

D-R-A-F-T

DURHAM TOWN COUNCIL MONDAY, SEPTEMBER 19, 2005 DURHAM TOWN HALL – COUNCIL CHAMBERS

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

MEMBERS ABSENT: Karl Van Asselt

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 Kraus MOVED to approve the Agenda as submitted. Councilor Julian Smith SECONDED the motion, and it PASSED unanimously 8-0.

III. Special Announcements

No special announcements

IV. Approval of Minutes

August 15th, 2005

Councilor Julian Smith MOVED to approve the August 15th, 2005 minutes as submitted. Councilor Kraus SECONDED the motion.

Page 2 , bottom paragraph, should say “..about the fact that the entrance to her driveway that was impacted by road construction was repaired...”

Page 15 , motion at the bottom should say “The motion passed unanimously 9-0.”

Page 18, 1st full paragraph, should read “..2) including somewhat poorly drained soils”

Page 21, 7th paragraph, should read “...chose to not have conditional use...”

Councilor Julian Smith MOVED to approve the amendments to the August 15, 2005 Minutes. Councilor Kraus SECONDED the motion, and it PASSED unanimously 8-0.

The August 15th Minutes, as amended, PASSED unanimously 8-0.

V. Report of Administrator

- Administrator Selig said he was unable to attend Durham Day, but heard it was a wonderful day for residents. He thanked Nicole Moore for the excellent job she did in

organizing the event, and also thanked grill-master Neil Niman and other Council members, as well as various volunteer associations in Town who worked to make the day so successful.

- Administrator Selig said the continued Council meeting from September 15th would be continued to Wednesday, September 21, 2005. He noted that the School Board meeting, also scheduled for that evening, would be televised live while the Council meeting would be taped and aired at a later date.
- Administrator Selig said a blood drive was scheduled for September 19-22, 2005 between 10:00 and 4:00 pm at the Granite State Room of the MUB at UNH.

VI. Reports and Comments of Councilors

Councilor Niman said Durham Day was a great event and went smoothly. He thanked Nicole Moore for the outstanding job she did in organizing it, and asked if perhaps she could do it again in the future. He also thanked Town staff, especially the firefighters, for going all out to provide fun activities for kids.

Chair Sandberg thanked Councilor Niman for his work on the event.

Councilor Kraus noted Hazardous Waste Collection Day had taken place, and thanked all those who had participated. He stressed that citizens with household hazardous waste to dispose of should always avail themselves of this opportunity.

Councilor Carroll noted concerning Councilor Kraus's comments that she had read on the listserver that a Public Works Department staff person had recently attended a workshop on environmentally preferable products, such as products used to maintain machinery and clean offices. She said energy efficient materials were also covered at the workshop.

Councilor Carroll said it was very important that the Public Works Department be looking into these various materials, which were safe for people and the larger community, and said if everyone switched to such products, perhaps some day there wouldn't even need to be a Hazardous Waste Collection Day in Durham.

Councilor Needell said the next Planning Board meeting would be held on September 28, 2005, and would be a quarterly planning session, to cover issues that never seemed to get on the agenda because of other work the Board had to do. He said the Capital Improvement Plan and transportation issues were some of the things that would be covered at this meeting.

VII. Public Comments

Nate Smith, Gables Way, explained that he was the new UNH External Affairs Chair, and said he looked forward to working with the Council on issues relating to the student body and the Town. He provided details on current University initiatives to address some of these issues.

Chair Sandberg thanked Mr. Smith for coming to the meeting.

Bill Hall, 1 Smith Park Lane, spoke in detail regarding the University agreements. He said the kind of negotiating being done with the University was not working, and said the Town should go to court concerning several of the issues involved. He said there were significant problems with the agreement, and described in detail why handing over water infrastructure decisions to the University was unwise. He also spoke about problems with the fire agreement. He said the Town was in a position to deal with the University, but that dealing from a position of weakness was an absolute disaster.

Debra Lonigan, 2 Brown Road, Hampton Falls, said she had been closely following the dredging issue, explaining that her daughter was on the University's crew team. She said until the Council's recent motion concerning this issue, she had considered this a Town matter, but said she had now reconsidered this. She said whether they knew it or not, Councilors had the responsibility to be stewards of the Oyster River, which was a natural treasure.

She said it was difficult for her and others to see the river dying, and asked that the Council support the current effort, not necessarily to commit funds, but to untie the hands of those who were looking into this issue. She said they were just looking for a letter endorsing this further work.

Chair Sandberg said this issue had been postponed by the Council, but it was expected that it would come up again for closer view. He said the Town web site should be checked to see when this would happen. He said the Council looked forward to seeing something brought forward that addressed the issues raised at the last meeting.

VIII. Unanimous Consent Agenda

Shall the Town Council approve the special event permit application submitted by the UNH Campus Recreation Department requesting that a portion of Main Street be closed to conduct the annual UNH Homecoming 5K Road Race on Saturday, October 15, 2005?

Councilor Kraus MOVED to approve the Unanimous Consent Agenda. The motion was SECONDED by Councilor Julian Smith, and PASSED unanimously 8-0.

IX. Presentation Items

Amtrak Downeaster passenger train update - Patricia Douglas, Northern NH Passenger Rail Authority

Administrator Selig explained that Ms. Douglas had contacted the Town about providing this information to the Council.

Ms. Douglas presented each Councilor with a tee shirt celebrating the recent one millionth passengers on the Downeaster. She said the purpose of her presentation was to give a status report on the operation of the Downeaster.

She explained that the New Hampshire Passenger Rail Authority was formed to oversee restoration of passenger rail from Maine to Boston. She described the Authority's

relationship with Amtrak, and said the Downeaster operated as a guest over two railroad lines--Gilford Rail and the MBTA. She said in order to get train service up and running in this corridor, it took a lot of work and money to get the railroad bed, which was set up for freight trains, up to standards. She noted CMAC funding was used for this, and said of \$54 million in infrastructure improvements, \$21 million of it was spent in New Hampshire.

She said the approach was to start simple in terms of providing railroad service, and to build on that. She said the current four roundtrips per day were just the beginning, and said that as roads in the region became more congested, more and more people would come to depend on public transportation.

She said the Downeaster currently has a 42-45% cost-recovery ratio, which was very good. She also said securing dedicated funding over the long-term was a priority. She spoke in detail about CMAC funding and explained that the Downeaster would still qualify for CMAC funding through 2009. She said the plan over the long-term was for the Authority to purchase its own fleet equipment, and to add additional stations to the route. Ms. Douglas said one of the challenges was the ever increasing costs for fuel and steel.

Ms. Douglas also spoke about the development of inter-modal connections, where bus service and train service would interface at the same location. She said this was planned for Durham, involving a relationship with C&J Trailways, and said this would give the public and students more transportation choices. She said that if the one million passengers who had used the Downeaster had instead used their cars, the equivalent of 85 million miles would have been driven.

She said the Downeaster enjoyed an excellent customer service rating, but said more work on this was needed. She said New Hampshire was an important market, and noted that the number of commuters was increasing over time. She provided details on current plans to increase the level of train service in New Hampshire, noting that at present, there was only one peak hour train coming into Boston from New Hampshire.

She said instead of two train sets making two round trips per day, it had been determined that one of those trains could make three round trips. She explained that in order to do this, there needed to be a portion of track where trains, including freight trains, could get out of the way so trains could go around each other.

She said a \$6 million construction program was planned, with \$1.6 million of this to be spent in New Hampshire. She noted Council support of this had been requested the previous year.

Ms. Douglas concluded by explaining that the railroad had an important role to play in economic growth, quality of life, environmental protection, and energy conservation. She noted that Federal and state authorities were requiring that alternative transportation options be looked at, and explained that significant cost savings could come from this.

She thanked the Council for its support of the Downeaster, and asked that Councilors contact her if they needed further information.

In answer to a question from Councilor Kraus, Ms. Douglas said Guilford Rail Service was in charge of the train from Portland to Plaistow, and the MBTA was in charge from there to Boston. Councilor Kraus asked how fast the train traveled, and Ms. Douglas said the train went up to 79 mph. She said travel time had been reduced 15 minutes in the past year.

Councilor Julian Smith asked if the Downeaster had tried to encourage the University to suggest to incoming and existing students that they might consider living in Durham without cars and coming to UNH by train. He said there could be advantages to this for everyone.

Ms. Douglas said the University had been a fabulous partner, and did work with students on this. She noted that the availability of train service on campus solved a lot of problems.

Councilor Morong asked if there was any way to provide parking for commuters so the train would be more usable to residents.

Ms. Douglas said the University had long-term plans to open up parking spaces to the public, but noted her organization was basically a visitor in the communities it served.

Councilor Morong asked if her organization had communicated with the University concerning this, and Ms. Douglas noted again the University's long-term plans.

In answer to a question from Councilor Needell, Ms. Douglas said the Executive Council had some hesitation about approving funding for the addition of a fifth round trip, but said her organization had looked to address the issues that had been raised, and had found ways to work with other transportation providers to expand options.

Councilor Peter Smith noted the tenuous state of Amtrak, and asked Ms. Douglas how she saw the future, given this.

Ms. Douglas said her organization had long-term contingency plans, based on the tenuous state of Amtrak. She said Amtrak had been a fabulous partner, but was funded inappropriately. She noted that Amtrak had the right to operate over freight railroads, and said if it did cease to exist, these rights would have to be delegated to someone else. She said with Amtrak support, the Downeaster was looking to operate more autonomously.

Councilor Peter Smith asked where the proposed extension of service to Brunswick Maine stood.

Ms. Douglas said studies were being done on this, and that the preferred route would be over water in Portland. But she said it would be 4-6 years before that train was operating.

In answer to a question raised by Councilor Julian Smith, Administrator Selig provided details on the Depot Road parking area being developed at the former Craig Supply site. He said there would be spaces at that site designated for day trips, and said the Town was also working on a parking pricing plan to make it economical for daily riders to use the train instead of using a car.

Chair Sandberg thanked Ms. Douglas for her very informative presentation.

X. Unfinished Business

- A. **PUBLIC HEARING ON, AND ADOPTION OF RESOLUTION #2005-13** raising and appropriating an additional \$450,000 in the FY 2005 Capital Fund budget for repairs to the #2 clarifier and to correct pH issues at the Wastewater Treatment Plant, and **ADOPTION OF RESOLUTION #2005-14** requesting the Trustees of the Trust Fund transfer \$250,000 from the Capital Reserve of the sewer fund to the Capital Fund budget, account #07-5000-1000-450-05.

Administrator Selig provided a brief history on the issues surrounding the problems with the Wastewater Treatment Plant, including most recently the problems with the 2nd clarifier for the plant. He said it was determined that a new clarifier should be built.

He explained that although it had originally been estimated the replacement of the clarifier would cost \$700,000, unfortunately, the bids came in much higher at a price of \$947,000 with an additional cost of \$86,000 for the engineering services needed to finish the project.

He also spoke about the pH issue that had recently come to light concerning the Wastewater Treatment Plant and noted that the Public Works Department had asked Wright Pierce to include measures to address this in the bid for the new clarifier.

Administrator Selig said the issue that evening was that there was not sufficient money appropriated to undertake the project. He said it was not desirable for the plant to operate with only one clarifier, especially moving into winter months. He said the Council was being asked to appropriate an additional \$450,000 to do the work.

He provided an outline of project funding, explaining that \$250,000 would come from the sewer fund, and \$200,000 would come from bonding. He provided additional details on this, including how much of the cost would be covered by the University, and how much was expected to come from grant money.

Town Engineer Bob Levesque explained that he and Wright Pierce engineer Peter Atherton had put together an outline of compliance for the Council to review.

Mr. Atherton provided a detailed summary of issues currently being addressed at the Wastewater Treatment Plant. He noted improvements in zinc, copper, and ammonia levels at the plant, and provided details on the fact that the decrease in pH to below acceptable levels had resulted from improvements to other aspects of the system at the treatment plant, including the increased ammonia removal/nitrification. He noted that the pH level was not significantly below the desired 6.5 level.

He said the new clarifier would be an improvement in technology compared to the clarifier it replaced, noting among other things it was four feet deeper. He said it should perform better and met the most recent engineering guidelines.

He also provided details on the proposed pH improvements, explaining that the treatment system proposed would be a natural system that would allow internal recycling, and would not require input of chemicals.

Mr. Atherton provided details on the costs involved in this project. He said substantial completion of the project was expected to take approximately 150 days, with 270 days required for completion.

In terms of what lay ahead for the Wastewater Treatment Plant, Mr. Atherton said the Town was waiting to hear if the plant's permit would be issued. He said that when the Town embarked on the work on the plant, the goal was to show that tertiary treatment for the plant was not necessary. He said the Town was currently in a good position concerning this. He provided additional details on this, and said if advance treatment was required, there could be additional upgrades.

Councilor Needell noted that Mr. Atherton had said the replacement for the second clarifier was an improvement over the one it would replace, and asked for clarification concerning this.

Mr. Atherton said the clarifier that failed was 10 feet in depth, while the new one would be 14 feet.

Councilor Niman asked whether a 10 foot or 14 foot clarifier was used when the costs were calculated and Mr. Atherton said a 14 foot clarifier was used.

Councilor Kraus MOVED to open the public hearing on #2005-13 raising and appropriating an additional \$450,000 in the FY 2005 Capital Fund budget for repairs to the #2 clarifier and to correct pH issues at the Wastewater Treatment Plant. The motion was SECONDED by Councilor Julian Smith and it PASSED unanimously 8-0.

Richard Kelley, Stagecoach Road, asked Mr. Atherton if other communities on Great Bay had gotten updated permits from the Environmental Protection Agency (EPA), and also whether they were now being asked to do advanced treatment.

Mr. Atherton noted two reasons why advanced treatment standards would be required, and provided details on this. He said the one Durham faced was because of low effluent dilution.

Councilor Kraus MOVED to close the public hearing on RESOLUTION #2005-13 raising and appropriating an additional \$450,000 in the FY 2005 Capital Fund budget for repairs to the #2 clarifier and to correct pH issues at the Wastewater Treatment Plant. Councilor Julian Smith SECONDED the motion, and it PASSED unanimously 8-0.

Councilor Kraus MOVED to adopt RESOLUTION #2005-13 raising and appropriating an additional \$450,000 in the FY 2005 Capital Fund budget for repairs to the #2 clarifier and to correct pH issues at the Wastewater Treatment Plant. Councilor Julian Smith SECONDED the motion.

Councilor Kraus said he would like to have the opportunity to speak on this resolution after the vote was taken.

Chair Sandberg said if Councilor Kraus had concerns about spending this money, the Council would like to hear that before the vote was taken.

Councilor Kraus said that working through the mathematics, it appeared that the cost for total completion of the project was \$2,082,304. But he said the bid results were \$947,000. He provided additional details about the numbers before the Council, and said his purpose in bringing this up was to find out what the Town was actually paying for.

There was detailed discussion about the figures that had been provided to Councilors concerning the costs for repairs to the #2 clarifier and to correct pH issues. Some explanations were supplied by Mr. Levesque in response to questions from Councilors.

Councilor Peter Smith said the bottom line was whether to appropriate the funds. He said if the Council didn't vote for this, the Town ran a very major, unacceptable risk of trying to operate the Wastewater Treatment Plant with only one clarifier. He said if that clarifier should then go out, there would be a major crisis, including a health crisis. He noted that the University provided two-thirds of the waste treated by the plant.

He said he had mentioned at a previous Councilor meeting his concern about the 35% increase over the original engineering estimate. He said that came to \$350,000 to \$375,000, two-thirds of which would be paid by the University, and the rest of which would be paid by a minority of citizens in Town.

Councilor Smith said when this matter was brought before the Council to decide whether it would accept a negotiated settlement, it debated whether the settlement proposal was appropriate to enter into. He said the Council at that time was faced with the dilemma of having a virtual emergency situation, but also realizing that if it settled too rapidly, it might be giving up the opportunity for litigation.

He noted that at the meeting on this, there were two critical funding issues, the first being whether the Town would get the money it was told it would get from the New Hampshire Department of Environmental Services (NHDES) to help pay for a portion of the project. He said that piece seemed to be certain.

He said the other funding issue was how much was needed to complete the project. He said the Council was given the answer at the meeting in nonpublic session, and he then had asked if this was a solid figure, because the figure would determine whether he thought the Council should settle for the amount negotiated. He said he was told it was a solid figure, and provided additional details on the discussion at that time.

Councilor Smith said it hadn't turned out that way. He said the company technically had done excellent work for the Town in the past, and said he wasn't suggesting that someone had deliberately misled the Town on this. But he said the bottom line was that the Council got incorrect information, and said there had been negligence concerning this.

Councilor Smith said this situation did not cause him to not want to approve the resolution before the Council, again stating this would be irresponsible. But he said he wanted to make it clear that if the Council moved forward concerning this, this in no way waived, legally, the Town's right to move forward subsequently because of what he thinks was negligence in the information given. He said he would be looking for Wright Pierce to provide some assistance in resolving this matter. He said the bottom line was that the Town and University were stuck for approximately \$350,000, so for him, this matter would not end that evening.

Councilor Carroll asked Mr. Levesque if one of the reasons the clarifier failed was the fact that it was constructed in the winter, when there were problems with the weather.

Mr. Levesque said that was correct, noting the construction was done in freezing conditions.

Councilor Carroll asked how the situation would be different when the new clarifier was constructed.

Mr. Levesque provided details on this, including the fact that the area where the clarifier would be constructed would be completely de-watered this time. He said the construction company would have full responsibility concerning this.

Councilor Carroll noted the letter from Wright Pierce to Mr. Levesque which spoke about the quality of work done by Apex Construction, and said the Council would be looking for excellent results, not just satisfactory results.

Mr. Levesque said Apex Construction had done excellent work at the Wastewater Treatment Plant in the past, and said he was comfortable having the company do the work that was proposed.

Councilor Kraus said he agreed with Councilor Peter Smith's comments, but said that in contrast, he would speak against the motion, and would then vote against it. He provided details on the financing of the project. He said he was very dissatisfied with the entire process concerning the Wastewater Treatment Plant, providing details on this. He also said the presentation that evening was confusing.

There was additional discussion about the financial numbers provided to the Council on the project.

Councilor Needell said he planned to support the motion on the table. He said he agreed with Councilor Peter Smith that the work had to be done, and that it would be totally irresponsible if the work were not done. He said he also agreed with Councilor Smith's comments on the place the Town now found itself in financially, and how this had happened.

Councilor Morong said he also supported Councilor Peter Smith's concerns about the estimating process, and said he was not happy with it. But he said the cost figures made sense to him, and said he would vote in favor of the motion.

Councilor Julian Smith said he was satisfied with Councilor Peter Smith's analysis of the current situation, and also said he agreed that the cost figures made sense.

Councilor Niman said he agreed with what Councilor Julian Smith had said.

There was discussion about which was the correct draft of Resolution #2005-13, with Councilor Julian Smith explaining he had made some non-substantive corrections to the document. He said the draft on the table was the one the Council should be addressing.

Councilor Peter Smith said he would like to request that in a timely fashion, Administrator Selig explore this issue with Wright Pierce, and report back to the Council on this matter.

Chair Sandberg said that pending the results of this, the Council might enter into nonpublic session.

Councilor Needell said had not had a chance to read the revised draft so he could understand what these changes were.

Councilor Julian Smith said the changes were minor, and upon request, went through some of these changes.

Chair Sandberg recommended taking a five minutes recess so these changes could be clarified.

Following the recess, Councilor Julian Smith indicated the corrections he suggested.

Councilor Julian Smith MOVED to amend the draft of Resolution #2005-13 in the packet to include the corrections cited. Councilor Needell SECONDED the motion, and it PASSED unanimously 8-0.

The original motion as amended PASSED 7-1, with Councilor Kraus voting against the motion.

Chair Sandberg noted a two-thirds vote was required for this, so the motion was approved.

Councilor Julian Smith MOVED to adopt Resolution #2005-14 requesting the Trustees of the Trust Fund transfer \$250,000 from the Capital Reserve of the sewer fund to the Capital Fund budget, account #07-5000-1000-450-05. Councilor Needell SECONDED the motion.

Councilor Julian Smith MOVED to amend the Resolution #2005-14 in the packet to include the corrections cited.

Councilor Julian Smith provided these non-substantive changes, and said he believed they improved on the previous draft of the document.

Council Needell said the changes were good, but noted that procedurally, this was the correct

way to change the document.

The motion to amend PASSED unanimously 8-0.

The motion as amended PASSED 7-1, with Councilor Kraus voting against it.

- B. Shall Town Council authorize award of bid to Apex Construction of Chocorua, NH at a cost of \$947,600 for the replacement of the #2 clarifier at the Wastewater Treatment Plant and installation of an internal re-circulation system to increase pH, and award a construction phase engineering contract to Wright-Pierce Engineers of Topsham, Me at a cost of \$86,000 relative to the replacement of the #2 clarifier at the Wastewater Treatment Plant?

Administrator Selig asked that the two motions be taken separately.

Motion 1:

Councilor Needell MOVED to award a bid to Apex Construction of Chocorua, NH at a cost of \$947,600 for the replacement of the #2 clarifier at the Wastewater Treatment Plant and installation of an internal re-circulation system to increase pH. Councilor Julian Smith SECONDED the motion, and it PASSED 7-1, with Councilor Kraus voting against it.

Motion 2:

Councilor Julian Smith MOVED to award a construction phase engineering contract to Wright-Pierce Engineers of Topsham, Me at a cost of \$86,000 relative to the replacement of the #2 clarifier at the Wastewater Treatment Plant. The motion was SECONDED by Councilor Needell.

Administrator Selig said he had spoken to Mr. Atherton concerning the bid and about possible ways to proceed. He said concern was expressed to Mr. Atherton that the cost estimate had come in substantially lower than the bids that came in, resulting in a cost impact to the Town. He said he asked Mr. Atherton to think about whether Wright Pierce would be willing to work with the Town regarding the price or in some other way. He asked if Mr. Atherton wished to speak about the price that had been arrived at, or about possible ways to proceed.

Councilor Peter Smith said he would not object to having Mr. Atherton speak, but said whatever was said, this was not going to influence him personally to not vote for this contract. He said he believed there was a real problem here, but said this was not the moment to make it a more complicated situation rather than a less complicated one.

Chair Sandberg asked Mr. Atherton if he wished to speak to the justification for the cost of the project.

Mr. Atherton went through a detailed account of how the costs for the project were arrived at. He said Wright Pierce was as disappointed as others were with the bid results. He said his company felt a personal commitment to the Town of Durham, and was proud of the work that had been accomplished in working with the Town.

He provided additional details on how the process had unfolded, and said Wright Pierce felt it did base the estimate on recently bid construction costs. He noted the company's estimate could not guarantee what prices would be, but said it was realized that the Town's bottom line was that it did not anticipate having to spend this amount of money.

Mr. Atherton went through what the proposed \$86,000 would go toward, noting about \$56,000 was yet to be expended. He said Wright Pierce would be willing to provide additional engineering services if this was something the Town was interested in. He said this would not be done because the company did something wrong but because Wright Pierce was not part of getting the result the Town expected, and wanted to continue its relationship with the Town.

Councilor Niman asked if there was a reason why the Council had to vote on this motion that evening, or could perhaps explore what Mr. Atherton had suggested, and see what services Wright Pierce was willing to provide, and whether there was additional value to be gotten from this. He said if not, he would have to vote no on this motion.

Mr. Levesque provided details on the fact that this would be a significant setback, noting construction would be postponed for a month or more.

Councilor Needell said from what he had heard that evening, no one had argued that the \$86,000 figure was unreasonable.

Mr. Levesque said it was a reasonable contract, noting it had been reviewed and approved by NHDES, since the Town was looking for grant funding.

Councilor Needell said he didn't see why this matter should be coupled with other issues. He said the issue raised earlier about the prior process was a separate matter, and should remain that way.

Councilor Peter Smith said he agreed the issues should be separated. He said he had made the comments before Mr. Atherton spoke because he was concerned they all might go down the road of negotiations, which he felt would be a mistake. He said the issue before the Council was the \$86,000, and said additional negotiations should be handled separately. He also said he couldn't disagree more with the characterization that this situation was free of negligence. He said the Council was not told that the cost estimates were based on figures compiled in February-March when it was considering this issue in May. He said he believed the Town could have collected more money from the insurance company if it had had a figure that was significantly larger. He said he was very unconvinced, based on what Mr. Atherton had said, but said this issue should be put aside for the time being.

Councilor Kraus said he had no confidence in the engineering firm, noting it was open knowledge that the costs for materials were increasing. He said the whole process was flawed, and the Council should vote no on this motion.

Councilor Carroll said she had heard there had been a good working relationship with Wright

Pierce, and that the company had done good work for the Town. She said there was now a problem, which needed to be dealt with separately. She said Mr. Atherton had made an effort to say what could be done in the future. She said if the Council was ready to proceed with the project, it needed to vote on it.

The motion PASSED 6-2, with Councilors Kraus and Niman voting against it.

- C. **Continued Public Hearing on Ordinance #2005-06** proposing amendments to Chapter 175 “Zoning” of the Durham Town Code, Section #2005-06 (C) - Relative to the Shoreland Protection Overlay District, Section #2005-06 (D) - Relative to the Wetland Conservation Overlay District, and Section #2005-06 (E) – Relative to the Aquifer Protection Overlay District

Town Planner Jim Campbell provided detailed background on the proposed changes to the three overlay district provisions, as he had previously done before the Council.

Chair Sandberg pointed out that the public hearing on these zoning provisions had been opened previously, and continued.

Councilor Kraus MOVED to re-open the continued Public Hearing on Ordinance #2005-06 proposing amendments to Chapter 175 “Zoning” of the Durham Town Code, Section #2005-06 (C) - Relative to the Shoreland Protection Overlay District. Councilor Carroll SECONDED the motion, and it PASSED unanimously 8-0.

There were no comments from the public.

Councilor Kraus MOVED to close the public hearing on Section C - Relative to the Shoreland Protection Overlay District. Councilor Julian Smith SECONDED the motion, and it PASSED unanimously 8-0.

Councilor Kraus MOVED to re-open the continued Public Hearing on Ordinance #2005-06 proposing amendments to Chapter 175 “Zoning” of the Durham Town Code, Section #2005-06 (D) - Relative to the Wetlands Conservation Overlay District. Councilor Julian Smith SECONDED the motion, and it PASSED unanimously 8-0.

Beth Olshanksy, Packers Falls Road, said she had read the comments to the Council from Town Planner Jim Campbell and Planning Board Chair Richard Kelley in a letter submitted on September 14, 2005. She said she didn’t understand why the letter said Section 175-64 shouldn’t be consistent with Section 175-55 F. She provided details on this, and said she believed the wetlands overlay applied to all subdivisions.

There was detailed discussion with Mr. Kelley as to whether the Wetlands overlay applied to Conservation subdivisions. He said he stood by what he had said in the letter. He said that was why the language for 175-64 was left in tact within the wetlands overlay district.

Ms. Olshansky asked if the implication was that the wetland overlay district did not apply to conservation subdivisions

Mr. Kelley said not at all. He said the district applied to both, but the difference was in the calculation of minimum lot area and density. He said a conventional subdivision had one requirement, and a conservation subdivision had another.

Ms. Olshansky said if one went to Section 175-63, it said all lands within the wetlands overlay district were also subject to the provisions of an underlying zone, and where there was conflict, the stricter provision would apply.

Councilor Needell said he fully intended to carry this discussion on, noting that if nothing else, there was a semantic problem. But he said he wasn't sure the present meeting was the time to do this.

Chair Sandberg said it was important to get some clarification so when the Council did enter into deliberation, it would know what it was dealing with.

Ms. Olshansky said she had spoken with Steve Hundley of the Natural Resources Conservation Service about a model that had been developed as part of the discussion on somewhat poorly drained soils, and how they occurred on the landscape. She said he agreed it was just a model.

She said that while the model had shown that buffers would protect somewhat poorly drained soils, depending on the configuration of the land, they might not be protected. She said the model of a gently sloping hill appeared to make an assumption that the stretch between poorly drained soils and moderately well drained soils would only be equal to the buffer zone. She said this was a faulty assumption since nature did not necessarily reflect hypothetical models.

Ms. Olshansky noted a letter in which she had responded to comments from Chair Kelley and Mr. Campbell, dated September 19, 2005 (attached with this set of meeting minutes).

She said Mr. Hundley had agreed that on a R or RC lot, the 132,000 sq. ft. required for a lot of somewhat poorly drained soils in soils-based lot sizing would not be met if, in the Town's Conservation Subdivisions, 50% of the 150,000 sq. ft. minimum lot size (in the R and RC zones) was set aside for conservation. She said the 75,000 sq. ft. left for each lot would not be enough to support purification of septic effluent to meet EPA standards for somewhat poorly drained soil.

Councilor Needell said the presumption of this was that the entire lot was somewhat poorly drained, and said in this case there would be problems in permitting a septic system. He asked what rules covered somewhat poorly drained soils, to determine if this could even occur.

Councilor Julian Smith MOVED to suspend the 10:00 adjournment time (requires a 2/3 vote). Councilor Carroll SECONDED the motion, and it PASSED 7-1, with Councilor Kraus voting against it.

Planning Board Chair Richard Kelley said the issue they were skirting around was 175-55 F, which was not part of the wetland overlay district, so was not part of the present public

hearing.

In answer to a question from Chair Sandberg, Ms. Olshansky noted that the different provisions addressed the same issue, so it was hard to talk about one without talking about the other.

Chair Kelley said Ms. Olshansky raised a legitimate point about treatment of wetlands in conservation vs. traditional subdivisions. He said he would like to move on from a public hearing that had been closed, to one that was open.

Chair Sandberg said there was a consistency issue to consider concerning the different provisions that addressed wetlands.

Councilor Peter Smith said it was inevitable that there would be crossover between different provisions in the Zoning Ordinance.

Councilor Needell noted that the definition of somewhat poorly drained soils in the wetlands overlay provisions was different than the definition in the housekeeping amendments. There was discussion about this, and Mr. Campbell said it was the wetlands overlay definition that was correct.

Councilor Julian Smith MOVED to close the public hearing on Section D. Councilor Kraus SECONDED the motion, and it PASSED unanimously 8-0.

Councilor Kraus MOVED to re-open the continued Public Hearing on Ordinance #2005-06 proposing amendments to Chapter 175 “Zoning” of the Durham Town Code, Section #2005-06 (E) - Relative to the Aquifer Protection Overlay District. Councilor Julian Smith SECONDED the motion, and it PASSED unanimously 8-0.

There were no public comments.

Councilor Julian Smith MOVED to close the public hearing on Section E. The motion was SECONDED by Councilor Kraus, and PASSED unanimously 8-0.

- D. **Continued Deliberation 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

Chair Sandberg suggested not hearing Item C that evening.

Councilor Kraus MOVED to postpone deliberation on Sections C, D and E until after completing deliberation on Sections A and B. Councilor Julian Smith SECONDED the motion, and it PASSED 8-0.

***Councilor Kraus MOVED to amend the agenda to move to Item X E at this time.
Councilor Julian Smith SECONDED the motion, and PASSED unanimously 8-0.***

- E. Action on Ordinance #2005-09 Amending Chapter 153 “Vehicles and Traffic”, Section 153-49 “Parking Prohibited Certain Hours” by allowing residents to obtain parking permits through the Police Department for parking, overnight parking, and/or Temporary Overnight Parking in specified sections of municipal parking lots.

Administrator Selig provided a detailed background on this issue.

Councilor Kraus MOVED to adopt Ordinance #2005-09 Amending Chapter 153 “Vehicles and Traffic”, Section 153-49 “Parking Prohibited Certain Hours” by allowing residents to obtain parking permits through the Police Department for parking, overnight parking, and/or Temporary Overnight Parking in specified sections of municipal parking lots.

The motion was SECONDED by Councilor Julian Smith.

Councilor Needell asked if UNH was a “Durham organization”, as referred to in the Ordinance.

Administrator Selig provided details on the kinds of organizations this Ordinance was intended to address.

Councilor Needell asked if there was a particular reason why there were two categories of organizations. There was additional discussion about this.

Councilor Peter Smith proposed two amendments to the motion on the table.

Councilor Peter Smith MOVED to amend the motion to say “Jackson’s Landing Parking lot” on page 3, under of the proposed revised ordinance. The motion was SECONDED by Councilor Julian Smith and PASSED unanimously 8-0.

Councilor Peter Smith MOVED to amend the motion to strike the period and use a comma under the Parking Prohibited Column on page 3, and to add “pursuant to regulations adopted by the Town Administrator”. Councilor Julian Smith SECONDED the motion.

Councilor Peter Smith said the Town did not have, as part of the Town Charter or ordinances, a global administrative procedure act establishing who was given power to enforce regulations that had the force of law. He said the proposed language therefore needed to be added to avoid the legal defect.

The motion to amend the original motion PASSED unanimously 8-0.

Administrator Selig asked if what Councilor Peter Smith had recommended concerning the Jackson’s Landing parking lot should also apply to the Depot Road and Town Hall parking areas.

Councilor Peter Smith said the reason he hadn't done this was that he hadn't seen the regulations concerning these. But he said he agreed this would be appropriate.

Councilor Peter Smith MOVED to add on page 3 “pursuant to regulations adopted by the Town Administrator “for the Municipal Parking Lot, Depot Road, and the Municipal Parking Lot on Newmarket Road. Councilor Kraus SECONDED the motion.

Councilor Needell asked if Councilors didn't like these regulations, what the process was for changing them. There was discussion about this to the effect that such regulations may be amended at any time by the Administrator.

The motion as amended PASSED unanimously 8-0.

- D. **Continued Deliberation 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

Councilor Kraus noted it was late in the evening, and also said it would be prudent to discuss all the Zoning Ordinance Sections at one meeting.

There was detailed discussion about how to proceed, in terms of when to meet, and in what order to address the UNH agreements and the Zoning Ordinance revisions. It was agreed to continue the meeting until September 26th, if Item D on Sections A and B were not heard at the September 21st meeting.

Councilor Carroll asked if Councilors would be dealing with the issue of the Wiswall Dam fish way. She said she could not attend the presentation the following evening on this, but said it was important that Councilors be able to keep up with such issues. Councilor Julian Smith said that meeting would be televised live.

Councilor Kraus left the meeting at 10:47 pm.

Councilor Morong MOVED to adjourn the meeting. Councilor Julian Smith SECONDED the motion, and it PASSED 7-0.

Adjournment at 10:50 pm

Victoria Parmele, Minutes taker