

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

**DURHAM TOWN COUNCIL MINUTES
MONDAY, JULY 11, 2005
DURHAM TOWN HALL -- COUNCIL CHAMBERS**

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

MEMBERS ABSENT: None

OTHERS PRESENT: Todd Selig, Town Administrator

I. Call to Order

II. Approval of Agenda

*Councilor Kraus **MOVED** to approve the Agenda as submitted. The motion was **SECONDED** by Councilor Van Asselt and **PASSED** unanimously 9-0.*

III. Special Announcements

None

IV. Approval of Minutes

None

V. Report of Administrator

- Administrator Selig said that Durham Day would be held on Sunday Sept 18th from 1:00-4:00 pm at Wagon Hill Farm
- Administrator Selig said that on Wednesday, Town Engineer Bob Levesque would speak before the Planning Board concerning initial site plan acceptance for the parking area behind Town Hall.
- Administrator Selig said the number of applicants for the Fire Chief position had been narrowed down to 36. He described the review process, and said he hoped to bring forward a recommendation by the end of September. But he said the most important thing was to find the right individual for the position.
- Administrator Selig said the Town had recently been notified that it would receive FEMA (Federal Emergency Management Agency) grant money for the January 22nd-24th snow storm.
- Administrator Selig said that on Thursday, July 21st, NHDOT would be holding a public hearing at the Oyster River High School cafeteria on the proposed improvements to Route 108 between Newmarket and Durham. He encouraged members of the various Town boards to attend the hearing.
- Administrator Selig praised the July 4th Fireworks celebration, and said the Town had received a lot of positive feedback on it from residents. He thanked those involved with

the event, including Ron O'Keefe, who had been the coordinator.

VI. Reports and Comments of Councilors

- Councilor Kraus reported that the Integrated Waste Management Committee was continuing to look at whether to hold the spring and fall cleanups in Town. He said nothing had been decided yet, and also said citizens should provide input on this important matter, which would assist the Committee in its deliberations.
- Councilor Needell said the continued public hearing on the Irving Oil applications would be held on Wednesday, and said the focus of this hearing would be traffic issues.
- Chair Sandberg said he had attended a meeting of the University System Board of Trustees on June 23rd in Durham. He said there had been discussion at the meeting about how the relationship between the University and the Town had improved, and also about the need for continued engagement over difficult issues shared by the two entities. He said the Trustees appeared to be very interested in how the relationship was developing. He provided details on this.
- Chair Sandberg said he had attended the annual meeting for the Rockingham Land Trust. He noted that the previous year, the Town had participated in funding the conservation easement for the Mill Pond Center, and said that at the meeting, he had received an aerial photo of the preserved land on behalf of the Town. Chair Sandberg read the wording that came with the photo, and then expressed appreciation to everyone who had made this possible.

VII. Public Comments

Jim Jelmsberg, Park Court, thanked the Zoning Rewrite Committee for its colossal effort in revising the Zoning Ordinance, and especially for providing significant public input. He said they deserved the Town's gratitude for this time and effort, and said it was a great achievement.

Bill Hall, Durham said he was concerned about Chair Sandberg's report about the University Board of Trustees meeting. He provided background information on previous dealings with University administrators, and said he was the only person who really understood the issues between the Town and University. He provided details on this, and said he didn't really think the Town had gotten anywhere in negotiations with the University, compared to expectations. He spoke about the situation historically with the Dispatch center, and said the University had taken terrible advantage of the Town regarding this.

Mr. Hall also spoke about the fact that parking tickets were presently being issued to people at the Wiswall Bridge. He noted that he had previously discussed the importance of expanding the parking area at that location, and said the ticketing occurring there was harassment. He said the fact that more parking was not provided was insane, and also said that the Spangs should post their property. He said the way the Town was handling this situation was similar to how it dealt with the University, and said it needed to get down to business.

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 a sewer abatement and authorize the Town Administrator to sign said abatement?
- B. Shall the town Council move on FIRST READING 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 and schedule a public hearing for Monday, August 1, 2005?

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

IX. Presentation Items

- A. Joint report by subcommittee of the Conservation Commission and Parks and Recreation Committee on Town-owned lands – Dwight Baldwin, Chair, Conservation Commission and John Parry, Chair, Parks and Recreation Committee

Administrator Selig noted that the previous year, when the Council had been involved with goal setting, there had been discussion on town owned properties, and the importance of the Conservation Commission and Parks and Recreation Committee looking at these properties in more detail. He said a subcommittee with representatives from both committees had been established to undertake this effort, and said it had recently completed a report on this, which was in Councilors' packets.

He said both the Conservation Commission and Parks and Recreation Committee had endorsed the report, with the exception of the property at Arthur Grant Circle, where the Conservation Commission had recommended that it be set aside for conservation purposes because of its unique setting. He said the Commission felt that the view of the parcel would be enhanced by having nothing on it, and also felt that because it abutted other conservation land, it should be left as open space. Administrator Selig said the Parks and Recreation Committee didn't agree with this recommendation.

Administrator Selig said Dwight Baldwin, Chair of the Conservation Commission, would speak to the Council on these efforts, and then Jane Crooks, the Chair of the subcommittee established to look at Town properties, would speak.

Mr. Baldwin first introduced members of the subcommittee. He then outlined the subcommittee's recommendations concerning Town properties. He said that for already existing recreational sites, where appropriate public use was encouraged, the following needs should be addressed:

- Signs - name of site; parking; take-out trash or trash receptacle by road; specific allowed or prohibited activities; no hunting; when entering adjacent private property; historical and/or natural information.
- Trails - maintenance; markers; trail maps
- Use of area - appropriate activities for this site
- Parking - adequate number of parking spaces

Mr. Baldwin said the subcommittee has suggested that there should be a working committee to investigate and recommend the various public uses of the existing recreational Town owned sites, and also to consider management goals for these properties. He also said there were plans to update the Recreation website, and to create a user friendly brochure that would be available to the community on trails, including directions to all the recreational sites. He also noted there were plans to develop an Adopt-A-Trail program to help maintain these areas.

Mr. Baldwin said one goal was to bridge two existing trails, Longmarsh trail and the Durham Point trail. He said it was hoped that grant money could be obtained to either build a bridge or construct a floatation device, and said this would expand recreational access to these areas.

Councilor Peter Smith thanked the subcommittee for its tremendous effort on the project concerning Town properties. He said it was his understanding that the central accomplishment of the subcommittee was to view all of the Town-owned properties, and to make an initial determination as to which ones to dispose of, which ones to keep, and some general guidelines for their use. He said he wondered if this subcommittee could now take this to the next stage, - to take each property it believed should stay with the Town, and make more determinations as to its usage. He asked if the subcommittee could bring forth a very particularized set of ideas that could be put in an appropriate ordinance on different properties.

Ms. Crooks said they planned to do that for each property. Asked by Councilor Smith if this would include recommendations on limitations of use, she said yes, and said this kind of information would be in the brochures.

Councilor Needell noted that the Town owned parcels had been broken into three groups by the subcommittee, - those that should be disposed of, those that need substantial work to make them viable, and the rest that were fine the way they were. He said it was the middle group for which the subcommittee was suggesting significant actions and money were needed in order to get them up to a better level of use. He said he just wanted to make it clear that if a determination was made not to improve particular parcels, this did not mean that the Town shouldn't hold onto them.

Ms. Crooks said it was amazing how little many people in Durham knew about these properties.

Councilor Needell said that some of the largest Town properties had tremendous potential. Administrator Selig said he was interested in the idea of signage and use guidelines for recreational sites. He said if there was a concerted effort on this, a consistent look could be developed for all of the sites, along with some common usage guidelines concerning ATV use, dogs on leashes, etc. He said this would be very useful. There was discussion about this.

Councilor Kraus noted it had been said that there was not unanimous agreement about the Arthur Grant Circle property, but said the report from the subcommittee documented that

there was no disagreement on this, and that this was an accomplished recommendation.

Beryl Harper, 7 Davis Ave, noted she was a member of the subcommittee. She explained that the report dated May 5th was developed by the subcommittee, and went on to both the Conservation Commission and the Parks and Recreation Committee for their review. She said the letters from each of those committees stated their respective reactions to the report.

Councilor Van Asselt said under the category of Town properties that should be kept as is, a property on Beech Hill road off Madbury Road was listed. He asked what kind of land this was.

Ms. Harper said it was a Class VI road, and there was additional discussion about this. Councilor Van Asselt also noted a property on this list on Davis Avenue, in back of Rocky Lane. Ms. Harper provided details on this. Councilor Van Asselt noted that there was considerably more Town owned land behind the 3 cul de sacs in this area.

Ms. Harper said the subcommittee was considering having a work session with the Town Council, where they could all go through the parcels, look at the map, including tax maps, so people would have a clearer view of what the subcommittee was talking about. She asked if the Council might be interested in doing this.

Councilor Carroll thanked the subcommittee for the hard work it had done on this project, and said she wanted a clearer understanding of what came next, and when the action would happen concerning some of these recommendations.

Ms. Crooks said it was all a matter of time and money that was available. She said they were applying for a grant to bridge the two trails. She also said a graduate student had promised he would come back to work for the subcommittee on certain projects.

Chair Sandberg said bringing the Conservation Commission and Parks and Recreation Committee together for this effort had been a great effort. He noted that the review of Town owned properties had taken place at the behest of the Council, and said that as the Council began to adopt policies on Town owned properties, it could use this kind of report to help determine which way to go. He said that when the Budget process began, it would be great if the committees could come forward for discussions on some of these properties.

Councilor Peter Smith said in terms of the first category, he would think the ball had been passed to the Council to think about this. He said that as far as the rest of the properties were concerned, he assumed the Council wanted the subcommittee to take the additional steps it was planning. He said if that was not the case, the subcommittee should be told this so it did not waste its time.

Councilor Van Asselt asked if any of the properties were of interest to UNH.

Ms. Crooks said she could try to find this out, and Ms. Harper said it was probably unlikely the University was interested in any of the properties.

Councilor Needell said there were a lot more questions to be asked concerning these Town owned properties, and said if a more in-depth discussion could be arranged, he would like to participate in it.

B. Annual report from the Conservation Commission – Dwight Baldwin, Chair

Mr. Baldwin said the Commission had a new representative from the Planning Board, - Richard Ozenich. He also noted that Wendy Fogg, an alternate on the Committee, had retired from this role, and had not yet been replaced.

He said there had been two site visits, one at the proposed site for the Gables dormitories, concerning possible impacts to woodland wetlands from the construction. He said a second site visit was conducted at a home site on Great Bay, where the owner wanted to do landscaping within the 75 ft. shoreland setback.

He said that since his last report to the Council, the Mill Pond Wetlands Dredge Permit Application had been approved by NHDES. He provided details on remaining uncertainty as to when the Army Corps of Engineers would be able to do the work. He also noted that insurance for the project had not yet been obtained, and said it therefore seemed unlikely

Mr. Baldwin said the Commission continued to provide advice and financial resources to the Land Protection Working Group. He said actions taken included agreement to purchase an easement on the Merrick property, acquisition of the scenic easement at the Mill Pond Center, and the funding of costs associated with the surveying of several land parcels being considered by the LPWG.

He said the Commission continued to monitor wetland permit applications submitted to NHDES, and said the spring had been especially busy.

Mr. Baldwin next referenced the work recently completed by the Town Land-use/Trails subcommittee on town owned properties.

He said the Commission would be discussing at its July meeting whether to recommend that Durham move to designate certain wetlands within its jurisdiction as prime wetlands.

Mr. Baldwin noted the considerable amount of work the Conservation Commission had done in reviewing and making recommendations for improving the shoreland, aquifer and wetland overlay districts.

He also said a number of presentations had been made to the Commission, on various topics, since he had last been before the Council.

C. Annual report from the Parks and Recreation Committee – John Parry, Chair

John Parry, Chair of the Committee, listed its members, including Ms. Crooks, who was

present that evening. He noted that Public Works Director Mike Lynch attended many of the Committee's meetings. He said Mr. Lynch had been very helpful, and the Committee depended on him quite a bit.

He spoke about the meaning of the word "recreation", to re-create, and said this was a nice charge. He said the Committee was trying to take a new direction, and to do some new things.

Mr. Parry read the new draft vision statement of the Parks and Recreation Committee, and then listed the achievements of the Committee the past year.

- Assistance to the Public Works Department concerning the new playground structure, Woodridge Park. He noted this had been very successful
- Input to the DPW concerning the tennis courts at Woodridge that were re-done.
- Assessment of Town properties. He noted that Jane Crooks was the Chair of the subcommittee, and said both she and Ken Anderson had done a lot of good work on this project, and planned a lot more work on it in the future.
- Improvement of the maps of trails and Town and UNH properties. He also said a brochure to better describe the trails was planned.
- Completion of grant application for ski trail grooming equipment, for use by the UNH ski team but also for use on Town property.
- Meetings with other towns on their recreation programs, and how they had been made more successful. Mr. Parry noted he had met with the Town of Newmarket, which had a tremendous number of recreational activities, and was therefore a great model for Durham to look at. He said he would be meeting with the City of Dover, NH Parks and Recreation, and other entities to collect information to improve Durham's recreation program.
- Development of a policy for town properties. He noted this discussion had been started the previous year. He noted the issues that had come up concerning the Wiswall Bridge and Cedar Point had come up this year, and said there would be policy discussion by the Committee on these issues.
- Completion of a new trail loop at Wagon Hill Park by several Eagle Scouts

Mr. Parry described some additional projects the Committee had worked on. He then spoke about the new direction the Committee was trying to take. He said it had started to develop a new strategic plan to provide guidance on this, but had then realized the Town was planning to update the Master Plan, so had decided it would focus its planning efforts through the Master Plan process. He noted the Committee had asked that recreation be put up toward the front as a Master Plan topic to be addressed.

He identified some key themes the Committee was looking at: being more proactive, and more aggressive; developing a more formal program; and having a more sustainable program. He said ideas were being gathered from other towns on all of these things. He noted that Committee members felt there was a lack of leisure activities for adults and older citizens, and said more emphasis would be place on this.

He listed the following the Committee's draft plans for the following year:

- Refine Town property list, with needed improvements for properties that are the top priorities
- Develop a use policy to cover the majority of properties
- Pursue partnerships with other entities, perhaps nonprofit, local governments to find ways to

support each other, gather information, share resources

- Complete grant proposal, with Council approval, for the Longmarsh/Durham Point trail connection. He noted that other projects could potentially be adding on to this.
- Adopt a trail program
- Create vehicle for established clubs, informal volunteer units that could provide recreational offerings such as arts, leisure activities, etc.
- Continue to pursue, expand the number of soccer fields on Town properties
- Provide a listing of recreational offerings. He said a lot of people didn't know about these activities; and said a listing on the Town web site would allow residents to take greater advantage of them.
- Identify a location for a skateboard park

Mr. Parry said this was an optimistic list, and said the Committee would like suggestions concerning it.

Councilor Van Asselt noted that the Town didn't ask elderly developments to provide recreational facilities , and said there were ways to make that a requirement.

Chair Sandberg said there might be a way to tie in the Town's new Impact Fee Ordinance with this. He thanked Mr. Parry for his comprehensive report, noting its ambitious agenda, and said the Committee should let the Council know how it could help accomplish some of the things on it.

D. Receive report relative to the Craig Supply Site – Bob Levesque, Town Engineer

Mr. Levesque provided a brief history of the site and its problems. He said the Remedial Action Plan (RAP) developed for the site was currently under review by the State, noting the reason the review was not complete was that the State was looking at a new technology which would lower the cost of the cleanup, and was trying to determine if it would work for this site. He noted that development of the underpass would still be an option for UNH.

He said the Town had received a \$200,000 grant. He explained that the Town had pitched the idea, that if the site was paved over, this would cap it, and also said drainage measures, including detention basins for capturing runoff, would be put in place so the stage would be set for complete remediation. He said EPA had decided this was a good idea, so the Town was back to looking at complete buildout of the parking lot. He said there would be a total of 167 spaces, and provided details on this. He noted an aspect of the Town's plan that the EPA liked was that it would start to generate revenue for the cleanup right away. He said it was anticipated the Town could get \$500-1,000 per space, which would mean an average revenue of \$100,000 per year.

Councilor Van Asselt asked if a market study had been done on this planned use for the site. Administrator Selig said no formal study had been done, but provided details on factors that had been considered in developing this plan for the site, especially the proximity to UNH and the train station.

Councilor Van Asselt asked if UNH had been asked if it would be interested in managing the parking facility, and giving the Town a flat fee for usage of the property.

Administrator Selig said UNH had expressed an interest in this, but he said his feeling was that the Town could do better by managing the site itself. He also noted this would conserve the option of future use of the property.

In answer to a question from Councilor Van Asselt, Administrator Selig said the Town funds that would be spent on the project would be for demolition of buildings. He said this had been budgeted, and noted that this represented the Town's 20% match of the EPA grant. He said in terms of on-going maintenance, the Town's thought was that setting aside approximately \$25,000 of revenue per year would be sufficient.

Councilor Van Asselt asked whether, if the spaces didn't rent at the level anticipated, if the first obligation was to pay back the brownfield grant money with the revenues, and to use revenues after that for continued cleanup of the rest of the area.

Administrator Selig said there was no obligation to reimburse the EPA for the grant money. He said the EPA was willing to consider this a first step in the cleanup of the site. He said to him, the first dollars to be reimbursed to the Town from revenues from the parking area was demolition money, and after that, revenues could be set aside for maintenance of the area. He said anything beyond that would be held for the cleanup. There was discussion on this

Administrator Selig said he had been careful in his communications about this. He said he didn't want any member of the Council or community to think revenues that could potentially be used to clean up the site could be diverted to the General Fund. He said a new fund should probably be set up for this site. He said his goal was that in the long run Durham taxpayers would not have to pay for the cleanup and monitoring of the site after this. He provided additional details on the financial scheme for the site, and said the long term goal was to make this tax positive for Durham, once the site was cleaned up.

Councilor Van Asselt said he did not have an alternative to this parking plan. But he said there was an incorrect perception among some that this facility would be generating new revenue for the Town. He said the money would actually be going to clean up the site, so was not at present a new revenue source, although it might be, some time down the road.

Councilor Peter Smith asked if there was anything that would preclude the Town from continuing to seek additional federal funding for the site.

Administrator Selig said there was not, and said the Town was in fact continuing to seek additional funding.

Mr. Levesque provided details on this. He noted there were two lots with contamination, and EPA said the Town could apply for a grant for the second lot next year. He said the Town planned to do this. He said EPA also knew of other possible funding sources in the Federal government for the cleanup.

Councilor Kraus asked if the demolition would include all the buildings on the site, and was told it did.

Councilor Needell asked if it had been determined that the demolition plan for the buildings would not impact the contamination on the site.

Mr. Levesque said yes, as long as there was no soil excavation. He said while the grade might need to be raised to get the right drainage, there would be no excavation of the site for construction of the parking lot.

There was detailed discussion on the paving of the site.

In answer to a question from Councilor Van Asselt on which funds were being used to demolish the buildings. Administrator Selig said when he had written his June 15th memo to the Council, Town staff was not sure that brownfields funding could be used for any work other than engineering services. He said they had therefore continued to look for other funding, from the Contingency fund. UDAG funds, and a supplemental appropriation beyond what was in the Budget. But he said EPA encouraged the Town to move ahead with paving the site, and to use the funds awarded to it for that purpose.

Councilor Van Asselt asked where the Town funds for the demolition would come from, and whether contingency funds would be needed for this.

Administrator Selig said approximately \$80,000 was put in the 2005 Budget for demolition of the buildings behind the Town Offices, as well as the properties on the Craig Supply site. He said \$52,000 of this had been earmarked for the Craig Supply site, but said the bid had come in at \$38,500.

Recess from 8:26-8:30 pm

X. Unfinished Business (NLT 8:30 PM)

PUBLIC HEARING on Ordinance #2005-06 proposing amendments to Chapter 175 “Zoning” of the Durham Town Code, Section 2005-06 (A) “to address questions with prior amendments” and Section 2005-06 (B) “to implement the Master Plan recommendations dealing with the Non-Residential Zones”. The proposed revisions in 2005-06 (B) pertain to the zoning map, non-residential zoning district provisions, definitions, tables of uses, and table of dimensional requirements.

Administrator Selig said Mark Eyerman was present along with some members of the Planning Board and Zoning Rewrite Committee, in order to answer questions from the public and the Council. He said there no obligation to rush this process.

Chair Sandberg suggested that after their had been discussion on Section A as part of the public hearing, the hearing could be continued, and the public hearing on Section B could

then be opened and continued to the next meeting. He noted there were a number of other Agenda Items that had to be covered that evening.

Councilor Julian Smith MOVED to open the Public Hearing on Ordinance #2005-06 (A) "Proposed Amendments to Chapter 175"Zoning" to Address Questions with Prior Amendments" of the Durham Town Code. The motion was SECONDED by Councilor Kraus, and PASSED unanimously 9-0.

Beth Olshansky, thanked the Planning Board for its heroic efforts, and said she was grateful for this.

She said she had comments concerning 175-55 E and F, and changes recently made to these provisions. She said she had originally thought neither of these items was on the Town Council's punch list, but had determined that E was on the list while F was not. She said F was included as a result of complaints by a couple of landowners after the Ordinance was approved in 2004.

She noted that the Planning Board had originally referenced Randall Arendt, concerning the concept of usable land, and had also looked at the Hollis Zoning Ordinance many times as a model ordinance, during the early stages of drafting the new Zoning Ordinance. She said one of her biggest concerns was that the provision to exclude somewhat poorly drained soils from the usable area calculations had been deleted. She said this land wasn't usable, including the fact that a septic system couldn't be put on it, and by including it as usable land, density was being ascribed to land that couldn't be built on, which meant that there would be an increasing impact on the remaining usable land adjacent to these more fragile soils.

She said another concern she had under 175-55 F was that Items 3 and 4 were not redundant, noting that within a HISS map, there were 3 separate numeric ratings for depth to ledge.

Ms. Olshansky said one result of adding back somewhat poorly drained soils as part of usable area was that if this land was considered buildable, it becomes more valuable, so was more costly to conserve, which meant the Town would be able to conserve less of it. She also noted that the buildout analysis had been done based on the original revisions to the Zoning Ordinance, before the housekeeping amendments were made. She said if these present amendments were adopted, the Town would be doing so blindly, without any idea of how a buildout based on it would look.

Ms. Olshansky said the provisions under 175-55 E were still confusing, and said she would submit some language that might be less confusing. She noted a comment made by Councilor Niman at a previous Council meeting concerning 175-55 E, and said the language definitely would increase the density of a conservation subdivision.

She said that in talking with the planner in Hollis, she had found that if applying its Zoning Ordinance was a hardship for an individual property owner, a variance was considered a way to deal with this. She said the question for Durham therefore was, if the Zoning Ordinance impacted a couple of people, did that mean the whole Ordinance, for the whole Town had to

be changed, or could those people be offered the opportunity to seek relief through the ZBA.

Ms. Olshansky next spoke about the idea of bringing back the conditional use option for the Courthouse District.. She said some former Councilors were interested in being more restrictive and having the ability to negotiate more actively on development proposals in the Courthouse district, since it was the gateway to the community. She said in watching the current proceedings concerning the Irving Oil gas station/convenience store/donut shop applications before the Planning Board, it seemed the Board was very appreciative that the conditional use process was available to it. She said she realized there were design standards for the district, but said she didn't think they covered every situation that might come before the Board.

Chair Sandberg noted that this topic was more appropriate for a future public hearing.

Jim Jelmberg, Park Court thanked The Planning Board and Zoning Rewrite Committee for their hard work. He said he supported Ms. Olshansky's comments regarding soils based usable area. He said a stricter standard would be of economic benefit to the Town, and along with conservation of open space, seemed to be a win situation for everyone.

Bill Hall said he had noticed that no setbacks were proposed for Church Hill, and said he hoped there would be at least a 10 ft. setback. He provided details on his experience living in this area., and noted his fence had been destroyed by parked cars in the Church parking lot.

He said his alternative was that he owned a covenant to allow shrubs in the parking lot, and could remove this if necessary.

He also noted the provisions concerning sheds. He said electricity should be allowed for them, noting he needed this to be able to start his snow-blower and other equipment. He also said al a shed of only 10 ft. x 10 ft. was puny, and said perhaps 160-200 ft. would be better so people didn't have to go to the ZBA for a variance.

Chair Sandberg noted the references to sheds on Page 7, under 175-109.

Chair Sandberg asked if members of the Planning Board or Mr. Eyerman would like to respond to public comments that had been heard.

Kevin Webb, Vice Chair of the Planning Board, said the lack of any setbacks for the Church Hill District must be a typo, and if not, would be revisited. He also said providing electric power to sheds was not unreasonable, and would be revisited, and said perhaps the 100 sf size limitation was too small, and would be revisited.

Concerning Ms. Olshansky's comments on 175-55 F, he explained that the Board had gone around the block on this issue several times. He said in the end, it was decided it would be too restrictive to exclude somewhat poorly drained soils, and 50% of moderate depth to ledge soils from the calculation of usable area, and might be considered an unconstitutional taking.

Mr. Webb noted that Durham had often been compared to Hollis, but said a number of people involved in the Zoning rewrite process felt Hollis soils were not comparable with Durham soils, which were shallow, ledge, wet. He said there were not that many good soils left in Durham, and said it was thought that if the somewhat marginal soils were excluded from usable area calculations, the Town could ultimately be challenged on this.

Mr. Webb noted Ms. Olshansky had said the Hollis planner had said an individual impacted by having the somewhat poorly drained soil category in the Ordinance could go before the ZBA. But he said as a policy, he thought this was wrong. He said as great a job as the ZBA did, it shouldn't be making planning decisions for the Town, and said that function needed to stay with the ZBA. He said the Board had tried to balance environmental protection with not being subject to challenges.

Chair Sandberg asked if figures presented to the Council on the most recent buildout analysis represented the provisions in the Zoning Ordinance from the previous year, or the current proposed Ordinance.

Mr. Roberts explained that the Strafford County Soil Survey data for Durham, which was used in the buildout analysis, could not differentiate the soils that carefully, in terms of somewhat poorly drained, poorly drained, and very poorly drained, and also in terms of depth to ledge. He said the buildout analysis therefore had a wider purview in terms of what was considered usable area, as compared to what the ordinance was asking for. He said the buildout analysis results were not that different from what would result from the current recommendations for 175-55 F.

He said if the Town went with the restrictions Ms. Olshansky wanted, there would be a significantly greater withdrawal of usable land. Mr. Roberts said confusion over the numbers was a result of the fact that Durham had a mix of zoning techniques. He said the attempt had been made to combine soil based zoning with area zoning, noting the latter approach had historically been used by the Town, and was based on wanting to protect viewscapes and environmentally sensitive features. He said these two systems had collided

Mr. Roberts said the Board had at first believed that this system would not significantly impact the availability of buildable land. But he said that during the public hearing process the previous year, some residents came forward and said the new provisions would have an enormous impact. He said Mr. Campbell had heard from people with ledge and somewhat poorly drained soils. Mr. Roberts said he had 4 acres of land, but because of ledge and a vernal pool was limited in what he could do with his property.

He noted that the soil based lot size recommended by the Soil Science Society of Northern New England for somewhat poorly drained soils and moderate depth to ledge was 132,000 s.f., while Durham's minimum lot size was 150,000 s.f. He said the present recommendations were still protective, eliminating from usable area calculations serious ledge and serious wetlands, while more moderate soils, given the soil scientists' perspective, had been allowed as buildable area.

Mr. Eyerman said regarding access sheds, it was important that both the Council and the public understand where this recommendation came from and how it applied. He said it came from Zoning Administrator Tom Johnson because under the existing provisions, what was called a shed was considered a structure, and therefore had to comply with setbacks, etc. He said the Ordinance didn't say there couldn't be a 250 s.f. building, but if there was, it had to meet these requirements. He said it was recommended that a new class of shed be created that was smaller, did not require a permanent foundation, and could be located closer to a property line, as long as certain conditions were met.

Concerning the usable area discussion, Mr. Eyerman said this had been a subject of unending debate, and said he thought it was important to recognize that in the soil based lot size system developed by the Soil Science Society of Northern New England and used by the State, somewhat poorly drained soils were counted in meeting the lot size requirements. He said the State included these soils as well.

Mr. Eyerman noted Ms. Olshansky's comments on 175-55 E, the contiguous usable area provision. He said when this was originally enacted in May of 2004, some Council members had asked what it meant, why it was there, and so it was flagged as being questionable. He said in the Housekeeping amendments, if adopted, the usable area concept would apply only to conservation subdivisions. He said because if this, and because of the whole concept of conservation subdivision, involving evaluating the site, and deciding where the conservation and buildable areas were, the Planning Board had felt this language was unnecessary.

Chair Sandberg said he wanted to open the other part of the public hearing before 9:15 pm

Councilor Kraus MOVED to continue the Public Hearing on Ordinance #2005-06 (A) to July 18th, 2005. Councilor Carroll SECONDED the motion.

Councilor Peter Smith said he had a procedural statement to make. He said what the Council had been hearing comments on that evening was restricted to those punch list items that a year ago, the Council wanted the Planning Board to look at and give further consideration to, as part of approving the entire Ordinance. He said he would appreciate it if for the next meeting, Councilors could be provided with a document setting forth the items brought forth by the Council, along with what action the Planning Board took with each of those items (e.g., accepted, didn't accept) any why. He said this would make it much easier for Councilors to understand what had happened with these items.

Councilor Niman asked Administrator Selig if the Town attorney had looked at the proposed changes, and said he wondered if the Council should continue the public hearing process if he had not looked at these changes. There was discussion on this. He said specifically he was concerned with 175-21 A dealing with conditional use permits.

Chair Sandberg suggested that this question could be researched, and we could get an answer to it for the next session.

The motion PASSED 8-1, with Councilor Niman voting against it.

Councilor Needell MOVED to open the Public Hearing on Ordinance #2005-06 (B) "Proposed Amendments to Chapter 175 "Zoning" to Implement the Master Plan Recommendations dealing with the Non-residential Zones" of the Durham Town Code. Peter Smith SECONDED the motion, and it PASSED unanimously 9-0. Councilor Van Asselt MOVED to continue the Public Hearing on Ordinance #2005-06 (B). The motion was SECONDED by Councilor Morong.

Councilor Needell suggested it would be worthwhile to allow public comments that evening for a limited period of time.

The motion PASSED 6-3, with Councilors Niman, Julian Smith and Needell voting against it

XI. New Business (NLT 9:15 PM)

- A. **FIRST READING on Ordinance #2005-07** 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 9:00 PM to 5:00 AM
Administrator Selig provided background on the issue that had led to the development of this proposed ordinance. He said in terms of the content of the ordinance, it was felt restricting access to the park to specific hours was easier in terms of enforcement. He also said if a gate were installed (which he noted he did not endorse), it would be helpful if people knew a specific time when the gate would be closed, and would make transitioning to the gate less problematic. He said 9:00 pm seemed like a reasonable time to close the area, noting that even during the longest days of the year, that was about when it got dark, and said partying activities usually didn't begin until later in the evening. He said some concern had been expressed that the park should be closed earlier, but he said this was something for Town boards to talk about.

Councilor Julian Smith MOVED on first reading Ordinance #2005-07 amending Chapter 153 "Vehicles and Traffic", Section 153-49 "Parking Prohibited Certain Hours" by adding a parking restriction at the Wiswall Road Park from 9:00 PM to 5:00 AM, and schedules a public hearing to be held on Monday, August 1, 2005. Councilor Needell SECONDED the motion.

Councilor Needell MOVED to amend the original motion, by deleting the word "young" from the first "WHEREAS..." in Ordinance #2005-07. The motion was SECONDED by Councilor Morong.

Councilor Peter Smith said he wanted to make it clear that this language would not actually become part of the statute.

The motion PASSED 8-1, with Councilor Van Asselt voting against it.

Councilor Morong MOVED to amend the original motion, to include the boat ramp at the

Cedar Point launching facility. Councilor Niman SECONDED the motion.

Councilor Morong said he was not an advocate of the Bates, the owners of the property on which the boat ramp was located. But he said they had complained that the launch facility, for which the Town had an easement for launching boats, was being misused by people, and needed greater enforcement and limitation of activities. He said this situation seemed to parallel what was going on at Wiswall Park, and said the Bates' attorney had voiced their concerns to the Town. He said he found it interesting that when Judith Spang came to the Town, something happened, but when another citizen who was not as well known did so, with an attorney, no ordinances had come forward. He said he saw a problem, legally speaking, if the Town acted in one situation but not in another.

Councilor Morong noted Administrator Selig's memo, which said the Parks and Recreation Committee had looked into this. Councilor Morong said for the time being, in the interest of being fair, he didn't see anything wrong with a 9-5 parking limitation for this area as well.

Administrator Selig said the Town was looking at the Cedar Point issue, and suggested it should be addressed independently. He said the Town had received a request in June from the Bates, which he would forward, and said he wanted to have a chance to talk with the Parks and Recreation Committee about the issue. He noted that in the 1970's, the Bates took action to prevent access, but the access was preserved by a ruling in Superior Court. He said the Town had fought to maintain that access. Administrator Selig said he was open to ideas on this, but said that although the issues were similar, the circumstances were different.

Chair Sandberg noted the Bates had asked to make a presentation to Council to address the issues.

Councilor Peter Smith said he was sympathetic to the concept underlying Councilor Morong's request. But he noted that a few weeks back, he had voted against the motion to pass the ordinance on Wiswall Park, on first reading, because there had to be some meaningful order as to how a town adopted legislation. He said the Council shouldn't proceed in the way suggested by Councilor Morong for the same reason it did not do so a few weeks ago concerning the Wiswall issue. He also said there were some factual differences between the two issues. He said he would vote against this motion.

Councilor Julian Smith said there were some essential differences between the two issues. He said the Wiswall parking lot was being used by people who wanted to get easy access to private land, while the Cedar Point ramp provided access to a public waterway. He provided some details of how the site was currently used, and noted it was not a particularly convenient site because of the limited space available for parking. He said he would vote against the motion.

Councilor Needell said he would vote against the motion because the issue first had to be looked at carefully. He asked for some details on what went on at the site, and whether there were restrictions on parking. There was discussion about this.

Chair Sandberg said this issue would be coming up again before the Council, so would not be

forgotten.

Councilor Morong said the basic problem with this issue was the use of the Bates' property, and said this was parallel to the situation at Wiswall Park. He said he would not vote for the Wiswall Park ordinance because it would not be fair to the citizens. He said he didn't think a recommendation was needed from the Parks and Recreation Committee in order to do something about the Cedar Point situation. He said the Council could do something now, which could be augmented later, and said this would give the Bates an equal level of protection..

The motion to amend FAILED 3-6, with Councilors Kraus, Niman and Morong voting in favor of it.

The original motion PASSED 6-3, with Councilors Kraus, Van Asselt and Morong voting against it.

Chair Sandberg said the Council could have a first reading on the Bates proposal at the July 18th meeting.

Administrator Selig said he had spent a lot of time looking at both issues, and said he didn't see there was a problem at Cedar Point. He said the landowners who were trying to limit public access to the site, for reasons that didn't seem to hold up when one looked at what was happening there. Administrator Selig provided details on this, and noted he had made many trips out there, and never saw anybody there, as compared to what was observed at Wiswall Park. He said it was true that Judith Spang had brought forward the problem to the Town, but said these problems were able to be verified. He noted the signage had been changed at Cedar Point, and said he wanted to check with the Parks and Recreation Committee to see what else should be done. He said he was not ready to make a decision on this issue.

- B. **FIRST READING on Ordinance #2005-08** amending Chapter 153 "Vehicles and Traffic", Section 153-28 "Permitted Parking, Durham Resident Parking Permits" of the Durham Town Code by amending the language with respect to the regulation of parking permits and to allow parking, including overnight parking and/or temporary overnight parking, in certain municipal parking lots through the parking permit process

Administrator Selig explained that this Ordinance enabled Items C to move forward. He said it applied to both the proposed Craig Supply site parking area (to be called the Depot Road Parking Area), the expanded parking area behind the Town Hall site, and the parking area at Jackson's Landing. He provided details on how it related specifically to Jackson's Landing.

Councilor Peter Smith MOVED on first reading Ordinance #2005-08 as presented, amending Chapter 153 "Vehicles and Traffic", Section 153-28 "Permitted Parking, Durham Resident Parking Permits" of the Durham Town Code by amending the language with respect to the regulation of parking permits and to allow parking, including overnight parking and/or temporary overnight parking, in certain municipal parking lots through the parking permit process , and schedules a public hearing to be held on Monday, August 1, 2005. The motion was SECONDED by Councilor Kraus.

Councilor Kraus asked for clarification that there was no connection between this ordinance and the municipal lot at the Wiswall Dam.

Administrator Selig said it was correct that there was no connection.

Councilor Julian Smith asked if this ordinance meant someone could get a permit to park late at night in the Wiswall Road parking lot.

Councilor Peter Smith called a point of order, noting Councilor Julian Smith's comment had nothing to do with the motion.

The motion PASSED unanimously 9-0.

- C. **FIRST READING on Ordinance #2005-09** amending Chapter 153 “Vehicles and Traffic”, Section 153-49 “Parking Prohibited Certain Hours” of the Durham Town Code by allowing residents to obtain parking permits through the Police Department for parking, including overnight parking and/or temporary overnight parking at the Craig Supply, Town Hall, and Jackson’s Landing municipal parking lots

Administrator Selig briefly discussed the proposed ordinance to amend Chapter 153-49, and noted that this change would not allow temporary permit parking at Wiswall Park, because there was no enabling citation in the code at the present time.

Councilor Peter Smith MOVED to approve on first reading Ordinance #2005-09 as presented, amending Chapter 153 “Vehicles and Traffic”, Section 153-49 “Parking Prohibited Certain Hours” of the Durham Town Code by allowing residents to obtain parking permits through the Police Department for parking, including overnight parking and/or temporary overnight parking at the Craig Supply, Town Hall, and Jackson’s Landing municipal parking lots, and schedules a public hearing to be held on Monday, August 1, 2005. The motion was SECONDED by Councilor Kraus, and PASSED unanimously 9-0.

- D. Shall the Town Council award a bid to William A. Renaud Trucking, Inc. of South Berwick, ME in the amount of \$38,500 for the demolition of buildings at the Craig Supply site?
Administrator Selig said this was part of the plan presented by Mr. Levesque concerning the Craig Supply site. He said while there was no guarantee that the parking lot concept would work at this location, Town staff believed it would work, and recommended that the Council move forward with this.

Councilor Morong MOVED, upon the recommendation of the Town Administrator, to authorize the award of the Building Demolition bid at the Craig Supply Property to William A. Renaud Trucking Inc. of South Berwick, Maine at a cost of \$38,500 to be paid from Capital Fund Budget #07-4800-3002-999-05. Councilor Julian Smith SECONDED the motion.

Councilor Kraus said he would vote against this motion because it was an all or nothing demolition. He said he believed this was a bad idea, in the sense that it was premature to tear down the building on the property that was closest to the Dairy Bar. He said the cost to create something like that would be pretty significant. He said leaving the building there wouldn't impede construction of the parking lot, and said it could always be torn down later if necessary. Councilor Kraus said he wanted to be on record that the Town would rue the day it tore the building down. He noted the building was a possible location for a new Town library, one which the Library Committee did not like, and so would be glad to see the building gone.

Councilor Van Asselt said he would vote against this motion or abstain because of a lack of information. He provided details on his uncertainty concerning using the area as a parking lot, and said there must be an alternate solution. He said he thought the Town was looking at this as a quick fix, and said he needed answers to some of his questions. He said this was not meant as a criticism, noting some of the questions were unanswerable, but he said he didn't know if the Town should do this when it didn't know where this would lead.

Councilor Niman asked for some details on where the costs involved with rehabilitating the buildings had come from.

Administrator Selig provided details on this, and also noted that no one had come forward with an interest in developing the site. He said it was impossible to know all things about this site, but said the only way Town staff had been able to think of addressing the contamination was through developing a parking area. He said UNH had great interest in the site, but said it made sense for Durham to own it. He said a parking garage facility made sense in the long term, whereby the Town could make even more money, and also said if the site was cleaned up, the property could make sense to the University as something else. He said the parking lot use would turn UNH into a cash generator for the Town, noting this was something the Council had wanted. He provided details on why a parking area at this location most likely would provide revenue.

Councilor Kraus appealed to Councilors not to pass the motion based on the fact that they didn't know exactly what was going to happen at the site, and to save that building. He asked that Town staff come back with a new bid which left the building next to the Dairy Bar on the property.

Councilor Needell said he would support the motion. He said he had toured the building in question, and said although it was salvageable, he didn't think anyone would miss it either. He said the present plan was considered by Town staff to be a viable proposal to rehabilitate the Craig Supply site, and noted that the revenue generation that would occur should not be confused with making money on the site. He said the idea was to generate revenue to mitigate the site in the short term and possibly the long term future of the site. He said the current plan had a larger chance of succeeding than rental of office space.

Councilor Niman said it appeared from the numbers he was looking at that there would be a net revenue gain if one considered the revenue that could be obtained from renting the

building, and subtracted out the loss of revenue from having less parking on the lot if the building stayed. He noted the cost of rehabilitating the building also had to be considered, which was why he had asked the earlier question, but he said someone else might want to do this. He said if his scenario was correct, the Town was better off keeping the building on the property. He said having a viable building there made a stronger case that the Town should keep the property, and that if UNH wanted it, it would have to compensate the Town for this, which would be more compensation than would be received just for a parking lot. He said once the building was gone, this opportunity would be gone, and said that was why he didn't know how he would vote.

Councilor Morong said the building looked salvageable, while the other buildings could be torn down.

Councilor Peter Smith asked how many parking spaces would be lost if the building remained.

Councilor Niman said it would be 49 spaces, a little less than a third of what was proposed.

Councilor Needell said if this building was not torn down now with the others, it would mean additional cost to the Town if it was torn down later.

Chair Sandberg said he had watched the Craig Supply project unfold for the last 9 years, and said in all that time, no plan for that building had come forward. He said the current plan was to get into a cash flow situation, and said the easiest, safest, and cheapest way to do this was to level the site and pave it over. He noted this was a contaminated site, and said no one wanted to touch it until it was remediated. He said the Town had the responsibility to do this, and had waited long enough. He said this was a very reasonable bid. He said if someone came in the next day and wanted to buy the property, that would be fine, but said in the mean time, he would support the motion.

Councilor Peter Smith said for him, the decisive fact was an unexpected one, the extraordinary development that the EPA said the Town could use the grant money to pave the site over, and also noted that Mr. Levesque had said EPA had indicated the size of the grant money could be doubled. He said the risk to the Town was minimized. He said perhaps it was true that more revenue could be obtained from renting the building than renting the parking spaces. But he said the cost to tear down the building was low.

Councilor Morong asked whether if this one building was left out, it would sour the whole deal.

Administrator Selig said he would have to talk to the EPA about this. He said he was concerned that if the building was left on the site, the Town would miss out on getting the parking revenues, and would regret this.

Councilor Van Asselt said his concern was not about the building, but the overall plan for the property. He asked if it would be unreasonable to delay voting on this for one week.

Administrator Selig said this matter was time sensitive, in that in order to move forward with the paving, the buildings first had to be torn down. He said the delay put the paving in some jeopardy.

Councilor Van Asselt said he would like to have the opportunity to re-think the package Administrator Selig had put together before voting because of questions he still had.

Councilor Van Asselt MOVED to postpone a decision for one week. The motion FAILED for lack of a second.

The original motion PASSED 5-4, with Councilors Niman, Kraus, Morong, and Van Asselt voting against it.

Councilor Needell MOVED to remove the 10:00 pm deadline The motion was SECONDED by Councilor Julian Smith and PASSED 7-2, with Councilors Van Asselt and Kraus voting against it.

- E. Shall the Town Council award a contract change order to Continental Paving of Londonderry, NH in the amount of \$112,000 for the Craig Supply site parking lot project? Todd provided details on the proposed contract change order, and said it was a good price.

Councilor Van Asselt MOVED to approve the award of a contract change order to Continental Paving of Londonderry, NH for the Craig Supply Parking Lot Project in the amount of \$112,000, to be paid from a USEPA Brownfields Grant totaling \$200,000. Councilor Needell SECONDED the motion, and it PASSED 8-1, with Councilor Kraus voting against it.

- F. Shall the Town Council endorse the modification proposed by the NHDOT on Option 1 previously endorsed by the Town of Durham relative to the Route 108 bicycle shoulder project at the Bennett Road intersection?

DPW Director Mike Lynch said two weeks ago, NHDOT had told Town staff that it had a concern about Option 1, which brought Bennett Road into Newmarket Road at a 90 degree angle. He said it had been noted that the road dipped about 4 ft. at the intersection, which resulted in a significant loss of sight distance. He said NHDOT would like the Council to endorse a modification, which would move the entrance about 110 ft. to the north, and would therefore reduce the 4 ft. dip to a 1 ft. dip, resulting in a significant improvement in the sight distance. Mr. Lynch said NHDOT felt this was a much safer condition, but he noted that this modification would skew the intersection somewhat, which affected the previous desire to have a 90 degree angle intersection that would allow a good view in either direction.

Councilor Peter Smith asked if NHDOT was holding a public hearing on this issue and Mr. Lynch said it was. But he said the agency wanted to know in advance of the hearing what the Council's position was on this proposed modification.

Councilor Kraus said felt this was premature. He said the public hearing should take place

and then the Council could sort out the issue and weigh in on it. He noted that where he lived, many people like the intersection the way it presently was.

There was additional discussion among Council members about the best way to proceed concerning the request for an endorsement. It was agreed that the public hearing process should take first, and the Council could weigh in on the issue after that.

Councilor Peter Smith MOVED that the Council consider this issue between now and next week. Councilor Kraus SECONDED the motion, and it PASSED unanimously 9-0.

G. Other Business

Councilor Morong asked that when Administrator Selig speak with the Parks and Recreation Committee, he ask what kind of activities might be going on at the Cedar Point launch area between 9:00 pm and 5:00 pm. He provided details on his reason for wanting to know the answer to that question.

Councilor Morong also noted the comment from a member of the public concerning the Wiswall Park issue which made mention of 18 people getting arrested. He said that had occurred at the trestle bridge, a very dangerous bridge, when people went down there to jump off the bridge when they couldn't do so at the Wiswall Bridge. He commended the Police Department for anticipating that people would attempt to do this, and to take action on this because it was a very dangerous spot.

XII. Nonpublic Session (if required)

XIII. Adjourn (NLT 10:00 PM)

Councilor Kraus MOVED to adjourn the meeting. The motion was SECONDED by Councilor Carroll, and it PASSED unanimously 9-0.

Adjournment at 10:16 pm

Victoria Parmele, Minutes taker