

APPROVED MINUTES  
APPROVED ON JUNE 22, 2009

**KITTERY TOWN COUNCIL**

**June 8, 2009**

**Council Chamber**

1. CALL TO ORDER  
Chairperson Jeffrey Thomson called the meeting to order at 7:00 p.m.
2. INTRODUCTORY  
Chairperson Thomson read the Introductory.
3. PLEDGE OF ALLEGIANCE  
The Chair led those present in the Pledge of Allegiance.
4. ROLL CALL  
Answering the roll were Councilors Gary Beers, Frank Dennett, George Dow, Ann Grinnell, Glenn Shwaery, Vice Chair Judith Spiller and Chairperson Jeffrey Thomson. Also present were Town Manager Jonathan Carter, Town Clerk Maryann Place, Recorder Ashley Rodier, members of the press and others.
5. ACCEPTANCE OF MINUTES  
The Minutes of the May 18, 2009 Special Meeting were accepted, as amended. The Minutes of the May 27, 2009 Regular Meeting were accepted, as amended.
6. PUBLIC HEARING
  - a. (060109-1) *THE KITTERY TOWN COUNCIL MOVES TO HOLD A PUBLIC HEARING ON A RENEWAL APPLICATION FROM DIVINE CUISINES, LLC, 9 COOK STREET, KITTERY FOR A MALT AND VINOUS LIQUER LICENSE FOR TULSI, 2 GOVERNMENT STREET.*  
  
Chairperson Thomson then opened the Public Hearing. No response being heard, the Chair closed the Public Hearing.  
  
**COUNCILOR SPILLER MOVED THAT THE KITTERY TOWN COUNCIL APPROVE A RENEWAL APPLICATION FROM DIVINE CUISINES, LLC, 9 COOK STREET, KITTERY FOR A MALT AND VINOUS LIQUER LICENSE FOR TULSI, 2 GOVERNMENT STREET, SECONDED BY COUNCILOR SHWAERY**  
  
**A ROLL CALL VOTE WAS TAKEN, WITH ALL IN FAVOR. MOTION PASSES 7/0.**
7. DISCUSSION
  - a. *DISCUSSION BY MEMBERS OF THE PUBLIC (Three minutes per person)*

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There was none.

b. *CHAIRPERSON'S RESPONSE TO PUBLIC COMMENTS*

There was none.

8. UNFINISHED BUSINESS

There was none.

9. NEW BUSINESS

- a. (060109-2) *THE KITTERY TOWN COUNCIL MOVES TO APPROVE THE DISBURSEMENT WARRANTS.*

Chairperson Thomson referred Council to the warrant summary which included Warrant No. 20 for the School Nutrition Program in the amount of \$27,265.82, Warrant No. 23 for the School Accounts Payable in the amount of \$231,038.60 and Warrant No. 98 for Town Accounts Payable in the amount of \$350,413.11. Chairperson Thomson asked Councilor Beers if he had reviewed the Town Warrant. Councilor Beers indicated that he had and that they were correct. Chairperson Thomson then asked Vice Chair Spiller if the School Warrants were appropriate for signature which she answered in the affirmative.

**COUNCILOR DOW MOVED THAT THE DISBURSEMENT WARRANTS BE APPROVED, SECONDED BY COUNCILOR BEERS.**

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

- b. (060109-3) *THE KITTERY TOWN COUNCIL MOVES TO ACCEPT THE RESIGNATION OF BETSY BISCHOFF FROM THE CONSERVATION COMMISSION.*

**COUNCILOR GRINNELL MOVED TO ACCEPT THE RESIGNATION OF BETSY BISCHOFF FROM THE CONSERVATION COMMISSION, SECONDED BY COUNCILOR SPILLER.**

Chairperson Thomson asked the Town Manager to send the appropriate correspondence to Ms. Bischoff thanking her for her service.

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

- c. (060109-4) *THE KITTERY TOWN COUNCIL MOVES TO APPOINT A REPRESENTATIVE TO MEET WITH A MEMBER OF THE CONSERVATION COMMISSION TO INTERVIEW EARLDEAN WELLS FOR REAPPOINTMENT TO THAT BOARD UNTIL 5/31/12.*

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**COUNCILOR BEERS MOVED TO SUSPEND THE COUNCIL RULES IN ORDER TO REAPPOINT EARLDEAN WELLS TO ANOTHER TERM ON THE CONSERVATION COMMISSION, SECONDED BY COUNCILOR SHWAERY.**

Councilor Dennett inquired as to the reason that Councilor Beers made the motion to suspend the rules. Councilor Beers indicated that Ms. Wells is a long serving member and is currently Chairperson of the Board. He stated that she has been present at Council meetings and has made presentations regarding Conservation Commission matters. Councilor Beers continued that he had been present with other Councilors at various meetings in conjunction with Planning Board efforts and observed her demeanor and character and her attention to detail in regards to matters of the Conservation Commission and that he does not believe that anything of substance would come out of an additional interview. Councilor Dennett indicated that he was opposed to the motion. Councilor Dennett clarified that he did not object to the candidate but that he felt that everyone up for reappointment should be subject to the scrutiny of the most prying eyes and should receive an affirmation by all after a new inquiry. Chairperson Thomson indicated that it was his understanding of Councilor Beers's motion that if the vote was in the negative than Council would proceed in the usual process of interviewing the candidate. Chairperson Thomson stated that Ms. Wells had attended many meetings, made presentations, is most conscientious in this area and that he would have no problem in bypassing the interview process. Councilor Spiller noted that with the resignation of Betsy Bischoff, the Conservation Commission was down two members and felt that it was important to maintain the continuity that Ms. Wells' leadership provides. Councilor Dennett wanted to clarify that his only objection was the circumventing of the rules to proceed without the procedure that is in place.

**A ROLL CALL VOTE WAS TAKEN, WITH COUNCILOR DENNETT AND COUNCILOR DOW OPPOSED. MOTION PASSES 5/2.**

**COUNCILOR BEERS MOVED FOR REAPPOINT OF EARLDEAN WELLS TO THE CONSERVATION COMMISSION FOR A TERM EXPIRING 5/31/2012, SECONDED BY COUNCILOR GRINNELL.**

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

- d. (060109-5) *THE KITTERY TOWN COUNCIL MOVES TO CONSIDER PARTICIPATING IN THE CITY OF PORTSMOUTH COMPREHENSIVE RECREATION NEEDS STUDY FOR POSSIBLE SHARED SERVICES AND PROGRAMS.*

Chairperson Thomson indicated that Town Manager Carter had received a memo from Portsmouth City Manager John Bohenko regarding this proposal. Councilor Grinnell indicated that she would like to address this issue. She indicated that this idea

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came about from Heather Hurt, who contacted her over a year ago to discuss a community swimming pool. Councilor Grinnell indicated that Ms. Hurt has been working to get Portsmouth to build a swimming pool complex and that the City of Portsmouth has put aside \$65,000.00 for this feasibility study. Councilor Grinnell indicated that she and Town Manager Carter were going to meet with Ms. Hurt and City Manager Bohenko but thought that it should be brought to the Council's attention to ask Council if they would like to be involved in the feasibility study that is going to happen during the next six months. Councilor Grinnell indicated that she thought that if the Town of Kittery was involved in the feasibility study maybe Portsmouth would not need some of the Town's money and maybe that money could be used to build and use a community sporting complex. Councilor clarified that they were not committing any dollars and that they were just going to go to the public meeting on June 16, 2009 at Portsmouth High School. Councilor Grinnell indicated that she hoped that the Town would want to be involved in the feasibility study. Councilor Grinnell noted that she would report back to the Council after the June 16<sup>th</sup> meeting. Councilor Shwaery inquired whether other towns such as Rye or Newcastle were invited to participate in the study. Town Manager Carter replied that he was not aware that any other towns were involved. Town Manager Carter noted that Kittery residents are charged a different rate than Portsmouth residents for the use of any of the three pools in Portsmouth. Town Manager Carter noted that City Manager Bohenko had indicated that the swimming pools are expensive capital items to not only build but maintain and wanted to find out if there was a way that shared resources could be looked at. Town Manager Carter indicated that City Manager Bohenko would like a formal letter of participation from the Town. Town Manager Carter and Councilor Grinnell indicated that they would report back to the Council at the Town Council Meeting on June 22, 2009 as to what exactly this study will entail.

Chairperson Thomson took a consensus to allow the Town Manager and Councilor Grinnell to attend the meeting and report back to Council on June 22<sup>nd</sup>.

- e. (060109-6) *THE KITTERY TOWN COUNCIL MOVES TO AUTHORIZE, PER SECTION 3.04.100C OF THE KITTERY MUNICIPAL CODE, AN ALTERNATIVE DISPOSITION FOR THE WIND TURBINE EQUIPMENT AND TOWER THROUGH A REPURCHASE AGREEMENT WITH ENTEGRITY WIND SYSTEMS, INC. THE ORIGINAL TURBINE VENDOR, FOR THE FULL TOWN COST OUTLAY OF \$191,028.00.*

Chairperson Thomson recalled that at the Special Meeting of June 1, 2009, the Council voted to authorize the Town Manager to proceed with signing the repurchase agreement and to set up an escrow account to place the money that is going to be coming in monthly payments until the end of the year, with one balloon payment in December. He indicated that the Council also determined at the June 1<sup>st</sup> meeting that it would require a vote on the alternative disposition for method of procurement per the Town's ordinance.

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**COUNCILOR DENNETT MOVED TO AUTHORIZE, PER SECTION 3.04.100 C OF THE KITTELY MUNICIPAL CODE, AN ALTERNATIVE DISPOSITION FOR THE WIND TURBINE EQUIPMENT AND TOWER THROUGH A REPURCHASE AGREEMENT WITH ENTEGRITY WIND SYSTEMS, INC. THE ORIGINAL TURBINE VENDOR, FOR THE FULL TOWN COST OUTLAY OF \$191,028.00, SECONDED BY COUNCILOR BEERS.**

Chairperson Thomson asked Town Manager Carter if the Maine Public Utilities Commission was okay with waiting for reimbursement of the \$50,000.00 alternative energy grant it had given to the Town until the Town had received at least \$50,000.00 from Entegry Wind Systems. Town Manager Carter indicated that this was acceptable to the Maine PUC.

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

f. *OTHER*

Councilor Dow noted that Council had not been receiving copies of Planning Board Minutes, ZBA Minutes or any other Board Minutes. Town Clerk Place indicated that all of the Minutes were posted on the Town's website. Town Manager Carter asked if Council would like the Minutes included in the FYI Packet. Councilor Dow responded that he would appreciate having all Board Minutes included in the FYI packet once a month.

Councilor Dennett indicated that Council used to receive a list of all names, addresses, phone numbers and dates of office of all the various Boards in town. Councilor Dennett indicated that he would appreciate receiving a list of all the Board members on a quarterly basis.

Councilor Grinnell wanted to let the public and Council know that Former Councilor Steve Huntress was moved from Portsmouth Hospital to Spaulding Rehab in Boston. She wanted to report that Steve was recently able to walk without a walker and that he has some memory and other deficits but that he was getting better. Councilor Grinnell indicated that she believed that he was going to be able to come back to Kittery in a couple of weeks. She also wanted to remind everyone that there was a bank account set up for donations and that there were fundraisers being set up.

10. COMMITTEE AND OTHER REPORTS

a. *COMMUNICATIONS FROM THE CHAIRPERSON*

Chairperson Thomson wanted to tell the Council about the experience that took place during the Saturday, June 6, 2009 town meeting. He indicated that seven years ago the Town's charter was amended with changes that he felt were short-sighted and were

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done for reasons that at the time perhaps the people on the Charter Commission thought were appropriate and needed but were done out of frustration and anger regarding issues, including the construction of the Town Municipal Building. He clarified that he was not disputing the Charter Commission's frustration and anger. Chairperson Thomson continued that on Saturday morning during the Town Meeting that was required to conduct before the vote of June 9, 2009, only three members of the public attended the meeting. Chairperson Thomson stated that he was told by Town Manager Carter that the meeting cost the Town over \$4,600.00 to mail out the information to each registered voter as required by the Charter. Chairperson Thomson indicated that he was frustrated because he felt that the current Council and councils in the future were paying the price for an admitted bad decision that a group made at one time and did not feel that was reason enough to hold current and future municipal bodies hostage and to incur expenses for such mailings and public meetings when the interest on the part of the community was not there. Chairperson Thomson clarified that he thought that it was important to provide the public the opportunity to comment but that the public could do that at Council meetings. Chairperson Thomson explained that they were dealing with changes that were made perhaps not for the right reason and that he would be interested in seeing what could be done to change the rules. Councilor Dennett stated that the motion of the Charter that set the rules up would pave the way to eliminate it. He stated that there is a mechanism to rid Council of the Charter's changes if necessary. Councilor Dow indicated he was willing to sit down and take a look at this and figure out if it is still in the best interest for the community and if the Town is operating in the most efficient manner. Councilor Beers stated that Section 14.06 of the Charter addressed discontinuance of town meetings by petition stemming from signatures from ten percent of the most recent gubernatorial election, which would be about 500 signatures, similar to any other petitioning process. Councilor Beers continued that in order to do otherwise a Charter Commission would have to be established which would be allowed to examine and propose any changes to the Charter that they would deem appropriate. Chairperson Thomson indicated that he was pleased to hear about the possibility of the petition and the another piece that could possibly be looked at without the need of a Charter Commission would be if the \$50,000.00 limit per transfer per fiscal year could be amended so that the intent of the change back in 2002 is still in place but a figure is a little more financially relevant. Chairperson Thomson indicated that this was something that the Council might want to take a look at in the near future.

*b. TOWN MANAGER'S REPORT*

Concerning the FY-09 Budget update, Town Manager Carter said at this point where that the Town stands with the '09 budget, which ends in three weeks, was at 94%, operationally, 92.8% expended, and the collection of revenues was at 95.2%. He indicated that at this point the Town was shy 7.6% which equates in money to \$468,565.00. He continued that the Town had put \$552,633.90 aside deferred and that the Town should be able to squeak by if not too much happens in the next three weeks. Councilor Dow asked if the Town was not expected to collect the outstanding money. Town Manager Carter explained that the reason that the money was not being collected was because the market was down and investments were down, but that excise was

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moving upwards but that it was still off. Town Manager Carter wanted to recognize the Harbormaster for doing an excellent job and noted that collections were way up and that moorings were above expectations. He noted that the Town was going to go into the next three weeks watching what they were spending. Town Manger Carter indicated that 2011 could be an extremely difficult year if the vote in November goes the way that it could with the excise tax issues and other issues. He continued that the Governor's Office was forcing schools to delete the amount of what they are receiving in stimulus from the budget and it is a smoke and mirrors game which sets towns up for a deficit pattern in 2011. Specifically, he stated for Kittery it was an amount of \$106,000.00, much more for York and for schools that depend on subsidies it could be up to a million dollars. Councilor Beers noted that the whole state reduction of the stimulus money was a double wound because the amount of revenue sharing from the Department of Education is based on local dollars and excuses all federal contributions and thereafter the budget is based on a lower number than it normally would be.

Town Manager Carter said that the Town received a letter from the Friends of Fort McClary regarding the examination of moving the Safford School to Fort McClary which indicated that after careful consideration, timing and delays, they have withdrawn the proposal of moving the Safford School. Town Manager Carter noted that he communicated to the Advisory Committee that he would be reporting this to Council and to stand by and possibly meet one more time and make whatever recommendations back to Council for the next steps to be taken.

Town Manager Carter wanted to recognize that the next day was going to be a very long day for Town Clerk Place and her staff due to the Town Election. He wanted to thank Town Clerk Place for her hard work and also wanted to thank her staff and election workers.

Town Manager Carter lastly wanted to note that the State had passed a First Responder overall umbrella legislation so that the inter-municipal agreements that the towns have had for emergency response will not be needed in the State of Maine and that this will place most of the burden on the State. He indicated that the Town will continue its agreements with the State of New Hampshire.

12. ADJOURNMENT

**COUNCILOR BEERS MOVED TO ADJOURN, SECONDED BY  
COUNCILOR SHWAERY, WITH ALL IN FAVOR.**

**MEETING ADJOURNED: 7:58 P.M.**