

# **D-R-A-F-T**

## **DURHAM TOWN COUNCIL MEETING MONDAY, NOVEMBER 1, 2004 DURHAM TOWN HALL – COUNCIL CHAMBERS 7:00 PM**

**Members Present:** Malcolm Sandberg, Chairman; Arthur Grant, Chair Pro Tem; Neil Niman, John Kraus, Karl Van Asselt and Peter Smith

**Members Absent:** Annmarie Harris and Mark Morong

**Also Present:** Todd Selig, Town Administrator; Michael Lynch, Director of Public Works; Bob Levesque, Town Engineer; David Kurz, Police Chief; Jim Campbell, Director of Planning & Community Development

### **I. Call to Order**

Chairman Sandberg called the meeting to order at 7:00 PM.

### **II. Approval of Agenda**

*Councilor Kraus MOVED to approve the agenda as presented. The motion was SECONDED by Councilor Van Asselt.*

*Councilor Grant MOVED to amend Item VIII B. of the agenda by adding the words “...and schedule a public hearing for the proposed FY 2005 Operating Budgets and 2005-2014 Capital Improvement Plan for Monday, November 15, 2004 per Section 5.3 “Budget Hearings” of the Durham Town Charter” at the end of this item. The motion was SECONDED by Councilor Kraus.*

*The agenda, as amended, PASSED unanimously 7-0.*

### **III. Special Announcements**

#### **A. Introduction of Kathleen Brogan – Executive Assistant to the President, UNH**

Administrator Selig introduced UNH President Ann Weaver Hart to make the formal introduction to the Council.

President Hart thanked the Council for giving her the chance to introduce Ms. Brogan. She said she would be working closely with the Council. She said she had most recently worked at the Dept. of Labor in Maine, as Executive Director of the Division of Rehabilitation Services. She provided other details on Ms. Brogan’s background.

Kathleen Brogan said she had been in Durham for six, very interesting weeks. She noted she had already met some Council members, and looked forward to working with the Town in the future.

**B. Presentation of Certificate of Appreciation to Raymond Osborne for 30 years of dedicated service**

Chairman Sandberg presented Public Works employee Raymond Osborne with a certificate of appreciation for his 30 years of dedicated service to the Town of Durham, which read in part: "...As you begin your journey of retirement, the Town hopes that you remember with fondness those citizens and fellow employees with whom you met and worked along the way, and that you take with you the knowledge that your service to the Town is very much appreciated and highly regarded. Your dedication and devotion to providing the best possible service to the citizens of Durham is commendable and reflects favorably upon you and the entire community."

**IV. Approval of Minutes - October 18, 2004**

***Councilor Grant MOVED to approve the minutes of October 18, 2004 as presented. The motion was SECONDED by Councilor Kraus.***

***Councilor Grant MOVED to approve the minutes of October 18, 2004 to add the following amendment:***

Page 2, Item V, 5<sup>th</sup> bullet, add the words "and Fire Chief" after the words "former fire fighter."

***The motion was SECONDED by Councilor Kraus and PASSED 6-1 (Chair Sandberg abstained due to his absence from that meeting).***

***Councilor Grant MOVED to approve the minutes of October 18, 2004 as amended. The motion was SECONDED by Councilor Kraus and PASSED 6-1 (Chair Sandberg abstained due to his absence from that meeting).***

**V. Report of Administrator**

Town Administrator Selig reported on the following items:

- The newly remade sidewalk and lighting scheme along Madbury Road between Main Street and Pettee Brook Lane.
- The very successful Red Sox event, with no issues downtown. He thanked the Durham Police Department, Department of Public Works, and UNH students for all of their efforts.
- The polls will open for General Election from 8:00 AM to 7:00 PM at the Oyster River High School Gymnasium.
- The annual leaf and brush pick up began Monday, November 8, 2004. Administrator Selig said residents were being asked to use biodegradable disposable bags.
- Residents can sign up for the Town's ListServer and receive Friday Updates by logging on to [www.ci.durham.nh.us](http://www.ci.durham.nh.us) and click on "subscribe" at the left side of screen.
- Administrator Selig explained agenda items VIII A., C., and D. for the Council. Concerning Item VIII A, he said the full tax warrant noting all 2300+ parcels had been provided for Council review before signing.

With regard to VIII C, the Budget, Administrator Selig said the Operational Budget and the CIP reports were being provided to Councilors. He provided details of the improved layout and some new sections of these documents, and said there should be a very interesting discussion on the Budget this year because there were some hard choices to make.

Administrator Selig said VIII D dealt with a conservation easement concerning the Allen tract. He said he wanted to be clear that this Agenda Item was merely to authorize the Town to submit the grant application to help fund the easement, and said the Council would still have to accept the easement at a later date.

## **VI. Reports and Comments of Councilors**

Councilor Kraus told residents where leaf bags could be picked up. He also commended students on their behavior after the Red Sox victory, noting he was a direct eye-witness of the event. He said he saw no provoking action by the students. He also thanked the University for its commitment to order and discipline, and for helping the students understand the consequences if there was bad behavior. He said the police were excellent in showing a measured, thoughtful response, noting that the horses and dogs were handled very well, and moved the students forward. He noted some had complained about the dogs, but said he felt the dogs were appropriate and had behaved well. He said that all around, it was a good celebration.

Councilor Needell noted he had been asked to distribute information he had received concerning UNH's GIS Days, to be held on Wednesday, November 17, 2004. He also expressed his appreciation regarding the tremendous efforts of Town staff and the students at the Red Sox post-game event.

Councilor Van Asselt asked if Administrator Selig wanted the Council to remove Item VIII D from the agenda, and Administrator said he did not, unless Councilors had questions.

Councilor Smith said he had a question regarding Item 8D, and asked that it be removed for the discussion.

## **VII. Public Comments**

Rory Sheehan, UNH External Affairs Council Chair for the Student Senate, thanked the Council for allowing the students the time to speak at the last Council meeting. He also thanked the Durham Police Department for their efforts at the Red Sox victory event, and thanked the UNH student body as well for continuing to show it was very capable of celebrating responsibly.

Chair Sandberg said an event like the Red Sox celebration was something that all members of the community would like to share in, and said the fact that they could do so in a joyous way meant a lot to the Town. He thanked members of the Student Senate efforts, and all the students who had attended the previous Council meeting.

Bill Hall said the workings of Town government had failed them once again. He said there had been water line breaks for 30 years, and noted that 15 of these had occurred in the last two years. He provided details on the cost of the breaks, and also the location of these breaks. He said he had been on the Water Policy Committee about 12 years back, and the Committee had recommended that problematic areas be upgraded. He said this never came to pass, and the Town had never taken the responsibility to deal with southern Madbury Road.

He said it was a fairly simple problem, and it could not be put off another three years. He said this was paid for by the water users, and said the Council should find out why it wasn't being done sooner. He said if a reasonable approach had been taken in the past, they would have replaced most of Madbury Road by now. He also noted that the water line was right under the road where the sidewalk had been built, and said it was silly to do that work and not have as a priority to get the plumbing done before that if it this was needed. He said some questions needed to be asked as to why this was not in the budget for 2005.

Chair Sandberg said those matters would be reviewed over the next few weeks, noting that the Council had received the Budget that evening. He thanked Mr. Hall for his comments.

**VIII. Unanimous Consent Agenda** *(Requires unanimous approval. Individual items may be removed by any councilor for separate discussion and vote)*

***Councilor Kraus MOVED to approve Unanimous Consent items A, B and C listed below. The motion was SECONDED by Councilor Needell PASSED unanimously 7-0.***

- A. Shall the Town Council authorize the Town Administrator to sign the 2004 Tax Warrant as confirmed by the Department of Revenue Administration?
- B. Shall the Town Council adopt a schedule of supplemental meeting dates for the purpose of deliberating the proposed FY 2005 Operating Budgets and 2005-2014 Capital Improvement Plan, and schedule a public hearing for the proposed FY 2005 Operating Budgets and 2005-2014 Capital Improvement Plan for Monday, November 15, 2004 per Section 5.3 "Budget Hearings" of the Durham Town Charter?
- C. Shall the Town Council postpone discussions on the proposed FY 2005 Operating Budgets and 2005-2014 Capital Improvement Plan until the special Town Council meeting on Monday, November 8, 2004?
- D. Shall the Town Council authorize the Town Administrator to sign a grant application with the State of New Hampshire for \$59,500 to purchase a conservation easement for property located off of Packers Falls Road (Allen property, Tax Map 17, Lot 48-2)?

***Councilor Kraus MOVED to authorize the Town Administrator to sign a grant application with the State of New Hampshire for \$59,500 to purchase a conservation easement for property located off of Packers Falls Road (Allen property, Tax Map 17, Lot 48-2). The motion was SECONDED by Councilor Grant.***

Councilor Smith asked for clarification regarding the smaller piece of land in the proposed easement. He asked what the responsibilities and the privileges of the Town vs. the landowner would be in terms of the care of the property for recreational purposes.

Dea Brickner-Wood, explained she was a member of the Land Protection Working Group, and said she had been working on this property on behalf of the Town. She said the easement was in the process of being drafted, and said the easement was set up so that recreational use would be allowed. She said the Allens would maintain the property - mowing and fertilizing the fields - and would also help schedule the youth soccer activities on the field. She said if for any reason the owner didn't maintain them, the Town had the option to come in and mow the field. She said this was similar to the way some agricultural field easements were structured.

Councilor Smith asked, assuming the owner maintained the fields, who determined who used the fields; or assuming the owner did not maintain the fields, and the Town had the option to maintain it, in that circumstance, who determined who got to use the fields. Ms. Wood said the owners would schedule the use of the field for sporting events. She noted that the owners had gone before the Planning Board and had received a conditional use permit for the recreational use of the fields.

Land Protection Working Group member Duane Hyde noted that should the landowners fail to maintain the fields and the Town then stepped in, the Town would then be the regulator of the use of the fields.

Councilor Niman asked about the appraised value of the property, noting that it seemed high since the economic value was lessened because in that zone, one couldn't build on a parcel that small. Mr. Hyde noted that porkchop subdivisions with this type of configuration were allowed, in the Rural Zone, and provided details on the configuration.

Councilor Niman asked whether, if the conservation easement was not purchased for lot B, the owner would be able to build a house on it, and Mr. Hyde said yes. There was additional discussion about this.

Administrator Selig said one of the benefits of this proposal was that it would provide recreational fields for the Town, at minimal cost to the community.

***The motion PASSED unanimously 7-0.***

## **IX. Presentation Items**

### **A. Receive report from the Zoning Board of Adjustment – Henry Smith, Chairman**

Mr. Smith provided an overview of the Board's activities in the past year. He noted there were two new members to the Board within the past year, Myleta Eng and Sally Craft, and also noted the resignation of Robin Rousseau. He said there was presently once vacancy for an alternate. He said he had agreed to continue as Chair for an additional year, although reluctantly, because he felt the Chair position should rotate, to prevent anyone from being too enamored of his/her power.

He said the present Board of Adjustment was doing a fine job. He also noted that since August, the number of Items on the ZBA agenda had been decreasing, because of the good

work of the Zoning Rewrite Committee. He said one of the ongoing questions was the definition of dwelling, and explained the problems that had come up concerning this, because the wording in the Zoning Ordinance was somewhat ambiguous. He provided details on what the Town Attorney had advised concerning this.

Mr. Smith also noted that there had been four lawsuits challenging the Board over the past year, and said the Board was very pleased to find that it had prevailed in each case.

Chair Sandberg said the work of the ZBA was extremely challenging and time consuming, and said that the concurrence of the courts showed how well the Board was doing its job.

Mr. Smith said the work was indeed difficult and time consuming, and said the present ZBA was a very reflective group of people.

Councilor Needell noted he had seen the debate at the ZBA meeting on the definition of dwelling, and asked Mr. Smith if the ZBA thought the Ordinance needed to be modified in order to clarify it. Mr. Smith said Vice Chair Jay Gooze was in the process of proposing revised language in the Zoning Ordinance, and provided details on this. He said it was hoped the new language would be much clearer to everyone.

B. Presentation on Remedial Action Plan for the Craig Supply Site – Mike Lynch, Director of Public Works and Bob Levesque, Town Engineer

Administrator Selig provided background on the site, and noted it was a brownfields (contaminated) site, due to spillage of chemicals from railroad cars, as well as other activities, in the past. He noted Mr. Levesque and James Wieck from GZA were present to discuss the site in more detail if Councilors had questions.

He said it was only after extensive testing that the Town had taken the property by tax deed earlier in 2004, as the only way to leverage funds and the political will to clean up the site. He said a long-term goal was to fund the cleanup through a 165 space parking lot in that location. He said there would be a public hearing on a grant application concerning the site later that evening.

Public Works Director Mike Lynch addressed the Council. He noted that GZA had done the environmental assessment and remedial action plan (RAP) for the site, and thanked Mr. Wieck for his presence to answer technical questions. He said it was very important that this be a public process, so people would understand the site, what the contamination was, and what the plans were to deal with this. He asked those watching at home to call the Public Works Department if they had questions on this project.

He said the RAP was a milestone, noting the Town had been working toward this for 15 years. He noted this was an incredibly valuable property in the Town, and said the RAP document was scientifically based, and was a planning tool that provided multiple options for moving forward with the site.

He said that DES had classified the Craig Supply site as one of the most contaminated sites in the State, which had an advantage in that it made it likely that the Town would get federal

funding for it. He noted that a \$200,000 grant proposal developed for the site had not yet been awarded, but said it would soon be resubmitted for the next grant round.

Mr. Lynch gave a detailed description of the options for remediating the site:

- ☐ In situ (in place) treatment of contaminated soils
- ☐ Excavation and dewatering off site - to depth of about 17 ft, which would take into consideration most of the contaminated soils
- ☐ Excavating and dewatering on-site, with stockpiling on site and treatment of piles; when cleaned, put back on site as backfill
- ☐ In situ chemical oxidation – excavate contaminated soils to 5 ft, with chemical oxidation, and then backfill. Also inject chemical into subsurface to chemically oxidize organic site contaminants

Mr. Lynch said the Town currently was waiting for NHDES's review of the Remedial Action Plan. He said his department's internal review agreed with GZA's original recommendation, Option 1, and noted that cost was a key concern. He said the Town was poised to send a letter to NHDES to ask the Federal Government to step in, under the EPA Emergency Removal program. Mr. Lynch said the Town would aggressively go after this program, and said it was possible the site could be remediated with little cost to the taxpayers.

Chair Sandberg asked what the timeline was this for this, assuming there was approval from NHDES.

Mr. Lynch said the grant was due the following week, and would be awarded in March-April. He said the Emergency Removals program could happen as early as spring of 2005, and noted that the State was very anxious to get the site remediated. He said a unique aspect of the project was that they could actually start construction on the parking lot the following spring. He said one proposal was to build a parking lot the following summer on the first two thirds of the lot, working up to the contamination and stopping, leaving one third of the area to be remediated.

Councilor Kraus said the document spoke about the soil contamination at 17-18 feet, and the plan would be to excavate to 5 ft. He asked what happened to the rest of the material, between 5 and 17 ft. Mr. Lynch said the bioremediation process would take care of this area. He said another option was chemical treatment above ground, and then backfilling of the soil.

Councilor Kraus said he had heard there was a mechanism to "cook" the soil, but said he didn't see it listed in the options. Mr. Lynch said this was a process that would take place if the soil were removed from the site.

Mr. Wieck said one of the advantages of treatment on site was that if it was removed from the site, it could be potentially considered hazardous waste, which would involve significant disposal costs. He said the bioremediation approach was a slow, long-term process that was relatively inexpensive.

Councilor Needell asked at what point the decision on which option to be used would be made. Mr. Lynch said NHDES was reviewing the plan, and would be making some

recommendations on this. He said these could include possible modifications to the proposed options.

Councilor Needell noted that there would be ongoing operational cost for the in situ option, and asked for details on this.

Mr. Lynch said it was a process that would continue indefinitely, and could take from 5-10 years.

Mr. Wieck said not enough testing of that method at that location had been done yet to determine how long it would actually take. He also noted that there was contamination in the groundwater itself, which was difficult to deal with. He said a groundwater management zone would be established for this, and would be monitored. He said this would continue until the groundwater met the water quality standards.

Councilor Smith said he recalled that when they discussed the transfer of the land to the Town, they knew there were a lot of things they didn't know, including how the land could be used. He asked if the Administration thought of the parking lot idea as a long-range proposal, or as something easy to do for a period of time. He also asked whether the scientific studies done up to this point allowed the Town to know how much remediation would be required relative to a range of uses that could be made of that land.

Councilor Smith said it was widely known that the land in question was of great interest to the University, and that this entity could possibly take the land from the Town by eminent domain for market value. He also noted that if the University suddenly had no interest in that land, it would still have great interest in the remediation process, which would take place on its land. He asked for details on this aspect of the process.

Mr. Lynch said they were focused on the parking lot in order to generate revenue immediately, and were looking at being able to yield anywhere from \$200,000-500,000. He also said it would be a relatively simple plan, and could be done in house. He said the options for future use of the site were endless. He noted the University was interested in the site, and said their Master Plan called for a tunnel to connect Strafford Ave. to the A lot. He said this option had been built into the plans.

Mr. Wieck provided details on areas of the site that could and could not be built on immediately. He showed where the proposed tunnel would be located, and said it was outside of the contamination area, although noting any work on this would have to take the contaminated area into account.

Councilor Grant said the Council had been told that NHDES had added some monitoring wells down toward the campus because of the possibility the plume was extending that way. He asked for an update on this.

Mr. Lynch said this had been determined, and said two wells were put in, in the area of the New Hampshire Hall parking lot, because that was, to all indications, where the contamination was heading. He said they now knew that was correct. He said the good news was that there was little to no contamination on outside wells, which indicated it was not going that far off site.



Mr. Wieck provided details on monitoring well locations and what contamination had been detected. He said contamination did exist outside the site, but data indicated that it was fairly close by.

Councilor Grant asked if the interest expressed by the University had been expressed in dollar terms.

Administrator Selig said it had not to date. He noted that the Town had been very open with the University regarding the RAP as well as the Town's proposed funding strategy. He said the challenge was to avoid having the taxpayers have to pay to clean up contamination that was caused by a private company many years ago. He said the parking lot solution was the only way to achieve this, and said it could also be a way to provide additional revenue for the Town above and beyond this. He said the challenge was that the intersection of Depot Road and Main Street was a difficult location, and it was important that whatever was done for parking, that traffic was not overloaded.

Councilor Grant said since the University was very interested, and because there were contamination concerns beyond the initial site, the University could be very helpful in getting Senator Gregg to be supportive of obtaining whatever grants or other funding the Town needed.

Councilor Kraus asked if there had been any discussion about putting a railroad underpass through this location, which although expensive, would mean all of the contamination could be removed and sent back to New Jersey, where all those chemicals came from. Mr. Lynch said there had been discussions with the University about this, but said there was no funding for this.

Councilor Kraus said the concept wasn't necessarily wrong, however.

Mr. Lynch said it was a perfect program. He said he had asked the University whether, if the Federal program came in and remediated the site next spring, and there could be a collaboration to install the tunnel at that time, the University would have the funds to do that work. He said the University said it thought it would.

Mr. Wieck said a technical challenge of this approach was that the depth to bedrock was highly variable in that area, but he said in theory, it was an excellent concept.

Councilor Van Asselt asked for the big picture on the funding.

Administrator Selig said there was no guarantee the Town would get any funding from the State or Federal Government. He said that given this, they were trying to find a way to pay for it, through the parking scheme, or if they only got partial funding, a way to make up the difference. He said the grant applied for was for \$200,000, which was a drop in the budget in terms of completing the project.

Administrator Selig said the Emergency Removals program was part of Superfund dollars, and if selected, the EPA would descend and take control of best way they felt to clean up the

site, and they would do it. But he said there was no guarantee that this would happen. He said it wasn't yet known which option would get the green light, but said the recommendation from NHDES would lead them to select one.

Councilor Smith asked if the Town did nothing but put up a parking lot there, and thought it was a long term revenue source, what remediation it would have to do. He asked if the Town would still have to engage in one of the four options before being allowed to park cars there. Mr. Lynch said NHDES would eventually want the Town to do some remediation of the site.

Mr. Wieck said the soil quality at ground level exceeded state standards, so it was important to deal with that, at a minimum. He said the State also required some remediation to control, and treat contamination, so at some point something would need to be done to address that. He said monitored natural attenuation, which allowed the contamination to be cleaned up through natural processes, could also be approved, but noted the monitoring concerning this would have to go on for a long, long time.

Administrator Selig noted that the University completely surrounded the site, so working with the University, it would be important to stem the contamination and work toward remediation. He said as long as they could show they were actively doing that, there was every reason to believe the Town could retain ownership of the site, and use it in ways the Town thought were appropriate. He said at some point, it might make sense to sell the property to the University, once it was remediated.

Chair Sandberg suggested that the Council take a recess and then come back and address the next two Items on the Agenda. He said that would bring them back to the present subject, and they could discuss it further at that point.

Chairman Sandberg called for a recess at 8:50 PM. The meeting reconvened at 8:55 PM.

## **X. Unfinished Business**

- A. **Public Hearing and Action on Ordinance #2004-07** amending Article II "General Legislation, Chapter 98 "Rental Housing Commission", Section 98-3 of the Durham Town Code to increase membership to ten by adding a neighborhood representative

Administrator Selig provided a brief explanation of the ordinance. He said a suggestion was made by Councilor Harris to add a neighborhood representative to the Commission. He noted the Commission thought this was a good idea.

***Councilor Van Asselt MOVED to open the public hearing on Ordinance #2004-07 amending Article II "General Legislation, Chapter 98 "Rental Housing Commission", Section 98-3 of the Durham Town Code to increase membership to ten by adding a neighborhood representative. The motion was SECONDED by Councilor Grant and PASSED unanimously 7-0.***

There were no comments by members of the public.

***Councilor Kraus MOVED to close the public hearing on Ordinance #2004-07 amending Article II “General Legislation, Chapter 98 “Rental Housing Commission”, Section 98-3 of the Durham Town Code to increase membership to ten by adding a neighborhood representative. The motion was SECONDED by Councilor Grant and PASSED unanimously 7-0.***

***Councilor Grant MOVED to adopt Ordinance #2004-07 amending Article II “General Legislation, Chapter 98 “Rental Housing Commission”, Section 98-3 of the Durham Town Code to increase membership to ten by adding a neighborhood representative. The motion was SECONDED by Van Asselt and PASSED unanimously 7-0.***

- B. **Public Hearing and Action on Ordinance #2004-08** amending Article VI “Schedules”, Chapter 153 “Vehicles and Traffic”, Section 153-49 of the Durham Town Code by establishing a parking permit system in the Bayview Road neighborhood

Administrator Selig provided a brief explanation of the ordinance. He said that when parking had been eliminated on Young Drive, concern was expressed that there would be impacts on Bayview Road.

***Councilor Grant MOVED to open the public hearing on Ordinance #2004-08 amending Article VI “Schedules”, Chapter 153 “Vehicles and Traffic”, Section 153-49 of the Durham Town Code by establishing a parking permit system in the Bayview Road neighborhood. The motion was SECONDED by Councilor Kraus and PASSED unanimously 7-0.***

Chair Sandberg asked if there were any members of the public who wished to speak for or against the ordinance. He noted there appeared to be no members of the public who wished to speak, and therefore questioned whether there was adequate motivation to change the ordinance.

Police Chief Kurz told the Council that after the ordinance was passed concerning Young Drive, there was a petition by one resident concerning the need for this present amendment. He said he contacted approximately 15 residents of the neighborhood about this proposed amendment, and got 7 responses, but none were negative.

Councilor Smith asked what the situation was there at present, and if there was a real need for the Ordinance. Chief Kurz responded that there had been cars parking there in the evening so people could go to Young Drive. He said the Department had tried to communicate with the neighborhood about the issues there, and noted this area had been challenged with noise problems over time. He said he trusted them to tell him what they needed to have. He said the ordinance was relatively easy to administer, but said there was not an overwhelming safety problem in the area. He said he didn't have a problem with the ordinance, and it was something that had been asked for.

Councilor Smith said he understood it was not a public safety issue. He said these ordinances had been around a long time, and made sense when there were circumstances that crowded the streets so there were difficulties with parking. He said his intuitive feeling was that, with what was going on with respect to Young Drive, the parking problems at Bayview

Drive were increasing. But he said he would like to have some sense that this was in fact the case.

Chief Kurz said there had not been a lot of complaints about parking on Bayview Drive. He said residents had been encouraged to participate in this. He said he was in an awkward position, and it was hard to argue a pro or con concerning the issue.

Councilor Grant said when the Council took aggressive action on Young Drive, they specifically addressed this issue, and the neighbors on Bayview Drive spoke on it. He said he gave them every indication that the Council would adopt this permit system, with the first request they got, and said it was the least the Council could do.

Councilor Needell said the request came from a resident, and there were no objections to it. He asked whether in terms of parking, there had been any calls concerning parking problems. Chief Kurz said there had not been such calls.

Councilor Van Asselt said there were nine areas in Town that required with parking permits, and 14 special no parking areas. He asked if no parking would also work on Bayview, if it worked on Davis Ave. Chief Kurz said that when the University changed B lot from student to faculty and staff only, it pushed student parking into the faculty neighborhood. He said his philosophy when he met with the residents of the neighborhood was why they should be inconvenienced simply because they lived closer than other people. He said the strategy of a parking permit system to allow residents to park on their street seemed fair. He noted he had attempted to do parking permits on Davis Ave., and provided some detail on why this didn't happen.

Councilor Van Asselt asked if it made any difference in terms of enforcement whether it was parking by permit or no parking. Chief Kurz said the department was customer oriented, so allowing parking by permit made more sense.

***Councilor Kraus MOVED to close the public hearing on Ordinance #2004-08 amending Article VI "Schedules", Chapter 153 "Vehicles and Traffic", Section 153-49 of the Durham Town Code by establishing a parking permit system in the Bayview Road neighborhood. The motion was SECONDED by Councilor Van Asselt and PASSED unanimously 7-0.***

***Councilor Grant MOVED to adopt Ordinance #2004-08 amending Article VI "Schedules", Chapter 153 "Vehicles and Traffic", Section 153-49 of the Durham Town Code by establishing a parking permit system in the Bayview Road neighborhood. The motion was SECONDED by Councilor Kraus.***

Councilor Needell said that when the no parking discussion on Young Drive was held, he said it made sense that this amendment was in place first. But his concern now was what the driving force for it was, other than worrying about a potential problem there. He said he was concerned they were fixing a problem that didn't exist.

Councilor Niman said he had spoken to two residents of the area who said there were parking problems there, and would like a permit system. He said he would vote for the amendment to the ordinance.

Councilor Kraus said he was pleased that there was no citizen pressure group present to scream and yell about it, and said for this reason alone he would vote for the ordinance amendment.

Councilor Smith said he saw the humor in that comment, and Councilor Niman's comment brought evidence to the table, which was useful. He said at least they had been told that half of the residents thought it was a good idea. But he said this was not a great way of making law to engage in this guessing, and said more should be brought to the table to allow the Council to make an informed decision. He said he would vote for this, but was not happy about the level of evidence that came before them, and would hope they would do better in the future.

Councilor Kraus said he had heard many Bayview residents speak about this concern in the past. He said this situation was different that the previous issue about lessening the speed limit. He said the voice of the neighborhood was there, because they had been there before.

Councilor Needell said he appreciated Councilor Niman's comments, and said it was enough information to allow him to support the ordinance. But he said it would have been nice to hear some direct input. He noted that the ordinance not brought forward at the previous meeting did not move forward to public hearing, so there was no opportunity for the public to comment on it.

Chair Sandberg said perhaps the Council was going to support the ordinance based on former discussions and the level of support the group had had in the past. But he said it should be noted that when such items came forward, there should be some advocacy.

***The motion PASSED unanimously 7-0.***

## **XI. New Business**

- A. **Public Hearing:** Grant application under the Brownfields Cleanup Grant Program to be used for the remediation and cleanup costs associated with the former Craig Supply Company site located on Depot Road

Administrator Selig provided background on this. He said the grant was administered by EPA, and one of the requirements was that there be a public hearing as part of this process.

Councilor Needell asked if there was any need for Council authorization in order to apply for the grant.

Chair Sandberg said the Public Works Department was making the application whether the Council liked it or not. He said the hearing was required, and the Dept. would then take the comments of the public and Councilors under advisement.

***Councilor Grant MOVED to open the public hearing on a grant application under the Brownfields Cleanup Grant Program to be used for the remediation and cleanup costs associated with the former Craig Supply Company site located on Depot Road. The motion was SECONDED by Councilor Kraus and PASSED unanimously 7-0.***

Walter Rous, Adams Point Road, spoke in favor of the Town applying for this grant application. He said he was excited to see the process moving forward.

Councilor Van Asselt said if the grant was approved, and the Town decided to do the \$4 million project, the only other place the other \$3.8 million would come from was if the NH delegation got the Town the money. He said somebody would get stuck paying this bill, and it would require a lot of parking quarters to pay for it. He said the potential of financial consequence was significant.

Chair Sandberg said the Council needed to understand the strings attached if the Town got the grant.

Mike Lynch said the grant was a 20% match to the Town, so the Town would have to contribute \$40,000 to the project. He said the Town proposed in kind services, gravel, etc. He said the first step of the process was the removal of the buildings, and said the Town needed to provide funds for this.

Chair Sandberg asked if the Town committed to spending \$200,000, how committed it would be to spending more than this.

Mr. Lynch said the Town had asked this question to NHDES, and the answer was vague. He said the general feeling there was that the Federal government was very interested in moving this along. He said NHDES was very excited about moving this project forward, but said there were no guarantees.

Chair Sandberg said that after spending 200,000, the Town was very committed to spending more.

Administrator Selig said they weren't planning to spend a dollar on the site until the plan was finalized. He said they were trying to capture grant funds so that when this plan was available, there would be as much money as possible lined up. He said the money in the CIP for demolition of buildings wouldn't be spent until there was a sense of whether the grant would be received, and what remediation plan would be required for the site. He said whatever option was chosen, if it was found in five years that the contamination levels had not decreased, or were increasing, more money would need to be invested in the site. He said it was in everyone's best interest to address this brownfields site in Durham as best as they could. But he said it was a challenge.

Councilor Smith said he admired the goal, but said it was one thing for the Council to talk about this, and then have the Administration, regardless of what they said, proceed with the grant process. He said it was another thing to discover that the Town would become obligated to much larger amounts without applying its mind its mind, and making a positive decision. He noted that depending on what happened in the election, this could have a profound impact on

whether the Town would get any major amounts of money. He said the Council had to be very careful about what it was obligating itself to.

Chair Sandberg said the question was whether, if the Town got the \$200,000, it obliged it to spend more. He got clarification that the Town would not need to accept the grant money, even if it got it.

Administrator Selig said the Town would not spend tax dollars upfront without a long-range plan to recoup those dollars in the long run. He said the parking lot scheme was the way to do this.

Councilor Needell said that between now and March, the Town was anticipating getting back the recommended plan from NHDES, so that by the time the grant came back in March, the Town should have more information on how to utilize the \$200,000. He said presumably the Town would have committed to a plan of action by then, and the money would be a down payment toward that.

Councilor Kraus said if it looked like achieving the cleanup was going to be enormously problematic, the site could be capped, and a cyclone fence could be put around it. He said if the other option was to bankrupt the Town, it wouldn't be the end of the world to take the option of capping the site.

Administrator Selig said that if the Town could not find funding for the cleanup, it might have to consider something like this. But he said the Town had to make every effort to find the funding.

Chair Sandberg said they wouldn't get any grant money if they didn't apply for it. He said this was what the hearing was about. He noted the Town might be involved in another hearing down the road concerning obtaining Superfund money.

Administrator Selig said the Town needed to show the Department of Environmental services that it was making a good faith effort to clean up the site. He said if the Town refused to come up with ways to fund the project, it would be pitting itself against the State.

Councilor Needell said it was really important that the site be cleaned up, and said that doing nothing might not be an option. He said he was hoping the Town would find a solution to fix it.

Councilor Van Asselt asked what the Town's obligation was if it was awarded the grant.

Administrator Selig said if the Town received the grant, and expended the grant, there would be the expectation that Durham would continue to clean up the site.

Mr. Lynch said the Town would be in line to receive other grants from other programs. He said that as long as the Town was applying for grants, that was sufficient proof to NHDES that the Town was participating in the process. He said Town staff was looking at the glass as half full.

***Councilor Kraus MOVED to close the public hearing on a grant application under the Brownfields Cleanup Grant Program to be used for the remediation and cleanup costs***

***associated with the former Craig Supply Company site located on Depot Road. The motion was SECONDED by Councilor Grant and PASSED unanimously 7-0.***

**B. First Reading on Ordinance #2004-10** amending Sections 175-133(B) (2) and 175-133(G) of the Durham Zoning Ordinance relating to snipe signs and political speech

Administrator Selig provided a brief explanation of the ordinance as presented. He said the issue came to light because a resident in Town wanted to have more than the allowed snipe signs on his property. He said the question initially went to the Code Enforcement Officer, who sent a violation notice. He said this was appealed and the Board then denied the appeal.

He said at the hearing before the ZBA there was a great deal of discussion as to whether the ordinance provisions was appropriate, given that the largest expense for most candidates was their signs. He said the matter then went to the Planning Board, with the request to allow more than one sign in Residence A and B districts, and in the other districts, more than two.

He said the hearing was held, and the proposed changes were then forwarded to the Council. He noted that because of the timing of this during the election season, he made the decision not to enforce the existing provision, because it seemed there was considerable interest with respect to this issue. He said that in addition, he did not want the Town to expend tax dollars on this issue, given a reasonable change of perspective on the matter. He noted that the amendment would allow an unlimited number of signs, but did not amend the size of the signs.

***Councilor Smith MOVED to pass Ordinance #2004-10 on first reading as presented, amending Sections 175-133 (B) (2) and 175-133 (G) of the Durham Zoning Ordinance Relating to Snipe Signs and Political Speech and schedules a public hearing for Monday, November 15, 2004. The motion was SECONDED by Councilor Needell.***

Councilor Smith said the issue before the ZBA was not simply that it would be appropriate to be able to be able to put up more than one sign, but that it was a violation of the US Constitution to allow a government entity to penalize someone who chose to do so.

He also said that it this dealt exclusively with political speech, and no issue was raised about 1 restrictions to signs not related to political speech. Councilor Smith also said that the provision that had been changed was very likely unconstitutional, and the Planning Board put forth an immediate change, keeping in mind it was doing the Zoning rewrite, which included the sign ordinance which they hadn't gotten to yet.

Councilor Smith said the Planning Board decided to make this narrow change, with the understanding that they would revisit the entire sign ordinance as part of the amendment process, and at that time they would fine tune the wording. He said he had some concerns about the wording, but said that as a whole, it would deal with the crisis, and could be improved on later.

Chair Sandberg asked if there was any opposition to the motion to have the public hearing.



Councilor Needell said he wanted to be clear on what the Council wanted to accomplish. He asked who determined what was political speech, and what other signs were considered to be snipe signs.

Administrator Selig said the Code Enforcement Officer would refer to the ordinance for guidance and would make the decision. There was additional discussion about this.

Town Planner Jim Campbell said those who spoke at the public hearing at the Planning Board all spoke in favor of the wording changes.

Chair Sandberg said the questions being raised were concerned with the need for clarification, who was making what determination, and by what guidelines. He asked if something needed to be included in the definitions of the Zoning Ordinance in order to provide adequate guidance.

Mr. Campbell said the ultimate interpretation would be made by Code Enforcement Officer Johnson. He also said the Planning Board would be taking a hard look at the sign ordinance in the coming weeks.

Councilor Grant noted that this was all coming about because the Town had a Code Enforcement Officer who read the ordinances and enforced them, and noted this wording had been on the books since 1980.

Councilor Smith said he wanted to assure the Council and the public that political speech was defined in greater detail by many Court decisions, including those of the Supreme Court.

***The motion PASSED unanimously 7-0.***

- C. Other Business
- None

**XII. Nonpublic Session (if required)**  
None

**XIII. Adjourn (NLT 10:00 PM)**

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

Chair Sandberg reminded Councilors about the invitation from the Moderator to attend the balloting session for the General Election. He provided details on when he intended to be there, and noted an email sent to Councilors asking that they make themselves available to assist with any manual counting that might be necessary. . He said the polls opened at 8:00 AM and closed at 7:00 PM., and also noted that once people showed up, if they had not yet registered to vote, they would be permitted to complete the registration process even after 7:00. He said the counting, and opening of the ballot box couldn't be done until after the last vote had been taken.

***The motion FAILED on a vote of 4-3 (Councilors Smith, Van Asselt, Sandberg and Needell voting against the motion and Councilors Kraus, Niman and Grant voting in favor of the motion).***

Councilor Smith noted that anyone in line at the polls at 7:00 PM, whether or not they had registered, was eligible to vote.

Administrator Selig said the Presidential election was a huge undertaking for the Town's election officials. He said they did this largely free, but did it because they cared deeply for the Town. He asked residents to thank them for their hard work and effort, when they went to vote.

***Councilor Van Asselt MOVED to adjourn the meeting. The motion was SECONDED by Councilor Smith. The motion PASSED unanimously 7-0.***

The meeting ADJOURNED at 9:53 PM.

Victoria Parmele, Minute Taker