TOWN OF KITTERY

200 Rogers Road, Kittery, ME 03904
Telephone: (207) 475-1329 Fax: (207) 439-6806

February 17, 2016 Council Chambers

Kittery Town Council
Regular Meeting
7:00 p.m.

1. Call to Order

2. Introductory

3. Pledge of Allegiance

4. Roll Call

5. Agenda Amendment and Adoption

6. Town Manager's Report

7. Acceptance of Previous Minutes – 1/25/16 Special Meeting

8. Interviews for the Board of Appeals and Planning

9. All items involving the town attorney, town engineers, town employees or other town consultants or requested officials

10. PUBLIC HEARINGS

11. DISCUSSION

    a. Discussion by members of the public (three minutes per person)
    b. Response to public comment directed to a particular Councilor
    c. Chairperson's response to public comments

12. UNFINISHED BUSINESS

13. NEW BUSINESS

a. (020116-1) Donations/gifts received for Council disposition

The Kittery Town Council moves to accept a donation in the amount of $300 for the Kittery Fire Department and a $300 donation for the Kittery Police Department from the Kittery Land Trust to be deposited in account #1111-43530 Miscellaneous Revenue.

b. (020116-2) The Kittery Town Council moves to approve the disbursement warrants.

c. (020116-3) The Kittery Town Council moves to authorize the Kittery Harbourside Garden Club to place 18"x24" signs on stakes along Route 1, Route 103, the Bypass, and Route 236, etc. 7-10 days before their May 28, 2016 plant sale event.

d. (020116-4) The Kittery Town Council moves to establish a Council-Port Authority, Port-Town Issues Working Group and to appoint 2 Councilors.

e. (020116-5) The Kittery Town Council moves to schedule a public hearing on a proposed amendment to Title 13 of the Kittery Town Code.

f. (020116-6) The Kittery Town Council moves to accept the resignation of Town Manager, Nancy Colbert Puff effective March 17, 2016

g. (020116-7) The Kittery Town Council moves to discuss the replacement and search process for a Town Manager and an Interim Town Manager.

14. COUNCILOR ISSUES OR COMMENTS

15. COMMITTEE AND OTHER REPORTS

a. Communications from the Chairperson
b. Committee Reports

16. EXECUTIVE SESSION

17. ADJOURNMENT

Posted: February 11, 2016

TOWN OF KITTERY

Office of the Town Manager

200 Rogers Road, Kittery, ME 03904

Telephone: 207-475-1329 Fax: 207-439-6806

ncolbertpuff@kitteryme.org

Nancy Colbert Puff
Town Manager

Town Manager's Report to the Town Council
February 8, 2016

1. **Capital Improvement Program (CIP)** – The CIP Committee is nearing the end of its work and would like to present its recommendations for the 2017-2021 CIP to the Council on February 22nd.

2. **Dispatch Upgrades** – The Dispatch center at the Police Department is currently undergoing some renovations as the new communications equipment is being installed.

3. **Land and Water Conservation Grant (LWCF) for Emery Field** – We have received unofficial notice from the Department of Agriculture, Conservation, and Forestry that we have been selected to receive a $187,000 LWCF grant. It may take several months before the official award is made, and the Town executes a project agreement. In the interim, I will be working with Commissioner Norm Albert, KCC General Manager Janice Grady, and the Kittery Athletic Field Improvement committee to complete the designer selection process to enable the project to begin as soon as the agreement is final.

4. **Comprehensive Plan Public Forum** – Save the date: the Comprehensive plan will kick-off its public outreach process with a meeting planned for Saturday March 12th, from 10 am – 12:30 pm, in the Starr Theater at the Kittery Community Center. Please help spread the word!

As always, if you have any questions or concerns prior to the meeting, please do not hesitate to contact me. Thank you.

Respectfully Submitted,

Nancy Colbert Puff

TOWN COUNCIL SPECIAL MEETING JANUARY 25, 2016
COUNCIL CHAMBERS UNAPPROVED

1. Call to Order

Chairperson Beers called the meeting to order at 6:30 p.m.

2. Introductory

Chairperson Beers read the introductory

3. Pledge of Allegiance

Chairperson Beers led those present in the Pledge of Allegiance

4. Roll Call

Answering the roll were Chairperson Gary Beers, Vice Chairperson Charles Denault, Councilors Kenneth Lemont, Judith Spiller, Jeffrey Thomson, Russell White and Frank Dennett.

5. Executive Session:

(010216-1) The Kittery Town Council moves to go into executive session with the Town Manager in accordance with 1 MRS §405 (6) (D) to discuss labor negotiations.

IT WAS MOVED BY COUNCILOR THOMSON AND SECONDED BY COUNCILOR SPILLER TO GO INTO EXECUTIVE SESSION IN ACCORDANCE WITH 1 M.R.S. §405 (6) (D) WITH THE TOWN MANAGER TO DISCUSS LABOR NEGOTIATIONS AT 6:34P.M. A ROLL CALL VOTE WAS TAKEN WITH ALL IN FAVOR. MOTION PASSED 7/0/0.

IT WAS MOVED BY COUNCILOR WHITE AND SECONDED BY COUNCILOR SPILLER TO COME OUT OF EXECUTIVE SESSION AT 6:49P.M. A ROLL CALL VOTE WAS TAKEN WITH ALL IN FAVOR. MOTION PASSED 7/0/0.

6. Adjournment

IT WAS MOVED BY COUNCILOR THOMSON, SECONDED BY COUNCILOR WHITE TO ADJOURN THE MEETING AT 6:50P.M. ALL WERE IN FAVOR BY A VOICE VOTE. MOTION PASSED 7/0/0.

KITTERY LAND TRUST

January 28, 2016

Nancy Colbert-Puff
Town of Kittery
200 Rogers Road Extension
Kittery, ME 03904

Dear Nancy,

On behalf of the Board of Directors of Kittery Land Trust (KLT), I am enclosing donations to the Kittery Police Department and the Kittery Fire Department.

As a property owner in Kittery, KLT is deeply appreciative of the services these two Department provide for Kittery Land Trust and all of our community. These small monetary gifts are meant to convey this appreciation.

Most Sincerely,

Christine Bennett

Executive Director

KLT is a 501(c) 3 organization. No gifts or services were provided with this contribution.

Members of the Board of Directors
Kalle Matso, *President* Ken Fellows, co- *Vice President* Bob Sheppard, *co-Vice President*
Clayton Smith, *Treasurer* William Brewster, *Secretary*
Alex Dearborn Gary Mitchell Cynthia Pawlek Wendy Pomeroy Heather Sullivan

Christine Bennett, *Executive Director* Jeff Cantara, *Stewardship Coordinator*
Cindy Kuliga, *Administrative Assistant*

HOLD TO LIGHT TO VIEW WATERMARK IN PAPER. HEAT SENSITIVE RED IMAGE DISAPPEARS WITH HEAT. DETECTION CIRCLE REVEALS A LOCK WHEN TESTED.

2246

KITTERY LAND TRUST
P.O. BOX 467
KITTERY, ME 03904-0467

Kennebunk Savings
52-7450-2112

EZShield™ Check Fraud Protection for Business

10/1/2015

PAY TO THE ORDER OF Kittery Fire Department $**300.00

Three Hundred and 00/100********** DOLLARS

Kittery Fire Department

MEMO

AUTHORIZED SIGNATURE

Security features. Details on back.

⑈002246⑈ ⑆211274502⑆ 33 01208 2⑈

HOLD TO LIGHT TO VIEW WATERMARK IN PAPER. HEAT SENSITIVE RED IMAGE DISAPPEARS WITH HEAT. DETECTION CIRCLE REVEALS A LOCK WHEN TESTED.

2247

KITTERY LAND TRUST
P.O. BOX 467
KITTERY, ME 03904-0467

Kennebunk Savings
52-7450-2112

EZShield™ Check Fraud Protection for Business

10/1/2015

PAY TO THE ORDER OF Kittery Police Department $**300.00

Three Hundred and 00/100********** DOLLARS

Kittery Police Department

MEMO

AUTHORIZED SIGNATURE

Security features. Details on back.

⑈002247⑈ ⑆211274502⑆ 33 01208 2⑈

KITTERY LAND TRUST 2247

Kittery Police Department 10/1/2015

300.00

1111-43530
misc Revenue

Checking - 2082 300.00

Nancy Colbert Puff, Town Manager
Kittery Town Hall
Kittery, Maine 03904

Dear Nancy,

On behalf of the Harbourside Garden Club of Kittery I'm requesting permission to place signage throughout Kittery advertising our annual plant sale which will be held on Saturday the 28th of May, 2016.

The signs are double sided, 18" x 24" on stakes, and tastefully designed. We have 12 to 15 of them which we plan to place in strategic spots : i.e. along Rt. 1, Rt. 103, the By pass, Rt. 236, etc. We would like to set them in place 7 to 10 days before the event. We'll also remove them within 24 -48 hours after the sale.

I can be reached at home (703-0716) or by email if you need to discuss this further.

Warmest regards,

Lois Cosloy, Co- President
Harbourside Garden Club of Kittery
Email: cosloy@comcast.net
29 High Pasture Rd.
Kittery Pt., ME 03905

REPORT to the KITTERY TOWN COUNCIL & PORT AUTHORITY
PORT-TOWN ISSUES WORKING GROUP

RESPONSIBLE INDIVIDUALS: Beers, Whitman, Puff **Date:** January 22, 2016

SUBJECT: Port – Town Issues Working Group

BACKGROUND:

- Council – Port Authority Workshop 1/11/16
    - Port Authority presentation outline (*previously provided*)
    - Port Authority presentation slides (*previously provided*)
- Council – Port Authority consensus to establish a working group to examine issues of the relationship, responsibilities, and authorities, of and between the two bodies (*encl 1*)

CURRENT SITUATION:

- Port Authority & Council Chairs with Town Manager drafted charge recommendation to establish a group to examine and report conclusions and any recommendations no later than May 31st.

RECOMMENDATION: Council & Port Authority establish working group as presented

ENCLOSURE

e1. Port – Town Issues Working Group charge draft

ENCLOSURE1: PORT – TOWN ISSUES WORKING GROUP CHARGE - draft

The KITTERY TOWN COUNCIL & PORT AUTHORITY:

Hereby establishes the Port – Town Issues Working Group as follows:

1. The Working Group consists of the following membership: Council – 2 members; Port Authority – 2 members. The Town Manager is appointed ex officio.

2. The Council & Port Authority wishes the Working Group to investigate, examine, analyze, and report its conclusions with any recommendations it may choose to make on the following issues:

a. Town Charter – Private & Special law 1961, as amended, Authority
b. Port Authority member appointment process
c. Port Authority staff employment status
d. Port Authority administration support
e. Liability risk management coverage
f. Civil – criminal enforcement authorities/responsibilities
g. Enterprise account

2011 MOU: Port and harbor program development efforts will be conducted during the period of this agreement with the objective of the KPA operation achieving self-funded enterprise account status

h. Revenue generation (e.g. marketing, fees)

2011 MOU: Appropriate user fees for launch, fuel, pumpout, waste disposal, or any other KPA provided services, in addition to their current customary fees, must be established;

2011 MOU: Annual KPA revenue in excess of approved budgetary expense is to be dedicated to reimbursement of Kittery's capital program account

i. Expense allocation (e.g. outside legal service)
j. Capital planning / Asset management
k. Port & Harbor Rules and Regulations
l. Achievement of Comprehensive Plan Goals
m. Other issues as may be identified by the group, residents, staff or other interested parties

3. The Working Group will hold its meetings at Town Hall; organize itself; meet as often as it determines necessary to complete its task; and, achieve the objectives laid out herein.

4. The Council & Port Authority wishes the Working Group to publish notice and agendas of its meetings; record and publish the meeting minutes; submit periodic progress and status reports no less often than monthly, with its final report delivered in time for consideration by the bodies at their respective first June regular meetings.

5. The Working Group reports to the Council & Port Authority as a whole through its Chairs. It has no authority with members of municipal staff, except as it may be requested of, and directed by, the Town Manager.

6. The Working Group stands dissolved on May 31st, 2016, unless its term is extended by the Council & Port Authority prior to that date.

REPORT to the KITTERY TOWN COUNCIL

RESPONSIBLE INDIVIDUALS: Beers, Denault **Date:** January 25, 2016

SUBJECT: Town Code Title 13 Error Revision

BACKGROUND:

- Councilor Dennett discovery (*atch 1*)
- Recodification history of the item's transition (*encl 1*)

CURRENT SITUATION:

- 30-A MRS §3443 mandates an arbitration process (*encl 2*)
- It is unknown just how/when the error occurred during the recodification process, but there was no intention to change the provision for appeals as laid out in the state law.
- "Strikeout/underscore" (*encl 3*) draft provided for review is intended to resolve the issue.
- Draft is in due form and proper format with enactment findings of fact, basis of law, and legislative intent delineated and satisfy all statutory obligations.

RECOMMENDATION: Ordain correction presented.

ENCLOSURES

1. Recodification History
2. 30-A MRS §3443
3. Title 13 §1.4.5 Ordinance Revision Proposal Enactment

ENCLOSURE 1: ITEM RECODIFICATION HISTORY

ORIGINAL

13.04.370 Appeal of assessment.

Any person, firm or corporation not satisfied with the amount for which he/she is assessed pursuant to Section 13.04.350 may appeal within ten (10) days pursuant to 30-A MRSA, Section 3443. (Prior code § 10-68)

1/2/10 Revisions

13.~~04~~1.37~~0~~ Appeal of assessment.

Any person~~, firm or corporation~~ not satisfied with the amount ~~for which he/she is~~of assessment~~ed~~ pursuant to Section 13.04.350 may appeal within ten (10) days pursuant to 30-A MRS~~A~~, §~~Section~~ 3443. ~~(Prior code § 10-68)~~

1/2/10 Accepted

13.1.37 Appeal of assessment.

Any person, firm or corporation not satisfied with the amount for which he/she is assessed pursuant to Section 13.04.350 may appeal within ten (10) days pursuant to 30-A M.R.S., §3443. (Prior code §10-68)

Record not found of revision from 1/2/10 to 6/17/10

6/17/10 Final

13.1.4.5 Appeal of Assessment.

Any person not satisfied with the amount of assessment pursuant to Section 13.1.4.3 may appeal to the Board of Appeals within ten (10) days pursuant to 30-A M.R.S. §3443.

8/3/10 Ordained

13.1.4.5 Appeal of Assessment.

Any person not satisfied with the amount of assessment pursuant to Section 13.1.4.3 may appeal to the Board of Appeals within ten (10) days pursuant to 30-A M.R.S. §3443.

NEEDED REVISION:

13.1.4.5 Appeal of Assessment.

Any person not satisfied with the amount of assessment pursuant to Section 13.1.4.3 may appeal ~~to the Board of Appeals~~ within ten (10) days pursuant to 30-A M.R.S. §3443.

ENCLOSURE 2: 30-A MRS ASSESSMENTS AND FEES

Title 30-A: MUNICIPALITIES AND COUNTIES
Part 2: MUNICIPALITIES
Subpart 5: HEALTH, WELFARE AND IMPROVEMENTS
Chapter 161: SEWERS AND DRAINS
Subchapter 3: ASSESSMENTS AND FEES

§3443. Arbitration of assessment

Any person who is dissatisfied with the amount assessed under section 3442 may, within 10 days after hearing under section 3442, subsection 5, make a written request to the municipal clerk to have the assessment upon the lot or parcel of land determined by arbitration.

1. Arbitrators selected. The municipal officers shall nominate 6 persons who are residents of the municipality. The applicant shall select 2 of these persons, and these 2 persons shall select a 3rd person who is a resident of the municipality and who is not one of the 6 persons nominated by the municipal officers.

2. Arbitration procedure. The 3 persons selected under subsection 1 shall fix the amount to be paid by the applicant. Within 30 days from the hearing before the municipal officers under section 3442, the arbitrators shall report their findings to the municipal clerk who shall record them. The arbitrators' report is final and binding on all parties.

§3442. Expense of construction

5. Hearing; revision of assessments. When the hearing is held, the municipal officers or sewer district trustees may revise, increase or diminish any of these assessments. Any revision, increase or diminution must be in writing and recorded by the municipal clerk and the sewer district trustees.

ENCLOSURE3: Title 13 §1.4.5 ordinance revision proposal

AN ORDINANCE relating to the municipality's authority to assessment sewer betterment fees the Town of the Kittery for those purposes, as more particularly set forth herein.

WHEREAS, the Kittery Town Council is authorized to enact this Ordinance, as specified in Sections 1.01 and 2.07(3) of the Town Charter; and 30-A MRS §3001, pursuant to its powers that authorize the town, under certain circumstances, to provide for the public health, safety, morals, and welfare and does not intend for this Ordinance to conflict with any existing state or federal laws.

WHEREAS, the Council is enacting this Ordinance in order to correctly implement its obligations and authority pursuant to 30-A MRS §3443, Arbitration of assessment, to have the assessment upon the lot or parcel of land determined by arbitration; and

WHEREAS, the Council intends, through the adoption of this Ordinance amendment, to correct the error made during the 2010 recodification;

NOW THEREFORE, IN ACCORDANCE WITH TITLE 30-A MRS §3001, AND TOWN CHARTER §2.14, THE TOWN OF KITTERY HEREBY ORDAINS REVISION TO TITLE 13 OF THE TOWN CODE, AS FOLLOWS:

"13.1.4.5 Appeal of Assessment.
Any person not satisfied with the amount of assessment pursuant to Section 13.1.4.3 may appeal ~~to the Board of Appeals~~ within ten (10) days pursuant to 30-A M.R.S. §3443."

Approved as to form: _____ {NAME}, Town Attorney

INTRODUCED and read in a public session of the Town Council on the ____ day of _____, 20___, by:_____ {NAME} Motion to approve by Councilor _____ {NAME}, as seconded by Councilor _____ {NAME} and passed by a vote of _____.

THIS ORDINANCE IS DULY AND PROPERLY ORDAINED by the Town Council of Kittery, Maine on the _____ day of _____, 20___, {NAME}, _____ , Chairperson

Attest: {NAME}, _____Town Clerk

TOWN OF KITTERY

Office of the Town Manager
200 Rogers Road, Kittery, ME 03904
Telephone: 207-475-1329 Fax: 207-439-6806
ncolbertpuff@kitteryme.org

Nancy Colbert Puff
Town Manager

February 1, 2016

Mr. Gary Beers, Chairperson
Kittery Town Council
200 Rogers Road
Kittery, ME 03904

Re: Notice of Resignation

Dear Chairperson Beers,

I write to inform you of my resignation as Town Manager. Pursuant to my contract with the Town, I am providing 45-days advanced notice, with my last day of work to be March 17, 2016.

I am thankful for having had the opportunity to serve Kittery as its Town Manager. It is a wonderful community that I have truly enjoyed serving over the past two years. The Town has a bright future which I will gladly observe from my continued residence here.

I have accepted another position in a Seacoast community. At your convenience, I would be happy to share my work priorities and thoughts for the Town's administration in the near term with you.

Sincerely,

Nancy Colbert Puff
Town Manager

Cc: Town Council, Department Heads, Town Attorney

2016 TENTATIVE AGENDA ITEMS

February 22, 2016 – 6:00 pm Workshop with CIP Committee

- Disbursement warrants
- MRI presentation?

March 14, 2016 – 6:00 pm Audit Presentation

- Disbursement warrants

March 28, 2016

- Disbursement warrants

April 11, 2016

- Disbursement warrants
- School Budget presented to Council
- Council takes preliminary vote on the School Budget and schedules May 9th for School Budget public hearing for its final approval on the School Budget
- Council votes on the Town Meeting warrant articles language for the June 14th ballot

April 25, 2016

- Disbursement warrants
- Town Manager presents Municipal Budget to Council

May 9, 2016

- Disbursement warrants
- Public Hearing – Council votes on School Budget
- Public Hearing – Council votes on School Ordinances
- Council schedules June 13th for a public hearing to vote on the FY'17 Municipal Budget

May 23, 2016

- Disbursement warrants

June 13, 2016

- Disbursement warrants
- Public Hearing – Council votes on the FY'17 Municipal Budget
- Public Hearing – Town Meeting

February , 2016

Kittery Town Council,

The clam flats in Spruce Creek have been closed for many years now but there is some light at the end of thee tunnel. The water quality in Spruce Creek has improved over the last several years. A dye study showing the water flow in the Piscataqua River conducted by the New Hampshire Department of Environmental Services Shellfish Program showed that effluent from the sewage treatment plant on Pierce Island can flow into Spruce Creek. As a result the Maine Department of Marine Resources has listed Spruce Creek as closed to shellfish harvesting but upgrades to the plant are underway which, when complete, makes it likely we can harvest again.

Although once a productive area, Brave Boat Harbor has insufficient resources to allow recreational clam digging.

In April, we will schedule a committee meeting with the Maine DMR. We will discuss the previous years' results of the water quality testing they have done in Spruce Creek as well as the potential for clam harvesting following the Portsmouth plant upgrades.

The Shellfish Committee will meet this Wednesday at 10:00 am in the Town Hall to discuss our 2016 budget and any other issues or concerns.

Respectfully,

Daniel L. Clapp
Chairman, Kittery Shellfish Conservation Committee.