

D-R-A-F-T

DURHAM TOWN COUNCIL MONDAY, SEPTEMBER 12, 2005 DURHAM TOWN HALL – COUNCIL CHAMBERS

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

MEMBERS ABSENT: None

OTHERS PRESENT: Town Administrator Todd Selig; Business Manager Paul Beaudoin; Town Engineer Bob Levesque; Peter Atherton, Wright Pierce Engineering

I. Call to Order

II. Approval of Agenda

Councilor Niman MOVED to approve the Agenda as submitted. The motion was SECONDED by Councilor Van Asselt.

Councilor Julian Smith noted there were quite a few people present to discuss the item concerning the Packers Falls Bridge, and asked if other Council members might therefore be sympathetic to moving it up on the agenda.

Councilor Julian Smith MOVED to put discussion of the Packers Falls Bridge after Public Comments, making it Agenda Item VII B. Councilor Morong SECONDED the motion.

Councilor Julian Smith said this issue had been long postponed, and noted there was considerable interest in hearing the decision on it. He said the agenda was long, and if this item was completed fairly early, the Council could then move on to other business.

Councilor Carroll said this was a good idea, and said that in general it was important to place items that were likely to get a good public turnout closer to the beginning of the agenda.

Councilor Peter Smith said he had attended the meeting establishing the agenda for this meeting. He noted there was substantial discussion on the appropriateness of when to hear this item, given other matters people would also be present for at the meeting. He asked if there was additional discussion between the Chair and Chair Pro Tem on this item.

Chair Sandberg said there was no further discussion between the Chair and Chair Pro Tem. He

said they did discuss this issue when putting the agenda together the previous week, and at that time they agreed the order that was proposed was the most reasonable. He noted there was no easy way to do this

Councilor Julian Smith said he was also at the agenda setting meeting, and said the Chair had said this item could be moved up on the agenda if there was considerable interest in having an early discussion on it, or if there was a crowd.

Chair Sandberg said Councilor Smith was correct, and that he did say there was always the possibility to amend the agenda.

The motion PASSED 5-4, with Councilors Peter Smith, Kraus, Niman and Sandberg voting against it.

The Agenda as amended PASSED 8-1, with Councilor Niman voting against it.

III. Special Announcements 7:05 pm

No special announcements

IV. Approval of Minutes 7:05 pm

August 1, 2005

Councilor Morong MOVED to approve the August 1, 2005 as submitted. The motion was SECONDED By Councilor Kraus.

Councilor Kraus noted the Council memo referred to the August 15, 2005 minutes, and that it should refer to the August 1, 2005 minutes.

Page 8, 15 Check on spelling on **Burrows/Burroughs** (proper spelling is Burrows).

On page 21, between paragraphs 3 and 4, it should be noted that Councilor Kraus left the meeting. Also in motion, on the same page, the vote was 6-0, since Councilor Kraus had left the meeting.

Councilor Morong MOVED to accept the amendments to the August 1, 2005 minutes. The motion was SECONDED by Councilor Julian Smith, and PASSED 7-0-2, with Councilors Niman and Van Asselt abstaining because of their absence from the August 1, 2004 Council meeting.

The August 1, 2005 minutes as amended PASSED 7-0-2 with Councilors Niman and Van Asselt abstaining because of their absence from the August 1, 2005 Council meeting.

V. Report of Administrator 7:10 pm

- Administrator Selig noted the upcoming Durham Day celebration to be held on September 18, and said Councilors should let Councilor Niman know if they had grills available for the event.
- Administrator Selig said the CIP had been provided to the Planning Board as well as the Town Council. He said it was a draft document, providing a general fiscal forecast. He said the CIP did not reflect any cutting on his part, and simply presented requests for funding to date. He said the fiscal year 2006 Budget proposals would be incorporated into the next version of this document, and the Council would receive this document at the same time it received the proposed Budget. He said the goal was to have more time to talk about the document this year. Administrator Selig explained the timing for the CIP and noted that for the last several years, the Planning Board had been given significant opportunity to provide input on this concerning Town planning issues. He said input was being sought even earlier this year and that he and Business Manager Paul Beaudoin would be meeting with the Planning Board on Wednesday, September 14, 2005.
- Administrator Selig said the annual University Day picnic would be held on Tuesday, September 13, 2005, from 3:30-6:30 in front of Thompson Hall. He said Town residents were invited to this event.
- Administrator Selig said that he, Chair Sandberg, and Chair Pro Tem Niman were trying to include specific Council goals in future agendas to ensure these topics were not forgotten. He asked Councilors to look at these items scheduled as part of upcoming agendas, and to determine if they wished to address these items, or had changes to suggest to them or the schedule for discussing them.
- Administrator Selig reminded residents that there was a real threat of West Nile Virus and encephalitis in the area, and asked residents to take appropriate precautions concerning these potential dangers. He said the Town had a permit to spray, but that he had opted not to spray at this time, noting that spraying had potential environmental effects, and the specific need for it in Town had not been seen to date. He said any spraying the Town decided to do would be done on public property unless there were problems found in other locations. He said the Town was looking at how much it would cost to do mosquito testing to determine if it should look more closely at the idea of spraying.
- Administrator Selig noted a number of updates had been provided to the Council concerning the dispatch issue in recent months. He said that an assessment of the idea of moving the dispatch center from UNH to the Strafford County communications facilities had determined that at present this could not be done. He said there might be opportunity to continue to explore this idea in the next 12-18 months, and noted one possible idea was to see if it made sense instead for Strafford County to contract with UNH and the Town to provide dispatch services. He said this would allow the Town to continue to have the excellent service it had come to expect, while lowering the overall cost for this. He noted that during the Budget process the previous year, it was hoped that the consolidation could save the Town approximately \$200,000 a year.

- Administrator Selig said there were five semifinalists for the new Fire Chief position, narrowed down from thirty-nine applicants, and said Town staff would meet with all of them by the end of that week.
- Administrator Selig said that concerning negotiations with the police union, his proposal was to focus on wages and working conditions. He said that because of recent changes concerning health care co-payments for Town employees, he did not feel it was appropriate to focus on that aspect of the contract at that time. He said he did not see the need at present to have a non-meeting Council session with the labor negotiator to talk this over, noting the Council's heavy schedule. But he said if any Councilors felt strongly that the Council should meet in this way, this concern should be raised at present, and there would be discussion on this. He said that unless he heard otherwise, he would proceed as described. He said he would work hard to ensure that police employees were paid competitive wages, but at same time he would be cognizant of the high taxes in Town.

VI. Reports and Comments of Councilors 7:18 pm

Councilor Kraus noted the upcoming fall cleanup. He said this was the first time plastic bags would not be accepted, and said paper bags were available for this purpose. Councilor Kraus also said he would like to personally thank Dave Garvey for the wonderful job that had been done on the repaving of the Mill Plaza parking lot. He said the area was now much more attractive, and that the work had been done in a timely manner during the summer.

Councilor Kraus said he had been on the record on numerous occasions making statements about pressure groups that ruled Durham, and was told this was a myth. He said he would read an email from Beth Olshansky to her personal pressure group, and people could determine for themselves whether the heavy turnout concerning the Packers Falls Bridge that evening was spontaneous, or instead was carefully orchestrated in order to dictate policy to the Town of Durham and to the Town Council. He then read this email aloud. In this email to Citizens Exchange, Ms. Olshansky suggested that supporters of the bridge rehabilitation come early to show their support and stay for the vote.

Councilor Kraus said it was his contention that there was a lot more at stake that evening in Durham than the Packers Falls Bridge. He said this represented an important effort by individuals to dictate policy in Durham. He said it was dangerous, and was a real problem.

Councilor Needell said that the Planning Board had approved the Conditional Use Permit application and the site plan review application for the Irving proposal to replace Smitty's with a gas station, convenience store, and donut shop at its August 31st meeting. He noted there was discussion at the meeting on parking immediately around the Courthouse and Mr. Mitchell expressed his willingness to work out an agreement with the Town concerning parking. He also said there was a fair amount of discussion and agreement by the developer that the requirements of ADA would be well posted and adhered to at the gas station so that customers would know that under certain conditions, by law, full service would be available to them.

Councilor Morong informed Councilors that the Rental Housing Commission had recently met. He said the various Town departments reported that it had been a relatively quiet summer in the rental housing community. Councilor Morong said that any residents with problems concerning rental housing or other issues could bring this up to the Commission, and he noted the next meeting was October 12, 2005 at 4:00 PM. He said the Commission was an informal, friendly group, and wanted to hear any concerns. He said that at the recent meeting, the Commission had welcomed new member Diane Woods, who would be representing different neighborhoods. He said the Commission had also discussed some University initiatives, the DVD "Choices Matter", and the commuter handbook the University published to improve relations between students and the general population of Durham. He said the Commission was still looking for a student representative, someone who lived off-campus in Durham.

Councilor Morong noted, concerning Councilor Kraus's comments, that like it or not, groups interested in certain issues had the right to organize and come to meetings. He said this was the way democracy worked.

Councilor Van Asselt spoke about a recent situation where a citizen had directly contacted a Town department head by email on an issue, and said it was the procedure, not the substance, that bothered him. He noted that Council members had to go through Administrator Selig instead of dealing directly with department heads on issues, and said he encouraged Administrator Selig to remind citizens of this. He said he believed Administrator Selig concurred that this was how the organizational chart should work and that citizens should follow the same procedures as Councilors.

Chair Sandberg asked if Administrator Selig wished to comment on this.

Administrator Selig said Councilor Van Asselt's comments were self-explanatory.

Chair Sandberg noted that the document referred to was written by a citizen as a member of the Packers Falls Bridge Study Committee, which was appointed by Administrator Selig

Councilor Julian Smith said DCAT had finally revised and approved the contract for those who wished to produce programs through DCAT, and submit DVDs and videotapes relevant to community issues. He said he hoped more citizens would avail themselves of this opportunity. Councilor Smith also said it might be useful, and was technologically possible, to have a time stamp on the videotape of meetings so the public could see at what times items were discussed at meetings, and also could see how late the Council meetings sometimes went.

Councilor Morong noted the Economic Development Committee had recently met. He said he was on vacation and was unable to attend, but received a good report on the meeting from Jim Campbell. He said the Committee was moving forward to market the Durham Business Park. The Committee also talked about breaking up into smaller subcommittees to study the three locations in Town being considered for development.

Administrator Selig referred to Councilor Needell's comment on parking around the Court

house, and noted there had recently been an inspection of the building by the Governor's Commission on Disabilities Architectural Barrier Free Committee, which renewed all State leases. He said the Committee had had some concerns about the Courthouse on ADA issues regarding parking and access.

He said there was a very beneficial site walk, and that the Committee commented on the beauty of the building and seemed very willing to support the continuation of the facility. The Committee also offered one suggestion to increase handicap parking around the facility. Administrator Selig said Town staff was very clear that the challenge was that the Town did not own the land around the Courthouse, and therefore did not have the capability on its own to provide this parking. He noted that as part of the improvements in front of the Town office parking lot, the number of van accessible spaces was being increased from two to three, and a fourth van-accessible handicap space would be added at the end of the building near the sidewalk leading to the Courthouse.

He said it appeared the lease for the Courthouse was moving forward again, and provided details on a promising possibility of having a four-year lease. He said the Town had contacted Scott Mitchell, the developer of the Irving site, and Mr. Mitchell was interested in working with the Town to provide additional parking there. Administrator Selig said that would be ideal.

VII.A. Public Comments 7:34 pm

Chair Sandberg noted that numerous people were present to speak about the Packers Falls Bridge. He said the Council had already heard an enormous amount of commentary on the bridge, and said if there were new issues, or clarification of previous issues, public comments on this were welcome.

Shirley Thompson, 48 Bagdad Road, said she was proud of all of the Town's employees. She noted the Police Department had been in the news recently, and read a poem in honor of them.

Roberta (Robbi) Woodburn, 6 Cormorant Circle, said she was present to speak on the Oyster River dredging study. She noted that when she had been at a previous Council meeting which discussed this issue, several Councilors wanted to clarify whether the Town would be required to participate financially or otherwise in further study, or what happened after that. She said that for any grants the study group sought, there was some kind of match required, whether this involved in-kind services or monetary participation. She said she did not think the Town should make a provision that the project should not move forward if the Town would have to participate financially. Ms. Woodburn said maintenance of natural resources was part of the Town's responsibilities, and if it did not participate at least minimally in the effort, it would not be doing its job.

Dave Watt, 6 Sullivan Falls Road, noted that a Councilor had characterized legitimate political activity as a dangerous thing. He said it was much more dangerous not to participate and that he thought that there should be an apology.

Phyllis Heibronner, 51 Mill Pond Road, said she thought they all lived in a democracy. She said she had always been very proud to live in a town where people felt free to come forward to speak about issues. She said it was appalling to hear the comments that were made, and said she agreed an apology was in order.

Ms. Heilbronner also spoke about the Packers Falls Bridge issue, noting it was a Town issue, not a neighborhood issue. She said it was primarily a matter of safety, noting Durham was a town with a lot of young drivers, who had the highest accident rate of any age group other than elderly drivers. She also said there was general agreement that a mistake had been made concerning the bridge, and that it needed to be fixed. She said she hoped the Council would honor its commitment to remedy the mistakes.

Dudley Dudley, 25 Woodman Road, said she was present to speak on behalf of all citizens of Durham, concerning replacing the concrete rails. She noted that she had provided the Council with the more than 500 signatures of citizens, including present and past board members, at a previous meeting, and spoke about this again. She said there were many ordinary citizens as well as those involved in Town government who were urging the Council to restore the bridge. She said this was not a neighborhood issue, stating that 80% of those who had signed the petition lived in other parts of town. She also said those who had signed were not ill-informed about the cost of replacing the rails. She said for those Councilors hoping that citizens would get used to the current rails, members of the public at the meeting were present to remind them that they had not gotten use to it. She asked members of the audience to indicate how many of them were at the meeting because they wanted the rails to be replaced.

Chair Sandberg counted thirty-five people in the audience who raised their hands indicating they supported replacing the rails.

Ms. Dudley said these people were present to say they still cared. She said driving over the bridge was as painful at present as it previously was. She also said the safety hazards were still there, noting that many in the audience had experienced near accidents. She said they were all asking again that the Council vote to fix the bridge.

Bill Hall, 1 Smith Park Lane, pointed out that the parking lot was filled that evening, which answered a lot of questions concerning potential use of the property. He also noted that the Irving application had been approved unanimously by the Planning Board, and he was concerned that Administrator Selig did not relay to the Council the problems on the Board during the application process, when one Board member put in jeopardy the whole process, and another questioned the Town Attorney on an issue. Mr. Hall spoke about the fact that someone had described the rowing club issues at Jackson's Landing as an isolated incident, and provided details that this was not the case. Mr. Hall also spoke about a Police Department issue. Concerning the Packers Falls Bridge, Mr. Hall said the bridge could benefit from placement of a layer of hot top, which would put the railings right where they were needed.

Beth Olshansky, Packers Falls Road, said it was a very exciting night when the Town Hall was filled with people, no matter what the issue. She noted that when she first started coming

to Council meetings, she got hooked on how exciting Town government was. She thanked the public for their attendance.

She said she wanted to speak as the Chair of the Packers Falls Bridge Committee. She noted there had been some question regarding the way the Committee had gone through the issues in designing the proposal before the Council, and she reviewed these in detail. She said that concerning the concept of the "melting rail", the Committee had preferred it, aesthetically, but unanimously agreed safety was the number one concern. She said the Committee met with the Town Engineer, and learned that curl and flair back terminal units were standard and being used in similar bridges in the area. She said Mr. Levesque assured the Committee this design would be safe from an engineering point of view.

Ms. Olshansky said the Committee visited several local bridges, and also met with Mr. Levesque at the bridge site, and walked to each of the four ends of the bridge to discuss the exact shape the design should be.

Ms. Olshansky said she had some specific points to make. She said the Town Engineer had played an instrumental role in designing the modification to the bridge, including the exact curl and flair back as well as the length of the approach rail. She said there was nothing unconventional about the bridge design before the Council, and that this was the standard bridge constructed over scenic waterways, describing several locations in the area where it could be found. She noted the letter from NHDOT which affirmed that the bridge design, and curl flair back terminal, was considered safe for speeds up to 45 mph. She noted the speed limit in the area of the bridge was 35 mph or less.

Ms. Olshansky said the Committee was asking for the replacement because of the lost view, but also because the existing rail had created a real safety hazard--a blind spot. She said in this specific location, the proposed rail design would provide greater sight distance, as explained in the letter from NHDOT. Ms. Olshansky said the Bridge Committee and Mr. Levesque would be happy to answer any questions.

Dick Lord, 85 Bennett Road, showed Councilors what the proposed metal railings for the Packers Falls Bridge would look like, compared to the existing railings on the bridge. He noted among other things that it was discovered that the new concrete railing could be walked on, which could cause safety problems, so the top of the railing was designed to be rounded to match the vertical rails, making it less likely it would be walked on. He said the Packers Falls Bridge Committee had spent a good deal of time looking at the railing issue, and said the proposed changes to it were similar to the Oyster River bridge. He provided details on the railings, including the fact that the vehicular rail met ASHTO standards, and although the pedestrian railing did not, there should be no reason why a vehicle would reach it.

Chair Sandberg said the Council might have specific questions which Mr. Lord could address during Item VII B.

Mr. Lord said Ms. Olshansky had contacted NHDOT concerning the railing, noting Councilor Needell had asked for more specifics. He provided details about the letter, and said it provided

assurances concerning the design process, and about the fact that this design was very much a part of what the State did on slower roads.

Tom Pache, 93 Packers Falls Road, said he felt compelled to speak about the comments made by Councilor Kraus. He said these comments made him feel very unwelcome, and were totally unnecessary and out of line. He said an apology was needed..

Edward McNitt, 101 Durham Point Road, said he had lived in Durham for twenty-three years, and had vacationed there for over fifty years. He said he was concerned about safety hazards regarding the Packers Falls Bridge, but said none of the pictures showed what one saw looking through both the vehicular and pedestrian rails. He said this should be looked at before making a final decision.

Regarding dredging of the Oyster River channel, Mr. McNitt said his primary concern was the fact that the cost of the dredging alone, \$3.2 million, was what it took to run the Town for 7-8 months. He said he was confident that the people proposing this felt that most of the money would probably come from the Federal government. But he said he did not think the Town would come close to getting \$3.2 million worth of results from dredging the channel. He said to the best of his knowledge, the river had never been dredged, and said it was a classic meandering river, with a very natural set of channels. He noted he had brought some of the largest boats up the river.

Mr. McNitt said he did think there was problem in the upper river, roughly between the dam and Jackson's Landing, noting there was substantial siltation there, and a definite change in the location of the channel in the last three years. He said he did not know if what was proposed was the answer for this. He doubted there was a need for any dredging below Gardner Point, noting there was no commercial use of the river there, relatively few big boats, and most people who brought big boats in proceeded slowly, especially where the channel wasn't marked.

He provided detailed information on what he thought the dredging would and would not accomplish concerning the channel depth at different locations on the river. He also spoke about the dilution issue, noting that although he would not swim in Mill Pond, he would swim in the river one hundred yards down from the Wastewater Treatment Plant. He said before the Town worried about dilution from the plant, it should worry about what came over the dam from the Mill Pond.

Ken Hochgraf, 10 Croghan Lane, said he wanted to speak about past conditions on the river. He noted his use of boats in the river over many years, and said even at low tide, in the past he could go all the way up the river, and there was two and one-half feet of water all the way out. He said he had often tied up to Jackson's Landing, and also said he had oystered off of river View as a youth, where there was at least six feet of water. He said he had rowed on the river in 1976, and was able to do so twice a day regardless of the tide.

Sean O'Connell, 22 Shearwater Street, echoed what Ken Hochgraf said, noting he grew up with him, when people could go out on the river at any time. He said he had rowed all through high school and college and coached at UNH after that, and at that time they could still go out

on the river at any time. He said when he came back in the late 1990's, the river had filled in. He said it was not possible to row any time of the day anymore, and was not possible to use the landing in a meaningful way anymore. He said he believed the science supported this. He said it struck him that the Council was a steward of the Town's natural resources, and said this was a resource that was wasting away, and would waste more if nothing was done. He encouraged the Council to vote in favor of endorsing the proposal.

Judith Spang, 55 Wiswall Road, said there was not yet a true cost for the dredging work, noting that the one the engineer had provided the study group with was based on faulty information it had gleaned concerning the amount of material that would be taken out of the river. She said she had no confidence in that number, and that it would be unrealistic to come up with one right now.

Ms. Spang said she thought there was reason to be optimistic that the Federal government would pay for this project because Senator Gregg and the other delegates were very committed to the Great Bay Estuary, noting they had already gotten millions of dollars for UNH for the estuarine research effort, and for conserving land around Great Bay. She said it would be entirely consistent that they would bring back some New Hampshire dollars. She said she was fairly optimistic money could be obtained for the dredging project, including consulting needed for preparation of permits, noting this took the burden off the Town.

She said she was a bit concerned that there was constant reference to restoring the navigational channel, and said the Oyster River needed to be restored as an ecosystem, as badly as it needed to be restored as a navigational channel. She noted that she recently had a conversation with Fred Short of Jackson's Lab who was very disturbed about the loss of eel grass in Great Bay. She said he saw this project as an opportunity to restore the ecosystem, including the oysters. Mr. Short had indicated to her that there was a great deal of Federal money available to restore the channel and replant it with eel grass. She said this was extremely important. She noted that as Robbi Woodburn had pointed out, the Town plowed its snow, so why not plow up the sediment being deposited in the Oyster River. She said as stewards of the river, it was the Town's responsibility to restore it.

B. Packers Falls Bridge 8:20 pm

Administrator Selig provided background on the history of this issue. He noted that rehabilitation of the bridge was substantially complete when residents expressed concerns about the aesthetic and safety issues concerning it. He said there followed a great deal of discussion at the Council and among Town staff about this issue. He said he had decided at the time that it made sense to ask a group of concerned individuals to look at the problem and to try to come up with solutions. He said the Packers Falls Bridge Committee had worked with Mr. Levesque for a year to address the concerns raised and to develop solutions. He noted a number of alternatives were then presented to the Council at a meeting earlier in 2005, and Option 1 was endorsed by the Council. He said this option replaced all three railings with those that were more aesthetically pleasing, and said the estimated cost had been \$131,020.

He said concern was expressed at that meeting that if a vehicle hit the terminal railing at a high

speed, it could launch the vehicle into the river. He said there was sensitivity to this concern, and the Committee had consequently looked for ways to address this issue. He said with Mr. Levesque's guidance on this, the Packers Falls Bridge Committee put together a design that met both safety needs of the Town as well as the aesthetic needs of residents who wanted to be able to see the river below. He said the project was put out to bid, in three pieces, and the following prices were established, noting the Town did not get bids for the last two times and therefore had solicited phone quotations. He noted the total price was within the estimate provided to the Council in January.

▪ Replacement of rails	\$88,834
▪ Cutting off existing concrete rails	9,510
▪ Preparation of concrete base for installation	
▪ of metal rail system	9,945
▪ Construction contingency	<u>21,656</u>
	\$129,945

Administrator Selig described the following proposed funding for the project:

▪ Remaining Packers Falls Bridge Capitol Project Appropriations	\$81,775
▪ 2004 Contingency Funds (encumbered in 2005)	50,000
▪ Lamprey River Local Advisory Committee	15,000
▪ Hoyle, Tanner & Associates	<u>7,500</u>
TOTAL AVAILABLE	\$154,275

He noted that because it would take 14-16 weeks from the time of bid award to have the rail system delivered, the Town was planning to start construction in May. He said the bid would need to be awarded at this time to secure the prices that had been quoted.

Councilor Julian Smith MOVED that the Durham Town Council hereby adopts Resolution #2005-12 authorizing the release of the \$50,000 encumbered from the 2004 Council Contingency Fund to be used for the Packers Falls Bridge railing replacement project. Councilor Carroll SECONDED the motion.

Chair Sandberg asked if Councilor Smith wished to speak to his motion, and Councilor Smith said he would like to defer his comments.

Chair Sandberg asked if Councilors who previously had outstanding questions on this issue had received answers to these questions.

Councilor Needell said he had questions regarding the engineering practices that were employed. He said one of his concerns about the process was that it was not clear what engineer was responsible for the design. He asked whose design this was.

Town Engineer Bob Levesque said he had taken the lead on the overall concept. He said there were conflicts in developing the design, but some compromises were made and were done with

safety in mind and with good intent on his part, also using practical common sense. He said the terminal rail ends were not "NHDOT approved", because typically in a case like this, the agency would look at a complete design and would have a standard package design. He said when the speeds got lower than 45 mph on a rural road, in order to be approved, a design had to go through the approval process. He said the Town technically had not done this, but said he had tried as best as he could to meet the State's guidelines and had taken knowledge from past approvals by NHDOT and imported them into this design. He said he felt confident about the design, and said it addressed aesthetic as well as safety issues.

Councilor Needell asked why NHDOT did not approve the plan.

Mr. Levesque said he had asked NHDOT if that was possible, and the agency had indicated that it could look at it, but it could take six months. He said knowing that the Town had to move forward with this, they had opted to do so without NHDOT.

Councilor Needell said his concern was not with the design itself, and noted he was not going to play engineer, and in fact refused to take that responsibility. But said it was not clear to him who was doing the design work. He said communication with NHDOT recently had been very helpful, but said the person at NHDOT was responding to things he has never seen. He noted this person's reference to the fact that if Hoyle Tanner designed this, he did not see why it would be a problem. Councilor Needell said he wanted to make it very clear that Hoyle Tanner did not design this, and in fact was taking a "hands off" approach to the design.

Mr. Levesque said that was not totally correct, but was correct regarding the aspect of the design involving the termination of the bridge rails. He said Hoyle Tanner had stamped other aspects of the railing system design.

Councilor Needell asked if in backing away from this, Hoyle Tanner was saying the design did not meet engineering standards from their point of view, or was simply stating that it could not say the proposal was an "off the shelf, NHDOT approved design".

Mr. Levesque said he could not answer for Hoyle Tanner's decision. He provided details on this, and said what he needed to think about was what was practical.

Councilor Needell said his final question was whose reputation was behind this design. He said a substantial structure was being redesigned, and he wanted to be convinced this wasn't designed by lay people to look nice, and happened to be something the Town Engineer thought was adequate.

Mr. Levesque said the design would certainly look totally different if he wasn't involved. He said he would love to have NHDOT approval of the process. But he said if one took a practical point of view, and looked at the Oyster River railing system, which was something that NHDOT had installed, it clearly went against the agency's current guidelines. He said he felt the design for the Packers Falls Bridge was much safer than what was presently in place.

Councilor Kraus said he had noticed that Town staff had solicited bids by phone, and asked if

this had been done before.

Administrator Selig said yes. He explained that the Town had thresholds below which this could be done, and the amounts proposed were within that threshold. He said they had initially asked for sealed bids, but did not receive any. He said if the Council awarded the bids, the present prices would be secured.

Councilor Kraus asked what the threshold was, and Administrator Selig said it was \$15,000.

Councilor Kraus asked how these companies were chosen.

Mr. Levesque said Kidder Concrete had submitted a written proposal, and had faxed it to DPW. He provided details on the other quotes that were obtained.

Councilor Kraus discussed the process of obtaining the bids, and asked how much confidence Mr. Levesque had in these bids, noting nothing had been submitted for two of the projects the first time.

Councilor Kraus spoke about the proposed costs for the project, and noted that cutting the railings off and rail preparation might cost about half of what it cost to put the new metal railings on. He asked if that sounded reasonable to Mr. Levesque.

Mr. Levesque said yes, noting the rail cutting involved labor costs and machine costs, but the railing cost was for materials and the labor for installation

Councilor Kraus asked where expenditures for the DPW would come in.

Mr. Levesque said these expenditures, which would be for erosion control and traffic control, would come out of the \$20,000 in construction contingency money.

Councilor Kraus asked if the difference between \$129,945, and \$154,275 would be spent, since it was available.

Administrator Selig said these numbers were included simply to show what was available for the project. He said if in the end, the number came in above \$129,945, he would feel comfortable authorizing expenditures up to \$154,275 but not exceeding it. He said he did not expect to exceed the \$129, 945. He provided details on the remaining \$81,775 available in the capital appropriation, and noted this funding would have to be bonded.

Councilor Van Asselt said he had a procedural question. He asked if it was standard procedure to approve funding, and then approve bidding and look at sources of funds. He said the \$15,000 from the Lamprey River Advisory Committee had never been accepted by the Council and the \$50,000 contingency funding needed to be unencumbered. He said the Council also needed to approve the bonding of the capital project appropriations, and noted this money was not free.

Councilor Van Asselt said he objected to having two motions before them, which meant they would not follow a process of approving the various pieces of this proposed project and funding. He said he would like to change the process into a series of motions to take these steps, instead of lumping them together. He said the procedure before them was not one the Council usually used, and noted that the January 3, 2005, Town Council minutes indicated that Councilors were assured that when this issue came before them, they would be able to talk about the different funding sources and approve them.

Administrator Selig said there was a difference between this project and a typical Public Works project which was established during the Budget process. He said in this case, the Council had given approval to go ahead with Option #1. He noted the original funding stream was approved years ago, when funding was approved for the initial concrete structure, also noting the Town would have to get a bond for this money. He said that in terms of the \$50,000 in contingency funds, he had acted on his own authority that this money would be encumbered, to be applied toward modifications for the Bridge. He said there was previously Council discussion about that, but said that was the direction in which they had gone, and the Council was being asked that evening to designate this money.

Concerning the \$15,000 from the Lamprey River Advisory Committee, Administrator Selig explained that the Committee had had experiences with other towns where the end result of a project was not what they were promised, so they were being cautious. He said they had been assured that the project was reflective of the plans in the packet, and was also assured the Town would not officially accept the moneys from them until it had reached substantial completion of the project, when it was clear it was reflective of the plans. He said in the mean time, the funds were in hand, and acceptance of funds would be done as a formal process to allow the Town to spend the money. He said the same thing would be done with the money from Hoyle Tanner, but said they could not do that until they moved forward with the award of the bid. He said this entire process was an aberration compared to how things normally proceeded.

Councilor Van Asselt said he did not agree, and said he cared about the procedure. He said the Council was being asked to approve the expenditure of \$129,945.

Administrator Selig said the Council was actually being asked to approve an expenditure of \$88,834, noting it was not necessary to gain Council approval for the other funds.

Councilor Van Asselt said he understood that, because these separate amounts were not \$25,000 or more. But he said when he walked out the door that evening and someone asked him how much the Council spent that evening on a railing for a bridge that wasn't broken, it was \$129,945. He said in order to get there, he believed the Council needed to approve the steps of accepting the different moneys. He said this in part involved the expenditure of taxpayer money. He noted Councilor Peter Smith's discussion on January 3rd where he discussed the order in which he wanted the different moneys for this project to be spent.

Councilor Peter Smith said with respect to the \$15,000 in Lamprey River Advisory Committee funds, he understood this was currently in a Town of Durham account. He said there was a written statement/agreement which obligated the Town to keep the money only if it completed

the project it said it was going to complete, and said he viewed the Town as being legally bound in that regard.

Administrator Selig agreed with these statements.

Councilor Smith asked if it was necessary, in terms of the Town Charter, for the Council to pass a motion to: a) accept the \$15,000; and/or b) to state it was designating this money for that purpose.

Administrator Selig said the \$15,000 had been received and was forwarded to the Business Office. He said he believed it had been deposited into the account, and said in terms of spending the money, the State law was that the Council would need to formally accept those funds, and to expend them on a particular project.

Councilor Peter Smith said a motion on this would therefore be called for, to accept funds and to designate them for that purpose. Concerning the \$7,500 in Hoyle Tanner money, he said his understanding was that there was a written contract which was enforceable, which included a provision where they agreed to provide \$7,500 at a certain time, conditional upon the Town carrying out the project they were involved in.

Administrator Selig noted other aspects of the Hoyle Tanner contract.

Councilor Smith asked if it was necessary to pass a motion to accept the \$7,500 from Hoyle Tanner, and designate it for the project.

Administrator Selig said the Council could accept it as unanticipated revenue and have the Council vote to expend it. He said an alternative was to accept it as revenue, and to use that much less of the remaining capital project appropriation.

Councilor Smith said at the appropriate moment, he would ask what the wording of a motion should be to handle that \$7,500 in the most efficient way, with the least cost to the Town.

Councilor Smith said that regarding the \$50,000 in contingency funds, there was a clear policy decision previously made not to transfer that money to the Land Use fund, and he provided details on this. He said if the Council simply passed the present motion, it would fully take care of that item, and nothing more would need to be done.

Regarding the \$81,775 appropriation, Councilor Smith said he understood the logic that on a previous occasion, the Council approve the expenditure and bonding of that money as part of a much larger sum to reconstruct the bridge. He asked Administrator Selig if there was anything necessary under the Town's charter or ordinances, given these previous actions, in order to have the authority to spend this money, and to bond it, for purposes of this project.

Mr. Beaudoin said that money had already been appropriated, in the Budget for that particular year. He said the money was still there, and extended until the project was completed, so the Council did not need to do anything concerning it. He said the Council only needed to

unencumber the \$50,000 into that project, making a total of \$131,775 that was available. He said that later on, the \$15,000 and \$7,500 could be accepted to offset that.

Administrator Selig said that at a subsequent date, when a slate of projects that needed to be bonded was brought forward to the Council, as much of the \$81,775 as was needed would be included in this.

Councilor Smith said regarding the interrelationship of the funding sources, it was his view that there should be an order in which the different moneys were spent. He said the three smaller amounts should be fully spent first, and the remaining \$81,775 should then be drawn on and bonded, only to the extent of making up the difference. He asked how this should be accomplished, assuming the majority of the Council agreed with this concept.

Administrator Selig said the Council would need to have a public hearing concerning the \$15,000, which could not be accomplished that evening.

Councilor Smith asked what sort of motion was needed to cause Administrator Selig to expend the money in the order that had just been outlined.

Administrator Selig said no motion was needed, because he fully intended to designate the \$50,000 toward the project. He also said if the bid was approved that evening, the bill for \$7,500 would be sent to Hoyle Tanner. He said the second amount that would be expended would be the \$50,000, and said they would then begin to draw on the \$81,775. He said there would be aspects of the project that the Town would not pay out until there was substantial completion of the project, and noted they would also utilize the \$15,000 before substantially moving into using the \$81,775.

Chair Sandberg said it needed to be determined if Councilor Van Asselt's concerns had been resolved. He said it was not the Council's prerogative to move expenditure of the \$15,000, and said the motion on the table was simply whether to release the \$50,000 and assign it to the project. He said the question was whether the Council wanted to move ahead concerning the Bridge, and said if it wanted to say no, it could say no to this expenditure of funds. He said if the Council wanted to move forward, it would be prudent to authorize the bid so the cost could be locked in. He said the Council could then step into the sequence of events raised by Councilor Van Asselt and Smith, so they were all satisfied the money was accepted and would be spent in that order. He said it seemed that would cover the concerns of both of them.

Councilor Kraus noted that the Council had authorized the bond for the bridge, and said although \$81,775 was left over, the Town did not actually have this money. He said if the bridge cost more, that difference would have to be bonded, and would represent a bigger percentage of a larger bond.

Administrator Selig said if this happened, he would need to come to the Council to get an additional appropriation which would be part of a larger package involving other projects. He said he could have just listed the amount remaining in the appropriation as the amount needed to reach \$129,945, but said he had wanted to be more forthcoming and show the full amount

available. He noted there had been previous discussion in January as to whether the Council wanted to put a cap on the price tag, and the Council said it did not want to do that. He said unless the Council did not want to spend anything over \$129,945, he assumed it wanted to complete the project, and if it cost an additional \$4,000-5,000 to do this, he assumed the Council would move ahead to do that. He said staff would let the Council know at the end of the project how this came out.

Chair Sandberg said all the Council was being asked to do was to vote on whether to authorize the release of the contingency funds, and on whether to authorize the awarding of the three bids.

Councilor Van Asselt said the reason he wanted three more motions was that he thought the Council owed it to the community to say it thought it was all right to spend \$57,445 on the bridge, along with the \$50,000 in contingency funds, for a total of \$107,445 that would come from property taxes, out of the total \$129,945 to be expended. He said the Council should say that was what it was being asked to do.

Councilor Peter Smith said he agreed that the Council should say that, and should vote on these motions. He said he would hope there was no procedural obstacle to putting a motion on the table to accept the \$15,000, and another motion on the table to accept the \$7,500, and if each passed, to schedule a public hearing for each. He also said he had no problem with putting a motion on the table that specifically stated that although on a previous occasion, moneys were appropriated for the bridge, the Council was now seeking to spend x amount of the appropriation for this project.

Chair Sandberg said the timeline was very important to consider. He suggested taking a brief recess and drafting appropriate language, and said the present motion could be tabled pending the resolution of this.

Councilor Peter Smith suggested that he and Councilor Van Asselt would work out the language during the recess.

Administrator Selig said he thought they were making a mountain out of a mole hill. He said the critical moment for this funding issue was during the Budget process, when he said he could piece together enough money for the project from the various sources. He said there was discussion at that time as to whether it was appropriate to use contingency money, etc., including whether the Council should simply vote to appropriate new money.

He said the decision was made not to do that, and instead the Council decided to piece together the various funds. He said he had made an agreement with the Lamprey River Advisory Committee that he would not bring the \$15,000 to the Council to accept and expend until the project reached substantial completion, and said he would not feel good about it if this changed. He also said the Town did not have the \$7,500 in hand yet to accept.

Administrator Selig said that in terms of notifying the public on the total cost of the project, to the best of his knowledge, it would cost \$129,945 to retrofit a bridge that NHDOT said met its

standards, but that the Town was not happy with.

Chair Sandberg declared a 10-minute recess at 9:30 PM.

Chair Sandberg called the meeting back to order at 9:40 PM.

Councilor Peter Smith noted the letter from the NHDOT Bridge Design Bureau dated September 7, 2005, and said his understanding was that with respect to the end pieces of the railing, the letter explicitly stated that the design for those end pieces selected for this project was viewed by NHDOT as acceptable for roads where the speed was no more than 45 mph.

Mr. Levesque said that was correct.

Councilor Smith said the item from Hoyle Tanner that was not stamped was concerning the end pieces. He said he read the letter from NHDOT to mean that the only thing the Town had not dealt with was a piece of bureaucracy within NHDOT, unless the agency chose to abandon Mr. Richardson, and his substantive statement.

Mr. Levesque said he would not say he felt safe about the design unless he felt that NHDOT's statements were true.

Councilor Peter Smith asked if the Council took action that evening and made quick contact with the low bidders on these items, if it was it with an extremely high degree of reliability that the work would be done for that approximate amount.

Mr. Levesque said he felt sure these prices could be locked in.

Councilor Smith noted Mr. McNitt had raised a question about what one would be able to see, looking through the two railings. He said given the mistakes made in the past, this was a good question, and asked Mr. Levesque what the answer was.

Mr. Levesque said an extensive amount of time was spent looking at the different angles. He provided details on this, and said the design was such that the posts would line up, in order to get the maximum view through them.

Councilor Smith said in other words, there would be no surprises when the railing was built.

Mr. Levesque said the Committee had reviewed this extensively, and the issue was resolved.

Councilor Needell said from what Mr. Levesque had said, and from the NHDOT letter, the materials to be used were routinely used by NHDOT, and were to build to an engineering standard that the agency approved of.

Mr. Levesque said absolutely, in terms of structural integrity. He said he tried to make sure the guidelines used in the past were followed, specifically those for the Oyster River Bridge. He provided details on this.

Councilor Needell said it was important that NHDOT had said it was not a requirement that the design be approved, and there was no expectation on the agency's part that it would participate in this process.

Mr. Levesque said that was true, unless the Town invited them to be part of the process. He said that if the Town did the project with its own funds, it was not required that NHDOT approve the design.

Councilor Van Asselt MOVED to table Motion #1, with the intent to follow up with a new motion encompassing it and the other matters. The motion was SECONDED by Councilor Kraus.

There was very detailed discussion on the process that should be followed at that point.

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

Councilor Peter Smith MOVED that the Town Council vote to approve the expenditure of \$129,945, to be used to dismantle and then reconstruct the railings on the Packer Falls Bridge according to the design plans presented previously to the Council, such funds to come from the following sources and utilized in the order listed:

- 1. \$50,000 from the funds encumbered in 2004 that were previously placed in the Land Use account,***
- 2. \$15,00 to subsequently be accepted from the Lamprey River Advisory Committee pursuant to the agreement entered into with the Committee,***
- 3. \$7,500 to be received from Hoyle Tanner and Associates pursuant to the agreement entered into by Hoyle Tanner and the Town of Durham, and***
- 4. \$57,445 from the funds previously approved by the Town Council for the Capital Project Appropriation on construction of the Packers Falls Bridge, which funds would be appropriately bonded.***

Councilor Julian Smith SECONDED the motion.

Councilor Peter Smith said it was clear that if this motion passed, the project would be undertaken, and if it did not pass, it would not be undertaken. He said he would support the project, although not out of pleasure. He said it was the responsible thing to do, given that the Town was involved in making a serious error, and because of some very important aesthetic values. He said he appreciated the fact that some of these funds did not affect the tax rate, but some did, and said this was an instance where the Town needed to correct an error concerning an important value.

Councilor Smith also noted that he was a great believer in the first amendment, and would

never object to the right of a Councilor to say anything. He also said he was not afraid of being intimidated, and could distinguish when advice that came in was good, or bad.

Chair Sandberg asked if the language on the table were adopted, if Administrator Selig would still need further action from the Council.

Administrator Selig said the Council should still take action.

Councilor Niman said he agreed the Town government had made a mistake, and that the bridge was not attractive as it presently was. But he said he would vote no on this motion. He said the proposed design did not reflect concern about the view of the Bridge from the river, and said he did not think it would do this view justice to put up metal railings. He said he hoped they could have cut down the concrete, and could have gotten rid of the ugly guard rails, but he said he could not see taking an ugly bridge and replacing it with an ugly bridge.

Councilor Van Asselt said he would vote against the motion. He said this would affect the tax rate, and said the truth was that the Town had spent hundreds of thousands of dollars on this issue, much of it in staff time. He said he could not see spending this money on a bridge that was not broken. He said the Town could make better use of the contingency funds than spending it on the Bridge.

Councilor Needell said the Council had discussed this issue at great length at its Jan 3rd meeting, and decided to go forward. He said there was nothing in his mind that had changed this. He thanked Mr. Levesque for answering his questions on the approaches used to design the railing system, and for his efforts to ensure that the design standards were applied throughout the process.

Councilor Carroll said the previous day she had walked on the Packers Falls Bridge again, and was more adamant than ever that it needs to be changed. She noted that while she was there, she had spoken to someone about the safety issues concerning the current bridge. She said she would vote in favor of the motion.

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

Councilor Peter Smith Moved to remove Motion #1 from the table. The motion was SECONDED by Councilor Julian Smith, and PASSED 6-3, with Councilors Kraus Van Asselt and Niman voting against it.

Councilor Julian Smith MOVED to award the bid for new rails at the Packers Falls Bridge to CWS Fence & Guard Rail Co. of Andover, NH for the sum of \$88,834 with the expenditure coming from account 07-4800-1032-999-03. Councilor Peter Smith SECONDED the motion, and it PASSED 6-3, with Councilor Van Asselt, Niman and Kraus voting against it.

There was discussion about the need to continue the meeting since the hour was getting late and

there were still several Agenda Items to address. Chair Sandberg said the Unanimous Consent Agenda Items and the Clarifier Issue were important to address that evening. He said the Council should select a date to continue the meeting in order to address the remaining Items.

Councilor Kraus MOVED to continue the present meeting to no later than 10:30 pm. Councilor Van Asselt SECONDED the motion, and it PASSED unanimously 9-0.

VIII. Unanimous Consent Agenda (*Requires unanimous approval. Individual items may be removed by any councilor for separate discussion and vote*) 10:00 pm

A. Shall the Town Council approve the special event permit application submitted by the UNH Public Programs & Events department requesting that a portion of Main Street be closed to conduct the annual University Day Picnic on Tuesday, September 13, 2005, with a rain date of Wednesday, September 14, 2005?

B. Shall the Town Council approve the special event permit application submitted by the UNH Wildcat Marching Band to close a portion of Main Street in front of Thompson Hall to Cowell Stadium for the UNH Marching Band to march to home games scheduled during the months of September through November, 2005?

C. Shall the Town Council approve the special event permit application submitted by the UNH Campus Activities Board to close?

D. Shall the Town Council approve the special event permit application submitted by the Durham Business Association requesting that the date for the annual Young Artist's Showcase be postponed to Saturday, October 22, 2005, and that a portion of Main Street be closed to conduct the event?

Shall the Town Council reappoint Director of Planning and Community Development Jim Campbell as its representative to the Seacoast MPO Technical Advisory Committee for the period July 1, 2005 to June 30, 2006?

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

IX. Presentation Items 10:05 pm

A. Replacement of #2 clarifier at the Wastewater Treatment Plant -- Bob Levesque, Town Engineer

Mr. Levesque provided detailed background information on the need for the replacement of the clarifier. He then noted there was a public hearing scheduled for the September 19th Council meeting, at which time the Council would also be asked for additional funds for the repair.

He said the plant was presently functioning efficiently, and the water quality was up. He explained that the reason for the current pH violation was ironically because ammonia levels

had been lowered significantly, but said this had caused the pH to go down. He said NHDES had notified the Town it would receive an administrative order if it did not try to correct this situation. He said that since the appropriation for the replacement of the clarifier was in place, and there would probably be state funding available for the upgrade, it made sense to correct the pH, so had asked Wright Pierce to include this in the bid.

Councilor Niman noted the letter from NHDES regarding the pH level, and said apparently the Town had been out of conformance concerning this since 2000. He asked if the Town had just figured out it had a problem and realized it needed to do something about it.

Mr. Levesque said they had always known the pH was an issue. He explained that chemical compounds had been used at the water treatment plant which had improved the water quality, but had lowered the pH of the system. He said the reason for additional lowering of pH was the impacts of nitrification at the wastewater treatment plant. He said the nitrification was working, which was good, but it resulted in lowering the pH, so this meant they now had to deal with the pH.

Councilor Niman asked why, when the clarifier that just failed was built, the pH issue wasn't part of the plans for it..

Mr. Levesque said the reason this wasn't done then was that at that time, they would have had to inject chemicals to raise the pH, which would require a long term investment in using these chemicals. He said they knew they had been able to reduce the ammonia in the system, although the pH consequently went down, but said since the treatment process in place was more of a biological one, it allowed for an internal recycling system to be developed which could recuperate some of the pH within the system. He said from a design point of view, it was a logical process.

There was detailed discussion about the financial aspects of the project. In answer to a question from Councilor Niman, Mr. Levesque agreed the estimate was off by close to 50%.

In answer to a question from Councilor Kraus, Administrator Selig said when the Town had come to a settlement with St. Paul, there was \$300,986 remaining which had not paid out on the contract. He said St. Paul paid the Town \$385,00, for a total of 685,986. He said from that amount, they paid out some engineering costs to do the design of the bid the Town had now received from Wright Pierce.

Councilor Kraus said in other words, that bid was an additional amount of money that did not show up on the sheet.

Administrator Selig said yes, and noted the award of the bid to Wright Pierce for construction services would come before the Council the following week.

Councilor Peter Smith said he had a procedural concern. He said the Council had not been aware of the history concerning the pH issue, and stated that unless he had missed something, this was the first time he had seen this letter. He said he was quite certain he had not heard

about the seriousness of this matter, and said he felt the Council should have been informed about it so the issue could have been discussed.

He said the other issue of concern was the reliability of the figures put forth in the proposed settlement. He said he had difficulty accepting that the Council received the quality of advice on the proposed costs of the clarifier that it should have been expected to receive. He noted he had raised specific questions about the reliability of the estimate of costs, at the time of the settlement negotiations. He said based on the information received then, the settlement looked good. He noted when the estimate was made, when the settlement discussions took place and when it was discovered there was a whole new pricing structure, and said he was not satisfied with the response from Wright Pierce that there was this massive change in such a short period of time.

Mr. Levesque provided details on the pH issue. He apologized that Councilors were not informed, and said this was not intentional. He asked Peter Atherton to speak about the cost estimates.

Mr. Atherton, of Wright Pierce Engineers, said the estimate and resulting bids were certainly disappointing. He said at the time the estimate was done, it was based on previous construction projects of a similar nature, and the concrete portion was increased 20%. He said they were surprised at the bid 6 months later, and said he had consequently gotten a break - down from the contractor of the numbers. He said the underestimate was in the concrete and the site work, aspects of the project that were dependent on steel, cement, labor, and fuel prices. He said this was not atypical of other projects the firm had bid on in the last six months. He noted that the second and third bidders were significantly higher. He provided additional details on the increase in costs.

Councilor Peter Smith asked when the Council had the discussion on the settlement.

Administrator Selig said the discussion was on May 16th, in a confidential Council session.

Councilor Smith asked when the bids came in, and was told it was August 9th. He noted the initial estimates came in February, and said he thought there was a problem. He said he was very disappointed, and said the data he was relying on was several months out of date, which made it unreliable as a basis for determining if the settlement was appropriate.

Councilor Kraus said the Town appeared to be a bad polluter based on the number of violations, had a broken clarifier, and it would cost a lot to replace it.

Administrator Selig said he did not think the characterization of the wastewater treatment plant was appropriate.

Councilor Needell MOVED to have an open ended adjournment time. The motion was SECONDED by Councilor Julian Smith and PASSED 9-0.

Mr. Atherton provided details on the wastewater treatment plant. He said through the phase I and II projects of the upgrade of the plant, it had performed very well. He said the pH violations were relatively new, and said pH was only one of several parameters that had to be monitored. He said the violation was not far below the 6.5 level. He said one of the main goals of Phase I and II was to position the Town to potentially hold off on having to do Phase III, advance treatment. He said the plant was performing well on its other requirements, and was removing ammonia. He said there were a lot of positive results at the plant from this, but an unfavorable one was the lowered pH. He noted this resulted from biological processes at the plant, as well as from lower pH water coming into the plant because of the water treatment plant.

He said when the pH issue came up in May, it was thought it would make sense, from a cost perspective, to do an internal recycling system, and said that was why it was included in the clarifier project. He provided additional details on the status of the plant, and said overall, the plant was operating exceptionally well. He said the Town was in a very positive position moving forward toward Phase III.

Mr. Atherton said he had no excuses concerning the clarifier except for the increase in the cost of concrete and site work.

Councilor Niman said he was very nervous about the way the Town was funding this, and said it would exhaust the wastewater capital reserve fund. He also noted the existing capital reserve fund for water would be dissolved as part of the proposed water agreement. He asked where the money would come from if something else went wrong with the system, and also asked what the probability was that something would go wrong, or that the EPA would say the Town did not meet some standard.

Mr. Beaudoin said the water capital reserve fund would give the money UNH had put into the fund back to them, and said the Town's remaining funds would remain in the fund. He said there was approximately \$160,000 in the fund, noting this was only for water projects. He said if something did come up that required more, they could bond the repairs.

Councilor Kraus said in that context, that meant Mark Morong would need to pay more for sewer and water.

Mr. Beaudoin said the money they got back from the State on the Clean Water grant would more than offset the bond payments. He provided details on this, and said there should be no actual impact on users.

Councilor Niman said he understood this, but said he wondered what the probability was that something else that would go wrong. He said they were giving away their insurance, and asked how worried they should be.

Mr. Levesque provided details about the amount of money available in the capital reserve account for the wastewater treatment plant.

Chair Sandberg explained that as Councilor Peter Smith had previously questioned in a point of order, although the motion authorizing the release of the \$50,000 in contingency money for the Packers Falls Bridge repairs was removed from the table, it was never voted on. He said this therefore needed to be done.

Councilor Peter Smith MOVED that the Town Council hereby adopts Resolution #2005-12 authorizing the release of the \$50,000 encumbered from the 2004 Council Contingency Fund to be used for the Packers Falls Bridge railing replacement project. The motion was SECONDED by Councilor Needell, and PASSED 6-3, with Councilors Kraus, Niman and Van Asselt voting against it.

IX. Adjournment

There was discussion on the need to continue the meeting.

Councilor Kraus MOVED to continue the meeting, and to reconvene on Thursday, September 15th, at 7:00 pm. The motion was SECONDED by Councilor Julian Smith, and PASSED unanimously 9-0.

The meeting ADJOURNED at 10:45 pm.

Victoria Parmele, Minutes taker