

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

**DURHAM TOWN COUNCIL
MONDAY, JUNE 5, 2006
DURHAM TOWN HALL – COUNCIL CHAMBERS
7:00 PM**

MEMBERS PRESENT: Chair Niman; Councilor Carroll. Councilor Peter Smith; Councilor Morong; Councilor Needell; Councilor Van Asselt; Councilor Julian Smith

MEMBERS ABSENT: Councilor Henry Smith and Councilor Leach

OTHERS PRESENT: Town Administrator Todd Selig, Police Chief David Kurz, Town Engineer David Cedarholm

I. Call to Order

Chairman Niman called the meeting to order at 7:04 PM.

II. Approval of Agenda

Councilor Needell MOVED to approve the Agenda as submitted. The motion was SECONDED by Councilor Morong.

Councilor Julian Smith MOVED to amend the Agenda by removing Item IX B. Councilor Morong SECONDED the motion.

Chair Niman said he would like to remove Item IX B from the Agenda because he felt the Council Communication on this issue was incomplete. He said his own memory of the details of the issue was incomplete, and also said that when the Council was being asked to endorse something, a more complete communication on the issue was needed. He also said the rationale as to why the Council was going to endorse changing the Bennett Road/108 intersection should be provided.

The motion to remove Item IX B PASSED unanimously 7-0.

The amended motion PASSED unanimously 7-0.

III. Special Announcements

Administrator Selig introduced Chief David Kurz, who introduced newly promoted Sergeant Mike Bilodeau to the Council and residents of Durham. Chief Kurz provided details on the rigorous promotion process the Department had recently gone through, and also described Mr. Bilodeau's many accomplishments during his employment with the Town, noting that during 8 years of service, he had received 26 letters of commendation.

IV. Approval of Minutes

May 1, 2006

Page 11, the motion in the middle of the page should read “The motion PASSED 7-1, with Councilor Leach voting against it.”

Councilor Van Asselt MOVED to approve the May 1, 2006 Minutes as amended. The motion was SECONDED by Councilor Needell, and PASSED 6-0-1 with Councilor Julian Smith abstaining because of his absence from this meeting.

V. Reports of Councilors

Councilor Morong noted that the IWMAC public forum on the different models for spring cleanup would be held on June 21st. He said information on the forum was available on the Town web site, and said he hoped there would be a good turnout for it.

Councilor Needell said the Planning Board would be having a quarterly planning meeting on the 4th Wednesday of June, and said one of the topics that would be discussed then was the timber harvesting issue. He noted that the Board had a brief discussion on this issue at its most recent meeting.

Councilor Carroll suggested using air conditioning in the Council chambers only when necessary, and otherwise to open the windows, which were all equipped with screens.

Administrator Selig explained that it was not a “smart” system, and said it could certainly be turned off if this was requested.

Administrator Selig reminded Councilors that they were welcome to attend the forum on spring cleanup. He also noted that Katie Paine had been asked to be the Town’s representative in the UNH Presidential selection process.

Councilor Julian Smith explained that the reason he was wearing headphones was that this enabled him to better hear the Council meeting. He provided details on this, and said he hoped that citizens who were hearing-challenged might let Administrator Selig know they were interested in having other head sets available in the Council chambers.

VI. Public Comments

Terry Scott, 38 Madbury, in Bagdad Woods, asked what the criteria were for receiving pool vouchers and who had determined them.

Administrator Selig said children and senior citizens who were residents of Durham were eligible for the vouchers. He provided some history on how this policy had evolved over time.

Ms. Scott asked if the policy could be changed to take into account people like herself with disabilities. She noted that one activity she could still participate in was swimming, and said she couldn’t afford the cost of the pool pass for the whole season. She said she wasn’t asking just for herself, explaining that she knew of some other people in Town who were in the same position she was in.

Administrator Selig said he had no opposition to this, and said if the Council was open to the idea, the policy could be changed. He said the vouchers hadn't sold out yet.

Councilor Julian Smith said he hoped the Administrator would reconsider this.

Councilor Peter Smith said he would be happy to add this to the Council's agenda, but said the Council needed to have a fairly sharp line as to what constituted Public Comments. He suggested that this issue should be put on the Agenda for discussion.

Councilor Niman said the Council could either discuss the issue under New Business, or on the agenda of the next meeting.

Councilor Morong suggested this issue could be addressed during the Roundtable discussion that evening.

Pete Chinburg, 32 Woodridge Road, said he supported the resolution concerning the enhancement of Memorial Park. He said it was something that should be done as soon as possible, stating that there were a lot of people whose names should be on those markers.

Judith Spang, 55 Wiswall Road, said she was asking, on behalf of the residents who lived on the other side of the Wiswall Bridge, if they could get a quick rundown on the status of the Bridge. She also asked if it would be possible to at least get pedestrian access across the Bridge, through perhaps a temporary bridge, and said if it turned out it was necessary to construct a new bridge, she would like to know what the timing would be for this.

Administrator Selig explained that NH DOT and Hoyle Tanner had evaluated the condition of the Bridge, and said the results of this were not yet in. He said he had asked NHDOT about a temporary bridge to allow pedestrians and one lane car access, and said this could potentially be available within the next few months, or possibly weeks.

He said it was an unsafe bridge at present, and said it had been secured so that it was a challenge to walk across it. He said it was realized this was an inconvenience for residents, and said the Town was trying to address the problem as quickly as possible. He said he would continue to provide updates on the situation.

In answer to a question from Mrs. Spang as to what would happen if a temporary bridge was not available, Administrator Selig said he didn't have an answer to that question at present.

Councilor Peter Smith noted that there was a substantial safety issue involved, and said it was his understanding that signage was up to prohibit pedestrians from crossing, since even this could cause the bridge to collapse.

Administrator Selig agreed, and provided details on this.

Bill Hall, Smith Park Lane, said efforts in the past to upgrade Memorial Park had merely been a ruse for eliminating it, and updating the whole area. He said he hadn't seen the current plan, so would defer to those people who were working on it.

Jim Hewitt, Fairchild Ave, said he was there to speak on behalf of the Lamprey River Advisory Council, an advocacy group speaking on behalf of the quality and quantity of the water in the

Lamprey River. He said there were several things the LRWAC would like the Council to be aware of when it discussed water issues.

He said a plan was needed that carefully documented which water sources in Town were used, when, and how. He said this documentation should be something that could be understood by the Council and others.

He said a water conservation plan was needed, stating that it was good that customers conserved water, but said the system itself needed to be looked at in terms of water conservation. He provided details on this.

He said there should be a buildout plan in terms of water usage, stating that at present, no one knew how big UNH or the Town could grow, in terms of water that would be available for this growth. He made reference to the 2004 Dufresne Henry report concerning this issue.

He said a drought management plan should be prepared, and said it would be very useful in times of short water supply.

Chair Niman noted that Town Engineer David Cedarholm's presentation that evening would be a prelude to further discussion by the Council on water issues at its upcoming work session on June 26th. He asked that the LRWAC be involved in this discussion.

Dick Lord, Bennett Road, said the LRWAC was not just an advocacy group, but was also a State-designated river management committee, so had a legitimate role in the process.

Mr. Lord also said there was a lack of awareness that the Route 108 intersection issue was to be on the Agenda that evening. He said the Packers Falls Bridge Committee's report had included 5 conclusions, and he read the last 3 for the Council, regarding the role of the public in Town projects.

He said he realized the Bennett Road/Route 108 Intersection project was a State project and not a CIP project, but said he would have thought that when the Council received a petition of 191 signatures from the neighborhood the previous summer to essentially keep Bennett Road the way it was, that this would have triggered some kind of awareness that these 3 recommendations were something that perhaps should be considered.

Mr. Lord also noted that another thing the Committee had done was work with the Public Works Department, using products already available, to come up with a good solution for the Bridge. He said that if this had been implemented in the first place when the work was done on the Bridge, it would have been less expensive than the concrete rails that were put on the Bridge.

He said there was going to be a Wiswall Bridge project, and said he hoped that with this project, the Council would listen to what the Bridge committee had come up with, and would include the people most involved with the process. He said a good place to start was with the Bennett Road/Route 108 intersection project, and to say that the residents in this area had a legitimate role in that process.

Richard Dewing, 3 Willey Road, said he agreed fully with what Mr. Chinburg had said. He said he had looked at the Public Works Department's proposals for Memorial Park, and liked what he had seen so far. He said he didn't see any downsides to what they had proposed.

Bill Hall provided details, in reference to Mr. Hewitt's comments on water conservation, on some water conservation measures used by other towns. He noted that he had made some recommendations concerning this to the Public Works Department, but they were rejected. He also provided details on the issue of whether the Town's water system had a leakage problem or a metering problem.

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

Item A was removed from the Unanimous Consent Agenda.

- B. Shall the Town Council approve a special event permit application submitted by Mr. Joseph Sarno of Stoneham, MA to conduct a 5K charity road race on Saturday, June 17, 2006 at the Oyster River High School?
- C. **RESOLUTION #2006-13** approving the expenditure of \$23,470 for repairs to the Fire Department Engine 2 pumper and requesting that the Trustees of the Trust Funds transfer said funds from the Fire Equipment Capital Reserve Fund to the Town of Durham

Councilor Julian Smith MOVED to approve Unanimous Consent Agenda Items B and C. The motion was SECONDED by Councilor Needell, and PASSED unanimously 7-0.

- A. Shall the Town Council approve a permit application submitted by Seacoast Growers' Association to conduct its Farmer's Market during the period June 5-October 9, 2006?

Councilor Carroll said she had asked that this be taken off the Unanimous Consent agenda. She said a fee was charged the Seacoast Grower's Association for holding the Farmers Market in Durham, and asked that this fee be rescinded. She said the Market served the public good, in bringing the community together, bringing people downtown, and encouraging conservation of farmland. She noted that the previous year and in some previous years, Durham was the only town which charged the Seacoast Growers a fee.

She said in light of what the Market offered the Town, it should welcome the farmers, and encourage them by not applying the fee. She noted that the value of the Farmers Market would perhaps be more apparent if it was not in Durham, and there was an effort being made to bring it to Town because of the various benefits it could provide to the Town.

Councilor Julian Smith MOVED to approve the request by Seacoast Grower's Association to conduct a Farmer's Market in the Pettee Brook Parking Lot each Monday afternoon from 2:00-6:00 pm beginning Monday, June 5 and ending Monday, October 9, 2006 and to lease 15 parking spaces closest to the road, subject to the special conditions of approval indicated on the second page of the permit application. Councilor Carroll SECONDED the motion.

There was discussion that this motion was meant to be interpreted that there would be no fee for using the parking spaces.

Councilor Peter Smith asked how liability issues concerning the Farmers Market were handled.

Administrator Selig said there was a certificate from Foy Insurance naming Durham as the certificate holder. He said the Seacoast Growers Association paid for this insurance.

There was discussion as to whether any of the Farmers Markets in other Seacoast towns were located on Town land. Davyanne Dippold of the Seacoast Growers Association provided details on this. There was also discussion as to whether the use of the 15 spaces for the Farmers Market would cost the Town money in terms of lost parking revenue.

Councilor Peter Smith noted that this issue had come up before, and said his concerns were insurance issues, and whether parking spaces were being taken that were needed. But he said if these weren't sufficient problems, or were outweighed by the benefits of having the Farmers' Market there, he was not inclined to think the \$250 was worth debating.

Administrator Selig explained that some vendors downtown were touchy about this issue, noting as an example that the Farmers' Market competed with Durham Marketplace. He also said the Town did lose some parking revenue as a result of the Market, but said there was also the social benefit of the Market to consider. He also noted that when other vendors came to Durham, the fee was \$50 per day.

Councilor Carroll said she had talked to Chuck Cressy of Durham Marketplace about this, and was told his produces sales were impacted on Mondays. But she noted that when people came to the Farmers Market on Monday, they might also possibly buy some things at Durham Marketplace while they were downtown.

Councilor Van Asselt said the concern about liability was legitimate. He recommended that the Farmers' Market should be charged at least a dollar so the insurance policy was applicable.

Councilor Van Asselt MOVED to amend the motion to say "The Town Council hereby sets the fee for 15 parking spaces for 18 weeks at \$1.00."

Councilor Peter Smith asked if anyone had spoken to Mr. Cressy about this proposal. He said there was a possible legitimate issue of fairness. He said he was in favor of farmers' markets, but wanted to know if there was more than a miniscule impact on Mr. Cressy's business.

Administrator Selig said he had not spoken with Mr. Cressy about this particular issue, but said Mr. Cressy had called within the last year asking about the fee, and was concerned that only \$250 was being paid for the use of the parking spaces.

Councilor Needell said he too was concerned about the issue of fairness, noting other vendors were charged fees for the use of parking space in Town.

Councilor Needell MOVED to amend the motion to include language "The Town Council further sets the fee for the 15 parking spaces for 18 weeks at \$250.00." Councilor Van Asselt SECONDED the motion.

Councilor Peter Smith asked the Seacoast Growers Association representative if this fee would be difficult for the Association to pay, and she said although the waiver of the fee was appreciated, there was already a donor who paid \$125 of the fee every year. She said the waiver wasn't essential, and said she didn't want to annoy the other merchants.

The motion to amend PASSED 5-2, with Councilor Julian Smith and Councilor Carroll voting against it.

The amended motion PASSED 6-1, with Councilor Carroll voting against it.

IV. Presentation Item

Receive presentation on Durham water system – David Cedarholm, Town Engineer

Chair Niman noted that water issues would be addressed in more detail at the Council's upcoming work session on Water issues, so actual discussion on them that evening should be limited.

Mr. Cedarholm explained that he would be covering the following issues in his presentation: Water Sources; Treatment and Distribution System; Water Storage; Supply vs. Demand; Future Needs; and Recommendations.

Mr. Cedarholm described the elements of the Town's water supply and distribution system. He then provided details on the Town's water supply capacity. He said the capacity of the Lee Well was 0.54 MGD.

He said the Oyster River reservoir behind the Arthur Rollins Water Treatment Plant (ARWTP) had an estimated maximum capacity of 9 million MGD. He said only a fraction of this was used, and said probably only about half of it was available.

He noted that the treatment plant drew water from both the Lamprey River and the Oyster River, and said the maximum capacity of the plant was 1.55 MGD. He said this capacity was based on the size of the sedimentation tank and the process pumps.

Mr. Cedarholm said the maximum capacity of the reservoir behind the Lamprey River dam was estimated to be about 36 million gallons. But he said because of the Section 401 water quality certificate, the Town was restricted to using only 6 inches below spill way. He said from data recently collected during the recent inspection of the dam, they were able to accurately estimate that that 6 inch drawdown correlated to about 6 million gallons.

He also said that during the recent drawdown, they had looked at the effects of drawing down 12 inches, and estimated that this would provide about 11 million gallons, and that an 18 inch drawdown translated to about 15-16 million gallons.

He explained that critical capacity occurred during low surface water flow periods, when the ARWTP critical capacity was reduced to 0.5 MGD .

Mr. Cedarholm provided details that the maximum capacity of the pump station was 0.5 MGD. He noted that during the recent flooding episode, the Town came close to completely losing the electronics for the facility, but said fortunately this didn't happen.

He said from the pump station and hard pipe, installed in 2001, crossed the Oyster River at the water treatment plant. He noted that it was actually the wetlands permit needed to construct this crossing that had instigated the 401 water quality certificate.

Mr. Cedarholm said adding the 0.54 MGD Lee Well capacity and the 1.55 Treatment Plant capacity together came to 2.09 MGD, from which was subtracted the capacity reserved for the Town of Lee (0.375 MGD), leaving 1.94 MGD of total available supply capacity of treated water.

It was clarified that in the absence funds to upgrade the treatment plant, this was the maximum capacity of treated water.

Mr. Cedarholm said during critically low flows, the capacity at the treatment plant dropped down to 0.5 MGD, and said when added to the 0.54 MGD from the Lee Well, this came to 1.0 MGD of total critical supply capacity.

Mr. Cedarholm next talked about water storage capacity in Durham, noting the following: Foss Farm Tank - 3.0 MG; Beech Hill Tank - 0.6 MG; Edgewood Road Tank - 1.0 MG (owned and maintained by UNH) for a total of 4.6 MG.

He explained that in order to maintain minimum acceptable pressures in high parts of the system, the total usable treated water storage was 1.92 MG, or 2.5 days of average daily demand. He explained that in times of emergency, more could be drawn down, but said this would affect water pressure in the system.

Mr. Cedarholm next provided details on raw water storage capacity, stating again that the Oyster River reservoir capacity was 9 MG, and the Wiswall Reservoir capacity was 36 MG, for a total raw water storage capacity of 45 MG. He said in an emergency situation, all of that water would be available to the Town, noting that there was a condition in the Section 401 Water Quality certificate that allowed the Town to use all this water if there was an emergency.

But he said if there were not an emergency situation, but the Town had critically low flows, the drawdown allowed was limited to 6 inches, or approximately 6 MG, which resulted in a total of 15 MG of raw water storage capacity from both reservoirs. He said this translated to 19 days of average daily demand.

Mr. Cedarholm said the 6 inches of drawdown assumed the flows were down to 13 cu. ft. per second. He said during that time, the Town was required to maintain as much flow downstream as there was upstream. He provided details on this, and said he would try to answer Councilor Smith's question, concerning how much raw water was in storage at times of drought, when the river was at its lowest levels, later in the presentation.

Mr. Cedarholm discussed water demand data over the past 7 years, stating that average daily demand was 0.8 MGD, but that peak demand, which occurred when UNH was in session and the weather was dry, resulting in more irrigation, was 1.7 MGD. There was discussion that rainfall impacted daily water demand, because irrigation was used when there wasn't as much rainfall. Mr. Cedarholm said he would have data on this for the work session.

Councilor Peter Smith asked if there were meters for irrigation water, and Public Works Director Mike Lynch provided details on this

Mr. Cedarholm said the water demand trend prior to 2003 appeared to be different than what had happened in the last few years, and said some of this could be explained by the fact that UNH was renovating some of its buildings.

He next showed a slide of peak demand vs. supply capacity. He explained that critical capacity currently occurred an average of 30+ days per year. He compared the 1.0 MGD of total critical water supply capacity with the potential 1.7 MGD of peak daily demand, and said this would

result in a capacity deficit of 0.7 MGD. He stressed that this would only occur during low surface water flows.

Mr. Cedarholm next spoke about future water supply needs, estimating that the Town's demand for water by 2010 would be 0.32 MGD, while UNH's demand would be 1.08 MGD. He then discussed the potential of the Spruce Hole aquifer to provide 0.3-0.4 MGD. He also noted that UNH was in the process of studying potential new bedrock well locations. In answer to Councilor Peter Smith, he said this research would include looking at whether, if there was water capacity as a result of a new bedrock well, how the use of this water would impact existing water capacity.

Mr. Cedarholm said there was an average daily demand of 0.8 MGD, and a peak demand of 1.7 MGD. He noted again that the critical water supply capacity was 1.0 MGD, which corresponded to an average daily reserve of 0.2 MGD, and a peak daily water supply capacity deficit of 0.7 MGD.

He said in 2010, if the average and maximum daily demand were expected to be 1.3 MGD and 2.6 MGD respectively, the Town would be looking to develop somewhere between 0.4 and 0.9 MGD in order to make up the deficit. He noted that he thought these numbers were somewhat inflated, because of conservation measures currently being implemented.

He also noted that the door was wide open for additional water conservation measures. He said the last water audit was done more than 10 years ago, and said the next one was planned for 2008. He said that according to the UNH/Town agreement, an audit would be undertaken every 5 years. He said the last time the audit was done, the water losses were less than 15%, but said he agreed that they could do much better than this.

Mr. Cedarholm said another requirement under the agreement was to implement a rate structure that encouraged efficiency. He said the current charge of a dollar for 200 gallons of water was a bargain, and said this raised the question of whether water rates should be raised to encourage efficiency. He said a discussion was needed on this, and said much more could be done to encourage water conservation by residents and UNH.

He also noted that leak detection and repair work was the second highest priority of the Public Works Department, behind snow removal.

Concerning water resources protection, Mr. Cedarholm said the Town had done a lot, but could do more. He said the Town was very fortunate to have a diverse water supply, involving surface water from two locations, and an excellent groundwater supply. He spoke about the importance of protecting these water sources, and noted that the Lamprey River Watershed Advisory Council and the Lamprey River Watershed Association had done more to protect this water resource than had been done for any other river in the state. He said it was important for the Town to support the work of these organizations. .

Mr. Cedarholm said the Town had taken the Spruce Hole aquifer by eminent domain back in the 1970's, and said this was a great example of water resources protection. He said a source water grant in 2002 was used to upgrade the classification of the aquifer to enhance its protection. He said right now there was a groundwater availability study being done regionally, for the purpose of water resource protection, and said the results on this were due out in the fall.

He noted that UNH had secured \$28,000 for water quality monitoring of the Oyster River. He also noted that Bill McDowell of Lee and Matt Davis of Durham had recently formed the Lamprey River Hydrological Observatory to research and monitor the water quality of the Lamprey River watershed.

He said cooperation with neighboring towns was key, noting the Town of Lee especially had done a lot of work to protect Durham's water resources. He also noted the work of Madbury in protecting the Beech Hill greenway, which was in the Oyster River watershed.

Mr. Cedarholm summarized that maximizing the water storage capacity in the Wiswall reservoir behind the dam was key. He noted that Durham had more treated water storage capacity than the City of Portsmouth, but explained that this water could get stagnant, which meant chlorine needed to be added to it. He said the key to the water system was raw storage capacity. He said the Town was fortunate to have the two reservoirs it had, but said during low flow periods, the Town would experience critical demand situations, when the ability to use both the reservoirs was limited.

He said if the Town could increase this capacity by getting approval to draw down more than 6 inches of the Lamprey River, this would double the raw storage capacity. He also noted the capacity increase that would result from drilling a well in the Spruce Hole aquifer, and said it was time to do this, especially considering the upcoming Spruce Woods development.

He said it was good that UNH was now researching the idea of developing a bedrock well on its property, and also stressed the importance of water conservation measures. He said in addition to looking at water rates, additional education was needed to encourage water conservation and water quality protection. He said the Town should continue to support the source water protection efforts of regional planning commissions and neighboring towns.

The Council took a recess from 8:53 to 9:01 PM.

V. Unfinished Business

- A. **PUBLIC HEARING ON AND ADOPTION OF 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.

Councilor Julian Smith MOVED to open the public hearing. Councilor Needell SECONDED the motion, and it PASSED unanimously 7-0.

Shaune Shields, co-chair of the PTO, said a study indicated that 25% of spaces in this area were used for overnight parking. She provided details on the parking problem, and said she would like Dennison Road to be available for transitional day time parking for people coming to the Middle School. She said there were an average of 35 visitors per day, and they generally stayed for 1-2 hours. She said she didn't think the issue of where cars would go if the ban were put in place was a problem, because these people apparently found places to go when the winter overnight parking ban was in place.

Ms. Shields noted that the Town's parking lot at the Town Hall had an overnight parking ban, and asked if the reason for this was previous parking problems.

Administrator Selig said it was, and said the Town had wanted to insure that during the academic year, this parking lot didn't become a long term parking lot for students.

Laura Ball, co-chair of the PTO, said she had a petition with 200 signatures of Durham residents, collected during the previous effort to deal with the parking problem. She said these people would like to see some assistance from the Town regarding this issue.

It was noted that there were other supporters of the Resolution in the audience that night.

Councilor Peter Smith stressed that the only change this Resolution would make was in prohibiting overnight parking, and said that people who came to this area expecting to be able to park should be aware of this.

Councilor Van Asselt said he would like to ask once more whether this Resolution would take care of the parking problem.

Ms. Shields said that given the previous rejection by the Council of the idea of designated parking for the Middle School, this Resolution appeared to be the best solution.

Councilor Julian Smith asked if there would be an attempt to monitor who used the parking spaces, in order to actually keep some spaces open for visitors. He was told that this would not be done.

Chair Niman said this Resolution was a good step forward, and said if it didn't solve the problem, the issue could be looked at again.

Robin Masia, 8 Deer Meadow Road, noted that she had seen a huge difference in the ability to park when there was a winter overnight parking ban in place.

Councilor Needell MOVED to close the public hearing. The motion was SECONDED by Councilor Peter Smith, and PASSED unanimously 7-0.

Councilor Van Asselt MOVED to adopt 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-June 30. The motion was SECONDED by Councilor Carroll, and PASSED unanimously 7-0.

Chair Niman thanked Chief Kurz for helping to put this Resolution together, and asked him to let the Council know how it worked out.

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

Administrator Selig said the Economic Development Committee had recently revised the guidelines significantly, making them into a two-page document that could be used as a guide for businesses interested in operating in Durham.

Councilor Van Asselt said the Design Guidelines now required that they needed to be incorporated into a deed of sale for any successors to the owners of the property. He said they had asked Mr. Campbell to check to see whether or not there were any conflicts between the

document and the site plan review regulations and the Zoning Ordinance. He said the answer was that there were not conflicts.

He also said a new paragraph was included that there be a review panel. He explained that if a developer came forward, this would provide a mechanism where the developer's design could be reviewed, to avoid wasting time on something that wasn't desirable and didn't meet the guidelines of the Planning Board. He discussed the proposed makeup of the review panel.

Councilor Peter Smith said regardless of what any of them meant, his first question was whether these were guidelines or mandatory rules. He said a significant change was that the language of the guidelines had been altered so that it read like a series of legal requirements. But he also said there was some ambiguity, noting the wording "Thou shalt" was found in something called guidelines. He asked what the intent was.

Councilor Morong said they were called guidelines, and that was what they meant. He noted that he had hoped the Economic Development Committee could come up with something resembling an Ordinance that said the Planning Board could sign off on any potential development, so that it wouldn't have to come before to the Council. But he said he realized that the Town owned the property, so the Council would have to approve the sale of the property. He said these guidelines said the developer "shall do.....", or else the Council wasn't going to approve the development.

Councilor Needell said the Zoning Ordinance referenced the Design Guidelines. He said once the Town should agree to the sale, as he saw it, the Council was out of the picture, and then the Zoning Ordinance applied, and this committee assisted in changes that might occur. He said he thought the role of the Planning Board was already spelled out by the Ordinance, and said he therefore questioned the need for the last sentence of paragraph 3.

Councilor Needell also suggested that the guidelines on page 1 could say that the review panel would consist of a member of the Town Council and a member of the Planning Board, etc. rather than the Chairs of these boards. He also said it was his understanding that this review panel would be formed on an ad hoc basis, as needed, and was told that was correct.

Councilor Peter Smith said if these guidelines were viewed simply as essentially an internal document of a landowner, and not an ordinance or regulation, that was one thing. But he said the Council was doing this as the governing body of the Town, so the situation seemed different.

He also said it was important to provide as much clarity as possible to potential buyers of the Business Park property, at the start of the process. He said the Council needed to make up its mind on where it stood on this property and what developers should have to comply with. He said if the property was going to be marketed, the Town was defeating its own purposes unless it provided clarity on this.

Councilor Julian Smith said it was pretty clear by now that this Council couldn't come up with a set of guidelines on the Business Park. He said he would like to vote on this issue and move on.

Councilor Peter Smith asked how the Council could possibly vote on this, not knowing what the document really was.

Councilor Needell noted that at the last meeting, he had suggested that the Design Guidelines document be minimized. He said if there were still things in it that people thought were not

necessary, they should be taken out. He also said this document was part of the Zoning Ordinance whether Councilors liked it or not. He said it played two roles, - framing the purchase and sale agreement, but also stating the minimum design criteria that the Town would accept.

Councilor Peter Smith MOVED to waive the 9:30 PM time requirement for the Roundtable discussion. Councilor Needell SECONDED the motion and it PASSED unanimously 7-0.

Councilor Morong said he would have preferred a stricter set of guidelines, and would also like to have seen the Council not involved in the process, but said he felt the Council needed to do something. He said this was better than no guidelines at all, and also said he felt that whatever happened, there would be discussion if someone wanted to build at the Business Park.

Chair Niman said he would like to see a motion to adopt the Design Guidelines.

Councilor Morong MOVED to endorse the revised Design Guidelines for the Durham Business Park as recommended by the Economic Development Committee, to include the deletion of the last sentence of the third paragraph on page 1, "All subsequent construction shall be subject to design review by the Planning Board, including additions, exterior alterations, and secondary appurtenant structures", and that this paragraph say the review panel would consist of "...a member of the Town Council, a member of the Planning Board, etc." The motion was SECONDED by Councilor Julian Smith.

Councilor Peter Smith said he also wished to make a motion to amend, but said he couldn't do this if, in an informal way, Councilor Needell's amendments had informally gotten worked into the original motion.

After some discussion, the motion was withdrawn.

Councilor Morong MOVED to endorse the revised Design Guidelines (as originally stated) for the Durham Business Park as recommended by the Economic Development Committee. Councilor Julian Smith SECONDED the motion.

Councilor Needell MOVED to amend the motion by deletion of the last sentence of the third paragraph on page 1, "All subsequent construction shall be subject to design review by the Planning Board, including additions, exterior alterations, and secondary or appurtenant structures", and by revision of the first sentence of paragraph three to say the review panel would consist of "...a member of the Town Council, a member of the Planning Board, the Town Administrator, and the Town Planner". The motion was SECONDED by Councilor Van Asselt, and PASSED 7-0.

Councilor Peter Smith MOVED to amend the motion by changing the word "guideline" to "requirements" where it appeared in the document, and to delete the second bold and underlined Design Guidelines heading on page 1.

He said this heading was superfluous, and also contrary to what he had in mind.

Councilor Needell SECONDED the motion.

Councilor Peter Smith said he was incorporating by reference his previous comments as to why this was the only logical thing to do, if this was what the Council had in mind. He said if the

Council voted this down, what it was really saying was that it didn't have it in mind, and that it disagreed with what Councilor Needell said in his remarks.

Administrator Selig noted that if this language were changed, it would create an inconsistency with the Zoning Ordinance.

Councilor Peter Smith said he agreed, but said this wasn't a troubling inconsistency. He said he thought everyone agreed that this document didn't purport to be an ordinance, regulation, or anything that had the force of law. But he said it was a written document stating the decision of nine people who jointly in trust owned this land, and wanted to go about making a decision of how to sell it. He said this had nothing to do with the Zoning Ordinance.

Councilor Van Asselt said he would oppose the amendment. He said these were in fact design guidelines, not requirements. He said this wording had been used in Dover, and said they were an added reason for developers to meet the desires of Durham and to try to make something happen at the Business Park. He said he didn't see anything in here that a developer would run away from, or that the Town would run away from if it really wanted to develop the Business Park.

Chair Niman said he agreed with Councilor Van Asselt, but said perhaps a way to get at what Councilor Peter Smith was saying was that the word "shall" might be replaced with the word "should" in the document, so these would be suggestions, which would appear as guidelines.

Councilor Peter Smith said Chair Niman didn't understand his problem. He said this document was neither a set of requirements or guidelines at present. He said to Councilor Van Asselt that he was not playing a game, and was saying that if this use of the property came to pass, that as landowners, the Council should insist that it was a requirement that the new landowner follow these guidelines. He said it didn't have to be, and said if the Council voted now for the guidelines, it was quite clear it didn't have to be.

He said the language that had been put in now, "shall", was mandatory language, and said the wording "should" was consistent with what Councilor Van Asselt had said. He said the more consistent thing for the Council to do, if it didn't want to use the word "require", was to change the words "should" to "shall".

Councilor Carroll asked Councilor Morong what he thought about the proposed wording change, and Councilor Morong said he would prefer to leave the wording as it was.

The motion to amend FAILED 2-5, with Councilor Peter Smith and Councilor Carroll voting in favor of it.

The original motion PASSED 6-1, with Councilor Peter Smith voting against it.

VI. New Business

- A. **RESOLUTION #2006-14** endorsing the proposed enhancements to Memorial Park, authorizing the expenditure of funds for said enhancements, and requesting that the Trustees of the Trust Funds transfer the remaining funds from the Memorial Park Expendable Trust Fund to the Town of Durham to be used for enhancements to Memorial Park as recommended by the Town Administrator

Public Works Director Mike Lynch made a brief presentation on the proposed design for the Memorial Park.

Councilor Needell said he liked the plan,. He asked if the plan was to maintain the area in the winter, and if so, if the proposed layout presented problems concerning this.

Mr. Lynch said he had hadn't looked into this yet, but said he was sure the area could be maintained.

Councilor Morong said he really liked the plan, but said he wondered if plans for the future had been considered, in terms of room to expand because of future conflicts.

Mr. Lynch said there was room for additional plaques to be placed there in the future.

There was discussion about the issue of naming particular conflicts, and how this impacted the plaques.

Councilor Van Asselt MOVED to approve Resolution #2006-14, endorsing the proposed enhancements to Memorial Park, authorizing the expenditure of funds for said enhancements, and requesting that the Trustees of the Trust Funds transfer the remaining funds from the Memorial Park Expendable Trust Fund to the Town of Durham to be used for enhancements to Memorial Park. The motion was SECONDED by Councilor Carroll.

Bill Hall suggested that Administrator Selig meet with the American Legion auxiliary to go over the plan with them, and wait to take final action on the Resolution until after this. He said these were people with long standing on this issue.

Mr. Lynch said his department hadn't met with the Ladies' auxiliary yet, but had met with others. He stressed that this would be a very public process, and said members of the American Legion would be helping with various aspects of the project.

Councilor Peter Smith said this was a sensitive matter, and said he felt there should be a public hearing on it.

There was discussion on this.

Councilor Needell said this would be a good opportunity for more people to become aware of the project and embrace it.

Administrator Selig said this matter had been discussed widely over the years, and said it was a shame it hadn't been done sooner. But he said it was appropriate to have the hearing.

The consensus of the Council was that there should be a public hearing.

Councilor Needell MOVED to postpone action on Resolution #2006-14 until after the public hearing on June 19th, 2006. Councilor Peter Smith SECONDED the motion, and it PASSED 7-0.

It was suggested by Dr. Bruce Bragdon that the hearing should be held relatively early in the Council meeting because a lot of older adults would be attending.

Administrator Selig said he would post a notice on the hearing in the foyer of the Town Hall, and would also announce it on the Town web site.

Chair Niman thanked everyone for their involvement in this project, and said it was a great plan that the Public Works Department had developed.

B. Other Business

After discussion on whether to discuss the pool voucher issue as other business or during the Roundtable, Chair Niman suggested it be discussed during the Roundtable.

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

There was discussion on the pool voucher issue. Administrator Selig said he would move ahead to make the change to allow disabled members of the community to get vouchers unless there was opposition from the Council.

Councilor Peter Smith said he felt they were moving ahead too hastily concerning this. He said he didn't know what the basis was for the original policy, but said if the Council was going to tinker with the rules, this needed to be supported by a decent public policy. He said what was sympathetic to him was not that the person who had spoken on this issue had a disability, but that because of it, she didn't have much money to pay for a voucher. He provided details on this.

Councilor Morong agreed, and noted there might be other families in Town who couldn't afford vouchers. He said that perhaps the criteria used in providing financial assistance to residents could be applied to pool vouchers.

Administrator Selig said there were a fairly limited number of people in Town asking for assistance, and a fairly limited number of people with disabilities, so it didn't seem worthwhile to have a comprehensive policy on income requirements for this. He also noted that there were sometimes pool permits left over. He said he was hesitant to get in to the issue of ability to pay without applying this across the board.

There was additional detailed discussion on this issue.

Councilor Carroll said the Council should give Administrator Selig the ability to evaluate the situation, and to use his discretion on this issue.

Other Councilors agreed, and also agreed that the Council shouldn't be making a policy on this issue.

Chair Niman said it had been agreed that a Housing subcommittee would be formed, as a result of the recent Housing work session. He said there would be two Councilors on the subcommittee, and said Councilor Julian Smith and Councilor Van Asselt had expressed interest in this. He said there would also be two members of the Durham Landlords Association, a member of the Historic District Commission, a member of the Planning Board, the Planner, and the Code Enforcement Officer..

He said that concerning the issue of public/private partnerships for student housing, the Economic Development Committee was moving forward with this. He also said it was hoped

Councilor Carroll would take on the task of organization concerning the issue of affordable housing.

Administrator Selig said there would be a memorial service at Mill Pond Park for Marjorie Milne, noting that Councilor Carroll had submitted a special use application for this. He also said he had received calls as to whether the Town wanted to assign a new keeper of the swans, and suggested that he could ask residents if there was interest in filling the vacancy in his Friday Update, as part of the notice about the memorial service.

Councilor Needell said he would like to get a better understanding of the role of the swans, and the history of the swan keeper.

Councilor Carroll provided some detail on this, and said she didn't know if there was any written information on this.

Councilor Needell said his understanding was that if someone didn't feed the swans on a regular basis, they probably would leave.

Chair Niman said they would figure something out on this issue.

Councilor Van Asselt brought up the timber harvesting issue, and said he assumed the Planning Board would be doing something concerning it.

Councilor Needell provided details on the different aspects of this issue, noting that a key question was how the Zoning Ordinance dealt with forestry as opposed to the cutting of trees in the shoreline area, and that the two issues were different from a legal perspective. He said the Planning Board was looking at how the Ordinance fit with the State RSA on forestry, but said even if that part was fixed, there was the question of whether the Board needed to revisit the restrictions on people who weren't foresters cutting trees.

Councilor Van Asselt asked if there was some way that the Planning Board and the Council could be educated on this issue at the same time.

Chair Niman suggested that members of the Council could attend the quarterly Planning Board meeting where various experts would be discussing this issue with the Board.

Administrator Selig agreed that perhaps this could be a joint meeting.

There was further discussion on this issue.

Councilor Carroll noted the markings on Canney Road and Bagdad Road, as said it was not clear who had done this, and why.

Administrator Selig provided details on why the markings were placed on the road as part of an effort by developer Joe Caldarola to determine whether it was feasible to hook into municipal water and sewer. He explained that the engineer did the markings without talking to the Public Works Department or Mr. Caldarola. He said Mr. Caldarola was getting in touch with the neighbors, and said the markings would be removed once the measurements were completed.

Councilor Carroll said the concern was that someone had done this without asking the residents of the neighborhood. She said it was essentially graffiti, and said it was important that there be an acknowledgment that the proper protocol wasn't followed.

Administrator Selig noted that Durham was more particular about this than many other communities.

Councilor Julian Smith said he would like to discuss the issue of pedestrian access across the Wiswall Bridge. He said the bridge was probably no less safe than it was 10 years ago, and said he saw no evidence that there had been new substantial damage to the underpinnings of the bridge. He noted he had pictures that showed the damage that had recently been described had actually been there for years.

He provided suggestions on what could be done to shore up the bridge at present. He also noted that he had seen people walking on the bridge recently, and said he had even crossed the bridge himself by walking along the brush rail. He said it was dangerous and stupid, and asked that some kind of pedestrian access be provided across the bridge.

There was additional detailed discussion about the state the bridge was in, and the degree of danger involved.

Administrator Selig said the bridge wasn't evaluated when the drawdown was done because the scope of work didn't include this analysis. He said the focus was exclusively on the dam. He said it was known at this point that the Bridge was unsafe, and said NHDOT had said it wouldn't be safe to use a bicycle on the Bridge.

He said if the report recommended that the span was about to fall, he might recommend that money be spent to remove part of the span so people couldn't cross it, because he was concerned that the Bridge might collapse. He provided details on the unknowns at this point, and said it could be quite some time before significant action could be taken. He said it was realized it was a real inconvenience, but said the flood was a natural occurrence.

Councilor Peter Smith said he didn't want someone to be killed on this bridge because a member of the Council had said that evening that he had walked across it.

Councilor Needell said the plan of action was fine, and said he didn't want to play engineer. He also said if the report indicated that the Bridge was hopeless, the Council should look at options, including getting some temporary access for people who lived in the area.

VIII. Adjourn (NLT 10:00 PM)

Councilor Van Asselt MOVED to adjourn the meeting. The motion was SECONDED by Councilor Morong, and PASSED unanimously 7-0.

Adjournment at 10:51 PM

Victoria Parmele, Minutes taker