

This set of minutes was approved at the Town Council meeting on March 16, 2009

**DURHAM TOWN COUNCIL AGENDA
MONDAY FEBRUARY 16, 2009
DURHAM TOWN HALL - COUNCIL CHAMBERS
MINUTES**

MEMBERS PRESENT: Chair Neil Niman; Councilor Jerry Councilor Needell; Councilor Karl Van Asselt; Councilor Julian Smith; Councilor Henry Smith; Councilor Cathy Leach; Councilor Mike Sievert; Councilor Peter Stanhope (arrived at 7:04 PM); Councilor Doug Clark (arrived at 7:03 PM)

MEMBERS ABSENT: None

OTHERS PRESENT: Town Administrator Todd Selig; Town Engineer Dave Cedarholm; Town Planner Jim Campbell; MIS Manager Luke Vincent; Business Manager Gail Jablonski; Deputy Police Chief Rene Kelley; Fire Chief Corey Landry

I. Call to Order

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

II. Approval of Agenda

Councilor Needell MOVED to approve the Agenda. Councilor Sievert SECONDED the motion.

Councilor Van Asselt asked why Item XI B had been included in the Agenda. He said it was his understanding that there was a process already in place to discuss a variety of options for the Oyster River dam. He asked why the Council was talking about this before that planned process took place.

Councilor Julian Smith said the Council was talking about it because he had put it on the Agenda, and because it was necessary to talk about it. He said if the Council didn't talk about it, NHDES would tend to set the agenda for this issue.

Councilor Clark arrived at the meeting at 7:03 pm.

Councilor Van Asselt said there was nothing for the Council to discuss right now, noting that they didn't have information on the issues yet. He said the process underway did have an information component, and said it seemed to be the right approach to take.

Councilor Needell said he had no problem with having this Item on the Agenda, and also said that if the discussion took a form that Councilor Van Asselt was uncomfortable with, he could

address this at that time.

Councilor Stanhope arrived at the meeting at 7:04 pm.

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

III. Special Announcements

None

IV. Approval of Minutes

January 12, 2009 Minutes

Page 11, 6th paragraph from the bottom, should read “Councilor Julian Smith confirmed that clarification...”

There was no Motion or second, but the minutes were approved, as amended.

January 26, 2009

Page 2, 3rd paragraph from bottom, should read “...only ones that were on the Council’s website.”

Page 17, 2nd paragraph, should read “...and said resident Susan MacDonald had...”

Page 18, 3rd paragraph from bottom, should read “He asked what numbers Chair Niman was referring to.”

Page 19, top paragraph, should read “Councilor Needell said he understood those numbers.”

Councilor Clark MOVED to approve the January 26, 2009 Minutes as amended. Councilor Henry Smith SECONDED the motion, and it PASSED 8-0-1, with Councilor Van Asselt abstaining because of his absence from the meeting.

V. Councilor and Town Administrator Roundtable

Councilor Henry Smith said he had attended the Main Street West project meeting on February 4th. He said there had been discussion about the ongoing issue of funding, and said another critical issue was the idea of a roundabout at North Drive, noting that the federal government didn’t feel the project was eligible for funding. He said bike lanes and walking paths were also discussed at the meeting.

Councilor Smith said he had attended the HDC meeting on February 5th, and said there was a quorum at the meeting. He said there was a large turnout at the meeting because the Mill Pond dam was on the agenda, and said there was a healthy discussion on possible options. He said this conversation would be ongoing, including discussion at the Council meeting and the meeting on March 4th.

Councilor Leach received confirmation that the Main Street West informational meeting would be held on Friday.

Councilor Needell reported that the Conservation Commission was moving forward with plans to do stewardship plans, which including forestry considerations, for four of the Town's conservation properties. He said the Commission was applying for a grant for this work, and as part of this was seeking letters of support from other Town boards and committees. He said they would ask the Council for their support at the March 2nd meeting.

Councilor Clark said the Energy Committee would be holding an informational session on Wednesday at 7:00 pm.

Councilor Sievert noted that the Parks and Recreation Committee had provided free hot chocolate at Wagon Hill on Sunday, and said the event was really successful. He said it would be great to use Wagon Hill for this kind of thing more often.

Councilor Julian Smith said the Planning Board had met on Wednesday, and approved a conditional use permit application and a site plan application for a proposed 4 unit, 16 bedroom apartment building on Rosemary Lane. He said the building could hold a maximum of 32 students.

He also said there was a conceptual consultation for a proposed mixed use development on the Houghton Hardware property. He said if all went well, a fairly large building would be built there, which would have offices on the first floor, and apartments on the second and third floors.

Councilor Smith said the Planning Board had also had accepted an application for a subdivision of the Moriarty property that would create a 48 acre conservation easement. He noted that this land abutted a very large piece of conservation land that the Nature Conservancy had acquired several years ago on the Beaudette property, and said the easement would result in a stretch of continuous conservation area between Route 108 and University land on east Foss Farm.

Councilor Smith noted that six campaign signs for two of the Town Council candidates had recently been stolen as a result of some teenage foolishness, but he said the Police Department had recovered them.

Councilor Henry Smith asked if the student housing planned for Rosemary Lane would be a private development.

Councilor Julian Smith said it would be, and noted that there would be no onsite parking, and that the units would be marketed to students who could live in Durham without a car. He said the existing building on the site would be demolished.

Councilor Needell said he had received a mailing from the Durham Business Association inviting people to a conversation with Town officials. He said it was a fine idea to host this meeting, but said his concern was that there were nine Town officials on the Council, so the inclusion of just the Council Chair at this meeting was an error. He said the Council should have been invited as a whole, and said that otherwise, this was inappropriate and misleading.

Councilor Leach said her understanding was that the Council had discussed this, and had

encouraged Administrator Selig and Chair Niman to set up a meeting with the DBA.

Councilor Needell said he didn't disagree, and said the Council probably did encourage this. But he said he didn't think it should be doing this, and instead should be encouraging Administrator Selig to attend the meeting. He said that otherwise, the wrong message was being sent. He said this was a concern he had had for a long time, and said he felt the Council was doing this kind of thing too often.

Chair Niman said his thought had been that he could explain the idea best because it was his idea in the first place, and said he wanted to get some feedback on it.

Administrator Selig said he was an ex officio member of the DBA, and had asked that this be on the agenda, in order to get that feedback. He said he had included Chair Niman and Mr. Campbell, and also said that at the previous EDC meeting, he had invited one representative of the EDC to be a part of this discussion. He provided details on what his thoughts were concerning this approach.

Councilor Needell said his only concern was the idea of including just one Councilor in the discussion at the meeting.

There was discussion about whether all Council members had been invited to attend the meeting.

Councilor Julian Smith said it appeared from the fact that invitations were sent to Councilors that they were welcome to join in the conversation.

Administrator Selig said if any proposals for zoning changes came out of this process, the Council would be involved, and there would be public hearings. He also said that while the public had not been invited, if they did attend the meeting they wouldn't be turned away. But he said the intent of the meeting was to get feedback from DBA members.

Administrator Selig said the DBA would be hosting a Candidates forum on February 17th, and also said the Durham Neighborhood Association would be holding a Candidates forum for individuals running for the Town Council on March 3rd. He also noted that the School District would be holding a Candidates forum at the High School.

Administrator Selig said the Mill Pond dam informational meeting would be held on March 4th and said there would also be a meeting prior to that to work on the coordination of the presentations at that meeting.

He noted that the Town Report was on its way to residents, and said particular credit should be given to Jen Berry for her work on it. He also thanked the various Town committees and others for their contributions to it, and thanked Andrea Bodo for the photo she had provided for the cover.

Administrator Selig spoke about the fact that the Governor's recent Budget proposal included the elimination/suspension of all municipal room and meals tax distributions, all shared revenue

distribution, and an increase in the Town's share of retirement costs for local fire, police, school, and other employees.

He said for Durham, this would result in a \$770,000 loss of revenue, which would increase the local portion of the tax rate by 13%, or \$0.86. He said the Governor's proposal indicated that federal stimulus money would offset this reduction in municipal revenue by providing money to local school districts, which would then use that new found revenue to reduce the School budget, leaving Durham taxpayers in a tax neutral state.

Administrator Selig said it was unclear how much money would actually be available to the school districts; what the criteria would be for receiving the money; and if the funds were received, whether the School District would actually use the money to reduce its budget. He said the Town was very concerned about this, and he encouraged residents to let legislators know of their concerns.

Administrator Selig said the Governor's Budget also proposed to close 8 district courts, but he noted that the Durham District Court was already scheduled to see reduced usage based on an administrative action involving consolidation with Dover. He provided details on this, and said the reduced usage of the building would mean that the current \$30,000 in annual revenue the Town received from leasing the building would be significantly reduced.

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

Roger Speidell, 7 Noble K. Peterson Drive, said he was present to go over what had been discussed at the School Board meeting on Wednesday. He provided details on the cost per student per year in Durham (\$19,000) compared to the costs in Fairfax County, Maryland (\$13,000) and Montgomery County, Maryland (\$15,000), and said the number for Durham couldn't be justified.

He said the taxpayers wanted some answers, and said although he had waited for an answer at the School Board meeting, he didn't get one. He spoke about the MS26 form containing budget information that the School Board had submitted to the State, which said there would be an estimated 8.6% increase in the budget. Mr. Speidell asked how this could be justified, and said the taxpayers were waiting for an answer.

He read a recent letter to the editor in Fosters on this subject, and also spoke about three candidates for the School Board.

John Kraus, 7 Cutts Road, said he would like to offer some observations in terms of framing the context of deliberation on the Oyster River Dam at Mill Pond, both by the Council and in further Town meetings such as the one scheduled for March 4th.

He said the Council and the Town administration needed to insure that full and clear data and information shaped the discussion, and that everyone in the community besides the various special interest groups and abutters to the Pond had an opportunity to express themselves in rational and respectful discourse.

Mr. Kraus said he liked the pond and the dam, and said both were assets. But he said when he had heard that the dam was in disrepair and might need to be removed or rebuilt at the very considerable expense of \$1.3 million, he had thought it was important not to have a failure of imagination, and that perhaps there could be some creative benefits to a situation without the pond. He said he had thought that perhaps something could be created that would actively benefit the whole Town, and said he had therefore floated some proposals and ideas.

He said he had then been set upon in missives, and been mentioned by name five times along with words and phrases like “disabuse, ill-informed opinion, misconceptions, and ludicrous.” He said this kind of abuse, labeling and other intimidation tactics, was unfortunately all too prevalent in Durham, where self-interest groups were involved.

Mr. Kraus said the Oyster River Dam and Mill Pond meeting should not be about one opinion dominating but about moving forward together, with full and shared information for the best outcome for all of Durham. He said no one had a monopoly on the truth, and said with modesty, integrity, and respect for empirical data, this time it should be seen if it was possible to reconcile different views into a constructive effort that served everyone appropriately.

Jerry Olson, 55 Mill Pond Road, said that anyone who had an opinion on the Mill Pond dam was by definition a special interest group. He then spoke about the process underway to discuss the future of the Mill Pond dam. He said the problem with this process was that the State was setting the agenda. He said it was important to make sure that all points of view were identified prior to the upcoming meeting, and said otherwise, the agenda would already be set and it would drive the discussion.

Mr. Olson said the pond was larger than most people realized, and said it was a beautiful, freshwater resource, one that the Town had not really taken advantage of. He spoke about pictures taken during the drawdown, and said he had pictures he wanted to be able to show as well. He said it was important to understand that the flow of the Oyster River in that area was relatively small, and that at times the river could almost be straddled. He said the area was a far better water resource if it remained as a pond.

He spoke about the estimated \$1.3 million cost to repair the dam, and said he thought there was room for decreasing this cost. He asked that the Council keep an open mind on this issue, and said the Town should not be governed by an outside agenda. He said everyone should have an equal opportunity to participate in the process.

Chair Niman asked Mr. Olson if it would be helpful if there could be a second informational meeting following the March 4th meeting. There was discussion.

Jean Olson, 55 Mill Pond Road, said she was concerned that the pictures they had taken would be mingled with all of the other slides for the March 4th meeting. She said their pictures needed to be explained separately.

Town Engineer Dave Cedarholm said that in preparation for the March 4th meeting, he had organized a meeting of those people who had contacted him and who had an interest in

presenting information related to this topic. He said he would be presenting the technical issues concerning the dam, while Andrea Bodo would discuss the history of the dam. He said there would also be presentations on fisheries, shellfish, hydro-electric power, etc., by various entities.

He encouraged those people with specific information to come forward and present it, and said a goal of the March 4th meeting was to get the various comments and concerns out. He said all of this information would be brought to the Council to aid in its decision-making.

Councilor Julian Smith received clarification from Mr. Cedarholm that the meeting on March 4th would be a public information meeting, and was not a Town meeting, as an earlier speaker had stated.

Diane Freedman, 28 Laurel Lane, spoke in detail about the work of the Mill Pond Taskforce in 2002, which she had been a member of, and said the taskforce had stopped meeting after the dredging of Mill Pond was approved. She noted recent consideration, after the dam was inspected, about what to do with it, and said it would be helpful if the Mill Pond Taskforce could be one of the speakers at the upcoming meeting on this issue.

She agreed that the process should be an open one, and noted that as an abutter she wasn't specifically notified about it. She said the previous town managers hadn't understood that the Mill Pond area was much more than what happened down by the dam, and that many people in the watershed were involved. She said this had been overlooked repeatedly over the past 17 years, and said she was speaking for that large group of people.

Ms. Freedman said she was present to speak in defense of the dam and the impoundment it created. She also said that when talking about expense, the Town shouldn't be thinking just about local tax dollars. She said money that didn't come from local tax dollars still came from other State or federal money, which also came from people's pockets, and if spent, meant that it couldn't be spent on other projects.

She said she had attended the meeting where John Kraus had talked about the idea of taking out the dam and using the resulting land for recreational purposes or for a Town building. But she said those who had served on the taskforce and had witnessed the pond in its various states realized that there were no fewer than 10 streams that fed into the Mill Pond and its immediate backwaters. She provided details on this, and said the area always would be wetland, whether or not there was a dam. She said the idea of a sudden outcropping of land if the dam was removed was probably not realistic.

Ms. Freedman said wetlands were protected and generally could not be filled in for a building. She said it was important to keep this in mind. She also said the ecology of the area was that if swampy land appeared, invasive species and other vegetation would move in. She provided details on this, and said it was therefore not as though removing the dam would result in a situation where no maintenance was required. She said if there was no dam, this would mean there would be a temporary open channel for a small area closest to the Mill Pond, but upstream there would be mud flats, etc.

She urged the Council to read the letter she had given the Council, stating that she had accrued a lot of information from her research and her daily walks in that area.

Bill Hall, Smith Park Lane, spoke about his complaint letter about Code Administrator Tom Johnson, and provided a copy of it to Councilors. He noted that Administrator Selig had said the complaint was without merit, but he said John Belcher had verified the claim he (Mr. Hall) had made.

He said he had never heard of a building inspector who blamed an electrician for work he knew was done by some else, and said this was outrageous. He said he strongly hoped the Council would take this matter up.

Robin Mower, Faculty Road, said she had listened with great interest about possible redevelopment of Durham's downtown. She said for many people who were opposed to sprawl and in favor of protection of the Town's gateways, this was a welcome shift.

She said Chair Niman and Councilor Stanhope had made compelling arguments for re-zoning the downtown to allow greater density. She said for those involved with the work of the Mill Plaza Study Committee, the 2000 Master Plan or the 1995 Community Development Plan, the current planning concepts sounded familiar. She said some of these concepts remained fundamentally sound no matter how much time had passed.

She said mixed use development had featured in the work on the redevelopment of Mill Plaza, and noted that architect Pat Sherman, who had overseen the architectural planning for the Study committee, had argued that this was the prime way to energize a downtown, along with providing public spaces for people to gather, encouraging pedestrian use, and allowing more density. Ms. Mower said it was perhaps time to dust off the Report of the Mill Plaza Study Committee and to see what else could be learned from it and transferred to Main Street.

She noted that Councilor Sievert had commented that he didn't see how the downtown redevelopment would evolve in a way that would be much different than the redevelopment of Mill Plaza. She said she respectfully disagreed, stating that while one might contend that the end result could be the same in terms of physical components, what worried her was that the route the Council was taking to get there might defeat the purpose of the exercise.

Ms. Mower said she had attended all of the Mill Plaza Committee meetings, and had observed how stakeholders hammered out differences and honed visions. She said without public input from a wide range of stakeholders, there wouldn't be buy in, and without this, the prospect of realizing the purpose of redevelopment might be reduced.

She said redevelopment would only succeed if it provided what stakeholders wanted, and said that was where comprehensive planning came in. She agreed that the Master Plan chapter on the downtown and commercial core needed updating. She urged that whether there was an update of the Master Plan or some other comprehensive planning, the Council should consider how to engage the greater public in the conversation about changing the face of Durham.

Phyllis Heilbronner, Mill Pond Road, said she was present to speak for others who could not be present. She said they had made it very clear to her that they had strong feelings about the possibility of doing something concerning the Mill Pond dam that might be irreversible. She noted the health report in the Town Report about stagnant water and how it could be a breeding ground for mosquitoes and the diseases they spread. She spoke about how this was an issue that needed to be considered, when contemplating removal of the dam.

Ms. Heilbronner said there were many people who saw the Mill Pond area as the core of Durham, and she said it was important to take the long view and not the short term view.

Diana Carroll, 54 Canney Road, noted that she was a candidate for the Town Council, and she thanked the Police Department for finding the campaign signs that had recently been stolen. She said she was relieved to find that this had been a youthful prank.

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

- A. **RESOLUTION #2009-02** recognizing and congratulating Dr. Dennis Meadows for his achievement in receiving the prestigious international 2009 Japan Prize from the Science and Technology Foundation of Japan
- B. Shall the Town Council approve abatement for water in the amount of \$720.87 and authorize the Town Administrator to sign said abatement?
- C. Shall the Town Council approve and authorize the Town Administrator to sign a contract amendment with Underwood Engineering, Inc. of Portsmouth, NH for Phases II and III of the Spruce Hole well project?

Chair Niman noted that there had been a request to take Item VII C off of the Unanimous Consent Agenda.

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

Councilor Needell said that when the Spruce Hole well project was first brought forward, he had expressed some reservations about the aquifer recharge concept because he was not well informed about it, and because it was an approach that could have repercussions. He said he therefore saw the importance of being fully informed about it, and fully supporting the approach as it moved forward.

He said his concern was the idea of funding the test basin now (Task F of Phase III). He said his understanding was that the discharge permit needed to be received first from NHDES, and said he would like to see an intermediate step, to make the permit approval come from the community as well. He said perhaps Task F should be removed from the authorization, and should come back to the Council explicitly later, when the information was available and a better informed decision could then be made.

Councilor Van Asselt MOVED to approve the Spruce Hole Municipal Well contract amendment for Phases II and III to Underwood Engineering Inc. of Portsmouth, NH for the

sum not to exceed \$615,000 and authorizes the Town Administration to sign said contract with the monies coming from Account #07-0921-221-36-000. Councilor Needell SECONDED the motion.

Councilor Needell said he wanted to see a lot more information, and wanted to include the community in the process before the test basin was put in and the Town committed to recharging the aquifer. He said he thought that as part of this, there should be a public hearing.

Councilor Van Asselt asked what the purpose of that would be, and Councilor Needell said the Council needed to inform the public about this project, and should also solicit their input on it.

Mr. Cedarholm said the idea of having the public hearing could be inserted into the process.

Councilor Needell asked if there was any downside to removing funding for Task F (Pilot Testing).

Mr. Cedarholm said that task was quite a ways down the road, and said there was a lot of modeling, etc. that needed to be done first. He said the project wouldn't be jeopardized by not putting Task F in the proposal right now.

Councilor Needell said Task F was the piece of the project he was uneasy about committing to at this point.

Mr. Cedarholm suggested that the public hearing could be scheduled to take place before Task F.

Councilor Sievert asked Mr. Cedarholm what he thought the public would add to the process.

Mr. Cedarholm said Public Works would be looking at a number of possible sites to use as recharge areas. He noted that some sites might be considered more environmentally sensitive than others, and he spoke in some detail on this.

Councilor Needell said his concern was whether to do aquifer recharge at all, not which site to chose. He said an important question was whether it was a good idea, and said before getting the permit, a lot of homework first needed to be done, and everyone needed to be on the same page.

Chair Niman said it seemed like it couldn't be determined whether the aquifer recharge made sense unless the testing was done.

Councilor Needell said information should be gathered and a well thought-out case should be made to the public and to the Council before going for the permit. He said the testing would then have to be done. He stressed that he was not trying to slow the process down.

Councilor Needell MOVED to amend the proposal by removing the \$90,000 for Task F in Phase III. Councilor Julian Smith SECONDED the motion.

There was discussion between Councilor Henry Smith and Mr. Cedarholm about the fact that NHDES would need to issue a discharge permit before the pilot test was done.

Councilor Van Asselt asked if Councilor Needell was correct that the public was currently being left out of the process by omission. He said he didn't have a problem with the idea of having a public hearing, but said this appeared to be a routine process. He also said he had confidence in Town staff.

Councilor Needell noted that he had raised these concerns from the beginning. He said at some point, residents needed to be able to ask some questions.

Councilor Clark said he tended to agree with Councilor Needell. He asked if UNH was all set with doing this. He also said while there had been some presentations, there hadn't been conversations on why Spruce Hole was being developed, and why so much money was being spent on this and not on how to optimize the Lamprey River water supply. He also said it would be a good idea to hear what the public had to say about this.

Councilor Van Asselt said what Councilor Clark had said was not accurate, and said the Council had spent two years talking about the Spruce Hole aquifer and other water supply issues.

The motion FAILED 2-7, with Councilor Needell and Councilor Julian Smith voting in favor of it.

Councilor Julian Smith suggested that the motion should say "for a sum of, "not" "for the sum of". Councilors agreed that this would be a friendly amendment to the original motion.

The motion as amended PASSED 7-2, with Councilor Needell and Council Julian Smith voting against it.

VIII. Committee Appointment

None

IX. Presentation Items

None

X. Unfinished Business

A. PUBLIC HEARING AND ACTION ON ORDINANCE #2009-01 amending Chapter 175 "Zoning", Article XXIV "Septic Systems", Sections 175-139 and 175-140 of the Durham Town Code

Councilor Henry Smith left the table at 8:27.

Councilor Stanhope MOVED to open the Public Hearing on Ordinance #2009-01 amending Chapter 175 "Zoning", Article XXIV "Septic Systems", Sections 175-139 and 175-140 of the Durham Town Code. Councilor Sievert SECONDED the motion, and it PASSED unanimously 8-0.

There were no members of the public who wished to speak.

Councilor Stanhope MOVED to close the Public Hearing. Councilor Van Asselt SECONDED the motion, and it PASSED unanimously 8-0.

Councilor Julian Smith MOVED to Adopt Ordinance #2009-01 amending Chapter 175 “Zoning”, Article XXIV “Septic Systems”, Sections 175-139 and 175-140 of the Durham Town Code. Councilor Stanhope SECONDED the motion, and it PASSED unanimously 8-0.

- B. PUBLIC HEARING AND ACTION ON ORDINANCE #2009-02** amending Chapter 4 “Administrative Code”, Article IV, Section 4-18 (9) (a) of the Durham Town Code by reducing the number of Council representatives on the Economic Development Committee from two to one

Councilor Leach MOVED to open the Public Hearing on Ordinance #2009-02 amending Chapter 4 “Administrative Code”, Article IV, Section 4-18 (9) (a) of the Durham Town Code by reducing the number of Council representatives on the Economic Development Committee from two to one. Councilor Van Asselt SECONDED the motion, and it passed unanimously 8-0.

There were no members of the public who wished to speak.

Councilor Leach MOVED to close the Public Hearing. Councilor Van Asselt SECONDED the motion, and it PASSED unanimously 8-0.

Councilor Henry Smith returned to the table at 8:30.

Councilor Sievert MOVED to Adopt Ordinance #2009-02 amending Chapter 4 “Administrative Code”, Article IV, Section 4-18 (9) (a) of the Durham Town Code by reducing the number of Council representatives on the Economic Development Committee from two to one. Councilor Clark SECONDED the motion, and it passed unanimously 9-0.

- C. Update on transfer of dispatching services to the Strafford County Dispatch Center – Administrator Selig**

Administrator Selig explained that this topic was on the Agenda because Councilor Needell had asked for an update on the process and the various issues being resolved. He noted that IT Manager Luke Vincent was present to provide details on this to the Council.

Mr. Vincent spoke in detail about a flawed microwave link in the communication network (between the Beech Hill cellular site and the Strafford County Court building that housed the Dispatch Center), and explained how this problem was being addressed. He also provided details about the fact that there had been a number of non-technical concerns with the communication system, which the Fire Department and Police Department had been dealing with directly.

Councilor Needell said he appreciated the summary Mr. Vincent had provided in the Council Communication and in person, and said his sense was that the problems could be overcome. He asked for clarification of Mr. Vincent’s comment “Our communication vendor is anticipating

they will be able to overcome the limitations of the system in place, but ultimately some part of the larger system will be sacrificed.”

Mr. Vincent said in order to balance out the microwave system, the full capacity would have to be reduced, and said further down the road, this could reduce additional innovations to the system that would be possible.

Councilor Needell asked why this transfer was so hard, and Mr. Vincent said new technology had been introduced, and said the infrastructure hadn't been there before. He said the radio system was built from scratch, and said some flaws had been found in the system. He said they had been working continually with the vendor to improve on this.

Councilor Clark asked if the work still needed to correct these problems could get done within the existing budget.

Mr. Vincent said he believed so, and provided details on this. He said the company was committed to creating a system that would work for the Town.

Councilor Needell noted that the purpose of transferring dispatching services to the County was to save money. He asked where things stood concerning this.

Mr. Vincent said it was still the case that the \$250,000 per year cost was being eliminated.

Administrator Selig said the transfer of dispatching services was a major undertaking for all Town departments. He said a challenge was that previously there hadn't been a regional consolidation culture. He said the County was willing to move forward with Durham with this approach, had done due diligence, and was committed to making things work.

Councilor Needell asked Town staff whether the public was at risk because of these current problems, and also asked them if they were confident that the system provided, and would provide the services they needed in order to do their jobs.

Deputy Police Chief Rene Kelley said while there were some technical glitches they were working through, they had a handle on them, and said the public was not at risk. He said the transition had gone relatively smoothly, except for the microwave issue.

Fire Chief Corey Landry agreed that the public was not at risk. He said there were some delays in calls based on the fact that two dispatch centers were working together. But he said one way or the other, someone was responding to a call when it came in.

Administrator Selig noted the excellent dispatch services that had previously been provided to the Town by UNH, and said there had been some concerns about making the transfer. But he said Town employees had done a wonderful job during this transition.

He noted that the fee for dispatch services through UNH had been \$250,000 per year. He said the fee the Town would pay the County for these services would be \$30,000, which represented a

tremendous savings, and said this had recently helped to hold the line on a tax rate increase.

He said there were tradeoffs involved. But he said the County had worked hard to bring on an additional dispatcher within its own budget, and noted that it was difficult to find the right people for this work.

Ray Bower, the Strafford County Administrator, spoke before the Council. He said the \$30,000 cost would be reduced to about $\frac{3}{4}$ of that, and would likely remain stable over the next three years. He said he hoped to have the exact numbers on this the following day.

Mr. Bower said it was realized that Durham had to make a substantial capital contribution at the outset. He also said that a reduction in staffing for the County dispatch center had never been on the table. He said the County appreciated the opportunity to provide this service for Durham and Madbury, and said this would help to make the provision of County services more equitable across the County.

Administrator Selig said he wanted to acknowledge Mr. Vincent's efforts in addressing the microwave issues, including all the work he had done after hours. He said Mr. Vincent asked the right questions.

Mr. Vincent said there had been great communication with Town staff as these problems were worked out.

Councilor Needell thanked Town staff for the update on this issue.

The Council stood in recess from 8:34 to 8:46 PM.

Councilor Stanhope was not at the table when discussion resumed.

D. Continued discussion and action on the Town Administrator's annual performance evaluation

Chair Niman thanked Councilor Leach for doing virtually all of the work on compiling the evaluation information.

Councilor Leach provided details on how she had summarized the information received from Councilors. She noted among other things that there might have been some unintentional bias introduced, in that the areas of performance particular Councilors had said they wanted to evaluate might be areas they thought might need improvement.

She reviewed in detail the evaluation document, and summarized its findings. She said as a whole, Councilors had overwhelmingly rated Administrator Selig's performance as excellent in the financial area, including the whole Budget process. She said he also received high ratings regarding maintaining and improving relationships with various groups.

Councilor Leach said in the other three areas of assessment, Leadership, Initiative, and Other, the results were more mixed, and fell within the Acceptable to Excellent range. She went through these assessment areas in some detail. She noted that there were no ratings of unacceptable

anywhere in the document.

Chair Niman said it appeared that the Council wanted to accept the Evaluation.

Councilor Leach MOVED to finalize and accept the Evaluation and to present it to Administrator Selig. Councilor Van Asselt SECONDED the motion.

Councilor Henry Smith asked Administrator Selig to comment concerning the Council's evaluation of the extent to which he provided initiative and strategic direction to the Council.

Administrator Selig noted that there were two Councilors who felt his work in that area was "acceptable". He said moving an issue forward in Durham was a very cumbersome process, because as a community residents were extremely engaged on nearly every issue. He said operating in an environment like that required a huge amount of time, and made it difficult to sit back and think about possible initiatives.

But he said he had brought forward some initiatives. He said he felt the evaluation document was very helpful, and also said he appreciated the useful narrative Councilor Leach had provided. Administrator Selig said he worked for nine Councilors, with different priorities and goals, and said it was not possible to provide each of them what they wanted. He said he worked hard to move things forward in a way he thought made sense.

Councilor Henry Smith noted that he had asked that question regarding initiative and strategic direction because there had been a range of responses from Councilors regarding this. He thanked Councilor Leach for the really good work she had done in putting the evaluation summary together.

Councilor Julian Smith complemented Administrator Selig on the words used in his Self-Assessment on page 5. He noted that the Council that evening had seen some of the civic engagement referred to by Administrator Selig.

Councilor Needell asked if there were any other things in the Evaluation document that Administrator Selig had questions about.

Administrator Selig first noted that in each of the years he had worked in Durham, he had made his evaluation and self-evaluation public. He said one thing it was important to be aware of was that running the Town by itself was a big job. He spoke in detail about the many roles he played, including trying to work more collaboratively with UNH.

Concerning a comment from one Councilor in the Evaluation document describing two polarized factions in Town, Administrator Selig said Durham was actually a town where alliances changed depending on the issue. He noted recent discussion on the idea of a community garden as an example of this, and said this made it hard to know how to move a particular issue forward. He said the approach he tried to follow was to be patient and open, and to operate in good faith so that people could work through friction points.

Councilor Stanhope returned to the table at this point.

Administrator Selig noted a comment from a Councilor that was summarized on page 4 regarding the idea of seeking clear direction from a majority of the Council, and said it was worth having a discussion on this.

Councilor Needell noted that this had been his comment.

Administrator Selig said he had in fact been working closely with Chair Niman, and said the Council had been supportive of this. He said if he had a sense that the Council wasn't supportive, he might have approached things differently. He said Chair Niman had the capacity to be very creative and to look at things in a different way, something that he had found very helpful in various discussions.

He said that in some areas Chair Niman had struck out on his own, and said the Council was interested in some but not all of these initiatives. He noted that the proposal to rezone Church Hill had failed, but he said even then, there had been a productive discussion by the Council.

Administrator Selig said when he had involved the Chair in outside discussions, he was careful to be sure that they brought something back to the full Council. But he said if there was concern about this, the Council needed to discuss this. He said this was the reason why he liked the annual evaluation process, to check in on things like this.

Councilor Needell said he would like to discuss the issue further with the Council, although noting that he might be a minority of one. He said he believed there was a larger issue that needed to be discussed.

Chair Niman explained that some time back when Administrator Selig was negotiating with UNH on cost issues concerning policing, he had offered to come to a meeting on this. He noted that he had done his own study about the cost of policing, which had come up with a much larger cost figure.

He said he had attended a few meetings, and said what had come out of these meetings was the possibility of moving away from the idea of direct money payments to compensate the Town, and toward the idea of the University helping the Town build economic value, which would mean there might be enough tax revenue generated to cover the cost of hosting the University.

He said representatives from the University liked this idea, and there were several discussions on it. He said at some point the President of UNH had asked him to serve on his strategic planning steering committee, and said he was later made co-chair of the Strategic Planning Working Group. He said he thought this was a benefit to the Town, and said they were looking at some really interesting ideas on changing the traditional relationship between the Town and the University.

Chair Niman said he was trying to help bring some good things to Durham, and said he didn't think he had ever had a conversation with anyone without telling Administrator Selig, or without Administrator Selig being in the room.

Administrator Selig said in the few cases where there might have been some concern about this, he and Chair Niman had discussed this.

Councilor Stanhope said he respected where Councilor Needell was coming from, but he said there were occasions where Chair Niman would participate in a dialogue, and would then bring the results of the discussion back to the Council. He said that dialogue couldn't happen with nine people in the room.

He said he didn't feel Chair Niman had excluded the Council with the approach he had taken, and said the Council was given ample opportunity to explore publicly what was going on with a particular issue. He also said it was the nature of the Chairmanship to work closely with Administrator Selig

Councilor Needell noted that he had never claimed that Chair Niman had been acting in bad faith. But he said Councilors elected the Chair to run meetings, and said this was the only duty the Chair has under the Town Charter. He said the role of the Chair was not to represent the Council regarding policy making. He said he thought things had shifted concerning this, and said this presented a quandary.

He said Chair Niman had talents and expertise that were very valuable, and said it was important to be careful how they were used. He said he respected that Administrator Selig wouldn't allow anything untoward to happen, but also said he was concerned about perception. He said Administrator Selig represented the Town in outside discussions. He also said the Council at any time could delegate a Councilor to work on a particular issue, and said they needed to do this more often.

Councilor Leach said she thought they had gotten off track from the discussion on Administrator Selig's evaluation.

Administrator Selig said in the Evaluation, Councilors had said they wanted him to be more direct regarding recommendations, and to offer his opinions earlier in discussions. He said if that was what the Council would like, they needed to pause as a group and ask him for that kind of input.

Councilor Van Asselt said he felt that the Chair needed to play a strong role. He said if this role wasn't called for in the Charter, that was a legitimate issue. But he said the role was no different than the role Council Chairs had played in the past, and he said in this situation, it had been done publicly rather than privately. He said the initiatives that had come forth had been public, from the day the discussion started. He said this was the process that was needed when there was a nine member Council, and said he didn't think the role played by Chair Niman had overstepped the bounds of the Charter.

Councilor Clark said the criteria for the evaluation were currently set at the end of the year, and suggested that when the Council's goals were set after the election, perhaps this would be a good time to set the evaluation criteria as well.

Chair Niman said he thought that was a good suggestion.

The motion PASSED unanimously 9-0.

- E. Update and continued discussion on report submitted by subcommittee relative to Town Council Goal #7, “Review Management and Administrative Structures

Councilor Leach said more details had been put down on paper concerning developing an orientation process and a volunteer appreciation night. She said the subcommittee would also try to get more on paper regarding guidelines on Council representatives’ roles on Town committees. She asked Councilors to contact the subcommittee if they had any comments or suggestions.

XI. New Business

- A. Discussion and possible action on whether there is an interest in amending the Employment Agreement between the Town of Durham and Town Administrator Todd I. Selig dated February 19, 2007 to extend the agreement for one year – Councilor Karl Van Asselt

Councilor Van Asselt noted that Administrator Selig had taken the initiative not to increase his compensation. He also said he was in his second year of a three year contract. He said that over the past year, Administrator Selig had done the best job he had done in five years. He said extending the employment agreement for one year recognized that.

Councilor Van Asselt MOVED to approve amending paragraph 3 “Term of Employment” of the Employment Agreement between the Town of Durham and Town Administrator Todd I. Selig dated February 19, 2007 to extend the agreement for one year, with a new ending date of December 31, 2011. Councilor Stanhope SECONDED the motion.

Councilor Stanhope asked if Administrator Selig was consulted about this, and was told that he had been.

Councilor Needell said he appreciated the explanation of where this proposal had come from, and also said he appreciated that it was being done as a recognition of the good work Administrator Selig had done. He said he wasn’t sure when he read the proposal if it was meant to be a bonus or not. He asked Administrator Selig if he agreed that this was intended to be a pat on the back, or a putting off of negotiations.

Administrator Selig said he hadn’t been aware of the complete rationale for this until Councilor Van Asselt had just stated it. He said he wanted to remain in Durham only if he was wanted there. He also said there were some interesting challenges ahead over the next few years, and leadership would be important. He said he felt he was well suited to doing this, and also said he enjoyed living in Durham. He said he felt he was paid fairly, and also said that in recognition of the importance of consistency, he was pleased to extend the agreement.

It was noted that this agreement would extend the Employment Agreement by one year, but that there would still have to be discussion on renewal of the Agreement at the end of 2009.

Councilor Needell said he didn't want there to be a sense that there was a reluctance to renegotiate the contract. He said the willingness to extend the Agreement didn't mean that.

There was agreement that discussion on the renewal of the Agreement would occur at the end of 2009, and that the Council could talk again at that time about whether to extend or renew the Agreement.

The motion PASSED unanimously 9-0.

B. Discussion concerning options for repairing, replacing, or removing the Oyster River Dam at Mill Pond – Councilor Julian Smith

Councilor Julian Smith said he was inspired to initiate this item after someone had sent him an email from NHDES' Dam Bureau inviting participants "on behalf of the Town of Durham". He said his impression was that DES had set the agenda for the discussion of what was to happen with the dam and Mill Pond. He noted that he had attended a meeting the previous August, and at that time, DES representatives had held up the carrot that they would pay for decommissioning the dam but would pay nothing for its repair or replacement.

He also said that in September, Administrator Selig had tweaked his interest when he had sent an email to Andrea Bodo, who had asked for the Town's help with listing the dam with the Division of Historic Resources. He said the email mentioned the need to have a clear sense about what the community wanted.

Councilor Smith said the Town hadn't begun that process, and said NHDES had begun a process. He said the Stevens Associates analysis focused on the cost of repairing the dam and on the cost of maintaining the dam over 30 years. But he said not all of these costs would be borne by the Town. He asked that this report be balanced with the question of whether the community wished to keep the Mill Pond and restore the dam, which was given to the Town as a gift.

He said the Mill Pond was the only equivalent of a Town green in Durham, and was as close to a visual symbol of the Town and of the past as anything else. He said it represented open space in the middle of Town, and said the Council really needed to talk to members of the community about whether they were willing to give up centuries of history. He said many people went to a lot of trouble to build a series of dams. He noted that Mill Pond was a mature environment, and some dredging was needed.

Councilor Smith asked if the Council would like to have some kind of representation at the pre-information meeting to be held the next day. He also said the Council could perhaps give Administrator Selig and Mr. Cedarholm some guidance on representing the interests of the Town.

He said that in the best of all worlds, a public hearing would be held on the future of the dam and Mill Pond. He said there was time to do this, but said he could understand why the Council would want to leave this issue in the hands of the next Council. He asked what the pleasure of the Council was.

Councilor Stanhope said he was surprised that Councilor Smith had brought this forward. He said NHDES wouldn't make this decision, the Council would, and said the Council recognized that there were three difficult choices. He said repairing, replacing, or removing the dam each had economic and social consequences.

He said he was comfortable that Council members would not allow a decision to be made without a significant amount of public input. He said he didn't think the DES show would fool anyone or stampede anyone into tearing down the dam. He said the people the Council had heard from that evening would be out in force. He said the dam had great historic significance, and also said Councilor Needell would make sure the correct process was followed.

He said this would go on for an extended period before the Council could make a decision, and said they shouldn't argue any point of view until they knew the facts.

Councilor Julian Smith said he didn't want to keep the Mill Pond at any cost, but said he didn't think all the options had been provided. He said that in the Stevens report, the option of doing nothing wasn't even considered, but said the Town had been doing this for a long time. He also said he would like to see some facts about grants and other ways to help the Town pay to help to keep this legacy.

Councilor Henry Smith noted a brochure from DES on selective dam removal that said when a dam had historic significance, other options might need to be considered. He also spoke about Andrea Bodo's communications with the NH Division of Historic Resources on this matter, and noted that the State had determined that the dam was eligible to be on the National Register of Historic Places. He said the letter on this would be forwarded to NHDES, and also said he believed the person who wrote the letter would be present at the meeting on March 4th.

Councilor Leach said she was not convinced that the meeting on March 4th would be run by NHDES, and also said she didn't see why the Council would want to have a public hearing on March 2nd, before the informational meeting on March 4th. She said none of the Councilors had said that the information in the consultant's letter was correct. She said she personally had no idea yet what to do with dam, and she recommended allowing the process to move forward as planned.

Councilor Needell said a public hearing would certainly be in order later on in the process, but said he didn't see a reason for having one before March 4th. He said there also needed to be discussion on this issue at the Council table, and noted that he had some questions about the Stevens analysis.

He said his impression was that March 4th was the beginning of the process, and that the decision on the dam wouldn't come out of that meeting. He said if people were concerned about the way the meeting was being organized, the Council needed to hear about that. But he said the Council had no role to play tomorrow in setting up the March 4th meeting, and said he didn't see the need to participate in it.

Councilor Van Asselt said Councilor Julian Smith had confirmed that there was nothing for the

Council to do right now concerning this process. He said he didn't see why there was a great fear that this thing would be rammed through. He said Mr. Cedarholm had bent over backwards in terms of the process that had been set up, and said the Council should let this process take its course.

Councilor Sievert said he agreed.

Chair Niman said he didn't understand why Mr. Cedarholm had been thrown under the bus on this matter, and why everybody was assuming that he was going to get beaten up by NHDES. He said he was concerned that Mr. Cedarholm's character and Administrator Selig's character were being questioned, and said he had confidence that they could handle the situation.

Councilor Stanhope said he realized that Councilor Julian Smith did want the facts. He noted Ms. Freedman's letter, and said the Town needed numbers on the loss of tax revenue that would occur from properties up and down the river if the dam was removed. He said it was not information that was easily identifiable.

Administrator Selig noted that the forum to be held on March 4th was being organized by the Public Works Department, not NHDES. He said Public Works was very busy right now working on more than 30 major projects, and said the Department had therefore jumped at the chance when NHDES had volunteered to help organize the forum.

He said it was now back on Mr. Cedarholm's plate because of the concerns that had been expressed by residents. He said Town staff were trying to be as objective as possible, and said he was sure that following the meeting, more information would be gathered, and there would be subsequent public input.

- C. Other business
None

XII. Nonpublic Session (if required)

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

XIV. Adjourn (NLT 10:30 PM)

Councilor Leach MOVED to adjourn the meeting. Councilor Van Asselt SECONDED the motion, and it PASSED unanimously 9-0.

Adjournment at 9:57 pm.

Victoria Parmele, Minutes taker