

**This set of minutes was approved at the September 11, 2006 Town Council meeting.**

**DURHAM TOWN COUNCIL MEETING  
MONDAY, AUGUST 7, 2006  
DURHAM TOWN HALL – COUNCIL CHAMBERS  
7:00 PM**

**MEMBERS PRESENT:** Chair Neil Niman; Councilor Diana Carroll; Councilor Peter Smith; Councilor Mark Morong; Councilor Jerry Needell; Councilor Karl Van Asselt; Councilor Julian Smith; Councilor Catherine Leach; Councilor Henry Smith

**MEMBERS ABSENT:** None

**OTHERS PRESENT:** Town Administrator Todd Selig, Police Chief David Kurz, Director of Public Works Mike Lynch, Town Planner Jim Campbell

**I. Call to Order**

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

**II. Approval of Agenda**

***Councilor Van Asselt MOVED to approve the Agenda as submitted. The motion was SECONDED by Councilor Julian Smith.***

Chair Niman said he would like to discuss an email received from Planning Board Chair Richard Kelley, under Agenda Item X.F. Other Business.

***The motion PASSED unanimously 9-0.***

**III. Special Announcements**

**Introduction of Bonnie Newman – Interim UNH President**

Administrator Selig introduced Interim President Newman, providing some detail on her background, and said the Council was very pleased that she was in attendance at the meeting.

Interim President Newman said she was present to say hello to the Council and to answer questions they might have. She provided details on the fact that she had started her career 37 years ago, at UNH, and said she was honored she had been asked to assume the Interim President position.

She spoke of the importance of the University and the Town being good neighbors, and said she hoped to work with the Town toward that goal. She said she had met with Chief Kurz, Administrator Selig and other Town staff, and was impressed with their dedication. She also noted that she had known Administrator Selig previously when he had attended, and she had worked at the Kennedy School of Government, and said she looked forward to working with him. She also noted she had met with Chair Niman, and she spoke about the importance of keeping the lines of communication open.

President Newman said she realized the University had let the Durham community down recently when the UNH Police Department had not completed its accreditation program by the required date. She said she was working hard with the department to make sure the University met its accreditation obligation as soon as possible, and she provided details on this.

#### **Introduction of Benjamin Smith – New Police Officer**

Administrator Selig explained that Durham went through a rigorous process in selecting new police officers, and said the result, including in this instance, was some stellar police officers for the Town.

Police Chief Kurz introduced Officer Smith to the Council and members of the Durham community, describing his exemplary background outside the law enforcement field. He noted Officer Smith's recent military duty, and said he would be entering 12 weeks of police training at the police academy.

#### **IV. Approval of Minutes**

##### July 3, 2006

***Councilor Van Asselt MOVED to approve the July 3, 2006 Minutes. Councilor Carroll SECONDED the motion.***

Page 9, 2<sup>nd</sup> paragraph from bottom, should read "...would not be confused that it didn't exist."  
Page 12, 6<sup>th</sup> full paragraph, should read "...he was not in favor of drawing a line of distinction."  
Page 16, 5<sup>th</sup> paragraph, should read "...Verizon vs. Town of Durham case concerning damage to the cable during roadwork..."

***Councilor Van Asselt MOVED to amend the July 3, 2006 Minutes. The motion was SECONDED by Councilor Julian Smith, and PASSED unanimously 9-0.***

***The July 3, 2006 Minutes as amended passed 8-0-1, with Chair Niman abstaining because of his absence from the meeting.***

##### July 17, 2006

***Councilor Van Asselt MOVED to approve the July 17, 2006 Minutes. The motion was SECONDED by Councilor Julian Smith.***

Page 4, 6<sup>th</sup> paragraph, should read "Administrator Selig also said that because of some..."  
Page 5, 5<sup>th</sup> paragraph, should read "...had gone up to \$180,000, from \$50-60,000..."  
Page 7, 1<sup>st</sup> paragraph, should read "...beginning of 2007..."  
Page 10, top paragraph, should read "...would have to happen fairly rapidly according to Chair Niman's timetable, since it was already half way through 2006."

***Councilor Van Asselt MOVED to amend the July 17, 2006 Minutes. The motion was SECONDED by Councilor Julian Smith, and PASSED unanimously 9-0.***

***The July 17, 2006 Minutes as amended PASSED unanimously 9-0.***

## **V. Reports of Councilors**

Councilor Needell updated the Council on matters dealt with at the Planning Board's July 26<sup>th</sup> meeting: the personal wireless service installation on Christiansen Hall; a conceptual consultation on a proposed project in the MUDOR zone, and a conceptual consultation on possible single family housing or multiunit elderly housing development on Edgewood and Emerson Roads.

Councilor Julian Smith said the Historic District Commission had met the previous week, and had endorsed the Durham Historical Association plan to install a flag on the side of the Courthouse building. He said the Commission had also endorsed plans for proposed changes to the rectory at St. George Church. Councilor Smith said the Commission had also studied the proposed revisions to the Historic Overlay District Ordinance sent back to it by the Zoning Rewrite Committee, and had endorsed all of the revisions.

Councilor Henry Smith provided details on the recent DCAT meeting he had attended.

Chair Niman noted that a few weeks back, the Library Board of Trustees had said it would prefer moving the work session on the Library to September, but he said no dates were available for this. He said the Trustees had reconsidered and had agreed the work session should be held on August 28<sup>th</sup>.

Chair Niman also said he was pleased to announce that there would be another potential site for library to discuss by the time of the Library work session, noting that in recent months he had said to the Trustees that it would be good if there were a variety of possible locations for a new library. He said he had never been a big fan of the Town Hall site, and had promised to come up with some other possible sites. He said he hoped to have least 4 sites to discuss at the work session.

Chair Niman said he and Administrator Selig had met with the Mill Pond Center Board recently to begin to understand how they all might come to some closure on a plan that could be brought forward to the Council. He said the target date for this was September 11<sup>th</sup>, and said he hoped the items needed could be put together by that time.

He put up a schematic of the Mill Pond property, and said there seemed to be a lot of misinformation going around as to what could and could not be done with the site. He provided details on this, and said he was demonstrating these things on the schematic to show some options for developing portions of the site, despite the conservation easement on a large portion of the property. He said he hoped over the course of the next three weeks that there would be a proposal to bring to the Council, to give it a better idea of what could and could not be done with the property, and what this would cost.

Councilor Needell said that regarding the issue of misinformation, what needed to be stressed was that the Council was not yet at the stage of considering anything. He said all of the discussions had been among individuals, with some of these discussions including Council members.

Chair Niman agreed, stating that he hadn't formed his own opinion yet, but that he hoped that by September 11<sup>th</sup>, there would be a proposal.

Councilor Henry Smith agreed that the Council had no proposal before it yet.

Councilor Peter Smith said he was glad the map had been put up of the Mill Pond property. He said he thought there had been considerable confusion about the property, and said that close to 11 of the 18 acres was covered by a conservation easement, which required that this acreage be kept in its natural state, in perpetuity. He noted that half of the cost of the easement had been paid for by the Town.

He said it should be made clear that the mortgage for the property was legally subordinated to the conservation easement, so that if there was a bankruptcy, and the bank took over the property and sold it, the 11 acres covered by the conservation easement, including the meadow, and the land extending to the banks of the river, would be protected in perpetuity. He said the remaining 7 acres could be developed according to the Zoning Ordinance.

Councilor Smith also said one of the things that concerned him, in terms of what it meant to say that the Council was considering this matter, what that it was very difficult for residents to believe the Town was still at the stage where it was considering whether it even wished to pursue a partnership with the Mill Pond Center. He said there was a rather sharp contrast between how Councilor Needell and Councilor Henry Smith had described where the Council was at, and how Chair Niman had described this.

Chair Niman said he had been trying to reassure people that he was doing due diligence regarding the property. He said he was trying to respond to peoples' concerns about the property, and trying to address whether these things could be fixed and how much that might cost. He noted that Councilor Peter Smith had asked, at the previous Council meeting, where the facts were concerning this matter.

Councilor Henry Smith noted that the Library Board of Trustees had looked at the idea of a library on the site in the past, and had rejected the idea.

Chair Niman said this was a good observation.

Councilor Needell said he would like to comment further on this matter, but would like to do so under the Roundtable portion of the meeting.

## **VI. Public Comments**

**Jay Gooze, 9 Meadow Road**, said his comments were in regard to Agenda Item X.D., the citizen petition to change mixed use with residential from a permitted use to a conditional use in the Professional Office District. He said his comments would be brief, and said after the Council ideally passed the Ordinance on first reading, he would speak more on this subject at the public hearing on the proposed Zoning change.

Administrator Selig noted that he and Mr. Gooze had agreed that this approach made the most sense.

Mr. Gooze said the Zoning Rewrite Committee had done amazing work in revising the Zoning Ordinance, but said the Ordinance should be thought of as a fluid document. He said because some of the things in the Ordinance went through without knowledge of what their possible consequences would be, there would be a number of things that would need to be looked at. He provided some detail on this.

He said the area in question was a transition zone, noting among other things that it was an area of Town that residents walked through on their way to campus, to the downtown, etc. He stressed that nowhere in the petition for the proposed Zoning change were residents saying that the use in question should not be allowed. He said the idea instead was to put some conditions on the use in order to protect the residents.

**Bruce Bragdon, 7 Colony Cove Road**, noted that he was a former Chair of the Town Council and the Planning Board, and said he thought Chair Niman had to be very careful when he went out to talk to other groups in Durham. He said if a member of the Council did this, it had to be done as a member of the Council, and provided details on why Administrator Selig should be the lead man on these kinds of things. He said there needed to be some clear guidelines concerning this, and said he thought the Council needed to do some work on this.

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

- A. Shall the Town Council approve a special event permit and road closure request by the Durham Business Association to conduct a barbecue on Jenkins Court for UNH Proves students and DBA business owners on Tuesday, August 22, 2006 from 4:00 to 8:00 PM?
- B. Shall the Town Council accept a non-industrial sewer connection application submitted by the University of New Hampshire for Gables buildings D and E and refer the application to the Water, Wastewater, and Solid Waste Committee for review and recommendation?

***Councilor Julian Smith MOVED to approve Unanimous Consent Agenda Items A and B. The motion was SECONDED by Councilor Henry Smith, and PASSED unanimously 9-0.***

**VIII. Presentation Items**

- A. Receive annual report from the Cemetery Committee and Trustees of the Trust Funds**  
– Craig Seymour, Chair, Cemetery Committee and Bruce Bragdon, Chair, Trustees of the Trust Funds

**Bruce Bragdon** handed out copies the monthly financial statement the Trustees worked with, and explained that the funds were invested on a very conservative basis. He provided details on the investment policies the Trustees operated under.

**Craig Seymour** said there had been 12 internments at the cemeteries within the past year. He noted that the Committee was currently updating contact data in its database, and said this had been working out well, noting among other things that it sometimes resulted in receiving addition contributions for the cemeteries.

He spoke about the tremendous job the Public Works Department did maintaining the cemetery properties, and said people really appreciated this. He said the Committee was going to have to take a hard look at the issue of the landscaping of the cemeteries. He also said the Committee, as caretakers of the Doe Farm, was planning to do some tree cutting in the near future.

Councilor Henry Smith stated that he was on the Cemetery Committee, but said it had not met since he had been appointed to the Committee. He asked how many cemeteries the Committee was responsible for overseeing.

Mr. Seymour said there were a total of 74, including those that had been abandoned. He said the Town was required to do its best to maintain them.

Councilor Henry Smith noted a well-maintained cemetery he had recently stumbled on, on University property. There was discussion about this.

Mr. Seymour said the Public Works Department tried to get to all of the cemeteries at least once a year, for maintenance purposes, in order to address things like trees falling, etc.

Councilor Needell asked if there was anything to report on future space needs at the Town's cemeteries.

Mr. Seymour said there were three sections that had not yet been filled, and said there was approximately 50-60 years of capacity left. He noted the cemeteries were not used as often as they had been in the past because the Durham community was in more of a state of flux than it had been in the past. He also said there were more cremations now than there had been in the past. He said the Committee could look at the space issue in about 10 years.

Councilor Peter Smith said there were 2 actual cemeteries in Durham, noting that these were public entities. He said the rest of the sites were considered to be graveyards, which were private entities.

Councilor Smith asked what the relative roles of the Trustees of the Trust Funds were vs. other officials of Town, when there was a situation when money was left to the Town and there was a purpose stated for it, but this was such that some discretion was needed.

Mr. Bragdon first said that regarding the issue of landscaping at the cemetery, they would work with the State arborist on the kinds of plants that were appropriate to plant there. He also noted that they were using GPS to locate all the cemeteries in Durham for mapping purposes.

He also explained that there was a fund for un-funded graveyards in Durham that was started upon the death of resident Phil Wilcox.

Mr. Bragdon said the Town was always in need of specific trust funding to do specific projects. He said this was a wonderful way for a resident to make a difference in Durham, but he said it was important that the person leaving the Town the money be very specific about what he/she had in mind. He noted as an example that if it was not specified that both interest and principal from a fund could be spent by the Town, the State would say that only the interest could be spent. He provided details on the fact that the various trust funds had to be kept distinct and separate.

In answer to Councilor Peter Smith, Mr. Bragdon said that if a will said the money in a trust fund would be under the auspices of the Town Council, it would be, but if the will was nonspecific, it was generally given to the Trustees to administer, and they tried to follow what the will said. He provided some examples of this.

There was discussion about the importance of the Town having some clear-cut rules concerning this. Mr. Bragdon said he would get a specific answer on this from the New Hampshire Department of Justice.

Councilor Henry Smith asked for details on what Mr. Bragdon meant by the “conservative investment policy” the Trustees followed.

Mr. Bragdon said the Trustees only invested the funds in places where there could be fully guaranteed backing, so that if the bank failed, the Town would get the money back. He said that in terms of the investment policy, the Trustees never did anything that put the principal at risk. He also explained that the trust funds had to be essentially 100% liquid, so that when a project came up, the money was available. He noted that the monies from the various trust funds could not be pooled together, and said there was a written document that described these kinds of things.

Administrator Selig said the funds were 100% collateralized, and said the Town made sure they were kept where they would get the highest possible rate of return, noting that they were currently with Citizens Bank. He also said the Town was conservative in terms of investment of the funds, and Mr. Bragdon provided additional details concerning this.

Administrator Selig noted that a question that was sometimes asked in Town was where the money for the flowers came from.

Mr. Bragdon provided details on how certain Trust funds were used for this, stating that they were to be used for the beautification of Durham, and there was no stipulation as to where in Town the flowers were to be planted. He also said that when Town funds for flowers got tighter, the Trustees stepped in with more Trust funds for the flowers.

Chair Niman called a break at 8:10 PM; the Council returned at 8:17 PM.

**B. Receive annual report from the Integrated Waste Management Advisory Committee – Shelley Mitchell, Chair**

Ms. Mitchell provided a slide show that described the work of the Committee in recent years. Some of this work is listed below:

- Community education: publication of *Down to Earth newsletter*; use of Town web site for sharing a large amount of information with residents, including topics covered at meetings, an activity calendar, and Minutes of Committee meetings.
- Coordination with the Public Works Department, in updating the Town’s Solid Waste regulations. A weight limit of 50 lbs. was put on trash pickup in order to prevent injury of workers. Four 32 gallon barrels, or eight 32 gallon plastic bags are allowed. Most residents separate out recyclables, so the likelihood of exceeding these limits is not great.
- The IWMAC oversees running the Swap Shop, which is a unique way to accomplish recycling and reuse of goods. Volunteers are invaluable in running the Swap Shop, and the Committee

makes sure they are in place year round. Dale Valena is currently serving as volunteer coordinator.

- The Committee keeps track of charitable organizations that accept used furnishings; the goal of this program is to keep these usable items from going to the landfill. The list of organizations is available on the Town web page, at the Public Works Department office, and at the Swap Shop.
- The Committee is monitoring the waste management situation at events in Durham that many out-of-towners attend. Regardless of the fact that separate containers are provided for recycling, recycling seems to be poor at these events. The Committee is trying to come up with some suggestions concerning this problem, and among other things, may suggest that public address reminders be used at these events
- Recycling statistics are regularly shared with the Committee, giving it a chance to highlight successes and deficiencies.
- Household hazardous waste collection is done annually, and is handled by the Public Works Department by appointment. It is realized that some people call the Department after all the slots have been filled, so have no way to dispose of their hazardous wastes until the next year. The Committee is looking at this, but has not developed recommendations yet. The Committee plans to continue its efforts to educate residents on safe alternatives to hazardous products.
- Use of fall leaf bags by residents has been a complete success. Residents embraced this change; the drawbacks are that the bags weigh a lot more when it rains, which means more work for Public Works employees; another is that the cost of fuel to pick up the bags is going up. The Committee will continue to encourage backyard composting as the best alternative to using leaf bags.
- Tipping fee avoidance in the past year as a result of recycling and reuse was about \$43,000, and revenue received was about \$40,000. The Committee would like to thank residents for paying attention to recycling and reuse.
- Events the Committee participates in: Durham Day where it provides information on the Committee and its work; annual coastal cleanup; green building presentations; etc. It was also noted that former Committee member Merle Craig wrote a wonderful article on this topic for the *Down to Earth* newsletter.
- The Committee assisted flood victims in Newmarket by looking into whether the Swap Shop could be used to provide them with some needed items. This demonstrated the good will of the Town of Durham, and the positive effect of having the Swap Shop.
- The Committee continues to reach out to other entities in the community:
  - The Oyster River School District is continuing its commitment to use chlorine-free paper.
  - Hopefully, there will be a UNH representative on the Committee.
  - The Committee is currently looking at the idea of having an undergraduate student at UNH help with a research project.



- Representatives of the Durham Landlords Association came to some of the Committee's meeting this past year, and an experimental program allowed the landlords to bring bulky solid waste to the transfer station for four days, after spring cleanup but before the students left for the summer. This program went very smoothly.

A preview of some of the IWMAC's goals for 2007:

- More work with UNH - Office of Sustainability; Durham Its Where U Live; the new bio-diesel fueling station; etc. Exciting things are happening.
- Improves signage at the July 4<sup>th</sup> celebration concerning recycling.
- Swap Shop – the hope is to build a shed extension this year to protect building materials that come in, such as doors, windows, etc. This will involve extending the roof line.
- Review household hazardous waste disposal issue; disposal of tires and propane tanks also. Would like to investigate the idea of charging a fee for this.
- The Committee would like to look into the idea of Durham becoming a “cool city”, one of 80-90 communities in the country that are reducing greenhouse gas emissions.

Ms. Mitchell spoke in some detail about Spring Cleanup issues that had been researched and discussed in Town over the past several months, and then spoke about the Committee's recommendations concerning this. The following recommendations were developed by the Committee:

1. Eliminate the annual curbside pick up of bulky waste known as “Spring Cleanup”.
2. Grant all Durham taxpayers and residents with proof of residency free entrance to the Transfer Station & Recycling Center (Swap Shop included). Upon request, taxpayers and residents would be issued an entrance permit and 2 bulky waste coupons, good for one calendar year allowing for one pickup truck load of bulky waste or construction & demolition waste per coupon.
3. Grant all Durham taxpayers and residents living on private ways free entrance to the Transfer Station & Recycling Center. They would also be issued an entrance permit and 2 bulky waste coupons.

There was discussion as to whether the Council should discuss the spring cleanup issue that evening. It was agreed that there would be brief discussion on this issue.

Chair Niman said a Council Communication would be developed as part of plans for a detailed discussion of the issue at a future Council meeting.

There was discussion as to what the difference was between recommendations #2 and #3.

Councilor Needell asked if in an emergency, residents of other towns, could access the swap shop. He asked whether, if they couldn't, this was something that should be thrown into the mix of possible things to allow in the future.

There was discussion about this, and Administrator Selig noted that the Town did utilize a certain amount of discretion concerning situations such as when there were fire victims.

Councilor Needell said it would be good if people knew that they could contact the Town regarding this, for situations above and beyond what was considered in the guidelines.

Councilor Henry Smith asked whom the *Down to Earth* newsletter went to, and Ms. Mitchell said it went to all Durham households. Councilor Smith asked if renters also received the newsletter, and was told that it was up to the owner of the rental building to share the newsletter with renters.

Councilor Peter Smith said when the Council discussed the Spring Cleanup issue in more detail, he would be interested in seeing data which indicated whether approximately half of Durham households purchased the stickers. He noted that the first recommendation was based on the premise that if this barrier didn't exist, there would be greater usage of the Transfer Station and Recycling Center.

Ms. Mitchell said there had been a great deal of discussion on this at the forum, and said people had voiced objection to the \$25 fee, which was a substantial increase in price.

Councilor Needell noted that the IWMAC had labored tremendously on the spring cleanup issue, and said he hoped this would be taken into consideration when the Council discussed the issue in more detail. He said he hoped a lot of weight was put on the Committee's recommendations as they now stood, based on its efforts.

Councilor Julian Smith said he agreed, and said he hoped the Council would not leave that evening without discussing how it would proceed regarding the initiative the Committee had brought forward.

Chair Niman thanked IWMAC members for their presentation.

## **IX. Unfinished Business**

## **X. New Business**

- A. FIRST READING ON ORDINANCE #2006-03** amending Chapter 153 "Vehicles and Traffic", Section 153-36 of the Durham Town Code by designating the narrow turning lane between Packers Falls Road and Wednesday Hill Road for one-way traffic
- B. FIRST READING ON ORDINANCE #2006-04** amending Chapter 153 "Vehicles and Traffic", Section 153-43 of the Durham Town Code by installing a stop sign on the narrow turning lane between Packers Falls Road and Wednesday Hill Road

Administrator Selig said the Town had received a citizen petition regarding this matter, because of their concern that there were deficiencies at the intersection of Packers Falls Road and Wednesday Hill Road. He said the Traffic Study Committee had looked at the issue, and said Chief Kurz was present to speak on this agenda item as well as the next item, which also pertained to the safety issue at this location.

Chief Kurz said the impetus for the new Ordinance was the petition, and said the issue probably would not have hit the Police Department's radar screen unless the petition had come forward. He explained that there had been two reported accidents at the location in the last 4 years, noting that although this was certainly too many, there were other areas in Durham where there were more accidents, and which the Department would have paid attention to first.

He said that ideally, if one wanted to improve the situation at this intersection, it would be redesigned and reconstructed. But he said this would be costly, and he also noted that this was not a project that was listed in the CIP. He said the Traffic Safety Committee was therefore looking at enhancements to increase safety at the intersection.

He said what was proposed was: 1) designating the narrow turning lane between Packers Falls Road and Wednesday Hill Road for one way traffic, heading north; and 2) installing a Stop sign to the right of this narrow turning lane. He provided details on the current problems with the way traffic flowed at the intersection of the two roads, and said what was now proposed would be an improvement to the situation without significant expenditure of funds. He noted that the ideal traffic safety design for the intersection would be to create a "T" intersection.

Councilor Van Asselt noted there had been 2 accidents at the intersection in 4 years, and said what was proposed now wasn't really a solution to the problem. He asked if the Town was really going to go forward with these Ordinances.

Councilor Morong said he drove a box truck, and said he wondered if he could make the turn with his truck's turning radius. He also noted that with his truck, it would be difficult to see behind the truck as to whether someone coming down Packers Falls Road wanted to make a turn to get on Wednesday Hill Road.

Chief Kurz said this had come forth because of a petition of residents, and said the Police Department would not otherwise be presenting these proposed Ordinances to the Council. He said the Department's real recommendation would be to make this a 90-degree turn, but he noted again that money had not been allocated for this.

Councilor Julian Smith said that only two accidents at this intersection had actually been reported to the Police Department, but he said there were a lot of vehicles that went off the road at this location, noting that there were a lot of scars on the trees by the Pike houses. He said there was a larger problem of speeding in this area that the proposed Ordinances could not address. He said Councilor Morong's question was a good one, and he provided details on how drivers would probably deal with this. He also noted that there were alternate routes to get onto Packers Falls Road, Jenkins Lane and Griffith Drive, stating that the latter was the safer option.

There was discussion as to whether school buses could make the turn as proposed.

Chair Niman asked what the safety concern was regarding turning left onto Packers Falls Road, heading north. He noted that these Ordinances would not address this. There was detailed discussion about this.

Councilor Morong said local people knew Griffith Drive, but he said box trucks were becoming more and more popular, and said some people driving them might not know that road. He asked if perhaps the island could be made smaller so there could be two lanes.

There was discussion about this with Public Works Director Mike Lynch.

Councilor Peter Smith asked Chief Kurz to assess the degree of danger at present on Packers Falls Road and Wednesday Hill Road in the area of the intersection, given the shape of the roads and the way people drove.

Chief Kurz provided details on this. He said the potential for accidents was there, and said as more people drove these roads, the danger was real. But he noted again that the data said there had only been 2 accidents there in 4 years.

There was detailed discussion on the site distance on Packers Falls Road.

Councilor Morong said he didn't think he could support these Ordinances on first reading, because he didn't see them as an improvement in the situation.

Councilor Needell asked if it made sense to put a Do Not Enter Sign where cars turned from Packers Falls Road onto Wednesday Hill Road, and provided additional details as to what he had in mind. There was discussion about this with Chief Kurz.

Councilor Henry Smith said he had driven these roads many times, and said he saw increasing numbers of cars that didn't drive the speed limit. He said this needed to be addressed as urgently as the intersection design issue.

Councilor Julian Smith said he had attended the meetings of the Traffic Safety Committee on this issue, and said 5-6 different options had been developed. He said the best option would be to reconfigure the intersection, and provided some detail on this. He said if the Town did what was proposed that evening, bigger and bigger signs would still be needed concerning speed limits, and greater enforcement would be needed. But he said even that would not be enough to address the problems there.

Chief Kurz said the Traffic Safety Committee was not excited about the recommendations it had made.

There was detailed discussion as to how the Council should proceed concerning the proposed Ordinances.

Administrator Selig said the feedback he had gotten back from the Traffic Safety Committee was that what was now proposed was adequate for the intersection, at appropriate speeds. He said this solution was intended to show residents that the Town was trying to take some action regarding these issues. But he said that unless the Council wanted to appropriate capital funds for substantial improvements to the intersection in order to address the traffic safety issues, this matter was unlikely to come back to the Council. He also explained that this issue was considered to be a relatively low priority, given other demands on the resources of the Town. He provided details on this.

Chair Niman asked what the will of the Council was on the two proposed Ordinances.

Councilor Peter Smith said it was clear that the Traffic Safety Committee was not enthusiastic about the proposals, and he said nothing he had heard had made him feel this was an unreasonable conclusion. He said the fact that if everyone obeyed the speed limit there would be no problem was not an answer for him. He said he didn't think any action should be taken now, and said there should be no further action, unless and until the Traffic Safety Committee said that compared to other locations, improvement of this intersection should be a project the Town should undertake.

Councilor Needell said he didn't see a reason to move on with these Ordinances, from what he had heard. He said he thought the solution, if there was one, was to redesign the intersection. He said he would leave it to the Traffic Safety Committee to decide when this should be done, and to prioritize it in relation to other projects.

Councilor Morong said he understood the concerns of residents, but said he didn't think these Ordinances addressed them. He said he wouldn't vote to approve them on first reading.

Councilor Carroll said although there had been only 2 accidents at this location in 4 years, many residents said there were many near-miss situations there. She said she didn't think this issue should be set aside, and said the Council could hear more from residents concerning it. She said the Traffic Safety Committee could look at the issue again, and also said it was worth looking at what it would cost to improve the intersection.

Councilor Henry Smith said he didn't think the Council should move forward with these Ordinances, but he said it was important that the Town had addressed the petition from the residents.

Councilor Leach said she agreed with the Traffic Safety Committee that what was proposed was not really the solution, but said it might be okay to go forward with them, given that they only involved a couple of signs. But she said she was concerned about the left turn issue brought up by Councilor Morong.

Councilor Julian Smith said he would like to see a redesign of the intersection. He said the current speed limit was unenforceable, and provided details on this. He stated that this was an unsafe intersection, and was an accident waiting to happen.

There was discussion about the possibility of greater enforcement in this area.

Chair Niman said for lack of a motion, the Council would move beyond these two Agenda items.

**C. FIRST READING ON ORDINANCE #2006-05** amending the Durham Town Code by creating a new chapter, Chapter 46, entitled "Disorderly Actions"

Chief Kurz said it was a shame that the matter of public urination had to be addressed before the Council. He provided details on how other State laws, such as the sex offender law and disorderly conduct laws also didn't really address it. He noted that Councilor Julian Smith had proposed that littering laws could be used to develop some kind of enforcement action, but he said the reality was that the littering in this situation didn't do real harm. Chief Kurz said he therefore didn't see that using the litter laws to address the problem was a viable option.

He said the Ordinance that was now proposed would address the problem. He noted that the people whose behavior would be addressed by the Ordinance, were not bad people, but were just making bad decisions at a particular moment.

Councilor Julian Smith said these behaviors happened late at night, most often because people had been drinking. He provided details on wording he did not think was appropriate for addressing the problem, and then explained why he thought the litter law was appropriate to use.

Chair Niman asked if Councilor Julian Smith would like to do what he was suggesting under another Ordinance, so the proposed Ordinance was not needed.

Councilor Smith said he thought there should be a first reading of a tighter, more precise Ordinance than what Chief Kurz was now proposing.

Councilor Peter Smith said he was having some difficulty following Councilor Julian Smith's reasoning, and said he agreed that using the littering approach would be frivolous. He said there was a defect in the law that stemmed from the fact that the arrests that needed to be made were those made by police officers patrolling the streets late at night who observed these behaviors. He said the Ordinance proposed was clearly authorized by State law, and said it would solve the problem. He said he would urge that the Council pass the Ordinance on first reading.

Councilor Needell said even if the State statute could be interpreted as a misdemeanor, it was not really the Town's intent to prosecute someone under that law for the violation. He said he agreed there might be room for some changes to tighten the Ordinance so that it was not as broad, but said he had no problem with creating an Ordinance to address this issue in Durham.

***Councilor Peter Smith MOVED on first reading Ordinance #2006-05 as presented, amending the Durham Town Code by creating a new chapter, Chapter 46, entitled "Disorderly Actions" and schedules a Public Hearing for Monday August 21, 2006. The motion was SECONDED by Councilor Needell.***

Councilor Peter Smith said it was appropriate to adopt an Ordinance that dealt with this problem in the general manner that Chief Kurz had set forth. He said he thought the Ordinance needed some clarification in terms of drafting, but said this didn't need to be done that evening.

Chair Niman asked Councilors wanting to clarify the language of the draft Ordinance to pass their suggestions on to Chief Kurz.

Councilor Needell said he had done some research on Ordinances like this in other towns, and had noted that the exceptions from the regulations were more broadly defined, so could be left to the discretions of police officers.

There was discussion about this, and also about what "public place" and "private place that could be seen from a public place" actually meant, and how this should be interpreted.

Councilor Henry Smith asked whether, if the Ordinance passed that evening, this would satisfy Chief Kurz.

Chief Kurz said it would, and also said the wording of the Ordinance could be smoothed up after this.

Councilor Julian Smith said he had no trouble with the grammar in the draft Ordinance, but said he did have considerable trouble with the language in it. He said he was willing to vote to approve it on first reading and to go on to the public hearing, if he received assurances that the language would be cleaned up, and that it would be briefer.

Chief Kurz said he would take care of this.

***The motion PASSED 8-1, with Councilor Van Asselt voting against it.***

**D. FIRST READING ON ORDINANCE #2006-06 amending Chapter 175 “Zoning”, Article XII, Section 175-53 “Table of Land Use” of the Durham Town Code**

***Councilor Van Asselt MOVED on first reading Ordinance #2006-06, Amending Chapter 175 “Zoning”, Article XII, Section 175-53 “table of Land Use” of the Durham Town Code, and to schedule a Public Hearing for August 21, 2006. Councilor Julian Smith SECONDED the motion.***

Town Planner Jim Campbell provided background on the reason for this proposed change to the Zoning Ordinance, and explained that it was based on a citizen petition. He said the petition had been verified by the Town Clerk, and contained enough signatures to move forward. He noted that the Planning Board had held a public hearing on this matter at its July 12<sup>th</sup> meeting, and after deliberating had voted 4-3 to recommend to the Town Council that the Zoning change be made.

Councilor Needell said he thought the Council should move the Ordinance change on first reading, and schedule the public hearing. He said he was looking forward to hearing comments on the proposed change, but said he wanted to give Council members some idea of the issues involved.

He said there was a fundamental question as to whether the Zoning change should be made at all, noting that some Planning Board members who voted against recommending this had questioned whether this was the right methodology for solving the problems that were perceived. He said some Board members wanted the Ordinance to state exactly what uses were and were not allowed. He said some wanted to consider whether “retail” use needed to be redefined, or whether it should even be allowed in the Professional Office district.

Councilor Needell said other Planning Board members felt that using the conditional use process gave the Board the ability to deal with proposals in this district on a case by case basis. But he noted that the Zoning Ordinance said the conditional use process was meant to be used for a proposed use that was not normally allowed, so the question was whether it should be used as an enabling or a restricting tool. He said he was okay with this proposed Ordinance change as a short-term measure in this transitional zone, but agreed that longer-term measures also needed to be looked at that would be more effective.

Councilor Peter Smith agreed should the motion should pass. But he said what also needed to be looked at was the Town’s ability to regulate the sale of alcohol. He noted that the Town had no

direct power regarding this, and said it had to think in other terms, and had to look into other areas where the Town could use its regulatory power to get appropriate results.

***Councilor Julian Smith MOVED to extend the meeting beyond the 10:00 pm adjournment time. Councilor Henry Smith SECONDED the motion, and it PASSED unanimously 9-0.***

There was brief discussion by Councilors on the proposed motion, and it was agreed the proposed Ordinance change should move on to public hearing.

***The motion PASSED unanimously 9-0.***

- E. RESOLUTION #2006-17** recognizing the contributions of Durham's Swan Keeper for their dedicated services to the Town of Durham and suspending the official position of "Keeper of the Swans"

Councilor Needell noted that the Town's most recent swan keeper, Marjorie Milne, had passed away within the past few months, and said the question had then come up as to whether the Town should appoint another swan keeper. He provided some history on the keeping of the swans in Durham, and explained that in the early years of the practice, there was significant interaction with the swans, which were banded, and were actually owned by the Town. He said the present swans on Mill Pond in contrast were wild animals, whose ancestry was unknown.

He said that as a result of various discussions he and Councilor Julian Smith had had with residents on this issue, it had been determined that there did not appear to be a compelling reason to interact with the swans. He said it was the wild nature of the swans that made them special, and said human interaction with them should therefore be limited to observation.

***Councilor Needell and Councilor Julian Smith MOVED to adopt Resolution #2006-17 recognizing the contributions of Durham' Swan Keepers for their dedicated services to the Town of Durham, and suspending the official position of "Durham Keeper of the Swans." Councilor Julian Smith SECONDED the motion.***

Councilor Needell read Resolution #2006-17 out loud.

Councilor Carroll said she agreed with this Resolution, but said she would miss the swan report in the Town's Annual Report each year. She noted that in the past this report had been written by the swan keeper, but asked if there might still be some interest in keeping the idea of a report on the swans. She suggested that perhaps someone who kept an eye on them could submit something in writing.

Administrator Selig said he would consider this idea if such a report was not political, and was focused on the well-being of the swans.

Councilor Henry Smith said he had taken many pictures of the swans over the years, and told a story about a confrontation with some swans at one point, also noting there were times when it was necessary to interact with them.



Councilor Needell pointed out that the swans were wild, and could be dangerous. He said if residents had concerns about their behavior, the appropriate thing to do was to contact the animal control officer. He also said that if a swan died, the Town should be notified because it would be important to find out why this had happened, noting that the birds might be indicators of some diseases. He said there were therefore reasons to continue to follow their behavior.

Administrator Selig thanked Councilor Needell and Councilor Julian Smith for following up on this issue. He said although the era of the keeping of the swans was sunsetting that evening, that care-taking activity, as well as the research done by Councilors Needell and Smith was an example of Durham at its best. He said the Town appreciated these efforts.

***The motion PASSED unanimously 9-0.***

## **F. Other Business**

Chair Niman said that Planning Board Richard Kelley had sent the Council an email on the issue of the draw-down restriction on the Lamprey River. He said Mr. Kelley was suggesting that the Town move as quickly as possible to try to eliminate the restriction, and had provided details as to why it was not clear why Durham had this restriction. He said the email said the Town would be better off if the restriction were eliminated, rather than following the course proposed by Town Engineer David Cedarholm, who was in the process of writing a letter to NHDES on the idea of relaxing the restrictive nature of the 401 water quality certificate. Chair Niman provided additional details on this.

Councilor Peter Smith said he would not want to make a decision on this without having the Town Engineer present. He said if Mr. Cedarholm's actions were not considered satisfactory, this should be put on a future Council agenda, and the questions could be raised with him.

Councilor Carroll said she would also like to see more information on this issue.

There was discussion as to how to proceed concerning this issue. Councilor Morong asked Administrator Selig what his perspective was on this issue.

Administrator Selig said it was a complex topic, and said he would rather not start on a dissertation of it that evening, especially given the late hour. He said he was comfortable with the course the Town was presently undertaking by asking NHDES to relax the restriction. He provided some detail on this. He said he didn't feel the need for input from the Council on this issue at present, based on past discussions with the Council about it. But he noted that there were some new members of the Council, and said if Council members felt they needed more information on the issue, they could certainly have a discussion on it.

Councilor Leach noted that there had been a number of citizens' petitions before the Council that evening, and said she felt the Council should afford the same courtesy to the Chair of the Planning Board, and should ask him to come and speak with the Council on this issue.

Administrator Selig said if the Council did this, it would be important to include groups with other points of view who were interested in this issue.

Councilor Needell asked if it would be simpler to have the Town Engineer respond to Mr. Kelley's letter, or if this wasn't necessary, given the history of the issue.

Administrator Selig said the Water and Wastewater committee was meeting the following day, and said he recommended that Council members attend this meeting if possible. He said there was a lot of validity to what Mr. Kelley was saying, but he also said there was a lot of history to this issue.

Chair Niman said the key issue was whether Councilors agreed with the way the Town was proceeding concerning the draw-down of the Lamprey River, or if as Mr. Kelley had said, the Town should be proceeding differently.

Councilor Peter Smith said Mr. Kelley's point was that it was unnecessary for the Town to engage in the request to NHDES, because the State had no power to tell the Town what to do. He said the Town should contact an attorney for an opinion on this, noting that it had been operating on the assumption that the State's claims were valid. He said if Mr. Kelley knew of something that said these claims were not valid, the Town needed to see this information.

Administrator Selig said the assumption was that the State's claims were valid, and said the Town had been working within that framework.

Councilor Henry Smith said he thought the approach being taken by the Town currently in its dealings with NHDES made sense.

Chair Niman said he agreed with Councilor Peter Smith that the Town should get a legal opinion on the issue first, and if it turned out that the State didn't have the authority to restrict the draw-down, there could be a fruitful discussion on the issue at a future Council meeting. He said if it turned out that the State did have the authority, there would be no point in moving forward with further discussion regarding Mr. Kelley's concerns.

Chair Niman asked Councilors if they wanted to request that Administrator Selig ask the Town attorney to issue an opinion on this.

Councilor Peter Smith said an important caveat for him was that he didn't want to see a legal bill for something that was not necessary. He asked Administrator Selig if what was in Town files answered the question of what the State's authority was in this area.

Councilor Needell said an underlying question was what problem they were trying to solve. He said they were trying to increase the amount of water available to the Town from the Lamprey River at certain times of year, and said the question was whether to take a harder line with the State concerning the validity of the restriction, or to take the approach the Town was currently taking.

Chair Niman said he was not looking at this issue as one that was about getting more water, but as an issue of local control, and whether having this local control would allow the Town to be stewards of its resources. He said he was in favor of eliminating the restriction, and of contacting other groups to help the Town come up with a plan that made the most sense for it. He said the Town should not be bound by an artificial number that had been created.

Councilor Needell said most people agreed that the restriction was indefensible, so the Town could assert its water rights. But he said he thought they should pick their battles.

Chair Niman said the question now was whether the Council was interested in pursuing this issue.

Councilor Peter Smith said what Mr. Kelley wanted to pursue was based on the premise that the State had no power, and said if he was correct, and the Council agreed it would be useful for the Town to have more control, then obviously it would want to change course. But he said he didn't want to change the route it was on unless it was clear where the power lay. He said Mr. Kelley should get this information to Administrator Selig and the Town attorney, and the Town should then get a legal opinion on this.

Administrator Selig provided some detailed history on the draw-down issue. He said the State had said it would be willing to consider additional draw-down, but that the Town needed to show that this would not impact the Lamprey River. He said the Town thought the State should show there would be no impact, but had decided to take the high road, and during the recent de-watering of the reservoir, had done an inventory of the impact on the river ecosystem as a result of this. He said based on the documentation on this, it appeared to the Town that drawing down an additional 6 inches, to a total of 12 inches, would have minimal impact on the river. He said based on this, the Town was asking the State to allow this additional drawdown.

Administrator Selig said he hadn't seen the letter Mr. Cedarholm had written to NHDES concerning this issue. But he said for the time being, 12 inches of draw-down seemed reasonable. He said additional work would need to be done in order to be able to ask for an additional 6 inches of draw-down.

He also said there were flow issues that had to be addressed with the State, noting that because of access problems upstream, the Town hadn't been able to gauge flow in the way that had been required by the State. He said the second part of Mr. Cedarholm's request to the State was to allow the Town to do the calculation of flow at the dam itself, as a measure of the flow going over the dam.

He said the Town's requests to the State were respectful of the aquatic environment, which was a concern of residents.

Administrator Selig said the assumption had been that the State had the authority to limit the draw-down, and said he believed that administratively, the Town was bound by this. He said he hadn't asked for a legal opinion on this, but could refer this to the Town attorney. He also said the Town could fight this in court, but said it had opted for a collaborative approach.

Councilor Van Asselt asked if Administrator Selig could have the Town Engineer and Mr. Kelley put together something on this issue. He said Mr. Kelley's effort deserved some kind of response from the Council through Administrator Selig. He said he was not asking that this matter be on a future agenda, but said he would like Mr. Cedarholm to sit down with Mr. Kelley to address the questions he had raised.

Administrator Selig agreed with this approach, noting that he had great respect for Mr. Kelley, and that many of his points in the email were good ones. Administrator Selig said his own approach was one that he thought had made the most sense over time.

Councilor Leach agreed that Mr. Cedarholm and Mr. Kelley should meet to discuss this issue, and Administrator Selig said they would be meeting at the Water and Wastewater Committee meeting the following day. He noted that this meeting was a follow up to the work session the Council had held in July.

On another issue, Councilor Henry Smith said the Local Government Center in Concord was holding a Budget Finance workshop on September 28<sup>th</sup>. There was discussion about this, and Administrator Selig said the Town would cover the costs for this if Councilors wanted to attend.

## **XI. Council and Administrator Roundtable**

Councilor Leach suggested that perhaps when local boards made presentations before the Council, the Powerpoint presentations weren't really needed, especially when Councilors already had the information in their packets. She said the suggestion was no reflection on the presentation that evening, but said it might result in a more effective use of everyone's time.

Councilor Morong noted that because the meeting was televised on DCAT, the Powerpoint presentation was really intended for the whole community.

Councilor Leach suggested that perhaps these presentations could be put in the Minutes

Administrator Selig provided details on a proposed lease with the Irving station for parking spaces near the Courthouse building. He said it was important to secure these, and said the cost was \$700 per space per year, which was a reasonable cost. He said the lease would be for 20 years, but said that with 12 months notice, the Town could cancel the lease. He said he wanted the Council to have the chance to raise any objections to the proposed lease.

Councilor Peter Smith asked what the arrangement would be if Irving sold the property, stating that the 20 year lease extension meant nothing without such an arrangement.

Administrator Selig said he didn't have the answer to that question.

Councilor Van Asselt said he hoped that down the road, the Council could put together a group of people to look at things in the Town Charter presently requiring Council action that Administrator Selig and Town staff could deal with instead. He noted the Agenda item on the Packers Falls Road/Wednesday Hill Road intersection that evening, and said the Council spent too much time on these kinds of things, given all the other bigger issues it should be spending its time on.

Councilor Morong suggested that the Council could have a work session on this.

Councilor Peter Smith noted that it was only the Town Council that could pass Resolutions, also noting that some of these could be put under the Unanimous Consent Agenda.

Councilor Van Asselt said he understood that. But he said he personally was incapable of deciding how high a railing on a bridge should be, or where a stop sign should be placed. He said he would like the Council to come up with a plan for deferring these things to Administrator Selig and Town staff, so these items would come back to the Council on the Unanimous Consent Agenda. He noted

that Councilors didn't get into discussions on quarterly financial statements, but for some reason felt they were experts on things like stop signs.

Councilor Needell said a lot of the time spent by the Council on these kinds of details was self-inflicted, and provided details on this.

Councilor Needell said he wanted to speak concerning Dr. Bragdon's comments earlier in the meeting. He said his own feeling was that the Chair of the Town Council had no particular authority to go out and represent the Council, noting that only a vote of the Council was representative of the Council.

He said he felt it was entirely appropriate for a Councilor to have a discussion with a private group, but said there was a line to be drawn in terms of negotiating or selling something. He said in this instance, he was concerned that there was a lot of discussion going on that was making it confusing for those involved in the discussion as to whom they were talking to. He provided details on this, and said the Council had to be extremely careful in terms of how it represented itself.

He noted a letter that said the Mill Pond Center had been presented with an opportunity, and he said it was not the Council that had presented this opportunity. But he said he was seeing emails by people who thought the Council had made a gesture of some kind.

Chair Niman said he was trying to make things happen, and as part of this, was listening to peoples' ideas, and asked questions. But he said he was not negotiating with the Mill Pond Center or anyone else. He said he was trying to help figure out whether this idea was worth pursuing, and said the concern was that if he didn't do this, the opportunity would fall through the cracks. He said he was not doing this as a representative of the Council.

Councilor Needell said if something came to the Council concerning the Mill Pond Center, it had already been refined to a certain extent, so that some decisions had already been made. He also said it would have come to the Council from a Councilor, not from Town staff.

Chair Niman said he was trying to identify elements that needed to be part of a possible proposal, and to obtain information people needed to know in order to be able to discuss the possibilities.

Councilor Leach said she was not disagreeing with Councilor Needell in theory, but said it seemed that when ideas were brought forward, the Council said it needed more information. She said it seemed that this was what Chair Niman was attempting to provide. She said she thought there was more going on in Durham now than had happened in a long time, and said Chair Niman was a big reason for this. She said the Council and Town staff should be leaders, in taking these opportunities and going with them.

Councilor Needell said the particular situation concerning the Mill Pond Center was perhaps something that had been handled inappropriately, and had resulted in premature chatter that was not helpful. He noted that he thought the discussion on Mill Plaza had been handled well.

Chair Niman said there were challenges with this issue as well.

Councilor Morong left the meeting at 10:58 pm.

Councilor Julian Smith noted the extensive chatter on the Mill Pond Center, while no one had come to the meeting to speak on it. He said in terms of proper protocol, the IWMAC had put together a public forum on the spring cleanup issue, and had made a presentation to the Council. He noted that Ms. McKone was still at the meeting, and said he thought the Council needed to make a decision on what it wanted to do next concerning this issue.

Chair Niman said he assumed that a Council Communication would be drafted on the spring cleanup issue.

Administrator Selig said this initiative was coming from the IWMAC, not from himself or the Public Works Department at this point. He said he was going to consider the recommendations. He noted that any of the Councilors could bring the issue forward as their own. He asked if the Council wanted him to take the lead on this issue, or to pursue something else instead.

Councilor Van Asselt said the Council should have spent the time it spent on the stop signs talking about the spring cleanup issue instead.

There was discussion on how to proceed.

Administrator Selig suggested there could be a detailed presentation from the Committee on the spring clean up issue, and Chair Niman agreed, saying this could be something like what had been done on the Middle School parking issue.

Councilor Needell said he would speak with Councilor Morong and Ms. McKone to see where they thought the issue should go from here. He said he thought that at a minimum, the issue deserved to be heard by the Council. He said he thought the recommendations should either be accepted or rejected, and said he did not think the recommendations should be rewritten.

Administrator Selig said he also would think about the way to proceed, but said he had no clear sense that evening as to whether the recommendations were a good idea.

Councilor Peter Smith said the Council didn't have expertise on any of these issues, at 11 pm. He said he had heard Chair Niman say he wanted to make things happen, but said he agreed with Mr. Bragdon that it was simply not possible for someone who decided to join the Council to have the same life that existed before being on the Council. He said Councilors gave up the right to be seen other than as a Councilor.

He noted the comment Chair Niman had made, "at the appropriate time", and said a member of the Council didn't have the luxury to decide on what the appropriate time should be. He also said he was tempted to ask what other possible location there was for the new library, which Chair Niman had indicated he was aware of.

Chair Niman said he would like to discuss this with Councilors, and was more than happy to divulge the other possible location for the library. He said people came to him with their ideas, but he said the concern was that if he shared these ideas, people would work aggressively behind the scenes to stop them from happening. He provided details on this.

Councilor Peter Smith said he appreciated that Chair Niman had said this, and said this had confirmed to him what he thought was wrong with the role Chair Niman was playing. He said when Chair Niman joined the Town Council, he lost the right to have the attitude, as the Chair, and as a Councilor, that he had to be careful about communicating ideas and information to Councilors because this information would be sabotaged.

Chair Niman said the other possible location for the library was the property owned by Mike Davis behind Ocean Bank. He said an idea was to trade the Grange building for Mr. Davis' apartment building. He said he had lunch with Mr. Davis that day, and said Mr. Davis was serious about the idea of trading the properties.

Councilor Julian Smith said this was a parcel of land the Library Trustees had been very interested in a few years ago, and noted it had been on their list of top locations. He said he thought the Trustees would be very interested in hearing about this, and said this was a situation where there should have been a three-way conversation between a representative of the Board of Trustees, a member of the Council and Mr. Davis. He also said the reason why some Library Trustees had recently been a little agitated was that they had heard that the possibility of the Mill Pond Center as the location for the Library had been discussed, but not with them.

Chair Niman said he had discussed this with the Library Trustees, as one possibility, and had said to them that he hoped to come up with more possible sites. He noted he hadn't discussed Mr. Davis' site with them because this had just recently materialized.

Councilor Julian Smith said he thought the Library Trustees would be interested in the site.

Chair Niman said these were the kinds of things he was trying to work on.

Councilor Needell noted that the Council had the ability to go into non-public session so Councilors could talk more freely about these kinds of things. He also noted that Chair Niman had said a question had been brought to him, which asked him what he thought about something. Councilor Needell said this was inappropriate, stating that Chair Niman had only one of nine votes. He said the real question was whether the Council was interested in something, not whether Chair Niman was interested in it.

Chair Niman agreed. He said he was interested in doing something with the Mill Pond Center, but was aware that the Library Trustees were not interested in the property as a site for the Library. He said if there was a bona-fide opportunity with this property, he wanted to bring it forward, and said he was simply trying to create some opportunities. He said he was trying to do this with Mill Plaza as well. He said he wanted to be able to provide the Library Trustees and the Council with some realistic possibilities at the August 28<sup>th</sup> work session. But he said if others were uncomfortable with what he was doing, he would stop.

Councilor Needell said he appreciated Chair Niman's interest in these matters, but said that being Chair put Chair Niman in an awkward position. He asked whether these discussions could go on without Chair Niman's participation.

Councilor Van Asselt said Council members, including himself, did this kind of thing all the time, and said if they didn't, they weren't being responsible. He noted discussions he had had with

landlords, and said he had done this as a member of the Council. He questioned the fact that Chair Niman was being criticized for developing options to bring back to the Council.

Councilor Needell asked Councilor Van Asselt if the discussions with landlords had taken place at meetings.

Councilor Van Asselt said the discussions had occurred at meetings and outside of meetings. He said he had done this as a member of the Council, not as an individual. He said this kind of thing had to be done in order to get something done in Durham, and said he saw what Chair Niman was doing as being in the same category. He urged Chair Niman to keep doing this, and said the insinuation that democracy ended when the Chair did this was unfair.

## **XII. Adjournment**

***Councilor Van Asselt MOVED to adjourn the meeting. The motion was SECONDED by Councilor Leach, and PASSED unanimously 9-0.***

The meeting ADJOURNED at 11:29 PM.

Victoria Parmele, Minutes taker