

**DRAFT**  
**MONDAY, MAY 2, 2005**  
**DURHAM TOWN HALL -- COUNCIL CHAMBERS**  
**TOWN COUNCIL MINUTES**  
**7:00 PM**

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

**MEMBERS ABSENT:** Councilor Diana Carroll

**OTHERS PRESENT:** Paul Beaudoin, Business Manager (in place of Administrator Selig)

**I. Call to Order**

**II. Approval of Agenda**

*Councilor Kraus MOVED to approve the Agenda as submitted. The motion was SECONDED by Councilor Morong, and PASSED unanimously 8-0.*

*Councilor Julian Smith MOVED to amend the Agenda to move XI C, the discussion on goal setting, to the end of the Agenda, following XII C. The motion was SECONDED by Councilor Needell, and PASSED 7-1, with Councilor Kraus voting against it.*

*The amended agenda PASSED unanimously 8-0.*

**I. Special Announcements**

Chair Sandberg noted Administrator Selig was not present, due to the death of his grandmother, and said the Council's thoughts were with his family. He said Business Manager Paul Beaudoin would be filling in for him.

**IV. Approval of Minutes**

April 26, 2004

Chair Sandberg explained that these minutes had inadvertently not been approved back in 2004.

*Councilor Kraus MOVED to approve the April 26, 2004 minutes as submitted. The motion was SECONDED by Councilor Van Asselt.*

Chair noted some minor corrections had been made to the minutes prior to the meeting.

*The motion PASSED 7-0-1, with Councilor Julian Smith abstaining because he was not on the Council at the time of the April 26<sup>th</sup>, 2004 meeting.*

April 4<sup>th</sup>, 2005 minutes

***Councilor Kraus MOVED to approve the minutes of April 4, 2005. The motion was SECONDED by Councilor Van Asselt.***

Page 3, 4<sup>th</sup> paragraph, should read “..Administrator Selig to speak..”

Page 12, 2<sup>nd</sup> paragraph, -“Councilor Van Asselt said...” should be started as new paragraph. A new paragraph should be started with “Mr. Levesque said if the Town did the work...”

Same page, 5<sup>th</sup> paragraph, should read “..the possibility that The Surety could say...”  
Change spelling of this throughout the document.

***Councilor Kraus MOVED to adopt the amendments to the minutes. Councilor Van Asselt SECONDED the motion, and it PASSED unanimously 8-0.***

***The April 4<sup>th</sup>, 2005 minutes as amended PASSED unanimously 8-0.***

April 11 minutes

***Councilor Kraus MOVED to approve the April 11<sup>th</sup>, 2005 minutes. The motion was SECONDED by Councilor Van Asselt.***

Page 4, 5<sup>th</sup> paragraph, should read “Councilor Julian Smith said he would like to have as a goal stopping study on an issue after a certain point...”

Page 8, 5<sup>th</sup> paragraph, should read “He asked if the Grange could be added to the list.”

Page 9, 5<sup>th</sup> paragraph, should read “...so much litter, especially beer cans and water bottles...”

Page 12, 6<sup>th</sup> paragraph, should read “ Councilors agreed Mr. Hall...”

***Councilor Kraus MOVED to approve the amendments to the minutes. The motion was SECONDED by Councilor Van Asselt, and PASSED 7-0-1, with Councilor Needell abstaining due to his absence from the April 11<sup>th</sup> meeting.***

***The April 11<sup>th</sup>, 2005 minutes as amended PASSED 7-0-1, with Councilor Needell abstaining due to his absence from the meeting.***

## **V. Report of Administrator**

- Mr. Beaudoin said there would be a reception on May 13<sup>th</sup> to say goodbye to Ron O’Keefe, who was retiring after 15 years of service as Chief of the Durham Fire Department. and would be going to work for the NHMA Local Government Center, as a representative to various fire departments throughout the State.
- Mr. Beaudoin said the Town had entered into an agreement with the NH Department of Administrative Services to renew the lease for the District Court for another 2 years. He said the rental rate would be the same, and said the lease would be signed unless concerns were raised by the Council.
- Mr. Beaudoin said the three-person CALEA team reviewing the Police Department had recently finished its work. He noted some Councilors were present at the exit interview on April 27<sup>th</sup>. He said the review team had said it was extremely impressed with the

work of the Durham Police Department, and the reviewers said they were going to be taking some ideas back to their local community that they had learned in Durham. He said they were appreciative of the administration of the Department, and also of the work of the Town Administrator and the Council in making sure the Town stayed accredited.

Mr. Beaudoin said the CALEA organization was very credible, and did a thorough job of reviewing police departments. He said everyone at the Police Department and in the Town should be very proud.

- Mr. Beaudoin said the State was offering the low and moderate income property tax relief program. He said single people with an income of no more than \$20,000, and married people with a combined income of no more than \$40,000, might be eligible for relief from the state education portion of the tax bill.
- Mr. Beaudoin noted that the Town was in the process of purging fire hydrants, and said if residents found any rusty sediment in their water, they should let the water run for a few minutes. He said this process was done on a yearly basis.

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

Councilor Morong said he had recently attended a Cemetery Committee meeting. He said the price of grave plots was increasing from \$350 to \$500, and also said the Committee was looking at developing more formal policies concerning the cemetery. He said the Committee was also working at computerizing its data, which now was mostly on paper. He said some students had helped with this in recent years, and said volunteers were still needed to provide assistance with this.

Councilor Morong said he had also recently attended a Rental Housing Committee meeting. He said Deputy Police Chief Renee Kelley had reported at the meeting that Young Drive problems and other similar activity was generally down, and arrests were up, especially alcohol related arrests. He said it was believed that the increase was due to more vigilance, rather than more actual problems.

Councilor Morong said Committee members, especially landlords, had expressed interest in the presentation Councilor Niman had made at the previous Council meeting, concerning this issue of whether they paid their fair share of taxes. But he said there hadn't been much discussion yet on the issues involved, and noted people were welcome to come to meetings to express their views. He said the next meeting of the Rental Housing Committee would be on August 3<sup>rd</sup>, and said Jennifer Murray of the *Durham It's Where U Live* program would speak at the meeting.

Councilor Needell said on Wednesday of that week, public hearings on proposed amendments to the Shoreland, Wetland, and Aquifer Protection overlay district provisions would be held by the Planning Board. He also said that on May 11<sup>th</sup>, the Board would have a public hearing on the proposed Irving Station, as well as a public hearing on the proposed "Housekeeping amendments" to the Zoning Ordinance.

Councilor Kraus said the Town's spring cleanup process was still in progress. He asked again that people be reasonable in terms of the materials they put out for pickup, and noted that

people should be sure they put appliance stickers on appliances that were to be removed from properties.

There was discussion about which appliances needed stickers, and it was noted that if residents had questions about this, they should check with the Public Works Department.

Councilor Julian Smith said he had received a letter from Beverly Burrows, who lived on Schoolhouse Lane, and he then read her letter out loud.

In her letter, Ms. Burrows said she had lived on Schoolhouse Lane for 40 years. She said she had monitored traffic on the street for many years, and had sent the Town several letters about traffic on the road since the traffic light was installed. She said it was frequently used as a cut through, coming from both directions, to avoid using the traffic light, and also provided details about the increasing speeds people drove on the road.

Ms. Burrows said she believed that traffic would increase significantly as a result of the new hotel and the development of the Smittys property, and she suggested that Schoolhouse Road should therefore be made a dead end road. She said with a gate or chain, the road could be opened when needed if there was a problem at the corner and an alternate route was needed.

Councilor Peter Smith said he had attended the special Conservation Commission meeting on April 25<sup>th</sup> to discuss the issue of the various properties owned by the Town. He said the purpose of this meeting was to review the Conservation Commission/Parks and Recreation subcommittee's report on this in some detail. He said that as a consequence of this meeting, the Conservation Commission had requested that there be a joint meeting with the Parks and Recreation Committee, with the goal of seeking to reach consensus between the two organizations on how to handle the Town properties. Councilor Smith said that if a consensus were reached on the report as a result of this, it would subsequently be presented to the Council.

Councilor Smith also noted he had been present at the CALEA exit interview meeting, and said it had been astounding to hear the degree of praise that came from the three professionals who had reviewed Police Department operations. He noted that one reviewer said it was the best site visit he had ever been on. Councilor Smith said Durham could be very proud of the way its police force was viewed by outside professionals.

Chair Sandberg said he also had attended the exit interview. He said he was very pleased and impressed with the work the Police Department had done, and by the reaction to this by police professionals.

There was discussion that a joint Conservation Commission/Parks and Recreation Committee presentation was supposed to take place at the May 16<sup>th</sup> Council meeting, and should probably be moved up to a Council meeting in June, to give the two Committees time to complete their work.

## **VII. Public Comments**

**Jim Jelmsberg, Park Court**, urged the Council to support the acquisition of the small piece of land immediately surrounding the Court House and down to the Town Hall. He noted he had originally supported the proposal to acquire the Smitty's property, and hadn't given up on that. But he said this present proposal was the least the Town should do. He said there clearly was a need for parking at the Court House, and at the Library if it was built on the Town Hall site. He also said there was not a need for an additional gas station/convenience store in that very small area of Town.

**Bill Hall, 1 Smith Park Lane**, said the Town was saving about \$50,000 as a result of the new management of the dump, and questioned where the department head and the recycling committee were on this issue prior to this correction. He said this had been a failure of town government, and noted that the reason Durham had its particular kind of town government was so issues like that could be addressed more efficiently.

Mr. Hall also said he was concerned about the issue of acquiring land around the Courthouse for parking. He said this had been an issue for a long time, and said the person interested in developing the property had come to the Town in good faith, and the Town hadn't dealt with the situation very well. He said the Town had a bad reputation in terms of going to court, and provided details on previous issues that had led to this. He said the possible legal issues had not been thought through concerning the present situation, and said he hoped the Town wouldn't go down this same road with the Smitty's property.

**Ray Belles, Durham Point Road**, said he had been Chair of the Master Plan steering committee in 1999. He said the acquisition of the Smittys property was the number one item recommended in the Plan, noting the Master Plan didn't state that the library should be put at the Town Hall site, but did say the Town center should be put there.

He said he hoped the idea of the Town Center was still alive, but said he was present that evening to talk about preserving at least the last little bit of that idea, and about not turning the Smittys property into a thoroughfare, and marginalizing any sense that there was a town center. He said the Courthouse didn't have parking, and said he was surprised there were no complaints from the Court concerning this. He urged the Council to do what it could to preserve this small bit of continuity around the Court House, and to preserve a sense of the town center.

#### **VIII. Unanimous Consent Agenda**

- A. Shall the Town Council approve a special event permit submitted by the Town of Durham and the Bourgoin-Reardon Unit 94 American Legion Auxiliary to conduct the annual Memorial Day Parade to be held non Monday, March 30, 2004?
- B. Shall the Town Council approve the water and sewer warrant for spring 2005 and authorize the Town Administrator to sign said warrant?
- C. **Resolution #2005-10** establish a Fire Department Injury Prevention Trust Fund to finance public education initiatives with the Durham/UNH community.
- D. **Resolution #2003-11** accepting a State of New Hampshire Department of Safety, Bureau of Emergency Management, Emergency Management Performance Grant in the amount of up to \$25,826.13 for three emergency management projects.

- E. **First Reading on Ordinance #2005-05** amending Chapter 59 “Fire Department Service Call Fees”, Section 59-4(D) of the Durham Town Code by properly referencing that service call fees for apparatus responses are contained within the Town Master Fee Schedule.

Councilor Julian Smith asked that Item D be removed from the Unanimous Consent Agenda. Councilor Peter Smith, Councilor Niman and Councilor Sandberg asked that Item E be removed from this Agenda.

***Councilor Kraus MOVED to approved Unanimous Consent Agenda Items A,B, and C. The motion was SECONDED by Councilor Smith, and PASSED unanimously.***

D. **Resolution #2005-11**

Councilor Julian Smith said he was told this grant required a 50% match, but said he got a sense that the Town had to come up with 50% of the entire amount, which would be a 100% match. He asked for clarification on this.

Mr. Beaudoin said they looked at the total amount for the grant, and then the State paid half and the Town paid half. He noted that of the half the Town had to put up for the hazard mitigation plan, most of the match would be in-kind services including staff time. He also said some funds would go through the Strafford Regional Planning Commission to develop the plan.

Councilor Smith noted the hazard mitigation plan that was required in order to qualify for the grant, and said it sounded like a boondoggle. He asked for more explanation on what the money was being used for.

Mr. Beaudoin explained that this plan was required by FEMA in order to get any grant funding in the future. He said the State was assisting the Town in developing it.

Councilor Needell asked if the salary costs were already included in the Town budget, and Mr. Beaudoin said they were.

***Councilor Kraus MOVED to approve Unanimous Consent Agenda Item D. The motion was SECONDED by Councilor Van Asselt.***

Councilor Julian Smith said if a hazard mitigation plan was something that was mandated by the federal government, it should be ashamed of itself. He asked how many natural disasters occurred in Town.

Mr. Beaudoin explained that the plan was meant to find where all possible hazards were, what could potentially happen, and how these disasters could be dealt with in the community, for example, if the Wiswall Dam burst. He noted that the Town was trying to get money from FEMA to help with fixing the Wiswall dam, and couldn't even apply for that unless there was a hazard mitigation plan

Chair Sandberg said there had been two instances when the emergency operations center had been activated, once for some ice storms in Town when substantial numbers of elderly people needed assistance, and another instance for a flooding situation when parts of the Town were isolated.

Councilor Morong noted funds had also been received after large storms in recent years.

Mr. Beaudoin said that was correct, and noted that the Town might be getting assistance from the federal government because of three snow storms that had occurred the past winter.

***The motion PASSED 7-0-1, with Councilor Julian Smith abstaining because he felt that some of the things described, even if necessary, were a waste of time for Town staff.***

- E. **First Reading on Ordinance #2005-05** amending Chapter 59 “Fire Department Service Call Fees”, Section 59-4(D) of the Durham Town Code by properly referencing that service call fees for apparatus responses are contained within the Town Master Fee Schedule. Councilor Peter Smith noted he had suggested a change of the language in paragraph B.

***Councilor Needell MOVED to approve Unanimous Consent Agenda Item E. The motion was SECONDED by Councilor Van Asselt.***

***Councilor Peter Smith MOVED to amend the motion, to change the wording in Ordinance #2005-05, under Section 59-4 B, by deleting “”act of God”, and substituting for this “naturally occurring events”. Councilor Julian Smith SECONDED the motion.***

Councilor Kraus asked if this was new, generic wording that was considered more appropriate.

***The motion PASSED unanimously 8-0.***

Councilor Niman asked for clarification concerning the language in Chapter 59-4 A, asking whether based on this, his family could make a total of 15 service calls.

Mr. Beaudoin said this was currently based on households, so if a certain household required service, that was considered one call. He said that perhaps the word residence was more appropriate than resident, noting that in reality, the residence was counted.

Councilor Niman agreed the language should be changed, and said he hoped Councilor Peter Smith could recommend some specific language.

Councilor Peter Smith asked if had been standard practice that the number of occasions for a service call was counted against the residence address. Told that it was, he said if the Town wanted to stick to this policy, the language should be cleaned up.

Councilor Niman said an easy way to do this was to change “resident” to “residence”, and after “Town of Durham” to change “who” to “that”.

Councilor Peter Smith said the problem with this was that a residence didn't make phone calls. He said the fee should be assessed when calls for service in excess of five were received from any individual residence.

Chair Sandberg asked if the Council had any other issues of concern about Ordinance #2005-05. He said administrative staff could take the present issue, and any others, under consideration and refine the language, instead of having the Council serve as a committee on this.

Councilor Julian Smith said according to the present language, Councilor Niman's household got fifteen calls.

Council Needell recommended changing the wording under 59-4 C "An invoice shall be initiated by the Fire Department for responses in the preceding month. Fees will be due thirty days from the billing date."

Councilor Niman asked if this Ordinance included residences located on UNH property.

Mr. Beaudoin said it did not, and Councilor Niman said the Ordinance should make that clear.

Councilor Peter Smith asked why residences on the UNH campus were not billed.

Mr. Beaudoin said that policy went into affect long before he worked for the Town. He said there were two issues - the University was charged per call, so they would be paying for their fair share of calls anyway. He said he assumed a second reason for this policy was that when a call came in from a dorm, it was hard to define whether the call came from a particular person or room.

Councilor Needell asked if money received from this was kept by the Town.

Mr. Beaudoin said technically it was split because it went in as revenue to the Fire Department, and when billed the Town the University, it billed it the net of all expenses less revenue received.

Chair Sandberg suggested that the Council postpone action on this Ordinance until the various points discussed could be refined.

Councilor Morong asked if a building with five apartments was considered five residences. Told that it was, he asked whether that was clear in the Ordinance.

***Councilor Van Asselt MOVED to postpone action on Ordinance #2005-05 until it returned from the Town Administrator. The motion was SECONDED by Councilor Kraus, and PASSED unanimously 8-0.***

## **IX. Committee Appointment**

Shall the Town Council appoint Amy Cunningham to the Integrated Waste



Management Advisory Committee?

***Councilor Kraus MOVED to appoint Amy Cunningham to the Integrated Waste Management Advisory Committee. The motion was SECONDED by Julian Smith.***

Councilor Kraus noted he served on this committee, so had already had the privilege of working with Ms. Cunningham. He said she was very committed to the concerns of the Committee, and said he thought she would be an excellent member. He noted there had been a shortage of members, and encouraged the Council to endorse this appointment.

***The motion PASSED unanimously 8-0.***

X. **Presentation Item** - Historic District Commission regarding the creation of a Heritage Commission - Crawford Mills.

Mr. Mills provided the following presentation to the Council, which outlined the concept and justification for adding the functions of a Heritage Commission to the current responsibilities of the HDC.

Commission (as authorized by NH RSA 674:46-a, V.) These added, non-regulatory functions would:

- **Allow for a town-wide scope covering all historic properties, not just those located within the Historic District.**

Mr. Mills said there were 71 structures in the HD, only about half of them, 38 were pre 20<sup>th</sup> Century: two -17thc, fifteen -18thc and twenty-one -19thc. He said of the total 71, only twenty-two were owner occupied; non-residents owned twenty-eight.

He said the town as a whole had 171 pre 20<sup>th</sup> Century buildings: six – 17thc, fifty-seven 18thc and one hundred eight 19thc, and said these were spread over wide area of town. He said the numbers were taken from the tax cards and didn't include structures like barns, sheds, sugar houses, etc. – or any buildings at UNH.

- **Include a survey inventorying all historically significant sites and structures and develop a base map of all the elements that contribute to local history and character.**

Mr. Mills said a major goal was to conduct a town-wide survey, not just of structures, but also of all important sites. For example, according to Craig Seymour of the Cemetery Commission, there were seventy-two gravesites in town. He said the survey would also include dams, the Town Pound, archaeological sites, historic ruins, stone walls, etc.

He said the HDC had met with the Durham Historic Society and planned to work with them as a resource. He said the HDC was also hoping to work with UNH and was pursuing contacts there.

He said ideally, the HDC would field a team of volunteers of townspeople and students to conduct the survey, digitally photograph each site and use GPS equipment to locate it on the map. He said as a starting point, the town had digital photographs in the tax card files that were available.

- **Provide Assistance and advice to other local boards and commissions (i.e. the Planning Board, Conservation Commission, Cemetery Committee) in matters that effect the preservation of historic sites and properties.**
- **Work with local, State and Federal organizations (i.e. Durham Historic Society, UNH, New Hampshire Division of Historical Resources, New Hampshire Preservation Alliance, US Secretary of Interior, National Park Service, etc.) in an ongoing program to preserve, rehabilitate, restore and (perhaps at some future time)) reconstruct historic sites or structures.**

Mr. Mills said the HDC had met with Linda Wilson of the NH Division of Historical Resources on establishing and operating as a Heritage, and would continue to actively use the resources available to it, including consultants and grants.

- **Aid local owners in getting their property listed in the State or National Register of Historic Places.**

He said “Historic Places” meant exactly that, not just buildings but other “irreplaceable resources” such as “districts, sites, landscapes, structures or objects that were meaningful in the history, architecture, archeology, engineering or traditions of New Hampshire residents and communities.”

Why is the State Historic Register important?

- Public recognition that a property is significant to the community.
- Important consideration and advocacy in the planning of local, state funded or otherwise assisted projects.
- Qualification for state financial assistance.
- Special consideration or relief in the application of some access, building and safety code regulations.

Why is the National Register important?

- It makes Income producing property for a 20% federal tax credit.
- It provides some protection from state and federally funded projects.

- **Help preserve the town’s “cultural resources” as conservation commissions do natural resources.**
- **Establish a Heritage Fund for historic preservation projects such as the purchase, preservation or rehabilitation of local structures.**

Mr. Mills quoted from NH DHR “This is an exact analogue to the conservation fund provisions which have been in effect, very successfully, for municipal conservation commissions for over thirty years.” The fund can be used to acquire property and property

interests (easements for example) with the approval of the local governing body. The Heritage Fund can “receive gifts of money and property, both real and personal, in the name of the town with the approval of the council” RSA 674:44-d.

Mr. Mills said there was a NH Preservation Easement Program that enables the owner to protect a historic building or property for future generations by permanently preventing demolition, neglect or extensive alterations. The property must be listed on the National Register of Historic Places to qualify.

Councilor Peter Smith thanked Mr. Mills for his presentation, and asked him what the relationship was between what could be done under the Heritage Commission in connection with the idea of the Historic District Commission dealing with the issue of “demolition by neglect”. He said he wondered how creation of the Heritage Commission would allow the further advancement of that concept, for properties not in the District itself.

Mr. Mills said there was language in the Ordinance as it was coming forward on demolition by neglect, which was separate from the Heritage Commission. He said he thought the language would cover the whole town, although noting there wouldn’t be regulatory powers concerning this outside the Historic district.

Councilor Smith said this was a matter that should be explored, so when the issue came to the Council, there would be some perspective on it.

Mr. Mills said the Commission was trying not to be regulatory for the whole town, but did put that language forward, and said there was no reason why the Planning Board, as part of its purview, deal with this.

Councilor Needell provided clarification that discussion on the Heritage Commission would come forward as part if the Historic District overlay amendments.

Mr. Mills stated that the Historic District Commission was not proposing a separate commission, and was just taking over the functions of a Heritage Commission. He said State statute said this could be done as part of an ordinance change, and he also noted it would be subject to Council approval.

Chair Sandberg said his understanding was that an historic district was an overlay, and he asked if the Council already had the authority to include, with the recommendation of the Historic District Commission, other properties in the district.

Mr. Mills said the expansion of the actual district had become a physical impossibility, and said a lot of non-historic properties would have been taken in as part of this. He said the approach being used with the Heritage Commission could allow any property in Town to be considered an historic property.

Councilor Julian Smith asked if instead of adding functions to the Historic District Commission, it would be possible for the Heritage Commission to be the controlling Commission, and for the Historic District to be overseen by it.

Mr. Mills said it would, and provided details on this. He said different towns in the state did things in different ways.

Chair Sandberg said this concept would next go to the Planning Board, and then would come back to the Council.

Mr. Mills said he and Mr. Campbell had discussed this, and decided that instead of just burying the Heritage Commission concept in the new Ordinance, it would be better to bring it forward for information purposes, which would be helpful in future discussions on it.

Councilor Van Asselt said a Heritage Commission for the entire community would not have the same kind of regulatory authority as an Historic District, so one therefore couldn't be folded into another. He said the two commissions functioned differently.

Councilor Julian Smith asked if these proposed changes would require a charter change.

Chair Sandberg said they would involve an ordinance change. He thanked Mr. Mills for his input.

Chair Sandberg declared a recess at 8:27 PM.

The meeting reconvened at 8:35 PM.

## **XI. Unfinished Business**

### **A. Public Hearing and Action on Ordinance #2005-03** amending Chapter 175 "Zoning Ordinance" of the Durham Town Code, Sections 175,7, 175-25, and Article XV "Flood Hazard Overlay District".

Mr. Campbell said the suggested amendments resulted from a meeting he had with the water resources person from the NH Office of Energy and Planning, as well as correspondence from the Federal Emergency Management Agency (FEMA). He said the proposed changes would bring the Town in line with the new standards of the Flood Insurance program. He said he had received an updated flood insurance study for Strafford County and also noted that the Town would be adopting revised flood maps with the updated ordinance.

***Councilor Kraus MOVED to open the public hearing. Councilor Van Asselt SECONDED the motion, and it PASSED unanimously 8-0.***

Chair Sandberg asked if any members of the public wished to speak. There was on one who wished to speak at the public hearing.

***Councilor Kraus MOVED to close the public hearing. The motion was SECONDED by Councilor Van Asselt, and PASSED unanimously 8-0.***

***Councilor Kraus MOVED to ADOPT Ordinance #2005-0 and Councilor Needell SECONDED the motion.***

Councilor Needell noted on page 3, concerning increased premium rates for flood insurance, that the amount seemed high, and asked if it was correct.

Mr. Campbell said it was correct.

Councilor Peter Smith noted that page 2-3 described a series of hurdles that had to be overcome in addition to normal variance hurdles. He asked if this conformed to State statutes and the most recent cases generally dealing with variances, so there was no concern there would be legal challenges that these provisions were too rigorous.

Mr. Campbell said that was correct.

***The motion PASSED unanimously 8-0.***

- B. Public Hearing and Action on Ordinance #2005-04** amending the Durham Town Code by addition a new chapter, Chapter 75, and sections 75-1 through 75-13, entitled “Impact Fees”.

***Councilor Kraus MOVED to open the public hearing on Ordinance #2005-04. The motion was SECONDED by Councilor Niman and PASSED unanimously 8-0.***

There were no members of the public who wished to speak.

***Councilor Kraus MOVED to close the public hearing on Ordinance #2005-04. Councilor Niman SECONDED the motion and it PASSED unanimously 8-0.***

***Councilor Kraus MOVED to adopt Ordinance #2005-04. The motion was SECONDED by Councilor Niman.***

Councilor Niman said the Council had talked about this for quite some time. He said it would be a good idea for the Town to adopt impact fees, and urged the Council to support the motion.

Councilor Needell said he agreed with Councilor Niman, but said he wanted to clarify some things concerning the proposed Ordinance. He noted under 75-4-B, the list of items for which impact fees could be assessed, which included public libraries. He noted that the language in State statute said “public library facilities”, and asked if there was any reason why the phrases were significantly different.

Mr. Campbell said he didn't think there was a significant difference between the two, but said he would change the Ordinance to reflect the State wording.

***Councilor Needell MOVED to amend the language to say “public library facilities” instead of “public libraries”. Councilor Niman SECONDED the motion, and it PASSED unanimously 8-0***

Councilor Needell noted under 75-10 A that “Code Enforcement Officer” was mentioned. He said this appeared to be the only place in the Ordinance where this officer was mentioned, and asked if this language would cause a problem.

Mr. Campbell noted 75-8 B, and said there would be instances when something didn’t go to the Planning Board, such as prior to, or as condition to issuance of a building permit, so this would involve the Code officer.

Councilor Needell also made note of 75-9 A. He said the intent was to allow waivers for elderly housing subdivisions, but asked if this was necessary and appropriate to have in the Ordinance. He said if the fee structure was based on the method of calculating what the impact of that development would be, he thought this should be taken care of internally in the fee structure rather than in the Ordinance. He said he was looking for other Councilors’ comments on this.

Mr. Campbell said he felt it would be appropriate to be in the Ordinance.

Chair Sandberg noted the Council was moving toward having most other fees in the general fee document, and said this was a technical question.

Councilor Needell said the whole process of putting in waivers and then inviting them concerned him. He said the impact fee waivers might be appropriate in these cases, but he again questioned whether they needed to be in the Ordinance.

Mr. Campbell said he didn’t think it was a problem having the waivers in either place, and he provided details on this.

Councilor Peter Smith said this was a perfect example of the difference between adopting an ordinance and the next step, developing the fee structure. He said this ordinance created the possibility for Planning Board discretion of a certain sort, but he said the nature of that discretion and how it was viewed would depend on the next step taken, - working out the details of what the fees would and would not be.

Council Needell asked for clarification of the purpose of B under Waivers.

Mr. Campbell said it referred to off site exactions. He explained that the Planning Board had the authority, separate from an impact fee ordinance, to do exactions from developers for certain things.

Councilor Needell said in other words, this Ordinance gave credit for these exactions toward impact fees.

Councilor Peter Smith noted a grammatical correction needed for 75-9 C.

***Councilor Peter MOVED to put a period after the word “development” in the first sentence of 75-9 C, and then to start the next sentence with a capital letter. Councilor Julian Smith SECONDED the motion and it PASSED unanimously 8-0.***

Councilor Van Asselt said there were two policy questions. He said the first had to do with 75-4 C, and asked where apartments, add-on duplexes, and garages with apartments above fit under 1 and 2, if at all.

Mr. Campbell said they would definitely fit under 2, and probably under 1 as well, because they were basically creating new dwelling units.

Councilor Van Asselt said therefore, an impact fee would be imposed on residents choosing to add a building behind their garage that became two units of housing.

Mr. Campbell said that was correct.

Councilor Van Asselt said his second question concerned 75-5, I Authority to Assess Impact Fees. He said he thought the Town Council needed to have final authority on the impact fee schedule. He said the procedure he would like to see would be for the Planning Board to be responsible for developing the fee schedule; to hold hearings on this, and then to recommend the schedule to the Council for adoption. He said the final responsibility for this would be with the Council. He said his understanding was that currently, the responsibility ended with the Planning Board.

Mr. Campbell said the Planning Board annually reviewed the schedule and the methodology used. He said if impact fees were included within the master fee schedules adopted by the Council, this might take care of Councilor Van Asselt's concerns.

Chair Sandberg said the Council had a fee schedule it reviewed during the Budget session. He said Councilor Van Asselt's question was - why not include impact fees in this, and he said other questions were whether this was legal or not, and if legal, what language changes would need to be made to 75-5.

Councilor Peter Smith said it could be that State statute controlled where the power lay. But he said if it didn't, the question was, how should the power be divided up between the Planning Board and the Town Council. He said the Council had before it this initial statute, but the statute said the Planning Board had the power to implement provisions of the ordinance. He said this language was pretty broad, and he provided details on this. He asked Councilor Van Asselt if his concern was whether that whole body of power had to be centered, as a matter of policy, with the Council, aside from whether the Planning Board might have the power, under state law.

Councilor Van Asselt said yes, He asked at what point the Council was going to play a role in approval of the impact fee assessment schedule, noting that 75-6 B appeared to be giving the Planning Board the authority and responsibility.

Mr. Campbell said the language did give the Board the authority, but said he didn't see this authority given to it by State statute.

Councilor Van Asselt said he thought this was a choice for the Council to make, -whether the power resided with the Planning Board or the Town Council.

Chair Sandberg asked if Councilor Van Asselt preferred one over the other.

Councilor Van Asselt said he believed the proposed schedule should be developed by the Planning Board and ultimately should be approved by the Council. He said he didn't have specific language on this because it needed to involve what was presently in 75-5 and 75-6.

Chair Sandberg said if the Council was going down this path, and concurred with Councilor Van Asselt, he would like to recommend that Councilor Van Asselt work with Mr. Campbell to refine the language.

Chair Sandberg said if the Council believed the Ordinance needed further work, it was probably not the best group to draft the appropriate language.

Councilor Peter Smith asked what other jurisdictions had done concerning this issue of where the power resided. He said if there were a pattern here, he would like to know why it developed that way. He said a second question was exactly what would be encompassed in this power, and provided details on this.

He said the bottom of the policy question was whether the Council wanted to see this again after it passed this ordinance, and if it did, where it went from there.. He said he didn't want the Council to go back to playing a role such as was the case with conditional uses, and said more work was needed to define what they were talking about, and to see if experience in other jurisdictions answered that question.

Mr. Campbell said that the majority of impact fee ordinances relied on the Planning Board, and didn't go through the Town Council. He said what he saw 75-6 A saying concerned assessment of fees, and said if the details of the fee schedule were developed, the only thing the Board did was assess the fee at the time of approval. He said the fees were set by methodologies developed by the Board, but said he suspected the Council would be involved, and would have a chance to approve the fees and put them into the master fee schedule.

Chair Sandberg said the language as it presently reads would not require that fee schedule to come back to the Council, and said the fundamental question Councilor Van Asselt was asking was whether it should be incorporated into the master fee schedule.

Councilor Needell asked if Councilor Van Asselt was looking for Council approval of the methodology or the fee schedule.



Councilor Van Asselt said the elected body needed to take final responsibility for that final approval of the fee schedule.

Councilor Van Asselt said another significant issue concerned 75-9, Waivers, which Councilor Needell had spoken of. He said the waiver provisions were needed, because when the impact fee ordinance was implemented, if it didn't contain waivers, the Town would be in court.

Councilor Van Asselt said that if the Council revised 75-9A, he would like it to be considered that the trend in elderly housing clearly was 55 and older, for a variety of reasons. He said one could make an extremely strong argument that if a waiver was to be included concerning elderly housing, that the 55 provision should be here. He said he was not interested in excusing them from other impact fees, but on the school issue, because the community and many others towns were going in this direction, he thought the Council should think about his recommendation.

Chair Sandberg described the options for proceeding concerning the impact fee ordinance.

***Councilor Van Asselt MOVED to amend the original motion, to change the age from 62 to 55 in two places under 75-9 A. The motion was SECONDED by Councilor Niman.***

Councilor Van Asselt noted the Planning Board had wrestled with this issue, and said other such developments would be coming forward. He said if the Town was going to regulate 55 and older developments in a variety of ways, it was consistent to say they should also have the benefit of applying for a waiver on school impact fee.

Mr. Campbell said he wouldn't have a problem with that change, but said this was definitely a policy issue the Council would have to decide on.

Chair Sandberg said in some peoples' minds, this would be a substantive change, so if the amendment was approved, this would require another public hearing on the ordinance.

Councilor Needell said he didn't know the RSA 35-4 language, and asked if this would need to be changed in the ordinance as well.

Mr. Campbell said it would not.

Councilor Peter Smith asked, concerning the waiver in connection with the impact fee ordinance, why the Board had reached the conclusion the ordinance should say 62. He asked what was happening concerning this with other impact fee ordinances.

Mr. Campbell noted this never went to the Planning Board, and was a Council initiative. He said there was probably a mix in other towns concerning allowing waivers to 62 or 55. He said the question in Durham was whether 55 year olds had kids, and if so, why

have waivers for that. He said the trend in Durham was that there were mostly 55 and older developments, and noted that as part of the Spruce Wood application, the developer did a survey of developments in area , which showed they generally didn't have children.

Councilor Needell said postponing this would be a good idea, and said if the Council wanted to address the larger issue of Town Council/ Planning Board roles, that would clearly generate a substantive change. He asked for clarification of the process.

Chair Sandberg said if the Council approved the proposed amendment, this would require another public hearing.

Councilor Needell asked whether, if the Council moved to postpone action, it could make further amendments to the ordinance prior to calling for another public hearing. There was additional discussion on this.

Chair Sandberg said if the amendment was voted down, the Council could still postpone action, and seek more input from the Planning Board.

Councilor Needell said there appeared to be no advantage to approving or disapproving the amendment, and suggested the Council should postpone action to allow further work on the ordinance.

Chair Sandberg said the impact fee funds were not expended within 6 years, they had to be given back, with interest. He said granting a waiver to a developer of a 55 plus development at the outset seemed counter to the intent of impact fees, because one didn't know whether there would be an impact from a 55 age family or not. He said there was a greater likelihood there would be students in the school system from a 55 development than from a 62 development. He said he would vote against this, but said if the Council was not ready to act on this, it could move to postpone.

Councilor Morong said he would vote against the amendment, because he thought there was a good likelihood that someone age 55 could have people in the school system. He said granting a waiver before one knew this didn't make sense. He also said he was uncomfortable with the present a la carte menu for waivers from impact fees, and provided details on this.

Mr. Beaudoin said that the impact fees were not based on individual developments and residences, and whether they had an impact. He provided details on this.

Councilor Morong asked if each portion of the impact fee was broken down into the different categories.

Mr. Beaudoin said yes. Hw said the expenditures were separate, so the money from each category had to be given back, if it was not spent.

***Councilor Needell MOVED to postpone action on Ordinance #2005-04. Councilor Peter Smith SECONDED the motion.***

Councilor Needell said given the questions on the ordinance, he would like the Council to take some time to consider the impacts of this change, and to do more work on the Ordinance.

Chair Sandberg said if the Council did postpone this, Councilor Van Asselt would have the opportunity to rework some of the language.

Councilor Julian Smith said he would vote against postponing action, and against Councilor Van Asselt's motion. He said if both motions were defeated, he would vote to delete 75-9 A entirely.

Councilor Peter Smith noted the impact fee ordinance would be discussed at the upcoming Planning Board meeting. He said he would like additional input from the Board on the ordinance, so would vote in favor of postponement.

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

Chair Sandberg said this would be put on the next agenda, and said he would appreciate it if Councilor Van Asselt could put together the changes he was recommending, so the Council would have the opportunity in advance of the meeting to think about them.

Chair Sandberg thanked Mr. Campbell for his input.

## **XII. New Business**

- A. Shall the Town schedule a public hearing after holding a discussion concerning a draft proposed right of way agreement between the Town of Durham and the Town of Newmarket necessary in order to locate a cellular tower off of Simons Lane in Newmarket?

Mr. Beaudoin provided background on this issue. He said the proposed cellular facility was to be built on land owned by the Town of Newmarket in Newmarket, but accessible off of Simons Lane over land owned by the Town of Durham in Durham. He noted that in early 2004, T-Mobile/Omnipoint had proposed to build such a facility in this location, but had abandoned its permit application process in December of 2004 when confronted with neighborhood opposition, requests for additional information from the Newmarket and Durham planning boards, and some internal personnel changes.

Mr. Beaudoin said the present proposal was more competitive than the original one, and said Durham and Newmarket Town administrators had been negotiating extensively with Verizon in order to get the most competitive proposal possible for the two communities, in terms of generating additional revenue. He said a tentative agreement had been reached, where Newmarket and Durham would split the proceeds 60/40 respectively. Mr. Beaudoin provided additional details about the proposed agreement.

***Councilor Kraus MOVED to schedule a public hearing for Monday, May 16, 2005, on a draft proposed right of way agreement between the Town of Durham and the Town of***

***Newmarket necessary in order to locate a cellular tower off of Simons Lane in Newmarket. The motion was SECONDED by Councilor Van Asselt.***

Councilor Kraus said there seemed to be inaccuracies in the current diagrams, concerning access area impinging in Durham.

Councilor Needell said he supported having the hearing, and asked if someone would be making a presentation on the proposal at the hearing. He noted that the information Councilors had on the proposed cell tower was not up to date.

Chair Sandberg said it was his understanding that someone from Verizon would be at the hearing, and would provide a more representative presentation on the proposal. In response to a previous comment, he noted that the agreement would be between Durham and Newmarket.

Councilor Kraus said the Council needed to have accurate information for the hearing.

Councilor Peter Smith said he supported having the public hearing, noting that although there was a different carrier, the proposal was very similar to the previous one for this location. He said he presumed those who spoke of their concerns during the previous process with T Mobile would speak again.

Councilor Smith said this was a situation where the Town had a detailed overlay ordinance for communication towers which appeared to have no relevance because the land on which it would be located was not the Town's land. But he said the cell tower would be very close to Durham, and because of the nature of it, it would create visibility and possible other issues, - as if it was on the Town's land.

He said while he agreed the Durham ordinance didn't come into play, he couldn't get it out of his my mind that, given that the cell tower would be located right on the border, he would like Administrator Selig to provide information as to what extent the Town had the right to be involved.

Chair Sandberg said there would be opportunity to address this at the hearing. He also said the Council could determine to what extent it could have influence on the Newmarket Planning Board, to see if the Town could have Newmarket impose Durham's Ordinance.

Councilor Kraus said it would be helpful if the Council had a diagram showing houses within 800 ft, of the site, so when citizens made comments, Councilors could see where these people actually lived in relation the cell tower.

***The motion PASSED unanimously 8-0.***

- B. Is it in the Town's long term interest to acquire land immediately surrounding the Courthouse and between the Courthouse and Town Hall property to provide parking and improved access to the Courthouse?

Chair Sandberg said he had brought this item forward, and would therefore ask Councilor Niman to serve as Chair in his place.

***Malcolm Sandberg MOVED that the Durham Town Council hereby finds that ownership of land immediately surrounding the courthouse and between the courthouse and Town Hall is in the long-term public interest and directs the town administrator to prepare an estimated cost of acquisition including estimated legal expenses to require the sale as may be permitted by State statutes. Time being of the essence, the Administrator shall report his findings at the May 16, 2005 meeting of the Durham Town Council or as soon as possible thereafter. The Town Council will determine, upon receipt of the report, how it will proceed. The Administrator shall notify the owner of the property of this determination. Councilor Peter Smith SECONDED the motion.***

Chair Sandberg noted the Council communication that he had initiated. He said there was currently an active plan to re-develop the Smittys property, which was consistent with the current and proposed ordinance. He said it was not his intent to try in any way to impede the development of a legitimate and authorized use, and said to the extent a commercial enterprise could be developed, it should be, with the Town's blessings.

He said given that the property was in a state of change, it struck him that this was the right time for the Council to address the question of whether it was in the long term interest of the Town to acquire the land immediately surrounding the courthouse and between the courthouse and Town Hall, an acquisition which would make it contiguous with the current Town Hall property.

He said access to the courthouse was difficult, especially for people with disabilities. He said as the Council looked at the current use of the building, and the way it might be used in the future, it was in the Town's interest to own this additional square footage, in order to improve access, appearance, etc. He encouraged the Council to seek the information needed to determine if it could proceed, and to get estimates of what the costs might be, so it could be determined on May 16<sup>th</sup> in nonpublic setting what terms the Council would pursue.

Councilor Kraus said he was diametrically opposed to this motion, and said this was a Trojan horse to impede the development of the Smittys property. He said the Council had addressed the issues with Smittys before, and said he would enjoy ending this matter, and defeating Councilor Sandberg's initiative.

He said he was particularly troubled by the cost of the acquisition, which was the cost to the taxpayers, including legal expenses. He said he believed the wording "to require the sale as may be permitted by state statute" was code for eminent domain, which he was diametrically opposed to, and said there were likely to be some hidden agendas that were not clear to him.

Councilor Needell said he agree with Councilor Kraus's conclusion, but said he had come to it for totally different reasons. He said he felt the time to deal with this had passed, noting the votes taken the previous year concerning disposition of property, and said he didn't see the reason to revisit it. He said he saw the motion as a legitimate request to discuss an action he disagreed with, and said he didn't agree with the nefarious considerations Councilor Kraus

had brought up. He said he thought the intent was clear, and said he did not attribute anything hidden to it

Councilor Kraus said he had said hidden agenda, but not nefarious. He said it was not clear what the motive of this was.

Councilor Peter Smith said it was fair to reach the conclusion that the Trojan horse comment equaled something nefarious. He said there had been a series of votes several months ago, the content of which was largely the library. He said there were in the minds of people some broader issues, such as having that land for whatever purposes the Town might use it for. He said he could not then support building the library on the site because he thought it was too small. He said he didn't believe this precise issue was before the Council at that time.

He said he would support the position in the motion, although he would be much happier if the Town took possession of all of that land, noting that he was staying with his earlier position on this. He said Ray Belles had hit an important note, that even if there were to be a more limited type of Town campus, it shouldn't be made so limited that the Courthouse had no facility next to it, and the area was completely divided up with cars coming through.

He said the question was, was it legitimate to consider that an important Town function, and he said he believed it was. He said Durham had gone through efforts to make sure the Court remained there because it was in the Town's interest to do that. He said he saw it as a very legitimate public purpose of the Town to have space for parking next to the facility now used mainly as a courthouse, but which potentially could be used for other purposes.

He noted the strong resistance to the eminent domain concept, but said he didn't view it as something evil. He said the concept had been around for over 200 years, and was frequently exercised for public purposes. He said if it were exercised in this situation, it would be in regard to someone who didn't want to own his land anymore, and said this person would receive the appropriate value for his land. He said he realized there was hostility about the idea, and said although he respected others' views, he didn't understand them. He said if it came to using it to negotiate the price, it was quite appropriate to do so. He said this didn't fully satisfy him, but was better than nothing at all.

Councilor Morong said he was not sure from the Council communication what land was being talking about, parking near the Courthouse, or the entire piece of land. He said this made him uncomfortable. He said he was also uncomfortable that the Council had opportunities to land swaps that would have given the Town land near courthouse. He noted he had supported this, but said that based on how the Council had voted, he didn't think the use of eminent domain here was proper. He said he could support negotiation of a land swap or outright purchase of the property, but could not support the use of eminent domain.

Chair Sandberg said it was important to understand the process the Council had been going through, and said the time had not passed to make this decision. He said the Council had been involved with this, to the extent possible, for several years, and had talked about land swaps, etc., but was unable to reach a satisfactory conclusion. He said the negotiations had stopped, but not because the Town was not interested in pursuing the idea further. He said if it was in

the public interest to acquire the land, it was important to engage in active negotiations, and said the question he had put before the Council was whether it was in the public interest to own the land immediately surrounding that building, and between the Courthouse and the Town Hall. He said it was in the long term public interest to have parking, access to people with disabilities, and to protect the long term capital value of the property.

He said this wasn't a last ditch effort, but simply was the time for the Council to say whether doing owning this land was or was not in the public interest. He said if the Council believed it was, between then and May 16<sup>th</sup>, it should determine how much land was needed. He said he was not a lawyer, so did not know if the Town could prevail with eminent domain, and said he would like to think it wouldn't have to go that route if the developer or current owner could come to an agreement with the Town. He said he didn't have the answer to those questions, and didn't think the Council should answer them that evening.

Councilor Morong said he didn't see the proposed motion as putting the issue forward in quite that way. He said he would amend it to say, the estimated cost of acquisition, including legal expenses, but not including any expenses toward the goal of eminent domain.

***Councilor Morong MOVED that the motion be amended to not include any expenses toward the end of eminent domain, legal or otherwise. The motion FAILED for lack of a SECOND.***

Councilor Kraus said he had been tempted to support the motion, but said the issue needed to be finished that evening.

Councilor Julian Smith said he believed it had been in the interest of the Town to prevent access and egress to Route 108 across the abandoned right of way, and was in the Town's interest to acquire the strip of land between Courthouse and Town Hall. But he said the time to do this had passed, - Mr. Smith was not in a position to sell the property to the Town; the developer had already put a good deal of money into this, and he said the Town was heading toward a train wreck if it continued. He said the process should play out with the Planning Board, and said this might make all of this academic. He said he wished the Council had done this last year, and said he thought it was too late to act on it now.

Councilor Van Asselt said the Council had discussed the issue of swapping the land previously, where there wouldn't have been any money involved, and said he believed he had voted no on this. He said Councilor Sandberg was right about the piece of land being discussed, but said he looked at the situation in a bigger context. He described the changes to the area since the Master Plan had been developed, and said because of this, the idea of a Town center at the corner didn't exist any more.

He said he brought this up for those who said, how could you do this. He said for that reason, he was ready to abandon the idea, and move the whole idea someplace else, and said he was even ready to close up the Court. He said he was ready to say the corner should be a commercial corner that would generate revenue, and that a new Town center should be put someplace else. He said for these reasons, he wasn't interested in obtaining the property by any method.

Councilor Peter Smith said he could not agree the potential for the corner no longer existed. He said the fact that there was a hotel and a Dunkin Donuts across the street in no way removed the importance of this property and its historic connection. He said the Council knew the downsides of the area, especially the traffic. But he said it was obvious this motion was not going to pass, because of the hostility to the concept of using eminent domain.

Councilor Morong said this particular issue had less to do with the Town center, and more to do with making a property the Town owned more usable and valuable in the future. He said he agreed with Chair Sandberg that this would be desirable, and said he would like to see the Town get parking. He said he would endorse any other option than eminent domain to get parking for the Courthouse, but said he didn't see many options at that point.

Councilor Needell said to him, the eminent domain issue wasn't relevant. He said he was reacting to what he perceived would be the hostility created toward the business and economic and business development potential in Durham, if the Council took this action.

Chair Sandberg said there was no question that a business could do very well without access to Newmarket Road, noting that this easement had been blocked for many years. He said the Master Plan had in fact envisioned such things as the hotel and gasoline service areas for this part of Town, and said it also envisioned a Town Center there. He said the idea of building a new town complex some place else was unnecessary, and would be outrageously expensive.

He said he was not concerned about the idea of using eminent domain, because the owner had already said the property was for sale, and had said what he was willing to sell it for. He said the only person affected by this was the group of people that had a plan before the Planning Board, and that had said it wanted access onto Newmarket Road. He said this access should be weighed against the long-term public interest of that property. He noted the current value of the Courthouse property, and said if the Council said goodbye to the ideas in the Master Plan and tried to sell the property in the future, it wouldn't be worth a lot.

Councilor Sandberg asked Councilors to set aside the eminent domain issue, and ask whether acquiring the land was in the public interest. He said they did not know if the Council would have to exercise eminent domain, but perhaps could know this within two weeks. He said the Council wouldn't know this unless it said this was in the public interest, and noted several Councilors had said it was, so they should at least vote yes that evening.

Councilor Julian Smith said the Master Plan said there were two possible locations places for a Town center, one on Pettee Brook Lane, and the other by the Town Hall if the Smittys property was acquired, which didn't happen. He said the issue of parking could be negotiated with the new owner of the land, but said if the Town kept threatening to take the property by eminent domain, or held up through Council action the development of the property, it was very unlikely the developer would be interested in making any accommodation to the Town for parking.

He discussed the planned layout for parking at the property, and said the Council should start thinking in terms of how to get some preferential parking for the Courthouse. He said the



issue of whether or not there should be ingress and egress from Route 108 was a separate matter that had to work through the Planning Board. He said he would vote against any motion to try to make any move on this property.

Councilor Morong said the Town had been offered situations where it could have parking and egress from Route 108. He also said the developer thought this egress was very important for his business, and noted the new business would be significantly different than Smittys so would have more traffic in and out. He said he could see how the developer would consider this access to be extremely valuable to the new enterprise, but also said he could see how he would be willing to sell the Town some land around the Courthouse. He said that was what he would like to see negotiated, if it were still possible.

Councilor Niman said in order to secure the value of the building, the Town didn't necessarily have to own the land around the Courthouse. He said the Town could negotiate a long term lease to secure parking, and said if it wanted to sell the building in the future, the lease could go with that.

Chair Sandberg asked if Councilor Niman believed it was in the public interest to have access to the land.

Councilor Niman said he in fact had argued for the land swap, in order to get land around the Courthouse, and to get land along Newmarket Road, land he had believed was more valuable than the land the Town was willing to give up. But he said he agreed with other Councilors that the time had passed, so they were now not only talking about taking land, but also about taking someone's business opportunity away, about potential litigation, and about a loss of tax revenues if the business didn't have an opening onto Newmarket Road and had less square footage. He said as an economist, when he added all of these things up, he saw he would vote against the motion.

***The motion FAILED 6-2, with Chair Sandberg and Councilor Peter Smith voting for the motion.***

Chair Sandberg said the goal setting discussion should be moved to another meeting.

### **C. Other Business**

Chair Sandberg noted he had sent an email to Councilors concerning the Durham Day picnic, and provided details on this. He said the Council needed to decide whether it was interested in hosting the event.

There was detailed discussion about this.

Chair Sandberg said he sensed the Council thought this was a good idea, and said Councilors should give more thought to the details.

Councilor Julian Smith suggested that Administrator Selig's weekly update could call for a volunteer to run the event.

Councilor Kraus noted it didn't have to be a Councilor who ran this, although lately this had been the case.

***Councilor Kraus MOVED to continue the goal setting discussion to the next meeting. The motion was SECONDED by Councilor Julian Smith and PASSED unanimously.***

***Councilor Kraus MOVED to adjourn the meeting. The motion was SECONDED by Councilor Niman, and PASSED unanimously 8-0.***

Adjournment at 10:23 pm

Victoria Parmele, minutes taker