

D-R-A-F-T

DURHAM TOWN COUNCIL
MONDAY, MAY 15, 2006
DURHAM TOWN HALL – COUNCIL CHAMBERS
7:00 PM

MEMBERS PRESENT: Chair Niman; Councilor Carroll; Councilor Peter Smith; Councilor Needell; Councilor Van Asselt; Councilor Catherine Leach; Councilor Henry Smith; Councilor Julian Smith

MEMBERS ABSENT: Councilor Morong

OTHERS PRESENT: Town Administrator Todd Selig; Police Chief Dave Kurz; Town Planner Jim Campbell; Public Works Director Mike Lynch; Assessor Rob Dix

I. Call to Order

I. Approval of Agenda

Chair Niman asked Administrator Selig to update the Council and members of the public on areas of flooding in Town, and on the great job Town employees were doing in dealing with the problems the flooding was causing.

He also noted that he would like the Council to hear from resident Emily Smith before going on to other Agenda Items. He explained that she had volunteered for an alternate position on the Library Board of Trustees, and had a meeting to attend at 7:30 pm.

Councilor Peter Smith MOVED to approve the Agenda as amended. The motion was SECONDED by Councilor Needell, and PASSED unanimously 9-0.

II. Special Announcements

Administrator Selig provided an update on flooding conditions in Durham, noting there were problem areas in various parts of Town.

- Juncture of Route 108/Newmarket Road is experiencing flooding in two locations that will likely cause the failure of the roadway itself, particularly at the intersection of Hamel Brook. Here, the Lamprey River is over spilling its banks, crossing Route 108, and entering the Oyster River Watershed near the Oyster River Dam by the Mill Pond.
- The Lamprey River is now flowing over the Wiswall bridge. The Police Department has had to ask residents and other bystanders to get off of the bridge in the interest of safety. Please, exercise extreme caution around rushing waters and in areas that are cordoned off.

- Public Works crews have brought in fill to help preserve the Wiswall Dam's embankments on the Lamprey. Interestingly, the water level has risen so high in this location that the old spillway that was used in the past century to power mills that were located here has filled with water from the downstream side of the dam.
- We are now unable to reach residents who live on Cold Springs Road via roadways due to high water levels and deteriorating road conditions. If residents in this area need assistance, they should call 911. In an emergency, we would shut down train/Amtrak travel and access the area via RR tracks and overland. We are working at this time to obtain an ATV to access this area of town. A member of the Fire Department actually walked across land earlier today to deliver medicine to one resident needing assistance in this area.
- The Newmarket dam on the Lamprey River is still of great concern. The National Guard is assisting local crews in Newmarket.
- Reservoir Creek, which flows into Pettee Brook is overflowing into what had been the empty UNH outdoor pool, something that has never happened before.
- On Dover Road, near Beards Creek, water levels are starting to lower.
- The Town float system at Jackson's Landing broke free but was recovered by UNH crew/athletics. It is now temporarily tied up at the launching area at Jackson's Landing.
- The Durham Wastewater Treatment Plant, which has capacity to handle 2.5 million gallons per day is presently processing 6.7 million gallons per day due to storm water infiltration into the system. This has caused some discharge of untreated or partially treated waste from manholes and at the plant. All discharge will be reported to the state. Due to incredibly high water flow, all discharge will quickly be diluted and washed out to sea.

Administrator Selig said he was sending out updates to residents on the Town listserv and on the Town Web page.

Councilor Peter Smith asked Administrator Selig to explain to the public the importance of keeping eye out for people who were not using good judgment concerning fast moving water. He noted there had already been several incidents that day.

Administrator Selig did so, noting among other things that there had been people taking pictures from the Wiswall Bridge, which could conceivably give way at any time.

Councilor Julian Smith asked how traffic was going to be able to get to Route 125. It was agreed that this would be discussed later in the meeting.

Chair Niman said he would like the Council to hear from Emily Smith so she could then get to her 7:30 meeting.

Emily Smith, 17 Orchard Drive said she was firmly committed to the importance of a library for a Town like Durham. She noted that she was involved with the New Hampton Library for several years. She also said Stratham, NH, with a population the same as Durham, had two full time childrens' librarians. She said the Stratham Library was in many ways the center of the community, and said she hoped that Durham was moving in the same direction.

Councilor Peter Smith noted Ms. Smith had worked for a number of years for the UNH Foundation, and asked what interest she had in fundraising as part of the Library of Trustees position.

Ms. Smith explained that she was the operations officer at the Foundation. She said was fully committed to doing anything possible in order to have the finest library in the Seacoast, and said she was committed to fundraising.

Chair Niman thanked Ms. Smith for offering to serve in this position.

IV. Approval of Minutes

April 10th, 2006

Councilor Henry Smith said the April 10th, 2006 Minutes should indicated that he was absent from the meeting due to illness.

Page 11, 6th paragraph, strike first sentence, and replace it with "Chair Niman asked if the Council would have a consultant's report on a combined police department soon."

Councilor Needell MOVED to approve the April 10, 2006 Minutes as amended. The motion was SECONDED by Councilor Julian Smith, and PASSED unanimously 8-0.

April 17th 2006 Minutes

Page 6, under VIII C. should read "...\$11,700,000) in Tax Anticipation Notes (TANs).."

Page 8, 8th paragraph from bottom, should read "Councilor Peter Smith asked if anything had been signed that made it unlawful to use money collected from the parking...."

Page 13, 2nd paragraph, last line, starting with "He said this was..." should be made into a new paragraph, to read as follows: "He said this was not suitable regulatory language. He said the Suggested Action should therefore delete the wording "Contained within Chapter 118."

Councilor Needell MOVED to approve the April 17, 2006 Minutes as amended. Councilor Peter Smith SECONDED the motion and it PASSED unanimously 8-0.

V. Reports of Councilors

Councilor Julian Smith commended the Public Works Department for the wonderful work it was doing in addressing the flooding problems in Town, and provided details on this. He said he would

like to **thank Jeff ____** especially for getting Chair Niman and himself across Woodman Brook that evening so they could attend the Council meeting. Councilor Smith also noted that Chair Niman had walked more than a mile through some wet woods in order to get to the meeting

Councilor Needell said the Planning Board had adopted the school impact fee schedule at its most recent meeting, and said this matter would be on the Council's plate soon. He also said the Planning Board had scheduled a public hearing on the proposed modifications to the Historic District overlay for its May 24th meeting.

Chair Niman reported that he had recently talked to Ed Valena, who had invited members of the Council to put forth their ideas at the upcoming Library Site Selection Committee meeting on Wednesday at the Durham Library.

Chair Niman said he had recently had breakfast with University President Ann Hart and UNH Chairman of the Board Andy Leitz, and said he would discuss their conversation during the Roundtable discussion.

VI. Public Comments

Gerald Smith, 1 Back River Road, said he would like to read the following letter into the record:

"Thank you for listening to this report. For the record you should know that last year, 2005, the memorial flags were placed on the veterans' graves in the cemetery and graveyards of Durham by Ronald Clark, Richard Dewing, Gerald Smith and Donald Sumner.

"Until 2005, there was no master record of the veterans buried in the Durham cemetery. Donald Sumner spent many hours researching the cemetery, Town, and Durham historical records as well as walking the cemetery in order to get a complete record. He located these veterans' graves on a map of the cemetery. This will make placing the flags much easier and hopefully a lot more complete in the future.";

"Last year, the group placing flags decided a younger group should do the project. It is my understanding that starting in 2006, the Boy Scouts have accepted this responsibility. Thank you very much."

Malcolm Sandberg, Langley Road commended Administrator Selig and all Town staff for keeping residents informed and safe during the past few days. He said the use of the Listserv and Web site for this purpose was commendable.

Mr. Sandberg said he was present with respect to the proposed Business Park Design Guidelines, and noted his interest in this topic over many years. He provided some historical perspective, explaining that the guidelines were put together about 10 years to provide insight to potential buyers on what kind of development the Town wanted. He said over the last 10 years, the Town had become polarized as to what should happen with the Business Park. He said he had been an advocate for reconsideration of the guidelines, stating that they currently fell short of what the Town needed.

He said that in regard to the Business Park, the Council wore a slightly different hat, as the landowner, and irrespective of what the Zoning Ordinance said, the Council might have a vision of what it might want to happen with the Business Park. He said the language should not defer to the Planning Board for decisions that should be made by the landowner, in this case, the Town Council. He said the Council should say up front what it wanted, and when painting a verbal picture of this, should be as specific as the citizens wished them to be. He said to the extent that this could be done, this would increase the chance of selling the property, and said if the guidelines were vague, this would simply scare away perspective buyers.

Mr. Sandberg said the Master Plan was specific about wanting to preserve viewsapes and entryways to Durham, and said the Council should be able to come up with language that served those purposes, rather than leaving perspective buyer guessing about this.

He said although he was not there to say what the vision for the Business Park should be, if one asked him, he would think the architecture should be more of a farm type architecture that was compatible with the historic development of the Oyster River, as opposed to glass buildings, etc. He noted that the Powerspan proposal was liked by some, but not by others, and had polarized the Town. Mr. Sandberg said this was an opportunity to depolarize this issue, and to bring the community together in developing a vision for the property.

Hillary Scott, 20 Davis Avenue, said she was present to talk about the Durham Business Park. She spoke about the April 20th version of the guidelines, and noted that under Site Design on page 2 of the guidelines, two bullets regarding preserving significant views had been removed. She said she didn't see verbiage elsewhere that addressed the importance of these significant views.

Ms. Scott also noted that a guideline on parking areas said such areas were not to be permitted on the riverfront side of buildings unless screened with vegetation. She asked that there be a requirement concerning screening for all sides of the property, including the Route 4 side, where there were residential properties nearby. She noted that noise traveling across the water was a possible issue, and said screening from both the river side and residential side would therefore be good to consider.

Ms. Scott suggested that the wall design features for buildings should not be overly decorative, and asked that the guidelines include something on this. She also asked that the Council consider including wording that wall coverings should be compatible with nearby buildings.

Ms. Scott also referred to ambiguous wording, such as "planning staff" that should be looked at, and also noted that there were some grammatical errors in the document.

Ed Valena, 9 Bagdad Road, said he agreed with Mr. Sandberg's words concerning the Business Park. He noted that he had been in favor of the proposed Powerspan development, but said he had realized he had been wrong about this. He suggested that something like Stonewall Kitchen's architecture would be more appropriate for this location, and said the Town perhaps could challenge a developer to do something like this.

Mr. Valena also said he was present as a Library Trustee, noting he was also on the Library Site Selection Committee. He said the Committee's charge was to figure out how people in Durham

would be served by a library that was not affiliated with the University, and said the Committee would be doing a census on this.

VII. Committee Appointments

Shall the Town Council appoint Katie D. Ellis, Susan Roman, and Emily Smith as alternate members to the Durham Public Library Board of Trustees for one-year terms as recommended by the Library Trustees?

Councilor Julian Smith MOVED to appoint Susan Roman, 16 Little Hale Road, Katy Ellis, 26 Coe Drive, and Emily Smith, 17 Orchard Drive for one-year terms; said term to expire April 30, 2007. Catherine Leach SECONDED the motion.

Councilor Peter Smith provided clarification that the Council's role was not to confirm these alternate appointments, it was to make the appointments. He said he was noting this in order to emphasize the nature of the responsibility the Council had considering this. He said this was why he had posed the questions to Ms. Smith.

He said in appointing members to the Library Board of Trustees, the Council should spend a little more time relating this to what it thought should be happening in terms of creating a library, including major fundraising considerations. He said he hoped the Trustees would be thinking about this as well, noting that the most important role of the Trustees was to raise money.

Councilor Julian Smith said the people who had been nominated to the Library Board of Trustees had done their homework, and said he hoped they would be duly appointed that evening.

The motion PASSED unanimously 8-0.

Chair Niman thanked the new Library Trustees for their willingness to serve.

VIII. Unanimous Consent Agenda

Items A and B were removed from the Unanimous Consent Agenda.

A. RESOLUTION #2006-12 establishing the compensation for non bargaining unit employees for FY 2006

Chair Niman explained that the person who had asked that this Item be taken off the Unanimous Consent Agenda didn't want to discuss this item, but simply wanted a way to vote other than in the affirmative.

Councilor Needell MOVED to adopt RESOLUTION #2006-12 establishing the compensation for non bargaining unit employees for Fiscal Year 2006 as recommended by the Town Administrator. The motion was SECONDED by Councilor Peter Smith.

Chair Niman noted that Councilors were not obligated to have a discussion of the motion.

Councilor Peter Smith said although members of the Council were not obliged to give a reason why they were voting the way they were, he felt it was important for Councilors to listen to various

perspectives in order to fulfill their roles as part of a deliberative body. He said he personally would welcome discussion on the motion.

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

- B. Shall the Town Council award the bid for the Burnham Avenue sewer improvements to CGH Excavating, LLC in the amount of \$102,650.00 as recommended by the Department of Public Works?

Councilor Julian Smith MOVED to award the bid for the Burnham Avenue sewer improvements to CGH Excavating, LLC in the amount of \$102,650.00 as recommended by the Department of Public Works. The motion was SECONDED by Councilor Henry Smith.

Councilor Peter Smith said he had asked that this Item be removed from the Unanimous Consent Agenda because he had a question for Public Works Director Mike Lynch. He said the packet before the Council showed 4 proposals received for the project, and that CGH Excavating was the company that was chosen because it had the lowest prices but also the best credentials. He asked Public Works Director Mike Lynch to briefly explain how this could be.

Mr. Lynch said CGH Excavating was a small company, with a relatively small amount of overhead, and said the Town believed the company could do the required work for substantially less money. He noted that the company had already done several projects for the Public Works Department, most notably some work on the Hotel NH. He provided details on this.

Councilor Peter Smith said he thought it was important to understand how, through competitive bidding, and knowing the talents of people who bid on projects, a Town could save a great deal of money. He said this was clearly what had happened in this instance, and said this spoke well for the bidding process as well as the Public Works Department.

Councilor Carroll noted that the Town also expected to save \$40,000 on this project because Public Works Department staff was able to design it, and would also be doing inspections of the work.

The motion PASSED unanimously 8-0.

Recess from 8:10-8:15 pm

IX. Presentation Items

- A. Annual report from the Conservation Commission – Dwight Baldwin

Mr. Baldwin first said he was sorry to see former Commission member Lee Alexander go, noting that his work had been very important to the Commission over the past six years.

Site Visits and Land Protection. Mr. Baldwin said the Commission had visited the Fogg Property the past winter, and had voted unanimously to go ahead with purchasing the conservation easement. He said Commission members had also helped clear trails on the Merrick property. He noted that the Commission had unanimously recommended the Emery Farm for protection through a conservation easement.

Mill Pond. Mr. Baldwin said this project was still on hold, and said the Corps of Engineers was in no hurry to come to Durham, either this year or next year. He said the soonest the work would be done was 2008. He said the Commission would try to get a commitment concerning the project. He said the Commission planned to maintain the shoreland of Mill Pond, including cutting back vegetation.

Wetland Permit Application Review. He said the Commission's major responsibility was application review for wetlands permits, and said it had reviewed about 10 applications this year. He noted that the Commission had moved away from efforts to designate prime wetlands because of a lack of manpower.

Town Land use trails subcommittee. Mr. Baldwin said the Commission and the Parks and Recreation Committee has done marvelous work concerning the Longmarsh preserve, noting that a wetlands application had recently been submitted for boardwalk construction there. He said funds had been received to do the work over the summer.

Conservation Easement Guidelines. He said the commission was working on these, and said they would then come before the Council for approval.

Said Town owns cons easements or land outright, and hasn't had guidelines on how Town will

Adopt a Trail Program. Mr. Baldwin said the Commission was working on this program, which would similar to an adopt-a-highway program. He provided details on this.

Jackson's Landing. He said the Committee was moving ahead vigorously, noting it had held six meetings, including a public meeting. He provided details on some things that might be done with the property, and said the goal was to get a report to the Council by July 1st.

Presentations. Mr. Baldwin noted that the Conservation Commission had various presentations at its meetings, held the second Thursday of each month, and had recently heard such things as a methane gas line presentation, and a presentation on possible fecal contamination of Little Bay by the Colony Cove subdivision.

Councilor Henry Smith asked if the proposed Longmarsh trail had been approved, and was told that it had been. Mr. Smith said that was excellent. He also asked for an example of an "adopt-a-trail" that was being worked on, and Mr. Baldwin said none had been designated yet, but the Commission was working toward this

In response to a question from Councilor Needell, Mr. Baldwin said there would be no cost to the Town for the Mill Pond dredging project except for the diesel fuel for a street sweeper that was needed in order to pick up dredged mud that fell out of the trucks. He said it would be impossible for the Town to do the project on its own.

Administrator Selig asked what possible impacts the current flooding situation could have on Mill Pond.

Mr. Baldwin said it was hard to say, but said that when all of the inflow and outflow was considered, there would probably be a net accumulation of sediment in Mill Pond.

Councilor Peter Smith said this brief presentation provided a feel for what the Conservation Commission did, but didn't give a true sense of the extent of work that the Commission did. He noted specifically the detailed discussions the Commission had concerning properties being considered for land protection. He said this was an outstanding group of people, and it was a pleasure to serve with them.

In response to a question from Councilor Carroll regarding whether the Conservation Commission actually walked the properties being considered for protection, Mr. Baldwin said the Commission had walked the Merritt and Fogg properties, but had not walked the Emery Farm yet.

Councilor Carroll asked if it would be possible for the Council to walk the properties being considered for protection with members of the Conservation Commission.

Mr. Baldwin said the best idea would be for the Council to go out to these properties with Mr. Hyde.

Chair Niman thanked Mr. Baldwin for his presentation, and asked him to extend the Council's appreciation to members of the Conservation Commission for their efforts.

B. Annual report from the Rental Housing Commission – Mark Henderson, Chair

Mr. Henderson noted the absence of Councilor Morong from the meeting, but said he wanted to thank him for serving on the Rental Housing Commission. He also said he welcomed Councilor Van Asselt's input on the Commission.

Mr. Henderson reported the following concerning the Rental Housing Commission:

- He said lines of communication had really opened up between the various entities, so that when problems arose, they were handled before they got to be larger. He noted that at the meetings every three months, the various Town departments reported on these efforts.
- He said when code violations occurred, property owners had been working harder to address the violations. He provided examples of this.
- He said the Police Department was reporting that there were fewer problems than in years past. He noted that the number of reports was actually higher than normal, and said it was not clear if this was because of stronger enforcement, or the type of complaint. He said a lot of the complaints were now concerning noise violations, largely resulting from parties, but he said these parties usually dispersed quickly without major problems. He said moving people on so they didn't disturb surrounding houses was the key.
- Mr. Henderson said the Commission was pushing to get landlords more involved. He noted that the Town had a few major property owners, and said they had been doing a much better job with their properties, as part of the community.
- He said a major issue still facing the Commission was single family houses in neighborhoods used for student housing, noting that most of Mr. Johnson's reports were concerned with these kinds of properties. He said the properties generally had absentee owners, who didn't know what

was allowed or expected in Durham. He said the Commission would be focusing more on these properties.

Mr. Henderson said one thing that had changed concerning these properties was communication between the Commission, UNH and the Town. He said when neighbors did complain, within 24 hours, the issue was being looked at. He said he couldn't promise there would be no problems with these properties, but said the Commission was trying to open up communication on the fact that the noise at these properties was not acceptable, given their location. He provided details on work the Commission had done concerning some of these properties, and said involvement with UNH and working with the Town had made a difference.

- He said the biggest thing the Association was working on this year was the update of an informational booklet that addressed the kinds of things that owners of rental property in Durham should be thinking about, in terms of codes, etc.. He said it would be important to get these booklets into the hands of single-family house owners, and also to get them to people who were considering buying property in Durham.

Councilor Julian Smith asked if Mr. Henderson would be at the Council's upcoming Housing work session. He also asked if the Council could see a draft of the guidebook Mr. Henderson had spoken about, before the work session. It was noted that there was no draft ready to be looked at yet.

Councilor Peter Smith asked if Mr. Henderson would be willing to attend the Council's Housing work session.

Mr. Henderson said he would be willing to attend the work session.

Councilor Peter Smith asked Mr. Henderson if he could bring information, or tell the Council how to obtain data on what the proportion of rentals was, in terms of the number of students in facilities that fell between large property owners vs. single-family residences. He also said he was interested in learning more on the Commission's specific suggestions for dealing better with student rentals of single family housing.

Mr. Henderson said the Town would probably have more data on this than the Commission would.

Administrator Selig said Town staff was planning to provide that backup information for the work session.

Councilors agreed that Mr. Henderson's knowledge would make a valuable contribution to the work session.

Mr. Henderson said a strategy concerning student rental of single family housing hadn't really been developed yet.

Chair Niman asked Council to hear Agenda XI before Agenda Item X.

Councilor Needell MOVED that Item XI occur before Item X. The motion was SECONDED by Councilor Van Asselt, and PASSED unanimously 9-0.

XI. New Business

- A. **FIRST READING ON ORDINANCE #2006-01** Amending Chapter 153 “Vehicles and Traffic, Section 153-49 of the Durham Town Code by prohibiting parking on Dennison Road between Bagdad Road and Garrison Avenue Extension between the hours of 1:00 to 6:00 AM from August 15 through June 30

Police Chief David Kurz provided background on this issue, noting it had been discussed in 2000, was brought back in recent years, and was then tabled. He said the issue before them that evening represented an expansion upon the winter parking ban. He said research done on the number of vehicles on Dennison Road indicated that vehicles parked overnight were sometimes not moved for several days. He said the Town wanted to make this parking available for parents visiting the school, and said this Ordinance was a step in that direction.

There was discussion on the fact that there would be 81 parking spaces that would be affected. Chief Kurz described the area in detail.

Councilor Leach asked if Chief Kurz felt there needed to be an overnight parking ban on all 81 spaces, and Chief Kurz explained that marking the whole area would be simpler.

Councilor Needell noted that the spaces were also used for parking by school staff, and said there were rarely any spaces left there.

Councilor Leach asked if it was known where the cars that wouldn't be able to park overnight would go instead, perhaps spilling over to other locations.

Chief Kurz said he didn't think this would necessarily happen, noting that there were a number of other places that didn't allow overnight parking regardless of the time of year, or no parking, or permit parking. He said the Town was pretty aggressive at enforcing parking requirements in these areas.

Councilor Julian Smith asked if there would be vigorous enforcement late at night, and Chief Kurz said yes, including towing cars after three unpaid parking tickets.

Councilor Peter Smith asked if this would add to the burden of the existing police department staff.

Chief Kurz said these were areas that were checked anyway, as part of routine parking enforcement.

Councilor Peter Smith said it should be noted that this Ordinance did not mean that these parking spaces were now being reserved for parents and staff of the school, and that those spaces could be filled up by whoever got there first.

Chief Kurz said that was correct. He also the Police Department, while enforcing the Ordinance aggressively, would also ticket fairly.

Councilor Julian Smith MOVED to pass on first reading ORDINANCE #2006-01 Amending Chapter 153 “Vehicles and Traffic, Section 153-49 of the Durham Town Code by prohibiting parking on Dennison Road between Bagdad Road and Garrison Avenue Extension between the

hours of 1:00 to 6:00 AM from August 15 through June 30, and schedules a public hearing for June 6th, 2006. Councilor Carroll SECONDED the motion.

Councilor Van Asselt asked if this Ordinance would satisfy the Parent Teacher Organization representatives.

Shawn Shields, co-chair of the PTO, said given that they had been unsuccessful the previous year in having all of Dennison Ave. designated for Middle School parking, she felt this was the best option available. She noted that the parking this year was actually much worse than the previous year, in part because of a rental property on Dennison Ave.

She explained that parking in this area was difficult until the winter parking ban went into effect, and then parking spots could be found. She said it would still be challenging to find a spot with this Ordinance, but said the people who couldn't park there during the winter seemed to have found other places to park.

Councilor Needell asked if Ms. Shields and Ms. Ball thought this would be an overall improvement in the situation, given all the factors.

Ms. Shields provided details on this. She noted that the School District had designated 4 additional parking spaces in the side lot for visitors, which had helped a lot for awhile, until the spaces were spotted by non-middle school people who started taking them. She said some people used parking in the area as long term parking spaces, and said the idea was to keep these spaces transitional, so more people would have the opportunity to use them.

Councilor Needell asked for further detail on whether having the 4 additional spaces as well as the overnight parking ban would adequately address the parking problems.

Laura Ball, PTO co-chair said this was the best solution available, noting that there was no more land available for parking spaces. She said these 81 spaces would provide transitional parking, and said more often than not, parking spaces were available during the winter parking ban.

Ms. Shields said the PTO had observed over a period of time that 25% of the cars on Dennison Ave. were being used for long-term parking.

The motion PASSED unanimously 8-0.

X. Unfinished Business

Shall the Town Council endorse the revised Design Guidelines for the Durham Business Park as recommended by the Economic Development Committee?

Town Planner Jim Campbell provided background on the Economic Development Committee's (EDC's) charge to update the Design Guidelines for the Durham Business Park. He noted that these were originally adopted by the Council, and were coming back now for adoption again, after having gone through some revisions by the EDC.

There was discussion about Hillary Scott's comments about the two bulleted items under Site Design that had been struck, which reinforced wording on page 1 of the document. Chair Niman asked why they had been struck.

Mr. Campbell said the Committee had felt that the second bullet was more of a vision statement, which was why the wording was put on the first page as part of the introduction. He said perhaps they could put back the first bullet.

Councilor Julian Smith said there were two categories of issues the Council needed to confront that evening, one having to do with some wording problems, and the other having to do with more substantive matters.

Councilor Peter Smith said his underlying concern related to Mr. Sandberg's comments, and whether when the guidelines were first drafted, the people who drafted them asked themselves the basic question of whether they were doing this in their capacity as a landowner, or in the capacity of the governing body of the Town that passed ordinances.

Chair Niman said he had a notebook called "Durham Business Park" put together by Arthur Grant that included almost all of the Minutes from meetings of the Durham Business Park Advisory Committee, from 1992-1998, and also included a draft purchase and sale agreement. He said the notebook indicated that the Committee had drafted the Design Guidelines as a property owner, and that there had been a great deal of discussion that the Business Park should be developed in a way that was consistent with the Town.

Councilor Peter Smith said he was glad to hear this, and said that would be his approach. He said the Design Guidelines was not a satisfactory document, but said since the Council was the landowner, it could be as specific or as vague as it wanted to be. He said he would prefer that before reaching out to develop the property, the Design Guidelines be as specific as possible, so conversations with potential buyers would make more sense. He asked if there was general acceptance of looking at it this way.

Mr. Campbell said this was something the EDC had grappled with. He said the original wording of the guidelines had been very vague, and the Committee had tried to get more specific. He noted that the process with Powerspan had not been an informal process.

Councilor Needell said he found that the whole process had been confusing, noting among other things that when the Zoning Ordinance was updated, the Business Park became its own district. He said these guidelines really had nothing to do with the Ordinance, and said he thought the Council needed to decide what the goal was, because it could not impose covenants that would circumvent the underling zoning.

He said another option was that Town could become the developer, and said that part of the discussion was important to have. But he said the Council needed to separate the discussion from the Zoning Ordinance. He said he felt there was an error in creating the zone for the Business Park. Chair Niman said it was important to frame this discussion. He said his understanding was that the original Committee didn't want to get bogged down concerning specific guidelines, so wanted to

keep them somewhat general, and wanted developers to come forward with specific ideas, which the Council could then decide were or were not in keeping with the Town's values.

9:30 pm

Councilor Julian Smith MOVED to suspend the time limits on the Agenda. Councilor Needell SECONDED the motion, and it PASSED unanimously 8-0.

Councilor Peter Smith said he agreed with what Councilor Needell had said about separating the Zoning Ordinance from this. He also said it was important to keep in mind that if the Council, as landlords sold the property to a private person, that person was not exempt from the laws of the Town. He said the Court had said a developer couldn't then say he owned the Town's right to build next to the shoreland.

He said if the Council proceeded with the landlord model, this changed much of what the document said. He also said if the Council asked a developer to provide a master plan for the site, given no more specificity than was currently in the guidelines, a developer wouldn't want to waste time on this. He said the guidelines therefore needed to be as specific as possible.

Councilor Leach said Mr. Sandberg's vision was perhaps not the same as what others had. She also said she was concerned that it was a little unrealistic to be more specific, and asked for specifics on this from Councilor Peter Smith.

Councilor Peter Smith said this was substantially about aesthetics, noting it might be difficult to reach consensus on this, but that perhaps the Council could agree on a series of parameters

Councilor Needell noted the recent endorsement of the EDC action plan by the Council, which included development of a master plan for the Business Park, and said the Council could ask the EDC to just go ahead and do this now without additional guidance. He also said he felt the current Design Guidelines were quite vague, and agreed editing changes were needed. But he said he didn't think more specifics were needed.

Councilor Julian Smith said he would prefer to see fewer specific standards, not more, in order to allow more possible designs for a development, one that didn't necessarily follow a New England architectural style. He said some of the existing guidelines were probably going to make it very difficult for someone to build at the Business Park.

Councilor Leach said it was not clear what a master plan done by the EDC might involve. There was discussion on this.

Chair Niman provided some history on when the Town had first bought the property, and had considered what could be done with it. There was discussion about the extent of buildable area on the site, which had been determined to be about 5 acres based on the current Zoning Ordinance. He said a basic question had been whether the Council was prepared to say there would be no incursion in wetlands or shorelands, and if that prohibition would include any structures, including parking lots. He said he thought the Council had answered that question when it approved the Zoning Ordinance.

He said at this point, a master plan would be useful in identifying building sites, - how many there would be, where they could be situated, and what they might look like.

Mr. Campbell said with 5 –5 ½ acres of buildable area, there could be about 3 building sites.

Councilor Peter Smith said there were two huge constraints if the Town didn't want to change its Ordinances, - the issue of buildable area, and also what the State would allow in terms of traffic off of Route 4.

Chair Niman said one way to approach this was to say the Zoning Ordinance spoke for itself, and that the Council would then decide whether to accept offers of developers, or could perhaps more actively manage the process.

Councilor Julian Smith said he would not support the motion proposed because of the language in the Design Guidelines.

Councilor Henry Smith noted that he was new to this issue, and said he was not yet sure how he felt about the Design Guidelines.

Councilor Leach asked why it was felt the guidelines were needed, rather than just following the Zoning Ordinance.

Councilor Peter Smith explained that even those who had been the most enthusiastic about getting greater tax revenue for the Town from this property recognized that this was one of Durham's pristine sites, and that the shoreland and sense of history were Durham's greatest assets.

Councilor Leach said these were essentially double rules. She said she would either like to go with the Design Guidelines as they were, or get rid of them altogether.

Councilor Van Asselt said he was happy with the idea of look at correcting the grammar of the document.

Councilor Carroll said the Council should be able to look at a simple map with the various overlays on it. She also said the traffic issue needed to be looked at, and said it was important to find out where the State was on this. She said it was also important to look at those 5 buildable acres, and figure out if they would actually be able to bring in enough tax revenue to make the whole tract of land worth developing. She said the Council needed to look at the shoreland area, and what its commitment was to this area.

Councilor Carroll also noted several smaller issues with the document, and said some of these should be discussed by the Council in some detail.

Administrator Selig said he had great concern as to whether the Design Guidelines would allow the Town to market and sell the property. He said he feared that the Council would wind up acting as a committee, and after spending time on the guidelines, they would still be very confusing to developers, and nothing would happen with the property.

He said the core question was whether the Council wanted to keep the property in its natural state, and use for passive recreation, etc., or if it wanted to aggressively market the property, and therefore should forget about the guidelines. He said the guidelines created all sorts of confusion and uncertainty on the part of a developer, noting the situation with Powerspan a few years back.

He said he would prefer that the Council look more closely at the Zoning Ordinance as it pertained to this area, refine it a bit if needed, and then put the property on the market. He said it would then be up to a developer to deal with transportation issues, wetland boundaries, etc, in conformance with the Ordinance. He said the EDC could come up with a master plan for the site in order to market it to the kind of company the Town wanted. He said the Council's last step in the process would be signing the purchase and sale agreement, and the application would go to the Planning Board.

There was discussion on the role of the Economic Development Committee, the Town Council and the Planning Board regarding the property. It was noted that if the EDC had its way, it would remove the Council as much as possible from the process, because it was felt the Council was an impediment to developing the property.

Councilor Leach asked if the Committee could move forward with a master plan without the Design Guidelines.

Mr. Campbell said it could, also said he agreed the Ordinance needed a bit of tweaking first.

Councilor Van Asselt left the meeting at approximately 10:00 pm.

Councilor Julian Smith MOVED to remove the 10:00 pm adjournment time. The motion was SECONDED by Councilor Needell, and PASSED unanimously 7-0.

Councilor Needell said he agreed that the Design Guidelines hadn't really done much good. He noted that since the Town owned the land, the burden would be on a developer to come up with something it liked. He agreed the Zoning Ordinance would need to be corrected a bit, if the Council did away with the guidelines. But he said the EDC had substantial guidance with or without guidelines.

Councilor Needell said he thought the Design Guidelines could possibly be eliminated. He said he was thinking of the master plan as something that would provide general guidelines concerning building placement and overall use of the property. He said the property could then be marketed in order to find someone who wanted to do this.

Councilor Peter Smith said the Council was a strange property owner. He said he understood that the EDC, the Planning Board and developers didn't like dealing with this nine-headed monster that kept changing heads, but that was the reality.

He said the position he took on the property was based on a number of things: that he wasn't willing to sacrifice the shoreland and wetland provisions, and that if they weren't sacrificed, a relatively small amount of land would be left; that there were issues with NHDOT; and that if the property were going to be used for economic development, it shouldn't be used for the same range of

economic development as would be the case for another piece of land. He noted that the actual use of the building was a whole other issue.

Councilor Smith said it made sense that he would want to see more controls on the property, given that he didn't want to develop it other than for recreational purposes. He said the pristine nature of the site, and the fact that it was visible had a lot of value, and said if it was going to be built on, he didn't want to see those values sacrificed.

He said he was not interested in selling the property to someone who wanted to have a wonderful view looking downstream, and instead wanted the people of Durham to have the wonderful view when they looked at the property from the river. He said he therefore couldn't give up the idea of wanting more restrictions, noting that one restriction he would like to see was for the development to be substantially invisible, which could be done with appropriate landscaping.

Chair Niman said he agreed with what Administrator Selig had concerning the Design Guidelines, and that in trying to agree on them, the Council could wind up with nothing, and the property wouldn't be developed. He said he would like to express sensitivity to this special piece of land and protect its values while not undermining the goal of developing it.

He said the intent had always been to commercially develop the property, noting that there had been great concern by the original committee involved with the property that what would be put on it might not be taxable. He provided details on this. He said he thought the details of the Design Guidelines and the issues had been resolved, and said he would like to see the original intent fulfilled - to develop the property.

Councilor Peter Smith said it was inconsistent to say on the one hand to go with what the founding fathers of the Business Park wanted to do, when part of what they wanted to do was to add these restrictions. He noted that one of the changes the EDC made was to remove the phrase that had been the hang-up in the Powerspan application, the pitch of the roof. He provided details on this.

Chair Niman noted that wording was added to the Guidelines that no flat roofs were permitted.

He said he had felt that if the Council could come up with revised guidelines in a relatively short period of time, he would be ok with them. But he said he didn't think that was possible, so was forced to take Administrator Selig's position. He said the reason he wasn't following the founding fathers was that they had trouble drafting guidelines that everyone could agree on, and moving forward with the process. He said the same thing was now happening to the Council, and said instead of re-creating history, he would prefer tweaking the Zoning Ordinance and moving forward. He said he didn't think this was an inconsistent position.

Councilor Peter Smith said he disagreed, and said it was an inconsistent position. He said he didn't disagree with the fact that developing guidelines made this process more complicated, and that the situation was also complicated by the fact that only 5 acres on the property could actually be developed. But he said Administrator Selig did not take the position that the only way to go was to develop the land commercially.

There was discussion as to whether the Council had previously voted to develop the site commercially. Councilor Needell said the Council had voted for a master plan, but didn't vote to do anything specifically concerning the property.

Councilor Julian Smith MOVED that the Town Council abandon the design guidelines, and charge the Economic development Committee with making recommendations on how to change the Zoning Ordinance in order to move forward with developing the property, while maintaining the values of the citizens of Durham.

There was no second.

Councilor Peter Smith said that motion went massively farther than abandoning the Design Guidelines. He said the motion seemed to be saying that the Council should get rid of the Zoning Ordinance provisions that would apply to this property.

There was discussion on what would be required in terms of changes to the Zoning Ordinance.

Administrator Selig said he didn't see a motion that would be helpful at the moment, and said it might make sense to table this motion, and then bring a recommendation on this forward at the next meeting, for further discussion.

Councilor Needell stated that his position was that historically the goal was to develop the property, but said even if the Council discarded the Design Guidelines, he was not at all convinced that it would be able to sell the property. He said the Council might at some point come to this realization, and then move ahead to do something else useful with the property. But he said removing some impediments to developing it was still worth entertaining.

Chair Niman said he would draft some potential motion(s), and the Council could then discuss them at the next meeting.

Administrator Selig noted that another way to go was for the Town to say it could develop the property commercially. But he said the challenge was that the process of deciding how it should be developed could get muddled.

B. Discuss and finalize the draft agenda for the May 22, 2006 Town Council Work Session meeting

Chair Niman described what was planned for the work session, and asked Councilors to let the organizers of the session know in the next day or two if something else should be added to the Agenda.

C. Discuss the possibility of requesting introduction of legislation allowing for the delegation of authority to administrative personnel to render decisions on abatement appeals

Councilor Henry Smith left the meeting.

Administrator Selig provided details on this issue, noting that there had been 80 appeals in 2003, the year of the most recent property revaluation in Durham. He said his opinion had been, and continued to be, that he was comfortable keeping the process, although it wasn't perfect.

Councilor Peter Smith said he was the one who had recommended changing the current process. He said the threshold decision to be made was whether the Council should be in the business of reviewing abatement appeals, noting he had discussed this a couple of years ago. He said he felt this was a function that the Council was not suited to deal with in a reasonable way, and provided details on this.

He said his personal preference was to put this function in the hands of the Assessor, noting there was an appeals process for property owners when mistakes were occasionally made. He said in order to make this change, changing State statute was required. He provided details on what would be involved, and said the discussion that evening was intended to see if there was interest by the Council in doing this.

There was discussion as to whether this approach, or an alternative approach of creating a Town Board of Assessors, could be used to replace the current process.

Councilor Needell said he also didn't like the current system of rubberstamping abatement appeals, and also said he felt the RSA on this implied that the intention was not that a single individual be responsible for this process. He said he was not convinced that legislation to make a single person responsible was the correct approach, and said perhaps a Board of Assessors was worth trying. He said he assumed that when the Board met, members of the public would be able to speak.

Councilor Leach asked what qualifications members of the Board of Assessors would have to have.

There was discussion about this, and about whether it made sense to have one person, or a Board, review these appeals.

Chair Niman asked if it could be expected that there would be a significant increase in appeals ever five years, when the Town was revalued.

Town Assessor Rob Dix provided details on the fact that he wouldn't expect as many abatement requests the next time, although he couldn't be absolutely certain about this.

In response to a comment by Councilor Peter Smith, Councilor Needell said he didn't see that that having a Board of Assessors would add another layer of review, and also said citizen boards generally seemed to work pretty well in Durham. He noted that a further appeals process would still be available to property owners after appeals were heard by the Board.

Councilor Leach asked why another group should be formed that wouldn't have any more knowledge than the Council had on tax issues.

Councilor Needell said a Board of Trustees would actually look at this issue in more detail than the Council would, and would be a partner to Mr. Dix. He said if this did not happen, then the Board would be a waste of time.

Councilor Peter Smith said he agreed with this, but said he disagreed that Council involvement in the process was essentially the same step as Board involvement. He provided details on this. He also said he was somewhat concerned about the difficulty of getting persons to serve, and asked Administrator Selig to find out if this proved to be difficult in other NH towns. He noted that it was important that these people serve for a fairly long period of time.

Administrator Selig said that typically, NH cities had these boards, which reviewed the work of the assessor. He noted that they received some training, and also said that as part of the revaluation process, these Boards reviewed data and played an active role. He said theoretically, a Board of Assessors in Durham could work well. But he also said he didn't see a problem with the Council simply endorsing the recommendations of the Assessor.

Councilor Peter Smith said as a Councilor who would be asked to do this, he didn't want to be in the position of being ignorant on an issue before him, and of rubberstamping it.

Councilor Needell said if the Council accepted the role of rubberstamping and therefore made no changes now, he could not promise that he wouldn't take a more active role in the abatement appeals process in order to fulfill the requirements. There was discussion about this.

Councilor Carroll said she would like to try the Board of Assessors idea, and said the Council could look at something else in the future if this didn't work.

Councilor Leach said she was not sure., and asked what was involved in introducing legislation and if this took a lot of time.

Administrator Selig provided details on this, and also discussed the process of developing a Board of Assessors. He said he was comfortable with the process as it was, but was open to exploring the idea of a Board of Assessors if the Council was interested in doing this.

Councilor Julian Smith said he would like the Town to try having a Board of Assessors.

Councilor Peter Smith said he was happy to try this, but said his concern was finding the people, training them, and keeping them in positions on the Board for a sufficient length of time.

Councilor Needell said he would like the Council to explore what such a Board would look like.

D. Other Business

XII. Council and Administrator Roundtable (*NLT 9:30 PM*)

Councilor Leach and Councilor Julian Smith moved and seconded a motion to adjourn, and then withdrew the motion when it was decided that Chair Niman would briefly summarize his recent meeting with UNH President Ann Hart and UNH Chairman of the Board Any Lietz.

- Chair Niman said they discussed the sewer interceptor problem, and how this would affect UNH expansion and other projects in Town. He said he was told there was a strong commitment by the University to solve this problem.

- He said there was discussion about the idea of a joint police department, and said concern was expressed about a strong contingent on campus that felt that if the Town was the sole police force, officers would not react with sufficient sensitivity to UNH's environment. Chair Niman said his sense was that President Hart didn't share this sentiment, and said his own response was that 90% of arrests in Durham were of students and their friends, so Town police had tremendous experience dealing with students.

Councilor Peter Smith said this argument had been raised several years ago by a Leo Moore. Councilor Smith said he had yet to talk to a student who didn't say he/she was treated better by Town police than by University Police. Chair Niman said he had expressed something to that affect.

- Chair Niman said he was told that policies were being drafted by the individual campuses, not the Trustees, on the issue of businesses competing with Town businesses. He said President Hart said the University was currently looking at its core mission, what activities were and were not consistent with this, and had also said it would be ending those activities that were not consistent with the core mission.
- He said there was discussion of the idea of public/private partnerships for student housing as well as housing for faculty and staff. He said President Hart said she had heard that Temple University was involved in this kind of thing, and she also said that Dick Cannon of UNH was receptive to something like this. Chair Niman said that if the Council came up with something on this at the Housing work session, perhaps it could talk more with the University about it.

He said Mr. Lietz had assured him that there would be community involvement in the search for a new University president, including, perhaps, a community member on the search team.

- Chair Niman said he had expressed concern that with President Hart leaving, and an interim president taking over, the University would not move forward on issues that were important to the Town. He said President Hart had assured him that her senior staff would continue to move forward on these issues.

Administrator Selig noted that because of flooding problems, University graduation would be held in front of the Whittemore Center. He noted that the University had asked to close the road for this occasion, but the Town had said no because there were already too many roads in Town out because of the flooding. He said details on the traffic issues were still be worked out

Administrator Selig also said that Growing Places, which utilized the Grange building, had asked for an extended lease. He said the Town had not plans to use the facility in the next few years, also noting that although the organization had asked for a 3-5 year lease, he was comfortable with a maximum 3-year lease.

Councilor Peter Smith agreed that the lease shouldn't be for more than 3 years.

XIV. Adjourn

Councilor Leach MOVED to adjourn the meeting. The motion was SECONDED by Councilor Julian Smith, and PASSED unanimously 6-0.,

The meeting adjourned at **11:20 pm**

Victoria Parmele, Minutes taker