn't mean that, on challenge, it could sustain itself. He was not, however, giving an opinion on whether it would or it wouldn't. He said that was the procedure that was being followed; it was quite consistent with their Charter and he asked if there were any specific questions. Mr. Guay from the audience said it appeared to him that it fell under 11.03, which was a repeal, and they'd missed the 30 days. Mr. McEachern said it was a good question but he didn't agree with him on

that. He said there was a section under the Charter that said if this Council adopted an ordinance, then someone could generate a petition to overrule that ordinance, go out and get 10% of certified voters, then that would go back to the Council and they could overrule the ordinance they just passed or it could go to a public vote. If the public votes no, then that ordinance never goes into effect. So that Sec. 11.03 prevents the ordinance from going into effect. You have 30 days to do that if you don't want it to go into effect. Once the ordinance is in effect, you go back to 11.02, which would give you the right to challenge. Otherwise any ordinance if it gets by 30 days, it would be home free and no one could ever challenge it so, while it was a good point, he disagreed and that it was properly under the correct section of the Charter but again, legally, whether or not when all is said and done, if it passes, whether it's enforceable or not, is an issue that's out there. Any ordinance can be challenged subsequently, as it is applied or whatever. There would, of course, have to be a basis, not that you just don't like it but it would have to infringe on your rights; it's not easy to challenge an ordinance but it is doable if the ordinance is not properly drafted and with proper authority from the Council.

A question came from the audience asking if a special election was needed on this Petition as well and the Town Attorney said there would have to be a special election but he would assume they would be held on the same day. He said that Council didn't have leeway to amend what was presented to them, they either went with what was presented and adopt it or pass it on, as had been said before.

A question from the audience was if they understood what was being said, the process could continue to repeat itself and that 10% of the people, if they were not satisfied with the outcome of the special election, could go through the same process again and following that logic, 10% of the people literally, under our Charter, could frustrate 75% to 80% of the people's will in terms of the vote. Mr. McEachern answered, in some ways yes and in some ways no. By yes, a small percentage, 10%, and that's what our Charter says, could generate an issue but, ultimately, the voters have to vote on it and you need more than 10% to pass it so there would have to be a majority vote when it gets to the public so you couldn't have just a small percentage just enacting ordinances; you could have a small percentage getting an issue before the voters and we've had that happen before. We've had repeat petitions, but that's the system, whether you like it or you don't like it. An audience member asked if in January, they were both voted down, what prevented 10% from bringing a petition again? Mr. McEachern said he thought there was a provision in the Charter that prevented repeat petitions but he'd have to check on it and if there wasn't something in the Charter that prevented it, then there was nothing, that was the system. A member of the audience said that maybe they ought to change the Charter and another audience member said the Charter already spoke to repeat petitions and said that the petition would not be allowed if there was likely to be a repeat petition and that why this petition should be denied because there would be a re-petition and you had to nip it in the bud. Mr. McEachern said he would have to read the Charter but that you didn't nip anything in the bud that's been legally created. Mr. Lombardi said that 10% could also be on the other side. Mr. McEachern said they didn't want to get into whose ox was being gored to make legal rulings, they just had to go with what the Charter said and there was a Section 11.02 that talked about repeat petitions, which said any proposed ordinance that fails enactment by referendum vote may be subject to a subsequent petition if brought within two years following the failed vote and shall be governed by the sections of 11.02, so there was some limitation. But, he said, if people go out and generate these petitions under our Charter and follow the rules of the Charter, they could get something to the vote; if that's not a good system and the community doesn't like it, then amend the Charter. An audience member asked if they could get a petition to override this Petition and Mr. McEachern said there

was nothing to override yet. Ms. Muccio asked what constituted a failed vote pursuant to what they were talking about and Mr. McEachern said that would be one that did not gather enough people to support it. Ms. Muccio asked if this went to vote and failed, could there be another petition that could follow? Mr. McEachern said they had to interpret the Charter and Federal Constitution as best they could, regardless of how it cuts.

Chairperson Grinnell asked that they start the public hearing now on this issue and an audience member asked if they could be given the criteria of what they were going to be allowed to talk about? Chairperson Grinnell said the topic was keeping the bond at \$3.5 Million or having the bond go away, which means having the Rec Center go away; that was what they were discussing. Councilor Shwaery addressed the audience, asking that, for the sake of an accurate record, they clearly state their name and if they had spoken, it would be helpful if they printed their name and address on the roster.

George Dow, One Bartlett Road, said he was in favor of keeping the bond and didn't believe, based on the number of signatures on the Petition, which he believed was roughly 80 or 82 that were actually in the impact zone, the remaining few hundred were scattered around Kittery, Kittery Point, Gerrish Island, they were all over the place, but he would dare say that maybe not enough people from the Village who were going to be impacted by this probably got a good chance to voice their concern so he really thought they needed to kick this back out to the voters again and just let it fall where it may from there.

Susan Emery, 5 Mitchell School Lane, said she was in favor of rescinding the bond and so passing this Ordinance that was petitioned because she believed it was consistent with the Comprehensive Plan Update, specifically, the Neighborhood Conservation Designations Areas, relatively fully developed neighborhoods in which the objective was to maintain the current development pattern and character while accommodating new residential construction. She said it did not say anything about accommodating business and it was her understanding, because of the usage fees, the project originally fell under the business moratorium. Second, specifically under Admiralty Village Residential, again, the allowed uses in this area should include single family, two-family and multi-family housing, community and public uses and similar low intensity uses. Chairperson Grinnell asked Ms. Emery to stay on topic and reminded her that they had heard this a few minutes ago. Ms. Emery said she believed she was on topic and this was a different public hearing so she was trying to only state issues in the Comprehensive Plan that she believed pertained to this public hearing and what she had said at the prior public hearing would not carry forward into this public hearing; it was her understanding that if there were two separate public hearings, you spoke to that public hearing and the issues pertaining to that public hearing. Chairperson Grinnell told her to go ahead and Ms. Emery continued by saying that, again, business uses, and she was talking about business in the sense of user fees of the proposed Community Center and the fact that because of those, it was placed in the business moratorium originally and also, in her opinion, the scale being five times larger than the existing use takes it out of the low intensity category; that is, all the additional lighting, parking and noise of this greatly expanded facility and, again, she would just state this in a couple of sentences, but they were talking about an area with local roads and connectors where the traffic volumes were supposed to be minimal but this Community Center would not be only for local people and, again, she believed that this greatly expanded facility of five times larger than the current one would greatly increase the traffic and, therefore, that it would have an impact on the road network which was not consistent with the neighborhood and, again, that low intensity use similar to existing pattern and, also, she believed it would overburden the road network, create safety problems and

impact the existing residential neighborhood. Ms. Emery thanked the Council and asked that they please accept this Ordinance as written.

Ms. Muccio came to the podium and said they had a lot of green space in Kittery, they did not have a safe, inviting, convenient space for their citizens to congregate and exercise. Ms. Muccio said that Maine had the highest percentage of senior citizens in the U.S., more than Florida. She said that studies had shown that seniors that get out there and stayed mentally, socially and physically active, were at lower risk for dementia. She said that they also had an obesity epidemic and it was right here in Kittery. Based on actual measurements, last year, 36% of Kittery's K-12 kids were greater than the 85th percentile in weight, that was higher than both the State and national averages. Ms. Muccio said we kept talking about green space but let's talk about Kittery citizens. It got worse as they went up the chain through School; Traip and Shapleigh had a lot more overweight kids than the younger schools. She said that the status quo was obviously not working and they needed a gym where people wanted to go and could get to easily; they needed the Community Center for all of them. Ms. Muccio asked the Council to please kick this back to the voters and respect the 2,566 of them that did vote for it before, don't just ignore us and accept this Petition now. She said that when you look at the number of voters on each of those Petitions, it was a very small percentage compared to the 2,566; it's a small percentage compared to the number of people who voted in the last election where the signatures were collected and people had the option of signing and they chose not to.

George Lombardi, 105 Manson Avenue, said his kids weren't overweight; they go across the field where they can play; they can't play in the street and as far as gyms were concerned, gyms were great, basketballs were great. He said his seven year old took part in basketball right now at Shapleigh School and he just wanted to say he would like to see this voted on by the Town Council as it was written. He didn't know how else to say it but he humbly beseeched them; he was across the street from this Center and the only place his kids had to play was across the street in Dan's Park.

Lisa Comeau, 33 Halstead Street, said the Petition was to repeal the funding in the amount of \$3.5 Million for the proposed Rec Center. She said that it had been in the paper that this was "my cause of the week" and she just wanted to clarify that this was not her cause for the week, this was her life they were talking about, this was her neighborhood where she has made her home. She said that, as she said earlier, their homes and their green space was all they had, so that's why it was necessary to bring forth a Petition utilizing my right under both the United States Constitution and our Town Charter to try and stop something that she felt, if it was located within the Village at its present proposed scale and cost would be the ruination of her neighborhood because right now they already had a lot of problems they were trying to deal with and she would ask them to vote this Petition in this evening and if they didn't, and she understood that they would not and that it would go before the voters, she hoped the voters would vote yes when they vote in January because it came down to what quality of life and safety and green space they would have left in this Town. Ms. Comeau said she had been asked by many people who came to her to sign the Petition; people got in line to sign these Petitions and thanked them over and over again and said how many times do we have to say no to a new Rec Center, which was why it was voted down twice, and I didn't have an answer for these people, how come this keeps coming before us? She said that this particular person said, if I have to pay for two new \$3 Million fire stations and a new \$3.5 Million rec facility - it's actually \$5.2 Million because \$1.7 Million would be added on to the \$3.5, \$1.7 Million in interest. They said if I have to pay for those two bond issues, I don't know how I'm going to survive; I'm retired, I'm on a fixed income, my wife just died in September. These were things that he said to me and he said am I going to have to move

out of the Village? Is this going to force me out of the Village because now I'm not driving much and doing a lot on foot and he told me how his kids played in that field, how he'd raised his kids there. Chairperson Grinnell asked Ms. Comeau to stay on track. Ms. Comeau said that in regards to this Petition, a lot of people encouraged them in what they were trying to do because they don't want it, they're really worried and they said they had no idea about the scale of the project and that the entire field would basically be gone if this \$3.5 Million Rec Center went through and that's why we did both of these Petitions to state and to say unconditionally that we, all the signatories on the Petitions, believe that this proposed Center is just too big to put in the Village; it's as simple as that, it's too big. If you simply must explode into a building that's five times its original size, a total of \$5.2 Million worth of new building, then you should find a larger, more appropriate parcel of land on a major route where a facility of this magnitude belongs, not crammed into a small neighborhood ruining the only green space they have because they have small lots and that green space is valuable to us and if this Center is crammed into that five acre field we once enjoyed, how long will it be before you outgrow that and then what? Our field is gone, our neighborhood is gone, we've paid for it, where are you going to go? Ms. Comeau said she thanked the senior citizen who told them about the Deed and to look at that issue and she was sure that would be resolved and there were many seniors who remembered when that transaction occurred and that property was transferred to the Town. Chairperson Grinnell said they were not talking about the Deed. Ms. Comeau said that basically, the last thing she would like to say is there had been an opinion that was rendered by the Town Attorney that this \$3.5 Million Rec Center was a commercial entity by way of the fact that it took in fees and earned its own revenue. To put this in a residential neighborhood she felt would be illegal (their own Town Attorney said this was a commercial entity) because they were trying to avoid being held to the business moratorium everyone else was held to. So, she said, if you vote yes tonight, then that means they don't get the \$3.5 Million for this Center and hopefully they will look for a more appropriate, larger parcel of land on an accessible route instead of trying to cram it into a tiny little neighborhood and if it winds up going to vote, she hoped the voters would come out in January and vote to repeal.

Lucille Milhorn, 4 Williams Avenue, said this whole thing was such a waste and she hoped this Town Council would send it back to the public and let them speak again as they did before.

Peter McCloud, 46 Norton Road, asked the Council to repeal the Ordinance that they voted for on 8/23/04 that ordained the issuance of bonds in an amount not to exceed \$3.5 Million for the purpose of constructing and equipping a new Rec Center and in doing so, they would save the taxpayers \$5,000, which was a small amount compared to \$3.5 Million but he thought the \$5,000 could and should be saved. Mr. McCloud said that tonight was the night to right a wrong because new information had surfaced that gave the citizens of Kittery reason to be concerned about a project on land that had restrictions on it in the Deed. Chairperson Grinnell told Mr. McCloud they were not discussing the Deed. Mr. McCloud said they were discussing the bonds, the fact is the land had deed restrictions and the government can mine that land and also the project was going to cost \$3.5 Million; the tax payers cannot afford this exorbitant Center.

Suzanne Kuel, 90 Haley Road, said she really didn't want to have to be here and she had to say she thought she was allowed not to have a public conversation about her views and thought she could vote behind a curtain and not be harassed by a gauntlet of people urging her to come sign a petition and calling me by name. She said that, with all due respect to the Town Attorney, she didn't understand; she would like my vote to matter. She said she had taken an evening out to try to understand why her vote didn't matter; she was still not clear. Chairperson Grinnell said she had to address the bond and couldn't explain to her why this was happening right now, it just was,

because it is a democracy. Ms. Kuel said they couldn't 3,000 to 4,000 people in there tonight; it belonged behind the curtain.

Mr. Mitsui, 15 Pepperrell Road, said he wasn't going to say anything this time but Lisa said how many times did they have to say no, well, it can be turned around and, from the proponents' view, how many times did they have to say yes to get this thing done and he really urged the Council to send it to the voters so they could say yes again.

Charlie Rodis, 10 Colonial Road, said he would like to take a few minutes to address some extremely important things and was very sorry that it came to a place where it was us against them, it was the last thing the Committee wanted; we wanted to unify the Town, not divide it. He said that if everyone had been involved in the process from the beginning.... Chairperson Grinnell told Mr. Rodis he had to stick to the \$3.5 Million bond. Mr. Rodis said as a result of the bond he would like to mention - then he said he needed to make this point – they had been at this for years and years and years; the time had come for them to come to some agreement on this. It was about leading, meaning being part of the process; following, meaning carrying out the process; and if you're not involved, get out of the way and let people do the job that they were appointed by the Council to do for the Town of Kittery. He said to debate this issue over and over again ad nauseum was just not going to do it, enough was enough.

Bill Pagum, 8 Cromwell, said he urged the Council to enact the Petition, he was concerned about the increase of debt to the Town, the high mill rate compared to other Towns, and the increased commercialization of Admiralty Village.

Chairperson Grinnell closed the public hearing.

CHAIRPERSON GRINNELL MOVED THE DATE OF JANUARY 24, 2006 AS THE DATE FOR A SPECIAL ELECTION TO VOTE ON THIS ORDINANCE, SECONDED BY COUNCILOR DENNETT.

Councilor Dennett said that as much as we are distressed sometimes with the process, he just wanted to reflect that while the law makes us aware of our rights, so should it make us aware of the rights of every other person.

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

A recess was called at 9:07 p.m. The meeting was called back to order at 9:17 p.m.

e. (110205-5) *THE KITTERY TOWN COUNCIL MOVES TO HOLD A PUBLIC HEARING ON THE RENEWAL APPLICATION OF WEATHERVANE SEAFOODS FOR A MALT, SPIRITUOUS AND VINOUS LIQUOR LICENSE FOR WEATHERVANE SEAFOODS, 306 U.S. ROUTE ONE, KITTERY.*

Chairperson Grinnell said this had been advertised in the local paper and opened the public hearing. Receiving no public comment, the hearing was closed by the Chair.

COUNCILOR DENNETT MOVED TO RENEW THE APPLICATION OF WEATHERVANE SEAFOODS FOR A MALT, SPIRITUOUS AND VINOUS LIQUOR LICENSE FOR WEATHERVANE SEAFOODS, 306 U.S. ROUTE ONE, KITTERY, SECONDED BY CHAIRPERSON GRINNELL.

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

f. (110205-6) *THE KITTELY TOWN COUNCIL MOVES TO HOLD A PUBLIC HEARING ON THE RENEWAL APPLICATION OF PHAYVAHN FRICHITTAVONG FOR A MALT AND VINOUS LIQUOR LICENSE FOR PAYRIN THAI RESTAURANT, 182 STATE ROAD.*

Chairperson Grinnell said this was advertised in the local paper and opened the public hearing. Receiving no public comment, the hearing was closed by the Chair.

COUNCILOR HEILSHORN MOVED TO RENEW THE APPLICATION OF PHAYVAHN FRICHITTAVONG FOR A MALT AND VINOUS LIQUOR LICENSE FOR PAYRIN THAI RESTAURANT, 182 STATE ROAD, SECONDED BY COUNCILOR BRAKE.

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

9. DISCUSSION

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

Chairperson Grinnell asked if there were any members of the public that had something they wanted to discuss.

Susan Emery, 5 Mitchell School Lane, said that she would like the Council to reconsider putting something out to referendum that was not allowed in the zone, as was the case with the physical therapy aspect of the Recreation Center. She thought that was very confusing to the public and thought that the public would assume that if something was being put out to referendum that it was allowed in the zone, it wasn't something that they had changed the zone to fit the referendum so she was just asking that the Council reconsider that - it was a dangerous precedent and confusing to the public.

Peter McCloud, 46 Norton Road, said he just had a few things that he wanted to ask about. One thing he noticed, he wanted to know if the Town website was being worked on, because when you go to look up old Council Minutes, a lot of the links - not so much currently, but the ones from say 2003 and going backwards - a lot weren't working and also, he noticed that the link to the Town Charter was not working so he was wondering if it was being worked on or what. He said he didn't expect an answer tonight. The other thing, he said, he hadn't tried it tonight but (pointing to the back) when you go out those doors, you can't come back in and it would be more convenient if you could come in over there. The only other thing was, he said, with all due respect to the Town Officials, he thought that in the Charter it talked a little bit about the make-up of the Building Committee for the Rec Center and now that they had Mr. Carter as their Town Manager, it was his opinion that he didn't think that the Town Manager's wife should be on a Town Committee - it just brought up a possible conflict of interest - because he could bring home information from Town Hall, they were only human. He said he was not saying she had done anything wrong, he just thought it was a bad precedence and wondered if anyone had thought of that.

George Havelin, Bartlett Road, said he just wanted to quickly comment on the make-up of the Building Committee; they were an outstanding bunch of individuals, Mary Carter being one of those and who had, since Mr. Carter became Manager frequently questioned whether she should be there or not and who has always upheld herself in the highest manner. Also, he wanted to agree that individuals that did sit on Boards should not, and he didn't know if they were not supposed to, but should not be signing petitions either and wondered if he could get clarification on that, but he

did know that some people on the various Boards had, in fact, signed petitions on subjects they've had public hearings on tonight.

Chairperson Grinnell thanked Mr. Havelin and asked if there was anyone else. With no response, public discussion was closed.

b. *CHAIRPERSON'S RESPONSE TO PUBLIC COMMENTS*

Chairperson Grinnell addressed Ms. Emery, saying they would look into that issue. Addressing Mr. McCloud, the Chair said they would look into the website and Town Manager Carter said they were working on the website, trying to enhance it and if the links weren't working, they would certainly fix that. In regard to Mr. McCloud's question about the rear door, the Chair said they would make sure that the door was unlocked. With regard to the make-up of the Building Committee and having Mary Carter on it, the Chair said there would be further discussion on it and recognized Councilor Dennett who said he had a lot to say but he thought they should discuss it at a further time. Chairperson Grinnell said, at the same time, she thought they should discuss members of Boards that were signing petitions on issues they sat and voted on.

10. UNFINISHED BUSINESS

a. *THE KITTERY TOWN COUNCIL MOVES TO DISCUSS SUSPENDING COUNCIL RULES AND NOT HOLDING THE SECOND MEETING IN DECEMBER (WEDNESDAY, DECEMBER 28TH).*

Councilor Dennett said he suspected that that item was moot at that point and Chairperson Grinnell said yes, and they had five people that could come on that date.

b. *THE KITTERY TOWN COUNCIL MOVES TO ESTABLISH TWO SPECIAL ACCOUNTS FOR THE SCHOOL DEPARTMENT, AS REQUESTED AT THE EFFECTIVE GOVERNANCE WORKSHOP BY MARIA BARTH, CHAIR, TECHNOLOGY AND UN-FUNDED LIABILITIES.*

Chairperson Grinnell said that this was our meeting two weeks ago and they had given them the go-ahead to set up those accounts and asked the Council for comments. Councilor Dennett said he would move that it be so established.

COUNCILOR DENNETT MOVED TO ESTABLISH TWO SPECIAL ACCOUNTS FOR THE SCHOOL DEPARTMENT, AS REQUESTED AT THE EFFECTIVE GOVERNANCE WORKSHOP BY MARIA BARTH, CHAIR, TECHNOLOGY AND UN-FUNDED LIABILITIES, SECONDED BY COUNCIL SHWAERY.

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

c. *OTHER*

Councilor Shwaery said he had one item, dealing with the Conservation Commission and potential changes to rules and regulations at Rogers Park. He said the Commission had come to a consensus and he would suggest they have a workshop with the Conservation Commission as they had several suggestions about making Rogers Park trails pedestrian and cutting other trails in Town for mountain bikes and horses, etc., so they should probably discuss that with them at a workshop. Chairperson Grinnell said she thought that was a good idea and asked the Manager to look at the calendar and let them know.

Councilor Dennett said that he had nothing other than to say that the Town Warrant was okay but there would be a question on it for the Manager.

Chairperson Grinnell spoke to the cameraman as to the possibility of turning off the camera when Council was in recess, which the cameraman said was not possible because of an automatic turn-off feature.

11. NEW BUSINESS

a. (110205-7) *THE KITTERY TOWN COUNCIL MOVES TO APPROVE THE DISBURSEMENT WARRANTS.*

Chairperson Grinnell said she had Town Warrant No. 42, Accounts Payable, in the amount of \$51,977.91.

COUNCILOR HEILSHORN MOVED TO APPROVE THE DISBURSEMENT WARRANT, SECONDED BY COUNCILOR SHWAERY.

Councilor Dennett spoke to the Town Manager saying there was a question that came up that morning about propane delivery at the Rec Center and Town Manager Carter said they changed from Eastern to Davis and there would be a credit to the Town on the bottles.

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

b. (110205-8) *THE KITTERY TOWN COUNCIL MOVES TO APPROVE THE POLICY ON TREASURER'S DISBURSEMENT WARRANTS FOR EMPLOYEE WAGES AND BENEFITS TO EXPIRE ON NOVEMBER 30, 2006 AND TO DESIGNATE THREE COUNCILORS: _____, _____ AND _____ WHO MAY REVIEW, APPROVE AND SIGN SUCH WARRANTS. A COPY OF SAID WARRANT IS ATTACHED AND BECOMES A PART OF THESE MINUTES.*

Chairperson Grinnell said that it had been her responsibility for this past year and she would be happy to be the person to sign in the first slot. Speaking to the new Councilors, she said this responsibility was taking care of on either late Tuesday afternoon or Wednesday to go over wages; the first slot is the person who does it normally, and the second and third slots are for people to fill in if for some reason she couldn't be there. Councilors Brake and Spiller volunteered to fill the second and third slots.

CHAIRPERSON GRINNELL MOVED TO APPROVE THE POLICY ON TREASURER'S DISBURSEMENT WARRANTS FOR EMPLOYEE WAGES AND BENEFITS TO EXPIRE ON NOVEMBER 30, 2006 AND TO DESIGNATE THREE COUNCILORS: GRINNELL, BRAKE AND SPILLER, WHO MAY REVIEW, APPROVE AND SIGN SUCH WARRANTS, SECONDED BY COUNCILOR SHWAERY.

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

c. (110205-9) *THE KITTERY TOWN COUNCIL MOVES TO APPROVE THE POLICY ON TREASURER'S DISBURSEMENT WARRANTS FOR MUNICIPAL EXPENSES TO EXPIRE ON NOVEMBER 30, 2006 AND TO DESIGNATE THREE COUNCILORS: _____,*

_____ AND _____ WHO MAY REVIEW, APPROVE AND SIGN SUCH WARRANTS. A COPY OF SAID WARRANT IS ATTACHED AND BECOMES A PART OF THESE MINUTES.

Chairperson Grinnell asked if there were any Councilors who would volunteer for those slots. Councilor Dennett said he currently occupied the first slot and it only took about five hours on a Monday morning. He said he might consider continuing if the Town employees would accept him but he understood they might grieve his being there. Town Manager Carter said it was just the opposite, they liked the goodies he brought in. Chairperson Grinnell asked when he usually did this and Councilor Dennett said there was no time slot but usually it should be done by noontime on Monday, if possible, but you could put him down again for the first slot, depending on if he didn't get kicked out by the employees. Councilor Shwaery asked how frequently it was done and Councilor Dennett said once a week on Monday unless Monday was a holiday and then it was a Tuesday or perhaps Wednesday and this was where the education came because you saw every expenditure on the municipal side, with the exception of wages, and it was fun; you saw where your tax dollars went. Councilor Shwaery said to sign him up for fun and Councilor Brake volunteered for the third slot because it sounded like fun.

CHAIRPERSON GRINNELL MOVED TO APPROVE THE POLICY ON TREASURER'S DISBURSEMENT WARRANTS FOR MUNICIPAL EXPENSES TO EXPIRE ON NOVEMBER 30, 2006 AND TO DESIGNATE THREE COUNCILORS: DENNETT, SHWAERY AND BRAKE, WHO MAY REVIEW, APPROVE AND SIGN SUCH WARRANTS, SECONDED BY COUNCILOR HEILSHORN.

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

d. (110205-10) *THE KITTERY TOWN COUNCIL MOVES TO APPROVE THE SCHOOL DEPARTMENT'S POLICY ON DISBURSEMENT WARRANTS FOR SCHOOL EMPLOYEES WAGES AND BENEFITS TO EXPIRE ON NOVEMBER 30, 2006. A COPY OF SAID WARRANT IS ATTACHED AND BECOMES A PART OF THESE MINUTES.*

COUNCILOR DENNETT MOVED TO APPROVE THE SCHOOL DEPARTMENT'S POLICY ON DISBURSEMENT WARRANTS FOR SCHOOL EMPLOYEES WAGES AND BENEFITS TO EXPIRE ON NOVEMBER 30, 2006, SECONDED BY COUNCILOR BRAKE.

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

e. (110205-11) *THE KITTERY TOWN COUNCIL MOVES TO APPROVE THE SCHOOL DEPARTMENT'S POLICY ON GENERAL DISBURSEMENT WARRANTS FOR EDUCATIONAL EXPENSES TO EXPIRE ON NOVEMBER 30, 2006 AND TO DESIGNATE THREE COUNCILORS: _____, _____ AND _____ WHO MAY REVIEW, APPROVE AND SIGN SUCH WARRANTS. A COPY OF SAID WARRANT IS ATTACHED AND BECOMES A PART OF THESE MINUTES.*

Councilor Heilshorn said he would be happy to continue in slot 1 and explained that it typically was an every other week assignment and he usually did it on a Wednesday or Thursday, taking between one and three hours. He said that, as with the municipal expenses, it was quite an

education as well on the school side. Councilor Spiller and Chairperson Grinnell volunteered for the remaining two slots.

CHAIRPERSON GRINNELL MOVED TO APPROVE THE SCHOOL DEPARTMENT'S POLICY ON GENERAL DISBURSEMENT WARRANTS FOR EDUCATIONAL EXPENSES TO EXPIRE ON NOVEMBER 30, 2006 AND TO DESIGNATE THREE COUNCILORS: HEILSHORN, SPILLER AND GRINNELL, WHO MAY REVIEW, APPROVE AND SIGN SUCH WARRANTS, SECONDED BY COUNCILOR SPILLER

Councilor Dennett said that, as background, State Law provided that no municipal monies could be expended except by a warrant that was affirmatively voted and signed by the municipal officers, however, the State Law also stated that the Town could make other arrangements such as they were doing. He said on Town Warrant general expenditures the person designated on the off weeks was empowered to sign the expenditure. If Council was meeting like they were this week, the person would review it but it would come to Council for a vote, so primarily, this review process on the municipal side for the general warrants was kind of important all the time but was executed only by one person every other week and the Council did it on the alternate weeks. He said that some years ago, they went through quite a lot of confusion.

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

f. (110205-12) *THE KITTERY TOWN COUNCIL MOVES TO APPOINT JOYCE TRACKSLER TO THE SHELLFISH CONSERVATION COMMITTEE UNTIL 3/15/08.*

Councilor Dennett said the requisite interview had been done and was favorable and he would move the appointment.

COUNCILOR DENNETT MOVED TO APPOINT JOYCE TRACKSLER TO THE SHELLFISH CONSERVATION COMMITTEE UNTIL 3/15/08, SECONDED BY CHAIRPERSON GRINNELL.

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

g. (110205-13) *THE KITTERY TOWN COUNCIL MOVES TO APPOINT DONNA STOBBS TO THE PERSONNEL BOARD AS AN ALTERNATE MEMBER UNTIL 11/28/08.*

Chairperson Grinnell said she did this interview with the Chair and thought Ms. Stobbs would be a fabulous addition to the Personnel Board, so she would move the appointment.

CHAIRPERSON GRINNELL MOVED TO APPOINT DONNA STOBBS TO THE PERSONNEL BOARD AS AN ALTERNATE MEMBER UNTIL 11/28/08, SECONDED BY COUNCILOR HEILSHORN.

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

h. (110205-14) *THE KITTERY TOWN COUNCIL MOVES TO REAPPOINT AARON HENDERSON TO THE PARKS COMMISSION UNTIL 5/3/08.*

Chairperson Grinnell asked if this interview had taken place and Councilor Dennett said he believed it had been Councilor Guy's interview and had been pending for quite some time. He said that on the most recent list they received, he was not there as an unfinished one so he could only assume it was finished. Chairperson Grinnell asked Town Clerk Place if they should set this aside to get some clarity and the Town Clerk answered yes.

MOTION SET ASIDE.

i. (110205-15) *THE KITTERY TOWN COUNCIL MOVES TO APPOINT THE FOLLOWING MEMBERS TO THE FORESIDE DESIGN REVIEW COMMITTEE: GAVIN BARBOUR, CHARLES BOLD, PAMELA BOLD, ALESSANDRA "SANDY" DOMINA, BENJAMIN PORTER, JACQUELYN NOONEY AND DEANE RYKERSON.*

Councilor Dennett said, although it was a little out of sync, he was going to move that the meeting be extended to no later than 11:00 p.m.

COUNCILOR DENNETT MOVED TO EXTEND THE MEETING TO NO LATER THAN 11:00 P.M., SECONDED BY COUNCILOR SHWAERY.

A ROLL CALL VOTE WAS TAKEN, WITH SIX IN FAVOR, ONE OPPOSED. MOTION PASSES AS FOLLOWS: 6/1, WITH CHAIRPERSON GRINNELL OPPOSED.

Councilor Dennett said he had some reservations on what appears they were being asked to do that evening. He said the only reference, to his knowledge, is in the Zoning Ordinance itself for this Design Review Committee. First of all, was it going to be permanent or ad hoc, how many members and alternates, if any and who appoints? There is no charge and absolutely nothing exists for formation of this committee and it was unlike anything he had seen and to make it more interesting, the last person listed has, of this morning, not submitted an application and two of the people on the application have different addresses on the face sheet supplied to us. He thought they should back up a little bit and do something a little more formally. He said he presumed it was permanent and who was going to set the number of members, alternates and how was it going to work? Town Manager Carter said this came about because two-fold, one on the rewrite of the zoning and this was put forth by the Planning Board, it was at our workshop that we found out that the Kittery Foreside Committee was not willing to do this because they wanted to be disbanded so we added the words "or a successor organization." From there, it got somewhat cloudy as to this group of individuals how they came forth to the community other than the Foreside Committee he thought helped in gathering these people's applications and moved the issue forward. He thought folks felt there were guidelines placed in the re-write as to what they were going to do. They were to advise the Planning Board as to whether or not the applications they were required to comment on met the intent of the Ordinance in the design review aspect of the Ordinance. So Councilor Dennett was correct, the Manager said, there was no written charge other than what was in the Ordinance but he thought the question became whether or not this Council wished to set a charge as you did with the Open Space Committee or did they feel there was enough within the Zoning Ordinance to guide them as to what they are supposed to do. Councilor Dennett addressed the Chair, saying it went beyond that – Did they had three members, five or 100, how long did they serve, three years or lifetime, there was just no structure and the Manager asked if the Councilor was suggesting they amend the Zoning Ordinance? Councilor

Dennett said the Manager was quite correct that what they were going to do was in the Zoning Ordinance, if they could ever interpret it. He said his question was there was no structure to form the Committee; the Ordinance may say what they were going to do and how many are going to do it, how long would they serve; the basic structure for forming any Committee that was going to be permanent and he presumed it was a permanent committee. Town Manager Carter said it talked about a successor organization and an organization is a structured body not a group of citizens that came together so either this Council should amend that Ordinance to put that structure in or have this group become the Kittery Foreside Committee for this purpose. Councilor Dennett said he would go along with if someone wants it, that anyone who wanted to get together becomes this organization, or did Council want to retain the right to appoint the people beyond this review organization? The Manager asked for his clarification, did the Foreside Committee have terms for appointments? Councilor Dennett said they were unlimited because they were an ad hoc committee and once they finished, even though it was a long process, they were done; it was nothing that was permanent and forever. The Manager said couldn't Council consider this an ad hoc committee and Councilor Dennett said no, because presumably, the Ordinance was going to last forever until it was repealed or amended. They are going to be charged under the Ordinance with some very technical, subjective things and whoever is on that Committee is going to catch some real problems publicly and he thought as a Council they should have some control over who sits on it; they would have a fantastic amount of power. Town Manager Carter said, again, they were advisory. Councilor Dennett said they were advisory but they could hold it up 45 days and just bring us to a stop.

Councilor Shwaery said the Kittery Conservation Commission is advisory as well to the Planning Board and that's a pretty set structured organization. He thought it would be in good character to try format this the same way versus the Open Space Committee was advisory to the Town Manager and that's a little more fluid. If they were going to have this kind of impact, he said, it should be more structured.

Councilor Brock said he thought they were making a lot out of not a lot, this was not a decision making body it was an advisory body and he was glad there were people who were willing to come forward and advise. The Planning Board, he said, already has more than they can handle in its tasks and he didn't think they should be putting up roadblocks to prevent them from getting help, so he hadn't heard that this was going to in some way go off on its own and make binding decisions that the Town will have to live with and not control, they would simply give input to the Planning Board at least as it's presented here, as an advisory committee and then the Planning Board is the decision making body. If the Council had issues with it, they could take it up with the Planning Board, but if they had citizens willing to perform this task, let's let them do it.

Councilor Shwaery said he would agree with Councilor Brock but, as he said, the Conservation Commission is advisory as well and they have term limits, they're interviewed by us, they have full members and alternate members, so he didn't see why they didn't do it with this as well. It just sets some limits on who could be part of the board and how long.

Councilor Brock said that was one model, however, the Open Space Committee was another model and they seemed to fulfill an important function advising the Town Manager and Council members without having that defined structure. He said that if people wanted to have a defined structure, that didn't create problems for him but he didn't understand why this was being raised as an issue to prevent going forward, approving these members and then if they wanted to revisit and impose a structure, they could talk about that at some other time. Councilor Brock said it seemed like they already had in practice in this Town advisory committees on a more ad hoc model, so why don't we just do it. Councilor Dennett said this was not ad hoc and Councilor

Brock said it was ad hoc in the sense that it was an advisory board and that was its function, it was not a decision making body. Councilor Dennett said but its an advisory board that can hold things up for 45 days if it wanted to and Councilor Brock said he had made his comment; it sounded like they already had the Open Space Committee - and he thought it was a helpful committee - which functioned properly and he would just as soon go ahead and move this but if people thought it needed to be delayed in order to impose structure, then that would be the will of the Council.

Councilor Heilshorn asked if delaying this their only option? Could they put some structure in position at this time. Could they take that action at this time rather than put it off and give it a little more structure. Councilor Dennett said several boards were set up by ordinance, do they want to do it formally and do it by ordinance or just off the cuff? Councilor Heilshorn said maybe they could pull out the ordinance on one of the like committees and just substitute the title. Councilor Dennett said they could do that but if it was going to be done by ordinance, it would take a public hearing. Councilor Heilshorn said Councilor Dennett had answered his question.

Town Manager Carter said that the alternative was to appoint them all for one year and discuss this after a one year trial. If they were able to make those sorts of structured arrangements and Councilor Dennett asked how they would remove someone if they didn't like them? The Manager said that in their Order it would be a one-year appointment and Councilor Dennett said to write up an order and they could have it for their next meeting.

Chairperson Grinnell said why didn't they state the order, pass this and then the Manager could write it up so that it didn't come on to their agenda again. Councilor Dennett said they would have plenty of time on their agenda on December 28 if that was a good date.

Councilor Brock said if there was a way to move it forward tonight, he would go with that; his question to the Town Manager concerned this one year term that we can impose while the Council at its leisure could decide on a structure if and when it wanted to impose that, could they just go forward and approve these members for a one year term, could we do that tonight? Councilor Dennett said that sure they could but to remember they would do one without even an application and, of course, it would also take a formal motion to suspend the rules on committees to waive interviews. Councilor Brock said he thought they already had spent more time on it than it warranted and wanted to ask the Town Manager if there was a way to move this forward tonight on a one year basis, could they go proceed? Town Manager Carter said the Council had the authority to appoint these folks, whether it was one year or not. The point he was making was this was a new reviewing type board and they didn't know if it was going to work and to give it a trial for one year and then reassess it and put in some structure or amend the Ordinance at that point after a year's trial He said it made some sense, in his opinion, to do it that way rather than to kind of structure it over multi years because they really didn't know and the Planning Board didn't know if it was going to work.

Chairperson Grinnell asked the Manager where the information on Dean Rykerson was. Councilor Dennett said he hadn't made application yet. Town Manager Carter said that was correct, there was a group leader who brought this in and they had several meetings of this group that the Town Planner was involved with so it wasn't like these individuals had come in separately, they had a group, they submitted applications, all except one, and so that was how they got to this point. The Chair said she would like to make a motion.

CHAIRPERSON GRINNELL MOVED TO APPOINT GAVIN BARBOUR, CHARLES BOLD, PAMELA BOLD, ALESSANDRA "SANDY" DOMINA, BENJAMIN PORTER, JACQUELYN NOONEY AND DEANE RYKERSON TO THE FORESIDE DESIGN

REVIEW COMMITTEE FOR ONE YEAR FROM THIS DATE, SECONDED BY COUNCILOR BROCK.

Councilor Dennett asked the Chair how she expected to get around the Council rules on appointment? Chairperson Grinnell said she would ask Council to suspend Council rules for appointments to committees and asked for a second.

CHAIRPERSON GRINNELL MOVED TO SUSPEND COUNCIL RULES FOR APPOINTMENTS TO COMMITTEES, SECONDED BY COUNCILOR BROCK.

Councilor Dennett reminded the Council that it took five votes. Chairperson Grinnell said it would take five votes to suspend the rules and her idea of suspending the rules was so they could appoint these people this evening and she needed five votes in the affirmative to do this and asked if there was a discussion. Receiving no response, the Chair asked for a roll call vote.

A ROLL CALL VOTE WAS TAKEN, WITH FOUR IN FAVOR, THREE OPPOSED. MOTION NEEDING 5 VOTES TO PASS FAILS 4/3, WITH COUNCILORS BRAKE, DENNETT AND SHWAERY OPPOSED.

Chairperson Grinnell said with four votes, we cannot suspend Council rules; end of discussion.

j. (110205-16) *THE KITTELY TOWN COUNCIL MOVES TO APPOINT A REPRESENTATIVE TO MEET WITH A MEMBER OF THE BOARD OF ASSESSMENT REVIEW TO INTERVIEW ROBERT WYMAN FOR HIS APPOINTMENT AS A FULL MEMBER UNTIL DECEMBER 1, 2007 (Replacing Frank Clark, who moved to an alternate membership).*

Councilor Dennett said Council rules provided that the Council could waive interviews in the case of an alternate moving up to full membership and in this particular case, he recommended they do that, it does not take a formal motion to do, it was automatic if they chose to do it .

COUNCILOR DENNETT MOVED TO APPOINT ROBERT WYMAN FROM ALTERNATE TO FULL MEMBERSHIP FROM DECEMBER 1, 2007, SECONDED BY COUNCILOR HEILSHORN.

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

k. *OTHER*

Councilor Spiller said she had two items: one very quickly, she wanted to thank Public Works for picking up lobster traps on Crescent Beach; the other, which was particularly pertinent in regard to the upcoming election, was to ask the Town Clerk if there was some way to separate petitioning activity from voting activity. Chairperson Grinnell wondered if they could have a different setup. Town Clerk Place said the thing was having enough room for tables depending on the type of election and sometimes they would have five tables instead of four so it didn't leave a lot of room for petitioners; they try to keep it clear but they were doing a lot of running around doing other things. Councilor Dennett said there had been a bill in the last legislative session to solve this particular problem but it failed, however, it was his understanding that if anyone had a problem they could always go to the Warden who had authority to kick them out but someone had

to complain. The Town Clerk said something was brought to her attention but it was after the fact and she had said come to the Warden or me while it was happening. Councilor Heilshorn said perhaps at the next election they could sort of highlight this issue to the Warden and that person could pay a little more extra attention to the people exiting. Chairperson Grinnell asked if they said could appoint an additional person to be at the polls to monitor that situation and the Town Clerk said she could probably have an election person to help out. The Chair asked if that was someone's assignment to stand there and watch people going, that possibly could deter the petitioners. Councilor Dennett said it was not just the petitioners sometimes people harass the petitioners. Town Clerk Place said maybe they needed to implement rules only one person and one petition at a table and she had the right to cut off the number of tables if they wanted to have one outside, they could do it but inside she could have a cut-off of where to stop. Councilor Heilshorn asked the Clerk were there any type of conduct codes for people at the tables and the Clerk said they couldn't harass someone to sign. Councilor Heilshorn said we would make that presumption, is there anything that spells that out and the Clerk answered no, but that was a good idea. Chairperson Grinnell said she would be happy to work with the Clerk in the near future and try to get some clarity on this. Town Clerk Place said there was State Law on this as well. Councilor Heilshorn said maybe making that available to people who have those tables would be a good thing.

The Chair said she had one item and that was before Mr. Carter became the Manager, we had to evaluate a previous Manager and she remembered Councilor Shwaery saying we should work on a new evaluation form and she didn't know how that process happens and knew there was a standard review form and the Manager's time was coming and she wanted to know how the Council felt about looking at that review form and trying to spruce it up a bit. Councilor Heilshorn said maybe they could include it in their next packet and we can all have our ways with it, sort to speak, and pass it into you to compile our suggestions and have the Council look at it. Chairperson Grinnell asked the Manager if they could have that in their packet next time.

12. COMMITTEE AND OTHER REPORTS

a. *COMMUNICATIONS FROM THE CHAIRPERSON* – None.

b. *TOWN MANAGER'S REPORT*

Town Manager Carter said he had just a couple of reminders. The Holiday Parade, he hoped everyone could walk and enjoy that event, Saturday at 3:00 p.m.

The staff and Manager appreciated the willingness of Council to grant the Friday after Thanksgiving off; employees had indicated to him they enjoyed that. That day that they took was their own leave either vacation or comp time and they appreciated Council doing that.

The Gerrish Island Bridge update - those who attended the Memorial Bridge workshop with the New Hampshire DOT, they met up with the new Maine DOT and he spoke with the engineer in charge of the Gerrish Island Bridge. There were many who attended, as well as our staff people like Rick Rossiter and the Police Chief and Fire Chief spoke to how their mechanism and traffic planning for that Bridge replacement would not work with the dead end situation at Chauncey Creek. From that meeting they went back and after that and so they made Chauncey Creek eastbound one way during the construction period.

Another bridge item, as he just mentioned, Council went to the workshop between Council at the City of Portsmouth and ourselves, we learned that the replacement of that bridge will not happen until sometime way into the future and that was a surprise because they had indicated that

the bridge repair would be over the next couple of years and now it was like 2009 and 2010, if funds are available.

The last thing was he had was that on December 9 at the York County Community College a number of sponsors would be discussing the issue of the Route 109 corridor in South Sanford and how economic development was occurring in that area. Councilor Brock asked the Town Manager if he had a completion date for the Gerrish Island Bridge completion and the Manager said it was a minimum of a year or year and a half. Councilor Brock said to tell them to hurry.

Chairperson Grinnell said they would now return to Item No. 6.

(6) ACCEPTANCE OF PREVIOUS MINUTES – (*HEARD OUT OF SEQUENCE*)

After corrections from Councilors Dennett, Shwaery and Brock, the Minutes of November 14, 2005 were accepted, as amended.

13. ADJOURNMENT

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

MEETING ADJOURNED AT 10:25 P.M.