

This set of minutes was approved at the April 3, 2006 Town Council meeting.

DURHAM TOWN COUNCIL
Monday, March 6, 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; Councilor Van Asselt; Councilor Julian Smith; Councilor Carroll

MEMBERS ABSENT: None

OTHERS PRESENT: Town Administrator Todd Selig

I. Call to Order

II. Approval of Agenda

Councilor Kraus MOVED to approve the Agenda as submitted. The motion was SECONDED by Councilor Julian Smith, and PASSED unanimously 9-0.

III, Special Announcements

Chair Sandberg noted that Margery Milne had passed away and spoke about the fact that she had become the keeper of the swans in 1974 or 1975, when two swans came to Town.

Councilor Carroll said she and her husband had already heard of the Milnes when they first came to Durham, in 1974, and said the Milnes had taken them under their wings, and among other things, introduced them to the swans. She noted the book, *The Gift from the Sky* written by the Milnes, which recounted the story of the swans. Councilor Carroll said she and her husband had gotten to know the Milnes well over the years, and said Margery was a remarkable woman, who never gave up on anything. She said she would be missed.

Councilor Julian Smith said that shortly after he came to Durham in 1965, he was given a copy of the *The Valley*, the book the Milnes wrote about the Oyster River valley. He noted that the end of the book they lamented that so many elements of the natural world around Durham had been lost, including beavers and bears, and said that ironically, although beavers and bears have returned to Durham, the Town will never see the likes of the Milnes again.

Acknowledgement for contributions made by outgoing Town Council members

Chair Sandberg said this was the last time the current Council was scheduled to meet as a body. He then presented certificates of appreciation to outgoing Council members John Kraus and Neil Niman, noting that Councilor Niman might be returning to the Council if he was re-elected.

Councilor Niman then presented a certificate of appreciation to Chair Sandberg, and spoke in detail about the fact that he had provided the Council with a tremendous amount of leadership and stability during his chairmanship, which was very much appreciated. He also said that as part of a tradition, Chair Sandberg was to be presented with a chair.

Councilor Peter Smith said that as of the next Town Council, he would be the member who had served the longest, so had significant experience in dealing with Chair Sandberg. He also noted that he had served on the Planning Board with him, and said his service to the Town had been extraordinary. He noted that 16 years ago, Durham had changed its form of government, and said during that time, no one had served as long as Chair Sandberg had.

He said that serving as Chair of the Council for 5 years was a substantial record, but also said it was the quality of that service that should be noted. Councilor Smith said it was not an exaggeration to say that Durham's government at present was in a much different place than it was prior to 5 years ago. He said Chair Sandberg was responsible for much of that change, noting that among other things, he had played a key role in selecting Administrator Selig.

Councilor Smith said Chair Sandberg's leadership had brought an aura of professionalism, respect and organization to the Council, which was recognized by people throughout Durham. He noted Chair Sandberg's efforts to make sure everyone had a chance to speak, and said his most important long-term contribution was introducing the concept of openness in government, which had been a remarkable development in the last several years. Councilor Smith said he hoped it continued, because in the long run, it leads to better government.

Chair Sandberg said other members of the Council had made his job easy, and said he appreciated having had the opportunity to serve. He said he agreed that the steps taken in the last few years to have a more open government were important, and said he hoped this continued, and looked forward to seeing how the Council's work continued in the years to come.

IV. Approval of Minutes

February 6, 2006

Councilor Van Asselt MOVED to approve the February 6, 2006 Minutes as submitted. The motion was SECONDED by Councilor Kraus, and PASSED 7-0-2, with Councilors Niman and Councilor Morong abstaining because of their absence from this meeting.

February 6, 2006 (Nonpublic Session)

Councilor Van Asselt MOVED to approve the the minutes of the February 6, 2006 Nonpublic Minutes. The motion was SECONDED by Councilor Kraus.

Councilor Peter Smith MOVED to approve the amendment to the minutes of the February 6, 2006 Nonpublic Minutes, which involved adding “.. whether members of the Council were satisfied with his performance” on page 4. The motion was SECONDED by Councilor Kraus, and PASSED 7-0-2, with Councilors Niman and Councilor Morong abstaining because of their absence from this meeting.

The February 6, 2006 Nonpublic Minutes, as amended, PASSED 7-0-2, with Councilors Niman and Councilor Morong abstaining because of their absence from this meeting.

There was clarification that the Council hadn't voted to seal the February 6, 2006 Nonpublic Minutes, so they became public after 72 hours.

V. Report of Administrator

- Administrator Selig said that due to technical difficulties, the public hearing on proposed FEMA funds related to the snow storm the previous winter had been postponed, He said it would be scheduled for a later date, but said anyone with comments could provide them at the present meeting.
- Administrator Selig noted that the previous week, a story had broken about UNH Police Department court prosecution practices. He provided some detail on this, and said he had prepared a document about this for Councilors.
- Administrator Selig provided details on the fact that Paul Beaudoin would be leaving his position as the Town's Business Manager, and said he had been hired as a legal administrator for the Ransmire Spelling law firm. Administrator Selig said that in nonpublic session that evening, he and the Council would discuss how the Business Manager position should be filled.
- Administrator Selig congratulated the Oyster River High School Women's basketball team on completing an undefeated season, and winning the Class I State Championship. He noted this was the team's second state title in four years.
- Administrator Selig provided details on the candidates running for Town and School elections on March 14th.
- Administrator Selig said that copies of the annual Town Report had been mailed to residents the previous week, and also said it was posted online. He said extra copies of the Town Report were available at the Town Hall.
- Administrator Selig provided details on accreditation of UNH police officers. He explained that the UNH Police Department received its ability to exist through the Town of Durham, via a Memorandum of Understanding, and noted there was a process whereby employees of the University were sworn in as Durham police officers. He said as part of this, there was a clause that required full CALEA accreditation by July of 2006. Administrator Selig said he had requested a meeting to get an update on where the University's police department was concerning this process.
- Administrator Selig updated the Council on the issue of dispatch services. He noted that the idea had been raised the previous year that the County Sheriff's Department could perhaps take over the running of dispatch services, and said he had written to UNH requesting continued discussion on this idea.
- Administrator Selig said the Fire Department's Engine #2 had had electrical difficulties at the end of 2005, and had been sent to Massachusetts for repairs, which would run as high as \$25,000. He noted that this was not a budgeted item, but said there was money in the capital reserved fund to cover these kinds of expenses. He said a meeting had been scheduled with the University concerning this, and said he would be coming forward to the Council with a Resolution to authorized spending funds on the fire engine repair. He pointed out that this would require an amendment of the default 2006 Budget.

VI. Reports and Comments of Councilors

Councilor Needell said the Planning Board had recently approved a site plan review application for an expansion of Scorpion's Bar and Grill that would envelop the adjoining pizza place. He also said

the upcoming Planning Board meeting on Wednesday, as well as the March 22 meeting, would focus on a review of the Master Plan implementation strategy. He said the Planning Board would begin reviewing the Master Plan, what had been accomplished so far in implementing it, and what still needed to be done.

Councilor Needell congratulated the UNH Women's hockey team for its No. 1 ranking in its league.

Councilor Carroll said she had received a call from a resident about current zoning provisions regarding timber harvesting that this person said were too restrictive on landowners. She said she had done some research, including discussions with some UNH forestry professors and others who were in touch with landowners in Town. She said she hadn't put together a report on this research, but said she thought it would be important to look at this area of Zoning again. She said she was pleased to see that Mr. Campbell had put timber harvesting on his list as one of several Zoning issues that should be looked at some more.

Councilor Carroll also said she had become aware that when technical zoning provisions passed, there were really only a few people with the technical abilities to understand the requirements, impacts on landowners, impact on environment, etc. She said it might be appropriate that those people looking at technical aspects of the Ordinance include people with a forestry background, who could educate Durham board members on forestry related issues.

Councilor Carroll next noted House Bill 1495 Bill, whose purpose was to increase the setback requirement for new landfills to 1500 ft. from designated rivers. She said this was being proposed because of drinking water concerns, and said it was something worth following. She said it might be a bill that the Council would want to create a resolution on, or at least look into with the Town Engineer.

Chair Sandberg noted that there had been public hearings on the Shoreland and Wetland overlay ordinances, and said if there were errors in them concerning timber harvesting, there was a process that could be followed to address them. He said those citizens who felt they had been negatively impacted by the Ordinance should follow the process closely, so their voices would be heard as early as possible.

Councilor Kraus said at his last meeting on the Council, he would like to sing the praises again of the Integrated Solid Waste Committee, which did really terrific work for the Town. He said his role on the committee was to serve as a liaison between it and the Town Council, and said he hoped the Council would keep in mind how it would continue to provide representation for the Committee on the Council.

Councilor Niman said the Jackson's Landing Committee had met the previous week as part of developing a plan for the site. He noted that Councilor Needell and Councilor Julian Smith were present at the meeting. He said the Committee planned to present its plan for the site to the Council by July 1st, and said hopefully it would be on track.

He said that under Other Business that evening, he would like to share a multimedia CD Rom received from University of New Hampshire Hospitality Services, and would then like the Council to have a brief discussion as to whether it could develop a policy position on this. He stated that he was not anti-UNH, but just wanted the University to make a payment in lieu of taxes if they competed with other businesses in Town.

Councilor Niman said this might or might not be his last meeting on the Council, depending on how the election went. He said he was concerned about what was going on with the University Police Department, and said it didn't reflect well on it. He said he thought more was involved in the situation than money, and said it reflected poor judgment. He said his understanding was that if the Department were accredited, these kinds of things would not happen, and said he hoped the next Council would put this on its agenda, and communicate to the University that it was very concerned about the issue.

Councilor Morong said he had attended the recent Rental Housing Commission, and said it was hoped the booklet for landlords would be coming out by June. He also noted that Police Chief Kurz had reported at the meeting that during the last four months, noise complaints, which generally came from residents of Durham, were down. He said this was considered to be a very positive development, and said things seemed to be improving in that area.

He also made reference to the incident on Garden Lane, and said it looked like the University was becoming a better partner with the Town in helping to reduce neighborhood problems.

Councilor Morong also said he had gone to the recent Economic Development Committee meeting, and said the Committee was in the process of pulling together the rewrite of the design guidelines for the Durham Business Park. He said there had also been discussion on the best way to service the next phase of Spruce Woods, given water/wastewater issues, and the new zoning for that area.

Councilor Morong said he had gotten a great demonstration that day of the excellent response time of the Durham Fire Department, when there had been a chimney fire at his house. He said the Department worked very efficiently and was respectful of his property, noting that and that there was very little property damage suffered as the Department worked to put the fire out. He explained that an infrared sensing device was used to determine if there was heat in the walls.

He also noted for other residents of Durham heating their homes with wood that he had had his chimney cleaned at the beginning of the season, but apparently, that wasn't always enough.

Councilor Peter Smith said he deeply regretted the fact that Durham would be losing its Business Manager, Paul Beaudoin, who had been a first rate employee of the Town. He said the audit reports testified to the improvement in the Town's financial affairs in recent years. He also said he looked forward to hearing what Administrator Selig would be recommending in terms of filling the Business Manager position.

Councilor Peter Smith said he too was very concerned about the report on the UNH Police Department. He said an issue that should be attacked vigorously in 2006 was how policing in Durham should be carried out, and noted that he had believed for some time that there should be an exploration of whether it would be wise to have a unified police force, operating under the rules of Town government, by persons appointed by elected officials, and under an appropriate shared funding formula.

Councilor Smith said this had been an issue since at least the 1960's, and he urged the Council and the appropriate persons at the University to be willing to sit down and look at this issue with the view of seriously considering this idea. He said there was all sorts of common ground that could be found on this issue, including substantial financial savings, and provided details on this.

Councilor Van Asselt noted the various issues concerning wastewater/water infrastructure for the proposed Spruce Woods development, and said the next Council would have to deal with these

issues. He also said he hoped there was sufficient staff to deal with them, and said this kind of development raised that question. He provided details on this.

Councilor Julian Smith announced that the DCAT Governance committee was losing two of its members, Peter Brown, and Kathleen Kentner, and he encouraged citizens to volunteer for the Committee.

Councilor Julian Smith also spoke about the timber harvesting issue, and said he was glad to hear Councilor Carroll's comments on it. He said that as he had listened to Mr. Keefe's reservations concerning the timber harvesting portion of the Shoreland overlay district ordinance, the discussion at that time that it could be amended later had had a bearing on his voting in favor of it.

He said he now wished that he had voted against the ordinance, along with Councilor Kraus, and said he hoped there would be time at the end of the Council meeting to send a message to the Planning Board to take another look at it.

VII. Public Comments

Beth Olshansky, Packers Falls Road, said she was present to thank Chair Sandberg for his tremendous years of dedication in serving the Town of Durham. She said she always remained appreciative and in awe of his ability to guide the Council meetings. She also said a lot had changed and a lot had been accomplished in the past several years, due in large part to Chair Sandberg, as well as other members of the Council and the Town's excellent Town Administrator. She provided details on this, and said Chair Sandberg had brought a strong vision to the Town Council.

Ms. Olshansky said she hoped the years had provided Chair Sandberg with rewards as well as challenges, and that he would have the chance to enjoy some of the special places in Durham he had worked so hard to protect. She said perhaps, after awhile, he would miss Town government so much that he would enter public service again.

Dudley Dudley, Woodman Road, said to serve as chair of the Council required the flexibility of a country squire, the stamina of a Navy Seal, the patience of a high school math teacher, the firm hand of a sailing master, the steely nerves of a sports car driver, the sensitivity to nature of an orchardist, the courtesy of a gentleman, and the love for future generations of a grandfather. She also said it didn't hurt that he was as good looking as George Clooney. On behalf of the residents of Durham, she thanked Chair Sandberg for taking good care of their favorite Town, their favorite place, and their home.

Rob Keefe, 59 Piscataqua Road, thanked Councilor Carroll and Councilor Julian Smith for their words concerning the timber harvesting issue. He noted he had been prepared to read a long letter he had written to the Town on this, but said he would not read it because it sounded like the issue would be addressed.

He noted that a year ago, Don Quigly, a professional forester, had sent a letter to the Town suggesting that Article 20, Performance Standards, appeared to be in violation of RSA 672 3C which protected the rights of citizens to practice forestry in New Hampshire.

He said he had a master's degree in forest biometrics, and said that based on the current ordinance, he couldn't make sense of where he legally could cut trees in Durham. He said this ordinance needed to be revisited very quickly, not just for his own family's sake, but also for the good of the Town. He said he would submit a letter outlining some proposed changes to the Ordinance.

Chair Sandberg explained the procedures for Mr. Keefe to moving forward with his proposed changes, and said Administrator Selig could assist him with this.

Councilor Needell explained that if Mr. Keefe was not satisfied with the response from the Town Council or the Planning Board, he could initiate his own amendments.

Bill Hall, Smith Park Lane, thanked the Council for looking into the timber harvesting issue, and said it would find it had been uninformed on this issue. He said he had talked with other foresters about the timber harvesting provisions, and said they were adamant that Durham had no business tampering with State laws concerning forestry.

Mr. Hall also said he was concerned about the University police department's behavior, but said he was against the idea of merging the two police departments, noting there were some very good reasons why this shouldn't happen. He said that in serving in the Military Police at Fort Campbell, he had gotten a good view of how a police department should function. He said accreditation was a good idea, but said what was more important was that the Council, Administrator Selig and the Durham Police Department should be calling the shots, not T-Hall. Mr. Hall said he knew some of the University police officers well, and said T-Hall caused some chaos in their department. He said whatever was done, it had to be done to Durham's standards.

Harvey Woodward, a resident of Nottingham, said that he had grown up in Durham, and said he hoped the Town would take a good look at the Zoning Ordinance as it related to timber harvesting. He said people often equated tree cutting with other types of land disturbance, but said this didn't necessarily have to be the case. He said if the Town could make it possible for landowners to earn some money from timber harvesting, this would give them more incentive to hold onto their land.

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

- A. RESOLUTION #2006-05** recognizing outgoing elected officials and board members for their dedication and service to the Town of Durham

Councilor Sandberg read the names of outgoing elected officials and board members

Councilor Van Asselt MOVED to approve RESOLUTION #2006-05 recognizing outgoing elected officials and board members for their dedication and service to the Town of Durham. The motion was SECONDED by Councilor Julian Smith.

Councilor Kraus noted that the Resolution did not indicate that he had served the Town in an appointed capacity from November 2002 to March 2003, and said it should reflect this.

Councilor Kraus MOVED that the dates for his service to the Town should read November 2002 to March 2006.

Councilor Kraus said he was also making note of this so it would be kept in mind that there occasionally were Councilors who were appointed. He said this should be part of the historic record.

Councilor Van Asselt SECONDED the motion, and it PASSED unanimously, 9-0.

Councilor Needell pointed out that several people whose names had been read by Chair Sandberg might very well be reappointed to their positions.

Chair Sandberg noted that there were only 8 vacancies on Durham's boards and committees, and said this was a credit to the Town, considering the number of positions. He also said there was still an opportunity for citizens to fill these vacancies and serve the Town.

Councilor Peter Smith MOVED to amend Resolution #2006-05, by adding the following language to the first Whereas: "...and whose terms in office will shortly expire."

He said this made it clear that some members of boards and committees would soon be leaving their positions, but others would be continuing in these positions.

The motion was SECONDED by Councilor Van Asselt, and PASSED unanimously 9-0.

Chair Sandberg read the entire resolution and thanked all of those citizens who had served the Town of Durham, and said he looked forward to their continued involvement in the Town.

- B.** Shall the Town Council endorse the University of New Hampshire Outdoor Swimming Pool Use Agreement and the Jackson's Landing Boat Launch Agreement between the Town of Durham and the University of New Hampshire?

Administrator Selig provided background on the two agreements, and their linkages because of some common issues. He said the agreement was essentially that the Town would continue to allow the crew trailers to park at Jackson's Landing for free, and in turn, the University would allow pool pass holders to park for free at the Woodside lot. He said the pool agreement also put down on paper the understanding that had been developed over many years, and had specifics about the Town's options if the University planned to close the pool. Concerning the Jackson's Landing agreement, he said a number of operational issues were addressed in it, and he provided details on this.

He noted that when the Council had last seen these agreements in December of 2005, there were some outstanding issues regarding the Jackson's Landing agreement, one of them regarding provisions that would be applicable to third parties using the boathouse, in Section 7. He said Councilor Peter Smith had said he thought third party use should be separate, and said that after some discussion with him on this, the agreement was amended to reflect this.

Administrator Selig also noted Councilor Morong's concerns about rental of non-University space inside the boat house. He said after thinking about this more, he had still decided that since this was Town space in the University's building, it seemed fair to split any future income from rental of the space 50/50. He said no change had therefore been made to this provision. He noted that there were currently no revenues being received from rental of the space.

Administrator Selig pointed out that the negotiations on the agreements had taken place in 2005 with Candace Corvey, who had now left her position at the University. He said the longer the Council waited to sign this, the more likely it was that other University staff would find fault with the agreements, and he also noted that there were new Councilors coming on board soon. He said he therefore hoped the Council could endorse the agreements as soon as possible, and provided additional details on this.

Councilor Needell MOVED that the Town Council endorse the University of New Hampshire Outdoor Swimming Pool Use Agreement and the Jackson's Landing Boat Launch Agreement between the Town of Durham and the University of New Hampshire. The motion was SECONDED by Councilor Peter Smith.

Councilor Needell noted that there was a paragraph numbering problem on page 5, and also pointed out some boilerplate language issues at the end of the agreement.

Chair Sandberg said these were considered non-substantive issues.

There was discussion about some uniform changes that had been made to the agreements, and Administrator Selig noted that wording had been added on page 7 of the Jackson's Landing "...or if new information becomes available.."

Councilor Peter Smith noted that the date in the pool agreement should be changed to 2006.

He also said to the extent the University had a problem with the conceptual change of how the space was handled at Jackson's Landing, he believed the change that had been made with this draft was the correct way to go.

Councilor Smith also said that because the Jackson's Landing committee was in the process of discussing possible changes to how the area was used, he therefore thought it was important that the Council recognize that this group had not finished its work. He noted it was comprised of individuals from the Town as well as the University.

He said to the extent that the University signed this draft, it should be with the understanding by the Town and the University that if proposals for some change to the site were developed and came before the Council, the Town would want to open further negotiations with the University to implement further plans for the site. He said the University should not be surprised if this happened, especially given that it had officials working on this proposal.

Councilor Morong asked how many boat trailers would be allowed to park there, noting he didn't see anything specific about this in the agreement

Administrator Selig said historically, there had been between two and four trailers, and provided details on this.

Councilor Morong said there should be a map for the designated parking area for trailers, and a specific limit on the number of trailers that were allowed.

There was detailed discussion about this. Chair Sandberg said it might be a question of marking the parking areas.

Councilor Morong also noted there had been complaints about excessive number of cars parked at the Jackson's Landing site for University events, and asked if this was addressed in the agreement. There was discussion about this.

Administrator Selig noted that the owner next to the landing had posted signage that his land was not intended to be used for public parking. He said that when residents had contacted the Town about problems at Jackson's Landing, the University had been responsive. He said his sense recently was also that the crew people were responsive. He said if this was not the case, he hoped residents would let the Town know. He said the area was open to the public in the daytime, and said there was no reason why public boat launching and the crew team couldn't coexist.

Councilor Morong also spoke about non-University use of the boat house. He said the University got to use land belonging to the Town for the boathouse, and the Town rented space in the building. He

said it seemed only fair that the Town should receive the money from rental of the space, noting that a 10-year agreement represented a long time, so it was important that the Town was happy with it.

Councilor Morong MOVED that on page 4, under 5 F, the agreement should be amended to say that “..University Trailers - a maximum of four trailers may be stored during the day.” Councilor Kraus SECONDED the motion.

Administrator Selig said there were some people at UNH who were not at all happy with the idea of allowing Durham residents to park for free when using the pool, and said if the Town started talking about a maximum number of trailers at Jackson’s Landing, UNH might start talking about allowing a maximum number of cars to park for free. He also said the Jackson’s Landing site had to be workable for both parties. He said the Town could designate a space that only accommodated 4 trailers, if the number of trailers became problematic.

Councilor Morong said in that case, he would like to see that in the document.

Chair Sandberg noted the agreement did contain the words “designated spaces”, so in that sense it did restrict parking.

Councilor Peter Smith said he agreed in substance with Councilor Morong, but said he felt the motion went in the opposite direction of what he was trying to accomplish. Councilor Smith said the language in the agreement gave the Town full power to limit the square footage for parking of trailers.

Councilor Smith noted that he would like to change the wording in the document from “may” to “shall”. He said he would make a separate motion concerning this.

Councilor Needell said when he had read through the agreement a second time, he had realized that by controlling the designation of spaces, this gave the Town control it needed. He said the problem was enforcement, which was left to the Town Administrator, and said by giving him the authority to designate and control the parking spaces, the Town was covered.

Chair Sandberg said this was a very important point, and provided details on this.

There was discussion about the future of the UNH women’s crew team, and how this impacted the situation. Administrator Selig said a reason to nail down the agreement now was because of possible changes such as this.

The motion FAILED 2-7, with Councilors Morong and Kraus voting for it.

Councilor Morong asked if this agreement had the same weight as the water and sewer agreements.

Administrator Selig said the argument could be made that it was imperative for the Council to approve and authorize these agreements, or on the other hand, that the Town Administrator, who managed the Town’s properties, entered into them on his own authority. He said he wanted to be sure the Council supported what he did, and said if there were concerns, he wanted to hear them before signing anything. He said he was trying to work through these agreements in a public way.

Councilor Morong MOVED to strike under 7 F, on page 6 “that the Town and UNH shall split the proceeds evenly”. Councilor Peter Smith SECONDED the motion

Councilor Morong said Jackson's Landing was one of the few areas where the Town held something that was quite valuable to the University. He said it was worth more than parking at the Woodside lot, and said he didn't see why the Town should give up any moneys to the University on this.

Administrator Selig said there was a great deal more in the pool agreement than the parking aspect. He said he had tried to put in place a mechanism so that the Town had a strong voice on the future of the pool, and said this hadn't existed before. He provided details on the advantages to the Town of doing this, and on the concessions the University had made concerning this.

Councilor Morong said the University provided the pool for the use of Durham residents as a good neighbor. He said he hated to see this linked to the Jackson's Landing issue, and provided details on this.

Councilor Needell said the way he saw it, the Town had granted the University the space, and the University had granted it back to the Town. He said he didn't see this as something worth clouding the issues about, and said although the sentence was easy to take out, and he wouldn't care that much if it was, he was comfortable with the idea of sharing the proceeds of renting the space.

Councilor Peter Smith said he had seconded the motion because he wanted to hear Councilor Morong's argument for it. He said this was not a big space they were talking about, and said he would prefer not to disturb the agreement because of it, and would rather confront the University regarding a space such as the Whittemore Center.

The motion FAILED 1-8, with Councilor Morong voting in favor of it.

There was a brief discussion on whether the word "shall" or "may" should be used in the agreement, and it was agreed that Administrator Selig could treat this as he felt was appropriate.

The original motion, endorsing the University of New Hampshire Outdoor Swimming Pool Use Agreement and the Jackson's Landing Boat Launch Agreement between the Town of Durham and the University of New Hampshire PASSED unanimously 9-0.

Recess from 9:08-9:13 pm

IX. Unfinished Business

- A. Shall the Town Council postpone further action on the additional minor amendments made by the Durham Planning Board to Ordinance #2005-06, Section #2005-06 (F) – Relative to the Historic Overlay District contained within the Zoning Ordinance until March 20, 2006?

Chair Sandberg noted that the Council had posted action on this two meetings ago. He said work was being done to revise some of the language in the Ordinance, but the committee working on it was not yet ready for the Council to consider the changes. He said the committee had suggested that the Council postpone its discussion on the further changes.

Councilor Kraus MOVED to postpone further action on the additional minor amendments made by the Durham Planning Board to Ordinance #2005-06, Section #2005-06 (F) – Relative to the Historic Overlay District contained within the Zoning Ordinance until March 20, 2006. The motion was SECONDED by Councilor Peter Smith.

There was detailed discussion as to whether what the committee would propose was anything more than minor substantive changes.

Councilor Peter Smith said the work being done on the Ordinance was moving along, and hopefully would be finished within the next day. He said he would not want to characterize the changes as minor, noting there were a number of them that it could be argued were more than that. He said he would like to avoid this as a potential problem.

He also said it was the intention of two of the members of the Historic District Commission working on these changes to review these changes with other members of HDC, as the responsible thing to do. He said there would have to be a meeting of the HDC in order to accomplish this. He said it would then have to go to the Planning Board, so if the Council in the mean time remanded it there, it would already be with there when the HDC had finished looking at it. He said he thought some time would be saved in remanding it to the Planning Board ahead of time.

There was detailed discussion on this.

Councilor Peter Smith said the motion to postpone should therefore fail, and after that, another motion should be made to remand the Ordinance to the Planning Board.

The motion FAILED unanimously 0-9.

Councilor Needell MOVED to remand Section #2005-06 (F) – Relative to the Historic Overlay District contained within the Zoning Ordinance to the Planning Board for further review. Councilor Peter Smith SECONDED the motion.

Councilor Van Asselt said the suggestion about the review by the HDC was relevant. He said if the Council was in agreement that the HDC would review the ordinance, he was fine with remanding the ordinance to the Planning Board.

Councilor Peter Smith said he couldn't imagine that the Planning Board wouldn't wait to hear from the HDC.

Councilor Needell said it was the HDC that had voted unanimously that this ordinance be revised, so he thought this was the proper way to handle it.

The motion PASSED unanimously 9-0.

- B. Shall the Town Council approve a plan for additional signage directing travelers to the University of New Hampshire by way of the westerly 155A exit off Route 4.

Administrator Selig provided background on the fact that the Planning Board, in the interest of improving traffic flow in Durham, had decided to contact NHDOT to request additional signage on Route 4 that would direct people coming to UNH to take the 155A exit. He read the letter Mr. Campbell had written to NHDOT concerning this, and then said the agency had written back that it was not opposed to putting up the signage, but needed approval from the Council before proceeding with it.

Councilor Van Asselt MOVED to approve a plan for additional signage directing travelers to the University of New Hampshire by way of the westerly 155A exit off Route 4. The motion was SECONDED by Councilor Carroll.

Councilor Carroll provided details on how the Planning Board had decided to request the signage.

Councilor Needell noted there had also been a lot of discussion at the most recent Planning Board meeting that this additional signage would not solve the traffic problems, but was at least a starting point for rerouting traffic, by educating drivers. He then asked who actually developed the signage.

Administrator Selig said ultimately this was a State decision, but the Town could provide input on it.

Councilor Kraus said it had been a longstanding policy at UNH to direct people to come to UNH via Route 155A, noting that the guidebooks spoke about this.

Councilor Van Asselt said the real issue was not about cars getting to UNH, it was about cars from UNH related functions leaving town, for example, when UNH sports events were over. He said the Town had to work with the University on this.

Councilor Julian Smith said this signage was long overdue.

The motion PASSED unanimously 9-0.

C. New Business

Other Business

Councilor Niman noted the position the Council had recently taken concerning House Bill 1679 and also spoke about the UNH Chancellor's letter concerning the bill. He then spoke about a CD on wedding planning from UNH Hospitality Services that was mailed to his house, which he would like to show to the Council that evening.

He said the University Board of Trustees was formulating a policy on what the University could do and could not do, and said he thought it might be useful if the Council developed a position on this. He said he had written up a statement concerning this, and said if the Council agreed, he would like Administrator Selig to transmit it to the University.

After some discussion, Councilors watched the CD.

Chair Sandberg noted that the issue was not that it was inappropriate to offer these services, but that because the University was a tax-exempt entity, it was working in opposition to the free market.

Councilor Niman said he objected to the University hiding behind the State statutes, and competing with the local market, while avoiding paying taxes.

Councilor Peter Smith said the issues needed to be refined a bit. He said to the extent that feeding University students caused a person selling food downtown a problem, this didn't bother him. He said it was when University services went beyond its core mission that Councilor Niman's concerns came to the fore. He said the services shown in the CD clearly went beyond the core functions of the University.

Councilor Needell said he agreed with Councilor Smith's comments. He said UNH was a major research University, and it was entirely appropriate to have a significant conference center which hosted large events. But he said what they had seen on the CD clearly went beyond the University's core mission, and showed services that directly competed with downtown businesses. He noted that the University said it paid the rooms and meals tax, but he said this money didn't go to the Town.

Councilor Niman read the statement he had developed: "We welcome University efforts to provide services to the general public that are normally offered by local businesses, as long as a payment in

lieu of taxes is paid to the Town which is proportional to the level of services provided”. He said that for example, if there was a trade show or a wedding, there should be a payment in lieu of taxes that went to the Town.

Councilor Kraus noted that these shows brought people to Durham who otherwise wouldn’t be coming to Town, and said the University could make this argument. He said it was hard for the Town to quantify this kind of thing. He also said in fairness that people coming to events used the Town’s roads, so the issue became quite complex. But he said the core issue was direct competition with Town businesses, which he said he thought was quite valid.

Councilor Carroll said she was nervous about the use of the word “welcome” in Councilor Niman’s statement. She said a boundary had been crossed, and said she was not happy with the message on the CD. She said the University was calling itself a resort, and she didn’t welcome this in any way.

Councilor Peter Smith said he agreed with Councilor Carroll, and recommended that instead of using the words “We welcome”, the words “We will not take issue with” could be used.

Chair Sandberg said he would like the language in the statement to be consistent with language in House Bill 1679, which would be much clearer, and would cause no cross messages. He said he felt strongly that this bill was right on target with what the Council had been saying for many years.

Councilor Van Asselt said he didn’t have a problem with the idea of payment in lieu of taxes, but he said the fact was that services the University provided and was talking about providing were services Durham didn’t provide. He said the Town therefore had to be careful about speaking broadly, and talking about the University competing with Town businesses. He also said he realized the University was doing this because it was being pushed to raise more money. He said if someone could quickly match all of that up, he would vote yes on a motion concerning this issue. But he said he still didn’t think payment in lieu of taxes was the answer.

Councilor Needell MOVED to strike the 10:00 pm adjournment hour. Councilor Julian Smith SECONDED the motion, and it PASSED unanimously 9-0.

Councilor Needell said he thought the CD was an example of a much broader issue, - the disconnect between the Chancellor’s letter and the way the policies were being invoked. He noted there were rumors of possible businesses that would be more directly competing with Durham businesses. He said the crux of the issue was that there was real potential for direct competition with downtown businesses, which would have a tremendous impact on them, and said he would like to be able to quantify this.

Chair Sandberg said what he was hearing was that what the Council had seen on the CD had crossed the line, but he said he was nervous about the idea of writing this statement on the fly. He asked Administrator Selig if, having heard Councilors’ comments, he could put something together that was perhaps more powerful, and accurate. He suggested a copy of the Minutes of the meeting could also be provided to the University.

Councilor Kraus said the key thing was to provide illumination of the fact that the Council was very concerned about this issue.

Administrator Selig said it was clear the University had crossed the line as to what was appropriate. He said the Chancellor and the Board of Trustees were working to address these kinds of issues, and said it was unfortunate that the Town had to raise this before that work was done. He said additional

conversation between the Town and the Board of Trustees was warranted, and said he thought they would welcome this. He said the stage had now been set for the next round of discussion on these kinds of murky issues.

Administrator Selig noted that the University's practices were distinct on each of its campuses, but he said that clearly in Durham, these practices were having an impact on downtown businesses, and it was important that the Town was sensitive to this. He provided details on this, and said it would be helpful to further refine Councilor Niman's idea of developing a policy statement, and as part of this, to get input from the Board of Trustees.

Councilor Julian Smith said that although he was proud of his former connection to the University, the CD was an embarrassment. He also said too many of these kinds of things were happening and gave some examples.

Councilor Peter Smith said he thought the Council had an obligation to consider this issue more thoroughly, as trustees of the corporate entity of the Town. He provided details on this, and noted among other things that the Council needed more empirical data to support its claims.

Chair Sandberg said his sense was that all the Councilors were concerned about this issue, and he said it was an issue Administrator Selig needed to address with the Chancellor and the Trustees. He said he would rather work on solutions with the University, and said if the solution was ultimately in Concord, the Town and the University could work on this together. He said as soon as they both started being enemies, it would start going the other way. He said the Town and the University could firmly disagree, and yet still make progress. Chair Sandberg said he thought Administrator Selig was well-positioned to carry the message from the Council.

Councilor Needell said he wanted to distance and disassociate himself from Councilor Julian Smith's comments, and also said he didn't think they were relevant, and even in some ways were harmful to discussion on the issue.

Councilor Niman said there were very negative consequences from the activities of the University, noting there was a problem if the only way businesses in Durham could make money was selling things the University didn't sell. He said there had to be a way so that other businesses could make it downtown, and said he was concerned that if something wasn't done, the only stores left in Town would be those that sold nuts and bolts or cheap alcohol.

Councilor Julian Smith said if the University kept making the kinds of bad choices it had recently been making, having nothing to do with its core mission, this would affect the quality of students coming there, and would affect the Town in all kinds of ways. He said he would like the University to be a great regional university, and would like to see the administration spend more time on these efforts than on looking for ways to save money or raise funds.

Chair Sandberg said that concerning the forestry issue, he thought a resolution to the issue was underway.

Councilor Julian Smith asked if it was the sense of the Council that it should send a more forceful, unified message, that a number of them were increasingly uneasy with the timber harvesting component of the shoreland protection ordinance.

Chair Sandberg said any Council members could go to the Planning Board and raise this. He said he thought the ball was already rolling, so the Council itself didn't need to provide further input.

Councilor Needell noted that there was a list being compiled by Mr. Campbell of items concerning the Zoning Ordinance that needed further attention. He said timber harvesting was considered to be one of these items. He also said he thought it would be good if there was clarification concerning general timber harvesting issues addressed in the Zoning Ordinance, not just the provisions in the Shoreland and Wetland overlay provisions. He said it was important to make this distinction.

D. Nonpublic Session

Councilor Peter Smith MOVED to go into nonpublic session, in accordance with RSA 91-A:3 II a. The motion was SECONDED by Councilor Julian Smith, and PASSED unanimously 9-0 by roll call vote: Sandberg Aye; Councilor Niman Aye; Councilor Peter Smith Aye; Councilor Kraus Aye; Councilor Morong Aye; Councilor Needell Aye; Councilor Van Asselt Aye; Councilor Julian Smith Aye; Councilor Carroll Aye

The Council entered into Nonpublic Session at 10:27 PM.

The Council entered into public session at 10:36 PM.

Councilor Julian Smith MOVED to seal the nonpublic minutes. The motion was SECONDED by Councilor Kraus, and PASSED unanimously 9-0.

Councilor Van Asselt asked that Councilor Kraus have the privilege of adjourning his last meeting on the Council.

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

Adjournment at 10:37 PM.

Victoria Parmele, Minutes taker