

APPROVED MINUTES
Approved on May 11, 2009

KITTERY TOWN COUNCIL

April 27, 2009

Council Chamber

1. **CALL TO ORDER**

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

2. **INTRODUCTORY**

Chairperson Thomson read the Introductory.

3. **PLEDGE OF ALLEGIANCE**

The Chair led those present in the Pledge of Allegiance.

4. **ROLL CALL**

Answering the roll were Councilors Frank Dennett, George Dow, Ann Grinnell, Glenn Shwaery, Vice Chair Judith Spiller and Chairperson Jeffrey Thomson. Also present were Town Manager Jonathan Carter, Town Clerk Maryann Place, Jeffery Brake, Town Attorney Duncan McEachern, Parks Comm. Co-Chair Page Mead, KLT President Melissa Paley, Recorder Chris Kudym, members of the press and others.

Chairperson Thomson noted that Councilor Beers had a business commitment that evening.

5. **ACCEPTANCE OF MINUTES**

The Minutes of April 13, 2009 were accepted, as read.

6. **INTERVIEWS FOR THE ZONING BOARD OF APPEALS, PLANNING BOARD OR CABLE TELEVISION RATE REGULATION BOARD - None**

7. **PUBLIC HEARINGS**

a. (040209-1) *THE KITTERY TOWN COUNCIL MOVES TO HOLD A PUBLIC HEARING ON A RENEWAL APPLICATION FOR WLH MANAGEMENT CORP., 23 MENDUMS LANDING, BARRINGTON, NH, FOR A MALT, SPIRITUOUS AND VINOUS LIQUOR LICENSE FOR WARREN'S LOBSTER HOUSE, 11 WATER STREET.*

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

VICE CHAIR SPILLER MOVED TO APPROVE THE RENEWAL APPLICATION FOR WLH MANAGEMENT CORP., 23 MENDUMS LANDING, BARRINGTON, NH, FOR A MALT, SPIRITUOUS AND VINOUS LIQUOR LICENSE FOR WARREN'S LOBSTER HOUSE, 11 WATER STREET, SECONDED BY COUNCILOR GRINNELL.

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

b. (040209-2) *THE KITTERY TOWN COUNCIL MOVES TO HOLD A PUBLIC HEARING ON A RENEWAL APPLICATION FOR JOHN KENNETH REED, 139 CASS STREET,*

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PORTSMOUTH, NH, FOR A MALT, SPIRITUOUS AND VINOUS LIQUOR LICENSE FOR THE CORNER PUB, 4 WALLINGFORD SQUARE.

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

VICE CHAIR SPILLER MOVED TO APPROVE THE RENEWAL APPLICATION FOR JOHN KENNETH REED, 139 CASS STREET, PORTSMOUTH, NH, FOR A MALT, SPIRITUOUS AND VINOUS LIQUOR LICENSE FOR THE CORNER PUB, 4 WALLINGFORD SQUARE, SECONDED BY COUNCILOR SHWAERY.

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

c. (040209-3) *THE KITTERY TOWN COUNCIL MOVES TO HOLD A PUBLIC HEARING ON AN APPLICATION FOR JUSTIN HEBERT, 1171 SAGAMORE AVENUE, PORTSMOUTH, NH, FOR A VICTUALER'S LICENSE FOR HEBERT BROTHERS SEAFOOD, 2 BADGER ISLAND WEST.*

Chairperson Thomson indicated that notification of this Public Hearing had appeared in the local printed media on Friday, April 17, 2009 and opened the Public Hearing. Not receiving a response, the Chair closed the Public Hearing.

VICE CHAIR SPILLER MOVED TO APPROVE THE APPLICATION FOR JUSTIN HEBERT, 1171 SAGAMORE AVENUE, PORTSMOUTH, NH, FOR A VICTUALER'S LICENSE FOR HEBERT BROTHERS SEAFOOD, 2 BADGER ISLAND WEST, SECONDED BY COUNCILOR SHWAERY.

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

d. (040209-4) *THE KITTERY TOWN COUNCIL MOVES TO HOLD A PUBLIC HEARING ON AN APPLICATION FOR R.C.C.J., LLC, 175 HALEY ROAD, KITTERY, FOR A VICTUALER'S LICENSE FOR THE FIRE FLY DINER, 435 U.S. ROUTE 1.*

Chairperson Thomson indicated that notification of this Public Hearing had appeared in the local printed media on Friday, April 17, 2009 and opened the Public Hearing. Not receiving a response, the Chair closed the Public Hearing.

VICE CHAIR SPILLER MOVED TO APPROVE THE APPLICATION FOR R.C.C.J., LLC, 175 HALEY ROAD, KITTERY, FOR A VICTUALER'S LICENSE FOR THE FIRE FLY DINER, 435 U.S. ROUTE 1, SECONDED BY COUNCILOR GRINNELL.

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

8. DISCUSSION

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

Jeffery Brake came to the podium on behalf of the Recycling Committee to present the Town Manager with a check for \$265.

b. *CHAIRPERSON'S RESPONSE TO PUBLIC COMMENTS*

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Chairperson Thomson thanked Mr. Brake for all his efforts in that area.

9. UNFINISHED BUSINESS

Vice Chair Spiller wondered if the Cemetery Committee could give the Council a report about the status of the cemetery at We Care Cleaners. She noted that Gov. Wentworth's tomb was being split by a very large tree and that the area did not look good.

Town Manager Carter indicated that the Cemetery Committee was very concerned about that. The Committee, along with the Town Attorney and Town Planner were attempting to develop a strategy to get We Care Cleaners in compliance. The Cleaners' construction project was held up when an oil tank from the previous owner was discovered but some resolution to the contaminated site was expected to be close at hand.

Vice Chair Spiller asked if that would include removing the tree trunk and the Manager said he thought the tree was imbedded in the tomb so it was something the Cleaners would not be doing. He noted that the Cemetery Committee did have some funds so that was something they could consider but they certainly wouldn't want to damage the tomb by removing the tree trunk. The Manager added that Council would hear from the Committee after the completion of the We Care project.

Town Attorney McEachern came to the podium, stating that the site had bothered them for a long time. He and the Town Planner met with the owner of We Care about three or four weeks ago and they were now waiting for a landscaping plan from them. They anticipated that the Cemetery would be graded and they then would have some markers placed around the edges so people wouldn't drive up on it.

10. NEW BUSINESS

a. (040209-5) *THE KITTERY TOWN COUNCIL MOVES TO HEAR AN UPDATE FROM THE SAFFORD SCHOOL ADVISORY COMMITTEE ON THE OUTCOME OF THE APRIL 24, 2009 MEETING WITH THE FRIENDS OF FORT McCLARY.*

Councilor Grinnell reported that a meeting was held last Friday morning at Ft. McClary, which included the Town Manager, two people from the Safford School Advisory Group, two people from the Friends of Ft. McClary and four or five people from the State. It was a long meeting and the most important thing they learned was that all three groups needed to be in communication with each other. Councilor Grinnell said the State was adamant that the building not go on the inland side of the Park, the people from the Friends wanted it on the hill next to the Fort on the ocean side and the Safford School Advisory Group didn't think that was the best. The State offered up another one of their sites located in the John Paul Jones Park. The decision was made that the Safford Advisory Group would meet with the Town Manager this Wednesday at 10:30 to draw up a list of specifications they felt were needed and give it to the Friends. If the Friends were able to come up with the needed information, then the Advisory Group would come back and make a recommendation to the Council. Councilor Grinnell said that the Advisory Group really needed to see on paper what it would look like up there on the hill and she thought the Friends understood that. What it basically involved, she said, was money to do engineering. Councilor Grinnell said that was where it was left and they hoped they now could fish or cut bait.

Following more in depth discussion, Chairperson Thomson thanked Councilor Grinnell for the update and said they would await further information.

b. (040209-6) *THE KITTERY TOWN COUNCIL MOVES TO HEAR A REPORT FROM THE PARKS COMMITTEE ON THE SEAPOINT PARKING REGULATIONS AND SIGNAGE.*

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Parks Commission Co-Chair Page Mead came to the podium and reminded Council that last year the Parks Commission had recommended, and the Council had passed, an ordinance stating that from May 15th to September 30th parking at Seapoint Beach would be only for Kittery residents with a Kittery dump sticker affixed to their vehicle. Mr. Mead said the plan was to look at the results after a year and, unbelievably, over 500 parking tickets (at \$50 a piece) were written last summer even though there were signs all along where non-residents used to park and he was thinking of recommending that one more sign be put up in the middle parking area. He indicated that the Parks Commission, the Police Department and the Public Works Department all recommended that this ordinance continue as-is and said they were working on cleaning up some dated and redundant signs on the way to the beach, as well as in the parking lot.

Town Manager Carter added that there was a need to extend the signage further back from the upper lot, which was allowed by ordinance, because people were parking in front of residents' homes. Another idea brought forward by the Kittery Land Trust was to work in a co-operative manner toward putting in a kiosk displaying Seapoint Beach and what it was about. That idea was beginning to germinate and the Manager said they would like Council to indicate whether or not they would be willing to allow a kiosk down there.

Mr. Mead noted that the Open Space Committee and not the Town would pay for it. It would be about the size of a small blackboard with a roof over it where they could put various signage under a plexiglass sheet.

Councilor Grinnell added that after the clean-up work was done, some signs would be removed and any new signs put in would all be the same size, as well as the same color and type, so it would look neater.

Vice Chair Spiller made reference to dog waste containers that had been talked about and Mr. Mead explained that they were starting a new committee to deal with that. The Manager added that the Spruce Creek Association was working with the Parks and Conservation Commissions to beef up their Pooper Scooper Program at the Beach, Ft. Foster and Rogers Park.

Melissa Paley, President of the Kittery Land Trust, came forward and gave Councilors a montage they had put together to help them understand what was being proposed. The idea, she said, stemmed from a number of different observations, including the unappealing mish mash of signs, so she was pleased about the effort to reduce the amount of signage and make them more visually coherent. She indicated that there was a lot of interesting information about ecological functions happening at Seapoint and it was a beautiful walking area so a map and interpretive information could be included in the kiosk, as well as the rules and regulations of the Beach and headland. Ms. Paley noted that a dog bag dispenser could be located below the kiosk; information about the marine mammal hotline could be incorporated; special events like the lobster trap clean-up and other events at the Beach could be posted and the Land Trust would maintain it on a seasonal basis.

Mr. Mead added that the Parks Commission would recommend that the placement of the kiosk be behind the rocks for safety purposes.

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Chairperson Thomson thanked Mr. Mead and Ms. Paley and said, as always, they appreciated all their efforts in this area, noting that there had been a lot of great changes down there in the past couple of years.

c. (040209-7) *THE KITTERY TOWN COUNCIL MOVES TO SCHEDULE A DATE FOR A PUBLIC HEARING TO ACT ON A CITIZEN’S PETITION RECEIVED BY THE TOWN CLERK CONCERNING FRISBEE SCHOOL.*

Chairperson Thomson stated they were in receipt of a petition involving issues related to the proposed closing of Frisbee School in June of this year and which pointed toward two policies and four ordinances being approved and adopted but which had been received after the timeframe for inclusion on the June referendum vote. The Chair noted that the signatures contained on the petition had been validated by Town Clerk Place and that the Town Clerk had passed it onto the Town Attorney for his review and opinion.

Town Attorney McEachern came to the podium and stated his conclusion that the petition did not meet the conditions of the Town Charter. Atty. McEachern said the proposed questions were in an “either/or” format, which did not satisfy the Charter. He also noted there was no provision in the Charter that required Council to put a policy on a ballot and he didn’t believe they constituted ordinances. As a result, he concluded, although it reflected the will of the people and was a question for the Council to consider, his recommendation was that it not proceed to the ballot in such a form.

Chairperson Thomson wanted to make it clear to the public that this particular matter in no way affected the question that would be on the June 9th ballot regarding the rescission of the School Committee’s decision to close Frisbee School, which was a separate and distinct petition.

d. (040209-8) *THE KITTERY TOWN COUNCIL MOVES TO AUTHORIZE THE KITTERY/ELIOT VFW MEMORIAL POST 9394 OF THE VETERANS OF FOREIGN WARS TO HOLD THE MEMORIAL DAY PARADE AND CEREMONIES ON SATURDAY, MAY 23, 2009 BEGINNING AT 9:00 A.M.*

COUNCILOR GRINNELL MOVED TO AUTHORIZE THE KITTERY/ELIOT VFW MEMORIAL POST 9394 OF THE VETERANS OF FOREIGN WARS TO HOLD THE MEMORIAL DAY PARADE AND CEREMONIES ON SATURDAY, MAY 23, 2009 BEGINNING AT 9:00 A.M., SECONDED BY VICE CHAIR SPILLER.

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

e. (040209-9) *THE KITTERY TOWN COUNCIL MOVES TO APPROVE THE DISBURSEMENT WARRANTS.*

Chairperson Thomson listed the following warrant articles:

Warrant No. 17	School Nutrition Program	\$ 9,661.81
Warrant No. 51	Mitchell Renovation Account	\$ 4,479.68
Warrant No. 20	School Accounts Payable	\$ 167,505.36
Warrant No. 86	Town Accounts Payable	\$ 316,768.36

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COUNCILOR DOW 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.

f. (040209-10) *THE KITTERY TOWN COUNCIL MOVES TO ACCEPT THE REIMBURSEMENT FEMA ICE STORM FUNDS AND TO RE-APPROPRIATE THEM TO THE AFFECTED DEPARTMENT ACCOUNTS.*

COUNCILOR DENNETT MOVED TO ACCEPT THE REIMBURSEMENT FEMA ICE STORM FUNDS IN THE AMOUNT OF \$20,844.67 AND TO RE-APPROPRIATE THEM TO THE SEWER DEPARTMENT, AS FOLLOWS: ACCT. #5480 (CONTRACT SERVICES) - \$4,500; ACCT. #4010 (FULL-TIME SALARIES) - \$5,000; AND ACCT. #4019 (LABOR/PLANT MAINTENANCE) - \$11,344.67, SECONDED BY COUNCILOR DOW.

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

g. (040209-11) *THE KITTERY TOWN COUNCIL MOVES TO SCHEDULE A DATE FOR A PUBLIC HEARING ON AN AMENDMENT TO SECTION 16.12.070 TO REPEAL THE 2006 AMENDMENT TO VILLAGE RESIDENTIAL – VR ZONING DISTRICT.*

COUNCILOR DENNETT MOVED TO SCHEDULE MAY 11, 2009 FOR A PUBLIC HEARING ON AN AMENDMENT TO SECTION 16.12.070 TO REPEAL THE 2006 AMENDMENT TO VILLAGE RESIDENTIAL – VR ZONING DISTRICT, SECONDED BY COUNCILOR GRINNELL.

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

h. (040209-12) *THE KITTERY TOWN COUNCIL MOVES TO SIGN A PROCLAMATION DECLARING MAY 1ST AS “SILVER STAR BANNER DAY 2009.”*

VICE CHAIR SPILLER MOVED TO SIGN A PROCLAMATION DECLARING MAY 1ST AS “SILVER STAR BANNER DAY 2009,” SECONDED BY COUNCILOR GRINNELL.

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

i. (040209-13) *THE KITTERY TOWN COUNCIL MOVES TO APPOINT JOYCE TOBEY AS WARDEN AND SANDRA LUTTS AS DEPUTY WARDEN AND THE OPENING OF THE POLLS AT 8:00 A.M. AND CLOSING AT 8:00 P.M. FOR THE JUNE 9, 2009 SPECIAL MUNICIPAL ELECTION, AS RECOMMENDED BY THE TOWN CLERK.*

COUNCILOR DENNETT MOVED TO APPOINT JOYCE TOBEY AS WARDEN AND SANDRA LUTTS AS DEPUTY WARDEN AND THE OPENING OF THE POLLS AT 8:00 A.M. AND CLOSING AT 8:00 P.M. FOR THE JUNE 9, 2009 SPECIAL

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**MUNICIPAL ELECTION, AS RECOMMENDED BY THE TOWN CLERK,
SECONDED BY COUNCILOR DOW.**

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

j. (040209-14) *THE KITTERY TOWN COUNCIL MOVES TO SIGN THE MUNICIPAL WARRANTS FOR THE JUNE 9, 2009 SPECIAL MUNICIPAL ELECTION AND THE ANNUAL TOWN MEETING/SECRET BALLOT VOTE.*

**COUNCILOR DOW MOVED TO SIGN THE MUNICIPAL WARRANTS FOR THE
JUNE 9, 2009 SPECIAL MUNICIPAL ELECTION AND THE ANNUAL TOWN
MEETING/SECRET BALLOT VOTE, SECONDED BY VICE CHAIR SPILLER.**

Councilor Shwaery asked about the possibility of making some editorial changes and after some discussion, it was decided to leave the language as it was with the exception of capitalizing the word Council in the Warrant for Special Municipal Election sheet.

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

k. *OTHER*

11. COMMITTEE AND OTHER REPORTS

a. *COMMUNICATIONS FROM THE CHAIRPERSON*

Chairperson Thomson wanted to recognize the individuals involved in the John Paul Jones Park cleanup; some great work was done there and he certainly wanted to express the appreciation of the Council to those involved in that very civic-minded activity.

Secondly, the Chair requested input concerning setting up an Executive Session to discuss the Manager's annual evaluation and Monday, May 4th at 6:30 p.m. was decided upon.

b. *TOWN MANAGER'S REPORT*

The Town Manager reported that this afternoon they had attended a very big meeting at the Kittery Trading Post regarding the Bridges, which was now being replicated at the Portsmouth High School. Representatives of both States were in attendance and went through the scope of the study to be done and completed by June of next year. The Manager said there will be six public meetings with a very elaborate process for public participation during the time the work was taking place. There were probably 40 or 50 people in attendance and concerns were expressed that the study was too late in the process to resolve the need to re-hab or fix the two Bridges. The Manager said that two major groups had been formed, a Steering Committee and a committee made up of stakeholders that would feed comments back to the DOTs consultants' records on materials they produced on a regular basis. The Manager said he was serving on the Steering Committee and there was another spot for the Town of Kittery on the stakeholders' committee.

The Manager informed Council that there would be a rally tomorrow at Noon starting from Prescott Park going over to John Paul Jones Park. The rally had been put together by a developing group to save the Bridges and had two purposes: one was to carry forward the theme of having the Memorial Bridge named as the 11th most endangered piece of infrastructure by the National Trust and

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the other was to bring attention to the need and desire to save both the Memorial and Sarah Long Bridges.

The Manager then noted that the Recorder, Chris Kudym, would be leaving at the end of May so he and the Town Clerk would be advertising and looking for a replacement.

Councilor Dow added his thoughts concerning the meeting on the Bridges and encouraged the public to be a part of the process since the decisions made would have a huge impact on their communities.

The Town Manager stated he would be posting a calendar on the website outlining the schedule of the contractor working on the storm lines in the Village. Notices would also be given to Village homeowners at least on a 24-hour before-work basis.

The final item concerned a gift the Town received from representatives of their Japanese “sister city” who were in Kittery as part of the Japanese Student Exchange Program.

c. COMMITTEE REPORTS

12. ADJOURNMENT

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

MEETING ADJOURNED: 8:26 P.M.