

This set of minutes was approved at the February 20, 2006 Town Council meeting.

DURHAM TOWN COUNCIL
MONDAY, JANUARY 23, 2006
DURHAM TOWN HALL – COUNCIL CHAMBERS
7:00 PM

MEMBERS PRESENT: Chair Malcolm Sandberg (arrived at approximately 7:55 PM); Councilor Neil Niman; Councilor Peter Smith; Councilor John Kraus; Councilor Diana Carroll; Councilor Mark Morong; Councilor Gerald Needell; Councilor Julian Smith; Councilor Karl Van Asselt

MEMBERS ABSENT: None

OTHERS PRESENT: Town Administrator Todd Selig; Town Engineer David Cedarholm; Public Works Director Mike Lynch

I. Call to Order

Councilor Niman served as Chair for the first part of the meeting in place of Chair Sandberg, due to his absence from the meeting (Chair Sandberg arrived at approximately 7:55 PM and assumed the Chair at 8:30 PM).

II. Approval of Agenda

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

Chair Niman asked why Item X A, regarding the Water Supply Land Grant application, was on the Agenda, when the Council had already voted on it.

Administrator Selig said the Council hadn't actually voted on this, but had discussed it with Duane Hyde of the Land Protection Working Group in nonpublic session. He said the Council was being asked to approve the grant application because of the amount of the project. He noted that there were members of the public present to comment on the grant application, and said it would be helpful to let them know when they would be able to make their comments, under X A or under Public Comments.

There was discussion by the Council on the appropriate time for public comments on the grant application, and about the process the Town was going through concerning the Fogg property.

Administrator Selig provided details on this, noting that the purpose that evening was to hear Mr. Hyde's presentation, and to have discussion by the Council. He said there was no public hearing planned, but said given that members of the public were present, he wanted the Council to provide guidance on when they could speak on this matter.

There was additional discussion on the order in which the Agenda Items concerning the grant application should be heard, and when public comments should be allowed.

Councilor Kraus said the normal process was to hear comments from members of the public during the Public Comment portion of the Agenda. He also noted that the way in which this should be handled hadn't been brought forward during the setting of the Agenda. He said this was not a public hearing, and said the Council was opening itself up to problematic situation if public comments were heard during Mr. Hyde's presentation.

Councilor Niman said it was his understanding that the issue of whether the Town should go forward with the grant application was something the Council had already said it supported.

Councilor Needell MOVED to amend the Agenda, to have Item VIIIA precede Item XA, and to allow public comment at the end of what was VIII A. Councilor Peter Smith SECONDED the motion.

Councilor Needell said the process was what the Council made it, and said the Agenda could be amended, noting he didn't have a problem with this. He said it was clear that this was not a public hearing, and that the Council wouldn't be discussing or voting on the actual purchase of the conservation easement.

The motion FAILED 4-5, with Councilor Peter Smith, Councilor Needell, Councilor Carroll, and Councilor Niman voting in favor of it.

Councilor Julian Smith suggested that in order to hear from the public in a timely fashion during Public Comments, perhaps Mr. Hyde could summarize the issues at the beginning of the comment period.

Chair Niman said if Mr. Hyde wished to stand up as citizen at that time, he was welcome to do so.

Councilor Peter Smith said he hoped Mr. Hyde would not do this. He said members of the public had received the message that they should speak during the Public Comment period.

The Agenda, as presented, PASSED unanimously 8-0.

III. Special Announcements

Swearing in and Introduction of New Fire Chief, Peter O'Leary

Chair Niman asked Administrator Selig to introduce Peter O'Leary, the new Fire Chief, which the Town had actively recruited. Administrator Selig did so.

Town Clerk Lorrie Pitt conducted the swearing in ceremony for Fire Chief O'Leary.

Chief O'Leary said it was a dream come true for him to be in Durham, noting that his roots were in New England, and said it was no surprise that he was back in the region. He said Town staff and residents had been fantastic in welcoming him and his family to Town, and said if this was a true measure of the community, it would be a pleasure to serve Durham. He said he appreciated the faith that had been placed in him. He said it was an awesome responsibility, and one that he took very seriously. He said he hoped he exceeded the Council's expectations.

Councilor Julian Smith explained that the wrong minutes were in the Council packets.

Councilor Kraus welcomed Chief O'Leary to the community on behalf of the Council.

IV. Approval of Minutes

December 12, 2005 (Continued meeting of 12/05/05)

Councilor Julian Smith moved to postpone action on the December 12, 2005 Minutes. The motion was SECONDED by Councilor Kraus, and PASSED unanimously 8-0.

Councilor Kraus said it was just a small matter of confusion that had led to postponing approval of the Minutes.

V. Report of Administrator

- Administrator Selig said the filing period for local elected offices would run from 8:00 AM, Wednesday, January 25, 2006 until 5:00 PM, Friday, February 3, 2006. He noted for the public the elected offices which have openings.
- Administrator Selig said the Durham Business Association quarterly meeting would be held January 24th at the University's Holloway Commons. He said the meeting would include an open forum with David May, Executive Director of the University's Hospitality Services, and said the forum should include discussion on how these services impacted downtown businesses.
- Administrator Selig said the UNH Student Senate had invited Council members to attend a pot luck supper on Thursday, January 26th, at 6:00 PM.
- Administrator Selig said he would be going to Concord on Wednesday to observe the proceedings concerning House Bill 1659, relative to payment of taxes to host communities of the University system for non-University uses. He said he had prepared a draft letter to provide concerning the Bill, and said he would like Councilors to look at it and provide feedback on it.
- Administrator Selig said he would be working with Councilor Peter Smith to work on the Jackson's Landing agreement, and said both this agreement and the University Pool agreement would be coming forward to the Council in short order.
- Administrator Selig said he had provided Councilors with a memo written to Police Chief Kurz regarding concerns aired by a Durham resident about the property owned by Joe Caldarola at the corner of Bagdad Road and Canney Road. He said these concerns evolved around the fact that there had been a number of calls about potential vandalism/burglary of the property. He said the Police Department had responded concerning this, but that after further review, it would have been appropriate for the Department to notify the property owner, the Fire Department, and the Code Enforcement Officer regarding the various concerns about the property. He said this had been a learning experience, and said he believed the issues had been addressed.
- Administrator Selig said he hoped the Council would allow him five minutes that evening for a non-public meeting, so he could provide an update regarding a Town employee.

VI. Reports and Comments of Councilors

Councilor Kraus said he wished to put a commendation in the Minutes for Merle Craig, a member of the Integrated Solid Waste Committee who was resigning after 4 years of exemplary service. He noted Ms. Craig had been largely responsible for the “Down to Earth” newsletter, and had done an exceptional job on it. He said citizens like her made a real difference in Durham, and said the Committee would miss her.

Councilor Needell said at its last meeting, the Planning Board had completed its revisions of Section B of the proposed amendments to the Zoning Ordinance, in response to the fact that this section had been remanded back to the Board by the Council. He said there would be a public hearing on Section B at a special Planning Board meeting on Wednesday, February 1st.

He said there would be an additional public hearing at this meeting on the Planning Board’s Rules of Procedure, which had recently been updated by the Board, in part because of a request from the Town Attorney for clarification on the role of alternates. He said if the Rules were adopted, alternates would no longer be able to participate in deliberations once a hearing closed. He noted there were some other changes as well to the Rules of Procedure.

Councilor Needell also said that at the Planning Board meeting on January 25th, there would be public hearings on the Board’s revisions to the Shoreland Ordinance, Wetland Ordinance and the Personal Wireless Services Facilities Ordinance (Sections C, D & G), in response to Town Council changes to address questions on prior amendments of the proposed Zoning Ordinance.

He noted there would be public hearings at the January 25th meeting on three upcoming construction projects planned by the University, and he described the projects. He said there would also be an acceptance application for a site plan review for Scorpions, which wanted to merge with the adjoining pizza place.

Councilor Needell explained that the Board had realized that in order to get the Zoning Ordinance approved before the end of the current Council session, it would need to hold two extra meetings. He said the Board had requested that the Council, as well, make every effort to complete this process.

Councilor Needell noted that there would be several new applications coming before the Planning Board in the coming months.

Chair Niman said he hoped Councilor Needell could convey that the Council was very eager to have the Zoning Rewrite process come to an end.

Chair Niman said he was on the Library Site Selection Committee, which had met the previous week, and had voted unanimously that the Library Board of Trustees explore the Grange as a site for a new library.

Councilor Julian Smith said the Library Board of Trustees had voted unanimously to ask Administrator Selig to discuss the possibility of acquiring land immediately to the south of the Grange, on the Mill Road Mall, in order to have more room for additional parking for the library. He provided details on this, and said Administrator Selig would be doing that.

Administrator Selig said he would talk with the Chair of the Durham Public Library Board of Trustees in the next few days, and then touch base with the owners of the Mill Plaza.

Councilor Peter Smith asked if the proposal would involve removal of the Grange Building and constructing a new building on the site, and Chair Niman said it would.

Councilor Julian Smith said the Trustees were not proposing at this point to build a library at that location, and were simply interested in finding out whether it was possible to acquire more land that was not being used by the Mall, and to acquire some parking in the Mall parking lot. He said this was an effort to demonstrate that Town government was interested in working with local businesses, as was Administrator Selig's effort to lease spaces to the Durham Village Garage.

VII. Public Comments

Chair Niman asked members of the public to direct their comments on the Fogg property to the grant proposal, which the Council would be hearing a presentation on at the meeting.

Beth Olshansky, Packers Falls Road, said she was present to speak on the grant application. She said she often read with envy that other towns got grants to protect water supplies and conserve land, and said this was such an opportunity. She noted this was one of the goals of the Master Plan, and said she hoped the Council would support the grant application. She also said it should be acknowledged that the grant would pay for 25% of a conservation easement.

David Hollinger, 6 Carriage Way, said he was an abutter to the Fogg property, and noted he had submitted a letter of enthusiastic support for the grant application from abutters and neighbors. He said it was realized that a lot of work had been done on this project.

Judith Spang, 55 Wiswall Road, noted she was on the Durham Land Protection Working Group. She quoted from a letter from member Tony Federer, an ornithologist who said that although this was a water supply grant being applied for, the Fogg property also has considerable ecological value, as wetland habitat and as field habitat for various bird species, and deserved all the protection it could get.

Dwight Baldwin, Chair of the Durham Conservation Commission, made note of a letter of unanimous support from the Conservation Commission for the grant application. He said the wetlands on the property were probably very important for recharge of the aquifer, and said that in itself made the preservation of this land with this grant application of prime importance. He said he agreed that being in favor of the grant proposal implied wanting to conserve the entire 86 acres.

Henry Smith, Woodman Road, said he wished to strongly affirm comments from other speakers on this issue, and to affirm the profound importance of conservation easements in towns to maintain rural character and a sense of identity, and to avoid becoming a town that was unrecognizable from others on the landscape.

Don Brautigam, 122 Packers Falls Road, said he agreed with what other speakers had said, and also said that as someone who frequently drove past the property, it was a unique piece of land, and said it behooved Durham as a Town to preserve it.

Nate Smith, UNH Student Senate External Affairs Chair, 40 Gables Way, said that the Student Senate was looking forward to the potluck dinner with Councilors, and said he hoped to see all the Councilors there.

Bill Hall, Smith Park Lane, said that boat trailer parking for Durham residents who wanted to use the launch ramp at Jackson's Landing had effectively been eliminated, and provided details on this. He said it was very important to specifically identify where residents were going to be able to park no less than five 40 ft. long trailers.

Mr. Hall said there should have been no restriction on using the water from the impoundment behind the Wiswall Dam, but said now that the pipeline was in place, water from the Lamprey River and the Oyster River could not be mixed, so water would be taken from one or the other. He said this meant they wouldn't be looking for 150,000 gallons from the Lamprey River, they would be looking for 900,000 gallons if students were in Town. He said this could drop down the level by 2-3 feet.

Mr. Hall said Administrator Selig's description of the situation was inaccurate, and provided details on this. He also said it was entirely premature to consider any study, especially when the drawdown of the Wiswall impoundment for maintenance should not be confused with the drawdown for usage. Mr. Hall also said that every body of water in the state was drawn down at one time or another, and there was no indication this had an ecological impact. He provided additional comments concerning this issue.

VIII. Presentation Items

A. Water Supply Land Grant application relative to a Conservation Easement on the Fogg Property - Duane Hyde, Conservation Commission and Land Protection Working Group

Chair Niman said some people in Town might be getting impatient that the land protection bond had been passed 3 years ago, and wondered why it was taking so long to actually spend the money. He asked Mr. Hyde to share with the public what was going on concerning land protection efforts.

Mr. Hyde said when the bond had been passed, the Land Protection Working Group had started having preliminary discussions with various landowners. But he said this took time, noting it was a big decision to sell a property, or put a conservation easement on it. He said he was now pretty confident that the proposal concerning the Fogg property was the first of many that would be coming forward pretty soon.

He noted that the 16 acre conservation easement for the Mill Pond Center was complete, and that the conservation easement for the 20 acre Merritt parcel was almost complete. He showed a chart of other properties that were currently in the works, and said he expected that some of these would come forward in the next few months. He said the total cost for all of these projects was \$6.6 million, 39% of which was expected to come from Town money, and involved approximately 500 acres.

Councilor Van Asselt said in the last two years, Mr. Hyde had met with the Council in nonpublic session three or four times. He said there seemed to be the implication that there wasn't a great deal of Council support for these projects, but said he recalled that the only question from the Council was what the priority was of the various projects.

Mr. Hyde said there hadn't been anything major that had come before the Council on this property. He also said all the properties listed were good properties, and this one had risen to the top because of the water supply land grant. He provided additional details on this.

Mr. Hyde said he was here to request the Town Council to authorize the Town Administrator to submit an application to NHDES for a Water Supply Land Grant in the amount of \$235,000 for a conservation easement on the Fogg property.

Mr. Hyde said NHDES and the Land Protection Working Group saw this as a very important project, and noted it was ranked 4 out of 15 in the State as a result of the pre-application process. He said if received, the grant would fund up to 25% of the price of the conservation easement.

He said the plan was to acquire the easement on 86 acres of land on the Fogg property, which was located on Mill Road and Packers Falls Road. He provided details about the property, noting the entire parcel was 104 acres. He said the remaining 17 acres was the area around the house, a barn, wells, another house, and a wooded portion that would allow 3 house lots.

He said the proposed conservation easement area linked up well with 422 acres of existing open space, noting the land abutted Foss Farm, Carriage Way open space, the Spruce Hole aquifer, and Spruce Hole open space.

He said the property was appraised in July 2004, which determined that the highest and best use of the easement area was a 13-house subdivision, developed under the Town's conservation subdivision provisions. He went through figures that showed that buying the easement was a good investment for the Town from both a conservation and tax perspective, and leveraged the Town's money.

Mr. Hyde said NHDES staff had done a site walk of the parcel the previous week, and was very interested in the application because the land was in the Aquifer protection overlay district, where the Town's largest aquifer was located. He said they felt that if the Town submitted the grant application, it would get the funds.

He said the property had a lot of other benefits, in providing a contiguous block of open space, a viewscape mentioned in the Master Plan, prime agricultural soil, wetland habitat, and as the headwaters of Woodman Brook, which flows into the Lamprey River.

Mr. Hyde said the easement would require the landowners to keep 21 acres in the southern portion of the property open for public access for hiking, noting there were several University trails near this area. He said the remainder of the easement acreage would be open to the public at the discretion of the landowner. Mr. Hyde said the landowners drove their ATVs on the property, and said the easement would allow them to continue to do this, but would not allow other ATV use of the property.

He said if the Town did decide to apply for the grant, the next step would be to get the award of the grant. He provided additional details on the process that would be followed from there.

Councilor Kraus asked if it was correct that there was nothing in the easement that would prevent the landowners from allowing trees on the property to grow back, which would limit the viewscape.

Mr. Hyde said that typically a conservation easement didn't require an owner to keep the land open. He noted that with the Mill Pond property, this issue had been specifically addressed, and the requirement was included in the easement that the fields would be mowed.

Councilor Van Asselt asked if questions from Councilors were supposed to be limited to the application, or could be directed to the land and the conservation easement.

Chair Niman said he hoped Councilors would limit their questions to the application, and said he assumed the merits of the conservation easement would be discussed at a future meeting.

Councilor Peter Smith asked if the Council eventually approved the easement, who would hold this easement.

Mr. Hyde said one of the strings attached to the grant funding was that the Town had to hold the easement. He said this was not something the Working Group supported in general, because it was a significant obligation to monitor a conservation easement. He said the proposal in Council packets was that the Town would contract with a local land trust to do the monitoring, and he provided details on this.

Councilor Peter Smith asked about process of surveying the property as part of developing the conservation easement.

Mr. Hyde explained that one of the landowners was a licensed professional surveyor, and had donated to the Town a detailed survey plan, which included more than what was required.

Councilor Peter Smith said his understanding was that the Conservation Commission, having heard the recommendations of the Working Group, had endorsed the underlying proposal to move ahead with the conservation easement, and had also endorsed the Town's desire to multiply bond money with other moneys. He said if the Council agreed that evening to authorize Administrator Selig to request the grant, it would be with the understanding that the Council would not proceed in that way, only to say 2 months from now that it didn't want the grant money.

Councilor Smith said what was at stake that evening was only approving the filing of the grant, but he said in substance, what was also at stake was the Council being sufficiently comfortable with the underlying proposal, that unless something very substantial happened, the assumption here was that the Council at the appropriate time would give its final ok on the easement agreement. He asked if he had presented the situation clearly.

Mr. Hyde said he had, and provided details on this.

Councilor Needell said from what he had heard and read on this project he was very much in favor of it. But he asked if the Council could perhaps hold a public hearing the following week before filing the grant application. He said the situation seemed awkward, and said he didn't want the Council to imply that it was rubber-stamping this process. He said he wished this were not the case, because he fully supported the project.

There was discussion about enforcement of the easement, and how absolute it was. It was also noted that eminent domain could conceivably extinguish a conservation easement.

Councilor Van Asselt said he found this situation extremely awkward, and said it was unfair what the Council was being asked to do. He said Councilor Peter Smith was right, - the Council was saying yes to the technical question about the grant application, and was now hearing that by

doing so, it was saying yes to the project. But he said these were two different things. He said this was the wrong way to go about doing this, and said he thought it was wrong that this Item was on the Agenda. He said the Council hadn't yet discussed a number of issues relating to spending \$600,000 on this land, and said it shouldn't be asked to approve this grant application.

Chair Niman said Councilors should raise these kinds of issues under Agenda Item X A.

Councilor Peter Smith said he would be happy to hold his comments until then, but said it could now be seen why he thought it was important to bring these two Agenda Items together. He said Councilor Van Asselt had raised some important points, and said he was confident there were very sound answers to them, which put his own mind at ease. He suggested the Council move ahead, and he asked that Mr. Hyde stay until Agenda Item X A if possible.

Councilor Kraus noted the talk about aquifer protection, but noted it had been said that the highest and best use was 13 buildable lots, which seemed to be a contradiction. He said he wanted it to be clear that this was not land that was not buildable.

Chair Niman thanked Mr. Hyde for his presentation to the Council.

7 minute break 8:25-8:33 pm

Mr. Sandberg took over as Chair of the meeting (He had arrived at the meeting in the middle of the previous discussion).

B. Wiswall Dam Repair Project - David Cedarholm, Town Engineer

Administrator Selig noted to the Council that Councilor Needell had suggested it would be a good idea to have Mr. Cedarholm provide an overview to the Council on the issues surrounding this project.

Mr. Cedarholm said there were several issues relating to the Dam, and said it would take 3-4 more presentations to touch on everything. He said he was certainly not an expert on the Dam yet, but hoped to become one. He said at the present meeting, he would focus mostly on how the Town would be addressing the State's Administrative Order concerning the Dam, and the repairs that were planned.

He provided some history on the Wiswall Falls mill site, and showed historical photos of the dam, noting it was constructed in 1912. He said the Town had bought it and the water rights in 1962, and said the site was put on the National Historic Register in 1997.

Mr. Cedarholm provided some history on the problems identified with the Dam, dating back to 1995. He explained that a dam breach analysis and an emergency action plan were developed in 1997, which included recommendations for repairs. He noted that around this time, a siphon was installed to boost the flow in downstream areas, because of issues identified concerning some of the fish downstream.

He said grant money was received in 1999 to do repairs to the spillway, and for park improvements, and said in 2000, NHDES issued another letter of deficiency based on issues concerning brush, logs, and deteriorating concrete in the area of the floodgates and the face of the spillway. He said recommendations concerning this were developed by GZA, a consulting firm.

He said that soon after that, the Town had looked to install hard pipe between the Lamprey River and the Water Treatment Plant, and also said a 401 Water Quality Permit certificate was issued. He said in his opinion it was not a bad thing that there was a limitation on how much water could be taken and that the permit to withdraw water from the river was something that no one else on the river could do. He said the Town might be thankful it had this permit in the years to come.

He provided details on NH Fish and Game's proposal to install a fish ladder, also noting that around this same time, House Bill 1449 proposed the State's in-stream flow study, which began in 2003. He provided some detail on this. He said in 2002, Fish and Game proposed the removal of the dam instead of installing a fish ladder, but said the focus then shifted the next year to the idea of developing a natural fish passage. Mr. Cedarholm noted that there was currently a fish ladder in Newmarket, which meant that anadromous fish could get up as far as the Wiswall Dam, but no further. He said the fish way would allow some resident species to utilize the entire river.

He said that in January of 2005, an Administrative Order was issued by NHDES for the Town to proceed with immediate repairs. He said the State felt the Town had delayed the repairs to the Dam long enough, and whether the fish way was installed or not, it was important to address these repairs. He said the State was also requiring that the Town update the emergency action plan and dam breach analysis, and he provided details on this.

Mr. Cedarholm said the Administrative Order had also cited issues with the dam that raised doubts about its stability during a flood. He provided photos of the areas in need of repair, and said he was concerned that the next time the floodgates were opened, a significant amount of concrete around the discharge area could be lost. He also provided details on the deterioration of the existing floodgates, and how this impacted the ability to inspect the dam.

He noted that in 1994, when inspection and work on the dam was done, monitoring stations were established upstream, and said each was monitored for the length of slope exposed during dewatering. He also said some observations were taken of flora and fauna that were exposed. He said he saw the dewatering process planned as part of the present project as a good opportunity to do similar monitoring, and to determine the effects of fluctuating the impoundment more than 6 inches.

He spoke about the 401 Certificate, and said the 6-inch number was based on an agreement, not on technical information. He said it made sense to put technical information behind how low the level could be drawn down. He noted that the 401 Certificate and the In-stream Flow rules required not just looking at environmental impacts, but also the flow in the stream. He said in 2007, the State's In-stream Flow study would be complete, and said there would be a water use management plan in place by 2008. He said he hoped the information obtained from monitoring the impoundment could be incorporated into this plan, and that the 401 Certificate could be updated at the same time, resulting in a draw down number they all could live with.

Mr. Cedarholm said the recommendation of the Public Works Department was to hire Stephens Associates to do the engineering drawings and the repairs to the Wiswall Dam.

Councilor Needell asked if the plan was to comply fully with the Administrative Order.

Mr. Cedarholm said it was. He said the Town was about a year behind schedule, and would ask NHDES for an extension, noting the agency understand the situation. He explained that the reason for the delay was that the original selection of GEI Consultants hadn't worked out, but said the Public Works Department was now ready to go forward with Stephens Associates.

Councilor Needell asked if the floodgates would be completely replaced and Mr. Cedarholm said yes.

Chair Sandberg noted it was the Town that owned the dam, and not the water users.

Councilor Kraus said this project was not to be confused with the Wiswall Bridge redevelopment.

Councilor Needell said he had reviewed the Historic Register application, and asked if the dam itself was on the register.

Mr. Cedarholm said he wasn't exactly sure about this.

Mr. Lynch said every reference he had seen referred to the site, but not the dam itself.

Councilor Needell asked if the dam were part of this, if this would impact the repair process in some way.

Mr. Lynch said the engineering study would look at this.

Councilor Needell said that at a future date, the in-stream flow rules needed to be explained more fully concerning their impacts on Durham.

Mr. Cedarholm said he would be happy to do this at a future date. He noted he had recently planned on attending a meeting of the in-stream flow committee in order to be able to bring back information on this issue to the Council. He said the meeting had been postponed because of weather.

Councilor Carroll said the information provided to Councilors indicated that a consultant was hired in 2000 to do a report, but said it didn't sound like anything actually got done.

Mr. Cedarholm said a minimal amount of work was done to address the concrete issues. He said this was about the same time the issues of the fish ladder, possible dam removal, and the fish way came up, so it seemed to make sense to delay those repairs.

Councilor Carroll said it seemed like the Town was in a similar situation now.

Mr. Cedarholm said he didn't expect Stephens to identify many new issues, and said the firm would be doing the design for the repairs. He explained that the previous time, the recommendations never moved on to the design phase.

Councilor Peter Smith asked if all the deficiencies in the 1995 letter were in fact corrected.

Mr. Cedarholm said not all of them were corrected.

Councilor Kraus asked for clarification as to whether the dam was safe, even though it looked rather ugly.

Mr. Cedarholm said it was the sentiment of the Dam Safety Bureau that it was safe, and said if it looked like the dam was going to give way, there wouldn't be the leniency in the schedule. But he noted that NHDES staff had indicated the Town needed to update its dam break analysis.

Councilor Needell said the letter from NHDES didn't give the impression that the agency was comfortable with the situation with the dam. He asked if there could be an even stronger version of this letter, or if this present letter spoke for itself.

Mr. Cedarholm said it spoke for itself, and said if the Town ignored it, there could be fines, and loss of grant moneys for a variety of projects.

Councilor Needell noted that criminal penalties were also mentioned in the letter.

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

Chair Sandberg said it had been request that Item IX B. be removed from the Unanimous Consent Agenda.

- A. Shall the Town Council accept for referral a commercial wastewater discharge permit application submitted by the University of New Hampshire for a new Dairy Research building to the Water, Wastewater, and Solid Waste Committee for further review?

Councilor Kraus MOVED to approve Unanimous Consent Agenda Item a., to accept for referral a commercial wastewater discharge permit application submitted by the University of New Hampshire for a new Dairy Research building to the Water, Wastewater, and Solid Waste Committee for further review. The motion was SECONDED by Councilor Julian Smith, and PASSED unanimously 9-0.

- B. Shall the Town Council adopt **ORDINANCE #2005-06, SECTION #2005-06 (F) - RELATIVE TO THE HISTORIC OVERLAY DISTRICT**, contained within the Zoning Ordinance with additional minor amendments as recommended by the Durham Planning Board?

Chair Sandberg asked if Councilors wanted to entertain a motion to move this Item to X C. on the Agenda.

Councilor Van Asselt MOVED to move this Item to X C on the Agenda. The motion was SECONDED by Councilor Julian Smith, and PASSED unanimously 9-0.

X. Unfinished Business

- A. Shall the Town Council authorize the Town Administrator to submit a Water Supply Land Grant application to the NHDES in the amount of \$235,000 for a Conservation Easement on the Fogg property located at the corner of Mill Road and Packers Falls Road as recommended by the Durham Conservation Commission and Land Protection Working Group?

Administrator Selig said this was continuation of the earlier presentation. He said Councilor Van Asselt had raised a key question: that the Council needed to be clear on what it was endeavoring to do, and if it had a sense that if the grant was received, and if there were terms of the easement that were acceptable to the Council and the landowner, whether this implied a commitment to move ahead.

He said if there was not that commitment, it made sense to put the brakes on at this point. He said there were some key questions still to be fleshed out, and also said it was challenging to have a hearing when the easement document had not been prepared yet. He said a second question was that although there was a good amount of money in the land use change tax fund and there was the \$2.5 million bond, there was no formal recommendation as to how much should be drawn from either of these two sources.

Administrator Selig said the grant application would cover up to 25% of the cost of the easement, but said it was not assured the Town would receive that much. He said if it didn't, the Council would want to talk about this.

He said another issue was how to prioritize this particular piece of land with other tracts, especially those listed in the Master Plan. He noted that in nonpublic session, the Council had heard it was dangerous to set priorities and then wait until particular properties became available. He said it was important to have more discussion on all of these issues.

Chair Sandberg said he was glad he had been able to hear Mr. Hyde's presentation from the audience when he arrived late at the meeting.

Councilor Peter Smith MOVED that the Town Council authorize the Town Administrator to submit a Water Supply Land Grant application to the NHDES in the amount of \$235,000 for a Conservation Easement on the Fogg property located at the corner of Mill Road and Packers Falls Road. The motion was SECONDED by Councilor Julian Smith.

Councilor Peter Smith said he had the advantage of having seen this project develop, in his role on the Conservation Commission as well as on the Council. He said the Town was undertaking a project that procedurally was very different than anything he had seen while on Town boards. He said the Council had a few years back authorized a private group to engage in explorations concerning properties, and he noted there was some discussion at that time about whether this made sense.

He said the nature of this process was that it had to be done quietly and rather secretly if it was going to get anywhere, so a private group (the Land Protection Working Group) had started meeting with individuals. He said this was a long and tedious process, and said Mr. Hyde, who did this kind of work for a living, didn't bill the Town for his work on the Working Group. He said the Group had done a remarkable job. He explained that the Group did not disclose what it was doing concerning a negotiation to the Conservation Commission until it was at the point where the landowner authorized this.

Councilor Smith said he believed the issues involved must be discussed at the appropriate time, before decisions were made, and said he completely agreed with that. He said the initial conversation with the Council on this property was held in nonpublic session because it was the judgment of the Working Group that this had to be done, but he said the process was now further along. He said this was not necessarily a neat, logical process, and probably couldn't be. He said he believed this group had used good judgment when it had come to the Council, and had been conscientious in keeping the Council and the Town Administrator informed.

He said he didn't think it was fair or accurate to suggest there was a substantial disconnect between applying for the grant and the ultimate decision-making. But he said he didn't feel Councilors were committed to approving the conservation easement before all the documents were before them. He said he did think it was logical to say the Council needed to decide whether at least in principle, it was fairly confident that this easement was a good thing to do. He said if the Council were not confident on this, it would be creating problems by applying for a grant and then turning it down.

Councilor Smith said the priorities for land protection couldn't line up in perfect order, and said if the Working Group didn't think this property was a high priority, it wouldn't be moving ahead with it. He said he didn't think there would be any significant new development that would cause

him to vote against the easement, but he said he was prepared that this could happen. He said this was messy, but said he didn't see any other way to handle the land preservation process.

Councilor Van Asselt said he appreciated Councilor Smith's words, but said this still begged the question of whether the Council was saying that for any land or easements purchased by the Town, this was the process that would be followed.

Councilor Smith said the underlying process the Council had approved for working out priorities was being followed, through the Working Group. But he noted that each event would be a little different, and would be messy in a different way. He said the Merrick conservation easement application was easier, and he provided details on this. He said the moment he felt the Working Group was not following the rules that had been established, he would say this. He said he was confident they would be careful to follow the rules.

Councilor Van Asselt said it was the messiness that bothered him. He said it was a fair assumption that if the Council said to go ahead with the grant application, implicit in that was saying yes to buying the easement on the Fogg land, and that the nonpublic sessions with Mr. Hyde had determined that this was a priority. He said he didn't question the decision itself, but said it was a quick jump from the nonpublic sessions to the grant application. He also said he was not sure where the Town would get the money for the match. He said he had faith in the easement to be written, but noted that the grant gave the landowner quite a bit of leverage.

Councilor Van Asselt also said he didn't like the ratio that 20 of the 86 acres in the easement would be available for public use, and asked where he got to say anything about this other than that evening. He said this was just an example of the questions Councilors might have.

Chair Sandberg said the question was when Councilors got to speak about whether this was the best deal the Town could get. He said if the Council voted in the affirmative on the motion, it was saying that in principle it thought the easement was a good idea. But he said the Council knew it would not be a done deal, and said if the Council as a body wanted to say that 20 acres for public access wasn't enough, this could be discussed. He said this project was not being railroaded in, and said the vote that evening simply would bring the Council closer in that direction.

Councilor Julian Smith asked if the Council would have a public hearing before or after it received notification concerning the grant. He noted he was assuming the Town would probably get the grant.

There was discussion about this. Administrator Selig noted that it was important to have the easement document in front of them before having the public hearing, and said he didn't know how long that would take. He said the remaining thing would be how much the Town would receive in grant funds, and if it received less than 25% of the purchase price, whether this would change the vote of the Council.

Chair Sandberg said the Council could go forward with a public hearing even if the grant application were turned down, and could still move forward with buying the easement, for the full price.

Councilor Julian Smith said his question was whether it would be possible to have the hearing before getting the results concerning the grant application, so if it was awarded, the Town would be well prepared to go to the next step, which involved agreeing to spend Town money for 75-80% of the project.

Chair Sandberg said the hearing wouldn't be held until the full terms of the easement were before the Council.

Councilor Julian Smith asked if Mr. Hyde could indicate when these terms would be before the Council.

Mr. Hyde said his goal was to have these terms before the Council before the grant was awarded. He said this would allow the Town to act quickly. He also said it would be prudent to have the public hearing before NHDES made its final decision, so that in case there was a reason why the Council decided not to go forward, it could notify NHDES so the agency could cross this project off its list and go on to another one.

Councilor Needell noted that the Council couldn't make a decision on the easement process until it knew how it was going to be paid for.

Mr. Hyde suggested the Council's vote could be contingent upon the grant being awarded.

Councilor Carroll asked if the Council could get any answers that evening to some questions such as those Councilor Van Asselt had brought up.

Mr. Hyde noted he had told the Council in nonpublic session that the owner's original request was that there be no public access. He said he had determined that there was a logical break in the property, and had delineated an area abutting University property that he thought would be good for public access. He said he had taken input from a Council session and used it in negotiations with the landowner. He said the landowner came to understand the reasons why allowing public access in this area could be a good idea, and was willing to work with the Working Group on this.

Mr. Hyde said he wanted the Council to be clear that this would be a mandatory commitment to keep a portion of the land open for public access. He said for the remaining area, allowing access would be at the discretion of landowner, noting that this didn't mean the access would not be allowed.

Councilor Peter Smith said an example of where he would feel the Council needed to go back to the starting block was if the Town didn't get the grant, or the bulk of it. He said he had raised the issue of public access at a Conservation Commission meeting, and Mr. Hyde had explained the same thing he had just explained to the Council. He said that right now there was a good amount of land with public access that was guaranteed, and there was a large amount of land the owner was not saying was out of the question. He said he suspected that the Council wouldn't know the answer to this for 5-10 years.

Councilor Morong asked for details on the utility easement, and Mr. Hyde said it was for an underground telephone line. He said the trees had been cleared, and said it was an obvious way to delineate a public access area.

Councilor Niman said Councilor Van Asselt had raised the same concern he had, noting he had raised it before at a nonpublic meeting. He said he expected the Town would fully expend the \$2.5 million in bond money within the next year, and he said the question was what happened after that. He provided details on how he saw this, but said that ultimately, he felt the Council should go with this property.

Councilor Carroll said it was up to the residents of Durham whether the bond money would be expended. She said after that, they would determine the next step to take.

Councilor Needell said that in all of the nonpublic sessions, he had nothing but confidence in the Land Protection Working Group, which was doing a tremendous amount of work. He said there were some tradeoffs with the conservation easement, but said it was generous of the property owners to entertain the discussion on public access, and to allow the process to go ahead. He said the fact that public access had been granted to a large piece of land, and that the easement was going forward was a testament to all of them. Councilor Needell noted that if the Town had wanted to buy the land, it would be talking about a much higher price.

Councilor Van Asselt said he was not questioning the work of the Working Group, and said he would have asked the same questions for any of the other 10 pieces of land. He said his concern was that the Council needed to raise these kinds of questions, and to keep working at how it got to be part of this process.

Chair Sandberg said there would be a public hearing, where there would be many opportunities for Councilors to bring their ideas forward.

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

- B. Shall the Town Council authorize the Town Administrator to sign a contract with Stephens Associates of Brentwood, New Hampshire for engineering services at the Wiswall Dam?

Administrator Selig said this was a continuation of an earlier presentation item. He said the Budget appropriation for the project was \$55,500, and the contract was for \$52,070. He said it was important to note that there were a number of activities the engineering firm would be doing to bring the Town into compliance. He spoke about possible implications of the fish way on the dam, noting that the GIS overlay developed by the Town had indicated that the fish way would be quite large, perhaps larger than initially was thought. He said it might make sense for the Council to request that NH Fish and Game provide an update on the fish way.

Administrator Selig said if the fish way wasn't going to be a reality because of concerns of the Council, the Town might revisit the fish ladder idea. He said this might impact the design for the dam repairs, and might impact cost sharing, and provided details on this.

Councilor Needell asked if the fish way impacted flood control, since the fish way was a natural floodway. There was discussion about this.

Chair Sandberg asked if Stephens Associates were designing repairs for what was there, or if they would be involved with a fish way design that included the fish way or fish ladder.

Mr. Cedarholm said the firm was very aware of what was going on with the fish ladder/fish way, and had graciously offered to meet with the Army Corps of Engineers and NH Fish and Game pro bono up to six times to coordinate the repairs with either the fish ladder or the fish passage. He said he had complete confidence that the firm could design the dam repairs so they accommodated either.

Chair Sandberg said that at some point the Council might wish to have an in-depth discussion on what it had seen concerning the fish way in the GIS presentation. He said he personally had been uncomfortable with what he had seen. He asked Mr. Cedarholm when that discussion could happen.

Mr. Cedarholm said because of the shifting of federal funds to New Orleans, the Army Corps of Engineers was looking to construct something in Durham in 2007. He said the agency and NH Fish and Game were focusing at present on developing detailed drawings, so it was important that the Town meet with them soon. He said he had met with NH Fish and Game recently, and was told they had seen the GIS representation of the fish way, and that the Corps of Engineers had since revised the plan so the fish passage was closer to the shoreline.

Mr. Cedarholm said his concern was that the closer to the shoreline the fish passage got, the greater the possibility of impacting the historic site. He provided details on this, and said it would be a real challenge to construct the fish passage without having it appear like a standard Army Corps of Engineers flood control channel.

Chair Sandberg said the Council could go forward with this motion, and could also put on the front burner consideration of what the Council wished to do concerning the fish way/fish ladder.

Councilor Peter Smith MOVED that the Town Council authorize the Town Administrator to sign a contract with Stephens Associates of Brentwood, New Hampshire for engineering services at the Wiswall Dam. The motion was SECONDED by Councilor Van Asselt.

Councilor Peter Smith said he had read carefully the recent letter from engineer firm. He asked if at the moment, there was no accurate way to know how much money would be involved with the repair.

Mr. Cedarholm said that was correct.

Councilor Smith said keeping that in mind, he noted a footnote on page 6, and said as he read this, it was saying that unless the Town wanted to pay more than what was in the contract, the engineering firm had the right to rely on scientific and technical conclusions reached by entities in prior studies, without having to do any peer review. He said he was concerned about this, given that some pretty critical earlier judgments were reached, and he asked if the Town was asking for trouble here. He provided details on his concerns.

Mr. Cedarholm said he thought the footnote was referring to not recalculating the 100-year flood. He said that since the prior dam breach analysis, the 100-year flood had increased, and said this was one of the primary reasons the Town was being asked to redo the dam breach analysis.

Councilor Peter Smith said his concern was that this was Mr. Cedarholm's interpretation, but was not what the footnote said. He said the footnote sounded like it was saying the Town was letting the firm rely on previous conclusions, and he said this could come back to haunt the Town. He provided details on this, and said he wasn't happy with the fact that Mr. Cedarholm was not completely sure of the scope of what the engineering firm thought the footnote meant.

Mr. Cedarholm said he thought the fact that it referenced the Army Corps of Engineers study on the same page indicated that the footnote referred to the 100-year flood. He said Stephens Associates didn't plan to revisit this calculation. He noted he questioned the existing calculation, but also questioned the idea of spending the time now to redo it.

Councilor Peter Smith said if he was the Town Administrator, he would say he wanted Mr. Cedarholm to make certain that the engineering firm was not going to be taking a different position than what Mr. Cedarholm had stated.

There was further discussion, and Administrator Selig said he would follow up on this.

Councilor Needell MOVED to waive the requirement to adjourn at 10:00 pm. The motion was SECONDED by Councilor Julian Smith, and PASSED 8-1, with Councilor Kraus voting against it.

Councilor Carroll said one of her fears was that the Council would vote for this, and would then get tied up in looking at whether there would be a fish ladder or a fish way, a process that would take so long to carry out that another study would be needed.

Mr. Cedarholm said the fish passage plan would have little effect on the repairs, because the inlets, although in the vicinity of the floodgates, were far enough away so they shouldn't impact the repair work. He said if the ladder were installed near the floodgates, this would be more problematic.

He said his own wish was that the fish ladder be installed on the opposite side of the river, and said he said saw no reason why this couldn't happen, stating he thought it was the perfect place for a fish ladder. He said if NH Fish and Game said it had to be installed near the floodgates, the Town could say they had to work around the floodgates, since they were an essential part of the dam. He noted that in most cases, fish ladders were installed after the fact, so had to accommodate what was already there.

Councilor Niman said if the Council voted on this, he would vote no, because his feeling was that the Town was repeating the mistakes made with the Packers Falls Bridge. He provided details on this, and said because of all the factors and parties involved, with too many unknowns, his fear was that the Town would throw away \$50,000. He said until the issue of the fish way/fish ladder was resolved, he was not prepared to award the contract to anyone. He said he was sure Stephens Associates was a great company, and said as soon as the Town was sure what it wanted, he would be glad to award the contract.

Chair Sandberg said the issues with the Packers Falls Bridge came later, stating that the Town had received a substantial report that said clearly what the bridge would become. He noted that presently, the Town was under an Administrative Order to get the ball rolling with the dam repairs, and said the question was whether this was the firm to do so.

Councilor Kraus said Councilor Niman had spoken well, but had neglected to mention the additional complicating factor of special interest groups that would gum up the process even further.

Councilor Needell said that in his mind, the issue of the fish ladder was separate. He said the Town was under an Administrative Order, and said the burden was on NH Fish and Game to get their act together to coordinate with the dam repairs. He said he was looking for assurance from Mr. Cedarholm that hiring this company would lead the Town to comply with the Order to repair dam.

He said if the fish ladder/fish way issue could be resolved early in the process, this could be included in the plan. But he said if this issue dragged on, it could be separated out. He said he agreed that that issue could get complicated, but said this issue was separate from the contract.

Mr. Cedarholm said the fish ladder issue was independent of the dam repairs, and said the dam wasn't being redesigned, regardless of where the fish ladder went. He said the fish ladder needed to be able to work with the design that was there. He said if NH Fish and Game and the Army Corps wanted to redesign the dam, they would have to come up with the funds to do this.

Councilor Morong said he was more concerned with who was paying for this, and asked if the cost was being born by the 900 water users in Durham.

Mr. Lynch said they were.

Councilor Morong asked where the University fit into all of this.

Mr. Lynch provided details on the fact that the Town would be focusing on getting some sort of funding assistance from the University.

Councilor Morong said this didn't seem fair to the 900 households, and said if the issue was simply about water containment, it seemed that the cost for this should be shared equally between all the water users. He said it seemed there were other uses of the Wiswall dam area besides water containment, and also said the water users, given the choices, might decide to use water from the Spruce Hole aquifer instead of using water from the dam.

Chair Sandberg asked if other options were available to distribute the cost.

Administrator Selig said although there were recreational uses of the Wiswall dam area, the primary reason for retaining the dam was as a water source. He said the University had argued that if were going to treat the system as a single system, and if the University was going to help pay for dam repairs, the Town should help pay for repairs to the water treatment plant. He said his own contention was that cost of this would far exceed the cost of repairs to the dam. He said the University was therefore helping pay for portions of the infrastructure that were jointly owned, which did not include the dam.

Administrator Selig also noted that the Town had applied for, but had not received a FEMA grant to help pay for the dam repairs. He said the Town planned to apply for this grant again.

Councilor Morong said he thought the recreational uses of the Wiswall dam area were more significant than some had stated, and said he thought there would be an outcry if someone said the dam should be torn down.

Chair Sandberg said the Council needed to move on with the motion before it.

Councilor Peter Smith asked what the earliest possible date was when the repairs would begin.

Mr. Cedarholm said they would probably begin in December of 2006.

Councilor Smith said that answer was relevant to Councilor Niman's concerns. He said the issue of the fish way/fish ladder wouldn't be relevant until the work on the dam actually started, and said he saw no alternative but to proceed, unless the Council lacked confidence in the engineering firm.

Councilor Niman said he was still not prepared to vote for this, because there was too much uncertainty as to what the Town wanted to accomplish. He said he appreciated Chair Sandberg's comments on the Packers Falls Bridge process, but said this process did sound similar to that one. He said Councilor Morong's comments were directly relevant to the motion, because if one believed that water users shouldn't bear the cost, perhaps they should get rid of the dam, and not spend \$50,000 on repairing it.

Councilor Niman said why not return the Lamprey River to its natural state, and said it was not clear that if this happened, this would eliminate recreational opportunities in that part of Town.

He said with the existence of the Lee Well, and with the opportunity for recreational uses of the area without the dam, the only reason for the dam was to provide the University with free water. He said he would think that if the Town negotiated with the University, it would be worthwhile to bring this up.

Councilor Needell noted that the Corps of Engineers had suggested removal of the dam, and there was a great reaction from the Town against this. He also said that Council discussions on the Town's water supplies had indicated that while the Lee Well was a sufficient source of water, having a single water supply of that type was not sufficient. He said there was significant value to the Wiswall dam water, and said repairing the dam preserved that water supply. He noted that he felt the only reason for the dam was the impoundment. He also said the agreements with the University were convoluted, and said he was not willing to change right now how the Town was doing business with the University.

Councilor Julian Smith said he was ready to vote.

Councilor Morong said he would probably vote against this motion, because he thought this was a Durham dam, not a water users dam. He said the costs should be spread out more.

Chair Sandberg asked where the Town went, if it didn't repair the dam.

Administrator Selig said this would be quite problematic, stating that the Town had previously set the direction it wanted to go in. He provided history on the process, and noted that when the presentation on the fish way was made, the plan was acceptable to the Council, and it gave the ok to design the fish way, saying that as long as it continued to meet expectations, it would be on board with this. He provided additional details on how things had been proceeding since that time, and said the patience of NHDES was being tested.

Administrator Selig said he didn't believe eliminating the dam was the appropriate way to proceed. He said the dam provided an important water supply for the University, but was also an important alternate water supply for the Town. He said the recreational uses existed whether or not the dam was there. He said it was important to move ahead with the engineering, and said if the Council was concerned with the way the project was being funded, it could address this.

Administrator Selig said the present funded plan was endorsed by the Council. He noted there was discussion in the past that it was appropriate that water users foot the bill, and he provided details on this. He said the Town could raise the funding issue with the University again, but said the Town at present was required to make these repairs.

Councilor Peter Smith asked what the fines were if this didn't happen. There was discussion on this, and how soon they could come if the Town didn't move forward.

Administrator Selig said if the contract was awarded and questions were raised about the fish way, the Council could address whether it wanted the fish way or the fish ladder.

Chair Sandberg said the contract addressed the Administrative Order.

Councilor Peter Smith said he was not concerned about the fish way/fish ladder. He noted the idea of not impounding the water was not one the Council had been in favor of the previous year. He said the critical issue for him was the importance of having that impoundment, and said if this was important, threatening to remove this water supply was cutting off one's nose to spite one's face.

Councilor Van Asselt MOVED to amend the motion, and to take \$50,000 from some source other than the water users. Councilor Morong SECONDED the motion.

Councilor Kraus left the meeting at 10:35 pm.

Administrator Selig said if that was what the Council wanted to do, there should be discussion on how to raise and appropriate an additional \$52,070, which would involve amending the FY 2006 Budget, in place of expending money from the Water fund. He said this would mean there would be an additional impact on the tax rate. He said this would need to be done at another Council meeting, and would require a 2/3 vote of the Council. He also said contingency funds could be used to pay for this, but said he wouldn't recommend doing this.

Councilor Van Asselt and Councilor Morong withdrew their motion.

The original motion PASSED 5-3, with Councilor Morong, Councilor Niman, and Councilor Van Asselt voting against it.

- C. Shall the Town Council adopt **ORDINANCE #2005-06, SECTION #2005-06 (F) - RELATIVE TO THE HISTORIC OVERLAY DISTRICT**, contained within the Zoning Ordinance with additional minor amendments as recommended by the Durham Planning Board?

Chair Sandberg said that in reading the language of Section F, he saw there were some serious language problems, involving things like shall/may, and who had what responsibilities. He said as it presently existed, he would vote against Ordinance #2005-06 F because he felt it was worse than the original language.

Councilor Van Asselt said he would prefer to delay deliberating on this until another meeting.

Councilor Van Asselt MOVED to postpone deliberation on Agenda Item X C- Shall the Town Council adopt ORDINANCE #2005-06, SECTION #2005-06 (F) - Relative To The Historic Overlay District. The motion was SECONDED by Councilor Peter Smith.

Councilor Carroll asked that the Council apologize to Mr. Campbell, who had been in attendance at the meeting all evening.

Councilor Needell said he was not at the meeting when Section F was remanded to the Planning Board for non-substantive changes. He asked if there were substantive concerns with the document, and said he had concerns about the process.

Chair Sandberg said he had substantive, meaningful changes to recommend.

Councilor Peter Smith said he had innumerable substantive changes to recommend, and said he didn't think this section met the standard of previous sections that had been provided to the Council.

Councilor Niman asked for clarification of what the process would be, as result of this.

Chair Sandberg said that at the next meeting, he would argue that the Council vote no on the language in Section F. He said he would explain to the Planning Board why he was doing this, and said the Planning Board could either bring Section F back to the Council with changes, or not. He said he felt the Town was better off with the current language than with what was proposed.

Chair Sandberg noted that the Council could also decide to adopt Section F, if other Councilors didn't agree with the problems he and Councilor Smith had with the provisions.

The motion PASSED 7-1, with Councilor Niman voting against it.

XI. Nonpublic Session

Chair Sandberg said that Administrator Selig wanted to go into nonpublic session under RSA 91:A 3 II A, regarding a Town employee.

Councilor Jerry Needell MOVED to go into Nonpublic Session in accordance with RSA 91-A:3 II (a), the dismissal, promotion or compensation of any public employee or the disciplining of such employee, or the investigation of any charges against him, etc. The motion was SECONDED by Councilor Peter Smith and PASSED unanimously 8-0 on a roll call vote as follows:

<i>Julian Smith</i>	<i>AYE</i>	<i>Neil Niman</i>	<i>AYE</i>
<i>John Kraus</i>	<i>ABSENT</i>	<i>Malcolm Sandberg</i>	<i>AYE</i>
<i>Diana Carroll</i>	<i>AYE</i>	<i>Mark Morong</i>	<i>AYE</i>
<i>Karl Van Asselt</i>	<i>AYE</i>	<i>Jerry Needell</i>	<i>AYE</i>
<i>Peter Smith</i>	<i>AYE</i>		

The Council returned to public session at approximately 10:58 PM.

Councilor Julian Smith MOVED to seal the minutes of the Nonpublic Session. The motion was SECONDED by Councilor Peter Smith and PASSED unanimously, 8-0.

XII. Adjournment

Councilor Peter Smith MOVED to adjourn the meeting. The motion was SECONDED by Councilor Karl Van Asselt and PASSED unanimously, 8-0.

The meeting ADJOURNED at 10:59 PM.

Victoria Parmele, Minute Taker

