

APPROVED MINUTES  
Approved on August 24, 2009

**KITTERY TOWN COUNCIL**

**August 10, 2009**

**Council Chamber**

1. CALL TO ORDER

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

2. INTRODUCTORY

Chairperson Thomson read the Introductory.

3. PLEDGE OF ALLEGIANCE

Chairperson Thomson led those present in the Pledge of Allegiance.

4. ROLL CALL

Answering the roll were Councilors Gary Beers, Frank Dennett, Glenn Shwaery, George Dow, Vice Chair Judith Spiller and Chairperson Jeffrey Thomson. Also present were Town Manager Jonathan Carter, Recorder Ashley Rodier, members of the press and others.

5. ACCEPTANCE OF MINUTES

The Minutes of the July 27, 2009 Town Council Meeting were accepted, as amended.

6. PUBLIC HEARING

John J. Murphy from the Eliot Sewer Committee and former Town Selectman came to the podium. Mr. Murphy wanted to attend this meeting to hear what was said regarding the Kittery-Eliot sewer contract and possibly represent a different side depending on what others from Eliot might be saying. Mr. Murphy continued that there were some differences in opinions from Eliot and that Town Manager Carter had showed him a draft of the response to Eliot and noted that Kittery might want to emphasize the lack of funds to do anything at this point and that was why Kittery was requiring Eliot to come up with the monies. Mr. Murphy commented that he thought that Eliot should come up with some of the monies and that Eliot expected to do that through their TIF. Chairperson Thomson noted that this was an item that was on the agenda and when Council got to that point in the meeting, Council would allow him to comment at that time if Mr. Murphy was so inclined.

7. DISCUSSION

- a. Discussion by members of the public (three minutes per person)

There was none.

- b. Chairperson's response to public comments

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There was none.

8. UNFINISHED BUSINESS

Chairperson Thomson wanted to follow up on Councilor Shwaery's comments from the last meeting regarding the signage around town. He noted that he had seen some signs in violation of the town ordinance and he trusted that the town was working to fix the ordinance and that he hoped that the issue was being addressed.

9. NEW BUSINESS

- a. *(080109-1) THE KITTERY TOWN COUNCIL MOVES TO APPROVE THE DISBURSEMENT WARRANTS.*

The Chair then read the warrants which included Warrant No. 63 for the Shapleigh Middle School Project in the amount of \$750.00, Warrant No. 3 for the School Accounts Payable in the amount of \$185,412.42 and Warrant No. T-10-06 for the Town Accounts Payable in the amount of \$599,934.67. The Chair asked Vice Chair Spiller asked is the school warrants were in appropriate format for signature which she answered affirmatively. The Chair then asked Councilor Dennett if the town warrants were in appropriate format for signature which he answered affirmatively.

**COUNCILOR BEERS MOVED TO APPROVE THE DISBURSEMENT WARRANTS, SECONDED BY VICE CHAIR SPILLER.**

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

- b. *(080109-2) THE KITTERY TOWN COUNCIL MOVES TO DISCUSS PROPOSED AMENDMENTS TO COUNCIL RULES.*

The Chair indicated that this issue had been brought up at the meeting of July 27, 2009, regarding establishing an ordinance review committee. He continued that Council had received a draft of the proposed changes and per Council rules it was required to be on the agenda twice prior to any changes. Councilor Beers indicated per prior discussions this was a good methodology to pursue ordinance review processes and that the language in front of Council was the language that he suggested which he believed accomplished the principal objective of getting quality ordinance review and recommendations to Council dealing with the highly technical and complex details prior to public hearing. The Chair noted that this issue would be moved to the next regular meeting of August 24, 2009 and that it could be acted on at that time. Councilor Shwaery asked if Council was anticipating changes to the proposed language. Councilor Dennett indicated that there might be some minor grammatical changes but they would not be looking to change the intent.

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- c. *(080109-3) THE KITTERY TOWN COUNCIL MOVES TO AUTHORIZE THE CHAIRPERSON TO SIGN A LETTER OF SUPPORT FOR THE TRANSPORTATION INVESTMENT GENERATING ECONOMY RECOVERY (TIGER) DISCRETIONARY GRANT.*

Chairperson Thomson noted that Council had the proposed letter that would be sent to David Cole at the Maine Department of Transportation and George Campbell at the New Hampshire Department of Transportation, indicating Council's support and the rationale behind it relative to possibly funding the repairs on the two bridges.

**COUNCILOR SHWAERY MOVED THAT THE KITTERY TOWN COUNCIL AUTHORIZE THE CHAIRPERSON TO SIGN A LETTER OF SUPPORT FOR THE TRANSPORTATION INVESTMENT GENERATING ECONOMY RECOVERY (TIGER) DISCRETIONARY GRANT AS DRAFTED, SECONDED BY VICE CHAIR SPILLER.**

Councilor Dennett suggested that on the first page, second paragraph there should be a hyphen between the words two and state. Councilor Shwaery asked if the definitions listed in the draft letter were state definitions. Town Manager Carter responded that the definitions listed were part of the criteria for the TIGER grant.

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

The Chair wanted to note on a related subject, that the Maine DOT was in Kittery and had conducted an informational meeting on the proposal to rehabilitate the Dennett Road overpass which he and Town Manager Carter had attended. He continued that the Maine DOT did not know when they were going to start the construction, that they were looking to close down that area during the construction process and that they had come up with some elaborate detours. He noted that some businesses in that area were concerned about people cutting through their parking lots. The Chair continued that both bridges already had reduced weight limits so some commercial vehicles were traveling on roads that they would not normally be on and that now they were planning on closing down the area which the trucks were being directed to get to the Route 95 bridge. Chairperson Thomson noted that it did not seem like the right time to do this construction and wanted to express the concern formally to the Maine DOT that perhaps the bridge issue should be dealt with first before dealing with the Dennett Road overpass issue. He continued that the Dennett Road overpass was not in very bad shape and Kittery was already dealing with detour traffic and the weight limits on the two bridges could be reduced more in the next few months. Councilor Dow asked if there was a funding issue. The Chair noted that money had not been approved for the project and that it was state money. Town Manager Carter indicated that the figure for the project was in the millions. The Chair noted that he thought that money should be put towards the bridges issue and thought that this matter should be discussed more.

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d. *(080109-4) THE KITTERY TOWN COUNCIL MOVES TO RENEW AND AUTHORIZE A RESPONSE TO THE TOWN OF ELIOT ON THEIR REQUEST TO PARTICIPATE IN A SEWER ENGINEERING PROJECT.*

The Chair noted that Town Manager Carter had prepared a draft letter to the Chair of the Eliot Board of Selectman based on the letter that was received from Eliot in late July. Town Manager Carter noted that Eliot had sent a letter to Council dated July 27, 2009, asking Council to consider an approach to looking at the engineering and feasibility of bringing their sewer line down Route 236 and into the Kittery treatment plant and looking at the different design layouts that may occur either through the business park zoned area or down to Dennett Road and connect into their other pipe. He continued that Kittery and Eliot had been in serious negotiations for over a year and a half that put this issue about how Eliot and Kittery would proceed into the agreement that was submitted by Council to Eliot which was tentatively approved by the people representing Eliot at the time. Town Manager Carter noted that the agreement indicated the approach would be that funds that would be in the contract due to Kittery would initially pay for the engineering, layout and feasibility work up front to determine the costs. Town Manager Carter continued that it was to be a joint effort by Eliot's engineering firm, CLD, and Kittery's engineering firm, SEA, in a collaborative approach that would figure out the best way into the treatment plant and both shares would have been paid by Eliot. He noted that was following the acceptance of the contract that guaranteed Eliot the extra flow into the treatment plan from 200,000 to 400,000 and that was a major issue with Eliot that they had to have the additional flowage which Kittery agreed to. Town Manager Carter indicated that they designed in the negotiations a straight forward formula to determine their cost allocation of the plant and the pump stations that would be associated with Eliot coming into the treatment plant and for the debt factor of the plant and the daily operations. He continued that this got to Eliot and through a series of changes such as a municipal election and changes on the Board of Selectman, the agreement began to have a different reflection back to Kittery from Eliot. Town Manager Carter noted that they were questioning issues in the contract and the letter received was suggesting that Kittery pay for its share of the engineering to help Eliot. Town Manager Carter stated that from an economic development standpoint, this would benefit the entire region to bring the pipe down through Route 236 and that he thought that would only benefit both towns. He continued that Kittery did not have any money to spare for the engineering costs and that was why Kittery had included in the negotiations that Eliot would pay for the costs up front. The Chair asked if the letter received from Eliot was the last contact that Kittery had with Eliot. Town Manager Carter indicated that he had a very brief conversation with the Chair of the Board of Selectman who understood that Kittery thought that this was different from what had originally been negotiated. Councilor Dow indicated that he liked the letter and thought that the response was appropriate and well addressed but asked where this would put Kittery in regards to the facility. Town Manager Carter noted that Kittery was trying to improve the treatment plant and sewer lines so that it could provide effective and environmentally clean treatment of waste from three entities which were the United States Navy, the Town of Kittery and the Town of Eliot. He continued that they have a great deal of environmental pressure on improving the plant

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to meet stricter requirements. Town Manager Carter noted that they were finishing up a 3.4 million improvement and had made a million dollar improvement a couple of years ago and that they were doing ongoing maintenance to make sure that the inflow of water into the sewer lines is constrained. He continued that the Town was asking the Navy to do those same things which they were, and that the Town was asking Eliot to make improvements as well. He noted that the overall goal was to have greater capacity and stay within the environmental guidelines that are constantly changed to be greater restrictions. He noted that there were new EPA laws that were coming to New Hampshire relative to nitrates, Kittery was going to see the EPA get more involved in seeing those restrictions come to Maine. Town Manager Carter noted that the Piscataqua River was the target and that it was going to be cleaned up to a much higher standard that it currently is and in order for that they may have to stop chlorination or go to chlorination year round. Town Manager Carter noted that in order to do so Kittery needed to talk to the Navy and Eliot and increase the rates and have everyone understand what Kittery was doing to improve the environment. He noted that Kittery was approaching the Navy for discussions relative to raising the rates on their contract. Town Manager Carter noted that they would be coming to Council through workshops relative to raising the Town's rates which have not been raised since 2003. He noted that the Navy had not seen any increases since 1993 and the original contract with Eliot was signed in 1985. Councilor Dow asked if Kittery was required by the EPA to provide service to Eliot. Town Manager Carter noted that they were and that they were continuing to provide service to Eliot under the original contract for a capacity of 200,000 and that contract could continue on for a long time. Town Manager Carter noted that he did not think that Eliot would be able to bond the construction of the pipe without a contract with Kittery giving them the extra volume. Councilor Spiller indicated that she would slightly change the response to Eliot by removing the first sentence and that it might need some wordsmithing. Councilor Beers wanted to note that there was no joint workshop with Kittery and Eliot as had been written in the local newspaper. He continued that it appeared that Eliot had a workshop on July 15, 2009. He also wanted to make clear that there was not a pressing need for Kittery to install a pipeline to connect to Eliot, outside of Eliot's request for additional volume. Councilor Beers continued that the growth at the Shipyard would require additional demand and that he understood that Kittery had entered into some introductory discussions with York and that the existing facility could only absorb so much before it would not take any additional customers and that any additional customers after that would have to pay for signification reconstruction, renovation or absorption of capacity. Councilor Beers noted that the EPA related improvements were going to be paid for without regard to current or future customers and that they were mandated regulations related to water quality and would have to be paid for in any event. Councilor Beers indicated that he did not consider this to be a political consideration and that two municipal entities met, negotiated in good faith, came to a mutually beneficial agreement and that Council gave a contingent approval which meant that it was willing to stand up to the obligations that it had negotiated. He continued that now Eliot was looking in a different direction and he thought that they needed to understand the essence of the original agreement and that was Kittery's position and he thought that the Manager's letter conveyed that to Eliot.

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**COUNCILOR BEERS MOVED THAT THE DRAFT RESPONSE TO THE TOWN OF ELIOT BE ENDORSED AND AUTHORIZED FOR SENDING WITH MINOR AMENDMENTS, SECONDED BY COUNCILOR DOW.**

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

- e. *(080109-5) THE KITTERY TOWN COUNCIL MOVES TO DISCUSS THE PROPOSED CHARTER AMENDMENTS FOR THE NOVEMBER BALLOT CONCERNING ARTICLE XIV – TOWN MEETING AND TO GIVE GUIDANCE TO STAFF AS TO SCHEDULING A DATE FOR PUBLIC HEARING.*

Chairperson Thomson noted that Council had received correspondence from the town attorney in June regarding questions that Council had regarding the June public town meeting and the vote that happens the following Tuesday as well as the current limitation on action by Council in regards to the unappropriated surplus during the course of the fiscal year. Chairperson Thomson indicated that Council also had in front of them an initial attempt at a concept of what Council was trying to do. The Chair noted that one of the two drafts in Council's packet totally eliminated the section and the second was just eliminating some items. The Chair indicated that he had attended the Saturday town meetings, since his return to Council, and that very few residents attended and that very few questions were raised and the provision for every registered voter to receive a copy of the proposed ballot which costs upwards of \$5,000.00 to do seemed to be an concern. He continued that given the size of the overall budget and what Council has to deal with over the course of the year if \$50,000.00 was a realistic sum to have for a limit. Chairperson Thomson indicated that he was not totally averse to maintaining the sentiment of the change that was made in 2002 with regard to limiting the amount that could be appropriated by Council during the course of the year but that he thought that a limit of \$50,000.00 did not allow Council to deal with issues that come up. Councilor Spiller commented that she thought that there needed to be some ceiling and that if there was not it might make residents think that Council was going to go on a spending spree. Chairperson Thomson noted that he agreed and he thought that there should be a figure. Councilor Dow indicated that he agreed but he asked where Council has run into problems with the limit of \$50,000.00 and thought that if they could come up with some instances where they had run into problems it would justify Council in raising the limit. The Chair noted that recently Council had appropriated \$50,000.00 for the school study and if for some reason there had been some sort of catastrophe there would have been no more money to spend. The Chair noted that he understood where this originated from back in 2002 and that he agreed with the fury that was there at the time but that he was not sure in 2009 that this was the way that Council should be doing business. Councilor Dow asked if it would require a public hearing to appropriate funds if they raised the limit, which the Chair answered affirmatively. Councilor Shwaery indicated that he did not have a problem with the town meeting on Saturdays and that people do not come because there is not much out there that is contentious and there is not that much to learn. The Chair noted that he thought that the problem was that they

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were informational town meetings and no decisions were actually being made and that information could be conveyed in many different ways in this day and age. Councilor Shwaery noted that he thought that there should be some mechanism for people to ask questions and hear answers about issues that they might not understand. Councilor Shwaery indicated relative to changing the figure, he thought that \$50,000.00 was too low but that he was against just choosing a round number such as \$100,000.00 and that it should be based on some historical potential need. Chairperson Thomson suggested that rather than a set amount it could be set at possibly ½% of the previous year total town and school budget so at a budget of 24 million it would be \$120,000.00 and that it could be a moving figure. Councilor Beers noted that he agreed with the concept of a percentage but his concern was that those funds come out of unencumbered surplus and rather than fix a number or a percentage of a future budget it could be set at a percentage of the unencumbered surplus and if it was diminished and spent down it would make a smaller number available but that it would be a fair consideration. Councilor Beers suggested that before this was considered any more seriously that the staff could come up with what those numbers might look like. Councilor Dow noted that he looked to the Manager to establish the threshold that they do not want to fall below based on bonding and that was a way that it could be approached. Councilor Dennett indicated that the Shoreland Zoning Act that would be coming before Council and that there were some revisions regarding the Zoning Board of Appeals. He noted that one of the revisions was to change the Zoning Board of Appeals title to Board of Appeals and that state statute currently provided for a Board of Appeals but the town charter called for a Zoning Board of Appeals and over a period of years a Zoning Board of Appeals is no longer limited to land use or zoning under state law and it would be allowed to hear other types of appeals that are allowed by charter or ordinance. Councilor Dennett indicated that he thought that Council should consider, presuming that this was going to come through Council, that they put on a referendum in the fall to change the title of Zoning Board of Appeals to Board of Appeals. Councilor Dennett noted that it was a very minor change but thought that they should be consistent. Councilor Beers indicated that he appreciated Councilor Dennett's point of view and the subject would be addressed by the ordinance review ad hoc committee. He continued that when originally created in Kittery, the Zoning Board of Appeals was limited to zoning issues and not the general Board of Appeals issues at large as allowed for by state statute and that it was a huge philosophical and traditional distinction. The process related to a Board of Appeals in the State of Maine is allowed to hear any appeal from anyone who believes themselves aggrieved by any municipal officer's actions or inactions and could open the door to a wide variety of issues and that he was personally opposed to it at this point. He continued that it would require very careful consideration before any proposal could come forth. Councilor Dennett noted that he thought that the appeals without hindrance must be allowed either by ordinance or by charter and that they were not automatic. Councilor Beers noted if a Board of Appeals exists that would be the avenue that is used and if authority was not given that authority at the local level by virtue of restrictions or charter then it must pursue to a Maine superior court. Councilor Beers noted that it reflects the consideration of the entire question of a change to a Zoning Board of Appeals versus a Board of Appeals that needs to be examined. The Chair noted that if Council was going to make changes regarding Article XIV and perhaps on what

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Councilor Dennett raised, Council would have to hold a public hearing no later than September 14, 2009 which means they would need to set that date at the next regular meeting on September 24<sup>th</sup>. Chairperson Thomson noted that because there was some support relative to changing Article XIV but that there may still be some questions regarding the Saturday meeting and figures, he suggested that a workshop be scheduled for August 18<sup>th</sup> so that Council would have something clean that they could act on at the meeting on August 24<sup>th</sup>. The Chair then asked Town Manager Carter to prepare some optional wordings regarding percentages. Councilor Dennett told Town Manager Carter that his change would be relative to Charter Section 8.04. Councilor Beers noted that the issue was that the ordinances are proposed to change to identify a Board of Appeals whereas the Town Charter establishes a Zoning Board of Appeals and if the proposal to change the ordinances goes forward then a requisite Charter change would be necessary. Councilor Dennett noted that the Charter was established in 1967 and at that time state statute allowed for a Zoning Board of Appeals and that it was only recently that has changed with taking Zoning out of the title. The Chair then indicated that the workshop on these issues was scheduled for August 17, 2009 at 6:30 P.M.

- f. *(080109-6) THE KITTELY TOWN COUNCIL MOVES TO APPOINT A REPRESENTATIVE TO MEET WITH THE CHAIR OF THE PORT AUTHORITY TO INTERVIEW BARRY BUSH FOR RE-APPOINTMENT TO THAT BOARD UNTIL 8/31/14.*

**VICE CHAIR SPILLER MOVED THAT THE KITTELY TOWN COUNCIL APPOINT COUNCILOR GRINNELL TO MEET WITH THE CHAIR OF THE PORT AUTHORITY TO INTERVIEW BARRY BUSH FOR RE-APPOINTMENT TO THAT BOARD UNTIL 8/31/14, SECONDED BY COUNCILOR SHWAERY.**

**The Chair took a consensus with all in favor.**

- g. *(080109-7) THE KITTELY TOWN COUNCIL MOVES TO ACCEPT A CHECK IN THE AMOUNT OF \$210.00 FROM JB RECYCLING AND SALVAGE LLC FOR THE RECYCLING SCHOLARSHIP FUND.*

**COUNCILOR BEERS MOVED THAT THE KITTELY TOWN COUNCIL ACCEPT A CHECK IN THE AMOUNT OF \$210.00 FROM JB RECYCLING AND SALVAGE LLC FOR THE RECYCLING SCHOLARSHIP FUND, SECONDED BY VICE CHAIR SPILLER.**

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

The Chair noted that the check was graciously accepted with the Council's thanks to Mr. Brake and his company.

11. COMMITTEE AND OTHER REPORTS

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*a. Communications from the Chairperson*

*b. Town Manager's Report*

Town Manager Carter noted relative to the FY '10 budget update that July was good revenue wise and that they were around 15% for excise tax collection.

Town Manager Carter noted relative to the personnel update that Gerry Milroie, the interim planner had started that day to shadow Sandra Mowery who was leaving that Thursday. Town Manager Carter indicated that Ms. Mowery had been with the town for a couple of years and had done an excellent job. He continued that Gerry Milroie was a seasoned planner and he was on board. Town Manager Carter reported that Rick Rossiter, the Public Works Commissioner, was going to retire in early September and that he would be reporting back to Council on how filling that position will proceed.

*c. Committee Reports*

12. ADJOURNMENT

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

***MEETING ADJOURNED: 8:13 P.M***