

**This set of minutes was approved at the Town Council meeting on January 12, 2009**

**DURHAM TOWN COUNCIL AGENDA  
MONDAY NOVEMBER 17, 2008  
DURHAM TOWN HALL - COUNCIL CHAMBERS  
MINUTES**

**MEMBERS PRESENT:** Chair Neil Niman; Councilor Karl Van Asselt; Councilor Jerry Needell; Councilor Julian Smith; Councilor Henry Smith; Councilor Cathy Leach (arrived 7:42); Councilor Mike Sievert; Councilor Peter Stanhope

**MEMBERS ABSENT:** Councilor Doug Clark

**OTHERS PRESENT:** Town Administrator Todd Selig; Business Manager Gail Jablonski; Library Director Tom Madden; Public Works Director Mike Lynch; Police Chief David Kurz; Code Enforcement Officer Tom Johnson; Planner Jim Campbell; Manager of Information Technology Luke Vincent; Division Chief of Fire Prevention and Safety Corey Landry

**I. Call to Order**

Chair Niman called the meeting to order at 7:01 PM.

**II. Approval of Agenda**

*Councilor Van Asselt MOVED to approve the Agenda as submitted. Councilor Henry Smith SECONDED the motion, and it PASSED unanimously 7-0.*

**III. Special Announcements**

**IV. Approval of Minutes**

**October 20, 2008**

Administrator Selig noted page 17 of the October 20<sup>th</sup> Minutes, which included discussion by Council members about possible changes to the ORLI zoning provisions. He said he had been approached about the issue of whether a formal committee had been established to address this, and said he wanted the Council to clarify this. He noted that his own response had been that this was not a formal subcommittee that had been established.

Councilor Sievert said he had been approached about this issue too, and Chair Niman said his understanding was that anyone who was interested in this issue could work on it.

Councilor Needell said in the recent Right to Know discussion, scenarios like this had come up. He said it was somewhat of a gray area, and said it was something to be careful about. He said when more than one Councilor worked on an issue, this could be misconstrued.

Chair Niman said the wording in the October 20<sup>th</sup> Minutes concerning this were correct.

Page 6, 2<sup>nd</sup> full paragraph from the top, should read “..if they didn’t find anything wrong, he wouldn’t find anything wrong either.”

There was discussion on the motion on Page 18. Councilor Needell said it was a 4-4 vote, and it was noted that 5 Councilors were listed as voting against it. There was discussion that it needed to be clarified how Councilor Clark, who was not at the present meeting, had voted, before approving the October 20, 2008 Minutes.

## **V. Councilor and Town Administrator Roundtable**

Councilor Henry Smith said there had been a recent meeting of the Main Street West Committee, and said there had been discussion about the idea of a roundabout at North Drive, which would increase the expense of the project considerably. He said there had also been discussion on bus stops, bus turnouts, pedestrian crosswalks, and revised trail locations. He said at the Dec 5th meeting with NHDOT, more funding would be requested because of the expense of some of these things. He noted that there was a December deadline to get the final design from the McGuire group

Councilor Needell said the Conservation Commission had met the previous week, and had briefly discussed the CIP item on the dredging of Mill Pond. He said the Commission felt that this item didn’t need to be in the 2009 Budget, and he said there had been no discussion yet about committing funds to it. He said the Commission would be interested in reviewing the permit, which was due to expire.

Councilor Needell said the Commission had discussed an application to restore oysters to the Oyster River.

He said the Commission had done a site walk on the Wiswall Bridge, and said their biggest concern was that during the construction phase, sediment mobilization would be dealt with properly. He said the Commission would write a letter asking that when the plans were brought forward, it could review them concerning mitigation that would be needed.

Councilor Needell said the first annual monitoring of the Fogg conservation easement had taken place on Sunday. He said Commission members had walked the property, and no violations were noted. He said it was a great site walk.

Councilor Julian Smith noted that Administrator Selig had brought up the matter of discussion by Council members about changes to the ORLI zoning provisions. He said the Council had affirmed that there was no formal motion concerning this, but he said it had been established by everyone that these changes needed to be made. He said as part of that discussion, Councilors Clark and Sievert had said they would be willing to work on these changes.

Councilor Smith said he hoped that this would actually happen, and that there would be a proposal for modification of the Table of Uses and the dimensional standards for the ORLI zone, so the words Councilor Sievert had stated at the October 20<sup>th</sup> meeting would have some meaning, and it would be clear that these words had not just been an effort to move forward the ORLI Zoning district change.

Administrator Selig said a \$3.1 million bond had been issued for the Town, with a 4.08 interest rate. He

said this was a favorable rate, and noted that it was more favorable than the rate issued for Dover.

Councilor Van Asselt asked what the timetable was for putting items, including a possible bond item on the Ballot. There was discussion that the deadline was quite soon.

Councilor Sievert asked Councilor Needell for details concerning the fact that the Conservation Commission wanted to review the mitigation proposed regarding the Wiswall Dam.

Councilor Needell provided details on this, and said the issue of concern was possible sediment mobilization.

Councilor Sievert asked why this review by the Conservation Commission would be necessary, if the State and federal approvals had been obtained. He said they were almost to the point of construction.

Councilor Needell said he would let the Conservation Commission speak to that.

Administrator Selig said typically with a wetland permit, the Conservation Commission would provide comments early on before the wetland permit application was submitted. He said the permit application process wasn't completed yet because the design wasn't complete yet.

Administrator Selig said that regarding the tax rate for 2008 and the ongoing property revaluation, the Town had received the report last week from Steve Traub, who had been looking at the multi-unit properties, and he said this had just been sent to the Council. He said Mr. Traub was comfortable with the analysis that had been done, and provided some minor formatting recommendations. He said there would be a meeting with Tax Assessor Rob Dix the following day, and said Mr. Dix had come to the end of his process, and was ready to produce the MS-1 form that would be submitted in order to set the tax rate.

He said there was a tentative tax rating date of November 24<sup>th</sup>, and said a warrant would then be brought back to the Council that reflected the final revaluation numbers. He said if everything went smoothly with the Department of Revenue, the tax warrant could be approved by the Council on December 1<sup>st</sup>. He said the tax bills would then go out, and would be payable 30 days thereafter.

## **VI. Public Comments (*NLT 7:30 PM*)**

**Bill Hall, Smith Park Lane**, noted Administrator Selig's response to his comments at the previous meeting. Mr. Hall said he had not said that the Town should get its own paver, and said he knew the kinds of equipment the Town could rent. He spoke critically about Public Works Director Mike Lynch regarding some past projects, and said he thought this had cost the Town about \$200,000. He said it would save the Town \$100,000 if it did the Mill Pond Road job in house.

Mr. Hall said he had been informed that the Town wasn't interested in modifying the 401 permit. He said he was concerned that this would cost the water users millions of dollars, and said there was no reason why water couldn't be pumped from the Lamprey River.

**Dick Lord, Bennett Road**, noted he was a Durham representative to the Lamprey River Advisory Committee. He said the Committee had been very involved in the development of the idea of the John

Hatch Memorial Park out at the Wiswall Bridge. He said he realized that there was concern expressed regarding the cost of the historic mitigation at the previous Council meeting. He said the LRWAC had voted unanimously to reimburse the Town for the cost of the Town's portion of the historic mitigation, not to exceed \$10,000.

Chair Niman thanked Mr. Lord and the other members of the LRWAC for this, and said the Town would send a thank you letter regarding this.

**Diane Woods, 21 Garden Lane**, said she was present as a concerned citizen, regarding the rezoning around the Spruce Hole aquifer, the fact that a serious development could occur there, and the fact that the experts had said this could affect the Town's drinking water. She asked that if the Town was going to use UNH experts regarding water quality issues, that they also look at the impacts of the rezoning on water quality, if development occurred there.

Administrator Selig said the Council was working through the various water quality issues, and he said one issue was the need to revise the Town's stormwater regulations. He said they were presently awaiting a draft on this, and he noted that two members of the Council had expressed an interest in working on this issue.

Ms. Woods said some water experts had expressed their concerns, but said the vote regarding the change in the Zoning district had still gone forward, and said she was concerned about this. She said she wanted it to be clear that these experts who were available would be used, and that this was an important part of moving forward.

Councilor Needell said the Zoning district was changed, after hearing the public's comments and suggestions. He said as of now, if a developer brought forward a plan, the Town would have to deal with it, and it would be subject to the regulations as they presently existed. He said there was potentially going to be an ongoing discussion by the Council, and anyone else interested in possible modifications. But he said there was no process in place for the Town to do any further analysis on this, and also said there was no reason that there would be input from outside experts unless such a process occurred.

Councilor Needell said a few Councilors had said they were interested in making some recommendations, and said he thought their intent was to share these with the Council. He said it was his understanding that this was an informal process, which did not involve a subcommittee.

Ms. Woods said she appreciated the fact that the Council was trying to do something for the tax base, but said the environmental issues had to be looked at first.

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

None

**VIII. Committee Appointments**

None

**IX. Presentation Item**

None

**X. Unfinished Business**

**PUBLIC HEARING** and continued deliberation on the Town Administrator's proposed FY 2009 Operating Budgets, Capital Budget, and 2009-2018 Capital Improvement Plan

*Councilor Julian Smith MOVED to open the public hearing. Councilor Stanhope SECONDED the motion, and it PASSED unanimously 6-0.* (Councilor Van Asselt was out of the room at the time of the vote.)

**Bill Hall, Durham**, questioned the cost for the Mill Pond Road water infrastructure work. He also questioned the amount of money proposed to be spent for the Spruce Hole well pump test, and said he thought what was happening was that the final well was going to be put in.

Administrator Selig said the well that would be put in would in fact be the final well.

Mr. Hall asked that money not be taken out of the water fund for this project, and said it was needed to replace some of the Town's existing water pipelines.

Mr. Hall also spoke about the fact that there was no money in the Budget or CIP for cutting trees. He said unless the Council took a vote on this, Town staff would let this matter slip between their fingers. He noted that he had urged that trees on Town properties be cut, and said he had been told that this would be too time consuming. He spoke about his concern about fire because the trees were not thinned out, and he noted what had happened on Durham Point.

He said the Town could sell the wood that was cut, and also said there was a market for wood chips. He said the North Forty, Wagon Hill, Jackson's Landing and the area south of the transfer station could and should all be cut. He said this last area was especially dry, and said he was concerned that a fire there could spread to the neighborhood beyond it. Mr. Hall said the problem was that the Council didn't examine how decisions got sidetracked.

*Councilor Julian Smith MOVED to close the public hearing. Councilor Stanhope SECONDED the motion, and it PASSED unanimously 7-0.*

Chair Niman said the Council was restricted by the Town Charter from voting on the Budget and CIP for 14 days. He asked if the Council was happy with it, or would like to make some changes.

Councilor Stanhope said the Council had asked Administrator Selig to meet certain goals concerning the Budget, and initially had seen a Budget it wasn't entirely satisfied with, so had asked him to look at it again. He said they all could probably find some line items they would choose to modify, but he said the reality was that the Council's goals had been met. He said he didn't think it was the responsibility of the Council to micromanage this.

Councilor Needell noted a line item regarding the amount of money that came from the University for the School agreement, on page 25 of the Budget. He asked why the number was back up so high and where those children were coming from, and asked Administrator Selig if he was comfortable with this number.

Administrator Selig provided details on this.

Chair Niman said he didn't like the fact that the new fire station item kept lingering in the CIP, but nothing was done about it. He said he had read that Dover had completed a new fire station for \$3 million at a reasonable price, and he also noted that in July of 2009, the Town would start to pay rent at the existing fire station. He said given the present economy, where construction was down and the cost of materials was down, it could save the Town a substantial amount of money if the project was done soon. He said perhaps the Town could be more strategic about this. He said he was not suggesting that the project be done in the next fiscal year, but said a question was how to get movement on this in 2009 and take advantage of lower costs.

Councilor Leach arrived at the meeting at 7:42 pm.

Administrator Selig said a challenge to date had been finding a site. He spoke about the new agreement with UNH, and said it was expected that the Town would have to pay rent starting in 2009, and that in the long term, this would drive it to find a new fire station, so a comparable amount of money could be put toward paying the debt service on a new building.

He said in terms of the location issue, the UNH Master Plan had identified a space on Garrison Ave, across from Stoke Hall. He noted there were other potential uses for that location. He said the present location of the Fire Station was a good one, but said the University wanted to have some flexibility in case it received some federal money and therefore wanted to use the site for a different use. But he said the idea Chair Niman had raised could perhaps be revisited.

Chair Niman said it sounded like perhaps Administrator Selig was saying that the discussions with UNH could be broadened to discuss the location of a new fire station, which would motivate the Town's fire department staff to consider what would be needed for a new station. He said perhaps then there could be discussion of when the best time would be to construct that fire station.

Administrator Seligs said the Town's fire staff, was certainly interested in this idea, and he noted that the committee he and Ms. Jablonski sat on that met as part of the fire agreement had agreed that it would identify a site within the next fiscal year.

Councilor Van Asselt said he realized it was too late for 2009, but he said he hoped an effort would be made with Mr. Lynch next year to develop a real road program for 2010. He noted that this was why he had asked about the bond issue, and said this made more sense than the current approach of spending a couple of thousand dollars each year on Town roads.

Concerning the issue he had raised at the last meeting regarding no wage increase for nonunion employees in the 2009 Budget, he said his own philosophy was to reward performance, even in bad times. He noted that Administrator Selig had suggested some other approaches that could perhaps be taken, in lieu of the wage increase. He said that after discussing some of these ideas with Administrator Selig, he had changed his mind.

Councilor Van Asselt said he had balanced the idea of rewarding performance with his desire not to get involved in personnel areas. He also said the fact that Administrator Selig had worked so hard to put together a Budget package had caused him to decide that he had no interest in disturbing it.

He noted that Administrator Selig had said he would like to monitor the 2009 Budget in perhaps May or June, to see if perhaps something could be done then to compensate nonunion employees, based on

employee performance. He said he hoped that if it were possible in June, Administrator Selig would bring the Council a recommendation concerning this.

Councilor Julian Smith said he would like to see two changes made to the Budget/CIP. Concerning the CIP, he said he would like to see the project for development of a well at Spruce Hole either moved back several years or eliminated entirely. He said he didn't think the Town had looked at other options for increasing its water capacity, and said he thought there were some other things that could be done. He said the development of the aquifer was part and parcel of the kind of discussions the Council had had over the past few years, like sale of the Business Park or the TIF discussion for Stone Quarry Drive, where things had then developed very slowly. He said he would like to put the development of the aquifer on hold.

Councilor Smith also said that he would like to remove the \$95,000 Police Department overtime item from the 2009 Budget. He said he thought the University needed to take more responsibility for discouraging students from acting out. He also said the Council needed to take more responsibility for discouraging the Police Department from making the kinds of shows of force that he had seen over the last few years after crucial games.

***Councilor Julian Smith MOVED to remove \$95,000 from the overtime wages in the Police Department. The motion FAILED for lack of a second.***

Administrator Selig noted that the line item Councilor Smith had referenced was not the line item the Town would tap to bring in outside special details for special events. He said this would be done under contracted services, and he said \$8,000 had been Budgeted for 2009, which was down from \$25,000 that was spent in 2007.

Councilor Julian Smith said since his motion hadn't been seconded, he wouldn't speak about why he had recommended this change to the Budget. He said he hadn't expected the motion to pass, but said he felt compelled to make it anyway. He said he felt the same way about his recommendation concerning the Spruce Hole well.

***Councilor Julian Smith MOVED to move the item in fiscal year 2009 concerning the Spruce Hole aquifer to 2010, and the item in fiscal year 2010 concerning the Spruce Hole aquifer to 2011.***

Councilor Needell suggested keeping the fiscal year 2009 item where it was, but moving the fiscal year 2010 item out to 2011. He said he thought they should go ahead with the plan for next year.

***The motion FAILED for lack of a second.***

Councilor Needell asked if there was any reason for the \$2 million expenditure for Spruce Hole to occur in 2010.

Administrator Selig said the only reason would be if, in the next 6-9 months, there was a serious development project out there that required water. He said in that case, the Town would want to get the well online as soon as possible. But he said it was questionable that they would be seeing development that quickly. He said he thought it would take all of next year and some of the following year to move forward with the next phase of the project.

He said the Council could make a determination a year from now as to whether it wanted to move on to the additional phase. He noted that it had not yet been identified how this additional phase would be paid for, and also said there was no requirement that it be funded.

Councilor Needell said there was a tacit suggestion that the Council would consider bonding at that time, but he said that discussion hadn't yet happened. He said he wanted to make this clear, and also wanted to make it clear that the Town had not yet committed to this.

Councilor Henry Smith said he was in favor of leaving the funding where it was for now. He said if a development didn't come forward, the Council could move the additional phase forward to 2011.

Councilor Leach said she saw this as a placeholder, and didn't have any problem with it staying there. She said she didn't see this as being different than any other placeholder. She agreed that there had not been a discussion on it yet.

Councilor Henry Smith said he concurred with Councilor Stanhope's comment about moving the 2009 Budget and the CIP forward now.

Administrator Selig noted the forestry comment Bill Hall had made at the public hearing, and said this issue had not been a priority for the Town. He said a forester was supposed to put together a proposal, but this didn't happen. He also said that about a year ago, the Conservation Commission had looked at the idea of selective cutting, and had asked if they could take this on. He said his understanding was that the Commission was putting together a proposal to send out to foresters, but said he wasn't sure of the status of this.

Administrator Selig said he, Mr. Lynch, and the Commission hadn't looked at this as a money-maker, but thought that through the development of a thoughtful forest management plan, money obtained from cutting and selling trees could be put back into additional forest management. He said if there were any funds left over, these could be put in the General Fund.

Chair Niman asked that Councilor Needell update the Council on the status of this issue at the next meeting.

Councilor Stanhope said he too would like to know where this issue stood on the Conservation Commission's agenda, so the Council would know when something formal concerning it would be coming forward.

Councilor Needell asked Administrator Selig to justify why the contingency funds should be increased by \$50,000.

Administrator Selig said it had been his position for many years that the Town should have contingency funds, and he provided details on how he had approached this issue over the past several years. He said the Town had utilized the existing amount of \$50,000 in the contingency fund in each of the last few years, noting that in two of these years, the money went toward the flooding that had occurred. He said over the past year, the funds were used for dispatch transition costs, and he noted that the Town had actually used funds in excess of the contingency amount for these transition costs.

He noted that the Council could vote by a 2/3 majority to appropriate additional funds if they were



needed, but he said this process took some time. He said his recommendation for the 2009 Budget was to increase to \$100,000 the contingency money that would be held in reserve. He said the expectation was that it wouldn't be used, and it would then go into the General Fund for the fund balance, which also should be increased.

Administrator Selig also said if there were projects the Town wanted to consider midstream, the contingency fund allowed some flexibility concerning this. He noted as an example the idea of a possible part-time recreation director, and said if the Council wanted to move ahead with something like this, the contingency fund was something that could be tapped for this.

Councilor Needell said that in a sense, putting this additional \$50,000 in the contingency fund was one way to earmark money for the fund balance, and said this was an argument for increasing the contingency. But he said he was particularly concerned this year, when there was a limited Budget, and there was no salary increase for non-union staff. He noted that the figures involved were close.

Councilor Needell said he had asked Administrator Selig if he would restore the non-union salary money if the contingency increase was cut, and was told no. He said he respected, that, and said he was not there to tell him how to manage the administrative costs. But he said for some reason, this item bothered him.

***Councilor Needell MOVED to hold the contingency money at the existing \$50,000 level, and not increase it this year.***

Administrator Selig said he had taken a fiscally cautious approach in putting the 2009 Budget together, and said one of his goals in doing so was to try to build up the contingency account. He said the Town had taken risks in some other line items, to get the Budget down to an appropriate level, and he said if this didn't work out, he wanted to have something to fall back on, and to have the flexibility he needed to manage Town operations.

He said it was also important to build up the fund balance, and he noted that he didn't think more revenues than were projected would be coming in for 2009. He said adding \$50,000 to the contingency fund had outweighed a number of other things in his own ranking of priorities. He also said \$100,000 was not a huge reserve.

***The motion FAILED for lack of a second.***

Chair Niman said he was voting in favor of a Budget for the first time in five years. He said he had wanted a 0% tax increase, and not only was getting this, but was also getting a \$99,000 spending decrease. He said he was very pleased, and said Administrator Selig and Business Manager Gail Jablonski had done a terrific job.

Administrator Selig said he shared the credit with Business Manager Gail Jablonski and Town staff, who had all worked very hard to have a fiscally tight budget.

It was noted that the remaining Budget sessions were not needed.

The Council stood in recess from 8:26 to 8:36 pm.

## **XI. New Business**

- A. Review the draft revised “Personnel Plan” and the newly developed draft “Administrative Regulations” prepared by the Town Administrator and Business Manager

Administrator Selig explained that he and Business Manager Gail Jablonski had been working with the Town’s labor attorney to review and revise the current Personnel Plan, so that it would more accurately reflect the policies and benefits presently available to non-unionized personnel.

He said that in addition to the Personnel Plan, a set of Administrative Regulations had been developed, to ensure that general policies and procedures pertaining to all Town employees were up to date with current State and Federal laws. He said the draft policies were being presented to the Council for its initial review and to get some feedback.

He said after taking these comments under consideration, the policies would be submitted formally to the Council at the December 1<sup>st</sup> meeting, and after 30 days, these policies would become effective unless they were vetoed by the Council during that period.

Councilor Leach noted wording concerning the orientation period for employees in the draft plan, and said she wondered if this was more or less a probationary period.

Administrator Selig said that was correct, and Councilor Leach suggested that this might be made clearer. Administrator Selig said the Town’s attorney had recommended calling it an orientation period.

Councilor Leach said this wording didn’t tell a new employee that if he/she didn’t do well during the 90-day period, the Town could dismiss the person. She said there could be a potential lawsuit because someone might not understand what the wording meant, and she restated that she didn’t think this was clear enough.

On another issue, Councilor Leach asked whether in the General Rules, there was anything about town employees dealing with the public. She suggested that perhaps this could be broadened out and covered more.

Councilor Julian Smith said he thought this was covered in the second paragraph at the start of Section F.

Councilor Leach asked whether on page 9 under the discussion of reprimands, there could be a consistent practice that was laid out in the wording. She said it was perhaps important that the written part that went into the employee file included suggestions for improvement. She said if this was not in writing, an employee could say he/she had never been told this. She also suggested that in a hearing before a department head, there should be a second person present.

Councilor Stanhope asked if there was anything from the NH Municipal Association regarding employee policies that could be looked at, to make sure everything that needed to be in this Personnel Plan was included.

Administrator Selig said the Town had availed itself of this information.

Councilor Julian Smith said in Definitions section, there was no definition of “town” although it was used in the document. He said it meant some kind of town authority, and he asked who that would be.

Administrator Selig said that typically, it would be a supervisor, department head, or some other official designee of the town.

Councilor Julian Smith said he had reviewed the draft in detail, and had compared it to the earlier personnel plan done in 1989. He said he had found that a number of problematic things had been carried over, including the wording on bereavement leave. He read this out loud, and said the sentence needed to be tweaked.

Councilor Henry Smith asked if a 90-day orientation period was standard, and where it had come from. He also questioned the inclusion of “not be insubordinate” on page 8 of the document.

Administrator Selig said the 90-day orientation period was pretty standard, and said it had been included since 1989. He also said there was an opportunity to extend this time period.

Councilor Needell asked if the Administrative Regulations were new, and Administrator Selig said that for the most part, they were codifications of things that were already being addressed, but that weren’t written down. He noted the sexual harassment language, and the wording on the Town’s credit card policy, and provided details on this. He said his thought was that the Administrative Regulations could be added to over time, where this made sense.

Administrator Selig noted that the auditor had recommended that the Town have a hazard mitigation plan, in case the building burned down, and that as part of this there needed to be a protocol for off-site storage of copies of computer files. He said this was currently being developed, and noted that right now there was no consistent policy concerning this.

There was discussion on the credit card policy the Town followed. Administrator Selig provided details on this, and said there was no problem with the current policy.

In response to a question from Councilor Henry Smith concerning how many department heads drove town vehicles home each day, Administrator Selig said the Fire Chief and the Police Chief did so. He said other officers of these departments also did so, and said a total of eight cars were used. He explained that these employees needed to be able to respond quickly when there was an emergency. Councilor Henry Smith noted that town employees couldn’t smoke outdoors on Town property, and said he didn’t understand this. There was discussion of this issue.

Councilor Van Asselt discussed the fact that an employee could have 26 weeks of maternity leave, and asked if an employee could use sick leave and vacation pay to be compensated while she was gone.

Administrator Selig said this could in fact be done, and he provided details on this.

Councilor Van Asselt said he was opposed to paying people for unused sick leave, and said this encouraged people to come to work when they were sick. He said he didn’t think this was a good idea.

He also spoke about the fact that the Town didn’t require its employees to live in Durham except for Administrator Selig, and said it was an interesting question whether department heads should be asked

to do this.

Councilor Julian Smith said there was wording in the Personnel Plan regarding this.

Administrator Selig said this had been encouraged, for public safety employees. He also said response time requirements had been imposed.

Councilor Van Asselt said he wasn't sure he liked the idea of requiring employees to live in Durham, and said he had just wondered what the Town's policy had been.

Councilor Henry Smith said the Town didn't provide benefits for same sex domestic partners. He noted that UNH was going through some changes concerning this issue. He said for years, UNH had provided benefits for domestic partners, but said this would be changing because of the new Civil Union law in NH. He said domestic partners would not be allowed to get benefits unless they entered into a civil union. He then asked if Durham should provide benefits for same sex domestic partners in the future.

Administrator Selig said the Town presently covered 90% of the HMO health plan, for one person, 2 persons who were married, or a family. He said unmarried couples were not covered.

There was discussion. Administrator Selig said it was possible to include a rider, where coverage could be extended to a domestic partner. He said the Town could then require the employee to pay the difference between what the single person premium and the two-person premium would cost. He said the Town could also choose to fund that second person, but the IRS would consider the payment for the partner as pay, and said this would be taxable. He said he had not recommended this in the present document, and said it had not been an issue to date.

Councilor Needell said he agreed with Councilor Henry Smith's sentiments. He said he would like to see this issue considered, as the document was looked at, and said he would support the Town moving in that direction.

He also noted page 16, regarding a 45% reimbursement for employees who had opted out of the Town's healthcare program, and said the policy seemed very generous.

Administrator Selig provided details on the buy-out option for employees, and said this had saved the Town money. He said it would be worth revisiting it in a few years, to see if the percentage could be lowered further.

**B. FIRST READING ON ORDINANCE #2008-19** amending Chapter 124 "Street Vending, Peddling, and Soliciting, Section 124-7 (D) "Permit Procedure" of the Durham Town Code by lowering the fee for obtaining a street vending license

Administrator Selig said the Town presently charged vendors \$50 per day, or \$200 per week for their door-to-door businesses, or to sell products from carts in the downtown area. He said this ordinance had been put into effect to discourage transitory merchants from competing with downtown businesses. He provided details on this ordinance, and said that based on these permit costs, the vendors requests had been few.

But he said there had recently been a request from a woman who wanted to sell door to door in Durham, and who had challenged the fee structure. He said Attorney Laura Spector had looked into this

issue, and had determined that Durham could charge no more than a reasonable amount, or else this was a tax. He said after considering this, Town staff had recommended that the fee be reduced to an initial \$50 application fee for the initial permit, which included a police check, and a \$25 weekly fee thereafter.

Administrator Selig said his one concern was that this was likely to increase solicitations in Durham, but said he didn't see another option, because the Town didn't have the ability to enforce a higher fee structure. But he noted that the downtown blackout areas would still be in place, based on safety issues.

Councilor Henry Smith asked why the recommendation wasn't to adopt Attorney Spector's recommended fee of \$100 per week, which he said was reasonable.

Administrator Selig provided details on this, and said it seemed that what Town staff had recommended was reasonable.

Councilor Henry Smith said he thought \$25 per week was not enough.

Councilor Stanhope noted that Attorney Spector's letter discussed the fact that the people who had challenged the Town's fees had thought \$100 per week was reasonable. He also said there was an administrative cost in having to respond to calls from residents about peddlers in their neighborhoods, and he asked why the Town wouldn't say that \$100 per week was a reasonable threshold.

Administrator Selig said the Town did wind up charging the woman who had challenged the fees \$100 per week. He said he would be fine with charging this to other vendors.

Councilor Henry Smith said he agreed with this.

There was discussion that each time a vendor came back to sell in Durham, a new application would have to be processed.

***Councilor Leach MOVED on First Reading Ordinance #2008 - 19 amending Chapter 124 "Street Vending, Peddling, and Soliciting, Section 124-7(D) "Permit Procedure" of the Durham Town Code by lowering the fee for obtaining a street vending license and schedules a Public Hearing for Monday, December 1, 2008. Councilor Van Asselt SECONDED the motion.***

***Councilor Stanhope MOVED to amend the motion to have an initial fee of \$50, and a weekly fee of \$100. Councilor Henry Smith SECONDED the motion.***

Administrator Selig suggested that the permit fee would be \$100 weekly, or \$25 daily. It was clarified that under this scenario, there would then be no initial fee. There was further detailed discussion, and it was agreed that the amendment wording should be revised as follows:

***Councilor Stanhope MOVED to amend the motion to have an initial application charge of \$50, and \$100 per week. Councilor Henry Smith SECONDED the motion, and it PASSED 8-0.***

Councilor Julian Smith asked for clarification about wording on page 2 "if vehicular in nature", and there was discussion.

***The original motion PASSED unanimously 8-0.***

**C. Other business**

Councilor Van Asselt said Administrator Selig's 3-year contract ran through 2010, and asked if the Council would be willing to have a subcommittee of the Council meet with him a year out, to discuss this.

Councilor Needell noted that it was at the end of 2009 that the Council and Administrator Selig had to announce their intentions.

There was further discussion, and Administrator Selig said he would be happy to discuss this issue.

**XII. Nonpublic Session**

**XIII. Extended Councilor and Town Administrator Roundtable (if required)**

**XIV. Adjourn (NLT 10:30 PM)**

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

Adjournment at 9:20 pm

Victoria Parmele, Minutes taker