

This set of minutes was approved at the Town Council meeting on December 17, 2007

**DURHAM TOWN COUNCIL
MONDAY, NOVEMBER 19, 2007
DURHAM TOWN HALL – COUNCIL CHAMBERS
MINUTES**

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

MEMBERS ABSENT: None

ALSO PRESENT: Business Manager Gail Jablonski (sitting in for Town Administrator Todd Selig), Town Clerk Lorri Pitt, Police Chief David Kurz, Fire Chief Peter O’Leary, and Town Engineer David Cedarholm

I. Call to Order

Chair Niman called the meeting to order at 7:00 PM.

II. Approval of Agenda

Councilor Peter Stanhope MOVED to approve the Agenda. Councilor Van Asselt SECONDED the motion, and it PASSED unanimously 9-0.

III. Special Announcements

Employee service recognition (20 years) – Richard Miller, Fire Captain
Employee service recognition (20 years) – Jeffrey Furlong, Firefighter

Chair Niman noted that Jeff Furlong could not be present, but said that his service to the Town was very much appreciated. He then read a certificate of appreciation for Captain Miller.

IV. Approval of Minutes

October 15, 2007

Page 18, 1st motion on page, should read Councilor Leach MOVED to approve awarding...”
Page 20, 1st full paragraph, should read “..he wanted to be clear whether the purpose...”

Councilor Van Asselt MOVED to approve the October 15, 2007 Minutes as amended. Councilor Carroll SECONDED the motion, and it PASSED 8-0-1, with Councilor Henry Smith abstaining because of his absence from that meeting.

V. Councilor and Town Administrator Roundtable

Chair Niman apologized to citizens who hadn't received their tax bills. Town Clerk Lorrie Pitt said there had been numerous calls from residents concerning this. She said she would gladly mail out another copy of the tax bill to those residents who over the next several days still did not get their bills.

Councilor Julian Smith suggested that with the Thanksgiving holiday coming up, residents might visit the newly cleared loop trail at Langmaid Farm. He provided details on work done by the Trails Subcommittee and other residents to make this possible. He also noted that members of the Conservation Commission, Councilor Henry Smith and others had cleared out debris that was left after the house on the property burned. He also said there was an ancient cellar hole on the property that was in the process of being cleared out. He thanked the Public Works Department for sending the dump truck three times to haul away debris.

Councilor Carroll reported on the Planning Board meeting from the previous Wednesday.

- 1 She said there was a continued public hearing on the Caldarola conservation subdivision that was proposed at the corner of Canney and Bagdad Roads. She said the hearing was continued again.
- 2 She said there was a site walk, application acceptance, and public hearing on the conditional use application to expand a nonconforming use at 15 Main Street.
- 3 She said there was an application acceptance and public hearing on the site plan application for 12 Jenkins Court, where a 3 story mixed use building was proposed.

Councilor Morong said the Cemetery Committee had met recently, and he said he had realized in listening to the work the Committee did that it was an undervalued committee. He said Craig Seymour and Bruce Bragdon put in a lot of work on this committee, and he provided details on this. He noted that they oversaw the active Town cemetery and also had to make sure that the other gravesites in Town were maintained. He said they also oversaw the trust from which funds for maintaining these sites came from, and he also noted that they were working with interns on computerizing historical gravesite information.

Chair Niman agreed that the Town should be appreciative of the work of the Cemetery Committee, and he thanked Councilor Morong for bringing this to the Council's attention.

Councilor Henry Smith said he wanted to bring attention to the fact that Durham resident John deCampi had recently died. He said John had been a Trustee of the Trust Funds and had been a member of the ZBA for several years. He said he had been a fine member of this Board, and had made a significant contribution to the Town of Durham.

Councilor Van Asselt said he had received a letter recently confirming that the School District had no interest in looking at the school funding formula. He said he assumed that the Town of Durham would continue with its plans concerning this issue.

Chair Niman said that was correct, and he noted that the first meeting on this was the following

day, and would be an organizational meeting to figure out how to move forward concerning this issue.

Councilor Needell said he had received a packet some time ago that provided an example of assessing work done in some other communities. He said he had found this information to be very interesting, and he encouraged Councilors to look the information over. He said he would like to have a discussion at the next available meeting concerning where the Council wanted to go regarding the creation of a board of assessors.

Chair Niman said this would be put on the Agenda for the December 3rd Council meeting. He noted that Administrator Selig was in Arizona. He said Business Manager Gail Jablonksi was present in his place, and would discuss the fact that there were some problems with the semi-annual tax bills that were sent out. He also noted that the Town offices would be closed Thursday and Friday for Thanksgiving.

VI. Public Comments (NLT 7:30 PM)

John Kraus, 7 Cutts Road, noted that there was discussion at a recent Council meeting on how personnel costs tangled up the Budget. He suggested that the Council should not hire people to fill new positions. He suggested that the Council should think imaginatively about reallocating people in order to address the personnel gridlock the Town was in.

Mr. Kraus said he had heard at the present meeting that the School Board had no interest in addressing the funding formula issue. He said the School budget was approximately 58% of the tax bill, and he asked the Council to take a public position and ask the citizenry of Durham to vote no on the next School budget. He said the School Board members should be sent a message they could understand, so they would rethink what they were doing. He said if the Town Council didn't do this, the voters should be asked to vote the School budget down.

Regarding the issue of transparency and the Land Protection Working Group, Mr. Kraus said he was on the Council when this group got started. He said they seemed to have quasi-authority, negotiating what amounted to thousands of dollars. He asked who they were, and said he didn't see their names on the Town website. He said he was able to find the name of Duane Hyde, and found that he was the director of land protection for the Nature Conservancy. He questioned whether any members of this group might be abutters to easements being considered, in which case there could be a conflict of interest.

Mr. Kraus said the Town website was out of date, noting that it listed protected lands in Town as of 2005. He said that with all the expenditures the Town was making in that area, there should be good, complete information. He noted that former Councilor Peter Smith had kept a running tally of how much water new developments in Town would use, and said the Town needed a running tally of expenditures on conservation easements, and on who administered them. He requested that the Town Council provide more transparency for this group and what it did behind the scenes. He said if he was mistaken and there was information out there, he would like to know it.

Councilor Needell said his understanding was that the Land Protection Working Group (LPWG) was not a department of the Town, had no official status, and was a group of interested citizens that operated under guidelines. He said they brought forward land protection opportunities under those guidelines. He said there was no official Town group that did this, and said they did this entirely on their own time, and served the Town well.

Councilor Julian Smith said there were several members of the LPWG present, and said perhaps it was appropriate for one of them to speak to Mr. Kraus's questions.

Chair Niman said it would be better to discuss this issue at a later time.

Councilor Henry Smith concurred that they were not an official town group, and also said they were not obscure.

Robin Mower, Faculty Road, said the Conservation Commission might be in the process of adopting the kind of information database Mr. Kraus had referred to, which would be useful for everyone. She also noted that current constraints on the information available at the Town website had recently been referred to by Administrator Selig at a meeting where the CIP was discussed. She said this was an argument for approving the proposed budget line item for the software that would allow the website to have more current information.

Ms. Mower noted that the Town was awaiting the results of an energy audit, but said it had not take the most basic steps of reducing energy usage by better monitoring the temperature in the Council Chambers. She said she hoped the Council and other boards that used this room would take a leadership role concerning the energy usage there.

Concerning the Lamprey River withdrawals and the 401 certificate, she urged the Council to consider first that the Town had not begun to tap into the potential of water conservation. She said until it did so, there was no excuse to taking the easy way out, and consequently ravaging rivers, aquifers, and ecosystems.

She said the Public Works Department had been urging residents to conserve water through the Friday Updates, and she also noted that some residents had received water leak detection kits with their water bills. But she said those were baby steps, and said until Durham required energy and water conservation construction standards for all future development, and until it investigated other options for water conservation, the Town had no business further exploiting its local rivers and aquifers, particularly if it did so merely to meet the potential future demands of developers.

Ms. Mower said that regarding the so called arbitrariness of the 401 certificate draw down limits and required downstream flow, the 2001 permit level was established at a meeting with a hydrological engineer, the Lamprey River Advisory Committee, and then by the Army Corps of Engineers, the US Environmental Protection Agency, the National Fish and Wildlife Service, the National Park Service, and the NHDES.

She said the key was to balance the use of the river as a water supply with its ecological and

community uses. She said she believed that further efforts should be made toward this goal before any discussion regarding additional withdrawals from the Lamprey River or exploitation of the Spruce Hole aquifer was undertaken.

Bill Hall, Smith Park Lane, noted the court case *Bradbury v Shaw* relative to the fact that the Land Protection Working Group spent Town money, so came under the same requirements that the Council came under. He said the fact that since the group was not appointed, it didn't have to follow the right to know law was a lot of bunk. He said if a group was doing the Town's business and spending Town money, it came under the right to know law.

Mr. Hall said that when Administrator Selig spoke about the 401 water quality certificate, he discussed 28 subjects, none of which would help determine what would happen if the Town got rid of the restriction. He said the Lamprey River was meant to serve three uses, water supply, recreation and wildlife, and said the 401 certificate was intended to serve all three of them.

He spoke about the current process the Town was going through concerning the certificate, and noted that DES had refused to explain to the Town how the restriction was calculated. He said when the Town was pumping Lamprey River water in 2002-2003, this had revealed that this water was better, more consistent water, and easier to treat than water from the Oyster River. He provided details on this.

He said there was more water coming down the Lamprey River than any other river contributing to the Piscataqua River, and said Durham had several times the amount of water during a drought that it actually needed. He said that instead, the Town had a water management problem. He noted that when there were semi-drought conditions this year, there was water going over the dam.

Mr. Hall provided examples of a lack of understanding on the part of various people who were in charge of managing the Town's water resources. He said it was his opinion that Durham needed to do what the Pennachuck Water Works had done, and he provided details on this.

Steve Nadeau, 18 Emerson Road, said the Durham community seemed to value its natural resources, but said despite the efforts of Mr. Hall, safe, clean drinking water seemed to be a mystery to everyone. He said he didn't know what chemical was used to make the Oyster River safe to drink, and also said that safe water didn't necessarily mean good water. He said the water in August and September tasted different than it did at other times of the year, and noted that this was the time of year when there was less water coming over the dam.

Mr. Nadeau said he had learned that for some reason, the Town had decided years ago that the Lamprey River was a good water source to tap into, and that the Town had paid a large price tag to set up the pipeline to the UNH water treatment plant. He said it seemed that many in Durham thought that less was more, and said perhaps the Town should follow this when it came to drinking water.

He noted that when there was a complex issue for the Town needed to address, it often set up a committee to address it. He said the Council might or might not have a handle on this complex

issue, and he said some kind of water commission or committee might not be a bad way to go.

He said he hoped the Town could find common ground on water issues, and could improve the present situation.

He also raised the question of why people who were not on Town water received the mailer on water conservation.

Richard Kelley, 47 Stagecoach Road, said he was one of Durham's representatives to the Lamprey River Advisory Committee. He said that what Mr. Hall had said earlier regarding protecting wildlife, recreation and the municipal water supply was valid, and said he took this seriously.

He said the Lamprey River was a very important water resource, and was relatively cheap water that was fairly reliable. He said he understood that there needed to be a balance, but he said the statement that the Town had not tried any conservation was inaccurate. He said they had heard from Mr. Metcalf and Mr. Chamberlin that water conservation measures had been implemented, and he said he would like to see the numbers to support the idea that the Town was going to be able to conserve its way out of its water supply situation.

He noted Mr. Hall's questioning of the science behind the 401 restriction, and said he hadn't seen the science either. He said the State had dragged its feet, and said he hoped that the Council considered the water in the Lamprey River as a resource in the three areas that he had described, and that it recognized that it was a critical water supply for the Town.

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 authorize the Town Administrator to sign the corrected 2007 Tax Warrant?
- B. Shall the Town Council, upon the request of the Churchill Rink Advisory Committee, declare a vacancy on the committee?
- C. Shall the Town Council approve the Special Events Permit application to close a portion of Main Street for the annual "Light Up Durham" celebration on November 30, 2007 from 4:00-9:00 PM as requested by the Durham Business Association?

Councilor Van Asselt MOVED to approve Unanimous Consent Agenda Items A, B and C. Councilor Julian Smith SECONDED the motion, and it PASSED unanimously 9-0.

VIII. Committee Appointment

Shall the Town Council appoint Jason Lenk to the Economic Development Committee for a one-year term?

Chair Niman noted that the Council had received a letter that Mr. Lenk could not be present that evening.

Councilor Van Asselt MOVED to appoint Jason Lenk to the Economic Development Committee for a one-year term. Councilor Peter Stanhope SECONDED the motion, and it PASSED unanimously 9-0.

IX. Presentation Item

Quarterly Financial Report – Gail Jablonski, Business Manager

Ms. Jablonski said expenditures were running right on schedule. She also said that with bills going out, the Town had had to borrow on its line of credit approved in April. But she said this was a short-term loan, which the Town should be able to pay back quickly.

She said all of the revenue funds looked good. She noted that the Town had received \$80,000 in revenue from the Depot Road parking area, and said all of this money would stay in that fund to pay for further improvements to that property.

Councilor Needell asked how much money would actually be involved in terms of the interest the Town would have to pay on the line of credit.

Ms. Jablonski said the interest rate was 3.7%, and said the money would only be borrowed for a matter of days, so the interest that would be paid would be a few thousand dollars.

X. Unfinished Business

A. PUBLIC HEARING on Roselawn Farm Conservation Easements

Chair Niman said at the last regular Council meeting, Dea-Brickner Wood of the Land Protection Working Group had presented information on the proposed conservation easement, and the Council had then decided to move it on to public hearing.

Councilor Julian Smith MOVED to open the public hearing regarding a request by the Durham Conservation Commission and the Land Protection Working Group for the Town of Durham to:

- 1. Provide funds in the amount of up to \$170,000 towards an approximately 67.2 acres Conservation Easement on the Roselawn Farm property (Tap Map 10, Lot 1-2);***
- 2. Accept the Executory Interest in approximately 20 acres of the Roselawn Farm, as described in the Conservation Easement Area 2 (Tax Map 10, Lot 1-2); and***
- 3. Provided funds in the amount of approximately \$9,000 for transaction costs for the Roselawn Farm property.***

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

Dea Brickner Wood said she was a member of the Land Protection Working Group, and lived on Colony Cove. She then provided an overview on the proposed conservation easement, and

reviewed the details of it. (See the November 19th Town Council Minutes for these details)

She said the new appraisal report had been received, noting that it had been done by Erroll Charbonneau, someone with significant experience with farm appraisals. She said the total value of the conservation easement was \$1.14 million, and said \$340,000 of this would be available from the grant, \$340,000 would be paid for by the Towns of Durham and Madbury (\$170,000 each), with the balance, \$460,000 or 40% of the \$1.14 million coming from the Gangwers, who had offered a bargain sale.

She said the transaction cost, \$18,000, would be split evenly between the two towns. She said that \$179,000 was the total Town commitment, and said if the Council agreed to move forward, and the Town of Madbury agreed to move forward as well, due diligence would be completed. She said that hopefully, the closing could take place before the end of the year.

Chair Niman said that Town counsel was reviewing all of the documents, and said the Council could conceivably vote on the proposal at the meeting the following week. There was discussion that they could get a sense that evening as to whether it would be voting to approve the easement.

Ralph Fletcher, said he lived in Lee, but had lived in Durham previously, and used to walk by this land. He noted that he was a writer, and had written a book in which this land was described. He said he thought that part of the wealth of a community was the spaces that were left free. He said he hoped that the Town would conserve this property, and said if it ended up with houses, he wouldn't be able to take that walk anymore.

Hillary Scott, 20 Davis Ave, said she supported this project, and the use of funds from the conservation account to pay for it. She said she appreciated the comments made by Mr. Fletcher, and noted that she rode her bike along that stretch of road. She said if houses were built there, and in other rural areas of Durham, what Mr. Fletcher had described would be taken away.

Tom Kelley, 63 Canney Road, said sustainability was his preoccupation, and said he looked for a set of values to line up that represented a win-win situation. He said this proposal was definitely one of those situations. He stated that the entire structure of the food system was changing back to a local system, so the practical value of having agricultural soils was increasing ever year.

He said this project would also protect water resources, and he also noted the issue of the legacy of the property. Mr. Kelley said it was a really significant accomplishment to bring all of these things together, and he urged the Council to support the purchase of the conservation easement.

Elise Sullivan, 41 Woodman Road, said she supported the purchase of this conservation easement. She said she took her kids to the farm to pick blueberries, and said what was unique about this farm was the mature trees there. She said it was absolutely one of favorite places in Durham.

Sandy Blitzer, 61 Canney Road, said there were many others present at the meeting who would

not be speaking, but who were in favor of preserving this unique space. She also said this was a unique opportunity to work with the adjoining Town of Madbury to conserve a community space. She said it was a wild area, and that she often saw turkeys, coyotes, bears, etc., out there. She said she would love to see it preserved, because wild spaces contained a variety of important resources for the Town.

Joanna Wicklein, 240 Packers Falls Road, read a letter from **Susie Loder, Mast Road**. Ms. Loder's letter said purchasing this easement would allow the continued agricultural use of the property. She said that locally produced foods were less expensive and more nutritious, and said protecting Roselawn was a step in the direction of protecting community farms.

She said the property would also provide public access, and that because it was located near other protected properties, it would provide important wildlife habitat. She urged the Council to support this project, which would allow those who managed the property to provide local food for the community.

Margaret Bogle, 3 Croghan Lane, said this was a wonderful opportunity to preserve farmland, which was very necessary in this day and age, especially now that oil was getting more scarce. She said the Town would have to look ahead and think about producing food locally.

She thanked Dea-Brickner Wood, the Gangwers and the other people who had worked to make this happen. She said this was something that needed to be done for the future, although the Town did have a lot of expenses right now. She said she hoped that Durham could participate in the purchase of this easement.

Dwight Baldwin, 6 Fairchild Drive, said he thought this was a real bargain sale for the Town, paying \$179,000 for 67 acres, out of the Land Use Change Tax, so it wouldn't cost the Town anything. He said it was a no-brainer.

Pam Appleton, 92 Bucks Hill Road, said she supported this project. She said she had written a letter to the Town Council a few years back when a developer had approached the owner about this property, and said she would like to read from it now. Her letter spoke about Roselawn Farm being a gorgeous area that had many natural resources while providing easy access to the downtown area. She said the area was heavily utilized by cyclists and walkers, and said one of its key attributes was its proximity to the Town and the citizens of Durham, including students. She said she hoped Council members had the opportunity to walk this land.

Steve Nadeau, 18 Emerson Road, said he supported this, stating that this easement fit his criteria because it provided public access, agricultural use, conserved forest land, etc. He noted that some of the past easements the Town had purchased were a bit lacking, as far as he was concerned. He said this was a great use of the land conservation funds, also noting that the land would be managed by an entity other than the Town.

Jim Hellen, 20 Fitts Farm Drive, said he fully endorsed this, and said it was a great example of what could be done with Town money that was already available. He said it was a great model for future conservation easements, and said he supported this for all the reasons that had already

been spoken by others.

Councilor Julian Smith MOVED to close the public hearing. Councilor Peter Stanhope SECONDED the motion, and it PASSED unanimously 9-0.

Chair Niman said he would like the Council to provide Ms. Brickner-Wood a sense of whether it was going to support this proposal. He said he didn't anticipate that Town counsel would have any problems with the documentation for the easement, so the Council could probably vote on this at the meeting on November 26th.

Councilor Leach said her preference would be not vote on this until the regular Council meeting on December 3rd. She said if there were time pressures to get the easement transaction completed, she would agree the vote could be taken on November 26th, but said she would like the Council to agree that this would be an unusual circumstance.

Councilor Needell said he agreed, but said he thought there was some urgency to this.

Ms. Brickner-Wood confirmed that there was some urgency, in that they wanted to have the closing before the end of the year for tax purposes.

Chair Niman said his feeling was that this proposal would pass unanimously on Nov 26th, and that the project would move forward.

Councilor Stanhope said he planned to vote in favor of the project, but said his understanding was that there would be discussion on it before the vote was taken.

It was agreed that there would be Council discussion before the vote was taken.

- B. PUBLIC HEARING AND ACTION ON ORDINANCE #2007-12** amending Chapter 153 "Vehicles and Traffic" of the Durham Town Code by allowing vehicles displaying a Durham Resident/Taxpayer Permit sticker to park for two hours in any location downtown listed in Section 153-52 (Schedule XX: Time limit parking) that currently allows a one hour limitation

Chief Kurz provided a brief introduction on the proposed Ordinance. He noted that Durham Police Office Kathryn Lilly had developed it out of a recommendation she had provided to the Council over the past summer.

Councilor Peter Stanhope MOVED to open the public hearing on ORDINANCE #2007-12 amending Chapter 153 "Vehicles and Traffic" of the Durham Town Code by allowing vehicles displaying a Durham Resident/Taxpayer Permit sticker to park for two hours in any location downtown listed in Section 153-52 (Schedule XX: Time limit parking) that currently allows a one hour limitation. Councilor Henry Smith SECONDED the motion, and it PASSED unanimously 9-0.

Bill Hall, Durham, said that a number of times, it had been suggested that people other than Durham residents should be excluded from parking at places in Durham like Wagon Hill, Doe

Farm, etc. He said he hoped this Ordinance didn't make it easy to get to that kind of situation, noting that it provided the opportunity for that to happen. He said he thought that would be a serious mistake.

Hillary Scott, 20 Davis Ave, spoke in favor of the proposed Ordinance. She noted that she had a neighbor who shopped downtown, and got a ticket for parking longer than an hour there. She said that in the spirit of encouraging Durham residents to shop downtown, she didn't believe that what was proposed was an unreasonable time frame.

Councilor Julian Smith MOVED to close the public hearing. Councilor Peter Stanhope SECONDED the motion, and it PASSED unanimously 9-0.

Councilor Peter Stanhope MOVED to approve ORDINANCE #2007-12 amending Chapter 153 "Vehicles and Traffic" of the Durham Town Code by allowing vehicles displaying a Durham Resident/Taxpayer Permit sticker to park for two hours in any location downtown listed in Section 153-52 (Schedule XX: Time limit parking) that currently allows a one hour limitation. Councilor Van Asselt SECONDED the motion.

Councilor Leach said she agreed with Mr. Hall that this Ordinance should not lead to permitting procedures at recreational facilities in Town like Wagon Hill. She noted that that idea was included in Officer Lilly's original recommendations to the Council, but was not a strong recommendation, and the Council had at this point decided not to move forward with it.

Councilor Needell agreed, stating that there had been no discussion, and the Council had taken no stand on how else the permit might be used, especially for the exclusion of others. He said the Council had approved the sticker program in general, and now was approving this specific use of it. He asked Ms. Jablonski to explain for the public how this would work.

Ms. Jablonski said the sticker would not be available until January 1st, and said stickers would be given out when people came into register their vehicles.

Councilor Henry Smith said he agreed with what other Councilors had said.

Councilor Julian Smith said he fully supported this Ordinance, but he suggested a non-substantive change on page 2 of the Ordinance document. He said the first paragraph on that page should read "No person shall park a vehicle without a Durham resident/taxpayer permit sticker for longer than the time limit shown...."

Councilor Carroll said she agreed with Councilor Leach, and also agreed with what Ms. Scott had said. She said she hoped this Ordinance would encourage people to stay longer in the downtown area.

The motion with the non-substantive change suggested by Councilor Julian Smith PASSED unanimously 9-0.

Councilor Van Asselt asked where things were at concerning the re-write of the policy for

acquiring conservation easements.

There was discussion that this document would be reviewed at the Council's workshop with the Conservation Commission in January. It was noted that the criteria used for the Roselawn easement were those found in the original document.

Resident Hillary Scott asked for further details on how people would get their permit stickers. It was explained that for the first year of the program, a resident could get a permit at any time after it was available in January, or at the time of registration, but that after the first year, residents would get the stickers when they registered.

The Council stood in recess from 8:30-8:40

C. Discussion relative to acquisition of potential site for a combined Town Hall and Library

Councilor Julian Smith said it was unfortunate that the last regular meeting had ended where did, because the issue of eminent domain had just been put on the table, and it may have left members of the public fearing that if the Town could take this property, it might take their property. He said that wasn't going to happen, also said he didn't feel the Town needed to rely on eminent domain to get this property. He said what he wanted to get from the Council was a strong recommendation for Administrator Selig on how to proceed, and that that there might be a small delegation of people to visit Mr. Kyreages in person about the purchase of this property.

He noted the irony that this particular property had been a garden for the Hamilton Smith estate. He said Mr. Smith left a large bequest to the Town and the College (now the University of NH), which was used to build Hamilton Smith Library. He said it opened as both a University and Town library in 1906. He also said the property now in question was a park, and was open to the public when Ham Smith was alive.

He said it would be a good piece of public property for a library or a library/town hall at the east end of the Plaza. He said he hoped that there could be some discussion on this, as part of giving Mill Plaza owner John Pinto a sign that the Council was very interested in the redevelopment of the Plaza, and in bringing more potential customers past the businesses that would be located there. Councilor Smith said he was looking for a central location for some of the Town's services.

He noted the previous letter from Library Board of Trustees member Doug Bencks concerning this issue, and said Library Trustee David Moore had been authorized by the Board to speak to the issue set forth in this letter. He said the Trustees had had extensive discussion on this site, and the conditions under which the Trustees would be interested in talking to the Town about this.

Councilor Stanhope said he had a conflict concerning this topic, and would recuse himself.

Chair Niman summarized that Councilor Julian Smith believed this was a strategic property, but was not interested in eminent domain, and would like to get a sense of whether the Council

thought a delegation should be put together to speak with Mr. Kyreages. Chair Niman said he would volunteer to be part of such an effort, if the Council thought that such an approach was appropriate.

Chair Niman asked if any Councilors objected to this approach.

Councilor Carroll asked if it perhaps would be appropriate to have a member of the Board of Trustees be part of this.

Chair Niman said what he thought Councilor Smith was saying was that this was a strategic property for the Town to own, and the Trustees could then say they would like to put the library there. He said if the Town purchased the property, he was certain it would be made available to the Library Board of Trustees if they desired it.

Councilor Henry Smith noted that Councilor Julian Smith could be part of this, as a Councilor and as a member of the Board of Trustees.

Councilor Needell noted that at a May 7th nonpublic session, a related matter had been discussed. He said that the Minutes of that meeting had not been made public, and he asked if there were any reasons why they shouldn't be unsealed now. He said he had some comments to make that related that discussion and those Minutes.

Councilor Leach said this property had been identified as a strategic property for the Town to own, but she asked if it would be considered this way if it was unrelated to the Mill Plaza redevelopment, or if that redevelopment didn't happen. She said her sense was that this idea was coming forward because it was tied in with Mill Plaza.

Chair Niman said he wouldn't have a problem with releasing those minutes.

Councilor Needell MOVED to unseal the nonpublic minutes from May 7, 2007. Councilor Julian Smith SECONDED the motion, and it PASSED unanimously 8-0.

Councilor Needell said his question had to do with the fact that Administrator Selig had been authorized to approach the owner of the property. He said his understanding was that two letters had been written, but there had been no response.

Chair Niman said a few letters had been sent to Mr. Kyreages, and a few phone calls had also been made, the last one about two weeks ago. He said Mr. Kyreages had said he was not prepared to sell the property at this time.

Councilor Needell said he wanted the public to be aware that this was not a new item, concerning efforts to approach the owner. He said previous efforts had been rebuffed, and said he was not particularly interested in sending a delegation to lean on someone. He said he thought the owner had made his intent clear, and said he was not sure this was something that the Council needed to devote additional time to.

Councilor Henry Smith said an effort had been made, and said the owner had made his intent clear. He said going further with this might be counterproductive.

Councilor Morong asked if Chair Niman and Councilor Julian Smith felt there might be some way to talk with Mr. Kyreages that Administrator Selig might have missed.

Chair Niman said his sense was that Mr. Kyreages wouldn't want to have a meeting on this issue.

Councilor Julian Smith noted that the Trustees had approached Mr. Kyreages in the past concerning this issue. He said if it was the case that he wasn't interested, the fact was that Mr. Kyreages was sitting on this piece of property that he had not done anything with, and also had other properties, some of which were run down.

He said the reason he had brought this up two weeks ago was that he had wanted to see whether, if push came to shove and a request to have him sit down at the table failed, the Council would be willing to go forward with a serious discussion effort to take the property my eminent domain for the use of the Town.

He said if the Council was willing to go forward in this way, it could use this as a negotiating tool with Mr. Kyreages, and could say it would offer more than the fair market price for the property because it didn't want to go through, and didn't want to put Mr. Kyreages through, the disagreeable process of eminent domain.

Councilor Needell said he appreciated what Councilor Julian Smith was saying. But he said he felt the Council's discussion on this property and the library had gone nowhere near far enough to begin a discussion on eminent domain.

Councilor Morong asked what kind of dollars would be involved in purchasing the property, and also asked whether the Town could even get access to that property, which would be absolutely necessary in order for the site to be viable.

Councilor Van Asselt received clarification that the Library and Town Hall were still being considered together. He said he didn't think there had been any discussion about having a Town hall at that site, nor had there been discussion by the Council about using eminent domain to take the property. He said he really was not interested in moving forward with this.

Councilor Henry Smith said he didn't see it as a marriage between the Library and the Town Hall, and said it was more like a civil union. He also said if the Town was to pursue this property and the Mill Plaza re-development didn't come through, he wondered where they would be then.

Councilor Julian Smith noted that a question had been asked earlier about the interest of the Trustees in this property, and said this would be a good time to discuss that with them.

Councilor Leach asked if the letter from Trustee Doug Benck's was representative of how the Trustees felt.

Councilor Julian Smith said he believed so.

Chair Niman said he was hearing from several Councilors that it was premature to discuss the idea of eminent domain, and said he therefore didn't feel the Council needed to hear from the Trustees.

There was discussion as to whether a public hearing was needed to address this matter.

Councilor Niman said he didn't know that he wanted to hear from the public because he wasn't convinced he wanted to go down this road of eminent domain.

Councilor Julian Smith asked Chair Niman if he would be willing to go down this road in January if the Mill Plaza committee came to the Council with recommendations about placing the library at or near Mill Plaza.

Chair Niman said he was fully supportive of placing a library at Mill Plaza, and was dedicated to making that happen. But he said that was different than saying that the Town needed to take the Kyreages property by eminent domain in order to have a redeveloped Mill Plaza. He also said he didn't feel the Town should explore this idea until it had explored the idea of putting the library on the Mill Plaza property.

He said if eminent domain were used, this would make a number of citizens nervous. He also said if this were done, the property would have to be used for municipal services, and if the Mill Plaza redevelopment didn't happen, the Town could end up with a property that it couldn't do anything with. He said he would prefer to move forward with the Mill Plaza Committee's work, and said once it was complete, that would be the proper time for the Town to enter into discussion with the owner of Mill Plaza, and see what came forth from that discussion. He said in his opinion, the Council would otherwise be acting in a way that was hasty and premature.

Councilor Needell said the Library Board of Trustees' involvement in this matter was crucial. He said if they came forward and said this site was crucial to the idea of a new library, that would be one thing. He said their letter hadn't suggested this, and said until that suggestion was before the Council, he felt that further discussion on that property was premature. He said he agreed with Councilor Julian Smith that there should be a strong recommendation from the Trustees before going forward with any detailed discussion.

Councilor Morong said if the Trustees felt the library should go on the Kyreages property, they should speak as to whether it could be a stand alone facility or should go with a new Town Hall.

Councilor Julian Smith said he believed this was one of the things Mr. Moore had wanted to speak to that evening, as a result of the discussion the Trustees had at their last meeting.

Chair Niman suggested that the Trustees should write the Council a new letter outlining their most recent position, and said the Council would take that up for discussion at a future meeting.

Councilor Leach said that was fine, but said she would also be looking for something that told her there were virtually no other options, and that this was absolutely what the Trustees had to do. She said she would also need to see the big picture on how important this property was, how the Town would get it, how much money it would cost, and where this money would come from.

Councilor Julian Smith read from the previously nonpublic May 7th 2007 Minutes, quoting that Councilor Van Asselt had suggested “..that the Town should form its own corporation and buy as much property as possible from Church Hill down to the Post Office, including a number of parcels owned by Kyreages, and develop mixed use commercial and residential in relation to the redevelopment of Mill Plaza, either with the developer or by itself.”

He said this was a discussion the Council had had before, and he noted that as part of this discussion, there had been interest expressed in acquiring some or all of the Kyreages property.

Chair Niman said he wasn’t disputing that.

Councilor Needell said that was a comment that had been made by Councilor Van Asselt, but the Council’s vote at the time was only to pursue that one property.

Chair Niman also noted that taking a property by eminent domain didn’t mean that it could be developed for mixed use including retail.

XI. New Business

- A. Discussion on a Council-initiated Zoning Ordinance change relative to various issues related to future development in the ORLI, MUDOR, and OR 108 districts

Councilor Julian Smith said he didn’t think there needed to be a lengthy discussion on this issue. He said he would like to see if there was any interest by the Council in considering this Zoning change, and sending it on to the Planning Board.

He said the Town now required conservation subdivision only in residential zoning districts. He noted that a recommendation in the 2000 Master Plan to Office Research districts for site planning.” He said that was basically what he was suggesting, that conservation subdivision stipulations be applied to developments that didn’t require subdivision, and that these be extended to the three office research districts, ORLI, MUDOR and OR 108.

Councilor Peter Stanhope said he had been involved with some of the discussion outside of the Council chambers with residents who were interested in protecting the Town’s gateways. He noted that no specific language had come forward, and it had been suggested that this language might be an alternative approach.

He said he was opposed to what Councilor Julian Smith was proposing, and said it was basically an attack on private property rights. He said it singled out multiunit resident development for the application of the conservation subdivision ordinance, and said it was inappropriate to use this kind of thing to single out a particular land use. He said it was almost reverse spot zoning.

He said that when this initially had come forward, the draft he had seen had said the conservation subdivision approach would apply to any subdivision, and said he was more comfortable with that, but he said the wording now said it would apply to any development.

Councilor Needell said the idea of expanding conservation subdivision to encompass all subdivisions in all zones was a reasonable idea, and said he felt it should be discussed. But he said whether multi-unit residential development should be required to meet the same standards of development and open space usage that were envisioned for a condo complex, which would fall under the Subdivision Regulations, was a different question.

He noted that the 99 Madbury Road application had been was a conservation subdivision, because although it was a single building with apartments, they were condominiums. He said that raised the question of what the difference was, and said he thought the difference was that one was a use, and the other was a subdivision, and said he didn't think this language was appropriate to address the desired outcome.

Councilor Needell said that currently, multi-unit development was covered under site plan review, and said if one wanted to create a conservation development ordinance, substantial work would need to be done in rewriting the site plan regulations, and a new chapter would need to be added to the Zoning Ordinance to address this kind of development.

He said it couldn't be done by calling something a subdivision that wasn't, and said if the Planning Board tried to work with something like this, it wouldn't make sense. He said that while he supported the concept, it needed to be done carefully, deliberately, and appropriately by the Planning Board.

Councilor Leach asked what the intent of this proposal was.

Councilor Julian Smith said it applied mainly to large parcels that might come up for development at some point. He said it would mean that the benefits to the community growing out of conservation subdivision such as open space preservation would be applied to large developments. He agreed that perhaps the Planning Board should address this, and in the way that Councilor Needell had described.

Councilor Needell said a lot of work would be required to do this. In answer to a question from Chair Niman, Councilor Needell said the concept started clearly with the premise that density didn't change as a result of conservation subdivision. But he said there was a process, involving the Planning Board and the Conservation Commission, where the developer would come up with a strategic location for the development itself which was in everyone's best interest. He noted that it might be the same site design that the developer actually wanted to do.

Councilor Leach asked what they were talking about, in terms of large parcels in these three districts.

Councilor Van Asselt said a lot of time was spent on the Zoning Ordinance, with discussion on

the ORLI and MUDOR districts as places where the Town might be able to do multiunit developments. He said this proposal now was really saying let's not let that happen. He said what was proposed might seem simple, but he said it would have a huge impact, in terms of what had been discussed for these districts. He said he was not interested in putting the conservation development approach on these other districts.

Councilor Needell said this was not necessarily intended to change any of the proposed development uses structured in those zones. He said that properly applied, there should be no change in the allowed use. He said he was not sure it would be bad to take this approach on the development side, but said the approach needed work.

Councilor Carroll said the Town had conservation regulations now, and people were happy the Town had them because they saw that they provided a better use of land, and a better way of building. She said Councilor Julian Smith had brought up the idea of looking at other uses, whether multiunit development or commercial development. She said it might have helped with the TIF district that was approved, it had been more of a conservation development proposal.

She said she was concerned that there was still a fair amount of polarization in Town, concerning conservation vs. economic development. She said she would like to see some bridges built behind these two perspectives, so that residents felt there was enough in the town's Zoning Ordinance to protect the Town's resources when development occurred. She said if the Council moved forward to talk about this concept, perhaps the issue was what the next step was, in terms of development in Durham.

Councilor Morong said he was interested in discussing what Councilor Needell had brought up, but not what Councilor Julian Smith had brought up.

Councilor Leach said her sense was that the Planning Board had been struggling with the conservation subdivision approach, and she said the question was whether this was the appropriate time to bring the concept that was proposed forward. She said she was reluctant to have the Council mandate that the Planning Board had to address it.

She said she also felt the intent of this was to limit development, and said she felt it was premature to go forward with it when the Council didn't know what was out there, and what would have to be done to support the tax rate.

Councilor Henry Smith said the concept might be worthy of consideration, but said he was not sure that now was the time for the Council to look at it. He said he felt it should be in the Planning Board's court at the present time, and said it would be worthy of consideration by the Council at some point.

Councilor Needell said he would like the Council to take a stand on this one way or the other. He said it could embrace the concept, or could say it was not interested in it, or could recommend that the Planning Board should look at this topic when it would like to, with some idea of whether the Council had some interest in it.

Councilor Carroll said the Planning Board had a quarterly planning session on November 28th, and said a topic similar to this one would be on the agenda for that meeting. She also noted that the Planning Board had already had some discussion on this issue.

Councilor Van Asselt said he was not interested in doing this.

Councilor Needell said the citizens who brought this idea forward had gotten a sense of the Council, and said they could do with it what they wanted at this point.

Councilor Henry Smith left the meeting at the end of this discussion.

B. Discussion regarding use of surveillance camera in the downtown area during post-game events

Councilor Peter Stanhope said he had asked that this be put on the Agenda. He noted that some residents had asked him about this issue. He said he felt surveillance cameras were important in some situations, but said it was important that people knew when these cameras were being used. He said the Friday Update hadn't provided an adequate description of what was involved. He said cameras in public places brought up civil liberty issues, and said he wanted to get a sense of the Council on this issue.

In answer to a question from Chair Niman as to how the public should be informed about the use of cameras, Councilor Stanhope said a reasonable level of public notification would be appropriate.

There was discussion on what would be involved in providing public notification.

Councilor Needell asked Chief Kurz if there would be any logistical problem in putting forward notice that video cameras might be used.

Chief Kurz provided details on the approach the Police Department had taken, and said it was a balancing act. He said when he had authorized putting up the cameras, he had felt there was faith that the Department would do this in a tempered way.

Councilor Van Asselt said he thought that a guideline was needed that said the Town Council's preference was that the public be made aware of when video cameras were being used in Town. He said he didn't think the Council wanted to get into tactical issues, and asked if this approach worked for Chief Kurz.

Chief Kurz said yes, and provided further details on the way things worked, agreeing that the Council didn't need to get into the tactical issues.

Councilor Julian Smith said he found it ironic that this was the first time there had been any discussion on the preparation for what Chief Kurz referred to as "any eventuality" associated with sports victories or losses. He noted that he was the only Council member downtown when the Red Sox won the series this year.

He called the Council's attention to a position it had adopted in 2003, immediately following a celebratory riot in Town: "The Town of Durham will not permit.... unruly individuals, groups or mobs to congregate.....". He said he had gotten the impression downtown this year after the Series ended that the students, coming downtown in random groups from different directions, were being herded into camera range.

Councilor Needell said he hoped that the comments of one Councilor were not taken as the comments of the Town Council as a whole.

C. Discussion on the Lamprey River water supply withdrawal and restrictions imposed on the Town of Durham by a 401 Water Quality Certificate issued under the Clean Water Act

Councilor Stanhope said he would love to reach a point where this issue was resolved one way or the other. He said there had been a lot of discussion, and said the Town had spent a substantial amount of money on the Lamprey River infrastructure. He said he would like a sense of whether the Council wished to instruct Administrator Selig to resolve this issue, in a dialogue, confrontation, etc.

Chair Niman asked what Councilor Stanhope meant by "resolve", and Councilor Stanhope said he would like to direct Administrator Selig to seek modification of the 401 certificate. He said if the State was unwilling to address the issue, the only other course was to remove it.

Chair Niman noted that Administrator Selig wasn't there that evening. But he said his understanding was that the position of Town staff and Administrator Selig was that they had decided strategically not to place pressure on the State to modify the certificate because there were certain things the Town needed to do to put it in a stronger position to get a positive outcome in response to the request to modify it. He said he believed that they had been working on these various things with the hope of having the various pieces complete in the spring.

Councilor Stanhope asked if the Council could get a specific timeline concerning this.

Town Engineer Dave Cedarholm explained that part of the reason for not pressing the State on this was timing its request to modify the certificate with the timing of the instream flow study, which was supposed to be in its final year. He said he couldn't commit to a specific date as to when this would be completed, but he said it was important to get those results.

Councilor Needell said the Council had directed Administrator to pursue this issue with the State. He asked if Mr. Cedarholm could reassure the Council as to where this process was going, and could reassure it that he was putting in sufficient effort to resolve the issue.

Mr. Cedarholm said a real obstacle in satisfying the State was conducting a wetlands monitoring plan. He explained why this was needed and said that it would require significant effort to do this monitoring. He said the Public Works Department had made a conscious decision not to get involved with that during the instream flow study, noting that it could easily cost \$50,000-100,000 for such a project. He also said the results of this study could be interpreted in different ways by different parties, which could make the existing situation either worse or better.

Councilor Needell asked whether, without further direction from and action by the Council, anything would happen in terms of the request to modify the 401 certificate, or any other change in the ability to use the Lamprey River.

Mr. Cedarholm said something would definitely occur, but he said the question was how much the Town needed to modify the certificate. He noted that the Town had never drawn down below 6 inches, and he said it would be real challenge for the Town to ask for more than 6 inches when the Town had never actually brought it to that point. He said a compromise within their grasp would be to increase the daily withdrawal from half an inch per day. He said the State had indicated that it would probably agree to that.

Councilor Needell said his sense was that a compromise was being actively being pursued, and Mr. Cedarholm said yes. He said it would make sense to start with that, then give the six inches a try, and if that didn't work, then continue to modify it again, increasing it to 8, 12, or 18 inches.

Councilor Needell said the Council had asked Town staff to take action on this issue, and he said he had no reason now to refute what they have been doing. He said he didn't feel the Council needed to take further action.

Councilor Leach asked Mr. Cedarholm how he felt about the idea of trying one more time with the State, and if he felt the State could make a decision without a wetland study.

Mr. Cedarholm said the State had already made it clear that if the Town wanted to increase the drawdown, the Town would need to propose a wetlands monitoring program. He provided details on what would be involved, and said they would want to do the drawdown at a time of near drought conditions so the data would make sense.

Councilor Van Asselt MOVED to extend the meeting to 10:15 pm. Councilor Julian Smith SECONDED the motion.

Councilor Peter Stanhope said it would be disingenuous of him to vote in favor of this when he had ended the previous meeting this way.

The motion PASSED 7--1 with Councilor Peter Stanhope voting in the negative.

Councilor Julian Smith said a wetland study would cost \$50,000 - 100,000, while it would cost \$3 million or more to mine water from Spruce Hole to address a low water supply when the students came back in September. He said it seemed to make more sense to spend the money on the wetland study.

He also said if the Town wanted to build a dam at Wiswall now, DES would say the Town wanted to drown the mussels in the river. He said the dam was a manmade structure, which was built to be drawn down to power a mill, and he said now Durham's mill was the University of New Hampshire. He asked why the Town shouldn't pursue the removal of the 401 restriction as fast as it could.

Mr. Cedarholm provided some historical perspective, and as part of this provided a handout of the history of the 401 certificate. He said this was the perspective the State took when it heard Town discussion on the 401 certificate. He said during the 1980's, the focus was on conservation and protection, and he provided details on this. He noted the FERC applications that came in 1989 to take control of the dam, which heightened this concern about protecting the Lamprey River.

He said the NH Rivers Management and Protection Act was passed in 1990, and the Lamprey was one of the first rivers to be designated as a rural river. He said that at the time, Lee and Durham Selectmen passed resolutions in support of this designation. He also noted that in 1991, the National Park Service designated the Lamprey as a recreational river. He said during the same time period, State enabling legislation was passed to establish protective instream flow rules, rules which were not actually adopted until 2002.

He said those rules currently spoke specifically to two New Hampshire rivers, the Lamprey and the Souhegan.

Mr. Cedarholm said that in 1999 the hard pipe project was done for water conservation purposes, and to improve water quality. He explained that at the time, the Town was pumping 28 gallons per minute from the Lamprey, which had a significant effect on the river when pumping occurred during low flows.

He said instead of pumping a lot of muddy water into the Oyster River and creating a more turbulent situation, the idea was to pipe the water from the Lamprey directly to the water treatment plant, in order to make things more efficient and to end up with better water quality.

Mr. Cedarholm said the limitations imposed on the Lamprey River were an unintended consequence of the State of NH attempting to uphold the protective status established by the Town over the last 25 years.

Chair Niman asked Mr. Cedarholm for an answer to Councilor Julian Smith's question.

Mr. Cedarholm said his experience with the State was that the squeaky wheel didn't get the grease, it got tighter bolts. He said the Town could spend \$50,000 - 100,000 on a wetland study, and end up with conditions that were a lot worse. He said he anticipated that once the instream flow study was complete, the State would open up the certificate and give it a hard look. He said a question was how much data the Town wanted to provide to that study to give the State even more of a hard look.

Chair Niman asked how the Town could get to the point where it could take some amount of water from the Lamprey, such as testing the 6 inch drawdown.

Mr. Cedarholm said the primary holdup was the challenge of meeting the conditions. He said the most challenging one was having to monitor upstream and downstream flows, and said until the Town could do that successfully, it didn't have the ability to withdraw water from the River when it was flowing less than 45 cfs.

He said there was a draft plan to monitor the downstream flows, and to closely monitor water elevation and flow from the pump station. He said the State had indicated that it might allow the Town to do that in lieu of monitoring upstream and downstream flows. He said he believed that a good location had been identified immediately downstream of the station.

He noted that a student of Tom Ballestero at UNH had done some stream gauging at sites upstream from the pumping station, during low flows. But Mr. Cedarholm said that when he personally had visited those sites, he had concluded that none of the sites were adequate for the monitoring that was needed. He said he had concluded from this that it was important to focus on monitoring downstream, and to work through those details with the State so the Town would be in a good position to do the flow monitoring next year to satisfy their conditions.

Chair Niman asked if there was anything more concrete that the Council could expect to see on this, and if the issue could be resolved by September.

Mr. Cedarholm said that by next July-August, when there would likely be the opportunity to withdraw from the river during a low flow period, the Town might be in a position to try this.

Councilor Stanhope said there needed to be a schedule of what was going to be accomplished and when. He said the Council was entitled to that, and said absent that, he would hope the Council would consider proceeding with trying to get the removal of the certificate, and taking whatever steps were needed to accomplish this.

Councilor Van Asselt suggested that if there was consensus on this, Administrator Selig should direct Town staff to put together what Councilor Stanhope had asked for, and if the Council was satisfied with that, that would be the plan for 2008.

Councilor Needell asked Mr. Cedarholm if there would be any problems with putting together such a timeline, and Mr. Cedarholm said he didn't think there would be a problem.

D. Other business

XIII. **Adjourn** (NLT 10:00 PM)

Councilor Stanhope MOVED to adjourn the meeting. Councilor Leach SECONDED the motion, and it PASSED unanimously 8-0.

Adjournment at 10:15 pm

Victoria Parmele, Minutes taker