

DRAFT

MONDAY, AUGUST 16, 2004 DURHAM TOWN HALL -- COUNCIL CHAMBERS TOWN COUNCIL MINUTES 6:00 PM

MEMBERS PRESENT: Chair Malcolm Sandberg; Neil Niman; Gerald Needell; Karl Van Asselt; Peter Smith; Mark Morong; Arthur Grant; John Kraus

MEMBERS ABSENT: Annmarie Harris

OTHERS PRESENT: Todd Selig, Town Administrator; Rene Kelly, Deputy Police Chief

Discussion with Library Board of Trustees

Julian Smith read a prepared statement which he explained was the Library Board of Trustees' response to questions from members of the Town Council concerning the Trustees' recommendation that a new town library be built on the Town Hall site.

Mr. Smith said the Trustees had considered two dozen other sites, and that the key criterion in the selection of the Town Hall site was whether this location would fulfill the "Town Center" concept as laid out in the 2000 Master Plan. He said, as indicated two years ago, the Library Trustees had the Town Center concept in mind in suggesting the library include a large public meeting room to serve the needs of the general public, Town Council and library patrons.

Mr. Smith said the Trustees did not believe it would be fiscally prudent to purchase another site and remove it from the tax rolls, and preferred that every available dollar go toward building the library. Concerning the safety for children walking to this site, he said that while it was true Route 108 was a very busy road, any other site in Durham where a library would be built would also require children to cross busy streets, and most children, for various reasons, would not be walking to any of these locations.

Mr. Smith said the Trustees believed there was broad support for the Town Hall site, but said the public hearing would help to determine this. He said indication that the majority of citizens wanted a town library was provided by the Town vote to separate from the UNH library. He also noted that RSA 202-A:4 required that any existing library be maintained by the Town.

Mr. Smith said the Trustees thought it would make sense to have a new Town Hall and library under one roof. He said ideally, they would like the building to have approximately 12,000 sq. ft. of floor space, of which about 1,300 sq. ft. would be devoted to a public meeting room. He said the Trustees believed there was adequate parking (54 spaces) for the Town Hall and the library, noting that if the present Town Hall was taken down and a combined Town Hall/library was built, there would be even more room for parking. He said there also was some additional room for parking along Schoolhouse Lane, and dozens of parking spaces within easy walking distance.

Mr. Smith said about \$358,000 was available to put toward the new library, and that the Trustees would work hard to raise another \$500,000 from private contributions. He said the Trustees hoped the Town would provide the balance through bonding and funds already set aside. He provided additional detail about operating expenses, and the library budget compared with budgets in other NH towns. He noted that the Library Trustees had currently raised a third of the money for operating costs, a proportion that was greater than for any other Town in New Hampshire.

Mr. Smith closed by noting the present lease for the Library ended in July of 2005, and said the costs for rent and operations were only expected to increase in the future. He said the Trustees and Town Council needed to work together to build a proper Town library, and to fund it adequately as required by state statute.

Lucy Gardner said that if the citizens were going to have a public hearing regarding whether to have a library at this site, negotiations concerning a land swap appeared to be premature. She said this would usurp the rights of the citizens to decide what went on this site.

Chair Sandberg noted that Councilor Niman had an Item on the Agenda later that evening concerning the land swap, and asked if he would like to respond to the previous comments.

Councilor Niman said figures quoted by the Trustees concerning a land swap were the value of the land itself, and not the improvements on the land. He said if the Town Hall property was worth a million dollars, the value of the building on that land, in addition to the land, would determine the tax revenues coming in to Town. He also said if the Trustees were seriously committed to the idea of a Town center, to him the Town center was downtown, where the Town's merchants are located. He said if the Town Hall site could be sold for a million dollars, perhaps a property could be found in the center of Town for a million dollars that people could walk to. He said there would be a million dollar property, plus improvements, resulting in a \$2 to 2 _ million property that could generate tax revenues that could then support the construction of a new library and town hall. He said he did not think the discussions he had been having were a misguided scheme, but said he was a big supporter of the library who was looking for a revenue stream that would support the bond that would be needed to construct the library.

Councilor Niman said he didn't see how otherwise the Town could support such a bond for the library, when the Town had already committed to a \$1.2 million bond for conservation land. He said his concept was a constructive attempt to generate revenue to realize the goals of having a library and a Town Hall in the center of Town, supporting the merchants, beginning to take back the downtown from the students, and providing the kinds of services that the citizens of Durham really wanted.

Councilor Niman said that with respect to the land swap idea, he was not trying to do anything nefarious. He said he had been led to believe that land with road frontage was more valuable than land in the back, and said with the land swap, he was trying to improve the value of the Town's assets by obtaining more road frontage. He provided details of how the land swap would be beneficial, if the Town decided to put the library and rebuilt Town Hall on the

site. He said he was trying to be sensitive to everyone's concerns for this site, and said he believed his concept was a win-win for everyone.

Katie Ellis, 26 Coe Drive, said Councilor Niman's vision concerning putting the library and Town Hall downtown was beautiful, but said the library's rental situation could not be supported much longer. She questioned how his concept related to this reality.

Councilor Niman said he did not know how quickly the Town could get going with this. He also said this was why a few months back he had suggested the library be put at the Mill Pond Center site, a piece of land that was available, and which although not exactly downtown, did have some advantages. There was discussion about whether this site was within walking distance, and Councilor Niman noted that a footbridge over the Oyster River was a possibility, and sidewalks could be extended.

Tom Merrick, 7 Canney Road, noted the safety issue concerning the buildings at present, and said this was something the Council would need to deal with soon. He also said that he was concerned that \$50,000 in rent went out the window every year, which could be better spent being put toward a bond issue. He said he didn't agree concerning the tax revenue possibilities of having the Town Hall/library downtown, and also noted the parking there was terrible.

Bill Schoonmaker, 24 Mill Road, said he liked Councilor Niman's concept, but said the Board of Trustees had come to the conclusion that what was speculative needed to become a reality. He said this lot was available, and did fulfill the Town center concept. He noted that this property and the Jesse Gangwer property were mentioned in the Master Plan as possible Town center properties, and said that numerous discussions with Mr. Gangwer hadn't gone anywhere. Mr. Schoonmaker also spoke about the Mill Pond Center as a possible location, and among other things, noted that the Town would have had to purchase land from the Center. He said the Town Hall site represented a compromise, noting each of the Trustees had their favorite site, but when the vote was taken, this was the site that was chosen.

Chair Sandberg said it might be useful to frame the agenda structure for the public hearing more specifically, so it would be certain to be a meaningful meeting.

Julian Smith noted that the Master Plan spoke of the library as the anchor for the Town Center, and said the Council appeared to be uneasy as to where the library should be located. He said the Trustees had made their decision concerning this, and he did not think there should be discussions that evening about where else it could go. He said the issue was whether or not the Council would endorse this site, with or without a land swap. Mr. Smith also said he hoped Council members had other questions for the Trustees.

Councilor Smith noted that one of the Trustees had said they wanted a decision on this location tonight. He said he had had many conversations on this issue, and had made it clear that he believed it was essential that the Council have a public hearing on it. He said the Council would be doing itself and the Town a disservice if it closed its mind that evening to what would come out of the hearing.

In terms of how to shape the hearing, Councilor Smith said there were several issues that related to the library issue, and said it would be hard to control that at the hearing, which was a good thing. He said he hoped the public would address questions such as Councilor Niman raised regarding alternatives, and also would make known its views on all the costs that would be involved concerning building and operating a new library. He said that unless there was a clear sense that the Town wanted to go all the way down that road, he didn't want the Council to be making decisions on what to do with the land.

He said he didn't want townspeople to be discouraged from speaking broadly on the nature and possible location of this project. He also said he hoped the trustees could address in somewhat greater detail the likely cost of the library, how money would be raised, and also, the extent to which they would like to tie this to the building of a new Town Hall, and whether they believed this would be feasible on this site.

Chair Sandberg asked if the Trustees had conducted a public hearing of their own to see if there was broad popular support for their decision, or whether they saw the Council hearing as providing the opportunity to determine this.

Mr. Schoonmaker said the Trustees had not held a public hearing on this issue, but said they had held approximately six focus meetings where they got a fairly good sense of what people were looking for, and what they thought the appropriate location was. He said people generally wanted the library to be close to downtown, either on Main Street or Newmarket Road, and said the Trustees felt comfortable coming to the Council now with this proposal.

Chair Sandberg asked whether the Trustees would prefer having a tighter or a more flexible agenda for the public hearing. He said the question was whether the hearing on September 20th should be focused on whether to locate the library at the Town Hall site, or to open up the discussion as to whether the Town wanted a new library, and possibly at another location.

Mr. Schoonmaker said the Trustees could discuss this at their meeting on Thursday. But he noted they were anxious to get some clarity on this issue.

Councilor Morong said he hoped to see detail that took into consideration that parking and green space would be needed for the court, the Town Hall and the Library, if the Library were built on the Town Hall site. He noted that Paul Berton had been asked to show this for the hotel project.

Chair Sandberg commented that it would be helpful to provide this information for the public as well.

Councilor Grant said he was troubled to have the Town Hall concept brought up that evening. and urged Council members not to complicate the library concept with visions of a new Town Hall. He noted that the Council had to look out 10 years in the CIP, which already included many items. He said it was extremely difficult to have new visions presented each time the Council met to discuss something, and urged the Trustees to focus on the library, at this site. He said he wanted to hear if the public was happy with this site.

Councilor Kraus said he imagined that the top priority of the Trustees was to have a new library, and when this was coupled with the new Williamsburg concept of a Town center, this might be problematic. He also said he did not believe the Town center was ever at the Town Hall site, and might be more appropriate at present if placed downtown.

Bill Schoonmaker noted concerning Councilor Grant's comment that the Trustees were only responding to a question from the Council as to whether they would consider a combination library/Town Hall building.

Councilor Grant said he would only ask that the Trustees not make it part of their proposal.

Chair Sandberg said he hoped the discussion had been useful for the Trustees, and said the Council would continue to work with them. He also said there would be further discussion about logistics and the venue for the public hearing.

I. Call to Order – 7:00 pm, for Regular Town Council meeting

II. Approval of Agenda

Councilor Morong MOVED to approve the Agenda as submitted. Councilor Kraus SECONDED the motion.

Councilor Grant MOVED to amend the Agenda by removing the issue under III Special Announcements. The motion was SECONDED by Councilor Morong, and PASSED unanimously.

The agenda as amended PASSED unanimously.

III. Special Announcements

Retirement of Firefighter William "Jim" Davis
(This item was removed from the Agenda)

IV. Approval of Minutes

July 12, 2004 minutes

Councilor Grant MOVED to approve the July 12, 2004 minutes as submitted. The motion was SECONDED by Councilor Kraus.

Page 2, directly under Report of Administrator, should read "Durham Great Bay Rotary Club for its good work..."

Page 4, 1st bottom of page should read "Mac McLean.."

Page 10, 3rd paragraph from bottom, should read "..."...allowed across the back part..."

Also page 10, last line should read "...on the other hand, if the..."

Page 18, 4th paragraph from bottom, should read “Councilor Van Asselt said he had 7-8 questions...”

Councilor Smith MOVED to approve the amendments to the July 12, 2004 minutes. The motion was SECONDED by Councilor Grant and PASSED unanimously.

The July 12, 2004 minutes, as amended, PASSED unanimously.

August 2, 2004 Minutes

Councilor Van Asselt MOVED to approve the August 2, 2004 minutes as submitted. The motion was SECONDED By Councilor Morong.

Councilor _____ amended the motion to change Page 4, 1st full paragraph, to read “Jennifer Murray...”

The August 2, 2004, minutes, as amended, PASSED 6-0-2, with Councilors Grant and Kraus abstaining because of their absence from the meeting.

III. Report of Administrator

- Administrator Selig noted that Durham would be piloting a new program, entitled E-Registration, which would be offered through a current vendor of the Town. He said the program would be unveiled within the next few weeks, and gave credit to the Business Office for helping to make this happen.
- Administrator Selig said the “Hate Bias” training seminar was excellent, and said that about 200 law officers attended it, along with the Attorney General, UNH President Hart, and others. He noted that the Durham Police Department had gotten this project going, and thanked them for their efforts.
- Administrator Selig said that Duckers Day would return to the Town, and would be held rain or shine on September 11, 2004 at Wagon Hill Farm. He also said the Council was planning Durham Day for September 12, 2004, and provided details of this event.
- Administrator Selig said there had been a mock emergency response at Whittemore Center the previous week, where a mock chemical spill as well as a terrorist incident had been simulated. He said all appropriate Durham departments had responded, and said it was a very productive simulation.
- Administrator Selig said that, the Young Artist Showcase would be held on August 21, 2004.
- Administrative Selig said that on Aug 17, there would be an information gathering session to help determine whether the Fire Department was providing the kinds services the public wanted and needed.
- Administrator Selig noted that Heidelberg Web Systems had recently been acquired by Goss International.
- Administrator Selig said the leak at the UNH outdoor pool had been repaired, and the pool had been reopened.

- Administrator Selig said that Durham Hazardous Waste Day would be held on August 21, 2004. He noted that this was an annual event, and was a very positive program for the community.
- Administrator Selig said the Public Works Department was planning to shim the west end of Main Street, from Pettee Brook Lane intersection with Main Street out to the Route 155A intersection. He said this work was not budgeted, but funding was found for it within the Public Works capital projects budget because the road was in terrible condition.
- Administrator Selig said the Fire Department would have vehicles on display at the Mill Road Plaza on August 20, 2004.
- Administrator Selig said the Public Works Department had received a response from Hoyle Tanner concerning the Town's request that they pay for all of the repairs to the Packers Falls Bridge. He said the company had provided a lengthy report, and was not excited about funding any of the repairs.
- Administrator Selig said the public hearing concerning the Library was planned for September 20, 2004. He said it had initially been planned to have this hearing as part of a larger Council agenda, but recommended giving the entire evening to this one topic. He also noted that the Town Hall would probably be too small to hold the hearing in, and said other venues were being considered. He asked for feedback from Councilors on these logistical matters.

VI. Reports and Comments of Councilors

Councilor Smith agreed there should be a separate Council meeting dedicated to the public hearing on the library, but said it should be televised live. He asked if a site could be selected where that could be done. Administrator Selig said he did not know. He said the meeting could not be televised live from the Middle School, but perhaps it could be televised from the High School, and that he would look into this matter.

Councilor Smith announced that Councilor Harris' daughter was still in the running in the Olympics.

Councilor Kraus said that citizens with contrary views concerning the Trustees' recommendation of the Town Hall site for the library should come out and let the Council hear them, noting that the Trustees would be bringing out all of their supporters.

Councilor Kraus also encouraged citizens to write in about the Spring Cleanup issue, noting that one resident had written in to say that if people didn't put out the right kind or amount of materials for pick up, the Town shouldn't pick it up.

Councilor Morong said it would be preferable to have the public hearing televised.

Councilor Van Asselt said he would prefer to have a one item agenda on the night of the public hearing. He also noted the issue of the purchase of vehicles on the Unanimous Consent Agenda, and said the significant amount of paperwork that had been provided for this was not necessary. He said he would like to see the paperwork issue addressed under Council Communications in the future.

Councilor Van Asselt also said he had raised a number of questions about Forest Park, and had gotten some good answers. He said he hoped that after the new agreement was finished, the Council would agree that Administrator Selig should do everything he could to publicize that information. He said the information he had seen in the last three weeks was significant to the taxpayers, and said they needed to know it was out there. He asked Administrator Selig to use his Administrative Notes and the media to let the public know what this was about, so that the Council could proceed from there.

Councilor Grant agreed that the September 20, 2004 meeting should be dedicated solely to the library issue, and said it should be held at a different site, hopefully live but at least taped. He also said, as Chair of Durham Day, that he would like to encourage people who liked to ride on the boats to come a bit earlier, at 12:30 pm, so they could take advantage of the high tide that day.

Chair Sandberg agreed that there should be a one item agenda for the meeting on September 20, 2004, and also said they might need another Council meeting that month.

Councilor Needell said he agreed there should be a single item agenda, and said presenting the hearing live on TV was important, although noting that using a different location was also a good idea but not as important as televising the hearing live. He also said it would be important to hold an extra meeting in September if the Council planned to discuss the disorderly house and other related ordinances.

VII. Public Comments

William Hall spoke in detail about the increasing number of incidents of disorderly conduct that had occurred over time in Durham, and noted the lack of administrative action over time to deal with this growing problem. He described measures that had been used in the past that made it very unpleasant to start fires, and said that they had stopped the bad behavior. He said that if this behavior in recent years had been dealt with more firmly, the Town wouldn't be at this point now. He said the Town had to be prepared to use tear gas, and didn't use it often enough.

Julian Smith said that in the event the Council decided to authorize the Town Administrator to enter into negotiations with Harold Smith, owner of the Route 108 Sunoco station, the Council should first require that a public safety committee be convened to get input from the Fire Chief, etc, about the advisability of having the exit from the Irving Station west onto Newmarket Road. He said that turning left and trying to get across Newmarket Road, going south, presented all kinds of problems, and said there needed to be some agreement from the safety people that the right-of-way would be safe, and would not cause accidents.

VIII. Unanimous Consent Agenda

Councilor Smith asked that Items A and C be removed from the Unanimous Consent Agenda.

B. Resolution #2004-16: Establishing a trust fund for the purpose of holding and investing scholarship funds for the Oyster River Cooperative School District.

- D. Shall the Town Council award a bid for the purchase of a commercial recycling collection vehicle and a commercial side load refuse collection vehicle as recommended by the Director of Public Works?

Councilor Kraus MOVED to approve Agenda Items B and D on the Unanimous Consent Agenda. The motion was SECONDED by Councilor Van Asselt, and PASSED unanimously.

- A. Adoption of Ordinance #2004-04: Amending Part II “General Legislation” of the Durham Town Code by creating a new chapter, Chapter 42, entitled “Camping on Public Land” and initiating a permit system for camping on public land

Councilor Smith MOVED to approve the amendments to Ordinance #2004-04: Amending Part II “General Legislation” of the Durham Town Code by creating a new chapter, Chapter 42, entitled “Camping on Public Land” and initiating a permit system for camping on Town public land. The motion was SECONDED by Councilor Kraus.

Councilor Smith provided details concerning the minor changes he had introduced to the proposed ordinance, which were provided to Councilors for review.

Councilor Smith MOVED to amend the motion to include his proposed minor changes in the ordinance. The motion was SECONDED by Councilor Grant and PASSED unanimously.

Councilor Smith also asked, concerning the penalty language, what “each instance” meant. Administrator Selig said that in his view, the main tool the ordinance provided the Town with was the ability to remove camping tents. He said that when this was done, it was considered an instance, and said a fine would not need to be issued for each day the tent was there, because when found, it would be removed on that day.

Councilor Smith asked if this would be clear to potential violators, noting he would like to eliminate any ambiguity concerning this.

Councilor Kraus questioned the need to spend any more time on details of the wording of the ordinance, when there had only been a limited number of camping incidents in recent years.

Councilor Needell asked if cookouts were currently allowed on Town properties, and if so, asked if this current ordinance was prohibitive. He said his concern was that this ordinance was extending a prohibition to something the Town had not intended to prohibit.

There was discussion about Councilor Needell’s question, and Administrator Selig said both camping and cooking were currently not allowed, noting there were no facilities on Wagon Hill or other Town properties.

Councilor Smith said the provision regarding cooking already applied, and this ordinance provided further regulation.

The Motion PASSED 7-1, with Councilor Van Asselt voting against it.

- C. Shall the Town Council approve the Special Events permit application submitted by the UNH Public Program & Events department requesting that a portion of Main Street be closed to conduct the annual University Day Picnic on Tuesday, September 14, 2004 with a rain date of Wednesday, September 15, 2004?

Councilor Smith asked if this would create any problems, given that the permit indicated closure from 10:00 am to 7:00 pm, and September 14, 2004 was election day. Administrator Selig said he had been informed by Ann Shump, Chair of the Supervisors of the Checklist, that this would not be a problem.

Councilor Grant MOVED to approve Agenda Item C. The motion was SECONDED by Councilor Kraus, and PASSED unanimously.

IX. Meeting with Legislative Delegation

Administrator Selig explained that a discussion was held with the Legislative delegation a few times each year, and said this would be an open forum.

Chair Sandberg asked members of the delegation to introduce themselves, and to discuss issues or particular legislation they were involved with.

Representative Naida Kaen said she was first elected to the Legislature in 1995, was on the Science and Technology Committee as well as other ad hoc committees, and said her primary focus was environmental issues.

Representative Marjorie Smith said Representative Emma Rous extended her regrets that she could not be present, but said she would follow up if there were questions for her.

Senator Iris Estabrook spoke briefly, noting she had joined the Legislature in 1996, and was in her first term of serving as a Senator. She said there were a variety of issues she could speak about with the Council.

Representative Joseph Miller said he was completing his freshman year, and said he was especially interested in healthcare, including providing cheaper drugs, especially for senior citizens. He said he was also interested in the issue of malpractice insurance, which was driving many doctors out of NH. He said his goal was to get access to healthcare to as many residents as possible, to provide quality healthcare, thus avoiding avoided malpractice suits, and to make healthcare insurance more durable so small employers wouldn't be as likely to drop benefits for employees.

Representative Judith Spang said she was a resident of Durham, was the ranking Democrat on the Resources Recreation and Development Committee, and said her particular interest was water resources, especially surface water and groundwater issues. She said she was on several subcommittees that came about as a result of the USA Springs issue, including a study committee looking into developing a groundwater use policy for the State. She noted

another key water issue she was working on was the regional outfall pipe, and said she hoped Durham was paying special attention to this issue.

Senator Estabrook said that the budget, school funding and healthcare were the most important issues the Legislature was dealing with. She said what concerned her most was the policy of cost shifting, and said she saw the effect that this was having on local communities and tax rates. She also said she believed the cost of healthcare would be overtaking education funding as the State's greatest concern. In terms of regional issues, Senator Estabrook said she was working on the outfall pipe issue, the USA Springs issue, and on the Little Bay Bridge issue. She also noted that SB 110 was one of the reasons healthcare costs were rising so fast in the seacoast region. She said she had tried to repeal this law, and would continue to do so in the future.

Senator Estabrook noted she and Representative Smith had worked on legislation concerning student disturbances, the dredging issues, and said she was presently serving on a study committee concerning property tax relief.

Chair Sandberg asked if there was anything that the representatives would like the citizens of Durham to make special note of.

Senator Estabrook said the elections this September and November were very important, in terms of the direction the State was going concerning cost shifting. There was discussion as to the best way for citizens to stay up with the various issues.

Councilor Kraus asked if by cost shifting, Senator Estabrook meant that costs previously borne by the State were being moved to the towns, and she said that was correct. She said this was happening in many different areas, and said in the long-term, the costs to the taxpayer were greater.

In answer to a question from Councilor Needell as to what SB 110 was, Senator Estabrook explained that the State had changed the insurance rating system to a demographic rating. She said this would impact employees on the Seacoast, older workers, less healthy workers, and noted that this was one of the reasons more small employers were cutting back on health insurance. She also noted that 70% of the cost shifting was to pay for services for the uninsured. She said there was a huge overall problem in this area, including Medicaid reimbursement problems, which were impacting home healthcare work, nursing homes, etc. She said there was continued cost shifting in this area that was very significant.

Representative Smith asked if Councilors had other specific questions they would like answered, noting that representatives spent a lot of time on complex issues, which were hard to summarize briefly. She asked specifically if there were ways the Council thought members of the Legislature, in their work with administrative agencies, might be able to provide information or assistance.

Councilor Van Asselt asked whether the University was being treated fairly in terms of allocation of state resources. He also asked what the Legislature was thinking and doing, when issues relating to the Town and the University were being considered.

Representative Smith noted that the University was public in name only, receiving 18% of its money from the State, yet it had to abide by complex and limiting laws the State put on it. She said she did not believe the State provided enough assistance to deserve a seat at the table, and said the University system was being starved by the State. She said this impacted the way the University dealt with the Town of Durham.

Representative Smith also explained that the University system was run by a Board of Trustees, and was not run like a state agency. She said the degree of oversight the Legislature had concerning this was different than would be the case concerning a state agency. She noted that the Town of Plymouth had been very aggressive in trying to have the Legislature commit to how much Plymouth State would give to the Town. She said what the Legislature decided on was far below what the Town had wanted, and said she believed that if Durham asked for something like this, it would wind up with a lot less than it had at present.

Representative Smith said that while legislators could assist the Town with issues like dealing with the student riots, when dealing with money issues, she cautioned Councilors to consider how this might unfold, especially when the State was facing such difficult financial problems. She noted that by the next biennium, the State budget would probably be about \$300 million short of where it should be.

Senator Estabrook provided some detail concerning a bill before the Public Education Oversight committee, and said she would stay in touch with the Town concerning this.

Councilor Niman said Representative Smith was probably correct about the wisdom of asking the Legislature to do certain things. He provided a handout for legislators and Council members, in which he explained that he would like to see the introduction and passage of a bill to amend RSA 187-A:13 in order to expand the size of the USNH Board of Trustees from 27 to 30, and to include one member each from the Towns of Durham, Keene and Plymouth on the Board.

As explanation for this, Councilor Niman said the Board of Trustees should represent all stakeholders as it formulated policies, since the institutions of the University system had a significant impact on the quality of life, budgets, health and safety of host municipalities.

Senator Estabrook said the Legislature would be willing to consider something that had the support of the local legislative body.

Representative Smith said legislators took their relationship with the Town of Durham very seriously, and would need to know if the Council wanted this, since Councilor Niman was coming to them about this as a Councilor.

Councilor Smith said negotiations for every agreement the Town of Durham had with the University were based on an attempt to get more money, and said it sounded as if legislators were saying that Durham should use its persuasive powers locally with the University rather than through the Legislature. Councilor Smith also noted that the University was essentially free from having to abide by land use regulation, and asked if there was any chance of possible legislation in this area.

Representative Spang said she had looked into this as a planner, noting it was a source of concern about how little control the Town had on land use decisions made by the University. She said she had looked through State statutes, and had seen that the University had done a good job of making sure it maintained immunity from Durham's land uses regulations. She said some major changes to the State statutes would be needed in order to change this.

Representative Spang said she also found it surprising and alarming, in a Republican dominated legislature, to observe the tendency among the majority in the House to try to curtail local control on a myriad of different issues, including large groundwater withdrawals, land use controls, enabling legislation for downtown rehabilitation, control establishment of ATV parks, etc. She said that if things didn't change radically, there would be a gradual erosion of local control in the Legislature. She said she had tried to rise against this at every turn, and was alarmed at how unsuccessful her attempts had been.

Representative Smith gave the example of the development of Moore Field, noting that the University had felt it would not have to limit itself concerning wetland requirements, but quietly, Town representatives went to DES and as a result, DES made it clear to the University that it could not do what it proposed to do, because it would be violating wetland regulations. She said that if that same situation arose at present, the outcome would be different. She said that under current practices, DES would say that the Town and local legislators had no right to do anything that would stand in the way of a commercial development. She said this was a very serious, troubling problem, and said there had been dramatic changes in the State, including the people put in charge of agencies. She said cost shifting was one example of this change, and changes in enforcement of regulations were another.

Councilor Kraus said that cost shifting was shifting the tax responsibility onto the local communities, and the local communities were at the same time losing their autonomy.

Councilor Smith asked whether, given the parameters that had been described, if the Town, with the assistance of the Legislature, had any likelihood of amending those land use statutes to make them more favorable to Durham. Representative Smith said she would like to answer that question on November 3rd.

Senator Estabrook noted that the attitude of the Executive department had a great deal of influence on legislation.

Councilor Grant said he agreed with Representative Spang, but said he believed she gave more credit to the University's legislative liaison than perhaps it deserved. He also said that land use regulations imposed on the University system were stronger than those imposed on State agencies, and noted that these agencies had fewer requirements to cooperate with the Town than the University did. Councilor Grant also said a problem he saw with the Legislature was the huge number of bills that were introduced each year, which meant the cost was tremendous. He said he would like the Legislature to introduce fewer bills, and to educate the public better about those that were proposed.

Councilor Needell asked for information on the regional outfall.

Representative Spang noted that Representative Rous was on the study committee for the outfall. She discussed some of the concerns regarding the proposal, noting that if wastewater wound up out in the Atlantic Ocean, it would not be able to replenish groundwater/surface waters. She also explained that maintaining the salt water/fresh water balance was very important, and could be impacted by the outfall. She said there was some concern that the concept was being pushed through.

Representative Spang said the proposal was for the wastewater of 43 cities and towns to come together and receive treatment, and then to be piped through an outfall out into the ocean. She said this would save individual cities and towns from having to upgrade their sewage treatment systems to a higher level. She said one of the concerns about the concept was that it would remove a significant amount of water from the region's watersheds. She noted that a range of alternatives were being considered, and said the firm hired to study the issue was the one that had engineered the Boston Outfall pipe, which was having very serious problems.

Representative Spang said this would be the biggest public works project ever done in New Hampshire, and said Durham had been asked to be a part of this process. She said this was supposed to be voluntary participation, but noted that the capital investment for the outfall would be so large that at some point it seemed that participation would be required of all communities. She said she had great respect for Town Engineer Bob Levesque, who was keeping an eye on whether Durham wanted to participate in this project, or whether it preferred to upgrade to tertiary treatment at the wastewater treatment plant.

Chair Sandberg said this had been a fascinating discussion as always, and said he hoped the legislators would come back again soon.

Chair Sandberg declared a 20-minute recess at this time.

X. Presentation Item

A. Report of the Parks and Recreation Committee – Kenneth Andersen

Mr. Andersen updated Council members on the following issues:

- He provided details of the process of planning and constructing the playground at the Woodridge Recreational Area.
- He said that trails information was now available on the Town web site, noting that the Committee had realized that these trails were underutilized in part because a lot of people didn't know about them. He also said the Committee would be providing information on trails at the Durham Day celebration.
- He spoke briefly about a trail stewardship program that was planned, where a number of people would agree to keep an eye on the various trails in town.
- He said the Committee had approved a project for a nature trail at Wagon Hill, and said local boy scouts would be doing the work on this trail.

- He said the work of the Trail Policy subcommittee was ongoing, and said among other things, the group was considering what activities were appropriate on Town land.
- Mr. Andersen said, as he had in the past, that he believed Durham would benefit from having a professional recreation director.

Councilor Grant suggested that when the trails were done, this could be put in the Town Report so residents would know this. Mr. Andersen said he would consider doing this. He also noted that the Committee had been asked to look into the idea of a user fee for Wagon Hill, and said the Committee had determined there were a number of things wrong with this idea.

Councilor Kraus noted the excellent trail blazing done by scouts, but said the trails often later fell into disrepair, perhaps because they weren't publicized enough. He said it was important that something be done to promote and maintain these trails.

Councilor Needell noted that the Town web site now had individual maps of trails in pdf format, so people could download and print them. He said the Committee would like feedback as to whether this was an improvement.

Councilor Morong asked if when these trails were promoted, the Committee also took into account parking for each of the trail sites, and Mr. Andersen said this was included.

Councilor Morong said if these trails were being promoted, he was concerned that there might not be adequate parking for people using them. He gave the example of the area near Watson Road.

Councilor Smith asked Mr. Andersen to speak about where the Parks and Recreation Committee were, in terms of surveying Town properties. He said it would be good to get recommendations about tailored uses for the different properties. Mr. Andersen said the Committee would be discussing this at their next meeting.

Chair Sandberg thanked Mr. Andersen and other members of the Committee for their work.

XI. Unfinished Business

- A. Public Hearing (Continued) and Action on Ordinance #2004-06 Amending Part II "General Legislation" of the Durham Town Code by creating a new chapter, Chapter 34 entitled "Restaurant and Carryout Establishments Hours of Operation"

Administrator Selig explained that the Council had decided at its previous meeting that it would be appropriate to continue this public hearing. He said the University had sent an email that it was not able to attend the continued hearing. He noted that Deputy Police Chief Rene Kelly was present in place of Police Chief David Kurz to speak and answer questions about the proposed ordinance. He also noted that the Council had not yet discussed the proposed ordinance.

Administrator Selig said that at the last meeting Chief Kurz, when asked if having five additional officers would solve the problem, had said, for the most part, yes. He also noted that Councilor Van Asselt had asked if University representatives could be present at a continued hearing.

Administrator Selig provided additional details on how Town staff had tried to take a collaborative approach concerning the restaurant hours, by allowing the establishments to deliver after 2:00 am. He also said there were some concerns that University budget reductions could impact downtown coverage on opening weekends. He said it had been determined that the University was willing to keep Holloway Commons open beyond 1:00 am, but said it was not clear this would make much difference, because young people could not smoke on campus.

Administrator Selig said the problem was not the businesses, it was the young people. He said he had heard student representatives say they didn't have control over the other students. But he said the problem could be solved that evening if those students and their guests behaved. He said that absent the ability to encourage this, the Town was focusing on the businesses. He noted the closing time had been increased from 1:00 am to 2:00 am, to allow for delivery of food. He also made note of the memo from Chief Kruz that described the results of his research on what other communities did with respect to this problem.

Deputy Chief Kelly provided some historical perspective on the current problems downtown. He said that in the past, on a typical Friday, 3-4 officers were on duty from 9:00 pm to 3:00 am, and said the Town rarely needed to do more than this. He said that typically now, the normal complement of officers was 5-6, and described additional officers who were brought on to assist. He said a total of 25 officers were on duty, and said they were needed. He noted they did not go home at 3:00 am, because activity downtown required that they stay to 4:00-5:00 am.

He said that in the past, kids out partying knew that if they wanted to get something to eat, they should head downtown before 1:00 am. He said that now, they knew that places stayed open, so the downtown area had become a location where it was convenient for people from campus and off-campus parties, from Portsmouth, etc. to meet downtown.

He described what it typically looked like downtown after the bars closed, from 1:00 to 3:00 – 5:00 am. He said two police cruisers were needed, and one travel lane on Main Street was totally blocked, to prevent people who were drunk from being run over. He said it was just a matter of time before someone got hit downtown, and also noted there was shoplifting, and assault of officers. Deputy Chief Kelly noted that a comment had been made about young people getting into their cars to get food if the establishments were closed, and said he did not recall when stores weren't open that late, that there was a parade of people exiting Durham in search of late night food.

Deputy Chief Kelly said it was possible that if the establishments closed, people would go someplace else, but said he thought they would probably disperse throughout the Town, if they didn't have this central location where people could meet. He said there had been careful consideration as to whether 1:00 am or 2:00 am was a more appropriate time to close.

He said the Chart Chief Kurz had handed out demonstrated a high number of service calls, - 67 at one location, which certainly indicated there was a problem. He said that although the businesses involved were behaving responsibly, the Police Department had public safety to think about, and this ordinance was one of the possible answers.

Chair Sandberg asked Deputy Chief Kelly to describe the results of research he had done on how other communities with colleges handled this kind of situation.

Deputy Chief Kelly provided the following details:

- *Univ. of Mass at Amherst* – has ordinance that mandates that establishments close at 1:00 am; if restaurant wants to stay open until 2:00 am, it needs to get a special permit and hire special officers. Permit system seems to be effective; 65 police officers in department
- *Univ. of Maine at Orono* – no restaurants open that offer food after 1:00 am
- *Keene State* – no facilities that stay open after 1:00 am except for truck stop
- *Plymouth State* – last restaurant that serves food closes at 1:00 am
- *Burlington, VT*, with 3 colleges, and one university - has one area of town that stays open until the last person is served. From 1:00 am on, all enforcement efforts (22-25 officers) are focused there, with officers responding to other calls from that location. City is currently thinking of passing a tax on businesses to help defray some of the costs for this.

Chair Sandberg asked if Councilors had specific questions for Deputy Chief Kelly..

Councilor Smith asked if Deputy Chief Kelly had read the memo from Scott Chesney, and Deputy Chief Kelly said he had. Councilor Smith said the thrust of the memo was that if the Town wanted to come to grips with the underlying problem, there needed to be a uniform closing time, so that when Libby's shut down, all other establishments would also shut down. Councilor Smith asked if the police department had discussed this.

Deputy Chief Kelly said he had great respect for Scott Chesney, noting he saw first hand what the police had to deal with. He said the department had discussed this idea at length, but said the department believed it could adequately handle the activity downtown if the 2:00 am closing time was decided on. He said the way officers were scheduled (shift ended at 3:00 am), the department had the resources to do this. He said the bars were just closing at 1:00 am, and said the 2:00 am closing time seemed appropriate because this would give people time to get something to eat.

Councilor Kraus said Hampton Beach was used frequently as a reference point, and provided details as to why he believed it was quite a different situation there than in Durham.

Councilor Van Asselt noted that Deputy Chief Kelly had said that if downtown establishments were closed, young people would disperse throughout the Town, and asked for clarification concerning this.

Deputy Chief Kelly said that if young people didn't have a central location to congregate at, they would probably make their way to fraternity and sorority houses, etc.

Councilor Morong noted that Store 24 and Gibbs would still be open at that hour.

Chair Sandberg provided clarification that preparation of food on site was addressed in the ordinance, which disqualified a bag of potato chips.

Joe Kelly, owner of Joe's Pizza, said he sold pizza, but not alcohol. He showed his sales figures to Council members, and said the ordinance would be detrimental to his business. He said he competed with a lot of businesses in Town, and noted that it looked like Campus Convenience could stay open under the ordinance, and could sell prepackaged subs, etc.

He said he didn't think people were partying downtown because Joe's Pizza was open, and also said it would seem to make sense to have everyone located at one location, for police to deal with. Mr. Kelly also said there was no demand for pizza places to stay open late at Hampton Beach.

Councilor Smith asked if Mr. Kelly's objections to the ordinance would remain, even if all businesses had the same requirements.

Mr. Kelly said they would, and also said that if the purpose of the ordinance were to get rid of the students, this ordinance wouldn't accomplish that. He said that what to do after 2:00 am would still be problematic, because people still wanted food.

There was detailed discussion about the hours when Mr. Kelly's business operated, and when he had greater quantities of customers.

Councilor Morong asked why it was not profitable to close Durham establishments earlier, whereas in Hampton this made sense.

Mr. Kelly provided details on this, including the fact that the clientele at the two locations were different.

Catherine Clarke, UNH Student Body President, said she stood by what she had previously said - that drunk driving would be a problem if establishments closed earlier. She said she understood that student behavior was the key issue, but said that closing down establishments wouldn't help with this, and might make matters worse. She said the students would not be happy about this, which could potentially create a bigger problem. She said this ordinance was not the way to solve the downtown problem.

Rebecca Shay said she had lived in Durham and was a student. She said her concern with the ordinance was that students would drive if they were hungry. She said although some people thought these young people wouldn't drive, these were the same young people who were getting into trouble because they were not responsible. She said they would also not be responsible about driving. She said the ordinance wouldn't change the behavior, and said at least when they were congregated downtown, they were in one place. She also said they would congregate someplace else if they couldn't congregate downtown, and said there could be several groups of people.

Councilor Smith asked Ms. Shay if she had spoken with police officers about whether it was more difficult to police 400 people together in one group, or broken up into smaller groups. Ms. Shay said she had not, but said it would seem to be more difficult to police several smaller groups.

Deputy Chief Kelly said group dynamics were such that when one large group was congregated together, it became more difficult to manage, with limited resources.

Councilor Kraus received clarification that Thursdays, Fridays and Saturday were the most difficult nights.

Councilor Grant said that many of the residents in the neighborhoods would prefer to have young people concentrated downtown as compared to spread out near their properties.

Scott Stanley, Davis Ave. said he supported this ordinance, and noted he would like to see the establishments close at 1:00 am. He said the concern that young people might get into their cars was ridiculous, and noted that behavior couldn't be legislated.

Councilor Needell said it had been said that the core problem was behavior, and that the behavior had changed for the worse over the years. He said there was real concern that the proposed ordinance wouldn't impact this behavior and thus achieve success, because some of the other stores would still be open. He also said that restraint of business would be a big change for downtown businesses.

Councilor Needell said there seemed to be some movement on the issue of UNH's lack of participation. He said he was sympathetic to the Police Department's request for relief, and said it was difficult to consider not going along with it. But he said that considering everything, there were real questions about what would happen if the ordinance passed, and said he was concerned about hasty legislation. He said that at least a dialogue on this subject had been started, the student body was aware of it, and would possibly become engaged. Councilor Needell asked Deputy Chief Kelly what his reaction would be to a delay by the Council on voting on this ordinance, while the dialogue continued, and until such time as all the key issues had been addressed. He noted he was not suggesting the public hearing should be closed.

Deputy Chief Kelly said this was an appropriate question, and said that dialogue was a good thing if it brought everyone with a stake in this to the table. He said the department would work with the Council, and said the more this issue was discussed among all parties, the better. He said the police would stand ready to do whatever was appropriate.

Councilor Smith asked Deputy Chief Kelly whether, if this ordinance was passed, it was more probable than not that a large number of students downtown would in fact disintegrate into smaller groups spread throughout different areas of town, and not in dormitories. He also asked what kind of policing that would require, given the number of police available in Town. Deputy Chief Kelly said that from past experience, the majority of problems came from the gathering of more than 150-200 people. He said that when there were crowds of this size, people, including officers, were more likely to get injured, as compared to when

there were smaller parties that police routinely broke up. He said the group dynamic of these larger groups was different and far more problematic.

Councilor Morong asked if each of the weekend evenings were similarly problematic. Deputy Chief Kelly said this depended on the weather, etc., but said that generally, no one night was worse than the others.

Councilor Kraus MOVED to close the public hearing. The motion was SECONDED by Councilor Smith.

Councilor Needell said he would like to argue against closing the hearing.

Councilor Kraus said the Council had spent enough time on this issue, and said there had been a sufficient public hearing on it as well.

Councilor Needell said he didn't think the hearing should be closed. He said that he didn't think the Council should vote on the ordinance that evening, because there were too many questions that needed to be resolved before Councilors could cast a well-informed vote. He also said he was trying to avoid cutting off possible debate at a later date.

Chair Sandberg asked Councilor Needell what additional information he would like to see.

Councilor Needell said he would like to see if the underlying problem could be dealt with. He said he didn't think that pizza being made at 3:00 am was the problem, and said he thought the problem could be resolved in other ways. He also said that if the ordinance was voted on and was defeated, this would be sending the wrong message, when the Town might need the ordinance in the future if other ideas didn't work.

Councilor Kraus encouraged Council members to close the hearing, noting that the Council had amply proved that it could beat this or other issues to death.

Councilor Smith noted that he had urged at a previous meeting that the Council not close the hearing, because he had wanted University staff to be present to engage in a meaningful dialogue on this issue, which was vital to solving this matter. He said the reason he was now in favor of closing the hearing was because the University was "unable" to send representatives to the meeting. Councilor Smith said it was patently clear that the University was unwilling to sit down with the Council to discuss this matter, and said that if that statement was inaccurate, he would publicly confess this. But he said he was quite sure it was not inaccurate.

Councilor Smith said although the University had people who could be very useful in the discussion of this issue, it did not view the issue as one it should be centrally involved in solving, and instead saw it as one where the Town Council was dealing with the merchants of the community. He said he was terribly distressed by that, and said he had wanted University staff to participate in working out this problem, given that there were 12,000 students in Durham, and students were at the center of the problem. Councilor Smith said he would have backed Councilor Needell if he had thought the University would participate. He said

the Council either needed to pass the ordinance or a modified proposal on it, because it had received all the input it was going to get.

Councilor Kraus called the question. The motion PASSED 6-2, with Councilors Needell and Smith voting against it.

The motion to close the public hearing on Ordinance #2004-06 Amending Part II “General Legislation” of the Durham Town Code by creating a new chapter, Chapter 34 entitled “Restaurant and Carryout Establishments Hours of Operation” PASSED 6-2, with Councilors Needell and Morong voting against the motion.

Councilor Grant MOVED to ADOPT Ordinance #2004-06 Amending Part II “General Legislation” of the Durham Town Code by creating a new chapter, Chapter 34 entitled “Restaurant and Carryout Establishments Hours of Operation”. The motion was SECONDED By Councilor Van Asselt.

There was discussion about tabling the motion. Chair Sandberg explained what the options were at this point. He said the appropriate motion was to postpone action, not table action, because tabling would mean a motion was only on the table for the duration of the meeting, and if not taken off the table by the end of the meeting, would be dead. He said postponing could be done until a specific date, or indefinitely.

Councilor Niman MOVED to postpone action on Ordinance #2004-06 indefinitely. The motion was SECONDED by Councilor Van Asselt.

Councilor Needell MOVED to remove the requirement to end the meeting at 10:00 pm. The motion was SECONDED by Councilor Smith, and PASSED unanimously.

Councilor Niman said Councilor Needell had raised important issues that merited addition investigation, and said that until it had additional information, the Council could not adequately discuss this. He also noted the lateness of the hour.

Chair Sandberg asked what additional information Councilor Niman would like to see, for a future agenda.

Administrator Selig said Councilor Needell seemed to want to see whether the discussion that had been started by the Police Chief could result in additional discussion with the business community, students, and the University, and could result in innovative solutions of some kind. He said his one concern about an indefinite postponement was that it was easy to forget about this, and said he would prefer to postpone bringing this issue back to the Council until May, 2005, if that was the direction the Council wanted to take, when the Council could re-evaluate the scenario.

Councilor Niman said he agreed with all of this, and also said he would like to have a conversation with students. He said students were looking for some place to congregate, and Main Street seemed to be the place they had decided on. He said that if this issue was approached as a student activity that students wanted, they might see this as something they

had a vested interest in managing, - perhaps with a financial contribution, additional police resources, with behavioral solutions, etc. so that this activity could be continued.

Chair Sandberg asked Councilor Niman to think about how the Council might go about having this conversation with the students.

Councilor Morong said a March deadline made more sense, while the students were still around. He also noted Councilor Smith's challenge to the University concerning its intentions, and asked if the Council could still meet with University representatives if those representatives were interested in doing so.

Councilor Smith said that the University did not want to meet with the Council, because by law the Council operated in public. He said the University did not wish to do this, but said the problem would not be solved in secret.

Councilor Morong said he was not saying he wanted the Council to meet with University representatives in private, and said he wanted them to come to speak with the Council, in public.

Councilor Smith said if the Council could figure out a way to get the University to change its position on this, he would welcome this. He said it was terribly important that this happened, and said perhaps during the postponement, someone could figure out how to make it happen.

Councilor Morong said the Council had a weak excuse from the University concerning their absence, but said he would like to extend another invitation to them.

Councilor Grant said in his opinion, the most productive discussions with the University would not happen at the Council table. He said the University was well advised not to follow that course at present, and asked that the Council move on to decide the issue at hand.

Councilor Needell said he supported this motion, and said some important strides had been made concerning this issue, which he hoped would continue.

There was detailed discussion among Councilors as to what date to set to bring this motion back before the Council.

Councilor Smith MOVED to amend the motion to postpone, by setting the date to bring the motion back before the Council on the first meeting in January, 2005. The motion was SECONDED By Councilor Morong.

Councilor Smith said by that date, the Council would have completed the budget, and would have observed the fall semester for progress on this issue. He also said if there was no progress by this time, strong action should be taken.

Administrator Selig said that he would prefer to see the motion brought back in February, after the winter break, and before spring elections. He also said the Police Department would

probably say that starting this then would be problematic, as compared to at the beginning of the next school year.

Councilor Smith said he simply wanted to set the date of January as the time when there should be discussion about how things had gone during the fall semester.

There was additional discussion about the pros and cons of when to bring the motion back.

The amendment to the motion PASSED 6-2, with Councilors Van Asselt and Sandberg voting against it.

The motion, as amended PASSED 6-2, with Councilors Van Asselt and Sandberg voting against it.

- B. Shall the Town Council authorize the Town Administrator to negotiate the terms of a land swap between the Route 108 Sunoco property and the Town Hall property?

Councilor Niman provided geographical, financial and logistical details of the proposed land swap. He said the land swap would provide options the site presently didn't have, while also increasing the value of the Town's assets by giving it more road frontage. He said it would not take away the ability to have the library on the Town Hall site. He noted that Realtor Scott Mitchell was not willing to wait very long for the Council to make a decision about this, and said Mr. Mitchell was present to answer questions Councilors might have.

Councilor Niman MOVED to direct the Town Administrator to negotiate a land swap with Mr. Mitchell involving the portion of the Town Hall and the Route 108 Sunoco property, subject to the final approval of the Town Council. Councilor Kraus SECONDED the motion.

Councilor Grant asked Councilor Niman to include the word "purchase" in the motion, noting that he might be more interested in outright purchase rather than giving up land.

Chair Sandberg asked how wide the proposed easement required by Mr. Mitchell would be, and what the minimum lot size of such an entity would be. There was discussion about this.

Councilor Needell said he had serious concerns about the impact of a land swap on the entire property, but said he would be happy to bring these concerns up if a negotiated agreement came before the Council. He said he had confidence that the Town Administrator would negotiate something in the best interest of the Town.

Chair Sandberg noted that negotiate did not mean to bind.

Councilor Smith said he could not view this issue in the abstract, and also said the land swap issue was very premature. He said it did not make sense to take this action now, given the library proposal, and the late hour of the meeting. He also said buying the land might make more sense than doing the land swap. But he said the library proposal needed to be decided on before considering the land swap.

Councilor Kraus said connecting the land swap issue to the library proposal seemed to be somewhat of a red herring. He said it would seem to be a more desirable option to have the land at the Town Hall site configured in this way, and said to figure this out now was important.

Councilor Morong said he agreed, and said this decision would not be premature, wouldn't limit the Council's options concerning the library, and might even enhance the options. He said the land swap might not be an option later. He also said concerning the proposed easement, that it should not be a two way easement, and said he hoped Administrator Selig would make note of this in the negotiations.

Councilor Van Asselt said the land swap idea didn't make any sense to him, noting that the information on it was nebulous. He asked if there was a plan for the corner, and how asking Administrator Selig to negotiate on the land swap fit into the overall plan.

Councilor Kraus agreed there were some unknowns, and said the negotiations would smoke them out.

Chair Sandberg said some issues might come up at the public hearing on the library that would influence whether the land swap made sense. He said he was inclined to simply say that the Council was interested in hearing what the ideas for the land swap were, and how flexible they were in relation to the library concept. He said it was perfectly clear that the Town might purchase all or part of the land in the future, or might want to swap land, but he said it was premature to determine this prior to September 20, 2004. He said having conversations with Mr. Mitchell made sense, but asking Administrator Selig to negotiate specific terms would put him in an awkward position.

Councilor Needell asked if perhaps Mr. Mitchell could speak to the Council.

Mr. Mitchell noted he had been on the Planning Board in Hampton. He said he totally disagreed that the Town could take the property by eminent domain, and said he did have a valid purchase and sale agreement, noting that it was none of the Town's business what was in this agreement. He said he felt he had made a mistake by coming, and being a proactive developer. He said if the Town was interested in the land swap idea, he was interested in negotiating. He said if it was not interested in the land swap, he would go forward with his development. He said he was not interested in selling the property to the Town, and said unlike the Town, he had been able to work with Mr. Smith concerning his property. He also said it did not make any sense for the Town to buy the property.

Councilor Van Asselt said he would support the motion. He said the land swap might as well be one of the ideas on the table.

Councilor Kraus called the question. Councilor Grant SECONDED this, and it FAILED 5-3, with Councilors Smith, Needell and Sandberg voting against it. (2/3 majority required)

Councilor Needell asked Administrator Selig to comment on whether he believed the Town should enter into negotiations with Mr. Mitchell.

Administrator Selig said Mr. Mitchell had come to talk to him in good faith. He said it was clear from the start that Mr. Mitchell would rather develop the project as it was, but was trying to be a good neighbor. Administrator Selig said if the Council was not serious about considering the land swap, it should not ask him to negotiate on this. But he said if the Council did want him to pursue this, he and Mr. Mitchell could relatively rapidly come up with something, because they were not that far apart. He said the issue of what to do with the site was a bit of a problem because they didn't have a plan, but he said they did know they didn't have adequate parking for the court house.

Councilor Morong said it was important to pursue the negotiations on the land swap, and said that at the very least, they could determine if the Town could get parking for the court house. He said if the Council didn't think the deal that was negotiated was a good one, it could say no.

Administrator Selig noted that it was his idea to provide the right-of-way onto Schoolhouse Lane to get the negotiation going, noting that Mr. Mitchell had said this was not essential to him. He also said the Town would pick up land as a result of the land swap.

Councilor Smith said he would vote against this motion, but said if it passed, he would hope that in discussions with Mr. Mitchell, Mr. Selig would, as much as possible, consider any conceivable alternative issues that would come out of the desire to use the land to build the library.

Councilor Van Asselt said he would support the motion, because the Council might as well consider the land swap along with other approaches concerning the land.

Councilor Needell asked if the Council authorized this, whether the issue would come back to it before or after the public hearing. He recommended that it not come back before then for a number of reasons.

Administrator Selig said Town staff would try to handle the negotiations as rapidly as possible, and said if they were complete before the hearing, the Council could decide whether to address them before the hearing.

Chair Sandberg said he would vote in favor of the motion because it was non-binding. He said it was worthwhile to have this information to present to citizens at the public hearing as an option in helping to visualize the potential for the Town Hall site.

The motion PASSED 7-1, with Councilor Smith voting against it.

XII. Adjournment

Councilor Grant MOVED to adjourn. The motion was SECONDED by Councilor Kraus.

Councilors agreed to address Agenda Item XI C., regarding the Parks and Recreation Committee's view concerning the implementation of a non-resident user fee system at Wagon Hill Farm, at a later date.

The motion PASSED unanimously.

The meeting adjourned at 10:50 PM

Victoria Parmele, minutes taker