

This set of minutes was approved at the February 6, 2006 Town Council meeting.

**DURHAM TOWN COUNCIL
MONDAY, JANUARY 9, 2006
DURHAM TOWN HALL – COUNCIL CHAMBERS
7:00 PM**

MEMBERS PRESENT: Chair Malcolm Sandberg; Councilor Niman; Councilor Peter Smith; Councilor Kraus; Councilor Morong; Councilor Needell; Julian Smith; Councilor Van Asselt (arrived at 8:55 pm)

MEMBERS ABSENT: Councilor Carroll

OTHERS PRESENT: Town Administrator Todd Selig

I. Call to Order

Chair Sandberg called the meeting to order at 7:02 PM.

II. Approval of Agenda

Councilor Julian Smith MOVED to approve the Agenda as submitted. The motion was SECONDED by Councilor Peter Smith, and PASSED unanimously 7-0.

III. Special Announcements

There were no special announcements

IV. Approval of Minutes

November 28, 2005

Councilor Morong MOVED to approve the November 28, 2005 Minutes. The motion was SECONDED by Councilor Julian Smith.

Page 1, 2nd paragraph under II, should say “..Wednesday, November 30th...”

Page 9, 6th paragraph, should read “..was that it was not the Council’s responsibility...”

Page 14, Councilor Needell noted that the motion on this page was not amending the motion to pass the Budget, and said his concern was that someone reading the minutes in the future could be confused about this.

There was discussion about this by Councilors, but no change was made to page 14.

Councilor Julian Smith MOVED to approve the amendments to the November 28, 2005 Minutes. Councilor Kraus SECONDED the motion, and it PASSED 6-0-1, with Chair Sandberg abstaining because of his absence from the November 28, 2005 meeting.

The November 28, 2005 Minutes as amended PASSED 6-0-1, with Chair Sandberg abstaining because of his absence from the November 28, 2005 meeting.

November 30, 2005 (Continued meeting of 11/21/05)

Councilor Kraus MOVED to approve the November 30, 2005 Minutes as submitted. Councilor Morong SECONDED the motion.

Page 12, 7th paragraph, should read “..there seemed to be a lot of discretion...”

The motion PASSED 5-0-2, with Councilors Peter Smith and Needell abstaining due to absence from the November 30, 2005 meeting.

December 5, 2005

Councilor Julian Smith MOVED to approve the December 5th, 2005 Minutes as submitted.. The motion was SECONDED by Councilor Kraus.

Page 1, should indicate Councilor Morong was absent from the meeting.

Page 7, 2nd paragraph from bottom, should read “University of New Hampshire Student Senate External Affairs Chairman Nate Smith...”

Page 11, the vote in the motion at the bottom of the page should read 6-1.

Page 13, the vote in the 1st motion on the page should read 2-5; the vote in the 2nd motion on that page should read 1-6.

Page 14, the vote in the motion toward the bottom of the page should read 6-1.

Page 15, the vote in the 1st motion on the page should read 3-4; the vote in the 2nd motion on the page should read 0-6-1.

Page 16, the vote in the 1st motion on the page should read 5-2; the vote in the 2nd motion on the page should read 1-6.

Councilor Kraus MOVED to approve the amendments to the December 5, 2005 Minutes. The motion was SECONDED by Councilor Julian Smith, and PASSED 6-0-1, with Councilor Morong abstaining because of his absence from the December 5, 2005 meeting.

The December 5, 2005 Minutes as amended PASSED 6-0-1, with Councilor Morong abstaining because of his absence from the December 5, 2005 meeting.

V. Report of Administrator

Administrator Selig provided the following updates:

- The Town has signed an agreement with the Durham Village Garage whereby the Garage would rent 14 parking spaces at the far end of the Town Office lot, at \$550 per month. This is part of the Town’s plan to make improvements to the parking lot and to generate revenue. The agreement also supported local business by providing needed parking. The Garage will plow its parking area, and said signs will be installed to indicate these spaces were permanent parking.

- The Town received a finalized agreement from the State for another two years to rent the space in the Durham Historical Building to the Durham District Court. This rent brings \$30,562 in revenue into the Town.
- Code Enforcement Officer Johnson is moving forward to enforce dumpster violations. The Town's Solid Waste Ordinance requires screening of dumpsters, and Mr. Johnson has written a letter to violators, and would be following up on them.
- Administrative Assistant Jennie Berry is looking for a photo for the cover of the 2005 Town Report. Anyone with good ideas concerning this should contact her at the Town Hall.
- The filing period for local elected offices runs from 8:00 AM, Wednesday, January 25, 2006 until 5:00 PM, Friday, February 3, 2006. The following elected offices had terms that expired in 2006:
Town Council for a three-year term (3 positions); Library Trustees for a three-year term (2 positions); Moderator for a two-year term; Supervisor of the Checklist for a six-year term; Supervisor of the Checklist for a four-year term; and Trustee of the Trust Fund for a three-year term.
Anyone interested in finding out more about any of these important local elective positions should contact the Town Offices at (603) 868-5571.

- Administrator Selig reviewed the issue brought before the Council at a previous meeting as to whether transfer station employees should be allowed to wear shorts in the summer. He said he had met with transfer station staff about this, and they had told him this was not an issue for them. He said only one of the three individuals would actually like to wear shorts. Administrator Selig said he had also looked into whether this was appropriate from a safety point of view, and said he had concluded that wearing shorts was unsafe in this situation. He said pants provided better protection for employees, which kept insurance costs down, and also meant less lost time. He also noted that transfer station staff said they would be interested in wearing 100% cotton pants, rather than cotton/polyester pants.
- Town Engineer David Cedarholm recently met with NHDES on a number of issues regarding the Wiswall Dam and Lamprey River. Administrator Selig provided background on these issues, noting that it had generally been agreed that a fishway should be constructed so fish could swim upstream around the Dam, and said the design for the fishway was currently being developed.

He said the Town was finalizing an agreement with the consultant to address the structural integrity issues with the Dam. A second issue concerning the Dam is the impoundment behind it. Administrator Selig provided details on the fact that the Town was currently allowed to drawdown the impoundment by only six inches.

He said that for over a year, the Town had suggested to NHDES that it should be allowed to drawdown the impoundment by 18 inches, since there was no data to support the 6-inch limitation. He said that in-stream flow staff at NHDES had that day said that while there was no substantive evidence to show that an 18-inch drawdown would be harmful, they pointed

out that the Town had agreed some years back that a 6-inch drawdown was acceptable. He said the Town had since then re-thought that restriction, because it constrained the extent to further develop the Town, both on the University campus and in the Town proper. He provided details on this.

Administrator Selig said NHDES staff had said that in order to amend that, the Town needed to show what the impacts of the additional drawdown would do to wetlands and other riparian habitat upstream.

Administrator Selig explained that the impoundment would have to be drawn down two times as part of the process of repairing the dam. He said NHDES had suggested that the impacts of these temporary drawdowns could be studied, and if there were no substantive impacts on riparian habitat, his sense was that the agency would be very open to re-opening that restriction, and making some changes.

Administrator Selig also said the State was looking at the requirements in the Town's 401 Water Quality Certificate. He said the State was developing in stream flow rules for the entire stretch of the Lamprey River, a process mandated to be completed by 2007. He said it was especially important that Durham establish a drawdown level for the Wiswall Dam it felt was appropriate, and wasn't harmful to the ecosystem, before the establishment of these rules in 2007.

He said the meeting with NHDES had been productive, and said the Town Engineer was continuing to do research on this to be sure the Town had a plan in place, going forward. He said if the Council was interested in getting additional information on the in stream flow rule requirements, it could schedule a full presentation by the Town Engineer on the history of the 401 Certificate, and steps the Town might take concerning this.

Councilor Peter Smith asked what the funding source for the report on the impoundment would be.

Administrator Selig said at present, NHDES was suggesting that the Town would have to pay the entire cost for the report.

Councilor Smith asked if, under the current arrangements with the University, the answer would be the same.

Administrator Selig said he thought UNH might want to share in the cost of the report, because the issue affected them as well, but said he hadn't looked into this yet. Councilor Needell noted that the original 6-inch drawdown restriction wasn't established scientifically, but was now codified. He questioned the idea that Durham would now have to counter this with scientific information. He said he hoped the Town wouldn't have to go overboard with this analysis, and that it wouldn't be tremendously costly.

Councilor Needell also asked that the Council be provided with more information on the in-stream flow rules, stating that it was not clear how these rules related to the drawdown issue, now and in the future.

Administrator Selig said there no sense yet of what the cost of this analysis would be. He also said Town staff would work with the Conservation Commission to be sure it was comfortable with how the Town should proceed.

VI. **Reports and Comments of Councilors**

Councilor Niman said the Jackson's Landing Committee had met that day, and said members had shared their ideas for the site. He said the Committee would be holding a public forum in February, and he invited members of the public to express their own ideas for the site at that time.

Councilor Peter Smith asked if there had been any discussion on the wishes of the Committee concerning the agreement on Jackson's Landing the Town would be signing with the University.

Councilor Niman said this issue was not on the agenda, and didn't come up for discussion.

On another issue, Councilor Niman noted some current House bills in Concord that were relevant to Durham, including one that would require the University to reimburse the Town for property it leased for non-educational purposes. He noted the bills were being brought forward by State representatives from Plymouth.

Chair Sandberg said House Bill 1679 would amend the current State statute that prohibited real property owned by the University from being taxed. In response to a comment from Councilor Niman, he said the essence of this bill was something that had been supported by Representative Marjorie Smith, as well as several members of the Council, for a long period of time.

Councilor Niman said if other Councilors agreed, he thought there would be some value in discussing this issue under Other Business, and in considering the idea of publicly supporting this bill.

Chair Sandberg said he personally would be delighted to add this item to the Agenda under New Business.

There was discussion about this, and Councilors agreed to discuss this matter under Other Business.

Councilor Julian Smith said members of the public watching the meeting should take special note of the fact that the Library Board of Trustees would soon have two vacancies. He explained that the two most senior members of the Board would not be standing for reelection, and said that because the next few years would be very busy ones for the Board of Trustees, some really need candidates were needed to fill these vacancies.

Councilor Needell said the School District would be holding a hearing on the 2006 School Budget the following evening, and provided details on this. He said the meeting should be of interest to the Council and other residents of the Town.

Public Comments

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

VII. Presentation Item - Overview of efforts to improve the Longmarsh trail - Durham Parks and Recreation Committee

Administrator Selig said the Committee had been very active concerning the idea of making improvements to the Longmarsh trail, and noted there was some fabulous open space available to the public in this area. He introduced John Parry, Chair of the Parks and Recreation Committee, to speak about the grant proposal.

Mr. Parry noted that most people didn't realize that a lot of the Town's recreational properties had been accurately mapped, and that these maps were available for downloading on the Town web site. He said he was present to describe the grant application that had been prepared for the project, noting that Committee member Jane Crooks was also present concerning this.

He said the application was entitled the Longmarsh Trail Improvement project, and said it was prepared by a trails subcommittee, which included George Thomas, Beryl Harper, Jim Allen, and Ken Andersen, and which was assisted by UNH student Shawn McLaughlin. Mr. Parry provided details on the project, explaining that its main purpose was to construct footbridges across portions of the Longmarsh Road/trail that had become impassible for various reasons. He noted that the road stretched from Durham Point Road to Route 108.

Mr. Parry said two kiosks would be prepared and placed at each end of the trail, and also said maps of the trail would be developed. He described the location of the trail and surrounding Town roads in detail, and also explained how the footbridges made with cedar logs and hemlock planks, would be placed.

He explained that the State Division of Parks, Bureau of Trails was being asked to provide grant funds, which originated from the federal government. He said the Committee was applying for \$9,450 in grant money, \$6,184 of which would be matched in in-kind services by the Town, and noted that labor valued at \$2,000 would come from volunteers. He explained that there were several partners in this effort, including Durham Boy Scouts, the Public Works Department, the Parks and Recreation Committee, and the Conservation Commission.

He said the grants would be awarded in the spring, and said if the Town got the funds, work would commence in early summer. He said the Town would have until September of 2008 to complete the project.

Councilor Kraus said he would like to endorse the comments made by Councilor Julian Smith in an email, relative to the a distinction between what would be a trail, and a Class VI road. He noted he lived in this area, and had been on Longmarsh Road many times, and said there was a distinction between the Class VI road, and wondered if this was another trail running somewhat perpendicular to the road. He said it was confusing in reading this, whether they were talking about the road or the trails branching off the road. He said upgrading a road to be a trail was a curiosity to him.

Ms. Crooks said the footbridges were located in the area where the beaver dams were built, providing details on this, and said they were not located on the Class VI road.

There was discussion by the Council on the roadway in question, and whether it was a Class VI road or a trail. There was clarification that the footbridge in question would actually be on flooded sections of the Longmarsh Road right-of-way.

Chair Sandberg asked if the Class VI portion of the road would be passable by a 4-wheel drive vehicle, noting that one could drive through this area many years ago, before beavers had flooded it. He asked if the trail construction would in any way hinder the ability of firefighting apparatus to get into the backcountry, if there were a forest fire.

Ms. Crooks said this hadn't been explored as part of this project, but noted they couldn't discuss this issue at the present time.

Councilor Needell said there was no question to him that this was a Class VI Road and that the construction was being done on Longmarsh Road, and that it was not being done on the perpendicular trails. But he said the road was impassable at the present time.

Administrator Selig said the distinction was that a Class VI road had a very specific definition. He said although one might not look at Longmarsh Road that way right now, it was a Town right of way. He said his understanding was that these improvements were along what was at one time a Class V road, which became a Class VI road, and was now essentially a walking path. He said the improvements being sought with the grant were minimal, to make the area passable.

Councilor Julian Smith said the duckboards would provide something solid for at least one set of wheels on emergency vehicles. He said he was very supportive of the application, and said he would provide Mr. Parry with suggestions for making the application a bit more precise.

Administrator Selig asked what kind of feedback the subcommittee had gotten from people who might provide in-kind services, or from landowners abutting the trail.

Ms. Crooks said she had sent out letters to the abutters, and had heard back from three. She said one abutter had objected because of concerns it would create more traffic in the area, and parking problems. She said this person didn't like the proposed sign for the trail either.

Administrator Selig asked for details on parking that would be available for people using the trail.

Ms. Crooks provided details on parking that would be available on the Longmarsh Road side as well as the Durham Point Road side of the trail.

Councilor Needell said he wholeheartedly endorsed the proposed project, noting that it did not involve any funds to be provided by the Town. He said he hoped the Parks and Recreation Committee would be asking for volunteers to help with construction of the footbridges, and Ms. Crooks said it would be.

Mr. Parry said this was truly a gorgeous area, with mature forest and a lot of history. He said it would be an asset to the Town to open the area up a bit more and let people use it.

Ms. Crooks said there were a lot of old stone quarries in this area, noting there was a beautiful area where there was a seven-foot-long stone bridge.

Councilor Peter Smith asked if it would help if the Council passed a motion endorsing the project, for purposes of the grant application.

Administrator Selig said he didn't think this was necessary, and said he was very comfortable with the project. He said the purpose of the presentation was to make sure other were comfortable with it.

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

Shall the Town Council approve and sign the Warrant for the March 14, 2006 Town Election?

Councilor Kraus MOVED to approve the Unanimous Consent Agenda item. The motion was SECONDED by Councilor Julian Smith, and PASSED 7-0.

It was agreed that Councilors could sign the paperwork on this at some point in the meeting.

IX. **Committee Appointment**

Shall the Town Council appoint Robin Lynn Vranicar, 19 Riverview Road, as an alternate member to the Conservation Commission?

Ms. Vranicar provided details on her educational background, noting she had been an art major, but had done work for the Natural Resources Dept. at UNH. She described her professional experiences in drafting and surveying, as this related to the needs of the Conservation Commission.

Councilor Kraus said the Council appreciated that Ms. Vranicar had stepped forward to serve, and said her skills should be useful to the Town.

Councilor Needell asked if this was a recent vacancy to the Conservation Commission, and there was discussion on this. Councilor Needell said he remembered that the previous April there were more applicants than positions available on the Commission, and he asked if there was a process to keep track of the people who didn't get on at that time and keep their applications open, in case there were future openings.

Administrator Selig said there was no formal procedure for this, and said the Town relied on applicants coming forward again, or for the Conservation Commission to forward names of potential applicants to Town staff. He said he had no knowledge as to whether those people Councilor Needell had referred to were still interested in the positions, and also said he didn't know if the Commission had reviewed the application submitted by Ms. Vranicar.

Councilor Needell apologized to Ms. Vranicar for the inconvenience, but said he would like to recommend postponing action on this item until the Council could get comments from the Conservation Commission on her application, and could determine if the previous applicants were interested in filling the current vacancy.

Councilor Peter Smith said there had tended to be an overabundance of applicants for the Conservation Commission, and said he remembered that 2-3 people were not chosen the previous spring. He said it was appropriate to go back and notify them, although noting that one could also take the position that it was their responsibility to check the Town website about future openings.

Councilor Kraus said he found this conversation very awkward. He said the opening had been posted, and said if people were vitally interested in filling it, they would come forward. He said it was unfortunate that Ms. Vranicar would be run over because of a procedural concern that he personally did not share.

Councilor Niman said he felt that the practice Councilor Needell had outlined made sense to use in the future. But he said Ms. Vranicar was qualified for the position, and said he believed the Council should therefore go forward with this present appointment.

Chair Sandberg said the opening had been posted on the Town website and on DCAT. He said if a person who had applied for the previous openings had asked that his/her application remain active, that would be one thing. But he said the process being suggested could set a bad precedent, and could get the Town into problems it didn't need.

Councilor Julian Smith MOVED to appoint Robin Lynn Vranicar as an alternate member of the Conservation Commission with a term expiration of April 30, 2006. The motion was SECONDED by Councilor Kraus, and PASSED 6-1, with Councilor Needell voting against it.

X. Unfinished Business(NLT 8:00 PM)

A. PUBLIC HEARING AND ACTION relative to the additional amendments made by the Durham Planning Board to Ordinance #2005-06, Section 2005-06 (A) "to address questions with prior amendments" of the Durham Zoning Ordinance

Administrator Selig provided brief background on the deliberation process the Council was going through concerning the proposed Amendments to the Zoning Ordinance. He said the Council had previously suggested some modifications to Section A, and had then remanded this Section back to the Planning Board. He said the Board had addressed these suggested modifications, had then held a public hearing on the proposed changes, and Section A was now back before the Council.

Administrator Selig noted that Section E – concerning the Aquifer Protection Overlay District provisions, had already been approved by the Council.

He said if there were no further changes the Council would like to make to Section A, the Council was free to adopt it. He said the Council had recently remanded Sections B, C, D, F and

G back to the Planning Board, and said the Board would address these sections at its two meetings in January, and would then refer them back to the Council for public hearings and final action

Councilor Kraus MOVED to open the public hearing on the additional amendments proposed by the Durham Planning Board to Ordinance #2005-06, Section 2005-06 (A) “to address questions with prior amendments” of the Durham Zoning Ordinance. Councilor Julian Smith SECONDED the motion, and it PASSED unanimously 7-0.

Beth Olshansky, Packers Falls Road, thanked the Council and the Planning Board for the hard work they had done on Section A. She said she was very pleased that the language on calculation of usable area was restored to its original form, with somewhat poorly drained soils put back in as being excluded from this calculation. She said she had been glad to see the Council take a stand for these environmental protections.

Ms. Olshansky said one area that still jumped out was under Section 175-55 E concerning minimum contiguous area. She noted she had not witnessed the Planning Board’s recent discussion on this. She said that based on input from the Council, the recommendation now was that it should apply only to conventional subdivisions, and said she was trying to understand this. She said there were some protections for conservation subdivisions that wouldn’t exist anymore if this provision were changed. She said she didn’t know if the rectangular shape idea existed anywhere in the conservation subdivision provisions.

Ms. Olshansky also questioned the language on non-wetlands in the revised Section 175-55 E. She said the wording had previously been “..rectangle of useable area..”, but was now “..rectangle of non-wetland lot area..”

Mr. Campbell said the provision as originally written applied to both conservation and conventional subdivision, but the Planning Board had subsequently recommended removal of the section. He explained that most recently, the Council had felt that the wording needed to be kept at least for conventional subdivisions.

He said 175-55 F talked about contiguous area within a conservation subdivision, and also said the subdivision regulations complemented the conservation subdivision portion of the Zoning Ordinance. He said the resulting analyses required would show what the isolated parcels were, and through this process, the Planning Board would determine where the primary, and secondary conservation areas were.

Mr. Campbell said the Planning Board had now changed the provision to only address conventional subdivisions, but in doing this, wanted to make it clear that there still needed to be a certain amount of lot area that consisted of a rectangle of non-wetland area - defined as poorly drained and very poorly drained soils. He provided details on this.

Councilor Needell said this was a compromise, reached over a fairly long period of time. He said when the Board was originally asked why it had chosen to include wording on a rectangle in this provision, the discussion revolved around conservation subdivisions. He said after a lot of discussion, the Board decided that all the other constraints under conservation subdivision were

sufficient, and that this language simply complicated things. He said the Board decided to remove this paragraph, but it was the Council that said the wording should be in place, for conventional subdivisions.

Ms. Olshansky asked when Mr. Campbell said the Board would consider this as part of determining primary and secondary conservation land, what regulation determined that the Planning Board would do this?

Mr. Campbell provided details on this.

Councilor Kraus MOVED to close the public hearing on the additional amendments proposed by the Durham Planning Board to Ordinance #2005-06, Section 2005-06 (A) “to address questions with prior amendments” of the Durham Zoning Ordinance. Councilor Julian Smith SECONDED the motion, and it PASSED unanimously 7-0.

Councilor Julian Smith MOVED that the Town Council adopt Ordinance #2005-06, Section 2005-06 (A) “to address questions with prior amendments” of the Durham Zoning Ordinance. Councilor Needell SECONDED the motion.

Councilor Julian Smith provided a minor punctuation correction on page 1, suggesting that the comma after conservation under Usable Area should be removed. He also asked whether “floor area” in 175-56 A.II.1. on page 6 was referring to the total floor area of a house, or the footprint area.

Mr. Campbell said he believed this referred to the total floor area, not the footprint.

Councilor Peter Smith noted that there had been 13 items in the May 11th draft, and provided details on this. He also pointed out that he had previously asked for further examination of the relevant statutory provisions concerning the excavation issue, and noted that this land use had now been removed altogether from the Ordinance.

Mr. Campbell said that was correct. He said the Planning Board had previously recommended that excavation or mining be allowed in the Rural District, but had taken the Council’s comments under advisement, and said he was in the process of looking at model excavation regulations. He provided details on this, and said in the mean time, it was not included in the Ordinance.

Councilor Peter Smith provided details on the Council’s position on this previously, noting what he was now hearing was that provisions concerning excavation were a work in progress. He said in the meantime, if these Zoning amendments were passed, the bottom line was that until something else came before the Council, excavation was a land use that could not be carried out anywhere in Town. He said he wondered whether the Board would get some new provisions to the Council quickly, stating that otherwise, the Town would be in some jeopardy concerning this.

Mr. Campbell said the plan was to get something to the Council fairly quickly, after the current Zoning amendment process was completed.

Councilor Needell noted that the current Zoning Ordinance, without the proposed amendments, did not allow excavation in Durham either. He also said the Board was not quite ready to fix the problem.

The motion PASSED unanimously 7-0.

Chair Sandberg thanked members of the Planning Board, members of the public, and Councilors for their hard work on Section A. He said the Council looked forward to an expeditious consideration of the remaining Sections of the Ordinance in the next few weeks. He said if the Planning Board completed its work on some of the Sections on Wednesday, it could send these onto the Council for its next meeting, so it didn't get all of the Sections at once.

B. RESOLUTION #2006-01: Town Council approval of the FY 2006 water and sewer rates, effective January 1, 2006

Administrator Selig said the projected water rate was \$2.74 per hundred cubic feet of metered water usage, and the projected sewer rate was \$4.75 per hundred cubic feet of metered water usage.

He also said there was a request for the Council to transfer 5% of the Town's Water User Fees and 100% of the Town's Water Entrance/Connection Fees to the Water Equipment Capital Reserve Account. He said there was also a request for the Council to transfer 5% of the Town's Sewer User Fees and 100% of the Town's Sewer Entrance/Connection Fees to the Sewer Equipment Capital Reserve Account.

Councilor Needell MOVED to adopt Resolution #2006-01, a resolution setting the water and sewer rates for FY 2006, effective January 1, 2006. The motion was SECONDED by Councilor Kraus, and PASSED unanimously 8-0.

Recess from 8:45-8:53

XII. New Business

A. Other Business

Discussion on Council support of House Bill #1679 – An Act relative to the taxation on nongovernmental uses of university system property.

Councilor Niman said his understanding was that doing something similar to what was this bill was designed to do was next on Administrator Selig's agenda for discussion with the University.

Administrator Selig said that was correct, and said he would be looking specifically at the Whittemore Center and its impact on Durham.

Councilor Niman said he didn't think the analysis should be restricted to activities at the Whittemore Center, providing details on why other University properties like Holloway Commons and the NE Center should also be considered. He said it would seem to him that this Bill would be something the Council should support.

Councilor Van Asselt arrived at the meeting at 8:55 pm.

Administrator Selig said the Town had pursued this issue in court a number of years ago after the University had contracted with Barnes and Noble to manage the bookstore. He said the Town felt it could issue a tax bill, but the Superior Court struck this down, stating that as long as the function had some correlation to the inherent mission of the University, it was exempt from taxation.

He said in recent discussions with the University, he had raised the issue once again regarding the bookstore, fast food, and other sales in the MUB, noting the Town's feeling was that these businesses directly competed with the taxable entities in the downtown area, so it was fair game to tax them. He said the University said those services were inherent in its mission, so was not willing to talk about those types of activities.

Administrator Selig said he had pressed hard concerning the use of the Whittemore Center, explaining that it was hard for the University to justify things like monster truck rallies as being part of its mission. He said he had not spent any time studying this bill, but certainly could do that, and have a fruitful discussion on it.

Councilor Needell said on the surface, it seemed that this bill was strictly enabling legislation, and wouldn't impede anything else the Town might be trying to do. He provided details on this, and said all this did was weaken the existing RSA, to strengthen the Town's position in the future if it made a claim on something.

There was discussion that the argument would come in under the nongovernmental purposes aspect, rather than whether something was rented or not.

Councilor Peter Smith said there were several possible taxes, and items that could be taxed. He said he was reading this bill, as written, as directing itself specifically at property taxes. He noted the Council had spoken about several properties the University owned, which were being utilized by some other entity, but had nothing to do with the core function of the University.

He said those entities were transmission towers for cell phones, one on Route 4, and one on Strafford Ave. He said his understanding was that the University had agreed that for those properties, a provision in the lease was that the entity would have to pay any property taxes assessed. He said as he understood it, the bill would go to the renter, not the University, and said he believed the University had agreed to this.

Administrator Selig said that was correct.

Councilor Smith asked if tax bills had been sent to those entities, and if so, if the tax bill had been paid

Administrator Selig said the bills had been sent, but did not have specifics on whether they had been paid.

Councilor Smith received clarification that there was no reason to believe that the private renters were resisting paying taxes.

He said the second area under consideration for taxation was the series of real estate properties owned by the University being rented out to miscellaneous people to live in, which was not student housing. He asked what the position of the University and the Town was concerning these properties.

Administrator Selig Town said the Town had been unable to get a list of those properties until recently. He said the University had indicated that as leases expired, it would include in the leases a clause that required that local property taxes be paid. He said the challenge was that the University would likely require the tenant to make those payments in addition to the rent. He said this brought into question whether it would be economically viable for the University to rent these properties.

He said if nobody rented them, they would remain University holdings, which the University would probably argue were sitting idle for the time being. He said a potential solution could be for the University to make a payment to the Town, although not the full property tax amount.

Councilor Peter Smith said in those instances, there was the potential risk of getting nothing if the Town asked for something.

Administrator Selig said there had been correspondence with the Town Attorney on this issue, and said he could forward this to Councilors if they wished to see them.

Councilor Morong asked if there would be discussions with the University about the use of the Whittemore Center for any and all events that were non-University related.

Administrator Selig said yes, noting the Town had kept a list of all the non-University events held at the Whittemore Center.

Councilor Morong said having fast food businesses in the MUB directly competing with downtown businesses, and not having to pay taxes, was not fair. But he said he realized this issue had already been pursued with the University.

Administrator Selig said he had met a wall on this, noting it extended as well to the New England Center, and the hotel business run there. He noted that Paul Berton, proprietor of the Hotel New Hampshire, was concerned that the University was undercutting his business in terms of pricing it was using to attract event business. Administrator Selig said that since it was tax exempt, it could lower prices whereas Mr. Berton could not. He said Mr. Berton had contacted some of the State representatives from Plymouth about his concerns on this issue.

Chair Sandberg asked if there was anything in this particular bill that would cause Durham as a community to not endorse it. He noted a public hearing on the bill was scheduled for January 19th, at 10 am. He said the purpose of raising this issue was for the Council to consider whether it should ask Administrator Selig and/or a delegation of the Council to testify in support of this bill.

Councilor Needell said this bill was very much property tax related, and said it could be argued that the rental of commercial space in the MUB could fall under that category. He said the idea of a surcharge on Whittemore Center tickets was a separate issue, and said there was nothing in the bill that supported the idea of a surcharge.

Chair Sandberg said there was nothing that stood in the way of it either.

Councilor Needell said he didn't see any problem with this bill, other than the fact that the burden was passed to the renter.

Chair Sandberg said that was the way it was in the real world, for renters. He said even without having this bill, the Town might be successful in negotiating an agreement concerning this.

Councilor Kraus noted there were some vendors' kiosks at the MUB selling things like jewelry, which were only remotely connected to education. He asked if those persons would also be subject to some kind of fee collection if this bill passed.

There was discussion about this.

Councilor Peter Smith said this bill raised some fairly complicate questions, one of which was whether they were talking about real estate taxes vs. other forms of taxation. He said the jewelry kiosk was a good example of where a real estate tax might not be relevant. He said it also wouldn't be relevant when talking about specified activities at the Whittemore Center, in which case it was more suitable to impose a tax on tickets, for programs having nothing to do with the University's mission.

He said the second issue, when looking at the Legislation, was that Durham was in a substantially different circumstance than any other Town in the State, concerning the impact of a nonprofit University. He said for that reason, the Town should be very careful to figure out whether a bill before the Legislature provided the benefit the Town wanted. He said if it didn't, it tended to make it more difficult for the Town to get what it wanted.

He said a third consideration, which was political, was what the chances were of obtaining some forms of compensation from the University through direct negotiations, versus going the legislative route. He said what appealed to him about the legislative route was using it as an incentive, in combination with serious direct negotiations with the University. He said the threat of doing something could be more powerful than actually doing it.

Councilor Smith said he was concerned that if the Town used the legislative route too soon, or too vigorously, and it didn't work, in part because it was part of what other people were doing and this was beyond the control of the Town, the University would become secure that it didn't have to negotiate at all.

Chair Sandberg said this was going to the Legislature anyway, so the question was, should Durham have a voice in this.

Councilor Morong said this was a step in the right direction, but was only a baby step. He said in some ways he was not happy with it, stating that in the real world, a renter didn't get a bill for rent and a bill for real estate taxes. He said that as he read the bill, if the renter defaulted, a lien could be put on merchandise, but he said it would be difficult to collect the money. He said the bill seemed weak in terms of enforcement, and said he would rather see a lien put on the University than the renter.

Chair Sandberg said if he were a Legislator, he would be interested in hearing testimony on something like that. He said the Committee could amend the Bill if it decided to. He said the question was whether the Town should be represented there, and if so, what it should say.

Councilor Julian Smith asked if any members of the Council wanted to go to the meeting. There was discussion on this.

Councilor Needell said if the Council could agree on what it wanted to say, it could agree on who would speak at the hearing later.

Chair Sandberg said there were parts the Council might want to support, and parts it might have some reservations about. He said if there was consensus on this, he thought it was terribly important to have some presence there, and to say exactly those things.

He noted the Town had worked very hard to improve its relations with the University, but this didn't mean the Town wouldn't take a firm stand on these issues. He said the issue that had been presented was legitimate, Councilors had a certain level of passion about it, and they also had a level of passion about maintaining the relationship with the University system. He said he thought someone from the Town should speak at the hearing.

Councilor Niman said he had to work when the hearing was being held, but he said he thought the Town should be represented there. He said this bill was not the be all and end all, but it was a step forward in creating an opening in the Statute. He said that as a result of this, the University might think more about sitting down and having a more fruitful discussion with the Town. He said supporting this bill was a way of pushing the University in that direction, so it couldn't simply stand behind the statute.

Chair Sandberg said although the University probably wouldn't go there on its own, he could imagine that this was the kind of opening the University might go with the Town on, because the bill didn't threaten its cash flow.

Councilor Peter Smith said would like to know exactly how the Town would describe the opening described by Councilor Niman. He said he thought there was a slim chance the University would do anything other than vigorously oppose this bill. He cautioned against moving too quickly on this, and said he thought the Town needed to choose something with a reasonable chance of passing, to give it the leverage it needed. He said he liked the concept, but would like it to be clearer what the Town would be saying concerning the bill.

Councilor Needell said if the bill passed, it would not engender a problem in the relationship with the University, and would simply redefine it. He said the current RSA was something the

Town couldn't go anywhere with, and this bill provided a wedge. He said the bill was the most minimal thing that could be written to open the door, and was at least a starting point. He said if the Town had crafted the bill, it might be worded differently, but said he didn't see the downside of endorsing this. He said if he felt it would poison the relationship with the University, he would share this, and said in fact it might open the door to negotiations.

Councilor Van Asselt said if Durham didn't show up at the hearing, people would think the Town wasn't interested, but said the danger was showing up for too many losing causes. He said he felt the real time should be spent dealing with the Trustees, on long-term efforts, instead of reacting to the bill. He said the truth was that it wouldn't pass, and said he was not sure it would get the Town anywhere anyway. He said he felt the Town needed to talk seriously about payment in lieu of taxes, which was a much more comprehensive approach.

Chair Sandberg said didn't recall that the Council had gone to the Legislature much in the nine years he had been on the Council. He asked Councilor Peter Smith and Administrator Selig if they shared Councilor Van Asselt's cynicism that this bill would not pass.

Councilor Peter Smith said he was substantially concerned with who was leading the fray on this bill. He said he didn't feel the way certain persons in Plymouth had dealt with the university system had been nearly as successful as what Durham had accomplished with UNH. He said looking around the country, the way this problem was being approached to a large degree was through payment in lieu of taxes. He said this was because in the end, legislators didn't want to disturb the tax-exempt status of certain institutions. He provided details on this.

He said he would want to know the details of this bill, and would also want to know what the University was thinking about it. He also said he would like to know what the odds were that the bill would get someplace before the Committee hearing it. He said the Council needed to be a bit more strategic before jumping into this issue.

Administrator Selig said Councilor Smith had indicated a number of concerns he shared, and said it was important to think where the Town was in its relationship with the University. He said the Town had made some minimal progress with regard to the agreements with the University, and said he would now be focusing on the Whittemore Center and Policing expenditures. He said ideally, he would like to wait a year see how we work through those issues locally first.

He said he didn't know what Plymouth has in mind with its bills, and said it was important to remember there were three other bills that Plymouth was pushing, some of which he didn't think it was appropriate for the Town to support. He provided details on this, also noting it was hard to jump into these bills one at a time, because Plymouth was moving them forward as a package. Administrator Selig said it was important to look at these bills as a group.

He noted that the relations between Plymouth and the college were poor, noting this was where Durham had been 5 years ago. He said Durham had come a long way on this. He also noted that the Legislature was having its own struggles concerning funding for education, and said he didn't think it would have much sympathy for Durham and other host communities, because of the various social benefits of hosting a university.

He said if Durham was going to be successful, it needed to come up with good arguments. He said if it was not successful dealing with the administration, the next stop should be to deal with the University system office. He said it was worthwhile monitoring these issues, and said the Town could testify on 1679 that it was supportive, in concept of the bill, without getting into the particulars.

He said it would be a challenging position to do anything other than that, and also said he was quite sure the University would not work cooperatively with the Town to weaken its exemption. He said this was a key issue for, and said he thought it saw this bill as a wedge.

Councilor Needell said he endorsed the approach Administrator Selig had described. He said he agreed the Town shouldn't touch the other three bills, but said this bill was different, and was in fact a wedge to weaken the Statute. He said the Town should say it agreed with it in concept.

Councilor Kraus said it was important to send an observer to the hearings, to get the texture of what was going on. He said he agreed with how other legislators might see Durham, and said he wasn't sure he wanted to endorse something that could result in a back bite.

Councilor Peter Smith said he had no problem with endorsing this position, but he said the problem was what endorsing the bill in concept actually meant.

Councilor Niman said he agreed with everything Councilor Needell had said, and said the University shouldn't have the absolute right to be exempt from all taxes. He said Bill 1679 might not be perfect, but said he didn't see anything wrong with saying the Town didn't agree with the existing Statute. He said supporting this bill would be endorsement of an idea, and said he would like to think the Council was in support of it. He said every now and then, the Town had to speak out, and said if Durham hadn't done this much in the last 9 years, perhaps the Town hadn't outgrown its welcome with the Legislature.

Councilor Julian Smith reminded the Council that there was another important agenda item to get to before it got too late and asked if there was anything to stop Councilor Niman from going to the Legislature and raising the issues he had just raised.

Administrator Selig said Durham had had an ongoing presence at the Legislature, and provided details on this. He said the Committee hadn't viewed Durham as extreme, and the Town had in fact strengthened its credibility in recent years. He suggested crafting a letter to the Committee, which he would then distribute to Council members in order to get feedback. He said he would then hand deliver the letter, but would not testify at the hearing. He said it would also make sense to sit in at the hearing to get a sense of what was going on.

Councilor Van Asselt said sounded fine to him, He said breaking the tax exemption was one thing, but he said the idea of payment in lieu of taxes should be at the top of the Council's work plan, if it was serious about this issue.

Councilor Peter Smith urged that the Town be careful that it was not seeking to change the concept of an educational institution being free from taxation in carrying out its duties, because this was a losing issue. He said it had to be done in a way that said this was something different

that the Town wanted to talk with the University about, and said examples should be used to make the point. He said this would need to be done carefully.

Chair Sandberg said this had been an interesting discussion, and he thanked everyone for weighing in on it.

B. Discuss and develop a format for conducting the Town Administrator's FY 2006 performance evaluation

Chair Sandberg said Councilors had been asked to look at two different formats for the evaluation. He said the goal was to come up with an evaluation document that was reflective of what the Council wanted, and that was useful to the Town Administrator so he would know what the Council's expectations were.

Councilor Julian Smith noted there was nothing in the Town Charter that specified what the format should be. He said he was curious as to why Chair Sandberg had emphasized that this should be a consensus approach.

Chair Sandberg said this was simply how the Council did it last year, and he described the process in some detail. He said the Council hammered out the final language of the consensus document, to indicate what the will of the Council as a whole was, but he noted that individual Councilor's comments were also included.

Chair Sandberg said it would be useful to ask Administrator Selig if he had found last year's process useful.

Administrator Selig said he wanted to know how each Councilor felt, but also said it was useful to have a summary of some kind, to get a general sense from the Council of whether he was going in the right direction, and which issues he needed to spend more time on.

Chair Sandberg asked if one of these two formats was more useful to Administrator Selig

Administrator Selig said the version used last year was effective. He said it got at the issues, in a more concise way.

Councilor Kraus noted that he did not like the word consensus. He also pointed out the changing dynamics of the Council over time, as elections came and went, noting the difficulty for Administrator Selig that one Councilor might have evaluated him, but he might actually be working with a somewhat different Council.

Asked what he would like to hear from Councilors, Administrator Selig said he would like to know where Councilors thought he was falling short, so he could improve in those areas.

Councilor Kraus noted the issue concerning the kind of clothing worn at the transfer station, and said this was a good example of how the Town Administrator could get pulled in different directions, making it difficult to evaluate his efforts.

There was discussion about this. Chair Sandberg said the fault was with the Council in asking Administrator Selig to get involved in this issue. He said the Council as a body needed to say no sometimes.

Councilor Kraus said he had used this as an example of how Administrator Selig might get blamed for taking too much time on an issue, when the Council had in fact forgotten why this had happened.

Chair Sandberg asked which format Councilors preferred.

Administrator Selig said again that the core area he would like feedback on was deficiencies, stating that he wanted to serve the Council well.

There was discussion about the use of the word efficiency in the evaluation form, and it was agreed that the word could be taken out.

Chair Sandberg said there would be a nonpublic meeting in the beginning of February for the performance evaluation.

XIII. Adjournment (NLT 10:00 PM)

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

The meeting **ADJOURNED** at 10:10 pm

Victoria Parmele, Minutes taker