

APPROVED MINUTES
APPROVED ON AUGUST 10, 2009

KITTERY TOWN COUNCIL

July 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

Chairperson 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 and Chairperson Jeffrey Thomson. Also present were Town Manager Jonathan Carter, Town Clerk Maryann Place, Police Chief Edward Strong, Mark Bergeron of Sevee & Mahar Engineers, Inc., Recorder Ashley Rodier, members of the press and others.

5. ACCEPTANCE OF MINUTES

The Minutes of the June 22, 2009 Town Council Meeting were accepted, as amended. The Minutes of July 13, 2009 Town Council Meeting were accepted, as amended.

6. PUBLIC HEARING

a. (070209-1) THE KITTERY TOWN COUNCIL MOVES TO HOLD A PUBLIC HEARING AND HEREBY ORDAINS AN AMENDMENT TO THE KITTERY MUNICIPAL CODE, CHAPTER 10.12.010 GENERAL PARKING REGULATIONS TO PROHIBIT PARKING ON RANGER DRIVE.

The Chair noted that notification of this public hearing appeared in the local printed media on July 17, 2009. The Chair asked Chief Strong if he wished to address this issue before opening the public hearing. Chief Strong noted that this was driven by the response the he has gotten from the highway department and from his staff. He indicated that what was happening was that since the Irving station opened, a lot of truckers were choosing to come down out of the Irving station lot and park on Ranger Drive instead of in the back parking area. He continued that they had just re-paved Ranger Drive and re-did the shoulders and that they were afraid that the trucks were going to damage the edge of the roadway and that the trucks were also blocking the road. Chief Strong noted that it was just laziness and that the truckers did not want to drive out to the back lot and that this would only affect Ranger Drive from the Gorges Road intersection to the cul-de-sac.

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

COUNCILOR BEERS MOVED THAT THE KITTELY TOWN COUNCIL HEREBY ORDAIN AN AMENDMENT TO THE KITTELY MUNICIPAL CODE, CHAPTER 10.12.010 GENERAL PARKING REGULATIONS TO PROHIBIT PARKING ON RANGER DRIVE, AS PRESENTED, SECONDED BY COUNCILOR DOW.

Councilor Shwaery asked Chief Strong if they knew for a fact that the parking lot at the Irving station never got full and asked if they knew why the trucks were parking on Ranger Drive and if they were avoiding a fee of some sort. The Chief noted that since this issue was brought to his attention, he has been monitoring the parking lot and noted that he has never seen the parking lot at full capacity. He continued that the upper parking lot was a huge lot and did not think that they would ever see it at full capacity. He noted that there was no specific reason why the truckers were parking there and that there was ample room in the parking lot. The Chair asked if where the trucks were parking on Ranger Drive was closer to the service station. The Chief noted that it was closer to the station.

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

The Chair noted that this amendment would take effect in 30 days.

b. (070109-2) THE KITTELY TOWN COUNCIL MOVES TO HOLD A PUBLIC HEARING IN ACCORDANCE WITH SEC. 6.09 (4) OF THE KITTELY TOWN CHARTER TO TRANSFER APPROPRIATIONS BETWEEN ACCOUNTS AND CARRY FORWARD REQUESTS.

Chairperson Thomson noted that Town Manager Carter had prepared a memo regarding this and that this was an annual event that took place at the end of the fiscal year to move monies between accounts and to carry forward some accounts where work was started but has not been completed. The Chair wanted to make it clear that this was not additional appropriations and that this was simply a bookkeeping matter and was something that had to happen through public hearing and action by Council. The Chair asked Town Manager Carter if he wished to address this issue before he opened the public hearing. Town Manager Carter noted that Council was asked to take two actions after the public hearing. The first was to make the internal transfers to allow for all accounts to remain in or end up in the black. Town Manager Carter noted that it was a very difficult year and that they deferred funds to even out the revenues but that they had ended the year with about \$171,000.00 after adjusting for revenues and that number might go down a little bit based on the last warrant. The Manager commented that he thought that they did well in doing that and that there were three accounts that appear in ending the red, those being Elections, General Assistance and Other Insurances. Town Manager Carter noted the memo showed where the funds would come from for those

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accounts to even out. Town Manager Carter continued that in regards to the carry forwards, there was an annual list that the auditors require Council to vote on before moving forward. He noted that most of what is seen on the list were items that were projects that have not been completed or purchases that were meant to be purchased in FY '09 that are being carried over and some that will end up being reserve accounts so that they do not continually end up on this list every year.

The Chair noted that notification of this public hearing appeared in the local printed media on July 17, 2009. The Chair then opened the Public Hearing. No response being heard, the Chair then closed the Public Hearing.

CHAIRPERSON THOMSON MOVED THAT THE TRANSFERS FOR ELECTIONS ACCOUNT, GENERAL ASSISTANCE ACCOUNT AND OTHER INSURANCES ACCOUNT IN THE AMOUNT OF \$19,136.00 IN ACCORDANCE WITH SECTION 6.09(4) OF THE KITTERY TOWN COUNCIL BE APPROVED, SECONDED BY COUNCILOR GRINNELL.

Councilor Shwaery asked if the General Assistance account was unlimited. Town Manager Carter responded that by law they are required to spend it and that was why they asked the voters to do the special allocation. He continued that this year because they ended with enough funds in the general operating account he decided not to take from that reserve and transfer within. Councilor Grinnell noted that on the first page of the memorandum provided by the Town Manager, under Part 1, she would like the third column to read "Accounts to Transfer from to Cover Overdraft".

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

CHAIRPERSON THOMSON MOVED THAT THE VARIOUS ACCOUNTS LISTED IN THE MANAGER'S MEMORANDUM DATED JULY 22, 2009, CARRY FORWARD IN THE AMOUNT OF \$1,103,428.00 TO FISCAL YEAR 10 BE APPROVED, SECONDED BY COUNCILOR GRINNELL.

Councilor Dennett indicated that the note listed next to Account 8534 regarding the Traip Academy roof was not clear to him. The Town Manager noted that was a note that probably should not have been on the memo but it was monies to verify and make sure that all of the Traip roof repairs have been made. He continued that he had not been able to catch up with the facility manager to verify that all repairs have been completed. Councilor Dow noted that in regards to Account 8527 regarding the traffic light at MacKenzie Lane, he thought that they had kicked that back out and put that money elsewhere. Town Manager Carter indicated that Council needed to tell him the process as the voters had voted on that and he did not think that Council could just dismiss it. Councilor Dow noted that in regards to Account 8528 regarding the traffic light at Stevenson Road, Martin Road and Route 236 that Council had voted down the first part that was needed in order to do this part. Town Manager Carter indicated that Council

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needed to tell him if they had the authority to get rid of an account and if they did, then he would get rid of the account. Town Manager Carter noted that the reason that it had not been used was because DOT had declined the Town's request for a traffic light. He continued that they came back to Council for an amended warrant article to go to the voters to modify the Stevenson Road/Martin Road intersection with updated controllers and upgrades that were more than the \$10,000.00 for the voters to vote on. Town Manager Carter noted that Council rejected that and they were back trying to figure out what to do. Councilor Shwaery noted relative to Account 8527 regarding the traffic light at MacKenzie Lane, it was his recollection that the State had said that there were not enough left hand turns there to meet their threshold and that it was unlikely that the traffic would increase or that the State would change the law. Town Manager Carter noted that the problem was that there were a lot of close mishaps or actual accidents there and that the Town had not given up. Town Manager Carter noted that if Council voted to say that the project was dead and returned the money, and if in two months DOT approves the project, that they could not just go back and get the money. Town Manager Carter noted that if there continues to be a lot of accidents in that area, the DOT would take that into consideration. Councilor Shwaery noted that he did not want to see \$100,000.00 sit there for years and years when it could potentially be used for other projects. Councilor Shwaery noted that in June when they did the next warrant articles they should look at it again and see where they were with the project. Town Manager Carter indicated that the Planning Board may cause the intersection to be upgraded relative to the findings of the traffic studies.

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

c. (070209-3) THE KITTEERY TOWN COUNCIL MOVES TO HOLD A PUBLIC HEARING ON THE APPLICATION OF CIRCA 1828, LLC, 88 PEPPERRELL ROAD, KITTEERY POINT, MAINE FOR A VICTUALERS LICENSE FOR FRISBEES 1828 MARKET, 88 PEPPERRELL ROAD.

The Chair noted that notification of this public hearing appeared in the local printed media on July 17, 2009. The Chair then opened the Public Hearing. No response being heard, the Chair then closed the Public Hearing.

COUNCILOR DOW MOVED THAT THE KITTEERY TOWN COUNCIL APPROVE THE APPLICATION OF CIRCA 1828, LLC, 88 PEPPERRELL ROAD, KITTEERY POINT, MAINE FOR A VICTUALERS LICENSE FOR FRISBEES 1828 MARKET, 88 PEPPERRELL ROAD, SECONDED BY COUNCILOR SHWAERY.

Councilor Grinnell noted that on the application the applicant's name, the signature of the applicant and the handwritten applicant's name were different and thought that they should be the same. Councilor Dennett indicated that the applications were very difficult and that they should be re-worked for simplicity. He continued that when a corporation was signing the application it should state the corporation's name and

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the authority of the person signing the application. Councilor Grinnell asked that the Town Clerk take a look at the application and see if it could be reworked to be clearer.

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

7. 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.

8. UNFINISHED BUSINESS

a. (070209-1) THE KITTERY TOWN COUNCIL MOVES TO ORDAIN 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 action on these amendments was postponed during the meeting of July 13, 2009 so that further clarification could be sought. Councilor Beers noted that Councilor Dennett had discovered two discrepancies in the document and wanted to note those items first. Councilor Beers noted that on Page 7 on the second line, the letter s was missing from the word plan. Councilor Dennett indicated that on Appendix H, Note 1, the amount should be changed from \$2,000.00 to \$10,000.00. Councilor Dennett noted that also on Appendix H, Note 1, if this passes, the first \$10,000.00 of the project would be free except for the \$25.00 application fee. Councilor Dennett noted that after the first \$10,000.00 the cost would be prorated to the even \$100.00 and wanted to know if it would be rounded to the higher \$100.00 or lower \$100.00. Town Manager Carter indicated if it was \$49.00 it would go back to the lower \$100.00 and \$50 and higher would round to the higher \$100.00. Councilor Beers noted that the Town Planner had inserted Section c(3) on Page 7 but that in review of the Maine statute there were six exemptions. Councilor Beers noted that it would be his intention to change C(3) to incorporate all of the exemptions listed in the state statute.

COUNCILOR BEERS MOVED TO AMEND THE MAIN MOTION TO INCORPORATE REVISIONS TO 16.32.395, C TO REMOVE C(3) AND ADD TO THE END OF C(2) THE LANGUAGE "THIS SECTION DOES NOT APPLY TO EXEMPTIONS INCLUDED IN 38 M.R.S. §420-D.7", SECONDED BY COUNCILOR SHWAERY.

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Councilor Dow inquired as to the exemptions and wanted to know how it was going to be determined as to what the primary use was. Councilor Beers answered that there was a fairly complex formula relating to timber harvesting and forest management that was contained in the body of the ordinance and that there were state statutes that will put all timber harvesting activity under state management when the 252 of the 332 communities with sufficient forests are validated by the Commissioner to be compliant. He continued that what this did was kick it into their management threshold of activity and that the state would then make those determinations. Councilor Grinnell wanted to know what the Planning Board thought of this change and Councilor Beers noted that the committee was in concurrence. Councilor Dennett wanted to note that these exemptions would take single family residences out of the scope of this ordinance.

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

The Chair indicated that they were now looking at the main motion which was to adopt the amendments to Title 16, Land Use and Development Code, Post-Construction Stormwater Ordinance with the amendment agreed to on that evening.

Councilor Dennett indicated that he had one final amendment to make and noted that these changes to the Stormwater Ordinance were brought up by the Federal Government and that the State of Maine has been designated to oversee this and that the Town was one of the unfortunate 28 communities in the State that was stuck with this. He continued that the Federal statute requires that this ordinance only applies to urbanized areas of the town and it was up to Council to decide if it applies to the whole town. Councilor Dennett noted that he thought that it was their duty to go with what the Federal Government dictated. Councilor Dennett then read the applicable federal statute.

COUNCILOR DENNETT MOVED THAT SECTION 16.32.395, C(1) BE AMENDED TO READ “IN GENERAL. THIS SECTION APPLIES WITHIN URBANIZED AREAS OF THE TOWN AS DETERMINED BY THE LATEST DECENNIAL CENSUS BY THE BUREAU OF CENSUS, TO ALL”, SECONDED BY COUNCILOR BEERS.

Councilor Grinnell asked to see the latest census so that she could see where this would apply. Councilor Dennett then indicated which sections of Town this would apply to. Councilor Grinnell noted that her concern was that Spruce Creek was the watershed for more than 50% of the Town and because that area was not marked as urbanized it would not be applicable. Councilor Grinnell then indicated that all of the malls north of the Trading Post would not be included. Councilor Beers noted that there was a large body of regulatory requirements related to wetland preservation, stormwater management, development and redevelopment criteria and that this ordinance only related to post-construction stormwater management which the federal and state governments have determined is most relevant in urbanized areas. He continued that it was not of much benefit to address those issues in the rural, residential or non-urbanized areas and that was why he supported the motion. Councilor Beers noted that post-

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construction meant it was only for new development after its construction and that it was not applicable in any way to anything that currently exists and it was not retroactive. He continued that it would only apply to a new development that meets the review criteria and the thresholds for the various requirements for development, proximity to wetlands and stormwater runoff management. Councilor Beers indicated that there was some contention in the review committee as to which map is the correct map. Councilor Beers noted that, if accepted, the decennial map by the US Bureau of Census would be the definitive map for application of the criteria and that would satisfy the code of federal regulation and the state statute and go to the extent most appropriate to protect the runoff pollutants post-construction in the urbanized areas. Councilor Grinnell asked how the committee felt about this amendment. Councilor Beers indicated that Mr. Bergeron and the Town Planner did not concur and that they would prefer a greater requirement than they were obligated to satisfy. Councilor Beers noted that his opinion was that full compliance with the code of regulations and state statutes was appropriate and necessary and that going beyond that to areas not envisioned in those regulatory requirements was not appropriate. The Chair asked Mr. Bergeron if he had anything that he wanted to add. Mr. Bergeron stated that the DEP tries to separate construction activities from post-construction activities and there were a certain number of things in terms of erosion and stormwater control that needed to be done while a project was being constructed and then after a project is constructed there is other long term maintenance that has to be done. He continued that in terms of the thresholds for when a project applies and when it does not would go back to existing state statutes from 2006 and 1997 when the stormwater ordinances and regulations were first passed statewide. Mr. Bergeron indicated that when the new census comes out the urbanized area might get bigger. Councilor Shwaery indicated that he thought the Town had moved significantly in the last few years in protecting wetlands and vernal pools both in terms of its ordinances and enforcement. Councilor Shwaery noted that his issue was that the reviews of what was considered the urbanized area were ten years apart and that people could build in a rural area which could then trigger the area to become urbanized and that those people would not be bound by this ordinance. Councilor Beers noted that he had reviewed the Shoreland Zoning Ordinance draft that he thought had been approved by the Planning Board that defines and delineates significant amounts of space contiguous to water bodies and wetlands with additional degrees of protection beyond anything that is currently in place and beyond anything that would be required with post-construction stormwater management requirements.

A ROLL CALL VOTE WAS TAKEN, WITH COUNCILOR GRINNELL AND CHAIRPERSON THOMSON OPPOSED. MOTION PASSES 4/2.

Councilor Beers noted that the document in front of Council had other changes from the original Planning Board approved document, all of which had been agreed to as non-substantive, and for legislative assurance he wanted to amend the main motion.

**COUNCILOR BEERS MOVED THAT THE TOWN OF KITTEERY
HEREBY ORDAINS AMENDMENTS TO TITLE 16 OF THE LAND USE
AND DEVELOPMENT CODE SECTIONS AS MADE AND SECONDED**

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AT THE KITTEERY COUNCIL REGULAR MEETING ON JULY 13, 2009 TO INCORPORATE THE REVISIONS MADE BY THE COUNCIL'S REVIEW COMMITTEE THIS DATE, SECONDED BY COUNCILOR SHWAERY.

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

Councilor Shwaery inquired relative to Page 9, Paragraph F, regarding enforcement and asked if it was going to require training of the code enforcement office. Town Manager Carter indicated that they would do most of the training through the consulting firm. Councilor Dow indicated that he had a question relative to Appendix H, Note 1 and asked what the code enforcement officer would be using to determine the value. Town Manager Carter indicated that they use the estimates that come in from the contractor. Councilor Shwaery asked if there was any concern over the threshold from \$5000.00 to \$10,000.00 for collecting fees. Town Manager Carter indicated that there was and that they were going to lose some money. He continued that the reason for doing this was that it was probably meant to be required for replacement of items such as roofs and decks that from his point of view had grown in value and \$5,000.00 would no longer cover it. Town Manager Carter indicated that people will still be required to get a building permit but it would cost them less to do so.

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

b. other

Councilor Grinnell indicated that she would like the Manager to remove some of the signs on the front door of the Municipal Building that had been up for some time. Town Manager Carter indicated that the Town was still in a pilot program and in October when the pilot is over and if Council accepts the recommendation to make it permanent, then the signs will come down and much more attractive and permanent signs will go up.

Councilor Shwaery noted that at the meeting of July 13, 2009, the sign proliferation in Town was brought up. Councilor Shwaery indicated that he had passed out some pictures from around town and that it was getting carnival-like. He noted that some of the signs were illegal such as yard sale signs posted high on telephone poles. He noted that some landscaping companies were keeping signs up all summer and while it may be legal, he did not think that it was in the Town's best interest. He indicated that he knew that the Manager had an intern working on this issue and he hoped that there was a chance to revisit the ordinance. The Chair indicated that he concurred with Councilor Shwaery and that he thought that some of the signs were inappropriate.

9. NEW BUSINESS

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a. (070209-4) THE KITTELY TOWN COUNCIL MOVES TO AMEND APPENDIX H OF THE MUNICIPAL CODE BUILDING/REGULATED ACTIVITY PERMIT FEES.

The Chair noted that this issue was relating to what was just discussed relative to the Land Use Development Code, and this would be adopting Appendix H which deals with the changes to the permit fee structure, which was noted by Councilor Dennett previously.

COUNCILOR BEERS MOVED THAT THE KITTELY TOWN COUNCIL AMEND APPENDIX H OF THE MUNICIPAL CODE BUILDING/REGULATED ACTIVITY PERMIT FEES AS AMENDED AND DISCUSSED, SECONDED BY COUNCILOR GRINNELL.

Town Manager Carter asked Council when they would like this to go into effect. The Chair answered it should go into effect on August 1, 2009.

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

b. (070209-5) THE KITTELY TOWN COUNCIL MOVES TO APPROVE THE DISBURSEMENT WARRANTS.

The Chair read the list of disbursement warrants which included Warrant No. 1 for the School Nutrition Program in the amount of \$108.51, Warrant No. 62 for the Shapleigh Middle School Project in the amount of \$515.00, Warrant No. 2 for the School Accounts Payable in the amount of \$138,456.48 and Warrant No. T10-04 for the Town Accounts Payable in the amount of \$216,332.03. The Chair noted that in the absence of Vice Chair Spiller, he had reviewed the school warrants and found them to be in appropriate format for signature. Councilor Dennett indicated that he had found the town warrants in the appropriate format for signature.

COUNCILOR DENNETT MOVED THAT THE KITTELY TOWN COUNCIL APPROVE THE DISBURSEMENT WARRANTS, SECONDED BY COUNCILOR GRINNELL.

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

c. (070209-6) THE KITTELY TOWN COUNCIL MOVES TO APPOINT A REPRESENTATIVE TO MEET WITH THE CHAIR OF THE PARKS COMMISSION TO INTERVIEW MJ BLANCHETTE FOR RE-APPOINTMENT TO THAT BOARD UNTIL 5/3/2012.

The Chair indicated that Councilor Dow was next on the list.

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CHAIRPERSON THOMSON MOVED THAT THE KITTERY TOWN COUNCIL APPOINT COUNCILOR DOW TO MEET WITH THE CHAIR OF THE PARKS COMMISSION TO INTERVIEW MJ BLANCHETTE FOR RE-APPOINTMENT TO THAT BOARD UNTIL 5/3/2010, SECONDED BY COUNCILOR GRINNELL.

The Chair took a consensus with all in favor.

d. (070209-7) THE KITTERY TOWN COUNCIL MOVES TO VOTE FOR THE SLATE OF OFFICERS PROPOSED ON THE MAINE MUNICIPAL ASSOCIATION'S BALLOT FOR VICE PRESIDENT AND EXECUTIVE COMMITTEE MEMBERS.

Chairperson Thomson indicated that there was only one contest for the position of Vice President as there were only three candidates for Directors and there were three open positions. The Chair noted that the candidates for the Vice President position were Mark Green, Town Manager from the Town of Sanford and Stephan Bunker, Chair of Selectman from the Town of Farmington.

COUNCILOR GRINNELL MOVED TO ENDORSE THE APPOINTMENT OF MARK GREEN FOR VICE PRESIDENT AND THE DIRECTORS AS PRESENTED, SECONDED BY CHAIRPERSON THOMSON.

A ROLL CALL VOTE WAS TAKEN, WITH COUNCILOR BEERS ABSTAINED. MOTION PASSES 5/0/1.

e. (070209-8) THE KITTERY TOWN COUNCIL MOVES TO HEAR AN UPDATE FROM THE ELIOT SEWER CONTRACT TEAM ON THE STATUS OF THE NEGOTIATIONS AND SUGGESTED DIRECTION.

The Chair noted that Councilor Beers had prepared a report for Council. Councilor Beers indicated that as noted in the local newspaper, Eliot Selectman have decided to reconsider the previous agreement that the Kittery Town Council had passed contingent upon Eliot voter approval on June 9th or by special election. He continued that with those considerations and contingencies not having been met, he would consider the agreement to be null and void at this time and would move Council to accept this. Councilor Beers commented that this was be a technical requirement in order to be able to go forward with Eliot if the Town choses to do so after Eliot has completed their deliberations.

COUNCILOR BEERS MOVED TO DECLARE THE KITTERY TOWN COUNCIL CONTINGENCY APPROVAL OF THE ELIOT SEWER SYSTEM AGREEMENT AS NULL AND VOID, SECONDED BY COUNCILOR SHWAERY.

Councilor Grinnell indicated that she wanted to thank Councilor Beers and Councilor Dennett for their work and that she had read the notes and understands that this

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is where it has to go to be able to move forward. She indicated that she hoped that this was successful in the future. Councilor Dow asked if this meant that they were still abiding by the old contract as far as the charges assigned to Eliot for their usage. Town Manager Carter indicated that this was correct and that contract did not terminate. Councilor Shwaery asked if this would put the Town in a position to lose money. Town Manager Carter noted that they were upgrading the plant and were trying to talk to every customer that the Town has and suggest that the capital improvements and cost of operation would not be met by the current rates. He continued that the contracts such as the contract with Eliot, do not take into account the capital increases that the Town has to provide to comply with federal and state mandates to clean the sewage to an acceptable level to allow it to be discharged into the river. Town Manager Carter noted that over the last year and a half they had tried to educate Eliot on those facts and to tried to accommodate Eliot in their TIF rate where they want to grow in volume from 200,000 to 400,000 to be treated. He continued that unfortunately their efforts had not penetrated through the entire Board of Selectman and that at this point somehow what they had negotiated had been turned around on the Eliot end. Town Manager Carter noted that they were waiting for some communication from Eliot as to why they want to proceed with their studies when they can not enter Kittery's system without some sort of modification. Town Manager Carter indicated that they were looking to negotiate with the Navy Yard to increase the rates as they had not been adjusted since 1993. Town Manager Carter noted that they were holding a workshop on August 10, 2009 at 6 PM for Council and that the enterprise fund that they have for the sewer treatment plan and system needs to be reviewed and adjusted so that the funding that comes in the future will pay for the upgrades that the Town is doing now. Councilor Dow indicated that his concern was that if Eliot was not in a position where they had to do anything that they may sit still and wanted to know where the thrust was to get them to move forward. He continued that Kittery is bearing the cost of upgrades that were mostly done because of conversations that had taken place with Eliot previously. Town Manager Carter explained that the upgrades allowed for greater volume to be treated at the facility system-wide and that they had stopped the leakage and had done some efficiency moves. Town Manager Carter indicated that those things needed to be done and that the State had encouraged the town to do those things but that because they did those upgrades it would provide for the extra 200,000 from Eliot and may even be able to provide to the Town of York at the end of Route 1. He continued that the Town was providing for the greatest efficiency that they could but that it comes at a cost and that the rates needed to be raised. Councilor Beers noted that they were required to enter into agreements with towns that they provide support for from the waste control facility as part of the Federal Clean Water Act and if Eliot chooses not to meet and agree to the requirements mandated by the Federal Government it would put Kittery in an awkward position. He continued that generally speaking, there is little benefit for Kittery accrued from the negotiated and verbally agreed to agreement that was to be taken to the voters. Councilor Beers noted that if Eliot did not choose to come to terms with Kittery as they had in the past, then he saw little benefit in entering into an agreement to give them sufficient capacity but that they would still be required to treat the waste water coming from their system into Kittery's as a result of the federal regulations. The Chair noted that at some point Eliot would have to come to the realization that Kittery has invested taxpayer funds and user

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funds in the plant and that Kittery was just looking to share the cost fairly. He continued that he thought that at some point Kittery could use the DEP and EPA to talk to Eliot to move this forward but that he was hoping that it did not have to go that far.

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

f. (070209-9) THE KITTEERY TOWN COUNCIL MOVES TO ACCEPT FEMA ICE STORM REIMBURSEMENT FUNDS IN THE AMOUNT OF \$15,608.63 FOR THE DEPARTMENT OF PUBLIC WORKS AND DIRECT SAID FUNDS INTO THE STORM RESERVE FUND.

The Chair indicated that the Manager has noted that the Public Works Department has an existing reserve account with a balance of \$0.00 and that the Town Manager and Public Works Department agreed that the funds should go into that account to assist with future storm related repairs.

COUNCILOR SHWAERY MOVED THAT THE KITTEERY TOWN COUNCIL ACCEPT FEMA ICE STORM REIMBURSEMENT FUNDS IN THE AMOUNT OF \$15,608.63 FOR THE DEPARTMENT OF PUBLIC WORKS AND DIRECT SAID FUNDS INTO THE STORM RESERVE FUND, SECONDED BY COUNCILOR GRINNELL.

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

g. (070209-10) THE KITTEERY TOWN COUNCIL MOVES TO HEAR AND UPDATE ON THE PUBLIC WORKS SALT SHED AND OFFICE COMPLEX AND MOVES TO AUTHORIZE INTERIM FUNDING STRATEGIES UNTIL PERMANENT BONDING IS AVAILABLE.

Town Manager Carter indicated that he was going to report on the Public Works Department salt shed and office complex improvements that the Planning Board had approved on July 16, 2009. He indicated that the Public Works Director and his staff with the assistance of the Town Planner had moved forward early enough that they had gotten Planning Board approval for the two facilities to be built as the voters voted at the June 9th election. He continued that they had decided that the best method to move forward with this was to look at the projects as two separate entities. Town Manager Carter noted relative to the salt shed they had started geotechnical site work where the shed will be located and, based on the results, and they had an engineering firm to design the sheds and come up with bid specs. He continued that the bids were expected to be released in mid-October, if not earlier, and that the building permit would be issued in the third week of October, with the construction beginning in November or December. Town Manager Carter noted that relative to the office complex, they had been working with a number of pre-fab companies and were working to get a core set of specifications where they would be working with the Town engineers to put together a bid spec and that

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they would be monitoring the construction. He continued that would involve a foundation and hopefully a pre-fab that would be put on it. He noted that the engineers would also be working to get the metal sheeting in the back replaced per Planning Board requirements and that there would be a low intensity development project site. Town Manager Carter commented that in regards to the school addition project, that it needed to be financed and that he needed to get approval from Council to do bond anticipation notes and bonding. He continued that there was a slight delay in the school project and that they were not where the Public Works was with their project. Town Manager Carter noted that the business manager, superintendent and he had decided in the interim to borrow from the town to move this forward and that the Town would be reimbursed when they get permanent financing. Town Manager Carter noted that on the school side, they would be out shortly with an RFQ for architects to design the two additions to the Shapleigh and Mitchell schools and to do the site work necessary. He continued that they would not know until the architectural firm comes on board, most likely in September, what the cashflow analysis would be for the next nine months. Town Manager Carter noted that the strategy for financing would probably be a bond anticipation note later in the fall that will incur the costs and once the contract bids have been received to either go to a second bond anticipation note or permanent financing. Councilor Shwaery indicated that he had attended the School Board meeting and Shared Services had put out an RFI for engineering for the project. Councilor Shwaery noted that a bunch of those had come back and that it was his understanding that those would be the individuals that they would be looking at for the design and that they would be issuing an RFP for that architectural work. He continued that there were some issues with surveying the boundary behind Shapleigh and that there were some questions as to where those boundary marks were and that those have been completed and are accurate. He continued that they needed to remove a bunch of trees and they were going to be meeting soon with Learning Structures who would be designing the playground and that the project is moving forward. The Chair noted that no action was required by Council that evening.

h. (070209-11) THE KITTERY TOWN COUNCIL MOVES TO APPOINT KELLY WILSEY TO THE CONSERVATION COMMISSION AS A FULL MEMBER UNTIL 5/31/12 (REPLACES BETSY BICHOFF).

The Chair noted that he had conducted the interview and Ms. Wilsey was prepared to assume full membership.

CHAIRPERSON THOMSON MOVED THAT THE KITTERY TOWN COUNCIL APPOINT KELLY WILSEY TO THE CONSERVATION COMMISSION AS A FULL MEMBER UNTIL 5/31/12, SECONDED BY COUNCILOR SHWAERY.

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

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i. (070209-12) THE KITTERY TOWN COUNCIL MOVES TO APPOINT ALAN MCDONALD TO THE PARKS COMMISSION AS A FULL MEMBER UNTIL 5/3/2011 (REPLACES AARON HENDERSON).

COUNCILOR BEERS MOVED THAT THE KITTERY TOWN COUNCIL APPOINT ALAN MCDONALD TO THE PARKS COMMISSION AS A FULL MEMBER UNTIL 5/3/2011, SECONDED BY COUNCILOR DOW.

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

j. (070209-13) THE KITTERY TOWN COUNCIL MOVES TO SCHEDULE A PUBLIC HEARING ON A PROPOSED AMENDMENT TO THE MUNICIPAL CODE, CHAPTER 6.04 – DOGS, TO INCLUDE HORSES.

The Chair noted Councilor Grinnell was working with the Conservation Commission and Spruce Creek Association regarding animal waste.

COUNCILOR GRINNELL MOVED THAT THE KITTERY TOWN COUNCIL SCHEDULE A PUBLIC HEARING ON A PROPOSED AMENDMENT TO THE MUNICIPAL CODE, CHAPTER 6.04 – DOGS, TO INCLUDE HORSES FOR SEPTEMBER 28, 2009, SECONDED BY COUNCILOR BEERS.

Councilor Grinnell indicated that she would like the hearing to take place on September 28th because she had been working with a group of people on getting dog waste containers for Fort Foster, Seapoint Beach and Rogers Park as well as signage and wanted to change the ordinance. She noted that she would like to take the ordinance, take it to the group that she was working with and get their input and then bring it back to Council for a discussion before it was brought to a date for a public hearing. She continued that she would like everything to be in place before the hearing on the 28th and that Council had gotten the opportunity to discuss the matter. Councilor Grinnell asked that Council discuss this issue at the August 24, 2009 regular meeting. Councilor Shwaery asked if the Conservation Commission was okay with this process. Councilor Grinnell responded that the Conservation Commission had seen this but had not made any comments and that the Spruce Creek Association was also involved with this. Councilor Grinnell indicated that she did not want to have this issue come before Council before it was determined what exactly everyone in the group wanted.

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

Councilor Grinnell indicated that they were getting the final dog waste containers retrofitted and that there were going to be three of them, one at Seapoint Beach, one at Fort Foster and one at Rogers Park. She continued that there was still discussion as to who was going to pick up the waste and that Ex-Councilor Brake had offered to pick it up

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at a cost but that the committee would like to know if Public Works would pick it up. She noted that the answer had always been no but that the committee wanted an answer. Town Manager Carter noted that there was a “carry in, carry out” policy and that he would talk to the Public Works Department. Town Manager Carter indicated that in support of this the Town, through the amendment of the Seapoint Beach ordinance, did indicate that there would be a trash barrel down which was in production. Council then decided that any discussions relative to this could take place at the meeting on August 24th.

*k. (070209-14) THE KITTERY TOWN COUNCIL MOVES TO DISCUSS
ESTABLISHING AN ORDINANCE REVIEW COMMITTEE.*

The Chair indicated that this matter was brought to Council from Councilor Beers as a result of the work that was done on a number of ordinances and contract reviews. Councilor Beers noted that as these ordinances were very complex there was a necessity to support legislation that is accurate, coherent, consistent, fair and equitable and that he believed that they needed to reconsider the process. He continued that to receive paperwork on a Thursday afternoon for a public hearing on a Monday night was a very difficult proposition. Councilor Beers suggested that if from whatever source it may arise, they simply refer such recommendations to a review committee for review and examination to determine its consistency and accuracy and identify issues of substance to report to Council on the sum of its context. Councilor Beers noted that he considered a standing committee to be a necessity as opposed to ad hoc committees, and that legislating ad hoc was poor form because trying to absorb the sum of even small ordinances in context of everything in the municipal code was a non-trivial task and he thought that it would be well served to establish such a standing committee. Chairperson Thomson noted that it would be Councilor Beers’s suggestion to amend Council rules to include a standing committee of at least two Council members. Councilor Beers suggested if there was a sense of Council it would be in good form for the next Council agenda to have a rules revision agenda item and with successful passage at that point, they would have to wait the requisite second meeting before it would be enacted. Councilor Shwaery indicated that he agreed in principle but thought that there should be some sort of threshold in order to set up a committee as some of it was very trivial. Councilor Beers suggested that it whoever was looking for enactment by Council, whether it be the town manager, police department, etc., could ask Council beforehand if it should be referred to committee. Councilor Shwaery indicated that some of the issues that the Planning Board deals with where they have dialogue over six months, unless you go to those meetings, it is hard to give Council the crux of their changes in any context. Councilor Beers indicated that he concurred with Councilor Shwaery and noted that he had mixed feelings about the regular updates as they make dramatic changes from one meeting to the another. He continued that he did believe that it was possible to accept the results of their various meetings and hearings and provide a concise, brief summary of progress and an overview summary that highlights the substantive changes or the need for or explanation of the changes, and why they chose to go that way and that it was a feasible proposition. Town Manager Carter stated there is a Shoreland Zoning ordinance that has been moved out from the Planning Board arena and is heading towards Council

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and that the Planning Board has made their recommendations. Town Manager Carter asked Council if they wanted to hold off until a committee was put together but there were some time sensitive issues because they were beyond the state deadline for implementation or if Council would like the copies go to the ad hoc committee and have them start the review process. The Chair indicated that he would not be adverse to having it go to the ad hoc committee to keep the process going. Chairperson Thomson clarified that Councilor Beers would like an agenda item for August 10th to amend Council rules to establish the committee.

l. other

Councilor Dow indicated that as he had mentioned, he had attended a School Board meeting and that one of the issues that came up was the Frisbee turnover. He stated that if it came to Council to ask what they would like to do, he was concerned that the compensation for the dollars that were going to be paid for by the school would be turned over to the Town. Town Manager Carter indicated that the schools had said if they turned it over to the town they would turn over this year's monies to continue its closed operating status.

Councilor Shwaery wanted to express his appreciation to Councilor Beers and Councilor Dennett for their work on the sewer and stormwater management issues and that their work was thorough and clear.

11. COMMITTEE AND OTHER REPORTS

a. Communications from the Chairperson

b. Town Manager's Report

Town Manager Carter noted that he had received the annual Maine Department of Transportation Urban Rural Initiative Program certification form and that it was due August 1st. He continued that he would pass it out so that Council could look at it and if Council so moved, he would like authorization to sign it and get it back to them so that their payments were not held back. Town Manager Carter indicated that it was a certification that DOT had a requirement of which comes from the legislature and that the Town has to certify that the funds that the Town receives are spent according to the law.

**CHAIRPERSON THOMSON MOVED TO AUTHORIZE THE TOWN
MANAGER TO SIGN THE ANNUAL MAINE DEPARTMENT OF
TRANSPORTATION URBAN RURAL INITIATIVE PROGRAM
CERTIFICATION FORM, SECONDED BY COUNCILOR DOW.**

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

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Town Manager noted that there is a public hearing scheduled for August 3, 2009 regarding the construction to the Dennett Road overpass to hear a description of the project and to take questions and comments.

Town Manager Carter noted that the Harbormaster had purchased a new boat and that the boat had come in at a very good price at \$15,400.00. He continued that it was a 2005, 24 foot boat with a 90 horsepower engine and that at some point there would be a purchase of a trailer.

Town Manager Carter wanted to remind people that the Memorial Bridge weight limit had been reduced to ten tons and the weight limit on the Sarah Long Bridge was twenty tons. He noted that in regards to the grant application that New Hampshire is putting together and Maine would join, New Hampshire has still not heard directly from Maine on that and that they would be trying to find out what was happening and what work needed to occur. Town Manager Carter indicated that New Hampshire would like all of the towns and elected leaders to submit letters of recommendation and support and that they would be drawing up a letter for Council to review on August 10th.

Town Manager Carter noted that they had been attempting to get the Frisbee School committee together but that it had been difficult and it may have to go into September to get a meeting scheduled.

Town Manager Carter noted that the Town Planner had resigned while he was away and that her last day would be August 13th. He noted that she had taken a position much closer to where she lived. Town Manager Carter noted that they would be working through the transition and that he would be advertising and looking for a part time person to come in and help and also advertise for a full time planner.

c. Committee Reports

12. ADJOURNMENT

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

MEETING ADJOURNED: 9:16 P.M