

APPROVED MINUTES
APPROVED ON JULY 27, 2009

KITTERY TOWN COUNCIL

July 13, 2009

Council Chamber

1. CALL TO ORDER

Chairperson Jeffrey Thomson called the meeting to order at 6:00 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, Ann Grinnell, Glenn Shwaery, George Dow, Vice Chair Judith Spiller and Chairperson Jeffrey Thomson. Also present were Town Manager Jonathan Carter, Town Clerk Maryann Place, Recorder Ashley Rodier, Town Attorney Duncan McEachern members of the press and others.

5. EXECUTIVE SESSION

THE KITTERY TOWN COUNCIL MOVES TO HOLD AN EXECUTIVE SESSION WITH THE TOWN MANAGER, CHIEF OF POLICE AND THE TOWN ATTORNEY TO DISCUSS A PERSONNEL MATTER IN ACCORDANCE WITH 1 M.R.S. § 405(6)(A).

CHAIRPERSON THOMSON MOVED TO OPEN THE EXECUTIVE SESSION. COUNCILOR BEERS SECONDED FOR THE PURPOSE OF POSSIBLE OBJECTION TO CONSIDERATION OF THE REQUEST.

Councilor Beers queried the statutory basis for the session. Chairperson Thomson invited comment by Town Attorney McEachern who reviewed the criteria and suggested that this session would not be compliant with statute. Councilor Beers formally objected to consideration of the question,

A ROLL CALL VOTE WAS TAKEN, WITH ALL IN FAVOR OF THE OBJECTION. OBJECTION UPHeld 7/0.

6. ACCEPTANCE OF MINUTES

The Minutes of the June 22, 2009 were discussed and were not voted on pending further review of the tape.

7. PUBLIC HEARING

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- a. (070209-1) *THE KITTERY TOWN COUNCIL MOVES TO HOLD A PUBLIC HEARING AND HEREBY ORDAINS THE PROPOSED AMENDMENTS TO TITLE 16 OF THE LAND USE AND DEVELOPMENT CODE POST-CONSTRUCTION STORMWATER ORDINANCE, TO ADDRESS METHODS FOR COMPLIANCE TO THE FEDERAL CLEAN WATER ACT AND STATE LAW.*

The Chair noted that notification of this public hearing appeared in the local printed media on June 29, 2009 and July 3, 2009. The Chair then asked for a brief explanation of the purpose of this amendment.

Mark Bergeron of Sevee & Maher Engineers, Inc. indicated that his firm had been working with the Town for several years in assisting several ordinance changes that were necessary as part of the Post-Construction Stormwater Ordinance. He indicated that it went back to 2003 when the Town became subject to the requirements of the Phase II EPA guidelines. Mr. Bergeron continued that the guidelines are passed down from the United States Environmental Protection Agency (EPA) through the Maine Department of Environmental Protection and that the Maine DEP enforces the EPA regulations in the State of Maine which is why everything comes through the DEP. Mr. Bergeron explained that Kittery was designated as one of the 28 municipalities in Maine as an MS 4 (Municipal Separate Storm Sewer System). The DEP designated Kittery, Eliot, South Berwick and Berwick as the four towns in Southern Maine that are subject to the requirements. Mr. Bergeron continued that a few years ago the DEP hired an attorney to come up with a template ordinance for the towns to use to comply with the regulations and that it was then up to the town to take that sample and modify it as they see fit and then pass the ordinance changes. He explained that essentially the stormwater maintenance changes require any development or redevelopment of a project that creates more than one acre of disturbed land to be subject to the requirements, where the owner would need to maintain the stormwater systems, pipes, catch basins, detention ponds and those sorts of items so that they perform the way that they were designed and constructed. As part of that requirement, the owners would have to file an annual certification with the town and then the town would need to track to make sure that they are receiving those certifications annually and then report back to the DEP in September of every year so that the state can track the number of sites that have the requirement. Mr. Bergeron indicated that they had been working with the Town Planner, Sandra Mowery, and her staff over the past several months to take a look at the existing Kittery ordinance and had added and modified some of the sections so that it complied with the requirements that DEP had come up with.

Town Manager Carter indicated that the Planning Board had been working on this, with the input of the Conservation Commission, for 6 months and that it had been on the books to do for a few years.

The Chair then opened the Public Hearing. No response being heard, the Chair then closed the Public Hearing.

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COUNCILOR BEERS MOVED THAT THE TOWN OF KITTERY HEREBY ORDAINS AMENDMENTS TO KITTERY TITLE 16 OF THE LAND USE AND DEVELOPMENT CODE SECTION 16.08.020 DEFINITIONS, 16.12.140 BADGERS ISLAND URBAN ZONING DISTRICT, 16.16.040 ENFORCEMENT – GENERAL, 16.16.050 VIOLATIONS AND ENFORCEMENT, 16.20.020 BUILDING/REGULATED ACTIVITY PERMITS REQUIREMENTS, 16.28.390 WETLANDS BOUNDARIES, 16.28.450 REVIEW CRITERIA FOR APPROVAL OF WETLANDS ALTERATIONS, 16.28.470 PREVENTION OF EROSION, 16.32.390 STORM WATER DRAINAGE, 16.32.440 EARTH MATERIAL REMOVAL, 16.32.470 PREVENTION OF EROSION, 16.32.680 STANDARDS, 16.32.690 DEDICATION AND MAINTENANCE OF COMMON OPEN SPACE AND FACILITIES, 16.32.060 SUBMISSION CONTENTS, AND 16.32.730 MOBILE HOME PARKS AND TO FURTHER REPEAL 16.32.960 REGARDING NATURAL DRAINAGE EASEMENTS AND TO RENAME ARTICLE XIX AS RESERVED AND TO ADD NEWLY CREATED 16.32.395 POST CONSTRUCTION STORMWATER MANAGEMENT AS PRESENTED BY APPROVED KITTERY PLANNING BOARD VOTE, SECONDED BY VICE CHAIR SPILLER.

Councilor Beers indicated that there were some changes that needed to be made to the presented Planning Board recommendation and inquired if each change should be addressed individually. Councilor Dennett noted that some of the changes had already been made and that there were a few versions of the document out there. Councilor Dennett indicated that in the future all parties involved, including the public, needed to work off of one document and not have various versions out there. Councilor Dennett asked Mr. Bergeron if he would be willing to answer some problems that he had. Councilor Dennett indicated that there were various references in the document that referred to development and redevelopment and that development is defined but redevelopment is not defined. Councilor Dennett noted that he was of the opinion that redevelopment should be defined. Mr. Bergeron indicated that the ordinance created a lot of definitions for a lot of the terms and that during the Planning Board review process, the Planning Board felt that less new definitions were better. He further explained that it was generally agreed that redevelopment would be defined as developing a parcel that already has something on it, whether it be a structure or parking lot, and was something that was not creating any additional disturbed area. Mr. Bergeron stated that this ordinance would not generally apply in terms of agricultural uses but that the owner or applicant would have to have check with the Planning Board to see if it triggered Planning Board review. Councilor Dennett noted that in the code of Federal Regulations, it states that a municipality has the opportunity, if they wish, to only make this apply to urbanized areas and asked if the Planning Board had considered making this apply to only the urbanized areas and not to the town as a whole. Mr. Bergeron stated that it was up to the municipality but that some of the issues that arise when only making it applicable to the urbanized areas are that the town would need to update its zoning map to show what areas would be included or excluded. Councilor

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Dennett asked if the town could use the urbanized map developed by the last census. Mr. Bergeron indicated that he did not know if that map would be sufficient or if it would need to be updated and also noted that another issue would be that the areas would change every 10 years when a new census comes out. Russell White of the Planning Board indicated that a lot of the development was taking place in areas with wetlands, adjacent to the creek and other areas where the ordinance would be pertinent and that restricting it to just urbanized areas did not seem appropriate to the Planning Board. Councilor Beers indicated that he shared Councilor Dennett's view on the urbanized area issue and that there was a conflict on potential mapping that needs to be addressed. He apologized for not having brought the statute with him, but that Maine specifically exempts agricultural activity from the requirements of this federal requirement. Councilor Beers read Section 16.32.395 (D)(2) and asked if Mr. Bergeron could explain the intent of that paragraph noting that BMP (Best Management Practice) was defined differently than in that section. Mr. Bergeron responded that the intent was from the DEP's attorney and that it was limited to the BMPs that were actual structures and things that discharge to the Town's MS4. Councilor Beers noted that he did not see a structure being a BMP and therefore there was a logical language disconnect between the requirement of notification of discharging BMPs and what constitutes a BMP. Councilor Beers suggested that some language would be needed on what is being discharged that needs to be notified about. Mr. Bergeron agreed with Councilor Beers and noted that in the industry BMP is used as an overall term and is not a fixed set of schedules or structures because they move over time and as technology improves BMPs change so they try to leave the definition open to try to include that sort of flexibility. Councilor Beers clarified that his question was what would be discharged that needed to be notified about and suggested that Mr. Bergeron was talking about pollutants coming from previous structures, human waste, chemicals in sewer systems and that was what should be notified about. Councilor Beers then asked if the primary purpose of post-construction stormwater management was to prevent discharge of pollutants into sensitive areas. Mr. Bergeron indicated that it basically was, but not necessarily to prevent, but to make sure that the stormwater measures and practices were in place. Mr. Bergeron indicated that part of Planning Board approval for a site plan or subdivision was how the stormwater is being handled and how were peak flows being managed and those sorts of things and that DEP is taking that step now and deciding who will monitor the project and that was the intent of this project. Mr. White suggested that Section 16.32.395 be edited to add the words "areas subject to" before the acronym BMP, as well as on the next page, and noted that this should address Councilor Beers's concerns. Councilor Beers indicated that his primary concern was not the requirement but that the ordinance was very complex and that it was going to be read by lay people and wanted to make sure that people will understand what they were supposed to be doing and wanted to be clear on the requirements and interpretations of the requirements. Chairperson Thomson asked if there was any way that Council was going to be able to reconcile the documents in front of Council that evening to be able to vote on something. The Chair noted that the hearing had been held and that he did not believe that Council was substantially changing the ordinance but just making clarifications. The Chair asked if that could be handled by the planning office, the Planning Board, Councilor Dennett and Councilor Beers so that at the next meeting

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there could be one document that was very clear and consistent. The Chair indicated that he was getting the feeling that Council was not going to be able to do that tonight and that the deadline for the revised ordinance was July 30th so that there would be one more Council meeting before that deadline and asked if that would be a better way to move forward. Councilor Shwaery agreed in part but indicated that he had a couple of concerns that were going to need to be addressed. Councilor Shwaery continued that in Section 16.28.390, the term “disturbed” had been removed and the term “impacted” had been added in regards to wetlands and that both terms were used in that section and asked if that was what they had meant to delineate there. Mr. Bergeron indicated that the reason that they had changed disturbed areas to impacted areas was to not confuse it with disturbed areas associated with stormwater ordinance. Councilor Shwaery noted that disturbed did not refer to the definition but where disturbance was mentioned, it was relating to the definition and asked if it was actually talking about tearing up soils. Mr. Bergeron indicated that was correct and they were talking about filling in wetlands, cutting down trees and that sort of activity. Councilor Shwaery indicated that his other concern was in Section 16.16.050 regarding violations. Councilor Shwaery noted that the Section indicates a \$2500.00 maximum fee per violation and asked what would be done if the violation persists and is not remediated. Ms. Mowery indicated that she would have to pull the complete violation and enforcement ordinances and that those would elaborate more. Councilor Dow indicated that over the past year subcommittees had been developed to work with various boards to be able to break down into some of the decisions that come before them and alleviate some of the constant discussions that go back and forth. He continued that there was no question that the Planning Board had spent a lot of time trying to bring forth a document but that trying to get it passed within the course of a night seemed like a daunting task. Councilor Dow suggested he thought that the Chair’s idea to move this forward and get it to where it needed to be to be able to vote on was a great thought. Councilor Dow indicated that to read the document and actually truly understand the impact that it has on the community was extremely difficult and that there were certain people who did understand it and whom he looked to on his vote and who could bring forward certain issues to Council that should be looked at. Councilor Beers indicated that another issue was that the current building permit threshold is \$1000.00 and has been that way since 1991 and it was his sense that it should be \$2000.00 because it is unlikely to change for another 10 years. Councilor Beers noted that if he could have a sense of Council on the question he would be happy to move referral to the committee. Town Manager Carter indicated that was a table that Council could change at any time. Councilor Beers indicated that it was not and that it was Title 16.20.028 (e)(1) and that the basic threshold was established as part of the title’s section. Town Manager Carter indicated that it is an appendix that Council can change and that this is an opportunity to change it in the ordinance. Ms. Mowery indicated that issue was discussed at length but that they decided to do nothing because they knew that Council would address it. Councilor Dennett indicated that tables could be changed at any time and that there must be an ordinance change to increase this threshold from \$1000.00 to \$2000.00 and asked if it would need to be addressed in another public hearing. Councilor Dennett continued that he did not think so because the recommendation of the Planning Board was to go ahead with this and it said “for recommendation to be made by Councilor Beers but not

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made at this point” which he believed notified the public that something was going to be recommended and that he believed that this had been the public hearing. Councilor Beers indicated that he concurred. Councilor Shwaery wanted to get one more clarification that might require re-write relative to Section 16.32.390 and that it was unclear and asked Mr. Bergeron if that was the way that it was supposed to be written. Mr. Bergeron indicated that it was correct and the intent was to look at certain discreet storms as engineers and what year storm you are designing to which will give you specific rainfalls to design the structures for. Councilor Beers indicated for clarification to let the language in the ordinance drive the table and not the other way around. Councilor Grinnell indicated that she would support Councilor Beers’s suggestion.

COUNCILOR BEERS MOVED THAT THE TOWN OF KITTERY POSTPONE ACTION ON THE PROPOSED AMENDMENT TO TITLE 16 UNTIL THE NEXT REGULAR MEETING SCHEDULED FOR JULY 27, 2009 AND THAT THE MATTER BE REFERRED TO COMMITTEE, SECONDED BY COUNCILOR GRINNELL.

Councilor Beers indicated that this worked for him as long as the Planning Board and Town Planner had availability over the next two weeks. Councilor Dennett indicated that the date worked for him as well. Chairperson Thomson clarified that the purpose of Councilor Beers’s motion was so that the clarifications and changes recommended this evening would be blended to come back to Council in one version, with a cover report of explanation, so that everyone is on the same page and can act on this and make sure that it is being done the correct way. Councilor Grinnell indicated that there was still the issue that Councilor Dennett did not want to have this effect the whole town and only effect specific areas and that she felt that issue should be addressed tonight. Councilor Dennett noted that if it was going to be referred to committee, it could only be asked for a consensus tonight and there could not be any vote. Councilor Grinnell indicated that in her opinion it was a substantive change. Councilor Beers stated that it was his preference to allow the question to go to committee because there was a discrepancy between the map published by the Maine Department of Environmental Protection and the map published by the EPA on what constituted urban areas in the 2000 census and as it was only discovered recently there should be additional time to examine the legitimacy of which maps are what and an opportunity to offer recommendation by committee would be appropriate.

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

b. (070209-2) *THE KITTERY TOWN COUNCIL MOVES TO HOLD A PUBLIC HEARING ON A RENEWAL APPLICATION FROM DANIEL RAYNARD, 10 BEECHSTONE, APT. 5, PORTSMOUTH, NH FOR A MALT AND VINOUS LIQUOR LICENSE FOR TASTY THAI, 182 STATE ROAD.*

The Chair opened the public hearing and no response being heard the Chair closed the public hearing.

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COUNCILOR SPILLER MOVED THAT THE KITTERY TOWN COUNCIL APPROVE A RENEWAL APPLICATION FROM DANIEL RAYNARD, 10 BEECHSTONE, APT. 5, PORTSMOUTH, NH, FOR A MALT AND VINOUS LIQUOR LICENSE FOR TASTY THAI, 182 STATE ROAD, SECONDED BY COUNCILOR SHWAERY

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

8. DISCUSSION

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

There was none.

b. *CHAIRPERSON'S RESPONSE TO PUBLIC COMMENTS*

There was none.

9. UNFINISHED BUSINESS

Chairperson Thomson indicated that he completed the interview of Kelly Weeks Wilsey for the Conservation Commission and that would be on the agenda for the meeting of July 27th for her appointment. The Chair then noted that his other issue was regarding the 80 feet at the end of State Road and specifically the sidewalk leading to no where. He wanted to know what the rationale was behind having the sidewalk coming down the hill and ending a good 100 feet before the end of the new curbing and the new construction on State Road and why was it not even. Town Manager Carter indicated that he could get that answer but that DOT had not been the easiest agency to work with on this project. Town Manager Carter indicated that the contractors had done a great job but that it was his opinion that they had just ran out of money, that it was the tail end of the project and it ended where they thought that it should have and that 85 feet was what they determined to be the lead in to the rotary. Chairperson Thomson indicated that the new curbing and the new paving continued but the sidewalk did not. Town Manager Carter indicated that he would get an official answer. Chairperson Thomson noted that he would like an answer because if they had run out of money then the sidewalk should have continued on but that they just did not have the money to do that. Town Manager Carter indicated that at some point whether it would use town money or future tax money the original project vision would be completed down to an area around Dairy Queen. Town Manager Carter indicated that Shaw Brothers was out of the project at this point and they were now waiting for the asphalt people to come back. Chairperson Thomson indicated that from talking to residents it was a project that was done very well by Shaw Brothers. Councilor Dow wanted to clarify for the public that Shaw Brothers had fulfilled their contract and that the DOT did not run out of money because Shaw Brothers overspent. Town Manager Carter indicated that if someone looks at the maps of the original project they can see that the sidewalk does end short of the rotary and that it was

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a matter of going back to DOT and asking if its design matched what was constructed and why does the sidewalk end where it does. Chairperson Thomson asked the Manager to send a letter to Shaw Brothers expressing the Town's appreciation.

10. NEW BUSINESS

- a. (070109-3) *THE KITTERY TOWN COUNCIL MOVES TO APPROVE THE DISBURSEMENT WARRANTS.*

Chairperson Thomson referred Council to the warrant summary which included Warrant No. 22 for the School Nutrition Program in the amount of \$32,834.33, Warrant No. 25 for School Accounts Payable in the amount of \$108,755.01, Warrant No. 1 for the School Accounts Payable in the amount of \$320,004.67, and Warrant No. T10-02 for Town Accounts Payable in the amount of \$1,076,353.03.

COUNCILOR GRINNELL MOVED THAT THE DISBURSEMENT WARRANTS BE APPROVED, SECONDED BY VICE CHAIR SPILLER.

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

- b. (070109-4) *THE KITTERY TOWN COUNCIL MOVES TO DISCUSS THE LEGAL OPINION FROM THE TOWN ATTORNEY REGARDING TOWN MEETING AND THE POSSIBILITY OF PLACING THOSE ITEMS ON THE NOVEMBER BALLOT.*

Chairperson Thomson indicated that this was a request made by Council to have the Manager get some information after the town meeting in June, the vote on the following Tuesday, the cost of mailing the ballot questions out to every registered voter and that only a couple members of the community came out to the town meeting and what could possibly be done to save some money. Chairperson Thomson noted additionally the \$50,000.00 threshold set for Council to act on regarding the unappropriated surplus and wanted to know if there was a way that could be looked at in a more meaningful level. The Chair indicated that the only reason that he brought this up was the unencumbered surplus was there for a variety of reasons, the biggest being an emergency fund, and that if you look at in terms of a savings account, Council is only authorized to deal with an expenditure that is one quarter of one percent of the combined town and school budgets. Chairperson Thomson indicated that the other issue was that due to a charter change back in 2002 a large responsibility had been placed on the town staff and that in this technologically advanced society this was money that did not need to be spent. The Chair referred Council to the letter from Attorney McEachern which addressed those issues and the ways that they could be addressed which would not require a charter commission and what could be done by Council to perhaps place some of these issues in front of the public during the November vote. Attorney McEachern indicated that he was asked essentially if Council could take any action in regards to those items. He continued that basically the Charter, through the amendment in 2002,

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provided a method for the town to amend the town meeting provisions of the charter and that was not contained in the town's charter. Attorney McEachern stated that was not the only method for amending the charter and that the state statute provided a method for amending a town charter depending on if whether the amendment is a revision or an amendment. Attorney McEachern indicated that it was his view that Council, under the state statute, has authority to initiate charter amendments through a vote of the Council and that it would then take a process provided by statute where they would have a public hearing and ultimately the issue would be put in front of the voters in a municipal election and that it would be up to the voters whether to amend the charter. Attorney McEachern concluded that on all three questions asked by Council, that Council could initiate the questions, go through the statutory process and that the matter would then wind up on the ballot for the residents to decide if the charter should be amended. Councilor Dow indicated that he thought that Attorney McEachern brought up a great process and that the charter should be considered a living document and as the community changes there should be a way to modify the document without having to create committees and give a way to the residents to be able to make those changes. Councilor Dow continued that to be able to propose an amendment, have a public hearing and get it on the ballot as opposed to doing special elections, would allow the charter to become more up to date with the times. Chairperson Thomson indicated that he understood the rationale that the folks in 2002 employed and that they were upset over a large sum of money that had been spent but to saddle Council ten years later because of that decision was unreasonable. The Chair continued that people had to have a certain amount of trust in their public officials and that there are a variety of ways that residents are informed of public business. Chairperson Thomson continued that the town changed from a selectman/town meeting form of government to a manager/council form of government in 1966 for valid reasons and that some of the decisions made in 2002 reverted it back to those earlier days. The Chair then indicated that he would personally like to see some questions prepared for the vote in November. Councilor Spiller noted that she was interested in moving ahead with these items and particularly would be interested in hearing what the public would say at a public hearing. Councilor Beers indicated that he would also be interested in moving it forward but that time was of the essence as it was his understanding that November warrant articles would have to be completed sometime in August. Town Clerk Place indicated that it would be sometime in mid-September. The Chair clarified that Council would have to have something prepared for a public hearing for the first meeting in September. Town Manager Carter asked if Council would like each item addressed as a separate question, which was answered in the affirmative. The Chair indicated that it was a consensus to have something prepared in the next few weeks to look at in an upcoming meeting. Town Manager Carter indicated that they would pose the questions and then Council could word them more completely at that time.

c. (070109-5) *THE KITTERY TOWN COUNCIL MOVES TO DISCUSS AND APPOINT MEMBERS TO THE FRISBEE REVITALIZATION COMMITTEE.*

The Chair indicated that there were seven individuals of the public who would like to be involved in the process. He continued that Council had held off forming this

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committee until it was definite, by Town vote, that the Frisbee School would be closed on June 30th and once that was confirmed the School Committee felt that it would be appropriate for Council to move forward. Chairperson Thomson indicated that the School Committee had not taken any formal action on turning the building over and that they were still in the process of moving out. The Chair noted that during a meeting back in the winter it was decided that the committee would be in existence until 2011. The Chair indicated that he could not come up with any criteria to exclude any of the seven applicants. Vice Chair Spiller noted that there had been some concerns regarding Mr. Evancic due to his role on the Planning Board which could possibly create some challenges for him. Councilor Grinnell noted that in the minutes of 2/23/09 when the motion was made and passed it stated that there were going to be 4 citizens on the committee and was not sure if they could take all seven. Councilor Beers indicated that it would be in good order if a motion to change the composition was part of the nomination approval. Councilor Beers suggested the same consideration for Mr. Evancic and noted that if there were three councilors that you would need an even number of citizens to end up with an odd number on the committee. Councilor Beers indicated that he would be willing to support the composition of six public members and three councilors for a total of nine. Councilor Shwaery indicated that his only problem with steering away from the four members is that if people are going to be nominated to this committee they need to know that they need to show up for every meeting and limiting the committee to four members puts the responsibility on the members to show up and do their homework. Councilor Shwaery indicated that they should go down the list and each councilor will have four votes and therefore can vote for four citizens and whoever gets the most votes will be on the committee.

COUNCILOR SHWAERY MOVED THAT THE KITTEERY TOWN COUNCIL APPOINT DEB PIRINI BOYLE TO THE FRISBEE REVITALIZATION COMMITTEE, SECONDED BY COUNCILOR SPILLER.

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

COUNCILOR SPILLER MOVED THAT THE KITTEERY TOWN COUNCIL APPOINT MATT BROCK TO THE FRISBEE REVITALIZATION COMMITTEE, SECONDED BY COUNCILOR GRINNELL.

A ROLL CALL VOTE WAS TAKEN, WITH COUNCILOR BEERS OPPOSED. MOTION PASSES 6/1.

COUNCILOR BEERS MOVED THAT THE KITTEERY TOWN COUNCIL APPOINT CHRIS PERKINS TO THE FRISBEE REVITALIZATION COMMITTEE, SECONDED BY COUNCILOR SHWAERY.

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

COUNCILOR GRINNELL MOVED THAT THE KITTERY TOWN COUNCIL APPOINT ADLAI SUDBOROUGH TO THE FRISBEE REVITALIZATION COMMITTEE, SECONDED BY COUNCILOR DOW.

A ROLL CALL VOTE WAS TAKEN, WITH COUNCILOR SHWAERY, COUNCILOR BEERS AND CHAIRPERSON THOMSON OPPOSED. MOTION PASSES 4/3.

COUNCILOR SHWAERY MOVED THAT THE KITTERY TOWN COUNCIL APPOINT DEANE RYKERSON TO THE FRISBEE REVITALIZATION COMMITTEE, SECONDED BY CHAIRPERSON THOMSON.

A ROLL CALL VOTE WAS TAKEN, WITH COUNCILOR SHWAERY, COUNCILOR SPILLER AND COUNCILOR GRINNELL OPPOSED AND WITH COUNCILOR DOW AND COUNCILOR DENNETT ABSTAINED. MOTION DOES NOT CARRY 2/3/2.

COUNCILOR SHWAERY MOVED THAT THE KITTERY TOWN COUNCIL APPOINT ALAN MCDONALD TO THE FRISBEE REVITALIZATION COMMITTEE, SECONDED BY VICE CHAIR SPILLER.

A ROLL CALL VOTE WAS TAKEN, WITH COUNCILOR BEERS, COUNCILOR SPILLER AND COUNCILOR GRINNELL OPPOSED AND WITH COUNCILOR DOW, COUNCILOR DENNETT AND CHAIRPERSON THOMSON ABSTAINED. MOTION DOES NOT CARRY 1/3/3.

Chairperson Thomson indicated that there was a consensus that due to the potential for conflict regarding Ernie Evancic and his role on the Planning Board, he would not be appointed to the committee.

Chairperson Thomson indicated that Deb Pirini Boyle, Matt Brock, Chris Perkins and Adlai Sudborough were appointed to the Frisbee Revitalization Committee and that three councilors were needed for the committee. Vice Chair Spiller indicated that she would be interested in serving on the committee.

COUNCILOR GRINNELL MOVED THAT THE KITTERY TOWN COUNCIL APPOINT VICE CHAIR SPILLER TO THE FRISBEE REVITALIZATION COMMITTEE, SECONDED BY CHAIRPERSON THOMSON.

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

COUNCILOR BEERS MOVED THAT THE KITTELY TOWN COUNCIL APPOINT CHAIRPERSON THOMSON TO THE FRISBEE REVITALIZATION COMMITTEE, SECONDED BY CHAIRPERSON SHWAERY.

A ROLL CALL VOTE WAS TAKEN, WITH COUNCILOR GRINNELL OPPOSED. MOTION PASSES 6/1.

VICE CHAIR SPILLER MOVED THAT THE KITTELY TOWN COUNCIL APPOINT COUNCILOR GRINNELL TO THE FRISBEE REVITALIZATION COMMITTEE, SECONDED BY COUNCILOR DOW.

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

Chairperson Thomson indicated that the first order of business for the committee would be to appoint a chairperson and asked Town Manager Carter to get some available dates to start that process. Councilor Dow indicated that it was his understanding that these meetings would be public and wanted to know if there would be an announcement as to when these meetings would take place, which was answered in the affirmative.

- d. (070109-6) *THE KITTELY TOWN COUNCIL MOVES TO APPROVE A RESOLUTION ENTITLED, "RESOLUTION TO AUTHORIZE LEASE PURCHASE AGREEMENT FOR FOUR (4) DIFFERENT EQUIPMENT ACQUISITIONS WITH AN AGGREGATE COST OF UP TO \$84,433.00", AND BE ADOPTED AS WRITTEN IN FORM PRESENTED TO THIS MEETING AND INCLUDED IN THE MINUTES OF THIS MEETING.*

The Chair indicated that this came to Council from the CIP Committee for FY '10 budgeting and the method was described and approved by Council a few weeks ago. Town Manager Carter indicated that the Town had been working with its bond counsel and the bank that was supplying the lease purchase document. Town Manager Carter noted that this was a municipal lease purchase and not a loan but an instrument where if Council failed to appropriate funds for this purpose in the future there would be no penalty but that the assets would go back to the bank. Town Manager Carter continued that because it was a municipal lease purchase it fits within the Town's charter and there are four items that were budgeted for and were passed in the FY '10 budget in the CIP budget that calls for municipal lease purchase for those assets over a five year period. He indicated that the Town was working with its bank, Ocean Bank, and they had established the rate of 4.25% fixed for those five years. The first payment was budgeted in FY '10 and that payment would cover the cost of the four items. Town Manager Carter explained that those four items were codification of town codes and document automation for \$29,000.00, replacement of the Shapleigh School telephone system for

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\$30,433.00, the Harbormaster's boat replacement for \$20,000.00 and a camera security system at Pepperrell Cove for \$5,000.00 which would make a total of \$84,433.00. Councilor Shwaery asked if the intention was to do this every year for the CIP projects because in five years the Town would be paying five times this amount. Councilor Beers indicated that in the CIP this was a sort of threshold and that there would be outstanding loan obligations of about \$85,000.00 annually and would pay off about one fifth each year and then it would give the Town that much to consider in a rolling cycle. Councilor Beers clarified that it was not another \$85,000.00 each year and that it would be one five year obligation of around a little over \$16,000.00 each year. He continued that it would be the same level of appropriation for these kinds of purposes on a year to year basis. Town Manager Carter indicated that there may be another municipal lease purchase depending on what kind of items there were and that there may not be any. Councilor Shwaery noted that it might give the Town the opportunity to look at whether the Town's unencumbered surplus is making the Town 4.25% . Councilor Beers indicated that if the Town was funding depreciation properly, there would be an annual amount that would be reserved and set aside and at the end of the expiration the Town would take money out and replace it on a continuing basis. Councilor Beers further noted that this was a similar type of concept except that it is through a lease purchase arrangement so what the Town is really doing is funding \$16,000.00 worth of capital improvement reserve each year but using it actively to get the items now instead of setting aside the money for five years. Councilor Dennett indicated that the Manager has to sign a document saying that the payment for the first year has been appropriated and that Exhibit B in the package showed that the first year payment would be \$18,686.24 but that only \$15,317.00 had been appropriated in the budget. Town Manager Carter indicated that some of the items still had to get priced out.

COUNCILOR BEERS MOVED THAT THE KITTELY TOWN COUNCIL APPROVE A RESOLUTION ENTITLED "RESOLUTION TO AUTHORIZE LEASE PURCHASE AGREEMENT FOR FOUR (4) DIFFERENT EQUIPMENT ACQUISITIONS WITH AN AGGREGATE COST OF UP TO \$84,433.00", AND BE ADOPTED AS WRITTEN IN FORM PRESENTED TO THIS MEETING AND INCLUDED IN THE MINUTES OF THIS MEETING, SECONDED BY COUNCILOR SPILLER.

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

- e. (070109-7) *THE KITTELY TOWN COUNCIL MOVES TO APPOINT MARYANN PLACE AS ACTING TOWN MANAGER FROM JULY 20TH TO JULY 24TH DURING THE MANAGER'S ABSENCE.*

COUNCILOR GRINNELL MOVED THAT THE KITTELY TOWN COUNCIL APPOINT MARYANN PLACE AS ACTING TOWN MANAGER FROM JULY 20TH – JULY 24TH DURING THE MANAGER'S ABSENCE, SECONDED BY COUNCILOR SPILLER.

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A consensus was taken with all in favor.

- f. (070109-8) *THE KITTELY TOWN COUNCIL MOVES TO RE-APPOINT JOSEPH W. AFLENKO AS AN ALTERNATE MEMBER OF THE BOARD OF ASSESSMENT REVIEW UNTIL 4/24/12.*

The Chair indicated that the interview process had been completed by Councilor Dennett and was now in front of Council for appointment. Councilor Dennett indicated that the interview had been conducted and was successful.

COUNCILOR DENNETT MOVED THAT THE KITTELY TOWN COUNCIL RE-APPOINT JOSEPH W. AFLENKO AS AN ALTERNATIVE MEMBER OF THE BOARD OF ASSESSMENT REVIEW UNTIL 4/24/12, SECONDED BY COUNCILOR SHWAERY.

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

- g. (070109-9) *THE KITTELY TOWN COUNCIL MOVES TO SCHEDULE A DATE FOR A PUBLIC HEARING TO AMEND SECTION 10.12.010 – GENERAL PARKING REGULATIONS OF THE MUNICIPAL CODE TO PROHIBIT PARKING ON RANGER DRIVE.*

The Chair indicated that there was some background indication that this was becoming an issue at the new Irving station and that it was proposed that an amendment to the parking code take place to ban parking in that area. The Chair added that this will become more important in the coming months as from October of 2009 to October of 2010 the overpass going over Dennett Road is going to be closed totally for construction for one year and that this will become a route used by residents at that time. The Chair noted that a request had been made to schedule the public hearing for July 27th.

COUNCILOR DENNETT MOVED THAT THE KITTELY TOWN COUNCIL SCHEDULE A PUBLIC HEARING ON JULY 27, 2009 TO AMEND SECTION 10.12.010 – GENERAL PARKING REGULATIONS OF THE MUNICIPAL CODE TO PROHIBIT PARKING ON RANGER DRIVE, SECONDED BY COUNCILOR SHWAERY.

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

- h. (070109-10) *THE KITTELY TOWN COUNCIL MOVES TO APPROVE AND AUTHORIZE THE TOWN MANAGER TO EXECUTE A RESOLUTION AUTHORIZING THE SALE OF BONDS IN THE ORIGINAL PRINCIPAL*

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*AMOUNT OF UP TO \$3,400,000.00 TO THE UNITED STATES
DEPARTMENT OF AGRICULTURE RURAL DEVELOPMENT (USDA)*

The Chair indicated that this was an issue dealing with the sewer department. Town Manager Carter stated that the Town was preparing to file documents to close the loan on the \$3,400,000.00 USDA loan. He continued that it had been over a two year period and that the Town had been doing a lot of upgrading to the sewer treatment plant and sewer lines and rehabilitating sewer lines and that it was coming to a close. Town Manager Carter noted that the Town planned to initiate the actual closure of the documents in mid September. The Manager continued that there had been some concerns as the Town was working with the USDA but that it was at a point where the Town needed to assure that there was a Plan B in place in case the Town can not satisfy everything that the USDA needs and that the Town would have the authority to move quickly and create permanent financing through a separate bond sale. Town Manager Carter indicated that the Town would move its business from the USDA to another public sale. Town Manager indicated that this was a bond that the Town pays back 100% over 30 years at 4.25% interest rate. He stated that as he and bond counsel, Attorney William Stockmeyer began to see some difficulties which the USDA, which as of this date was beginning to see it the Town's way, and that there was a laundry list that the Town needed to complete and turn in within a couple of weeks and that the Town was basically trying to safeguard itself and that this was the way that Attorney Stockmeyer was proposing. Councilor Dow asked if there had been any research done on other banks or other avenues. Town Manager Carter indicated that they would go back to the open bond market and complete a prospectus and get rated again.

COUNCILOR DOW MOVED THAT THE KITTELY TOWN COUNCIL APPROVE AND AUTHORIZE THE TOWN MANAGER TO EXECUTE A RESOLUTION AUTHORIZING THE SALE OF BONDS IN THE ORIGINAL PRINCIPAL AMOUNT OF UP TO \$3,400,000.00 TO THE UNITED STATES DEPARTMENT OF AGRICULTURE RURAL DEVELOPMENT (USDA) AS PRESENTED, SECONDED BY COUNCILOR GRINNELL.

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

- i. (070109-11) THE KITTELY TOWN COUNCIL MOVES TO APPOINT A COUNCIL MEMBER TO SERVE ON THE MITCHELL/SHAPLEIGH BUILDING COMMITTEE.*

The Chair indicated that the School Committee would officially appoint the nine member committee at the July 21st meeting and that Council had been provided by with a charge of the committee.

COUNCILOR SPILLER MOVED THAT THE KITTELY TOWN COUNCIL APPOINT COUNCILOR DOW TO SERVE ON THE

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**MITCHELL/SHAPLEIGH BUILDING COMMITTEE, SECONDED BY
COUNCILOR GRINNELL.**

Councilor Dow indicated that he welcomed the nomination and would be happy to serve on the committee. Councilor Beers noted that where the School Committee establishes a sub-committee, appointing a councilor considering the charter, which was not a non-voting position, could conceivably place a councilor and a school committee member in an awkward position acting as a voting member of a voting committee and could subsequently discharge their duties as a school committee member or councilor. Councilor Dow indicated that Councilor Beers brought up a great point and that this grouping had come out of discussions with Shared Services and looked to add a school board member and perhaps a councilor as part of the Shared Services. Councilor Dow continued as it was unknown what voting right and voice the councilor will have on this group and not knowing what the intention is, Council could agree to a person, noting that he would welcome the nomination, but that his concern was that possibly some more information was needed before Council formally voted someone into the committee. Councilor Dow noted that he was hoping to ensure what was promoted to the Town takes place and that was why he would say yes to being on the committee and does not want to be there just to be a body. Councilor Dow noted that the School Committee was looking to vote on this issue on July 21st and he did not want to hold that up and wanted to see the committee put together as a lot of work had been done. Chairperson Thomson noted that they should look back at past projects, such as Mitchell and Shapleigh, and that there were representatives on those building committees from the School Committee and Council back in the early 1990s. The Chair noted that on all occasions the representative from the School Committee and from Council had an equal voice and vote on decisions being made and was really a resource voice for Council and envisioned the case would be the same now. Councilor Dow indicated that he would like to get an idea from the rest of Council as to what they would expect or what they would like to request. Councilor Grinnell indicated that she liked when Shared Services was meeting and thought that it was one of the top groups formed in the Town in a long time. She further noted that she would like to see Councilor Dow push this project along and come to Council every meeting and keep Council informed of what was going on and possibly ask Council questions about how they felt things were going or how things should move forward. Councilor Grinnell noted that she thought that Councilor Dow would be an asset to the committee and would keep things moving along and that there was a plan in place that should be moved forward.

**A ROLL CALL VOTE WAS TAKEN, WITH COUNCILOR BEERS
OPPOSED. MOTION PASSES 6/1.**

j. *OTHER*

Councilor Dow noted that all boards in the town had waiting lists to get on them and that when a spot opened on a board, the first person on the waiting list was asked to join. Councilor Dow noted if the first person on the waiting list declined at that time for

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whatever reason, the second person on the list was asked. Councilor Dow indicated that it was his understanding that the person that was asked first stays on the waiting list and that person does not go to the end of the list or drop off it. Councilor Dow noted that his concern was that if the first person asked declines that person then stays on the top of the list and then would be asked again first the next time that a spot was open. Town Clerk Place stated that had been the policy for a long time and that people stayed in the pool unless they asked to be removed. Councilor Grinnell indicated that she thought that if someone declined that they should move to the bottom of the list. Councilor Dow asked if it was a rule change that needed to take place or if it was just a policy that was outdated. Town Clerk Place noted that the policy was on a “first in, first out” basis. Councilor Dennett indicated that he thought that there was good reason for doing it this way in that if someone declined because of some sort of a family emergency outside their immediate control he did not think that they should be dumped off the list or put to the bottom. The Chair noted that this issue could be tagged for discussion at a workshop in the fall to discuss clarifying the language in the matter.

Councilor Shwaery wanted to note that the sign proliferation in town was out of control in his opinion, that people were nailing business signs to telephone poles, that some landscaping businesses were keeping signs in all summer long and that he thought that they should revisit whoever is in charge removing those signs. The Chair noted in a related matter the new seafood restaurant on Badgers Island had sandwich signs on the sidewalk for the first few days that they were open but that the signs had been moved onto their property and thought that maybe they had been notified to move their signs. Councilor Grinnell indicated that she and Councilor Spiller were on Badgers Island having dinner and they walked over to where the tomb was that the development infringed upon several years ago, went up to the top of the embankment and that in the embankment there was a huge sign for a lawnmoving company right in front of the cemetery. Councilor Grinnell noted that the sign needed to go and that it was very disrespectful to the cemetery. Councilor Grinnell asked that the Town Manager get rid of the sign.

11. COMMITTEE AND OTHER REPORTS

a. *COMMUNICATIONS FROM THE CHAIRPERSON*

The Chair read a letter from the Chair of the Trustees of the Rice Public Library thanking the Council for passing their budget and asking the Chair to convey their appreciation to the Council for Council’s continued support.

b. *TOWN MANAGER’S REPORT*

Town Manager Carter noted that in regards to the bridge report, the Sarah Long Bridge and Memorial Bridge had different weight postings now and through the connectivity study that the Maine DOT and New Hampshire DOT were conducting, the preliminary reports were coming back and the data was being fed through an

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analysis process. Town Manager Carter continued that the structural issues that had been raised and are fixable but on the Memorial Bridge, they have decided to be conservative and lower the weight limit on the bridge from 20 tons to 10 tons which will prohibit firetrucks from going over the Memorial Bridge. Town Manager Carter noted that the Sarah Long Bridge now posted a weight limit of 20 tons and had been the way for a couple weeks and would be that way in the foreseeable future and that the weight limit clearly eliminates some of the tractor trailers and trucks that would otherwise be using that bridge. Town Manager Carter noted that they were seeing through the connectivity study information coming about that makes decision makers think twice about the safety of the bridges and that there were questions on whether some of the things on the bridge could be fixed to bring the weight limit back up without fixing the entire bridge.

Town Manager Carter indicated that the connectivity study was moving fast in a process and had established a steering committee and a stakeholders committee. He continued that those subcommittees had held meetings preliminarily and that there were another set of meetings to take place and that all of the minutes and agendas are on the Town's website as a link on the front page. Town Manager Carter noted that the Save Our Bridges website link is posted on the front page of the Town's website as well and urged residents to keep abreast of what was going on with the study, what people had for vision for the connectivity of the bridges and the planning process. Town Manager Carter stated that there would be an extreme amount of data compiled that would be useful no matter what happened and that they were talking about a study that would end in June 2010 and an action plan that would probably take 24-36 months to launch and get moving. Town Manager Carter continued that the Save Our Bridges group and State Delegation had traveled to Augusta last Tuesday to attend a meeting of the State Transportation Committee of the Legislature and in that meeting they heard recommendations for applications to be submitted to the United States Department of Transportation under the Tiger stimulus grant program. Town Manager Carter noted that one of the recommendations was to join with New Hampshire to fix both bridges in one application and the other applications that Maine would rank high were a rail installation to Eastport, a bypass in Presque Isle and some work on the piers in Portland. He continued that those recommendations would go to the Governor who would decide if the State would go for all of the recommendations or select just one or two to focus on. Town Manager Carter indicated that he had spoken with Bob Landry at the NH DOT and that they were still waiting for Governor Baldacci's decision and that NH DOT had put a grant writing team together and that the next phase in the grant writing would be to write support letters and bring a whole lot of positive advocacy to the federal delegation to move support of the application process. Town Manager Carter noted that the other bridge information was relative to the utility meeting on the proposed replacement of the Dennett Road overpass. He noted that at that meeting it was clearly stated that the bridge would be closed for the duration of the construction which could be up to a year and that there were all sorts of issues coming about because that was an avenue that the Navy Yard uses to access the bridge and has been come in integral connector in the community. Town Manager Carter stated that the Town will need to think through how it is going to do a detour, which he noted will

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most likely go up Ranger Drive, and it will be something that the residents and visitors of Kittery will need to pay attention to.

Town Manager Carter indicated that there was a summer intern who was working on a signage ordinance review and that this person was working to look at the violations out there and how much of a violation problem there is from the ordinance standpoint and what are things that need to be done, whether it would be amending the ordinance or moving towards tighter enforcement and how to do that.

Town Manager Carter noted that the Town was beginning to see some business growth. He indicated that there was one company in the medical field that had expanded over the course of a year into a much greater facility than they had been in before and had added additional employees. He stated that there was another company, which was a high tech company, that had moved into the old Cooper Funeral Home on Rogers Road.

Town Manager Carter asked Council for a workshop on SOR rate increases and noted that the Town has been in touch with the Navy Yard and working with the Town of Eliot and were moving on all three customer levels to try to increase the revenue in the SOR area to meet the upcoming obligations on capital costs. Town Manager Carter noted that they had not seen rate increases since 1993, which he noted was probably a mistake, and that the Town should be trying to level out the increases to meet the expected deficits and capital costs in the future. He asked that Council begin the process with an introductory workshop on August 10th at 6:00 P.M. or if Council would like a more elaborate workshop they could do it on an off Monday. Council noted that they would be happy to conduct the workshop on August 10th.

Town Manager Carter wanted to make Council aware that the Town had been talking to the Naval Housing contractor and that it had been five years since their lease and that they would like to renew their contract. He continued that they were beginning to receive those materials in order to do so. Town Manager Carter indicated that he would be working with the town attorney and the company's attorney to bring a negotiated contract to Council to be reviewed. Town Manager Carter noted that the company pays a payment in lieu of taxes that amounts to just over \$2,000.00 per unit or \$265,000.00 for the whole year.

c. *COMMITTEE REPORTS*

12. ADJOURNMENT

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

MEETING ADJOURNED: 9:38 P.M