



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

November 14, 2016

Council Chambers

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

1. Call to Order
2. Introductory
3. Pledge of Allegiance
4. Oath of Office to Newly Elected Officials
5. Roll Call
6. The Kittery Town Council moves to elect a Chairperson for the ensuing year.
7. The Kittery Town Council moves to elect a Vice-Chairperson for the ensuing year.
8. Agenda Amendment and Adoption
9. Town Manager's Report
10. Acceptance of Previous Minutes – 10/24/16 Regular Meeting and 10/25/16 Special Meeting
11. Interviews for the Board of Appeals and Planning
12. All items involving the town attorney, town engineers, town employees or other town consultants or requested officials
13. PUBLIC HEARINGS  

(110116-1) The Kittery Town Council moves to hold a public hearing on a multi-year contract with MSDSONline.
14. DISCUSSION
  - a. Discussion by members of the public (three minutes per person)
  - b. Response to public comment directed to a particular Councilor
  - c. Chairperson's response to public comments
15. UNFINISHED BUSINESS
16. NEW BUSINESS
  - a. Donations/gifts received for Council disposition

b. (110116-2) The Kittery Town Council moves to approve the disbursement warrants.

c. (110116-3) The Kittery Town Council moves to adopt its current rules for the ensuing year.

d. (110116-4) The Kittery Town Council moves to appoint Council members to On-going, Standing, Ad hoc and Council Committees.

e. (110116-5) The Kittery Town Council moves to authorize the Town Manager to close departments with the exception of essential personnel, the day after Thanksgiving, November 25, 2016, with the understanding that employees will use their personal accumulated time.

f. (110116-6) The Kittery Town Council moves to schedule a public hearing for November 28, 2016, on a multi-year contract with I Am Responding.

17. COMMITTEE AND OTHER REPORTS

- a. Communications from the Chairperson
- b. Committee Reports

18. EXECUTIVE SESSION

(110116-7) The Kittery Town Council moves to go in to Executive Session with the Town Manager and Town Attorney in accordance with 1 M.R.S. §405 (6) (E) to discuss sewer easements related to the 2015 Sewer project.

19. ADJOURNMENT

Posted: November 9, 2016



Kendra Amaral  
Town Manager

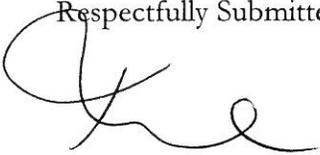
**TOWN OF KITTERY**  
**Office of the Town Manager**  
200 Rogers Road, Kittery, ME 03904  
Telephone: 207-475-1329 Fax: 207-439-6806  
[kamaral@kitteryme.org](mailto:kamaral@kitteryme.org)

**Town Manager's Report to the Town Council**  
**November 14, 2016**

1. **Transition** – I wish to thank the Council, the staff, members of the various boards, commissions and committees, residents and businesses for their warm welcome to Kittery. I am also grateful to Carol Granfield for her diligent efforts in preparing for the transition and her time briefing me on the various ongoing initiatives and activities in Town.
2. **Election** – I wish to thank Town Clerk Maryann Place, her staff and election workers, the Police Department, and all of the other support staff and volunteers for a job well done on 2016 Election.
3. **Sewer Hearings** – During the October 25 hearings two items were raised for follow-up relative to 37 Route 236, Lady Slipper.
  - a. The property contains 13 leased units. This information is captured in our assessing database and carried over to the sewer betterment calculation. The Council reduced the number as it relates only to the sewer betterment from 13 units to 3 units.
  - b. I reviewed Mr. Johnson's request for a relocation of the stub for this parcel. I was unable to approve the request. Owners had an opportunity to identify their preferred stub location prior to construction. I was unable to find instances of the Town committing to relocations or additions as requested. I advised Mr. Johnson of his opportunity to appeal this decision to the Council as stated in the Council vote on the matter.
4. **Speed Trailer Capabilities** – I spoke with Chief Soucy regarding the speed trailer capabilities and using it to collect data. He is looking further into the full capabilities of the equipment so we can ensure it is effectively used. The speed display component can modify behavior and therefore impact the data, insomuch as drivers tend to slow down when they see a display of their current speed. The pole mounted devices are discreet and therefore able to collect data that is more likely to represent actual conditions; however they do not assist in lowering speeds while deployed. There are beneficial uses to both options and the Chief will deploy the equipment in a manner that best serves the situation.
5. **Boy Scout Request to Use Fort Foster** – Councilor Denault referred one of the new Boy Scout Troop leaders to me for a request to use Fort Foster for an overnight camp out on November 5<sup>th</sup>. Working with Councilor Beers, we were able to find a path forward to assist the Troop in time for their planned camp out. The Troop also had a back-up plan, and ultimately chose to go with their alternate location. This effort did result in identifying opportunities to streamline the process for approval at Fort Foster. I look forward to working with the Parks Commission and the Council to develop and vet options for consideration at a future meeting.

6. **Memorial Circle** – The Council asked for an opinion from the administration on the upcoming construction of the traffic circle. We are in support of the traffic circle work proceeding as scheduled, with construction planned for the 2017 construction season. To mitigate the anticipated traffic impacts during construction, we intend to develop specific traffic management requirements in the scope of services for the contractor. We will require they receive approval from the Town of their proposed traffic management plan prior to work proceeding. The scope of service requirements will be developed in conjunction with Police, Fire, DPW, Planning, and Maine DOT.
7. **Resource Recovery Facility Usage** – I will be working with Dave Rich to identify measures we can take to enhance the monitoring at facility. More information will be provided at a future meeting.
8. **Council Chamber Chairs** – We are in the process of obtaining quotes for the broken chairs in the Council Chambers and conference rooms.
9. **Vacation** – As a reminder, I will be on a family vacation December 3<sup>rd</sup> through December 11<sup>th</sup>. I plan to appoint an Acting Town Manager for this period.
10. **MTCTA Tax and Collection Law** – I will be attending the Maine Municipal Tax Collectors' and Treasurers' Association workshop on Municipal Law for Tax Collectors and Treasurers on November 16<sup>th</sup> in Augusta.

Respectfully Submitted



Kendra Amaral

Town Manager

1 Town Manager Kendra Amaral thanked the Council for the opportunity to serve as the Town  
2 Manager. It is an exciting opportunity for her and the community. She thanked all the individuals  
3 involved in the interview process and felt the discussions were insightful. Through her research  
4 and experience, she has learned that Kittery is a Town committed to good education, strong  
5 financial management, responsible stewardship of natural resources, and that the community  
6 offers affordability and high quality for all residents. She will be learning more about the  
7 opportunities that face the Town and looks forward to working with all the various stakeholders  
8 to achieve the shared vision and goals expressed.

9 1. Call to Order

10 Chairperson Beers called the meeting to order at 7:02 p.m.

11 2. Introductory

12 Chairperson Beers read the introductory.

13 3. Pledge of Allegiance

14 Chairperson Beers led those present in the Pledge of Allegiance.

15 4. Roll Call

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

18 5. Agenda Amendment and Adoption

19 Agenda was adopted, as presented.

20 6. Town Manager's Report

21 Interim Town Manager Granfield reviewed her written report.

22 **Interim Town Manager** – A brief overview of the Interim Town Manager's accomplishments  
23 were mentioned as stated in the Town Manager's report. Ms. Granfield added that it has been a  
24 pleasure to serve as the Interim Town Manager since March.

25 **Sewer Betterment Assessments** – Letters will be issued on or about November 1<sup>st</sup> to individuals  
26 that have not yet paid or agreed to a payment plan for their Sewer Betterment Assessment. The  
27 Town will begin accepting requests for mandatory deferral starting November 15<sup>th</sup>. All  
28 Assessments will be either paid or agreed into a payment plan by December 1<sup>st</sup>.

29 **Traffic** – As a result of various concerns regarding traffic, the Police Chief has assured that the  
30 department will address specific areas with enforcement and utilize the speed trailer. The  
31 department intends to purchase a pole-mounted radar that can collect data with remote access.

32 **Rice Public Library** – The Rice Public Library is in need of gently used bubble wrap while in  
33 transit for Minerva-Inter library loan.

34 **Neighborhood Network Information** – The Neighborhood Network offers a wide variety of  
35 assistance for seniors in York County communities. Information has been available on Channel

36 22 and will be linked on the Town's website.

37 **Channel 22** – The Kittery Community Center has been working to make space available for the  
38 station and will be soon requesting quotations for the space design.

39 **Cemetery Project** – An intern has begun working on consolidating and evaluating information  
40 collected regarding the cemeteries in Town.

41 **Swamp Fill on 236 Boatyard** – The complaints were researched pertaining to filling in the  
42 boatyard. It was determined the owner was in compliance with the DEP permit to fill, thus no  
43 charges were levied against the owner.

44 **8 Stevenson Road Issue** – The Sewer Department requested the contractor to regrade the water  
45 runoff from the driveway. The property owner was suggested to install grade stakes with ribbons.

46 Interim Town Manager Granfield reviewed additional items not included in her written report.

47 **Transition** – Council has been provided information regarding the transition to Town Manager  
48 Amaral, which includes the website and virtual Town Hall. People have found it difficult to  
49 access the site and Ms. Granfield suggested to move forward with the proposal since there is an  
50 upgraded system that addresses those issues.

51 **Elections** – The Town Clerk has been inundated with absentee ballots and will be open this  
52 Saturday, October 29<sup>th</sup> from 9:00 a.m. to 1:00 p.m.

53 Vice Chairperson Denault noted that the speed radar trailer costed about \$17,000 and can report  
54 data into Excel spreadsheet. Those reports can be provided to Council and would be helpful to  
55 understand the traffic issues.

56 Vice Chairperson Denault appreciated the report regarding the filling in the boatyard. He  
57 questioned whether there are remedies for the unforeseen circumstances when allowing fill.

58 Vice Chairperson Denault mentioned that loam was used to address the issue at 8 Stevenson  
59 Road and suggested it should be crushed gravel.

60 7. Acceptance of Previous Minutes

61 Special Meeting – September 13, 2016

62 Councilor Dennett abstained from review of the minutes due to his absence.

63 The minutes were adopted, as presented.

64

65 Regular Meeting – October 12, 2016

66 The minutes were adopted, as presented.

67 8. Interviews for the Board of Appeals and Planning – None.

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

70 a. (100416-1) The Kittery Town Council moves to authorize to proceed with the Access  
71 Control System CIP funding, by selecting one of the three proposed options provided.

72 Chief David O'Brien explained in detail the bid received for the access control system  
73 improvements for four municipal buildings, which was authorized in the FY15 Capital  
74 Improvement Plan. The buildings are located at Gorges Road, Lewis Road, Town Hall, and the  
75 Department of Public Works campus. The bid received amounts to \$67,805 over two years,  
76 which is significantly less than the total project cost allocated. The request is to complete the  
77 entire job in the first year, which would exceed the one-year allocation by \$19,099.

78 Councilor Dennett asked what advantages the access control system provides versus a key  
79 system. Chief O'Brien explained the costs and security risks associated with using keys,  
80 especially in situations of unreturned keys. He provided a brief description of how the access  
81 control system operates and the benefits it provides.

82 Vice Chairperson Denault asked whether the system would be used for record keeping and  
83 accountability. Chief O'Brien replied that the system does have certain capabilities and the  
84 department intends to use the system to enhance security measures. He noted that the access  
85 cards are proximity based rather than swipe. The Police Department and Kittery Community  
86 Center currently use a similar system.

87 Interim Town Manager Granfield noted it is recommended to move forth with the one-year  
88 option. Three different funding options were presented and each of them is feasible. The former  
89 Finance Director was satisfied with all three options.

90 Councilor Dennett preferred the funds be utilized from the unencumbered surplus.

91 **A MOTION WAS MADE BY COUNCILOR THOMSON TO AUTHORIZE PROJECT**  
92 **MANAGER, CHIEF O'BRIEN, TO PROCEED WITH THE ACCESS CONTROL**  
93 **SYSTEM IN THE AMOUNT OF \$67,805 TOTAL PURCHASE TO COMPLETE THE**  
94 **PROJECT DURING FY2017 WITH THE COUNCIL REVIEWING THE THREE**  
95 **FUNDING OPTIONS PRESENTED IN THE SPRING SEASON AFTER REVIEW OF**  
96 **THE FY2017 BUDGET, SECONDED BY VICE CHAIRPERSON DENAULT.**

97 Councilor Dennett requested the motion indicate to be directed to the purchasing agent to  
98 proceed with the advice of the project manager.

99 **THE MOTION PASSED, AS AMENDED, BY A UNANIMOUS ROLL CALL VOTE**  
100 **7/0/0.**

101 b. (100416-2) The Kittery Town Council moves to approve the acceptance of High  
102 Point Circle as a public road.

103 Town Planner DiMatteo provided a brief description of the background and request for Council  
104 to accept a private street located south of the terminus of Kittree Lane as a public street and  
105 include it as part of the existing public street Highpointe Circle. The changes in ownership of the  
106 properties of Kittree Lane and Highpointe Circle were explained in detail, which has attributed to  
107 the legal and logistical complications of the existing situation. The request to Council intends to  
108 alleviate confusion and address various concerns identified by the property owners in the area.

109 Commissioner Rich explained it was the Department of Public Works' recommendation that  
110 upon acceptance, the entire Right-of-Way should meet the 60-foot width with a five-foot  
111 shoulder. He explained how the roadway does not meet the current standards and that the

112 acceptance be considered at a time when the budget can accommodate the manpower and  
113 materials necessary to maintain additional public roadway.

114 Commissioner Rich confirmed to Vice Chairperson Denault that there were exceptions granted  
115 by the Planning Board for a three-foot shoulder, but no waiver was submitted. The  
116 recommendation from DPW at the time was for a five-foot shoulder to accommodate a future  
117 sidewalk.

118 Commissioner Rich replied to Vice Chairperson Denault's question that without regard to the  
119 current budget, the acceptance could be supported if the Right-of-Way was 60 feet wide with no  
120 requirement for a sidewalk given the 3-foot shoulder. He noted that the Commissioner did not  
121 favorably recommend the Planning Board's decision in 2008 for the extension.

122 Chairperson Beers questioned how the connection was approved with more than one street name.  
123 Mr. DiMatteo believed the original intent was not to connect the roadways. That intent may have  
124 been lost when consideration was had for safety concerns. Chairperson Beers noted that the Code  
125 indicates that when two roadways are connected, only one street name would be had regardless  
126 of whether the roadways are public or private. Mr. DiMatteo concurred.

127 Councilor White provided further background on what and how the complexities arose for the  
128 Planning Board after the decision was made in 2008. The primary concern for the area is in  
129 regard for public safety given the confusing addresses. He encouraged that the entire  
130 neighborhood be evaluated for E-911 compliance. He would support expanding the Right-of-  
131 Way before acceptance with consideration for the issues identified by the residents and for  
132 potential budget constraints.

133 Vice Chairperson Denault felt there are several other roads that pose similar safety concerns. He  
134 did not see much support for changing the name designation, but encouraged that further  
135 discussion be had amongst the property owners and staff to isolate the problem that needs to be  
136 addressed.

137 Mary-Ellen Ciali, 10 Kittree Lane

138 Ms. Ciali noted that she has not signed the street naming application as a requester or abutter and  
139 there is no intention to include them in the endeavor. She expressed the concern that if the  
140 acceptance occurs, it would leave only her home in that area with the name Kittree Lane. The  
141 other addresses with Kittree Lane are not nearby, which would still create confusion. Also,  
142 Kittree Lane is small and consideration should be had for alternative locations for snow storage  
143 and the amount of traffic that will be generated from the new proposed development.

144 Ms. Ciali replied to Chairperson Beers that her house is located on the private side of Kittree  
145 Lane and she was a resident before the development occurred. Mr. DiMatteo further clarified  
146 which sections of the roadway were accepted as a public roadway and when that occurred.  
147 Chairperson Beers stated the consideration is that if the new development section is accepted as a  
148 public road, the public maintenance service would stop at the property line in front of Ms. Ciali's  
149 house. Mr. DiMatteo noted that the current proposal is to add a minimal amount past the current  
150 legal extent of Kittree Lane to enhance the function of a turnaround. He stated that Ms. Ciali's  
151 property straddles the current line where the asphalt stops and gravel begins. The proposed  
152 extension would extend roughly 50 feet.

153 Councilor Thomson felt the request should have reached full consensus prior to request from the

154 Council. He suggested that the property owners and Planning Board or staff devise a proposal  
155 that makes sense for all and move forward with that. Chairperson Beers concurred.

156 Councilor White understood why the request was submitted given the history.

157 Chairperson Beers stated that he concurred with the Commissioner that in order to be accepted, it  
158 would need to meet current standards and to made effective with the next fiscal year budget.

159 Councilor Dennett stated that no action could be taken on the application due to the statements  
160 made by the Commissioner and since the petition was not signed by all the property owners.

161 Councilor Spiller deferred to the Commissioner's statement and emphasized the concerns raised  
162 for safety.

163 Chairperson Beers suggested that the item be concluded. He replied to Councilor Lemont that a  
164 forward action plan is not in the purview of the Council and suggested administration be  
165 responsible for monitoring those activities.

166 10. PUBLIC HEARINGS – None.

167 11. DISCUSSION

168 a. Discussion by members of the public (three minutes per person)

169 Richard Sparkowich, 22-24 Old Farm Road

170 Mr. Sparkowicz stated that the most recent petition package for the acceptance of the roadway  
171 was not submitted. He asked to present a set of photographs that could help to alleviate the  
172 confusion.

173 Chairperson Beers replied that the Council was not in possession of a complete application and  
174 no further discussion could change the deliberations had. He noted that staff would need to  
175 present a revised application for the Council to proceed with further discussion.

176 Susan Emery

177 Ms. Emery introduced herself as the co-Chair of the Kittery Adopt-A-Road program. She invited  
178 all to celebrate the 20<sup>th</sup> anniversary of the program on November 9<sup>th</sup> from 5:00 p.m. to 7:00 pm  
179 at the Kittery Community Center. This was a program that is part of the Conservation  
180 Commission and accepted by the Town Council about twenty years ago.

181 Joseph Gasbarro, 11 Highpointe Circle

182 Mr. Gasbarro stated he is one of the two owners for the Right-of-Way previously discussed. He  
183 felt that Ms. Ciali should be included in the new street name. Street signs would help to alleviate  
184 confusion.

185 Marissa Day, 9 Main St Unit 3

186 Ms. Day provided a brief description of a project focused on both the traffic congestion and  
187 current land use at the Route 1 mall outlets area, which is currently in a preliminary phase of  
188 research and observation. The effort is facilitated by herself as part of her graduate school  
189 program at UNH. She requested a focus group discussion with Council at the next regular  
190 meeting.

191 b. Response to public comment directed to a particular Councilor – None.

192 c. Chairperson’s response to public comments

193 Mr. Gasbarro – The issue raised is not within the Council’s purview and will be presumably  
194 addressed by staff.

195 Ms. Day – The request should be deferred to the next regular meeting with the newly appointed  
196 Council.

197 12. UNFINISHED BUSINESS – None.

198 13. NEW BUSINESS

199 a. Donations/gifts received for Council disposition – None.

200 b. (100416-3) The Kittery Town Council moves to approve the disbursement warrants.

201 Town accounts payable of \$133,748.49.

202 Sewer account payable of \$41,078.02.

203 School accounts payable of \$176,102.48.

204 Total of all disbursement warrants of \$350,928.99.

205

206 Councilor Lemont stated that the School warrants are in order. Councilor Dennett stated that the  
207 Town and Sewer warrants are in order.

208 **A MOTION WAS MADE BY COUNCILOR SPILLER TO APPROVE THE**  
209 **DISBURSEMENT WARRANTS, SECONDED BY COUNCILOR THOMSON. THE**  
210 **MOTION PASSED BY A UNANIMOUS VOICE VOTE 7/0/0.**

211 c. (100416-4) The Kittery Town Council moves to approve an application from Central  
212 Maine Power and Fairpoint NH for a pole permit to replace one pole starting at Box 43.4  
213 Roseberry Lane in a northerly direction a distance of 145’.

214 **A MOTION WAS MADE BY COUNCILOR THOMSON TO APPROVE AN**  
215 **APPLICATION FROM CENTRAL MAINE POWER AND FAIRPOINT NH FOR A**  
216 **POLE PERMIT TO REPLACE ONE POLE STARTING AT BOX 43.4 ROSEBERRY**  
217 **LANE IN A NORTHERLY DIRECTION A DISTANCE OF 145’, SECONDED BY**  
218 **COUNCILOR SPILLER. THE MOTION PASSED BY A UNANIMOUS ROLL CALL**  
219 **VOTE 7/0/0.**

220 d. (100416-5) The Kittery Town Council moves to approve an application from FairPoint  
221 Communications-NNE and Central Maine Power Company for a pole permit to replace one pole  
222 1753/3 and two existing poles 1743/4 and 1743/2 located on Gray Lodge Road.

223 **A MOTION WAS MADE BY COUNCILOR SPILLER TO APPROVE AN**  
224 **APPLICATION FROM FAIRPOINT COMMUNICATIONS-NNE AND CENTRAL**  
225 **MAINE POWER COMPANY FOR A POLE PERMIT TO REPLACE ONE POLE 1753/3**  
226 **AND TWO EXISTING POLES 1743/4 AND 1743/2 LOCATED ON GRAY LODGE**  
227 **ROAD, SECONDED BY COUNCILOR THOMSON. THE MOTION PASSED BY A**  
228 **UNANIMOUS ROLL CALL VOTE 7/0/0.**

229 e. (100416-6) The Kittery Town Council moves to approve an application from  
230 FairPoint Communications-NNE and Central Maine Power for a pole permit to replace one pole  
231 227/3.5 and two existing poles 227/3 and 227/4 located on Picott Road.

232 **A MOTION WAS MADE BY COUNCILOR WHITE TO APPROVE AN APPLICATION**  
233 **FROM FAIRPOINT COMMUNICATIONS-NNE AND CENTRAL MAINE POWER**  
234 **FOR A POLE PERMIT TO REPLACE ONE POLE 227/3.5 AND TWO EXISTING**  
235 **POLES 227/3 AND 227/4 LOCATED ON PICOTT ROAD, SECONDED BY**  
236 **COUNCILOR THOMSON. THE MOTION PASSED BY A UNANIMOUS ROLL CALL**  
237 **VOTE 7/0/0.**

238 f. (100416-7) The Kittery Town Council moves to appoint a representative to meet with  
239 a member of the Mary Safford Wildes Trust to interview A. David Mann for his re-appointment  
240 to that board until 12/31/19.

241 **A MOTION WAS MADE BY COUNCILOR THOMSON TO RE-APPOINT DAVID**  
242 **MANN TO THE MARY SAFFORD WILDES TRUST BOARD UNTIL 12/31/19**  
243 **WITHOUT THE BENEFIT OF AN INTERVIEW, SECONDED BY VICE**  
244 **CHAIRPERSON DENAULT.**

245 Councilor Dennett noted that Mr. Mann's term expired in February and questioned whether  
246 current procedures should allow for re-appointment in this situation. Chairperson Beers  
247 suggested that change in the procedures could be incorporated into the forthcoming Title 4  
248 revisions.

249 **THE MOTION PASSED BY A UNANIMOUS ROLL CALL VOTE 7/0/0.**

250 g. (100416-8) The Kittery Town Council moves to authorize ReVision Energy to put  
251 18" x 24" lawn signs on public property in the Town of Kittery to promote the Solarize Seacoast  
252 Maine Campaign that runs from August 2016 through December 2016.

253 **A MOTION WAS MADE BY COUNCILOR SPILLER TO AUTHORIZE REVISION**  
254 **ENERGY TO PUT 18" X 24" LAWN SIGNS ON PUBLIC PROPERTY IN THE TOWN**  
255 **OF KITTERY TO PROMOTE THE SOLARIZE SEACOAST MAINE CAMPAIGN**  
256 **THAT RUNS FROM AUGUST 2016 THROUGH DECEMBER 2016, SECONDED BY**  
257 **COUNCILOR WHITE.**

258 Chairperson Beers noted that typically this type of request would include a time period, location,  
259 and number of signs to be placed. Interim Town Manager Granfield stated no further information  
260 was received.

261 Councilor Thomson expressed concerns for signs placed on public ways and could not support  
262 the vote. Councilor Dennett echoed Councilor Thomson's statement and stated his opposition to  
263 the motion.

264 Councilor White stated his support for the motion to include a provision for removal of the  
265 signage and a limitation for the number of signs. He mentioned the various benefits that the  
266 program offers to communities.

267 Vice Chairperson Denault stated he could support the motion if the request was further defined.

268 Thus, he stated in opposition of the motion.

269 Chairperson Beers felt it is not in the purview of the Council to designate the number and  
270 duration of requested signage.

271 **THE MOTION FAILED TO PASS BY A ROLL CALL VOTE 1/6/0, WITH VICE**  
272 **CHAIRPERSON DENAULT, COUNCILORS THOMSON, LEMONT, SPILLER,**  
273 **DENNETT, AND CHAIRPERSON BEERS OPPOSED.**

274 h. (100416-9) The Kittery Town Council moves to rescind the 2011 Memorandum of  
275 Understanding between the Town and the Kittery Port Authority.

276 **A MOTION WAS MADE BY VICE CHAIRPERSON DENAULT TO RESCIND THE**  
277 **2011 MEMORANDUM OF UNDERSTANDING BETWEEN THE TOWN AND THE**  
278 **KITTERY PORT AUTHORITY, SECONDED BY COUNCILOR LEMONT.**

279 Chairperson Beers explained that the request was based on the Port Authority's review and  
280 actions. Councilor Thomson felt Town Manager Amaral should review the matter given the  
281 general dynamic between the Town and the Port Authority and the original purpose of the 2011  
282 MOU.

283 **A MOTION WAS MADE BY COUNCILOR THOMSON TO POSTPONE ANY ACTION**  
284 **ON THE 2011 MEMORANDUM OF UNDERSTANDING BETWEEN THE TOWN AND**  
285 **THE KITTERY PORT AUTHORITY UNTIL THE TOWN MANAGER HAS**  
286 **CONDUCTED A REVIEW AND PROVIDES A RECOMMENDATION FOR FURTHER**  
287 **ACTION, SECONDED BY COUNCILOR SPILLER.**

288 Councilor Dennett stated no objection to the postponement and hoped that a representative from  
289 the Port Authority be present for any further considerations from Council.

290 Councilor White stated that the request should also include the purpose for the agreement and the  
291 financial ramifications. He believed the intention was to develop a transient facility, yet now the  
292 lobsterman pier was replaced by the Frisbee pier leaving several individuals dissatisfied.

293 **THE MOTION TO POSTPONE PASSED BY A UNANIMOUS ROLL CALL VOTE 7/0/0.**

294 i. (100416-10) The Kittery Town Council moves to schedule a public hearing on  
295 November 14, 2016 on a multi-year contract with MSDSONline.

296 **A MOTION WAS MADE BY COUNCILOR THOMSON TO SCHEDULE A PUBLIC**  
297 **HEARING ON NOVEMBER 14, 2016 ON A MULTI-YEAR CONTRACT WITH**  
298 **MSDSOONLINE, SECONDED BY COUNCILOR SPILLER.**

299 Councilor Dennett stated no objections to the motion and asked that further information be  
300 provided for the public hearing.

301 **THE MOTION PASSED BY A UNANIMOUS ROLL CALL VOTE 7/0/0.**

302 j. (100416-11) The Kittery Town Council moves to appoint George Dow to the Parks  
303 Commission as an associate member until 12/31/19.

304 **A MOTION WAS MADE BY COUNCILOR DENNETT TO APPOINT GEORGE DOW**

305 **TO THE PARKS COMMISSION AS AN ASSOCIATE MEMBER UNTIL 12/31/19,**  
306 **SECONDED BY CHAIRPERSON BEERS. THE MOTION PASSED BY A UNANIMOUS**  
307 **ROLL CALL VOTE 7/0/0.**

308 k. (100416-12) The Kittery Town Council moves to appoint a representative to meet with  
309 the Chair of the Parks Commission to interview Kristina DeMarco for her re-appointment to that  
310 board until 12/31/19.

311 **A MOTION WAS MADE BY COUNCILOR THOMSON TO RE-APPOINT KRISTINA**  
312 **DEMARCO TO THE PARKS COMMISSION UNTIL 12/31/19 WITHOUT BENEFIT OF**  
313 **AN INTERVIEW, SECONDED BY CHAIRPERSON BEERS. THE MOTION PASSED**  
314 **BY A UNANIMOUS ROLL CALL VOTE 7/0/0.**

315 Councilor Dennett noted that the previous appointment for both Kristina DeMarco and Denise  
316 Payne have already expired.

317 **THE MOTION PASSED BY A UANIMOUS ROLL CALL VOTE 7/0/0.**

318 l. (100416-13) The Kittery Town Council moves to appoint a representative to meet  
319 with the Chair of the Parks Commission to interview Denise Payne for her re-appointment to that  
320 board until 12/31/19.

321 **A MOTION WAS MADE BY COUNCILOR THOMSON TO RE-APPOINT DENISE**  
322 **PAYNE TO THE PARKS COMMISSION UNTIL 12/31/19 WITHOUT BENEFIT OF AN**  
323 **INTERVIEW, SECONDED BY CHAIRPERSON BEERS. THE MOTION PASSED BY A**  
324 **UNANIMOUS ROLL CALL VOTE 7/0/0.**

325 m.(100416-14) The Kittery Town Council moves to discuss the 2015 Sewer Project  
326 Easements.

327 Councilor Dennett requested further clarification regarding the three properties that were subject  
328 to betterment fees and later granted an easement from the Town. He recently discovered in the  
329 warrants that the properties were to receive monies from the Town for a total amount of \$17,200.  
330 He questioned why the Council was not informed for this payment.

331 Interim Town Manager Granfield noted it was submitted by the Superintendent of Wastewater  
332 Treatment based on an agreement made in 2014. That agreement indicated the fees would be  
333 returned to the property owners and processed through the warrant. She stated she did not find  
334 any additional information on the matter.

335 Councilor Dennett clarified that fees were waived for a particular property, if the property owner  
336 granted an easement. That was granted and thus, the connection fees were waived. However, it  
337 appears that the fees are being paid. Chairperson Beers understood that the total amount  
338 mentioned can be credited towards any combination of connection where applicable. That was  
339 the compensation understood and no payment would be had.

340 Vice Chairperson Denault believed the Town Attorney was involved and suggested that further  
341 clarification be provided from the Town Attorney.

342 Councilor Dennett replied to Councilor Thomson that the checks written and currently on hold  
343 each amounted to: \$6,400 for the Dennett property; \$6,400 to the Gerasin property; and \$4,400

344 to the Seaward property. Councilor Thomson suggested that further clarification be provided and  
345 copies of the notarized easements be reviewed. The Council reached consensus to seek further  
346 information from the Town Attorney and continue to hold the checks.

347 n. (100416-15) The Kittery Town Council moves to authorize the Dance Annex Studio  
348 to post 8 promotional lawn signs (18"x24") at various locations throughout town the beginning  
349 of November through November 27th to promote their upcoming ballet production.

350 **A MOTION WAS MADE BY COUNCILOR BEERS TO AUTHORIZE THE DANCE**  
351 **ANNEX STUDIO TO POST 8 PROMOTIONAL LAWN SIGNS (18"X24") AT VARIOUS**  
352 **LOCATIONS THROUGHOUT TOWN THE BEGINNING OF NOVEMBER THROUGH**  
353 **NOVEMBER 27TH TO PROMOTE THEIR UPCOMING BALLET PRODUCTION,**  
354 **SECONDED BY COUNCILOR WHITE.**

355 Vice Chairperson Denault requested that the signs not be placed in Memorial Circle.

356 Councilor Thomson stated his support for the activity, but does not support signage in public  
357 ways. He suggested alternative locations that signage could be placed.

358 Councilor Dennett noted that although the event benefits the Kittery Community Center, it is to  
359 be placed in a public way. He stated in opposition of the motion.

360 Councilor Spiller stated in opposition of the motion and encouraged further discussion regarding  
361 signage.

362 Councilor White felt that the necessary information was presented and would be posted in  
363 accordance with the ordinance. If a problem arises, then perhaps the sign ordinance should be  
364 revised.

365 Vice Chairperson Denault felt the necessary information was provided and supports a local  
366 event. He suggested that there be further review of the signage ordinance.

367 Councilor Lemont stated his opposition to the motion to be consistent with previous statements  
368 made.

369 **THE MOTION FAILED TO PASS BY A ROLL CALL VOTE 3/4/0, WITH**  
370 **COUNCILORS THOMSON, SPILLER, DENNETT, AND LEMONT OPPOSED.**

371 14. COUNCILOR ISSUES OR COMMENTS

372 Councilor Thomson noted a recent observation that several cars and trucks are dumping at the  
373 Resource Recovery Center that do not possess a sticker. He suggested that the issue be revisited  
374 and that Traip Academy students could provide support for the matter by raising awareness about  
375 obtaining a sticker.

376 Councilor Thomson raised concerns regarding the survey that was sent out by the Rice Public  
377 Library and felt that it included a biased question and was not anonymous.

378 Councilor Spiller mentioned that there was a minimal amount of litter picked up at the annual  
379 Coastal Cleanup at Seapoint Beach, with the exception for zip ties. She suggested to work with  
380 the Port Authority to encourage lobstermen to be careful disposing of zip ties.

381 Vice Chairperson Denault noted that the Maine DoT will soon move forward with beginning  
382 construction at Memorial Circle and expressed concerns for a potential safety issue.

383 Vice Chairperson Denault requested an update regarding the traffic light on Rte. 236.

384 Vice Chairperson Denault recognized the names of those that have recently passed as follows:

- 385 • Ruth C. Corvey
- 386 • Ruby Bishop
- 387 • Frank "Papa" Blackett
- 388 • Rochelle Davenport
- 389 • Kristini "Tina" Emard
- 390 • Jeanne M. Gunderson
- 391 • Maureen Healy Hankin
- 392 • Mark Taylor Pilgrim
- 393 • Richard Plomondon Sr.
- 394 • Fula Pouliopoulos
- 395 • Norma Madeline Quinty
- 396 • Donald Zimmerman
- 397 • Leonard Moreau

398 Vice Chairperson Denault received complaints regarding signage that have gone missing,  
399 stepped on, or bent.

400 Vice Chairperson Denault asked if the chairs in Council Chambers can be replaced.

401 Vice Chairperson Denault welcomed Town Manager Amaral.

402 Chairperson Beers commended Interim Town Manager Granfield for her contribution and  
403 accomplishments.

404 15. COMMITTEE AND OTHER REPORTS

405 a. Communications from the Chairperson

406 The Council will have a workshop on Monday, October 31<sup>st</sup> at 6:00 p.m. to discuss the Athletic  
407 Fields Master Plan.

408 There are possibly two additional hearing requests for sewer Assessments and it will be  
409 determined whether or not they can be heard in the regular meeting on November 28, 2016.

410 b. Committee Reports

411 The Comprehensive Plan Update Committee will be holding a public forum on November 3<sup>rd</sup>  
412 from 6:00 p.m. to 8:00 p.m. at the STAR Theatre to present the draft implementation plan for the  
413 Comprehensive Plan 2015-2025.

414 16. EXECUTIVE SESSION

415 a. (100416-14) The Kittery Town Council moves to go in to executive session with the  
416 Town Manager and Carol Granfield in accordance with M.R.S. §405 (6) (C) to discuss a land

417 acquisition.

418 **A MOTION WAS MADE BY COUNCILOR DENNETT TO GO IN TO EXECUTIVE**  
419 **SESSION AT 8:58 P.M. WITH THE TOWN MANAGER AND CAROL GRANFIELD IN**  
420 **ACCORDANCE WITH M.R.S. §405 (6) (C) TO DISCUSS A LAND ACQUISITION,**  
421 **SECONDED BY VICE CHAIRPERSON DENAULT. THE MOTION PASSED BY A**  
422 **UNANIMOUS ROLL CALL VOTE 7/0/0.**

423 **A MOTION WAS MADE BY COUNCILOR THOMSON TO COME OUT OF**  
424 **EXECUTIVE SESSION AT 9:13 P.M., SECONDED BY VICE CHAIRPERSON**  
425 **DENAULT. THE MOTION PASSED BY A UNANIMOUS ROLL CALL VOTE 7/0/0.**

426 17. ADJOURNMENT

427 **A MOTION WAS MADE BY COUNCILOR THOMSON TO ADJOURN THE MEETING**  
428 **AT 9:14 P.M., SECONDED BY COUNCILOR SPILLER. THE MOTION PASSED BY A**  
429 **UNANIMOUS VOICE VOTE 7/0/0.**

430 Submitted by Marissa Day, Minutes Recorder, on November 7, 2016.

431 *Disclaimer: The following minutes constitute the author's understanding of the meeting. While*  
432 *every effort has been made to ensure the accuracy of the information the minutes are not intended*  
433 *as a verbatim transcript of comments at the meeting, but a summary of the discussion and*  
434 *actions that took place. For complete details, please refer to the video of the meeting on the*  
435 *Town of Kittery website at <http://www.townhallstreams.com/locations/kittery-maine>.*

1 1. CALL TO ORDER

2 Chairperson Beers called the meeting to order at 6:00 p.m.

3 2. INTRODUCTORY

4 Chairperson Beers read the introductory.

5 3. PLEDGE OF ALLEGIANCE

6 Chairperson Beers led those present in the Pledge of Allegiance.

7 4. ROLL CALL

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

10 5. NEW BUSINESS

11 a. (100516-1) The Kittery Town Council moves, pursuant to Council Rules Section 10, to  
12 suspend the rule of Robert's Rules of Order, governing the conduct of meetings in order to modify the  
13 conduct of these hearings in the due form of quasi-judicial proceedings.

14  
15 **A MOTION WAS MADE BY COUNCILOR THOMSON TO SUSPEND THE RULE OF**  
16 **ROBERT'S RULES OF ORDER, PURSUANT TO COUNCIL RULES SECTION 10,**  
17 **GOVERNING THE CONDUCT OF MEETINGS IN ORDER TO MODIFY THE CONDUCT OF**  
18 **THESE HEARINGS IN THE DUE FORM OF QUASI-JUDICIAL PROCEEDINGS, SECONDED**  
19 **BY VICE CHAIRPERSON DENAULT. THE MOTION PASSED BY A ROLL CALL VOTE**  
20 **7/0/0.**

21  
22 b. (100516-2) The Kittery Town Council moves to hold Assessment Hearings for the following  
23 applicants:

- 24 • Central Maine Power Company (Two Parcels)
- 25 • Kathleen C. & Gerald L. Eldridge
- 26 • Lady Slipper Properties, LLC; Richard D. Johnson
- 27 • Kathryn M. Hawkes
- 28 • Michel E. Racine
- 29 • Richard E. & Kathy A. Dellapiana

30

- 
- 31 • Central Maine Power Company (Two Parcels)

32 Name of the requester: **CENTRAL MAINE POWER CO.**

33 Map-Lot: **20-04** Street: **91 MARTIN RD** & Map-Lot: **20-24** Street: **92 MARTIN RD**

34 Basic description of the issue on request:

35 **Claims lots are deemed unbuildable because they are "a high-voltage transmission line corridor not**  
36 **buildable for a structure that would benefit from the sewer main."** Notes adversely and directly  
37 **affected by "an assessment for services that does not benefit the property."**

38 **Requests relief from assessment. States that "CMP conveyed rights to install portions of the sewer**  
39 **main over its property by easement dated May 3, 2016. And gave the Kittery Water District rights to**

40 *store water main pipe for the water main replacement project on its property at the Kittery Substation.”*

41 Chairperson Beers stated that the request can be heard and a decision rendered based on the evidence  
42 presented or deny the request with prejudice due to the absence of representation. Councilor Dennett  
43 noted it is not required for the appellant to be present for hearing. Chairperson Beers concurred.

44 Chairperson Beers read the council’s basis in law and findings of fact for the hearing request into the  
45 record.

46 **COUNCIL’S BASIS IN LAW AND FINDINGS OF FACT FOR THIS MATTER ARE:**

47 The application [ **is** ] complete; made a part of the record; and, the applicant [ **does** ] have standing.

48 The applicant’s Burden of Proof [ **was** ] clarified to the Council: **SUBSTANTIAL EVIDENCE**  
49 Assessment dimensions of the property and other arithmetical calculations used for calculating the  
50 assessment [ **are not** ] applicable for this request.

51 Assessment formula for this assessment [ **is not** ] applicable for this request.

52 There [ **are no** ] mitigating factors related to this request not considered in the plan.

53 Key elements of the issue and applicable ordinance(s)/statute(s):

54 13.1.4.3 Assessment.

55 **13.1.4.3.1 Determination of Benefits.**

56 When the sewer line construction has been completed, the municipal officers shall determine what lots  
57 or parcels of land, with or without structures thereon, are benefited by said sewer line; and, estimate  
58 and assess upon said lots or parcels of land and against the record owner or owners thereof or against a  
59 person against whom the taxes thereon are assessed, a sum not exceeding the benefit the municipal  
60 officers deem fair and equitable towards defraying the expenses of said sewer construction together  
61 with any sewage disposal units and appurtenances that may be necessary for the proper operation of  
62 said sewer line.

63 **13.1.4.3.2 Definitions.**

64 For the purposes of this Article, the following definitions apply:

65 **Benefited Parcel:** A property which has gained direct access to a sewer main extension via frontage  
66 or an existing public right-of-way less than one hundred (100) feet distant, whether gravity flow is  
67 readily achievable or not.

68 **13.2.2 Unbuildable Parcel Appeals.**

69 **13.2.2.1 Definitions.**

70 The following definitions apply to this Section only:

71 Unbuildable means no structure containing or required to contain sanitary facilities may be legally  
72 constructed due to zoning restrictions.

73 **13.2.2.2 Right to Unbuildable Parcel Appeal.**

74 Any person owning a property, included in an adopted Assessment Plan for a sewer main extension  
75 project, not satisfied with the amount assessed pursuant to §13.1.4.3 may, prior to Assessment Fee  
76 payment due date and without limitation of time thereafter, appeal the assessed amount to the Board of  
77 Appeals (BoA), as an unbuildable parcel, provided that:

78 A. The appellant was the record owner of the assessed property and, excepting spousal or trust  
79 inclusions or exclusions, remains so without interruption at time of appeal; and

80 B. The assessed property was vacant, or was improved by structure(s) neither containing nor required  
81 to contain sanitary facilities.

82 The relief sought as noted in the request filing asked the Council to find:

83 **Request relief from assessment.**

84 In order to grant the request, the applicant needed to demonstrate that:

85 **Subject properties did not meet the “benefited parcel” definition/criteria.**

86 Evidence submitted by the requester beyond what is shown on a plan:

87 **Properties Area aerial photo. Indenture instrument, May 3, 2016, York Registry Book 17249 Pgs**  
88 **520-524. Letter, July 28, 2016, RE: Water Main Replacement and Pipe Storage, Kittery, Maine**

89 Evidence submitted by people other than the requester either for or against the issue: **NONE**

90 Evidence which Council enters into the record based on the personal knowledge of its members or  
91 experts which Council has retained on its own behalf:

92 **Applicant presented no evidence or argument disputing the definition of a “benefited parcel”, or**  
93 **classification of the lots in question not meeting that criteria.**

94 **Applicants statement regarding the granting of an easement to the Town for the project is found to**  
95 **have no bearing on the equation. Applicant failed to note that the Town Paid \$5,232.10 for said**  
96 **easement.**

97 **Applicant’s evidence regarding temporary easement to the Kittery Water District has no bearing as**  
98 **the District is an independent quasi-municipal entity unrelated to the Town.**

99 **Applicant may appeal to the Board of Appeals on its contention that the parcels are unbuildable**  
100 **lots, pursuant to Town Code Title 13, §2.2.2, Right to Unbuildable Parcel Appeal.**

101 The applicant’s evidence presented for the matter: [ was ] substantial;  
102 [ was not ] credible;

103 Councilor White disagreed with the Council’s basis in law and findings of fact that the evidence presented  
104 was not credible. Chairperson Beers understood that no evidence was presented to support it is not a  
105 benefited parcel. He cited the definition of benefited parcel. He clarified that the question as to whether or  
106 not it is a buildable parcel could warrant an appeal to the Board of Appeals. However, the parcel meets  
107 the criteria of a benefited parcel and no evidence was presented to dispute that fact.

108 Councilor Dennett concurred with the decision for the easement for water service and the determination  
109 as to whether or not it is a buildable lot.

110 Chairperson Beers continued to read the council’s basis in law and findings of fact for the hearing request  
111 into the record.

112 The applicant’s evidence presented for the matter:  
113 [ is ] outweighed by conflicting evidence from the Town; and, the applicant  
114 [ did not ] meet the burden of proof for granting the request.

115 The sum of the information/circumstances presented and reviewed [ does not ] warrant a revision of the  
116 Assessment.

117 What revision to the Assessment is decided upon, or not; and, what is the basis of the decision?

118 **NONE**

119 **A MOTION WAS MADE BY CHAIRPERSON BEERS TO HEREBY RESOLVE, PURSUANT**

120 **TO TOWN CODE TITLE 13, §1.4.3.5, TO AFFIRM THE ASSESSMENT MADE IN THE 2015**  
121 **SEWER MAIN EXTENSION ASSESSMENT PLAN ADOPTED ON AUGUST 15TH, 2016, ON**  
122 **MAP 20 LOT 04 AT 91 MARTIN RD AND MAP 20 LOT 24 AT 92 MARTIN RD, AND OWNED**  
123 **BY CENTRAL MAINE POWER CO., SECONDED BY COUNCILOR SPILLER.**

124 Chairperson Beers clarified to Councilor Dennett that the application could appear before the Board of  
125 Appeals.

126 Chairperson Beers added that some properties were included in the Assessment simply for the fact that it  
127 was suspected they could be waived, which in turn would not increase Assessments for other parcels.

128 **THE MOTION PASSED BY A ROLL CALL VOTE 7/0/0.**

129 **A MOTION WAS MADE BY CHAIRPERSON BEERS TO APPROVE THE CONCLUSIONS OF**  
130 **LAW AND FINDINGS OF FACT IN REGARD TO THIS HEARING FOR THE PROPERTIES**  
131 **AT MAP 20 LOT 04 AND MAP 20 LOT 24 AS DISCUSSED AND TO BE RECORDED IN THE**  
132 **MINUTES., SECONDED BY COUNCILOR WHITE. THE MOTION PASSED BY A ROLL**  
133 **CALL VOTE 7/0/0.**

134 **Chairperson Beers advised if the applicant is not satisfied with this decision, pursuant to Town**  
135 **Code Title 13, §1.4.3, appeal may be made within ten (10) days after this hearing, to an independent**  
136 **arbitration panel. Forms are available on the town website and at the Town Clerk's office.**

---

137 • Kathleen C. & Gerald L. Eldridge

138 Name of the requester: **ELDRIDGE, KATHLEEN C. & GERALD L.**

139 Map-Lot: **29-08** Street: **131 MARTIN RD**

140 Basic description of the issue on request:

141 **Apparently requesting relief to connection requirement due to lack of gravity flow and distance**  
142 **from structure to sewer main.**

143 Ms. Eldridge stated a deferral was granted from the Town Manager until year 2024. She asked whether or  
144 not the property requires connection past the deferral period since no gravity flow exists to pump out.

145 Chairperson Beers read the council's basis in law and findings of fact for the hearing request into the  
146 record.

147 **COUNCIL'S BASIS IN LAW AND FINDINGS OF FACT FOR THIS MATTER ARE:**

148 The application [ **is not** ] complete, **but may contain sufficient detail to render a decision**; made a part  
149 of the record; and, the applicant [ **does** ] have standing.

150 The applicant's Burden of Proof [ **was** ] clarified to the Council: **SUBSTANTIAL EVIDENCE**  
151 Assessment dimensions of the property and other arithmetical calculations used for calculating the  
152 assessment [ **are not** ] applicable for this request.

153 Assessment formula for this assessment [ **is not** ] applicable for this request.

154 There [ **are** ] mitigating factors related to this request not considered in the plan.

155 **Aerial view shows structure requiring sewage waste disposal to be greater than 100' from project**  
156 **main.**

157 Key elements of the issue and applicable ordinance(s)/statute(s):

158 **Title 13, §1.1.11 Installation ..... and Connection to Public Sewer Required.**

159 **A. Owners of all structures with use requiring the disposal of sewage with public sewer located**  
160 **within one hundred (100) feet** of the property line as measured along any public way are required at  
161 their expense to install suitable waste effluent and/or toilet facilities therein, and to connect such  
162 facilities directly to the public sewer in accordance with the provisions of this chapter, within ninety  
163 (90) days after date of official notice to do so.

164 **C. When gravity flow cannot be obtained from the building or the property, connection to said**  
165 **public sewer is not required.** However, this does not preclude waste flows from being pumped to  
166 the public sewer should the property owner so wish. Properties not required to connect at the time of  
167 a main extension project for this reason must do so when the existing septic/leach field system fails or  
168 must otherwise be replaced.

169 The relief sought as noted in the request filing asked the Council to find:

170 **Exemption from connect requirement due to lack of gravity flow and greater than 100' distance**  
171 **from structure to sewer main.**

172 In order to grant the request, the applicant needed to demonstrate that:

173 **Gravity flow cannot be achieved; or, distance exceeds requirement.**

174 Evidence submitted by the requester beyond what is shown on a plan:

175 **Superintendent – Project Engineer e-mail, Oct 06, 2016.**

176 Evidence submitted by people other than the requester either for or against the issue: **NONE**

177 Evidence which Council enters into the record based on the personal knowledge of its members or  
178 experts which Council has retained on its own behalf: **Parcel aerial photo.**

179 The applicant's evidence presented for the matter: [ **was** ] substantial;

180 [ **was** ] credible;

181 [ **is not** ] outweighed by conflicting evidence from the Town; and, the applicant

182 [ **did** ] meet the burden of proof for granting the request.

183 The sum of the information/circumstances presented and reviewed [ **does** ] warrant a revision of the  
184 Assessment.

185 What revision to the Assessment is decided upon, or not; and, what is the basis of the decision?

186 **Relief from Town Code Title 13, §1.1.11C, for connection: Structure greater than 100' distant from**  
187 **the sewer main; gravity flow probably unobtainable.**

188 Councilor Dennett stated there was no evidence presented that gravity flow cannot be obtained.

189 Chairperson Beers explained the basis of decision would not be lack of gravity flow, but would be the  
190 distance of the structure being greater than 100 feet. He added that the appellant requested relief only  
191 from connection.

192 Ms. Eldridge replied to Councilor Dennett that the septic is twelve years old and that is why the deferral  
193 request was made.

194 **A MOTION WAS MADE BY CHAIRPERSON BEERS TO HEREBY RESOLVE, PURSUANT**  
195 **TO TOWN CODE TITLE 13, §1.4.3.5, TO REVISE THE ASSESSMENT MADE IN THE 2015**  
196 **SEWER MAIN EXTENSION ASSESSMENT PLAN ADOPTED ON AUGUST 15TH, 2016, ON**  
197 **MAP 29 LOT 08 AT 131 MARTIN RD AND OWNED BY KATHLEEN C. & GERALD L.**  
198 **ELDRIDGE, PURSUANT TO TOWN CODE TITLE 13, §1.1.11A, EXEMPTION FROM**

199 CONNECTION REQUIREMENT IS GRANTED DUE TO STRUCTURE REQUIRING SEWAGE  
200 DISPOSAL LOCATED GREATER THAN 100' FROM SEWER MAIN., SECONDED BY  
201 COUNCILOR SPILLER.

202 Councilor Dennett understood that the motion is for exemption from the requirement to hook up to sewer  
203 and does not change the Assessment. He asked if there was a stub. Councilor Thomson believed that there  
204 was reference to a stub that is three feet buried. Chairperson Beers understood that the amount of frontage  
205 to the road is irrelevant and that there is a proposed stub for all parcels.

206 THE MOTION PASSED BY A ROLL CALL VOTE 6/1/0 WITH COUNCILOR DENNETT  
207 OPPOSED.

208 A MOTION WAS MADE BY COUNCILOR THOMSON TO APPROVE THE CONCLUSIONS  
209 OF LAW AND FINDINGS OF FACT IN REGARD TO THIS HEARING FOR THE PROPERTY  
210 AT MAP 29 LOT 08 AS DISCUSSED AND TO BE RECORDED IN THE MINUTES.,  
211 SECONDED BY VICE CHAIRPERSON DENAULT. THE MOTION PASSED BY A ROLL  
212 CALL VOTE 7/0/0.

213 Chairperson Beers advised if the applicant is not satisfied with this decision, pursuant to Town  
214 Code Title 13, §1.4.3, appeal may be made within ten (10) days after this hearing, to an independent  
215 arbitration panel. Forms are available on the town website and at the Town Clerk's office.

216

217 • Lady Slipper Properties, LLC; Richard D. Johnson

218 Name of the requester: LADY SLIPPER LLC, RICHARD D. JOHNSON

219 Map-Lot: 20-17 Street: 37 ROUTE 236

220 Basic description of the issue on request:

221 States objection to:

222 1) Number of units assessed

223 2) Sewer Stub Location

224 3) Sewage pump required

225 Mr. Johnson explained the reasoning for his request to assess the property based on three units instead of  
226 thirteen. Based on the water usage, the three units combined use about 500 gallons less than the average  
227 consumption per cubic feet per quarter.

228 Mr. Johnson explained the location of the existing stub is approximately five feet higher than the outfall.  
229 The distance to the proposed stub would reduce the distance from the outfall from 174 feet to 148 feet.  
230 The new stub location would allow the force main to run alongside the existing driveway. The current  
231 septic has reached less than 50% of useful life and when it fails, he plans to connect to Town sewer. He  
232 requests that the Town provide a stub at the proposed location and a pump station. Alternatively, he  
233 requests the future connection fee be waived and the Assessment fee be adjusted to offset the cost of  
234 grinder pump station. He did receive a response from Mr. George Kathios that the Town would provide a  
235 pump, but Mr. Johnson was not sure if that included installation.

236 Chairperson Beers read the council's basis in law and findings of fact for the hearing request into the  
237 record.

238 COUNCIL'S BASIS IN LAW AND FINDINGS OF FACT FOR THIS MATTER ARE:

239 The application [ **is** ] complete; made a part of the record; and, the applicant [ **does** ] have standing.

240 The applicant's Burden of Proof [ **was** ] clarified to the Council: **SUBSTANTIAL EVIDENCE**

241 Assessment dimensions of the property and other arithmetical calculations used for calculating the  
242 assessment [ **are** ] applicable for this request.

243 **Assessed for 13 units of occupancy.**

244 Assessment formula for this assessment [ **is not** ] applicable for this request.

245 There [ **are** ] mitigating factors related to this request not considered in the plan.

246 **1. Basis of determining number of units of occupancy.**

247 **2. Sewer stub location anticipated sewer line exiting at front, but it exits at rear.**

248 **3. Project sewer main level is 5.71' higher than structure outfall level preventing gravity flow.**

249 Key elements of the issue and applicable ordinance(s)/statute(s):

250 **UNITS OF OCCUPANCY**

251 **13.1.4.3.2 Definitions.**

252 For the purposes of this Article, the following definitions apply:

253 **Unit-of-Occupancy:** The category of property use which carries the unit charge as found in  
254 §13.1.6.5, Sewer Impact Fee.

255 **13.1.6.5 Sewer Impact Fee.**

256 **13.1.6.5.3 Categories of Use and Unit Charge.**

257 The following categories of property use carry the unit charge set forth herein to be used in the  
258 computation of the sewer impact fee as provided above:

259	Minimum charge.....	1/2 unit charge
260	Single-family dwelling or condominium unit.....	1 unit charge
261	Multifamily dwelling or condominium per unit.....	1 unit charge
262	3 hotel units (double occupancy).....	1 unit charge
263	5 motel units (double occupancy).....	1 unit charge
264	4 boarding house (double occupancy).....	1 unit charge
265	7 cabins.....	1 unit charge
266	15 school students (day school).....	1 unit charge
267	4 school students (boarding school).....	1 unit charge
268	2 hospital beds (medical).....	1 unit charge
269	3 nursing home beds.....	1 unit charge
270	50 theater seats.....	1 unit charge
271	30 employees.....	1 unit charge
272	Retail store per 1,500 gross square feet.....	1 unit charge
273	30 full service restaurant or function room seats.....	1 unit charge
274	1 laundromat machine.....	1 unit charge
275	1 automobile service station.....	3 unit charges
276	Fast food and/or drive-in service restaurant (15 seats).....	1 unit charge
277	10 yacht or country club members.....	1 unit charge
278	50 church members.....	1 unit charge
279	Industrial and manufacturing use.....	Base minimum on
280		domestic use plus any
281		process water usage

282 Commercial and retail uses:  
283 5 plumbing fixtures added to existing structures  
284 and connected to wastewater collection system..... 1 unit charge

285 For any category of use or change in use not specifically set forth above, the enforcing officer  
286 determines the total number of unit charges based upon a per unit load of three hundred (300) gallons  
287 per day.

288 **13.1.6.5.4 Proportional Factors.**

289 When the number of units within a category of use does not exactly correspond to that listed in the  
290 schedule above, a proportional factor is to be utilized to calculate the total sewer impact fee. For  
291 example, to compute the total sewer impact fee for a seven-unit motel the following calculation is  
292 used:

293  $7 \text{ motel units} = 1 \text{ Unit charge for } 5 + 2/5 \text{ Unit charge for } 2$   
294  $= \$3,000 + (2/5 \times \$3,000 (\$1,200)) = \$4,200.00$

295 **13.1.6.5.5 Multiple Category Factors.**

296 If two or more categories of use may apply to a particular proposed use, the sewer impact fee is the  
297 higher of the two or more calculations. However, when there are multiple uses within a structure, each  
298 such use is subject to a separate sewer impact fee.

299 **GRAVITY FLOW**

300 **Title 13, §1.1.11 Installation ..... and Connection to Public Sewer Required. 13.1.1.11**

301 A. Owners of all structures with use requiring the disposal of sewage with public sewer located within  
302 one hundred (100) feet of the property line as measured along any public way are required at their  
303 expense to install suitable waste effluent and/or toilet facilities therein, and to connect such facilities  
304 directly to the public sewer in accordance with the provisions of this chapter, within ninety (90) days  
305 after date of official notice to do so. **Pursuant to Town Code Title 16, Chapter 8, Article VII,**  
306 **Sewage Disposal, connection to public sewer is required for a commercial or industrial**  
307 **development or a residential subdivision, where public sewer, within an abutting public way, is**  
308 **within one thousand (1,000) feet of the property line as measured along said public way.**

309 C. When gravity flow cannot be obtained from the building or the property, connection to said public  
310 sewer is not required. However, this does not preclude waste flows from being pumped to the public  
311 sewer should the property owner so wish. **Properties not required to connect at the time of a main**  
312 **extension project for this reason must do so when the existing septic/leach field system fails or**  
313 **must otherwise be replaced.**

314 D. Owners of properties with a septic tank and leach field system **installed within twenty (20) years**  
315 **of any main extension project completion date may request deferral of connection until the**  
316 **system has reached the twenty-years after installation anniversary.**

317 The relief sought as noted in the request filing asked the Council to find:

- 318 **1. Reduction in number of units assessed to three (3).**
- 319 **2. Exemption from connection requirement due lack of gravity flow obtainability and distance in**  
320 **excess of 100’.**
- 321 **3. Request the Town install a pump station and maintain it forever; or, waive future Connection**  
322 **and adjusted Assessment Fees to offset the cost of the grinder/pump station and long term**  
323 **maintenance.**

324 **4. Not articulated as a request in application attachment A: The Town install an additional sewer**  
325 **stub for a short, less intrusive access line trench.**

326 In order to grant the request, the applicant needed to demonstrate that:

327 **1. The assessment of the number of units of occupancy (13) is in error.**

328 **2. Gravity flow from the structure to the main is unobtainable and/or structure is located more**  
329 **than 100' distant from the main.**

330 **3. That there is an obligation and/or justification for the Town to install a lifting station on a**  
331 **private property and maintain it in perpetuity.**

332 **4. That there is an obligation and/or justification for the Town to install an additional connection**  
333 **stub at the owner's preferred location.**

334 Evidence submitted by the requester beyond what is shown on a plan:

335 **Drawings; e-mails with Superintendent; dwelling unit comparable water consumption examples.**

336 **Applicant noted offer of grinder pump from Wastewater Superintendent**

337 Evidence submitted by people other than the requester either for or against the issue: **NONE**

338 Evidence which Council enters into the record based on the personal knowledge of its members or  
339 experts which Council has retained on its own behalf: **7.48052 gallons / cubic foot.**

340 **HOW MANY TOILET FACILITIES ARE IN THE BUILDING? Five plus a break room.**

341 Mr. Johnson replied to Chairperson Beers that the building has five bathrooms and one break room.

342 Councilor Dennett suggested that the determination of load based on number of gallons per day be  
343 verified by the Code Enforcement Officer. Chairperson Beers stated that given the number of toilet  
344 facilities, it appears that basis on use is not a decision making criteria. The consideration is for Council to  
345 accept the description of the facility and consider reduction to three units for Assessment or develop an  
346 alternative formula that is justifiable.

347 Councilor Dennett questioned why the Code Enforcement Officer would not be allowed to make the  
348 determination for number of units and whether or not that determination be based on load in gallons per  
349 day. He added that it is also based on occupied units and that would need to be considered.

350 Vice Chairperson Denault stated the evidence presented clearly supports the criteria in question and the  
351 request as presented is fair and reasonable.

352 Councilor Lemont echoed Vice Chairperson Denault's statement.

353 **A MOTION WAS MADE BY CHAIRPERSON BEERS TO MOVES TO RESOLVE, PURSUANT**  
354 **TO TOWN CODE TITLE 13, §1.4.3.5, TO REVISE THE ASSESSMENT MADE IN THE 2015**  
355 **SEWER MAIN EXTENSION ASSESSMENT PLAN ADOPTED ON AUGUST 15TH, 2016, ON**  
356 **MAP 20 LOT 17 AT 37 ROUTE 236 AND OWNED BY RICHARD D. JOHNSON, LADY**  
357 **SLIPPER, LLC, TO REDUCE THE NUMBER OF UNITS OF OCCUPANCY ASSESSED TO**  
358 **THREE (3) AND RECALCULATE THE ASSESSMENT FEE., SECONDED BY COUNCILOR**  
359 **SPILLER. THE MOTION PASSED BY A ROLL CALL VOTE 6/1/0 WITH COUNCILOR**  
360 **DENNETT OPPOSED.**

361 **A MOTION WAS MADE BY CHAIRPERSON BEERS TO RESOLVE, PURSUANT TO TOWN**  
362 **CODE TITLE 13, §1.4.3.5, TO REVISE THE ASSESSMENT MADE IN THE 2015 SEWER MAIN**  
363 **EXTENSION ASSESSMENT PLAN ADOPTED ON AUGUST 15TH, 2016, ON MAP 20 LOT 17**  
364 **AT 37 ROUTE 236 AND OWNED BY LADY SLIPPER, LLC, AND PURSUANT TO TOWN**  
365 **CODE TITLE 13, §1.1.11C, EXEMPTION FROM CONNECTION REQUIREMENT IS**  
366 **GRANTED DUE TO LACK OF OBTAINABLE GRAVITY FLOW, SECONDED BY**  
367 **COUNCILOR DENNETT. THE MOTION PASSED BY A ROLL CALL VOTE 7/0/0.**

368 Councilor Dennett felt that since the exemption for connection was granted, the request for lifting station  
369 and maintenance obligations is rendered moot. Chairperson Beers referenced the ordinance stating that  
370 properties not required to connect, must do so when the existing septic system fails or otherwise be  
371 replaced. Councilor Dennett interpreted that to contradict the exemption from connection based on lack of  
372 gravity flow.

373 Chairperson Beers explained to Councilor White that there was no evidence presented that there is an  
374 obligation for the Town to pay for a pump station on a private property.

375 **A MOTION WAS MADE BY CHAIRPERSON BEERS TO APPROVE INSTALLATION OF A**  
376 **SEWAGE WASTE LIFTING STATION, AND OBLIGATE THE TOWN FOR MAINTENANCE**  
377 **IN PERPETUITY, ON MAP 20 LOT 17 AT 37 ROUTE 236, AS REQUESTED BY RICHARD D.**  
378 **JOHNSON, REPRESENTING LADY SLIPPER, LLC, SECONDED BY COUNCILOR WHITE.**  
379 **THE MOTION FAILED TO PASS BY A UNANIMOUS ROLL CALL VOTE 0/7/0.**

380  
381 Chairperson Beers cited the fourth item regarding the Town providing an additional sewer connection  
382 stub at the owner's preferred location. He concurred with the applicant's position and questioned whether  
383 or not this is a function of the sewer department or Council's decision.

384  
385 Vice Chairperson Denault questioned when the connection would be required given the uncertainty of  
386 when the stub would be moved. Chairperson Beers explained if a second stub location is not arranged, the  
387 requirement to make the connection would be true. Vice Chairperson Denault did not feel it would be  
388 reasonable to make a decision if it could be potentially resolved later.

389  
390 Councilor White suggested to consult the matter with staff. If a satisfactory resolution cannot be found,  
391 then it could come back to Council, if necessary. It is difficult to know what the engineering should be.  
392 Chairperson Beers concurred. He added that the issue pertains to proper authority. He thought that the  
393 movement of installation or connection of additional stubs is part of administration, not a decision for  
394 Council to make. The Council reached consensus to make no action on the matter and request the Town  
395 Manager to provide a follow on report.

396  
397 **A MOTION WAS MADE BY CHAIRPERSON BEERS TO APPROVE THE CONCLUSIONS OF**  
398 **LAW AND FINDINGS OF FACT IN REGARD TO THIS HEARING FOR THE PROPERTY AT**  
399 **MAP 20 LOT 17 AS DISCUSSED AND TO BE RECORDED IN THE MINUTES., SECONDED**  
400 **BY COUNCILOR SPILLER. THE MOTION PASSED BY A ROLL CALL VOTE 7/0/0.**

401  
402 **Chairperson Beers advised if the applicant is not satisfied with this decision, pursuant to Town**  
403 **Code Title 13, §1.4.3, appeal may be made within ten (10) days after this hearing, to an independent**  
404 **arbitration panel. Forms are available on the town website and at the Town Clerk's office.**

---

405 • Kathryn M. Hawkes

406 Name of the requester: **HAWKES, KATHRYN M.**  
407 Map-Lot: **29-33** Street: **16 STEVENSON RD**  
408 Basic description of the issue on request:  
409 **Requesting relief to connection requirement due to lack of gravity flow.**

410 Ms. Hawkes explained why proper connection would require to pump up or lose the downstairs facilities.

411 Chairperson Beers read the council's basis in law and findings of fact for the hearing request into the  
412 record.

413 **A MOTION WAS MADE BY CHAIRPERSON BEERS TO RESOLVE, PURSUANT TO TOWN**  
414 **CODE TITLE 13, §1.4.3.5, TO REVISE THE ASSESSMENT MADE IN THE 2015 SEWER MAIN**  
415 **EXTENSION ASSESSMENT PLAN ADOPTED ON AUGUST 15TH, 2016, ON MAP 29 LOT 33**  
416 **AT 16 STEVENSON RD AND OWNED BY KATHRYN M. HAWKES, PURSUANT TO TOWN**  
417 **CODE TITLE 13, §1.1.11C, EXEMPTION FROM CONNECTION REQUIREMENT IS**  
418 **GRANTED DUE TO LACK OF OBTAINABLE GRAVITY FLOW, SECONDED BY**  
419 **COUNCILOR SPILLER. THE MOTION PASSED BY A ROLL CALL VOTE 7/0/0.**

420 Councilor Thomson referenced a statement made in an e-mail presented in the application and suggested  
421 that each department head should be made aware of Council actions in the regularly scheduled staff  
422 meetings.

**Chairperson Beers advised if the applicant is not satisfied with this decision, pursuant to Town Code Title 13, §1.4.3, appeal may be made within ten (10) days after this hearing, to an independent arbitration panel. Forms are available on the town website and at the Town Clerk's office.**

---

423 • Michel E. Racine

424 Name of the requester: **RACINE, MICHEL E.**  
425 Map-Lot: **20-08A** Street: **11 MARTIN RD**  
426 Basic description of the issue on request:  
**Requesting relief to connection requirement due to lack of gravity flow and deferral of connection until current system 20-year anniversary.**

427 **Noted in Application attachment: Difference in Assessed Area (32,670sf) and 2003 Survey plat**  
428 **(32,271sf) of 399sf.**

429 Mr. Racine stated the distances to the stub and septic and requested relief from connection and requested  
430 deferral.

431 Chairperson Beers read the council's basis in law and findings of fact for the hearing request into the  
432 record.

433 **COUNCIL'S BASIS IN LAW AND FINDINGS OF FACT FOR THIS MATTER ARE:**

434 The application [ **is** ] complete; made a part of the record; and, the applicant [ **does** ] have standing.

435 The applicant's Burden of Proof [ **was** ] clarified to the Council: **SUBSTANTIAL EVIDENCE**  
436 Assessment dimensions of the property and other arithmetical calculations used for calculating the  
437 assessment [ **are** ] applicable for this request.

438 Assessment formula for this assessment [ **is** ] applicable for this request.

439 There [ are ] mitigating factors related to this request not considered in the plan.  
440 **Distance from structure to sewer main; Assessed Area calculations in error**

441 Key elements of the issue and applicable ordinance(s)/statute(s):

442 **Title 13, §1.1.11 Installation ..... and Connection to Public Sewer Required.**

443 **A. Owners of all structures with use requiring the disposal of sewage with public sewer located**  
444 **within one hundred (100) feet** of the property line as measured along any public way are required at  
445 their expense to install suitable waste effluent and/or toilet facilities therein, and to connect such  
446 facilities directly to the public sewer in accordance with the provisions of this chapter, within ninety  
447 (90) days after date of official notice to do so.

448 **C. When gravity flow cannot be obtained from the building or the property, connection to said**  
449 **public sewer is not required.** However, this does not preclude waste flows from being pumped to  
450 the public sewer should the property owner so wish. **Properties not required to connect at the time**  
451 **of a main extension project for this reason must do so when the existing septic/leach field system**  
452 **fails or must otherwise be replaced.**

453 The relief sought as noted in the request filing asked the Council to find:

454 **Exemption of connection; Approval of deferral to 20 year deadline unnecessary.**

455 In order to grant the request, the applicant needed to demonstrate that:

456 **Gravity flow is unobtainable.**

457 Evidence submitted by the requester beyond what is shown on a plan: **NONE**

458 Evidence submitted by people other than the requester either for or against the issue: **NONE**

459

460 Evidence which Council enters into the record based on the personal knowledge of its members or  
461 experts which Council has retained on its own behalf:

462 **TOWN PROPERTY RECORD; TAX MAP EXCERPT; AERIAL VIEW. Title 13, §1.1.11A.**

463 The applicant's evidence presented for the matter: [ was ] substantial;

464 [ was not entirely ] credible;

465 [ is not ] outweighed by conflicting evidence from the Town; and, the applicant

466 [ did ] meet the burden of proof for granting the request.

467 The sum of the information/circumstances presented and reviewed [ does ] warrant a revision of the  
468 Assessment.

469 What revision to the Assessment is decided upon, or not; and, what is the basis of the decision?

470 **Relief from Town Code Title 13, §1.1.11 for connection: Structure greater than 100' distant from**  
471 **the sewer main; gravity flow probably unobtainable.**

472 Councilor Beers stated that the drawing presented does not include professional details and would require  
473 a certified soils analysis for proof of gravity flow. It would not be acceptable to find that proof of gravity  
474 flow is not obtainable, but rather probable.

475 **A MOTION WAS MADE BY CHAIRPERSON BEERS TO RESOLVE, PURSUANT TO TOWN**  
476 **CODE TITLE 13, §1.4.3.5, TO REVISE THE ASSESSMENT MADE IN THE 2015 SEWER MAIN**  
477 **EXTENSION ASSESSMENT PLAN ADOPTED ON AUGUST 15TH, 2016, ON MAP 20 LOT 08A**  
478 **AT 111 MARTIN RD AND OWNED BY MICHEL E. RACINE, PURSUANT TO TOWN CODE**  
479 **TITLE 13, §1.1.11A, EXEMPTION FROM CONNECTION REQUIREMENT IS GRANTED DUE**  
480 **TO STRUCTURE REQUIRING SEWAGE DISPOSAL LOCATED GREATER THAN 100'**  
481 **FROM SEWER MAIN, SECONDED BY VICE CHAIRPERSON DENAULT.**

482 Councilor Dennett requested to split the motion to vote separately on the finding that the structure is  
483 located greater than 100' from the sewer main.

484 **THE MOTION PASSED AS AMENDED BY A ROLL CALL VOTE 6/1/0 WITH COUNCILOR**  
485 **DENNETT OPPOSED.**

486 **A MOTION WAS MADE BY CHAIRPERSON BEERS TO RESOLVE, PURSUANT TO TOWN**  
487 **CODE TITLE 13, §1.4.3.5, TO REVISE THE ASSESSMENT MADE IN THE 2015 SEWER MAIN**  
488 **EXTENSION ASSESSMENT PLAN ADOPTED ON AUGUST 15TH, 2016, ON MAP 20 LOT 08A**  
489 **AT 111 MARTIN RD AND OWNED BY MICHEL E. RACINE, PURSUANT TO TOWN CODE**  
490 **TITLE 13, §1.1.11A, TO AFFIRM THE LOT SIZE AT 32,271 S.F. AND THE ASSESSMENT**  
491 **CALCULATION TO BE SO REVISED, SECONDED BY VICE CHAIRPERSON DENAULT.**  
492 **THE MOTION PASSED BY A ROLL CALL VOTE 7/0/0.**

493 **Chairperson Beers advised if the applicant is not satisfied with this decision, pursuant to Town**  
494 **Code Title 13, §1.4.3, appeal may be made within ten (10) days after this hearing, to an independent**  
495 **arbitration panel. Forms are available on the town website and at the Town Clerk's office.**

---

496 • Richard E. & Kathy A. Dellapiana

497 Name of the requester: **DELLAPIANA, RICHARD E.**

498 Map-Lot: **20-38** Street: **72 MARTIN RD**

499 Basic description of the issue on request:

500 **Contests Unit Category; Unit Charge; Total Assessment Amount; Other: Address incorrect and**  
501 **information of 20-38. Indicated 2002 data, not provided.**

502 Chairperson Beers read the council's basis in law and findings of fact for the hearing request into the  
503 record.

504 **COUNCIL'S BASIS IN LAW AND FINDINGS OF FACT FOR THIS MATTER ARE:**

505 The application [ **is not** ] complete; made a part of the record; and, the applicant [ **does** ] have standing.

506 **Number of Units - Town records show five dwelling units / Assessed for four.**

507 72: 1,687sf

508 **76A: 600sf**

509 76B: 980sf

510 76C: 864sf

511 76D: 1,064sf

512 The applicant's evidence presented for the matter: [ **was not** ] substantial;

513 [ **was not** ] credible;

514 [ **is** ] outweighed by conflicting evidence from the Town; and, the applicant

515 [ **did not** ] meet the burden of proof for granting the request.

516 The sum of the information presented and reviewed [ **does not** ] warrant a revision of the Assessment.

517 Chairperson Beers confirmed to Councilor Thomson that additional information regarding the purchase of  
518 the property was said to be provided in the application, but was not presented before the hearing.

519 Councilor White felt the application did not appear to be complete and it is the type of property that  
520 should connect.

521 Chairperson Beers stated the Assessment based on the number of units was done correctly because one of  
522 the five was less than 650 square feet, the code dimension for a dwelling unit.

523 Councilor Beers explained to Councilor Dennett that the motion would affirm the Assessment with  
524 prejudice and conclude the matter, but could still warrant an appeal.

525 **A MOTION WAS MADE BY CHAIRPERSON BEERS TO RESOLVE, PURSUANT TO TOWN**  
526 **CODE TITLE 13, §1.4.3.5, TO AFFIRM THE ASSESSMENT MADE IN THE 2015 SEWER**  
527 **MAIN EXTENSION ASSESSMENT PLAN ADOPTED ON AUGUST 15TH, 2016, ON MAP 20**  
528 **LOT 38 AT 72 MARTIN RD AND OWNED BY RICHARD E. DELLAPIANA, WITH**  
529 **PREJUDICE, SECONDED BY COUNCILOR THOMSON. THE MOTION PASSED BY A ROLL**  
530 **CALL VOTE 7/0/0.**

531 **A MOTION WAS MADE BY CHAIRPERSON BEERS TO APPROVE THE FINDINGS OF**  
532 **FACT IN REGARD TO THIS HEARING FOR THE PROPERTY AT MAP 20 LOT 38 AS**  
533 **DISCUSSED AND TO BE RECORDED IN THE MINUTES, SECONDED BY COUNCILOR**  
534 **THOMSON. THE MOTION PASSED BY A ROLL CALL VOTE 7/0/0.**

535 **Chairperson Beers advised if the applicant is not satisfied with this decision, pursuant to Town**  
536 **Code Title 13, §1.4.3, appeal may be made within ten (10) days after this hearing, to an independent**  
537 **arbitration panel. Forms are available on the town website and at the Town Clerk's office.**

---

538 6. ADJOURNMENT

539 **A MOTION WAS MADE BY COUNCILOR THOMSON TO ADJOURN THE MEETING AT**  
540 **7:20 P.M. SECONDED BY COUNCILOR LEMONT. THE MOTION PASSED BY A**  
541 **UNANIMOUS VOICE VOTE 7/0/0.**

542 Submitted by Marissa Day, Minutes Recorder, on November 7, 2016.

543 *Disclaimer: The following minutes constitute the author's understanding of the meeting. While every effort*  
544 *has been made to ensure the accuracy of the information the minutes are not intended as a verbatim*  
545 *transcript of comments at the meeting, but a summary of the discussion and actions that took place. For*  
546 *complete details, please refer to the video of the meeting on the Town of Kittery website at*  
547 *<http://www.townhallstreams.com/locations/kittery-maine>.*



# TOWN OF KITTERY

200 Rogers Road, Kittery, ME 03904

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

---

## REPORT TO TOWN COUNCIL

---

Meeting Date: November 14, 2016  
From: Kendra Amaral, Town Manager  
Subject: MSDSonline 3 Year Contract  
Councilor Sponsor: Chairperson Gary Beers

---

### EXECUTIVE SUMMARY

The Hazard Communication Standard (HCS) (29CFR 1910.1200(g) revised in 2012, requires that the chemical manufacturer, distributor, or importer provide Safety Data Sheets (SDSs) (formerly MSDSs or Material Safety Data Sheets) to communicate information on the dangers, composition, safe handling, and disposal of their chemicals and substances. The information contained in the SDS is largely the same as the MSDS, except now the SDS's are required to be presented in a consistent user-friendly, 16-section format. Employers must ensure that the SDSs are readily accessible to employees for all hazardous chemicals in the workplace.

The Town is seeking to enter into a three-year contract with MSDSonline to provide an "eBinder" of Safety Data Sheets for hazardous chemicals used in the workplace. The MSDSonline system will replace the physical binders presently being maintained in each department.

### STATEMENT OF NEED

Each department is currently responsible to maintain a physical binder that houses the SDSs on all chemicals used in the department. Each department must ensure they are updating their SDSs as chemicals are added, discarded, or changed. For example, the Fire Department has over 200 different chemicals it must maintain current SDSs on. Six departments are required to maintain SDSs information.

MSDSonline is a chemical management system that will allow each department to more efficiently comply with the demands of the updated Hazard Communication Standard. The online system will provide access to a large global database of SDSs with appropriate labels and documentation that meets the standards. SDSs on chemicals will be stored in eBinders, replacing the physical binder system.

### FACTS BEARING ON THE EQUATION

The Safety Committee sought quotes for a one-year contract and a multi-year contract.

A one-year contract with MSDSonline is \$3,749 for the first year. Each annual contract thereafter will increase in fee over the prior year.

A three-year contract with MSDSONline is \$3,749 per year. This annual rate is locked in for the length of the three-year contract.

A web-based approach is more efficient than paper-based for maintaining compliance.

As with any new software product, the staff must get familiarized with its functionality to make the greatest use of it. The Town therefore intends to contract with a vendor it feels is best suited for the need and can supply the service for at least the next three years.

### **CURRENT SITUATION**

Each Department is responsible for maintaining and updating their SDSs as chemicals are added, changed, and/or discarded. The ability to have access to every chemical and label is crucial in ensuring that each chemical is correctly labeled, catalogued, and accessible to employees. In the case of a hazard event, the liability of incorrect labeling, or lack of labeling creates a liability for the Town.

The Safety Committee reviewed the requirements for compliance, conducted research on MSDSONline, spoke with other municipalities using the tool, and participated in a demonstration by the vendor. Following this effort the Safety Committee determined that the online database will save staff time and will streamline compliance throughout all impacted departments.

### **PROPOSED SOLUTION/RECOMMENDATION**

The proposed solution recommended is to authorize the three-year contract with MSDSONline. The contract provides unlimited SDS database searches, views, and additions to the eBinder. The eBinder replaces the physical binders in each department. Each department will have their own administrator account and will be charged a portion of the annual fee to cover the cost.

### **RATIONALE FOR THE PROPOSED SOLUTION (INCLUDING COSTS)**

The three-year contract will allow the Town to stay compliant with requirements related to SDSs for hazardous chemicals in the workplace. A three-year contract is more advantageous because it allows the Town to lock in the annual cost, rather than be subject to increases each year. It also enhances predictability in budgeting for this service.

1 **AN ORDINANCE** related to ordaining a three year agreement between MSDSonline and the  
2 Town of Kittery, Maine to effectuate and encourage the furnishing of access to an online database  
3 of Safety Data Sheets for hazardous chemical labeling and information and to maintain applicable  
4 Safety Data Sheets in an online eBinder in order to meet workplace requirements.  
5

6 **WHEREAS**, The Kittery Town Council is authorized to enact this Ordinance, as specified in  
7 Section 2.07 (3) and Section 6.11 (2) of the Town Charter and 30-A M.R.S. subsection 3001,  
8 pursuant to its powers that authorize the town, under certain circumstances, to provide for the  
9 public health, safety, morals, and welfare, not intending for Ordinance to conflict with any existing  
10 state or federal laws; and  
11

12 **WHEREAS**, The Town of Kittery wishes to enter into a three year contract agreement with  
13 MSDSonline with the agreement of all parties; and  
14

15 **WHEREAS**, In the judgment of the Town Manager MSDSonline will provide a needed resource  
16 for workplace safety compliance and the efficient maintenance and management of Safety Data  
17 Sheets at the workplace; and  
18

19 **WHEREAS**, The Town Council intends, through the adoption of this Ordinance, to promote  
20 public safety, health and welfare through the authorization to enter into a three year contract  
21 agreement with MSDSonline.  
22

23 **NOW THEREFORE, IN ACCORDANCE WITH TITLE 30-A, M.R.S. SUBSECTION**  
24 **3001, AND THE TOWN CHARTER SECTIONS 2.07 (3) AND 6.11 (2):**  
25

26 **THE KITTERY TOWN COUNCIL HEREBY ORDAINS THE FOLLOWING**  
27 **ORDINANCE AND INSTRUCTS THE TOWN MANAGER TO EXECUTE THE**  
28 **THREE YEAR ONLINE SAFETY DATA SHEET SYSTEM CONTRACT**  
29 **AGREEMENT WITH MSDSonline.**  
30

222 Merchandise Mart Plaza, Suite 1750  
 Chicago, IL 60654  
 Ph: 312.881.2000  
 Fax: 866.320.1021  
 Tax ID #: 04-3626476

**Contract Number:** 065128  
**Contract Date:** 10/17/2016  
**Sales Rep:** Jeremy McDermott  
**Offer Valid Through:** 11/30/2016

**Customer Information**

**Bill to:**  
**Customer:** Town of Kittery Maine  
**Attn:** Carol Granfield  
**Address:** 200 Rogers Rd Ext.  
 Kittery, ME 03904

**Ship to:**  
**Customer:** Town of Kittery Maine  
**Attn:** Carol Granfield  
**Address:** 200 Rogers Rd Ext.  
 Kittery, ME 03904

**Terms and Conditions**

**Related Contract:** Not Applicable  
**Contract Start Date:** Fourteen (14) calendar days after execution  
**Contract End Date:** Determined upon execution  
**Term:** 3 Years  
**Coverage:** 1 Location(s)

**PO Number:**  
**Payment Terms:** Net 30  
**Billing Frequency:** Annually  
**Initial Invoice Due:** 30 Days from Execution

MSDS Management	Qty	Year 1	Year 2	Year 3
HQ Account	1	\$3,749.00	\$3,749.00	\$3,749.00
Site Administrators	2	\$0.00	\$0.00	\$0.00
MSDS Management License(s)	6	\$0.00	\$0.00	\$0.00

Services	Qty	Year 1	Year 2	Year 3
Implementation Services	1	\$0.00		
<b>Total:</b>		<b>\$3,749.00</b>	<b>\$3,749.00</b>	<b>\$3,749.00</b>

This Customer Order is governed by the terms and conditions of the MSDSonline Master Subscription Agreement, as posted on www.MSDSonline.com. By signing below, Customer agrees to be bound by such terms and conditions. MSDSonline may deem this Customer Order null and void if executed agreement is not received by MSDSonline by the "Offer Valid Through" date listed above, or if the document is returned with handwritten changes.

**Town of Kittery Maine**

Signature: \_\_\_\_\_  
 Name: \_\_\_\_\_  
 Title: \_\_\_\_\_  
 Date: \_\_\_\_\_

**MSDSonline**

Signature: \_\_\_\_\_  
 Name: \_\_\_\_\_  
 Title: \_\_\_\_\_  
 Date: \_\_\_\_\_

---

**Base subscription pricing includes:**

- 1 annual HQ subscription(s) for the Customer and its employees included within the Coverage of this agreement
- A Primary Account Administrator and 7 Additional Administrator(s). Additional Administrators may be purchased for \$100 USD per Administrator.
- Unlimited MSDS database searches, views and additions to the eBinder.
- Annual allotment of 50 MSDS Requests and 100 MSDS Uploads. Additional MSDS Requests may be purchased in bundles of fifty (50) for \$200 USD; additional MSDS Uploads may be purchased in bundles of (100) for \$200 USD.
- Implementation Services and Customer/Technical Support.

**Implementation Service:** MSDSonline will provide implementation assistance that includes the following:

- An assigned contact who will escort you through the implementation process.
- Assistance with the configuration of the system in a manner most suitable to your environment.
- Training (phone or Web conference) to any named system administrator (Primary or Additional).
- Help facilitating the deployment of your system across your organization.
- Unlimited access to the Customer Care and Technical Support resources to answer any questions you may have (between the hours of 7am and 7pm CST).

Unless otherwise noted, all fees are in USD, and Year One (1) fees become due within 30 calendar days of the execution of this Customer Order Form. The Base Subscription period will commence on the Contract Start Date, as noted on page one (1) of this agreement; the Contract Start Date will become the subscription "anniversary date". Subsequent yearly fees will be invoiced between 45 and 60 days before each anniversary date, with payments due prior to each anniversary date. Customer may at its discretion pre-pay the full term of the agreement. Sales tax associated to this Order will appear on the invoice, where applicable.

## **COUNCIL RULES**

Except as superseded by these rules, Robert's Rules of Order, Newly Revised, 10<sup>th</sup> Edition, govern the conduct of meetings.

### **SECTION ONE. REGULAR MEETINGS:**

The regular meetings of the Council are held in the Council Chambers of the Town Hall on either the second or fourth Monday of each calendar month, or both. Public proceedings commence at 7:00 p.m. whether or not preceded by an executive session.

When said meeting falls on a holiday or is otherwise postponed, the regular meeting is held on the following Wednesday, at the same time and place.

The date and venue of any regular meeting may be changed upon the vote of the Council, provided, however, that said change in date, or venue, will still provide for at least one regular meeting in each month.

### **SECTION TWO. SPECIAL MEETINGS:**

Special meetings may be called by the Chairperson or by four members of the Town Council. Notice of such meeting must, when possible, be given at least twelve hours before the time for holding the meeting. The call for the meeting must set forth the matters to be acted upon and nothing else may be considered.

Special meetings include public comment time as provided at regular Council meetings, but such public comment is limited to the matters on the agenda for the meeting. Notices of such meetings must include the name(s) of the person(s) requesting the meeting.

### **SECTION THREE. COUNCIL ACTION:**

The Town Council shall act only by ordinance, order, resolve, and by consensus.

Actions of the Council are recorded in the minutes of the Council meeting.

### **SECTION FOUR. EFFECTIVE DATE OF COUNCIL ACTIONS:**

All actions of the Council, except ordinances, take effect immediately upon passage.

The effective date of ordinances is governed by Section 2.14, Paragraph 3 of the Town Charter.

### **SECTION FIVE. DUTIES OF THE CHAIRPERSON.**

The Chairperson shall assume the chair at the time appointed for the meeting; call the members to order; provide for introductory and pledge of allegiance; cause the roll to be called; and, a quorum being present, proceed to conduct the business of the Council according to the published agenda.

The Chairperson shall preserve decorum and order; speak to points of order in preference to other members; and, decide all questions of order subject to an appeal to the Council by motion regularly made and seconded, and no other business is in order until the question on appeal be decided.

The Chairperson shall declare all votes, but if any member doubts a vote, the Chairperson shall cause a return of the members voting in the affirmative and in the negative without debate.

All persons wishing to speak, whether they be Council members or members of the general public must first be recognized by the Chairperson.

The Chairperson enjoys the same rights and privileges as other members of the Council, including the introduction and seconding of motions and participation in debate.

#### **SECTION SIX. VICE CHAIRPERSON.**

The position of Vice Chairperson is hereby established. The provisions of Charter Sec. 2.05 (1) apply for election to this position.

In the temporary absence or disability of the Chairperson, Charter Sec. 2.05 (3) and Section Five of these Council Rules govern the duties of the Vice Chairperson.

#### **SECTION SEVEN. RECONSIDERATION OF THE VOTE.**

When a vote is concluded, it is in order for any member who voted on the prevailing side to move a reconsideration thereof at the same or next regular meeting.

#### **SECTION EIGHT. CONDUCT IN ADDRESSING THE COUNCIL.**

Proper decorum, befitting the gravity of their solemn duties, is expected of all Councilors during the conduct of meetings.

Councilors wishing to speak shall respectfully address the Chairperson, and confine their comments to the question under debate, or the issue the Councilor wants to raise.

No member may be interrupted by another, but for a point of order or to correct a mistake, and only upon recognition by the Chairperson.

#### **SECTION NINE. MOTIONS IN WRITING**

Motions must be reduced to writing if the Chairperson so directs.

#### **SECTION TEN. SUSPENSION OF THE RULES.**

The rules may not be dispensed with, or suspended, unless five members of the Council consent thereto. No rules may be adopted, amended, or deleted without notice in writing being given at the preceding regular meeting.

## **SECTION ELEVEN. VOTING:**

Voting is by a randomly sequenced roll call. Councilors shall indicate their vote by a yes or no, or by abstention, when polled. No Councilor may be excluded from participation in debate on any question except as required by Town Charter or state statute, (currently Section 12.01 and 30-A MRS §2605, respectively). Councilors have the right to change their vote up to the time the vote is announced by the Chairperson.

The vote must be recorded in the minutes of the meeting to indicate each Councilor's vote, or abstention.

## **SECTION TWELVE. AGENDA:**

In order that advance notice of the matters to be discussed at Council meetings be afforded interested parties, all meetings of the Council will be conducted according to the agenda.

An agenda will be prepared for each regular meeting and posted by the Thursday preceding said meeting. Posting will be in a public area of the municipal building and of the U.S. Post Offices in Kittery and Kittery Point.

When practicable, an agenda will be prepared at least twelve hours in advance of a special meeting; delivered to all Council members and posted as previously provided.

All Town Manager's memoranda of interest to the Council members will be delivered to them at least seventy-two hours before a regular meeting.

All reports or proposals made to the Council, which require or request that an action be taken by the Council, are to be submitted in written form. The content will consist of the following, as appropriate:

- Executive Summary
- Statement of Need
- Background
- Facts Bearing on the Equation
- Current Situation
- Proposed Solution / Recommendation
- Rationale for the Proposed Solution (including costs)

The agenda consists of the following categories:

1. Call to Order
2. Introductory
3. Pledge of Allegiance
4. Roll Call
5. Agenda Amendment and Adoption
6. Town Manager's report

7. Acceptance of previous minutes
8. Interviews for Planning Board and Board of Appeals.
9. All items involving the town attorney, town engineers, town employees or other town consultants or requested officials.

Persons who are represented by legal or engineering consultants, who are present and wish to address the Council, shall notify the Chairperson prior to the Council Call to Order of the subject they wish to speak on and will be heard at this time.

10. Public hearings
11. Discussion
  - a. Discussion by members of the public (3 minutes per person)
  - b. Response to public comment directed to a particular Councilor'
  - c. Chairperson's response to public comments.
12. Unfinished business
13. New business
13. a. Donations/gifts received for Council disposition
14. Councilor issues or comment
15. Committee and other reports
  - a. Communications from the Chairperson
  - b. Committee reports
16. Executive session, if required
17. Adjournment

To the extent possible, matters to be discussed at a meeting by the town manager or Chairperson will be listed on the agenda under Chairperson Communications, or Town Manager's Report, respectively.

The category of Unfinished Business is specifically reserved for Council business discussed at a previous meeting that has been postponed or continued to the meeting for which the present agenda is prepared.

The New Business section of the agenda is reserved for those matters which a Councilor wishes to introduce anew.

Except as provided in Charter Article XI, no proposal for ordinances enactment, repeal, or amendment may lie before the Council unless introduced by a Council member.

In keeping with the policy regarding advance notice, Councilors are encouraged and requested to submit to the Town Clerk those matters which they wish to introduce under New Business by 4:00 p.m. on the Tuesday preceding the Thursday that the agenda is to be posted. The Town Clerk shall then place those matters on the agenda.

Immediately following the roll call, the Chairperson may amend and must adopt the agenda, except no matter requiring public notice may be added without such notice. Agenda amendment after adoption may be made only by majority vote.

### **SECTION THIRTEEN. DISCUSSION.**

#### **A. Discussion by members of the public (3 minutes per person)**

Any person wishing to address the Town Council will be given an opportunity to do so in accordance with the following procedures.

1. The Public Discussion section of the agenda is reserved for members of the public who wish to address the Council on any matters listed on the agenda or on other matters they wish to bring to the Council's attention.
2. Any person wishing to have an item listed on the agenda under Public Discussion shall submit the matter to be discussed in writing to the Town Clerk by 4:00 p.m. on the Tuesday preceding the Thursday that the agenda is to be posted.
3. Persons wishing to address the Council during public discussion will signify their desire by raising their hand and, when recognized by the Chairperson, request permission to address the Council, giving their name and address, then designating the subject matter on which they desire to address the Council.
4. Members of the public, addressing the Council during the public discussion section of the agenda shall limit their statements to the Council, to no more than three minutes per person unless the Chairperson finds it necessary to allow more time.
5. Persons wishing to address the Council on an item which appears on the agenda after public discussion shall wait until the Chairperson announces the consideration of such item, at which time, after being recognized, they may address the Council on that particular item.

However, once the Council has begun its deliberation on the item, no person is permitted to address the Council unless the Chairperson, having determined that the Council's deliberations appear finished, and that the item under consideration is of great concern to members of the public gathered, permits persons in the audience to address the Council before closing the discussion and calling for Council vote.

#### **B. Response to public comments.**

In order to assure that the Council is speaking as one voice when responding to public comments all general responses shall be made by the Council Chairperson.

The Chairperson is responsible for any subsequent follow-up response to the speakers. In the event a member of the public addresses an issue to a particular Councilor, the Chairperson will invite such Councilor to respond directly, if that Councilor so desires.

**SECTION FOURTEEN. COUNCIL POLICIES:**

The Town Clerk shall maintain copies of Council rules and policies and provide same to the Rice Public Library.

To allow for the opportunity for full attendance, all workshops held by the Council will be scheduled for a Monday. When this is impossible to do, another night will be chosen by the Council at a regular Monday meeting.

No member of the Council may request a legal opinion relative to Town business from the Town's appointed attorneys without prior approval of a majority vote of the Council. All such requests must be made through the Town Manager.

**SECTION FIFTEEN. STANDING COMMITTEES**

A. In accordance with the Kittery Town Charter, Sec. 2.10(2) the Council establishes two standing committees consisting of the entire Council, as follows:

<b>Financial</b>	<b>Legislative</b>
All budgetary matters	Approvals: Permits, licenses
Any appropriation ordinance	All non-appropriation ordinances
Administrative relations	Appointments
Grants, bequests, etc.	Property transfers

B. The Ordinance Review Committee consists of two members of the Council appointed annually at the first Regular meeting after the November municipal elections. All communication should be in coordination with the Town Manager.

The Committee is to conduct a review and evaluation of any non-appropriation ordinance proposal prior to Council Public Hearing on the matter. The Committee is to:

- provide a report of review results to Council at an appropriate level of detail;
- ensure that form and format are consistent with the codification structure;
- note any substantive debatable issues identified; and,
- make a recommendation for ordainment.

**SECTION SIXTEEN. COPY COSTS:**

The cost charged by the Town for making copies of any materials, excluding those produced by the Planning Department, access to which the public is entitled, is twenty-five (25) cents a copy.

Copies of the Council packets are to be made available to the media at ten (10) cents a page.

**SECTION SEVENTEEN. COUNCILOR AWARENESS**

The Council realizes that Councilors should make an effort to broaden and increase their knowledge of information and skills directly related to their responsibility to govern the Town, and that efforts should be made to appropriate funds for this purpose.

Prior to incurring and requesting reimbursement for such expenses, however, individual Councilors must obtain the approval of the Council. Such approval is required for any individual expense that would be paid from the Council Contingency or the Council Expense accounts.

Approved 02/27/89	Amended 09/27/99	Amended 12/17/01	Amended 09/27/10
Amended 12/28/92	Amended 11/22/99	Amended 09/16/02	Amended 01/09/12
Amended 06/26/95	Amended 05/31/00	Amended 10/28/02	Amended 09/10/12
Amended 010/3/96	Amended 10/30/00	Amended 08/24/09	Amended 02/11/13
Amended 01/10/96	Amended 03/19/01	Amended 11/23/09	Amended 03/25/13
Amended 12/09/96	Amended 07/02/01	Amended 08/23/10	Amended 01/27/14

## **TOWN COUNCIL STANDING, ADHOC & COMMITTEE LIST**

### **COUNCIL CHAIRPERSON / VICE CHAIR – 1<sup>ST</sup> ORDER OF BUSINESS AFTER SWEARING IN**

Beers, Gary, Chair  
Denault, Charles, Vice Chair

### **CIP COMMITTEE**

Thomson, Jeffrey

### **COMPREHENSIVE PLAN UPDATE COMMITTEE**

White, Russell

### **ECONOMIC DEVELOPMENT COMMITTEE (3 Councilors)**

Lemont, Kenneth  
Denault, Charles  
Thomson, Jeffrey

### **EDUCATION SCHOLARSHIP SELECTION COMMITTEE (2 Councilors)**

Denault, Charles  
Vacant

### **ELIOT SEWER COMMITTEE**

Beers, Gary

### **KITTERY COMMUNITY CENTER BOARD OF DIRECTORS**

Thomson, Jeffrey (until 3/26/18)

### **MARY SAFFORD WILDES TRUST (Chair serves as ex-officio member)**

Beers, Gary, Chair

### **OPEN SPACE ADVISORY COMMITTEE**

White, Russell

### **ORDINANCE REVIEW COMMITTEE (2 Councilors)**

Beers, Gary  
Denault, Charles

### **SAFFORD SCHOOL PRESERVATION COMMITTEE**

Spiller, Judy

### **SHARED SERVICES COMMITTEE (Chair and Vice Chair)**

Beers, Gary, Chair  
Denault, Charles, Vice Chair

### **WARRANT REVIEW - MUNICIPAL EXPENSE (3 Councilors)**

Dennett, Frank  
Beers, Gary  
Lemont, Kenneth

**WARRANT REVIEW – MUNICIPAL EMPLOYEE WAGES & BENEFITS (3 Councilors)**

Thomson, Jeffrey  
White, Russell  
Beers, Gary

**WARRANT REVIEW – SCHOOL EXPENSE (3 Councilors)**

Lemont, Kenneth  
Thomson, Jeffrey  
Spiller, Judy

**WARRANT REVIEW – SCHOOL EMPLOYEE WAGES & BENEFITS (3 School Committee)**

David Batchelder  
Kimberly Bedard  
Julie Dow



# TOWN OF KITTERY

200 Rogers Road, Kittery, ME 03904

---

## REPORT TO TOWN COUNCIL

---

Meeting Date: 14 November 2016

From: David W. O'Brien, Fire Chief

Subject: I am Responding; five year contract

Councilor Sponsor: Chairperson Gary Beers

---

### EXECUTIVE SUMMARY

The Fire Department uses a software program called [IamResponding.com](http://IamResponding.com) to assist fire officers and command staff in determining status of available firefighters for incidents. Simply stated the program allows a firefighter to input through his/her cell phone their status at the start of an incident. The fire associations have funded the previous two years and have purchased and installed television screens in the stations. A new subscription renewal agreement is needed to continue the use of this system. The most cost effective method to continue the use of this valuable tool is to subscribe for a five- year term at a cost of \$3,137.

### STATEMENT OF NEED

[IamResponding.com](http://IamResponding.com) (IaR) is a software tool that assists fire officers and command staff to access the response of available firefighters. The software has been installed in the fire stations for two years and has proven invaluable to help determine the number of firefighters available to respond and the number of firefighters actually responding to an incident. An officer may with a quick glance at his/her cell phone or at the in-house television screen determine whether an adequate amount of resources is responding.

The software also has several other modes including message notification (both emergency and non-emergency). Emergency message notification provides a secondary means for dispatch to alert firefighters of an incident. Secondary messaging is a recommendation of the Insurance Service Officer (ISO).

## BACKGROUND

Kittery, like most on-call and volunteer fire departments, is experiencing a reduction of community commitment towards being a town firefighter. In years past there was never a concern that there would not be enough firefighters to adequately staff an incident. This is not the case now as we are experiencing smaller number turnout to calls and incidents. Two years ago the fire associations subscribed to laR in an attempt to help fire officers and command staff understand response levels and assist in making decisions concerning apparatus movement and mutual aid. They also purchased and installed the necessary hardware in the apparatus bays and installed the software on firefighters cell phones. This was done as a two year trial in order to assess the software and make a determination for future use.

## FACTS BEARING ON THE EQUATION

1. One year subscription	\$800/yr	
2. Three year subscription		
Annually	\$725/yr	\$225 < one year
Up-front total	\$2,066	\$344 < one year
3. Five year subscription		
Annually	\$650/yr	\$750 < one year
Up-front total	\$3,087	\$913 < one year
4. Telephone costs are \$10/year		

## CURRENT SITUATION

The Fire Department currently uses laR to assist in the decision making process concerning firefighter manpower at incidents. The two year trial subscription is coming to an end on November 18, 2016 and in order to continue using this valuable tool will require re-subscribing. The Fire Department is considering moving this technology to the Kittery Dispatch Center to enhance dispatch capabilities. Once migrated the technology has the ability to provide a second means of fire incident dispatch capability. laR is a single town, single license agreement which supports migrating to the dispatch center.

## PROPOSED SOLUTION/RECOMMENDATION

The fire year subscription with a cost of \$3,087 coupled with the \$10/year telephone cost equals \$3,137. This is a savings of \$913 over the cost of a one year subscription for five years. Clearly from a financial management point of view this is the best recommendation. However, this amount was not included in the FY 17 Fire Department budget. It is recommended the town enter into a five\_ year subscription with laR and pay an annual amount of \$660 (\$650 + \$10 for telephone costs). The Fire Department is able to absorb this amount this year under the Professional Services account 1320-65480. The remaining four years will be properly budgeted under the 1320-65480 account.

## RATIONAL FOR THE PROPOSED SOLUTION (INCLUDING COSTS)

The Fire Department uses IaR on a daily basis and over the two year trial period has determined the value of this tool. It supports management decision making during a critical time of an incident by helping fire officers and command staff to understand their staffing levels. The cost of \$660/year is minimal and if spread over the average number of calls equals approximately \$1.66/call. \$660/year over 365 days/year equals \$1.81/day. This is a very inexpensive tool for something that is used daily.

David O'Brien, CFOIII  
Fire Chief

1 **AN ORDINANCE** related to ordaining a five year agreement between  
2 lamResponding.com and the Town of Kittery, Maine to effectuate and encourage  
3 the furnishing of a firefighter emergency responder tracking system on a reliable,  
4 proven web-based network.

5  
6 **WHEREAS**, The Kittery Town Council is authorized to enact this Ordinance, as  
7 specified in Section 2.07 (3) and Section 6.11 (2) of the Town Charter and 30-A  
8 M.R.S. subsection 3001, pursuant to its powers that authorize the town, under  
9 certain circumstances, to provide for the public health, safety, morals, and  
10 welfare, not intending for Ordinance to conflict with any existing state or federal  
11 laws; and

12  
13 **WHEREAS**, The current one-year trial subscription and one-year paid subscription  
14 will expire on 18 November 2016 at 12:00 pm; and

15  
16 **WHEREAS**, The Fire Department wishes to enter into a five year contract  
17 agreement with lamResponding.com with the agreement of all parties; and

18  
19 **WHEREAS**, In the judgment of the Fire Chief and his subordinate officers,  
20 lamResponding.com has provided a useful web based firefighter emergency  
21 responder tracking system for the previous two year and has met and/or  
22 exceeded the original agreement requirements in all aspects; and

23  
24 **WHEREAS**, The Town Council intends, through the adoption of this Ordinance, to  
25 promote public safety, health and welfare through the authorization to enter into  
26 a five year contract agreement with lamResponding.com.

27  
28 **NOW THEREFORE, IN ACCORDANCE WITH TITLE 30-A, M.R.S. SUBSECTION 3001,**  
29 **AND THE TOWN CHARTER SECTIONS 2.07 (3) AND 6.11 (2):**

30  
31 **THE KITTERY TOWN COUNCIL HEREBY ORDAINS THE FOLLOWING ORDINANCE**  
32 **AND INSTRUCTS THE TOWN MANAGER TO EXECUTE THE FIVE YEAR EMERGENCY**  
33 **RESPONDER TRACKING SYSTEM CONTRACT AGREEMENT WITH**  
34 **IAMRESPONDING.COM.**

35  
36