

This set of minutes was approved at the Town Council meeting on August 1, 2005.

**DURHAM TOWN COUNCIL MINUTES
MONDAY, JUNE 20, 2005
DURHAM TOWN HALL -- COUNCIL CHAMBERS**

MEMBERS PRESENT: Chair Malcolm Sandberg; Mark Morong; Neil Niman; John Kraus; Karl Van Asselt; Peter Smith; Jerry Needell; Diana Carroll; Julian Smith

MEMBERS ABSENT: None

OTHERS PRESENT: Town Administrator Todd Selig; Town Planner Jim Campbell; Zoning Administrator Tom Johnson

I. Call to Order

II. Approval of Agenda

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

Julian Smith MOVED that under XI B. Other Business, the Durham Town Council moves on first reading Ordinance #2005-07 amending Chapter 153 "Vehicles and Traffic", Section 153-49 "Parking Prohibited Certain Hours" by adding a restriction at the Wiswall Road Park from dusk to dawn, and schedules a public hearing to be held on Monday, July 11, 2005. The motion was SECONDED by Councilor Needell.

Councilor Julian Smith said this Item should be on the Agenda in order for the Council to have the public hearing on this issue at the July 11th Council meeting. He said with summer's arrival, there were some problems at the park, mainly at night. He said the ordinance addressed issues that should have been taken care of some years ago to prevent parking there at night.

Councilor Kraus spoke against inserting this Item into the evening's Agenda. He said he recognized the time that had been spent on this issue, but said it would set a bad policy because Councilors hadn't had sufficient chance to look at what was proposed.

The motion FAILED 4-5, with Councilors Julian Smith, Needell, Carroll and Morong voting in favor of it.

The Agenda as presented PASSED 8-1, with Councilor Julian Smith voting against it

III. Special Announcements

No announcements

IV. Approval of Minutes

June 6, 2005 public meeting

Councilor Needell MOVED to approve the June 6, 2005 Minutes as submitted. The motion was SECONDED by Councilor Kraus, and PASSED unanimously 8-0-1, with Councilor Peter Smith abstaining because of his absence from the June 6th meeting.

June 6, 2005 nonpublic session

Councilor Morong MOVED to postpone consideration of the June 6, 2005 nonpublic meeting Minutes until such time as they could be corrected. Councilor Julian Smith SECONDED the motion, and it PASSED unanimously 9-0.

Chair Sandberg said this would be addressed under Agenda Item XII. Nonpublic Session.

The motion PASSED unanimously 9-0.

V. Report of Administrator

- Administrator Selig noted that under the Unanimous Consent Agenda, Item VIII C was approval of the Core Purpose, Values and Goal Statement for 2005. He said he had worked hard to meld together the two documents that had been developed by the Council, one short and the other more detailed, and said he hoped he had captured what Councilors wanted.
- Administrator Selig spoke about the current issues concerning the Wiswall Bridge area. He said concerns had been expressed by abutters concerning late night activity in the area, including trees being cut down and partying. He said some abutters had also expressed concerns about the larger number of young people who were jumping into the water from the bridge, noting it was the sheer numbers that was the main concern, in part because of parking and traffic impacts on the road.

He said he had sent out an email two weeks ago describing how the Town was trying to address these problems with the resources available, and said this had caused a reaction from various sources. He said he had tried to clarify the situation, and also said he had referred the issue to the Parks and Recreation Department to get some feedback on it. He said he agreed with some of their suggestions, and had some concerns about other suggestions. He said he anticipated bringing forward some solutions for the Council to consider at the July 11th Council meeting, including the ordinance brought forward that evening. He said Town officials were trying to be sensitive to the situation, and said he hoped residents understood there were different perspectives on this issue. He said the Police Department and Public Works Department was simply trying to address the concerns of abutters, not trying to dampen the fun, and was trying to find a balance in the midst of a very challenging situation.

- Administrator Selig updated the Council on the process of selecting the new Fire Chief. He said the review process would start shortly, and said Chair Sandberg and Councilor Kraus would be the two Council representatives in this process.
- He noted that a memo sent out to the Council and to the Planning Board concerning the

Craig Supply property, which was a brownfield site. He noted that the Town had received a brownfields grant which it planned to use on the contamination itself. He also said the Town had applied to the State brownfields program to ensure that as the site was being remediated, Durham wouldn't be held responsible for the contamination.

He said the Town was trying to be a good steward of the land in cleaning it up, and said it was hoped that over time, the property would provide the Town with some revenue. He said he and the Public Works Director had determined that the best use of the site at present was to construct a parking lot, and he provided logistical and financial details on this. He said the parking lot could be completed by the fall, and said approximately 95 parking spaces were planned, which he believed could be rented at \$500-1,000 per space per year for daytime parking. He said the potential revenue from evening parking was even higher. He provided additional details on the logistics of having a parking lot in this area.

Administrator Selig noted the issue of the right of way to the Craig Supply property. He said the Town had always held that it had a right of way because of years of public use, and said there was now a deed concerning this. He said the University had been kept informed on the progress with the site, and noted that it had been interested in constructing a tunnel on the Craig Supply site. He said there was nothing in the Remedial Action Plan that would preclude this.

He said it was very important that there be discussion with the Planning Board and the ZBA about the plans for the site, and said this would be scheduled. He also said it was important before doing anything to survey the boundaries of the property. He said the Town was finally beginning to move ahead in working with the parcel, and said that on July 11th, he would bring forward to the Council a bid to award demolition of the structures on the site, as well as a funding plan for paving part of the site.

Administrator Selig demonstrated the proposed design for the parking lot, and noted that in the first phase of the project, the paved parking would be developed immediately up to where the contaminated soil was located. He said the second phase would be the paving of the remainder of the lot, which would take place after EPA had determined it was satisfied with the cleanup. He said there would be a more detailed presentation on the project when the bid process was underway.

VI. Reports and Comments of Councilors

- Councilor Peter Smith asked where the proposed location of the tunnel was, and there was discussion about this. Administrator Selig said he could provide a drawing on this at the next Council meeting dealing with this project.
- Councilor Needell said the next Planning Board meeting was Wednesday, when there would be a continued hearing on the Irving Oil conditional use permit and site plan review applications.
- Councilor Kraus said it was interesting to observe the amount of energy being spent on the Wiswall issue in response to some citizens of the Town, which stood in contrast to the fact that the Town's crosswalks had not been satisfactorily painted yet. He said this was an illustration of what happened in Durham.

- Councilor Morong asked if any consideration had been given to constructing a parking garage on the Craig Supply site. He asked whether, if the site was paved now, it would still be cost effective to consider this in the future.

Administrator Selig said he understood that the parking garage would very expensive to build, and said they were currently looking at the easiest alternative. But he said the idea of the parking garage had not been ruled out.

- Councilor Niman said he had attended the Library Site Selection Committee meeting the previous Wednesday, and said it was a very productive meeting. He said the group developed a long list of properties, had then removed several for various reasons, and had identified an upper tier of properties that it would like to look into more. He said the next committee meeting was July 20th, and said citizens who had sites to recommend were welcome to come forward, because the committee was continuing to sift through the possibilities.
- Councilor Niman said he had gone to the most recent Parks and Recreation Committee meeting, and said the committee was still formulating goals and the accompanying funding requests. He said the first part of the meeting was spent speaking about the Wiswall issue with members of the public who had come to the meeting. He said that based on this discussion, some recommendations had been developed by the committee, and said it would be a good idea to include these in a Council communication so the Council could talk about them.

He said the committee felt the Lamprey River was an important recreational resource for the Town, and wanted to encourage people to use the waterways, but also felt it was important that the public properties not be used in a way that adversely affected the neighbors. He said the recommendations developed by the committee remained true to both of these perspectives.

- Councilor Carroll noted that the Integrated Waste Management Advisory Committee had recently made a presentation to the School Board, and said that as a former committee member she had been part of this. She said the Board was encouraged to switch to using recycled paper, and voted unanimously to do so later that evening. Councilor Carroll noted the importance of purchasing products made of recycled materials. She said the Council had voted to do this the previous year, the University had switched to recycled paper, and now the entire School District had switched over, and said this showed good progress in the Town's recycling efforts.
- Councilor Julian Smith said he was glad to hear Councilor Niman report favorably on the discussion on the Wiswall site at the Parks and Recreation Committee meeting. He said that at the meeting, he and others had provided history on why parking was banned on parts of both Packers Falls Road and Wiswall Road, and the pressures that had resulted in the small parking areas being developed at both of these locations. He said the Committee had recommended that the Town have a limitation on parking after dusk at the Wiswall Dam site, and he provided details on this. He said there was really nothing legitimate one could do after dark at the site since there were no lights, and said this was one of the reasons why people in the neighborhood who were aware of the problems had asked that something be done.

Councilor Smith said he was sorry the Council had decided not to have a first reading that evening on the proposed ordinance, which was long overdue. He noted that the sign at the site at present said no parking was allowed after 1:00 am, which condoned parking before that time. He said people parking there often went down to the river onto private property, noting the property owners hadn't posted their land to try to prohibit access.

- Councilor Van Asselt said what Administrator Selig had presented to the Council was an interim solution. He said he was not interested in a parking lot next to the Whittemore Center, and said he hoped Administrator Selig would come back to the Council with a 10-20 year plan.

Administrator Selig said the University had a great interest in the property. He said the Town owned it at present, and had made a commitment to clean it up. He said his focus had been to generate a reliable source of revenue, of approximately \$80,000-100,000 a year, and said he believed enough revenue could be generated to clean up the site. He said he was trying to find ways to make the University a financial benefit to the Town, and said after the site was remediated, a possible multi-tier parking garage could generate a lot of money for the Town. He said this could be something that might then be pointed to as a location where the University was a big revenue producer for the Town, even though it cost the Town money at other locations. He also said it was possible that when the site was cleaned up, the Town might want to trade it for other property in Town, noting that at that point the cleaned up site would be much more valuable. He said some other ideas had been to create taxable property on the site, which could pay tax dollars to Durham. But he said he really hadn't been focusing much on these long term possibilities.

Councilor Peter Smith said the reason he had asked what the location of the proposed tunnel was, was that he wanted to know what would happen if the University was ready to move ahead with the tunnel in a year or two, and the site was already covered with the parking lot. He asked if the present plan was the most feasible way of keeping that option open for the University, and requested that Administrator Selig look into this.

Chair Sandberg noted the Wiswall issue would be on the July 11th Agenda, and if the Council decided to schedule a public hearing on the proposed ordinance, this would take place on July 18th.

Administrator Selig said that because the two Council meetings in July were back to back, this public hearing would have to be held at the first Council meeting in August.

Chair Sandberg said the Council could also choose to hold a special meeting, and he described additional alternatives. He also said he wanted to make it clear that the Council's vote that evening didn't mean it was not concerned about this issue, but said Councilors liked to see a proposed ordinance in advance, and some Councilors hadn't had the chance to look at the ordinance.

There was discussion on how to proceed, and Chair Sandberg said Agenda Item XI B provided the opportunity to address the Wiswall issue again.

Councilor Julian Smith said he hoped the Council would listen to those people who had come to speak on the Wiswall issue.

VII. Public Comments

Judith Spang, 55 Wiswall Road said she and her husband were abutters to the Wiswall area, and she distributed maps of the area to Councilors. She said the Lamprey River Advisory Committee had decided 7 years ago that there were too few opportunities for recreation, and realized that river crossings on bridges were the most likely locations for access. She said it was decided that Wiswall would be a good area to develop for this, and the Committee partnered with the Town to build the parking lot and do other work in that area. She said the public, including the neighborhood, was invited to participate in this process. She noted that the neighbors were nervous at the time, but said a deal was struck, so that instead of allowing an infinite amount of parking, the lot would hold 5 cars, for about 20 people. She said this deal was in writing, and said there was supposed to be a gated parking area, and extension of guard rails to prevent off-road parking. She provided additional details on this.

Ms. Spang said the Town had not enforced the no parking rule since the plan for the area was enacted and the park was built. She said the neighbors felt that the trust had been broken because cars were really packing into the parking lot and along the road. She noted that the Police Department was beginning to get involved, because the area was out of control and unsafe. She said that people stayed there overnight, and noted that there had been a tent on her land for three weeks. She said there were fires and large parties, and said trees on both sides of the river were being cut down. She said she felt that as an abutter she was being abused, and said she had been asking that something be done for eight years. Mrs. Spang said she felt it would be well into summer before anything was done about the situation, and said she didn't understand why it was taking so long. She implored the Councilor to do something about it.

Chair Sandberg said the question for the Council was whether a new, stronger ordinance on this was needed. He said to the extent that there were already regulations concerning the area in place, it was up to Town staff to enforce them.

Ms. Spang asked if anything could be done other than going through the process with the proposed ordinance. She suggested that a sign should be put up soon to say the area would be closed after sunset.

Beth Olshansky, Packers Falls Road said she had attended the Parks and Recreation Committee meeting, and was pleased the committee responded quickly to the concerns that were expressed about the Wiswall situation. She said she was also pleased that the Public Works Department was no longer considering putting wire and barricades up in this area. She said she felt terrible that the Spang's land and town land were being abused, and said that with the summer now here, the Council should deal with this expediently. She encouraged it to vote to consider having a special meeting to expedite the situation so the Spang's didn't have to continue to experience this abuse, and so the citizens could enjoy using the area.

Chair Sandberg asked Administrator Selig to what extent he needed guidance from the Council on this issue.

Administrator Selig said he looked through the historical minutes concerning the situation,

and said that from his reading of them, to say that there was an agreement about the way the parking area should be managed was an overstatement. He provided details on this. He said the agreement reached by the Council in 1997-1998 was not clear, and he provided details on this. He noted among other things that there was talk about putting a gate across this area. But he said the process unfolded over a long period of time, and described more of this process.

He said when he had walked the site soon after taking his position in Durham, there was a gate that prohibited cars from traveling into the park area, but they had opted not to install a gate at the entrance to the parking area. He said this was discussed actively at that time. He said in terms of the gate, he had seen this as an additional task for Town departments to take on, and said he had been looking at trying to reduce the number of tasks for the departments to take on.

He said he was not sure that the gate at present was the right solution, but said he was very comfortable about having signage as to when the park was closed. He noted that the police had responded each year to complaints about parking, but said this was a rural area, and was difficult to patrol constantly with existing resources. He said the existing signs needed to be freshened, but also noted that they had sometimes been vandalized.

He said there was a plan to install guard railing along Wiswall Road extending from either both sides of the bridge, in order to prevent people from parking along the shoulder of the roadway. But he said in the interest of being fiscally responsible, it was determined that the guardrails would be replaced as part of the larger plan for work on the Bridge. He said for fiscal reasons, this project had pushed out each year since that time, so the guardrail hadn't yet been addressed. He said he could not speak to the issue of the Town creating parking on either side of the road, noted that had happened many years ago.

He explained that the Police Department had suggested installing Jersey barriers or fencing after seeing more than 80 people standing on the bridge, jumping off the bridge, and getting in the way of cars crossing the bridge. Administrator Selig also spoke about the issue of people parking overnight in the area, and said in an effort to be responsive on this, the Police Department had suggested that jersey barriers or guard rails should be installed, because otherwise it would be a constant effort to patrol the area. He said the Public Works Department was sensitive to the aesthetic issues, so did not agree about installing the barrier. He provided additional details on discussions with Town departments over this issue.

Administrator Selig said his recommendation was that the Town move forward with some type of overnight parking restriction, such as dusk to dawn or some other finite time period. He said the police would prefer the latter, especially if a fence were installed, for enforcement purposes. But he said if a fence was installed, it created a host of logistical issues which he didn't think the Town needed to move into, and he provided details on this.

He said he thought the best approach was to freshen the signage along the roadway and for the police to do more directed patrols when there were complaints. He said this was a challenging issue. He noted that some in Town would like to restrict the area to only Durham residents, but he said this was a regional resource and the Town needed to be considerate of this. He said they were trying to take all of this into account, but said Town government was

slow moving. He said they were trying to deal with this issue in due course, while dealing with many other issues.

Bill Hall, said the first time he swam in the area of the Wiswall Bridge was the early 1950s, and said he was very familiar with the problems there. He recommended that the Town use a line machine to paint the edges of the pavement, 100 yards in both directions from the Bridge, and then should put up signs saying no parking was allowed on the pavement. He provided additional details on how the area could be marked to lessen the problems there.

He said it was his understanding that the Council had originally wanted 15 spaces for the parking lot, but this didn't happen. He said the current parking lot should be enlarged somewhat, and he provided details on this. He said activities after dark should be curtailed, and said there should be signs that trespassing was not appreciated. He said a cut-off time should be indicated on the signs, and then if there were illegally parked cars, the Police Department should announce that the tow truck would be arriving shortly. Mr. Hall said workable solutions could be put in that would not be harassment.

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

- A. Shall the Town Council approve refunds and abatements for water and sewer and authorize the Town Administrator to sign said abatements and refunds?
- B. Shall the Town Council approve 2004 property tax abatement requests as recommended by the Town Administrator?
- C. Shall the Town Council approve the Core Purpose, Values, and Goal Statement for 2005?

Councilor Kraus asked that Item C be taken off, and Councilor Peter Smith asked that Item B be taken off.

Councilor Van Asselt MOVED to approve Unanimous Consent Agenda Item A. The motion was SECONDED by Councilor Morong, and PASSED unanimously 9-0.

Councilor Peter Smith said he had made the motion to remove Item B because he otherwise could not have voted on the other Unanimous Consent Agenda Items. He said he did not want to approve Item B, noting that the previous year, the Council had been asked to approve the Assessor's recommendations for tax abatements, which included 75-80 items. He said he had argued at that time that these matters were not suitable for the Town Council to action on, under current circumstances, since it did not have the information necessary in order to make intelligent decisions on these matters. He said this was unlike other matters that came before the Council. He said he had suggested last year that if possible, the Council could empower the Assessor to deal with this, but said the Town Attorney had disagreed with this idea, and had said that legally it would not be possible.

Councilor Smith said his position remained the same, so for that reason, he would abstain when and if the Council voted on this. He said this was a matter the Council must come to grips with, and said he hoped that at some point it would.

Councilor Kraus MOVED to approve Unanimous Consent Agenda Item B approving the 2004 property tax abatement requests as recommend by the Town Administrator. The motion was SECONDED by Councilor Niman

Councilor Niman said he believed his position the previous year was that it was appropriate for the Council to certify that the Assessor had done due diligence in coming up with these recommendations.

Councilor Peter Smith said if that were what the Council was doing by taking this vote, he would agree. But he said the Council went further than that in taking this vote.

Councilor Van Asselt said he thought it had been planned that the Council would resolve this issue.

Administrator Selig said there had been a lengthy discussion on this by the Council, and he had followed up with a memo on the Town Attorney's perspective. Administrator Selig said his understanding was that they would proceed as they had in the past unless he heard otherwise.

Councilor Van Asselt asked if there had been a solution to what Councilor Smith was talking about.

Administrator Selig said one solution would be to provide backup material to Councilors for tax abatement applications, but said he didn't believe Councilors would know what to do with this information. He also said a Board of Assessors, apart from the Council, could be created, which would be asked to do what the Council was being asked to do. He also noted that if applicants disagreed with decisions on their tax abatement, they could appeal this at the State level.

Councilor Van Asselt said Councilor Smith made a good point on this issue, and said he wished something could be done about it.

Councilor Needell said while he appreciated Councilor Smith's objection, he didn't share his decision to not vote on this motion. He said given the situation the Council was in, this was all it had to work with. But he said he would like the Council to explore this issue further, noting an invitation on this to Councilors had previously been put out by Administrator Selig, but Councilors hadn't responded. He said that if a Councilor wanted to do this, it would certainly be worthwhile.

Chair Sandberg said perhaps Councilor Smith would bring something forward on this.

Councilor Smith said he had done this the previous year, and the vote was 8-1 against it, and said he said he tried not to engage in acts of futility. He suggested that the way to deal with this was to request that an amendment be made to the State statute on this, which would give the Town Assessor the same power that a Board of Assessors had. He said he believed he had said this the previous year, and noted that in order to do this, there had to be enough Councilors who felt this needed to be done. He urged Councilors to consider this.

The motion PASSED 8-0-1, with Councilor Peter Smith abstaining because of the lack of adequate information.

Councilor Kraus spoke about Unanimous Consent Agenda Item C. He said he had some concern about the addition of some language to the "Community" Goal. He said he would believe that what the Council was presented with in this list of goals was a reasonable facsimile of what the Minutes indicated the Council discussed. He said when he looked in the Minutes, he didn't see that these goals were discussed at the meeting. He said this troubled him, and said if the Council was going to endorse these documents, it needed to do so as a Council, and not as something the Town Administrator had added.

Councilor Peter Smith asked if the proposed motion to approve the Core Purpose, Values and Goal Statement for 2005 was directed at both documents.

Administrator Selig said, in answer to Councilor Kraus, that at the last Council meeting, some of the Councilors liked the short summary document, while others liked the longer document dated 5/26/05. He said both items under Community were included in the 5/26/05 document, so they were also included in the summary. In answer to Councilor Smith, he said the two documents corresponded to each other, so he recommended approving both of them.

Councilor Morong MOVED to approve the Core Purpose, Values and Goals Statement for 2005 and the summary of such Statement, as presented. Councilor Carroll SECONDED the motion.

Councilor Morong said he had no issues with the documents, and said this seemed to be what the Council had asked Administrator Selig to bring forward.

Councilor Needell said he agreed. Concerning Councilor Kraus' concerns, he noted that Councilor Van Asselt had asked that both be adopted together, so it made sense that they be in agreement, and would be problematic if they were not.

Councilor Peter Smith said he would make three motions to amend the motion on the table, which involved some slight language changes. He said these changes would pertain to both documents.

1. Preserve open space, vistas and farmlands - "Enact remaining zoning ordinance"

Councilor Peter Smith MOVED to amend the existing language to say "take action on pending draft zoning ordinance amendments forwarded by the Planning Board. The motion was SECONDED by Councilor Van Asselt.

Councilor Smith said the reason for this amendment was that as presently written, there was the assumption that there was nothing for the Town Council to do, so this clarified the nature of the Council's job.

The motion PASSED unanimously 9-0.

Foster cooperative relationship with UNH based on fair and equitable agreements

2. "Ratify new agreements (water, wastewater, fire, school)"

Councilor Peter Smith MOVED to amend the existing language by deleting the word "ratify", and substitute the words "take action on." The motion was SECONDED by Councilor Van Asselt.

He said the reason for this amendment was to clarify the nature of the Council's role.

The motion PASSED unanimously 9-0."

3. "Encourage payments to the town by "for profit" companies using UNH facilities not related to its educational mission."

Councilor Peter Smith MOVED to amend the existing language and substitute the language "obtain appropriate payments from "for profit" companies and/or the University when either entity utilizes UNH buildings or real properties not related to UNH's educational mission". Councilor Van Asselt SECONDED the motion.

Councilor Smith said it shouldn't be an issue of encouragement in that circumstance, noting this was not a discretionary matter. He said if the use didn't comport with UNH's mission concerning education, he didn't feel UNH had the privilege to say it was exempt from taxation. He said he had written this to make it clear that whether it was the University, or the University in combination of ownership with a "for profit" company, if the use was not related to the University's educational mission, the Town had the right to seek revenue.

The motion PASSED unanimously 9-0.

Councilor Niman said he would like to recommend an amendment to the motion on the table.

Streamline operations, increase revenue, and improve efficiency - "Explore feasibility of transition to Strafford County for dispatching services"

Councilor Niman MOVED to amend the existing language and substitute the language "Present a plan for Council action pertaining to the transition to Strafford County for dispatch services." Councilor Julian Smith SECONDED the motion.

Councilor Niman said the process had gone beyond exploring, and was built into the Budget. He noted that Councilor Needell had expressed some concerns about the idea, and said he would like to see a plan from Administrator Selig that the Council could look at, and that Councilor Needell could respond to.

Councilor Needell said he was opposed to the amendment, and said the wording in the statement was all right as it was. He said he had not seen support for this idea other than from a fiscal perspective, and said he therefore did not think the Council had moved past the exploratory stage yet.

Councilor Peter Smith asked Administrator Selig to respond concerning this.

Administrator Selig said they were continuing to explore the feasibility of making this

transition, and said that at such time that it was decided this was feasible, he would bring this proposal forward to the Council.

The motion PASSED 5-4, with Councilors Morong, Chair Sandberg, Councilor Carroll and Councilor Needell voting against it.

Councilor Niman asked for clarification concerning the item under Community "Keep residents and other key policymakers informed of local affairs."

Administrator Selig said it represented a melding together of statements in the larger documents, and provided details on this.

Councilor Julian Smith asked in what sense residents were key policy makers, and Administrator Selig provided clarification on this.

Councilor Kraus said he would vote against the motion to approve the Core Purpose, Values, and Goal Statement for the reasons he had already stated. He said it was bad practice for one to look at the record of the Minutes and find no discussion of items that then appeared on the list as though the Council had discussed it. He noted there was nothing necessarily wrong about the particular items that had been added, but said this was something the Council needed to think about. He said if Administrator Selig felt the Council had missed something it was his role to bring this forward. But he said there was nothing on these goals in the Council's discussion, as reflected in the Minutes.

Councilor Van Asselt asked why "Rehabilitate Packers Falls Bridge" was included on this list, noting the Council hadn't discussed this during in the Goals setting process. There was discussion about this.

Councilor Van Asselt proposed that the word "rehabilitate" should be changed to "resolve". Councilor Niman SECONDED the motion.

Councilor Van Asselt said all the other goals on the list were things the Council wanted to take action on, but he said the Packers Falls issue was a foregone conclusion the way this goal was written. He said the decision remained to be made, and said the Council should resolve this once and for all.

Councilor Carroll said she was opposed to this amendment. She said she had attended the last public hearing on the Bridge, and said members of the public had walked out that evening with the understanding that the issue had been resolved. She noted the Council had voted on this, and said she remembered Administrator Selig say he would have to come back to the Council when the project went out to bid, in order to get approval for the money to be spent.

Councilor Needell said he had no problem with the wording change, because all of these things were not a foregone conclusion, but he said he agreed that the expectation was clearly there that the Council was voting to go ahead with the project.

Councilor Peter Smith said he had a problem with the wording change, and said Councilor Carroll's statement had been accurate. He said that obviously, the Council could reverse a

position it had earlier taken, but said that as of now, there was no question that the Council had voted to approve the project, with the understanding that it would subsequently have to vote on whether to approve construction bids. He said the only circumstance under which the Council should change the wording in this goal now was if it wished to change its position on the issue, noting this could happen any night. He said he would not vote for this wording change.

The motion FAILED 5-4, with Councilors Niman, Van Asselt, Kraus and Needell voting for it.

The original motion to approve the Core Purpose, Values and Goal Statement PASSED 8-1, with Councilor Kraus voting against it.

IX. Presentation Items

2005 July Fourth Celebration – Ron O’Keefe, Durham-Great Bay Rotary Club

Administrator Selig provided details on the event, and encouraged residents to attend it.

Report from the UNH Outdoor Swimming Pool Committee – Robbi Woodburn, Marjorie Wolfson, Ed Valena

Marjorie Wolfson spoke before the Board. She provided details on the history of the pool, and noted the issue had recently come up that the pool had not been included in the UNH Master Plan. She said she didn't know what the future of the pool was, and said it was hoped that residents could appeal to the Council in the future if necessary, concerning its continued existence. She thanked the Council for its past and present support for the important community effort concerning the pool.

Councilor Needell noted that at some point, there had been some question as to whether the pool would open, if there was an issue with the Craig Supply site.

Ms. Wolfson provided clarification that no contamination issues were found relating to the pool.

Councilor Needell asked if this was being monitored.

Administrator Selig provided background on how this issue had come up, in its dealings with the EPA concerning the site. He said the State had conducted tests, and no contamination was found in the area of the pool.

Councilor Van Asselt noted there was a limit on the number of pool passes available.

Ms. Wolfson said there a limit on the number of vouchers to reduce the cost of a pool pass.

There was discussion about this, and Administrator Selig provided clarification that the Town could run out of vouchers, but would not run out of pool passes.

Councilor Morong asked if there were problems concerning finding parking for those residents going to the pool.

Ms. Wolfson said the University had implemented a new \$12 parking fee for parking at the Woodside lot.

Administrator Selig provided details on the fact that this increase was not supposed to happen, based on the joint agreements the Town and University were working on. He said the announcement of the increase was an oversight which the University had acknowledged, and said the parking fee would remain the same as it was the previous year.

Councilor Morong asked whether, if residents didn't have seasonal passes, they could still get day passes. Told that they could, he asked where they could park.

Ms. Wolfson said there was metered parking, and said people could also park in the Woodside parking area, located next to the Alumni Center.

Councilor Carroll asked how Ms. Wolfson had been able to find out the details of the history of the UNH pool.

Ms. Wolfson said it was not written down, and was passed down verbally from generation to generation.

Councilor Carroll asked if the pool was built in part for the Town, and Ms. Wolfson and Mr. Valena provided details on the fact that it was built for the University.

Councilor Carroll said the pool was an historic structure, and asked if anyone had thought of getting it on the Historic Register.

Ms. Wolfson noted the pool was one of three remaining similar pools in the entire country. In answer to a question from Councilor Julian Smith concerning the possibility that the University would prefer that the structure not be listed on the Historic Register, given its possible future plans for the site, for parking, etc, Ms. Wolfson explained that if the structure was preserved, the University couldn't remodel it in the future.

X. Unfinished Business

Public Hearing and Action on Ordinance #2005-04: amending the Durham Town Code by adding a new chapter, Chapter 75, and Sections 75-1 through 75-13, entitled "Impact Fees"

Town Planner Jim Campbell provided background information on the development of the Impact Fee Ordinance, and the previous review of the proposed Ordinance by the Planning Board, the Town Council, and public hearings. He noted some changes had recently been made to the Ordinance based on comments from the Council, and said another public hearing was therefore required.

Councilor Kraus MOVED to CLOSE the public hearing on Ordinance #2005-04, an ordinance amending the Durham Town Code by adding a new Chapter, Chapter 75, and Sections 75-1 through 75-13, entitled "Impact Fees". The motion was SECONDED by Councilor Van Asselt, and PASSED unanimously 9-0.

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

Councilor Kraus MOVED to CLOSE the public hearing and VA to close hearing on Ordinance #2005-04, an ordinance amending the Durham Town Code by adding a new Chapter, Chapter 75, and Sections 75-1 through 75-13, entitled "Impact Fees". The motion was SECONDED by Councilor Van Asselt, and PASSED unanimously 9-0.

Councilor Kraus MOVED to ADOPT as presented Ordinance #2005-04, an ordinance amending the Durham Town Code by adding a new Chapter, Chapter 75, and Sections 75-1 through 75-13, entitled "Impact Fees". Councilor Van Asselt SECONDED the motion, and it PASSED unanimously 9-0.

Chair Sandberg thanked all those who had been involved in the development of the Impact Fee Ordinance.

XI. New Business

A. First Reading and presentation on Ordinance #2005-06: Amending the remaining sections of Chapter 175 "Zoning" of the Durham Town Code

Administrator Selig said that Town Planner Jim Campbell, Planning consultant Mark Eyerman and Zoning Administrator Tom Johnson were present for the first reading and presentation on the Zoning Ordinance.

Mr. Campbell first showed the revised Zoning Map dated November, 2004, noting the changes to the map compared to the earlier Zoning Map dated May, 2004. He then did a slide presentation on Zoning Rewrite process.

(What follows is directly from the slide presentation)

How Did We Get Here?

Durham Zoning Rewrite Committee has held numerous meetings drafting changes, and soliciting public input, for the proposed amendments since 2002

Durham Zoning Rewrite Committee forwarded the following sections to the Planning Board for public hearings:

- _ Non-Residential Districts Provisions
- _ Overlay Districts
- _ Amendments to Address Questions with Prior Amendments

Durham Planning Board held public hearings on:

June 9, 2004	October 13, 2004
January 5, 2005	January 19, 2005
March 30, 2005	April 6, 2005
May 4, 2005	May 11, 2005

Proposed Changes/Amendments to Non-Residential Districts

- _ Revise CBD Standard
- _ Eliminate LBD and replace with Church Hill, Courthouse, and Coe's Corner
- _ Create a Professional Office District Along Madbury Road

- Create Four Office/Research Zones - Durham Business Park, OR-108, MUDOR, and ORLI
- Revise Zoning Map
- Non-Residential Districts
- Format Districts to Match Adopted Version
- Create/Update Table of Uses
- Create/Update Table of Dimensional Requirements
- Created Light Manufacturing Performance Standard
- Create Development Standards - -To improve attractiveness, that were zone specific, and that were tailored to the specific area and the desired pattern of development

Central Business District

- Keep CBD With Changes To promote economic growth while enhancing character of area
- Allow 3-4 Story Buildings with Mixed Uses
- Allow denser Development
- Maintain Downtown Character
- Created Development Standards

Church Hill District - Main Street heading east to Newmarket Road

- Office, retail, and service uses
- Mixed use allowed
- Maintain character
- Created Development Standards

Courthouse District - “Gasoline Alley” from intersection of Main Street and Route 108 to Young Drive. Key features:

- Office, small retail, and service uses
- Residential limited to elderly housing
- Create attractive gateway to downtown
- Created Development Standards

Coe’s Corner - Dover road from Young Drive to Route 4 interchange

- Allows office and service uses but limits retail, auto, and residential uses
- Gateway and rural character protection
- Created Development Standards

Professional Office District - Madbury Road from CBD to Bagdad Road and includes part of Strafford Avenue

- Offices and service uses
- Possible conversion to multi-family with CUA
- Maintain existing character
- Created Development Standards

Office/Research Zones

- Durham Business Park - Existing business park and abutting properties

- OR-108 High quality business parks while preserving rural character
- MUDOR Allows for offices, research, services, light manufacturing, and multi-family dwellings
- ORLI Beech Hill Technology Drive area including Mast Road/155A
- Allows offices, research, services and light manufacturing

Overlay Districts

- Shoreland
- Wetland
- Aquifer
- Personal Wireless Service Facilities
- Historic District
- Flood Hazard (Already Approved)

Shoreland Overlay

- Added definitions
 - Rewrote Purpose
 - Amended Shoreland Zones
 - 150' to 250' for Great Bay, Little Bay, Oyster River, Lamprey River, Durham Reservoir, Moat Island Pond, Follett's Brook including tidal sections and tributary streams, Johnson Creek, and Bunker Creek;
 - 75' for all other perennial brooks
- Spelled out permitted, conditional, and prohibited uses
- Amended Dimensional Standards:
- in the 250' zone there is a 125' structure and septic setback including Johnson and Bunker Creeks;
 - all other perennial streams (except College Brook & Pettee Brook) have a 75' structure and septic setback; College & Pettee Brook have a 25' structural setback
- Developed performance standards for buffer, agriculture, forestry, erosion and sedimentary control, inspection for nonconforming septic systems, access to shorefront, and docks and piers on or over the water

Wetland Overlay

- Added definitions
- Rewrote Purpose
- Increased setbacks
- Excluded isolated wetlands < 3000 sq. ft., and wetlands associated with currently functioning and maintained, non-abandoned human made ditches and swales, sedimentation and/or detention basins or ponds, agricultural and irrigation ponds and swales and fire ponds, cisterns, and related facilities
- Spelled out permitted, conditional, and prohibited uses
- Prohibited the use of wetlands (poorly drained, very poorly drained, and somewhat poorly drained soils) from being used to satisfy minimum useable area per dwelling
- Developed performance standards for the buffer, erosion and sedimentation control, agriculture, timber harvesting, and trails
- Amended section on challenge to the classification

Aquifer

- Amended definitions
- Amended purpose statement
- Amended section on challenges/appeals of classification
- Amended use regulations for lot coverage, site drainage, use of deicing chemicals, prohibited uses, and permitted uses

Personal Wireless Service Facilities (PWSF)

- Added definitions
- Encourage the location of PWSF in non-residential zones and discourage them in residential zones
- Excluded PWSF from conservation land
- Added language for use of alternative technologies
- Require applicant to demonstrate by technological evidence that the height requested is the minimum height necessary to fulfill site's function
- Added design and performance standards for concealment and disguise of facilities
- Added design and performance standards stating that no antenna shall cause localized interference with the reception or transmission of any other communications signals including, but not limited to, public safety signals and television and radio broadcast signals. Must provide certification

Historic District

- Revised ordinance
- Added definitions
- Rewrote purpose statement
- Clarified powers and duties of commission
- Created procedures for designation of Historic District
- Clarified identification and delineation of the district and kept the district as is
- Clarified the purview of the Commission
- Rewrote the procedures for review of a certificate of approval and review of application
- Created guidelines for review
- Creation of Demolition by Neglect Provision

Flood Hazard

- Made minor adjustments to language as a result of a meeting with, and recommendations from, the State Office of Energy and Planning
- Amended and added definitions
- Adopting a new FEMA Flood Insurance Study (FIS) for the County of Strafford together with Flood Insurance Rate Maps (FIRM) dated May 17, 2005
- Adopted by Town Council in May

Amendments to Address Questions with Prior Amendments - Resulting from previous public hearings and Town Council feedback

- Added and amended definitions
- Amended Conditional use section to remove “benefit” clause from purpose

- Amended language under the conditions of approval
- Amended Table of Uses to allow for excavation and mining
- Amended Table of Dimensional Requirements for useable area and accessory sheds
- Amended the minimum contiguous useable area standard in the Conservation Subdivision Ordinance
- Amended the calculation of useable area in the Conservation Subdivision Ordinance
- Created density calculations for elderly housing uses
- Amend the exempt subdivision section of the Conservation Subdivision Ordinance to reflect the fact that the useable area does not apply to exempt subdivisions
- Amended accessory apartments and dwelling units performance standard
- Amended hotels and motels performance standard
- Added a performance standard for accessory sheds

What's Left?

- Lighting Ordinance
- Signs
- Parking
- Landscaping

Mr. Campbell thanked the current Planning Board/Zoning Rewrite Committee: Richard Kelley, Kevin Webb, Art Grant, Richard Ozenich, Nick Isaak, Stephen Roberts, Jerry Needell, Susan Fuller, Annmarie Harris, William McGowan, Lorne Parnell, and Diana Carroll.

He thanked past Planning Board members and committee members Dave Pease, Dave Watt, Amanda Merrill, Rachel Rouillard, Suzy Loder, Ted McNitt, Julian Smith, Karen Bishop, Mark Morong, Tracy Wood, and also thanked his Administrative Assistant Karen Edwards, as well as Tom Johnson, Todd Selig, the Town Council, the HDC, the Conservation Commission, the ZBA, and the Citizens of Durham.

Councilor Morong asked if the provisions on conservation subdivisions were amended to take into account whether Town water and sewer were available.

Mr. Campbell said yes, noting changes were made to usable area criteria concerning this. He said when Town water and sewer were available, things like depth to ledge didn't apply.

Councilor Peter Smith asked if Mr. Campbell had a recommendation on how to proceed with the public hearing process.

Mr. Campbell said the easiest way would be to do this as one hearing, but said when this was done the previous year, the Council had felt pressure to adopt or deny the whole thing. He said the way the Ordinance had been brought forward, it could be adopted in sections, noting this process would take longer.

There was discussion about this. Mr. Campbell said the Planning Board had broke the process down into sections and held several public hearings. He said this made the process longer, but allowed people to come in only for the topics they were interested in.

Councilor Van Asselt asked Mr. Eyerman what, generally speaking, these changes to the Zoning Ordinance meant for Durham.

Mr. Eyerman said the nonresidential amendments were fairly significant. He said they changed what had been his understanding of a bully pulpit approach to developers into an approach that put in place zone specific standards. He said the Master Plan had been followed closely in developing these standards. He provided details on some of the nonresidential zoning changes, specifically noting the Professional Office district in the area of fraternity row on Madbury Road, and said this created the potential for significant opportunities in this area in the future. He also spoke about the MUDOR zone, which provided the opportunity for multifamily student housing on the other side of campus, and which institutionalized the direction the Town and the University were going in concerning student housing.

He said the Shoreland and Wetland overlay provisions were now somewhat more, as well as somewhat less restrictive than they had been previously. He said the focus in both was to look at not just setbacks, but also to put in place performance standards in trying to protect these resources.

He said the Historic District overlay provisions had been changed significantly, and said the Town needed to reflect on this. He said the goal had been to provide standards instead of a more arbitrary approach to that process.

Councilor Niman said he had some questions about the interpretation of the Historic District overlay provisions. He said his understanding was that if he didn't maintain his property, the demolition by neglect provision gave the Town the power to say, fix the building. But he said the Ordinance didn't seem to be able mandate how a property owner could "improve" the building.

Councilor Niman noted that in the proposed "Housekeeping Amendments", the contiguous area provision had not been deleted entirely.

Mr. Eyerman said as originally adopted by the Council the past May, there was some confusion as to whether the usable area requirement applied only to lots that were part of a conservation subdivision, or to all lots that were created by subdivision. He said the contiguous usable area provision was put into the original draft on the basis that lots could be created that would not be subject to town review, and a property owner might try to take little pockets of usable area and cobble them together to meet the requirements. He said in the packet of amendments, there were several that made the usable area provision apply only to lots that were part of a conservation subdivision, and it was felt that the contiguous usable area provision was therefore not needed, because there was already a high level of review for these lots.

Councilor Niman said in other words, the changes in terms of minimum contiguous area and calculation of usable area did not mean one could create more lots in a conservation subdivision.

Eyerman said he believed the answer to this was yes, and said the intention of the amendments was to make clear that usable area provisions applied only to conservation

subdivision, and not to change what could be done within a conservation subdivision.

There was detailed discussion on the Historic District provisions and what they could mandate. Councilor Niman noted he had spoken with someone recently about the demolition by neglect concept, who thought it was unusual. Councilor Niman asked if there might be a better way to accomplish what the Town wanted to accomplish.

Mr. Campbell said Roger Jacques of the Historic District Commission would be the person to speak to about this.

Councilor Peter Smith said the demolition by neglect concept was first presented to the Council around 1993, and had become more common in Towns recent years. He said it should not be confused with other provisions in the Historic District Ordinance, and explained that it was specifically designed to prevent someone from demolishing a building by not taking care of it, when that person wouldn't be allowed to knock the same building down. He provided details on this, and noted there were different models used by different towns as part of this process.

Chair Sandberg asked the Council how it would like to proceed in terms of scheduling the public hearings. He noted that the packet broke the Sections into A-G

Councilor Peter Smith said if all the proposed Zoning Ordinance changes were presented together, there could be a problem of confusion and overload for the Council, and also said the process would be too confusing for the public. He said in jumping from issue to issue, Councilors could find themselves very ineffective as part of this process. He provided additional reasons why the Ordinance changes should be divided up, and suggested the following groupings for holding the hearings: previous Zoning Ordinance amendments, and Nonresidential Zoning Districts; the Historic District overlay provisions; the Historic District overlay provisions; the Shoreland, wetland, aquifer, and floodplain overlay provisions; and the Telecommunications overlay provisions. In answer to Chair Sandberg, Councilor Smith said there should be four separate hearings on these topics.

Councilor Needell said this breakdown was good, but said having the hearings in the midst of regular Council meetings would limit the amount of time that could be spent on the process. He suggested adding extra meetings for this.

There was detailed discussion about how to go about organizing the public hearing process, and how the Sections could be voted on.

Councilor Needell moved to schedule public hearings on Ordinance 2005- 6 A and 2005-6 B on July 11, 2005. Councilor Needell said he thought that would be a sufficient starting point, and would prevent getting into legal problems concerning noticing.

Councilor Peter Smith SECONDED the motion, and it PASSED unanimously 9-0.

Chair Sandberg said future public hearings could be scheduled at that meeting.

Councilor Van Asselt asked if Councilors could submit questions in advance and have them answered early on, in order to short circuit speeches and save time.

Administrator Selig said if the questions were provided ahead, the answers could be provided to Councilors as part of their packets for meetings.

Mr. Eyerman noted this process had been used the previous year, and said he thought it had worked quite well.

Councilor Carroll said it would be very helpful if all Councilors got the answers to the questions posed in advance by individual Councilors. There was discussion on this, and it was agreed this was a good idea as long as the Council didn't start to engage in discussion on these topics by email.

Chair Sandberg said this would be a very useful and efficient process to follow.

There was additional discussion about scheduling issues.

Chair Sandberg asked for a motion to pass on first reading Sections A-G.

Councilor Peter Smith said it seemed that the Council had to do a series of motions on this in order to avoid being in the situation of having a package that was all or nothing to vote on.

Councilor Needell recommended that the Council reconsider the motion to schedule the first two public hearings, defeat it, and then could vote on the separate Ordinance sections independently.

Councilor Needell MOVED reconsideration of the motion to schedule public hearings on Ordinance 2005- 6 A and 2005-6 B on July 11, 2005. The motion was SECONDED by Councilor Peter Smith and PASSED unanimously 9-0.

Councilor Needell MOVED to schedule public hearings on Ordinance 2005- 6 A and 2005-6 B on July 11, 2005. Councilor Peter Smith SECONDED the motion and it FAILED unanimously 9-0.

Councilor Needell MOVED that the Town Council pass on first reading, and schedule for public hearing, Ordinance 2005-06-A, proposed amendments to Chapter 175 Zoning to address questions with prior amendments to the Durham Town Code, such public hearing to be held on July 11, 2005. Councilor Peter Smith SECONDED the motion and it PASSED unanimously 9-0.

Councilor Peter Smith MOVED that the Town Council pass on first reading, and schedule for public hearing, Ordinance 2005-06-B, proposed amendments to Chapter 175 Zoning to implement the Master Plan recommendations dealing with the nonresidential zones of the Durham Town Code, such hearing to be held on July 11, 2005. Councilor Needell SECONDED the motion, and it PASSED unanimously 9-0.

Councilor Kraus MOVED to adjourn the meeting, and it FAILED for lack of a SECOND.

XII. Nonpublic Session

Councilor Morong MOVED to go into nonpublic session in accordance with RSA 91-A:3, II (d), for the purpose of discussing the consideration of the acquisition, sale or lease of real or personal property. Councilor Kraus SECONDED the motion, and it PASSED 9-0 on a roll call vote as follows: J. Smith, AYE; Kraus, AYE; Morong, Van Asselt, AYE; P. Smith, AYE; Sandberg, AYE; Needell, AYE; Niman, AYE.

The Council entered Nonpublic Session at 10:00 PM.

The Council re-entered Public Session at 10:10 PM.

Councilor Morong MOVED to seal the June 6, 2005 Nonpublic minutes. The motion was SECONDED by Councilor Kraus, and PASSED unanimously 9-0.

Councilor Kraus MOVED to approve the amended June 6, 2005 Nonpublic Minutes. The motion was SECONDED by Councilor Morong, and PASSED 8-0-1, with Councilor Peter Smith abstaining because of his absence from the July 6, 2005 Nonpublic meeting.

XIII. Other Business

Councilor Julian Smith MOVED that the Town Council allow the introduction of Ordinance #2005-07, an ordinance amending Chapter 153 “Vehicles and Traffic”, Section 153-49 “Parking Prohibited Certain House” of the Durham Town Code by adding a parking restriction at the Wiswall Road Park from dusk until dawn. The motion FAILED for lack of a SECOND.

XIV. Adjournment

Councilor Kraus MOVED to adjourn the meeting. The motion was SECONDED by Councilor Van Asselt .and PASSED unanimously 9-0.

The meeting ADJOURNED at 10:25 PM.

Victoria Parmele, Minute Taker