

This set of minutes was approved at the Town Council meeting on April 6, 2009

**DURHAM TOWN COUNCIL MINUTES
MONDAY MARCH 2, 2009
DURHAM TOWN HALL - COUNCIL CHAMBERS
7:00 PM**

MEMBERS PRESENT: Chair Neil Niman; Councilor Jerry Needell; Councilor Karl Van Asselt; Councilor Julian Smith; Councilor Henry Smith; Councilor Cathy Leach; Councilor Mike Sievert; Councilor Peter Stanhope; Councilor Doug Clark

MEMBERS ABSENT: None

OTHERS PRESENT: Town Administrator Todd Selig; Public Works Director Mike Lynch; Town Engineer David Cedarholm; Business Manager Gail Jablonski

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. Councilor Julian Smith SECONDED the motion.

Councilor Stanhope said he had initially planned to ask for a nonpublic session to discuss a series of complaints that had been brought to his attention. But he said he would defer this to the next meeting, and asked that this be put on the agenda for that meeting. He also said he would like to remove Item X from the Agenda, noting that it had been discussed at the previous meeting.

Councilor Stanhope MOVED to remove Item X from the Agenda. Councilor Van Asselt SECONDED the motion.

Councilor Stanhope said he had received a copy of the email talking about some of the issues that needed to be considered under Item X (continued discussion on the Oyster River Dam). But he said it didn't make sense for the Council to debate this issue until there was a formal public hearing, and before the Council had received various pieces of information, including information from the Assessor on the property tax implications of removing the dam.

Councilor Henry Smith said that while there had been discussion on this issue at the previous Council meeting, if Councilor Julian Smith wanted to say something about it now without an extended esoteric discussion, that would be fine.

Councilor Leach said she thought they had been clear at the last meeting that there wouldn't be more Council discussion about this issue until after the March 4th public information session.

Councilor Needell said he didn't disagree that the sense of the Council on this had been pretty clear. But he said the beginning of the deliberations on the Oyster River Dam issue would hopefully come soon, and said the March 4th meeting wasn't meant to be the deliverance of all of the data the Council needed. He said he was looking forward to getting this information, and seeing where the Council would go with it.

Councilor Julian Smith thanked the Council for allowing him to speak on this issue at the last meeting. He said he wanted to talk about some factual information, and said he had heard some factual mistakes and evasions he wanted to talk about under Item X. He said he had opened a door, which he believed was still open. He said he hoped they would leave this Item on the Agenda, and said otherwise, he would have to say some things during the Roundtable. But he said this was definitely unfinished business.

Councilor Clark said he needed more data on this issue, and said he wanted to make sure the Council got this data as part of the process.

Chair Niman agreed, and said after the meeting on March 4th, the Council could then request the additional information it needed. He noted that the email from resident Doug Bothner was excellent, and he provided details on this.

Councilor Needell asked Councilor Clark if he had specific questions that evening, and Councilor Clark said he was willing to wait until after the March 4th meeting to ask them.

Councilor Julian Smith said there were some questions the Council might want to consider asking the various entities that would be at the meeting on Wednesday, including members of the community. He said he wasn't sure the Council yet knew the questions that needed to be asked.

Chair Niman asked Administrator Selig about future communication there would be with the agencies and organizations involved, after the March 4th meeting.

Administrator Selig said the fate of the dam rested with Durham. He said the purpose of the meeting was to begin to hear factual information that would help in coming to some conclusions, not to actually decide how to proceed. He said he expected additional questions would be gathered at the meeting on Wednesday. He noted that there were a number of committees in Town that were interested in this issue, as well as residents, and said the issues would be fleshed out over time.

The motion PASSED 6-3, with Councilor Julian Smith, Councilor Henry Smith, and Councilor Clark voting against it.

There was discussion as to whether the request for a nonpublic meeting would occur at 6:30 pm at the next Council meeting. Administrator Selig said doing it at that time would be problematic, noting that this was when there would be an organizational meeting with newly elected Councilors. He said it would make more sense to hold the nonpublic meeting at the end of the meeting.

The original motion to approve the Agenda PASSED 8-1, with Councilor Julian Smith voting against it.

III. Special Announcements

None

IV. Approval of Minutes

February 2, 2009 Minutes

Councilor Van Asselt MOVED to approve the February 2, 2009 Minutes. Councilor Stanhope SECONDED the motion.

Page 2, 5th paragraph, should read “..by resident Bill Hall about the interaction between Mr. Hall, the State electrical inspector.....”

Page 13, 1st paragraph, should read “...that a neighboring community didn’t have a”

Page 18, 2nd paragraph, should read “He said with all due respect...”

The MOTION to approve the February 2, 2009 Minutes, as amended, PASSED unanimously 9-0..

V. Councilor and Town Administrator Roundtable

Councilor Leach noted the Unanimous Consent item “Todd’s Trot”, and said since this event had been taking place annually for six years, she didn’t think it was necessary at this point for the organizers to attend the Council meeting where the event was approved.

Councilor Julian Smith said he suspected that there would be a move to remove Item X from the Agenda, and said he had therefore prepared a brief statement. He provided details on why he had asked that the Item be put under Other Business, based on comments made by the Council at the previous meeting. He said he hoped that during the Roundtable, Administrator Selig would clarify some mistakes he had made about the Stephens Associates report in his statement to the Council at the December 15th meeting.

Councilor Smith said not a single Councilor had asked for facts at the previous meeting, so he didn’t understand how there was closure on this issue. He said several members had discussed the process involved, and said he had now identified that process so far. He said a Councilor had said he was trying to create fear-mongering, and said he suspected this referred to creating fears in the community that the dam would be removed. He said

that fear already existed in the community, and also said if he wanted to stir up fear, it would be at the Council table, that the Council could make a mistake that would be far more expensive than the one an earlier Council had made regarding the Packers Falls Bridge.

He noted that Chair Niman had said he didn't understand why Mr. Cedarholm had been thrown under the bus. Councilor Smith assured Councilors that he had not done this, but said he wished the rest of the Council would get on that metaphorical bus, and steer away from a disaster or a bad mistake. He also said it was not his intent to throw Administrator Selig under the bus by asking him to correct his mistake. He noted his request for a response concerning this.

Administrator Selig updated the Council on the following issues.:

He said he had sent an email to Councilors earlier regarding a fairly serious fire on Dame Road. He said no one had been injured, and said the Fire Department was still on the scene.

Administrator Selig noted the Unanimous Consent Agenda Item on the Collective Bargaining Agreement with Durham Police Officers. He explained that this agreement had been negotiated in the fall of 2008, and also said that over the past few months, there had been a collaborative approach to look at various health insurance programs. But he said the decision had been made to stay with the existing program. He said he appreciated the union's involvement in this process.

He said the proposed agreement resulted in an increase in costs of \$20,485 for 2009, \$17,690 for 2010 and \$18,520 for 2011. He provided details on the two main elements of the proposal, including wage scale adjustments, and the fact that three additional steps were being added to the sergeant's scale. He said another element of the agreement was that Police Department employees with 120 more hours of vacation leave could transfer these hours to a health savings plan, to cover health related expenses.

Administrator Selig said the bargaining team recommended that the contract be approved. He noted that the contract had been negotiated in the fall of 2008, and that economic conditions were very different now than they had been at that time. He said three other agreements would expire at the end of 2009, for Public Works Department employees, middle managers, and Fire Department employees. He said he wanted to be very clear that the economics had changed, and that the Police contract would not be the starting point for these other contracts.

He said the Town would be looking at how the pay in Durham compared to the pay for comparable positions in other towns. He said they would also be looking at the benefits employees in Durham were offered, and said as part of this, they would be looking at possibly more competitive health insurance. He then recommended that the Council adopt the Police agreement.

Administrator Selig said he had just returned from a trip abroad, and had over 300 emails waiting for him. He said some of these were about the Oyster River Dam, and some were about the Parks and Recreation Agenda Item. He said there might be some that he hadn't been able to send to Councilors yet, and said he would get these emails to them.

Administrator Selig noted that Councilor Julian Smith had sent him an email regarding the December 15th Council meeting. He said he suspected that this was when he (Administrator Selig) had asked the Council to schedule time to discuss the Oyster River Dam issue and the west end Main Street improvements at separate meetings.

He said that at the December 15th meeting, he had said the repairs to the dam were estimated to last 20 years, and said there was actually a 30-year time horizon. He also said the total cost he had mentioned was \$1.3-1.6 million, which included ongoing maintenance, some of which would be borne by the State. He said Councilor Julian Smith's email had asked that he clarify this information.

Councilor Julian Smith suggested that someone who had voted in the affirmative on amending the Agenda should put Item X back on the Agenda in order allow a discussion on some factual matters in the Stephens Associates report.

Councilor Van Asselt said the Council had spent three meetings on the housing authority issue, and said he wanted to let them know that he would be bringing it back again. He noted that he had read through the ideas on developing the Leawood Orchard property, and he spoke in some detail on this. He said he would like to bring back the housing authority issue in the context of UNH, because he thought the Town had a stake in what happened out there. He said he realized he had previously spoken against adopting a housing authority for a specific project, but said he thought the Town would have an even greater voice in the process if it had a housing authority.

Councilor Needell asked if it would be premature to invite someone from UNH to discuss the project with the Council.

Councilor Van Asselt said he would let Administrator Selig decide on that. He said he would like to show the Council the advantage of having a housing authority in place if UNH went forward with that project.

Councilor Leach said she thought it would be a good idea having an actual project to look at, regarding the use of a housing authority.

Councilor Van Asselt said the concept could also be considered in regard to what Chinburg Builders was talking about for the Durham Business Park. He said financing for development would be difficult over the next few years, and said UNH was an institution that would have some access to money.

Councilor Needell said he would like to return to the Roundtable discussion at the end of the Council meeting if it wasn't too late.

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

Stephens Burns, 20 Newmarket Road, noted that he lived next to Mill Pond, and said he had been disturbed by a comment at the previous Council meeting that the process with the Oyster River Dam and Mill Pond was just beginning. He said the process was not just beginning, and said the public information meeting would trigger an administrative order from NHDES with a deadline of December 31, 2009. He said the agency presumed that the meeting would provide all the information that was needed, and said his concern was that the Council wasn't aware of the many questions he felt needed to be addressed.

He said he and his wife had gone to the planning meeting for the March 4th meeting, and said what was planned was not a balanced, well organized presentation. He provided details on this, and among other things, said he personally felt there was a potential for hydropower development at the dam.

Mr. Burns said the Council did not have years to make up its mind, noting that NHDES had been asking for a response for the last 10 years, and seemed to have been remarkably tolerant.

Councilor Needell referred to information that NHDES didn't give an administrative order to the Town, but would do so after the public information meeting. He said he wasn't clear on the timeline, given various delays, and also asked why Councilors hadn't received the communications about the administrative order.

Councilor Julian Smith said the administrative order was not sent to the Town. He said he had seen a copy of the draft, and a later document from the Dam Bureau saying it would be postponed. He said he had spoken by phone to the person who wrote the two letters of deficiency to the Town, and had asked her what the timetable would be for the administrative order. He said she had said it would be months, not years, and he said NHDES's patience was running out.

Councilor Needell said he was confused about who was communicating with whom.

Mr. Burns spoke about the idea put forth of putting a new Town Hall on reclaimed land if the dam was removed, and said he would have a hard time simply building a garage on his property. He said he had a list of questions that it didn't seem would be addressed by the various entities at the public information meeting. He suggested that a goal of this meeting should have been to formulate questions. But he said that was the Council's responsibility, and said they needed to know what they needed to know.

Councilor Henry Smith asked Mr. Burns if his questions had been sent to NHDES.

Mr. Burns said they had not. He said he had inquired about the dredging of Mill Pond that had not yet happened, and said he suspected that the reason this hadn't happened was that the Council didn't want to spend the money.

In response, Chair Niman pointed out that the membership of the Council would soon be changing.

Andrea Bodo, 20 Newmarket Road, said NHDES had told her and her husband that the process had started on March 4th 1999, which was ten years ago, and she said the State was ready to give an administrative order. But she said the Town was just now getting involved with the process.

She said that at the organizational meeting on February 17th, there were two people from the Town and 13 people from NHDES and other agencies, who were on the side of river restoration. She noted that she had joined the HDC in October of 2008, and said the HDC had never had discussions on this issue until recently. She said they were now trying to understand the process.

Ms. Bodo said the concern was that time was ticking from NHDES's standpoint, and she spoke about the possibility of demolition by neglect. She said the Oyster River Dam was a gift to the Town in 1913, and was something people should be aware of and involved with. She said they needed the Council's help, and said the Town would lose the dam if they didn't pay attention. She said there were questions that the experts needed to address.

Chair Niman asked if Administrator Selig could call NHDES in order to get some clarity on the process, so some of these concerns could be addressed.

Ed Ricker, Dame Road, said he had built a house in Durham 10 years ago and his children had graduated from local schools, and he thanked the Town for what it had given him. He said he had worked at the University for 37 years, and also said he had worked for the Town in different capacities. He asked that Town departments give Durham residents priority for summer work that was available. He said it was important for the Town to take care of its residents, and said it was the right thing to do.

Phyllis Heilbronner, 51 Mill Pond Road, said there had been an inaccurate statement at the previous Council meeting that there was no more boating on Mill Pond. She said Mill Pond was used for boating, fishing and many other recreational purposes. She said if the dam was removed, the flow would be minimal at times so there wouldn't be any fishing there. She said when one problem was fixed, more problems could be created, and said taking the long term perspective was therefore important.

Ms. Heilbronner also said many people came down to the pond for picnics, bird-watching, etc., so there were economic considerations involved. She said the pond attracted people from beyond Durham, and said these visitors went to local businesses to purchase food, etc. She concluded by speaking about the joy of seeing the first red winged blackbird at Mill Pond in the spring.

Cindy Cooper, 41 Mill Pond Road, thanked the Council for the work they did. She said

she used paddle boats, canoes, snowshoes, and cross-country skis on Mill Pond, and said it would be nice if the Town could save this recreational area so all of these uses could continue. She suggested that Councilors should look at the tracks on the pond in winter to see how many people used it. She noted among other things that some people used the pond to get to the Foss Farm woods.

Councilor Julian Smith asked Ms. Cooper what name she would like the road to have, if the Council decided to remove the dam.

Ms. Cooper said she would not mind retaining the name “Mill Pond Road” for posterity, but said this would be sad. She also noted that when the drawdown was done, it was obvious that skating wouldn’t be possible if the dam was removed.

Sarah Wilson, 9 Cold Spring Road, said she was the Chair of the Parks and Recreation Committee, and said the Committee fully supported the Recreation proposal on the Agenda, which had been developed by Councilor Leach and Councilor Sievert. She said increasing recreational possibilities in Durham would be a benefit to the Town, and was the desire of Durham residents of all ages.

She said the goal was to enhance recreational possibilities, and said Parks and Recreation Committee needed the support of the Council to make this happen. She said the investment was pretty small, relative to the benefits. Ms. Wilson thanked the Council for considering the proposal, and said that while she could not stay for the rest of the meeting, she would be glad to answer by email questions Councilors might have.

Bill Hall, Smith Park Lane, said this was the fourth consecutive meeting he was at to speak about Mr. Johnson. He said he had spoken to others who had issues with Mr. Johnson, and he provided details on this. He said what was not in Mr. Johnson’s letter was admission or denial that he had told the State electrical inspector that Mr. Hall had done work at the house in question.

Regarding the Mill Pond issue, Mr. Hall said he had used Mill Pond for many purposes. He also said a hydropower turbine should be installed at the dam, and said the cost for this would be inconsequential if work was being done on the dam anyway. He said he could get engineering and cost/revenue details for this.

Mr. Hall asked when the Doe Farm had become conservation land, and asked what vote had been taken on this. He said when he was a Trustee, he hadn’t thought it was conservation land. He also said he didn’t think the land at Wagon Hill Farm was conservation land.

Mr. Hall recommended doing forestry on the property near the dump, as well as at some of the other properties that the Conservation Commission planned to do stewardship plans for. He said this could be done in the same way it had been done at the Doe Farm. He said it wouldn’t cost money, and in fact would make plenty of money.

Chair Niman asked Mr. Hall if he was referring to the person who owned Southeast NH Hydro.

Mr. Hall said yes, and said he could get the company's address. He said the company had tried to get a permit to do hydropower on the Wiswall Dam, but had been turned down.

Stephen Burns said he had arranged for the same company to look at the Oyster dam, but said this hadn't yet happened.

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

- A. **Resolution #2009-03** recognizing outgoing elected officials for their dedication and service to the Town of Durham:
Durham Town Council: Catherine Leach; Neil Niman; Henry Smith
Library Board of Trustees: Douglas Bencks; Sibylle Carlson
Trustees of the Trust Funds: George Frick
- B. Shall the Town Council ratify the Collective Bargaining Agreement between the Town of Durham and the Durham Police Officers Association (DPOA) by the New England Police Benevolent Association Local #21 for the period January 1, 2009 through December 31, 2011?
- C. Shall the Town Council authorize award of a bid for the purchase of a new 2008 Wausau Snogo loader-mounted snow blower from Fairfield, LLC of Skowhegan, Maine in the amount of \$79,890 as recommended by the Town Administrator?
- D. Shall the Town Council endorse a grant application for submission by the Durham Conservation Commission to the Piscataqua Region Estuaries Partnership, Community Technical Assistance Program, for development of a stewardship plan to better track, manage, and protect the ecological values of Town-owned conservation lands?
- E. Shall the Town Council approve the Special Event Permit application submitted by the Oyster River High School Friends of Oyster River Track to close certain sections of Town roads for its annual "Administrator Selig's Trot" 5K road race on Saturday, April 11, 2009?

Chair Niman said there had been requests that Items B and D be taken off the Unanimous Consent Agenda.

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

Councilor Van Asselt MOVED to ratify the Collective Bargaining Agreement between the Town of Durham and the Durham Police Officers Association (DPOA) by the New England Police Benevolent Association Local #21 for the period January 1, 2009 through December 31, 2011. Councilor Stanhope SECONDED the motion, and it PASSED 8-0-1, with Councilor Julian Smith abstaining because of a number of small problems in the agreement.

Councilor Henry Smith MOVED to endorse a grant application for submission by the Durham Conservation Commission to the Piscataqua Region Estuaries Partnership, Community Technical Assistance Program, for development of a stewardship plan to better track, manage, and protect the ecological values of Town-owned conservation lands. Councilor Sievert SECONDED the motion.

Councilor Van Asselt said he had some questions on the grant application. He said his understanding was that this dealt with ecological values, which was fine. He asked whether, once the grant was received and the plans were prepared, those people interested in public use of this land would have the opportunity to say something.

Conservation Commission member Beryl Harper noted that other Town boards had asked this same question. She said this was an application for technical assistance, and said the boards and committees should indicate what they wanted to be addressed.

There was further discussion. Councilor Leach said it needed to be articulated how people could be involved in the process. She said another question was what the outcome would be, and said if there were recommendations, a question was how they would take into account the various priorities of different groups. She said this was a question especially in regard to Wagon Hill Farm.

Ms. Harper said they were looking for collaborative work on these plans.

Councilor Leach said that was good, but said it still wasn't clear how they were all going to get there.

Councilor Henry Smith asked if this process was taking place because technical assistance was needed to manage these properties better.

Ms. Harper explained that a mandate of the Conservation Commission was to manage these properties. But she said most members of the Commission weren't technical people, and therefore needed assistance.

Councilor Needell said the Conservation Commission had been asked some blunt questions the previous year about why it wasn't doing more in terms of stewardship of Town conservation lands. He said they were now moving ahead to address this. He said what these stewardship plans would look like, and how they would be communicated were good questions.

Ms. Harper said there would be a scoping for each property, and said the issues for each property could be addressed at that time. She noted that the funding for the technical assistance program probably wouldn't be able to cover all of the four properties.

Councilor Van Asselt said the reason he had taken this off the Unanimous Consent Agenda was that he wanted to be sure there was a place for those who wanted to use the property for whatever purpose to come forward and make their argument.

Ms. Harper said there would be ample opportunities for this.

Councilor Van Asselt asked if the timber cutting issue would be looked at as part of the technical assistance being provided.

Ms. Harper said yes, but said the information that had already been collected wouldn't be duplicated. She noted that the Doe Farm already had an excellent forest management plan. She also said the stewardship plans would take into account any stewardship/management planning that had already been developed for neighboring properties.

Councilor Julian Smith commended Councilor VanAsselt for his attention to detail on this matter, but said he only wished he was more curious about other matters.

Councilor Leach advised Councilor Smith to "knock it off" and Chair Niman said he did not think that Councilor Smith's spontaneous outburst were constructive or helpful in moving through the agenda.

Councilor Smith objected to the Chair's characterization of his statement as an "outburst".

Ms. Harper said if the Town Council wished to support the grant application, it could do so.

The motion PASSED unanimously 9-0.

VIII. Committee Appointment

Shall the Town Council appoint Wayne M. Burton, 106 Madbury Road, to the Strafford Regional Planning Commission and MPO Policy Committee upon the recommendation/nomination of the Durham Planning Board?

Councilor Van Asselt MOVED to appoint Wayne M. Burton, 106 Madbury Road, to the Strafford Regional Planning Commission and MPO Policy Committee upon the recommendation/nomination of the Durham Planning Board. Councilor Stanhope SECONDD the motion.

Chair Niman said he had known Mr. Burton for 23 years, and said he would make a wonderful addition to the SRPC.

Administrator Selig agreed, and noted that Mr. Burton had been thinking about taking this position for some time.

The motion PASSED unanimously 9-0.

The Council stood in recess from 8:13-8:25 pm

IX. Presentation Items

Acknowledgement for contributions made by outgoing Town Council members

Administrator Selig passed out plaques of appreciation to Town Council Chair Niman, Councilor Leach, and Councilor Henry Smith.

X. Unfinished Business

Continued discussion of options for repairing, replacing, or removing the Oyster River Dam at Mill Pond – Councilor Julian Smith

This item was removed from the Agenda

XI. New Business

- A. **First Reading on Ordinance #2009-03** amending Chapter 153 “Vehicles & Traffic”, Section 153-34 “Schedule II: Speed Limits” of the Durham Town Code by adding two sections of Mill Road within this section and by reducing the speed limit on a section of Mill Road (from Main Street to Oyster River Road) from 30 MPH to 25 MPH

Councilor Van Asselt MOVED on first reading Ordinance #2009-03 amending Chapter 153 “Vehicles & Traffic”, Section 153-34 “Schedule II: Speed Limits” of the Durham Town Code by adding two sections of Mill Road within this section and by reducing the speed limit on a section of Mill Road (from Main Street to Oyster River Road) from 30 MPH to 25 MPH and schedules a Public Hearing for March 16, 2009. Councilor Stanhope SECONDED the motion.

Police Chief Dave Kurz said this Ordinance legalized in the Town Code what had been in place for a number of years concerning the 30 mph posting from Main Street to Woodridge Road, and also reflected the desire of the Traffic Safety Committee to reduce the speed limit to 25 mph from Main Street to Oyster River Road. He said the speed limits would be a logical progression of a reduction in speed, coming into Town.

He said there had been numerous calls that endorsed these changes, and also noted that some people had asked that the 25 mph speed limit be extended out further. But he said the Traffic Safety Committee had not discussed this.

The motion PASSED unanimously 9-0.

- B. Discussion on proposal submitted by subcommittee in support of Council goal #VIII “Expand Recreational Opportunities” – Councilor Cathy Councilor Leach

Councilor Leach said it had been a goal of the Council to look at ways to enhance recreational opportunities. She noted that when she was first on the Council, she had brought a large group of people together to work on this issue, but said this approach had not been very successful. She said more recently, the subcommittee had decided to work with smaller groups and with individuals, and then had discussed the findings among themselves.

Councilor Leach reviewed the proposals that had come out of this process:

- Provide more programming for those residents not currently served, and more community events, like Durham Day, July 4th celebration, etc.
- Management or expansion of facilities, as well as increased collaboration with facility usage
- More comprehensive and coordinated information on recreation opportunities available
- More of a vision for the Parks and Recreation Committee
- More collaborative efforts with other groups in Town, in terms of offering recreational programming

Councilor Leach said the discussion always came back to how these things could be accomplished, and who could do this. She said the next step recommended in the proposal was therefore to hire a part-time recreation director, and said the job responsibilities for this position had been included in the Council packet.

She said the Subcommittee's assessment provided details on why this could be done at the present time, and said it was hoped that the Council could move forward with this proposal, and that someone could fill the position by July 2009.

Councilor Leach said it was felt that the funding for this position could come from the contingency fund, and she noted that this idea had been considered when the contingency fund amount was developed for the 2009 Budget. She said this approach would not require increasing the Budget, so there would be no impact on taxes. She also noted that other ways to fund the position were through users fees, private and public funding, and potential grant opportunities. She said after 2009, recreation would be given the same consideration as other community needs during the Budget process.

Councilor Leach said data from the State indicated that the majority of NH towns had a recreation director, most of them full time. She noted that this data didn't include those towns that had directors as well as other recreation employees.

She stressed that if the part-time recreation director position was funded, it would not take over what other groups in Town were currently doing concerning recreation. She said these groups had been a part of the discussions, and said what was proposed would be an enhancement of what was already being offered.

Councilor Leach noted that the packet provided to Councilors included a report from 2001, when there had been a recreation director, and said the report indicated that the recreation needs at that time were strikingly similar to the needs in 2009.

Councilor Henry Smith said there were great number of references to Wagon Hill Farm and Wagon Hill Park in the plan that had been provided, and he asked if this property would be a priority if a recreation director was hired.

Councilor Leach said the Subcommittee had purposely not establish priorities for what the recreation director should do, and said it was felt that this should be left to the recreation director along with other Town staff. She said Wagon Hill was mentioned in the plan because it was a goal of the Parks and Recreation Committee to increase usage of the property. She explained that the recreation director would be able to handle some of the programming work that the Committee now did, which would leave them freer to focus on a project like Wagon Hill Farm.

Councilor Sievert spoke about the fact that the Committee had to do a lot of programming work, and said the members wanted to be able to focus on making some more substantial gains, and utilizing more properties for recreation. He noted the trails work the Committee had been involved with over the last few years, and said they wanted to take the next big step with this. He said if the Committee developed recreation programs for Wagon Hill Farm, the recreation director would work with these programs.

Councilor Henry Smith noted that if a part-time recreation director was hired, this could become a full-time position.

Councilor Julian Smith thanked Councilor Leach and Councilor Sievert for a very interesting, comprehensive, and useful document, and said he would like to make some good use of it. He noted that the 2001 Research Summary listed the Wiswall Dam and Mill Pond as resources, but said the March 2009 report did not list them anywhere as facilities that would be managed. He noted that both of these areas had dams that NHDES would like to remove. He asked if the idea of mentioning recreation opportunities on Mill Pond had been considered.

Councilor Leach said this kind of detail hadn't been provided for any areas.

There was discussion about whether the Parks and Recreation Committee had discussed recreation opportunities on Mill Pond.

Councilor Julian Smith asked if the Committee had taken cognizance of the fact that this popular recreation area could disappear or change into something quite different, if the Oyster River Dam was removed.

Councilor Sievert asked where this question was coming from, and said the recreation report was separate from the Mill Pond issue.

Councilor Julian Smith asked if the Parks and Recreation Committee would get involved in asking questions at the public information meeting on Wednesday.

Councilor Leach called a point of order, and Chair Niman said they should get back to the discussion at hand.

Councilor Van Asselt said that programmatically, it was difficult to argue that what was recommended in the report shouldn't happen, and said there was enough work in it for

four people to do. He also said a big advantage of having even a part-time recreation director was that having this kind of structure in place would help to attract other money, etc.

Councilor Van Asselt asked Public Works Director Mike Lynch how this would fit in with the work his department currently did.

Mr. Lynch said his department was 100% behind this proposal, and said it was hoped that the position would be created. He said the Public Works Department would work to make this successful, and said it would be a great thing for the Town.

There was discussion that the former recreation director reported to the Town Administrator, and that this was still in the Administrative Code.

Administrator Selig said there would be a lot of overlap in the work of the recreation director and the work of the Public Works Department.

Councilor Needell said he really liked the plan. But he said he was concerned about the idea of voting on it that evening. He said there were questions about funding the position and how to justify this budgetary item, stating that while there was no tax impact this year, after that it was not clear. He also noted that in the most recent budgetary cycle, there had been cuts in staffing costs.

Councilor Needell said he would like to give people a chance to read the report and comment on it, and said a public hearing might be appropriate and useful. He said he was not ready to vote on this, and said one question he had was what other costs besides the salary would be part of this.

There was discussion on the numbers for 2009 and 2010. There was also discussion about how things like user fees, possibly grant funding, etc., could come into play.

Councilor Needell said in addition to commenting on the plan, there should be discussion about whether to create the recreation director position now or in November when the Budget was set.

Councilor Leach said the Subcommittee had discussed this. She said it had been realized that while a full time person was needed, the part time position being recommended was a reflection of staffing and budget issues. But she said it was a really opportune time to do this because the contingency funding had been increased in order to be able to do something like this. She said progress couldn't be made unless there was a person in place to help look at user fees, grant funding, programming, etc.

Councilor Clark said this was a great report, and he spoke about his own experience in seeing how user fees could be used to make some recreation programs self sufficient. He said adult types of recreation programming were missing in Durham, and said he thought the only way this was going to happen was if there was a recreation director. He said

with this person in place, the Town could then look for things like user fees to make things self-sufficient.

Councilor Stanhope said he had lived in another town that had faced the same kind of decision, and said this had been a hotly debated subject. He said the town had subsequently decided to hire a full time recreation director. He said this person was still in that position many years later, and had been a catalyst for serving all segments of the community, with knitting classes, book groups, road races, etc.

Councilor Stanhope said he was surprised that Durham was so late in doing this. He said a part time recreation director was a good place to start, and said the cost would be small compared to the benefits of what was an integral part of any community. He also said this was an issue that had received broad consideration already, and said he hoped they had the votes to move things along now.

Councilor Julian Smith said he agreed with Councilor Stanhope, and also said he appreciated Councilor Clark's remarks. He said he supported this proposal, and said he hoped the recreation director would be a department head who reported to Administrator Selig. He also said he would like to see a recreation director who could help with such matters as organizing the kind of recreation he did, like trail work.

He said there would be a great deal of value in having a full time director, and said he thought filling this position would be as valuable as filling a police officer position. He spoke in some detail on this.

Councilor Leach said that might be a putting the cart before the horse. She also said she had contacted the Conservation Commission regarding the trail work issue, and she said a recreation director could help with trail maintenance, improvements, and advertising.

Councilor Van Asselt said in regard to Councilor Needell's questions that it was a question of priorities. He said he didn't have a problem with trying out this part-time position for \$20,000 within a Budget of \$10.5 million for 2009. He also said there was the question of what happened after that, but said at that point the Town would have had six months of experience with a recreation director. He noted that with the present economy, this was an especially good time to hire an experienced person for the part-time position.

Councilor Van Asselt said he was impressed with the efforts of the Subcommittee to speak with various groups and with members of the community on recreation issues. He said enough homework had been done on this, and said the questions from the public had therefore been answered.

Councilor Needell said he agreed with most of what had been said, and said he would like to support this proposal. But he said it was not an insignificant amount of money involved. He also said this was the first time they were talking about the recreation plan, and said he was uncomfortable with simply adopting it now.

He said what he was looking for was the opportunity for someone to perhaps come back and say what might have been missed in the report. He said he suspected the Council would hear what a wonderful idea the part-time position was, but he said some time was needed to digest this report, and said the Council owed this to the public. He said whether the Council voted on this now or two weeks from now, this wouldn't change the ability of a recreation director to do something useful.

Administrator Selig said he had seen iterations of this report over a period of months. He also said one of the justifications for increasing the contingency fund had been that there would be funding for this position. He said because of that progression, he didn't feel the discussion on the part-time recreation director position needed to be postponed to the next Budget session.

He noted that at some point prior to 2001, there had been a part time director, and said it wasn't clear what the reason for this was. He explained that in 2001, when a full time recreation director was hired, there was a turf issue, and a lack of desire to collaborate. But he said his sense was that the environment had changed dramatically since 2001, since everyone was now struggling for scarce resources and desired to do more collaboration.

Administrator Selig said they had tried to handle recreation costs effectively over the years, spending a negligible amount on it and relying on volunteers to coordinate programs. He provided details on this. But he said without a dedicated staff person to work with the volunteers, there were limitations on what could be accomplished. He said this had been difficult for the Parks and Recreation Committee, and said a key issue had been that there was not a lot of recreational opportunities available for adults in Durham beyond passive recreation.

He said a survey was done by the Parks and Recreation Committee a few years back, and said the Committee had hoped that in it there would be an outcry about the need for new recreational programming. He said they instead had gotten back ambivalence over spending new money, and had also learned that residents generally didn't know about the recreational resources such as trails and open space that were already available.

Administrator Selig said the Committee would benefit from having a professional involved, and said the Town would be best served by having a part-time position. He said there wasn't currently enough work to keep this person busy full time, and also said the budgetary will wasn't there right now to fund a full-time position.

He said a part-time person could work with the Parks and Recreation Committee to build things from a grassroots point of view, and he said once this happened, people would see much more value in the work being done, and the value of a full-time position. He said they would work to absorb this in the Budget.

Administrator Selig said the idea of replacing a police officer position with a full time

recreation director position wasn't the right approach. He noted that they had dropped down one officer in the most recent budget cycle, but said he could argue that many more officers were needed. He said it was unfair to pit these issues against one another.

He said it was time to re-prioritize, and to put some effort behind providing recreational opportunities for all age groups, and focusing on well-rounded community offerings. He said it wasn't known what effect the State's fiscal problems would have on the local community, including staffing. He said they could in good conscience make a decision now on recreation, and could revisit this issue and others later if necessary.

Administrator Selig encouraged the Council to keep in mind that he would have to explain to non-unionized employees who hadn't gotten pay increases for 2009 why the Council wanted to put new money into this new endeavor. He said it would be important to acknowledge that while these employees didn't receive a raise this year, this would be revisited if new moneys became available.

He noted that the Public Works Department did a great deal more than many other public works departments did, and he said hiring a part-time person would provide assistance to that department. He agreed with Councilor Van Asselt that it was an opportune time to find a part-time person, involving hourly pay and no benefits.

He also said that every \$20,000 counted, and said he wanted to make sure this position was something that would really be valued. He said he thought there should be a part-time recreation director for at least the next year to year and half in order to see how it played out, and said without this time commitment, they probably wouldn't find the right person.

Councilor Stanhope MOVED to adopt the plan and its recommendations. Councilor Leach SECONDED the motion

Councilor Henry Smith said this was a good plan, and said he was in favor of it. But he said the idea of adopting it that evening gave him pause. He noted the budgetary decisions that had been made for 2009, and said this needed a lot of discussion and thought. He said a public hearing was a good idea, and said he would like to hear more from the public before adopting this.

Councilor Clark asked if there was a procedure for having a public input session on this. He said he didn't see that there was a problem in putting this off, and said he assumed that most of the comments at a public hearing would be positive.

Councilor Leach said she didn't think the public hearing was necessary according to the Charter, and she noted that the money was already in the Budget for it.

Chair Niman said if a Councilor didn't feel comfortable voting on this that evening, a motion needed to be made to table this. He said if that motion succeeded, he assumed there would be a public forum or hearing at the next Council meeting.

He said that having been on the Council for the past several years, he knew that there had been a lot of discussion on recreation, and also knew that a lot of people in Durham would like the Town to expand recreational opportunities. He said he therefore felt fairly comfortable about moving forward with this. He said he would like to do more to support recreation in Town.

Councilor Leach said they could easily get a room full of people who wanted the Council to support this.

Councilor Needell MOVED to postpone action on this, pending a public hearing at the Council's next meeting. Councilor Julian Smith SECONDED the motion.

Councilor Henry Smith said Councilor Leach might be right that people would say yes, and said that would be important to hear.

Councilor Van Asselt said they didn't need a public hearing. He said this had been a Council goal for three years, and he asked how much more they needed to see. He said the issue had been worked on by a subcommittee in order to meet a Council goal, and he said they should get on with the program.

Councilor Needell said his only reason for asking for the public hearing was that the plan had been unknown to the public until that evening. He said it seemed that if the Town was going to make a long-term commitment to recreation, which he supported, it made sense to give people a chance to comment. He said he fully expected to hear positive things, and also said he personally had to work through the dilemmas of the funding.

Councilor Leach said this proposal had been provided to several Town groups, two times.

Councilor Stanhope MOVED the question.

Administrator Selig said an alternative was to get input from the public without a public hearing. He said people could be invited to provide written feedback, which would allow more time for people to think about it.

Councilor Clark said he didn't need more information in order to support this, but said the only issue was fostering good will, if people had the chance to weigh in. He said he liked the idea Administrator Selig had suggested.

Councilor Henry Smith said he didn't feel that it would be a waste of time to allow a public hearing. He said he and the wider public hadn't seen this report previously.

The motion FAILED 3-6, with Councilor Needell, Councilor Henry Smith and Councilor Julian Smith voting in favor of it.

Councilor Clark asked if what Administrator Selig had suggested could be done in order to get input from the public.

Councilor Sievert said there had been a public hearing when the Council developed its goals.

Councilor Needell said nothing was said at that time about hiring a recreation director.

There was further discussion about whether a public hearing was required.

Councilor Julian Smith said he supported the recommendations of the report in principle, but would vote against this motion. He said he hoped the Town would eventually have a part-time and then a full-time recreation director, but said he was against going forward with this right now.

Councilor Henry Smith said he was in favor of the plan, but couldn't vote for it that evening.

Chair Niman agreed that it was important to be transparent, but said that occasionally one had to show some leadership and take a positive step forward. He said recreation was something that was important to him and to the Town.

Councilor Needell said he would like to vote for this. He said he would abstain from the vote, because he felt he didn't have sufficient information.

The motion to postpone action PASSED 6-2-1, with Councilor Henry Smith and Councilor Julian Smith voting against it, and Councilor Needell abstaining.

Councilor Stanhope left the meeting at 9:32 pm.

C. Other business

XII. Nonpublic Session (if required)

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

Councilor Needell noted that during Public Comments, several comments had been made about communications concerning the Oyster River Dam. He said prior to the Council discussion on this issue, he would like to have a chronology of the official communications from the Town and NHDES regarding the dam. He also asked if the intent after the March 4th presentation was for the Council to set up a timetable for discussion on this issue and how to deal with it.

Administrator Selig said he would like to bring this to the Council when he was ready to do so. He said it might take some time to put information together that would be helpful for the Council.

Councilor Needell said he would still like to see a meeting as soon as possible to lay the groundwork for this.

Administrator Selig noted that the Oyster River Dam was one of many issues the Public Works Department was dealing with. He said things could have been handled more simply by having Stevens Associates come in with their report, but said the thought had been that a more comprehensive view of the facts should be presented with the forum that was planned for March 4th.

Councilor Needell said the information on the administrative order as well as its status was a concern, and said he was trying to understand the timeline and the urgency of it.

Administrator Selig said his understanding was that the Town would have the time it needed to come to a determination on how it wanted to proceed. He asked Mr. Lynch to speak on this.

Mr. Lynch spoke about the fact that there had been an administrative order concerning the Wiswall Dam, but nobody was demanding that it be repaired tomorrow. He noted that the NHDES Dam Bureau had put the whole thing on hold while there was discussion on the fish ladder/fish way ideas.

Councilor Needell said there were a confused set of communications on this issue, and said the Council should move quickly to address what might or might not be a big issue.

Councilor Sievert said he had worked with the Dam Bureau, and said this issue had been blown out of proportion. He said there would not be a deadline put in place the day after the March 4th meeting and said that wasn't how the Dam Bureau operated. He also said he thought the results of the discussion on March 4th would be great.

Councilor Julian Smith said at the presentation on Wednesday, questions could be asked of the Dam Bureau. He said he got the impression from what Grace Levergood and others at NHDES had said that the agency was running out of patience. He said the draft administrative order provided a deadline of the last day of December, 2009, and he said Ms. Levergood had said it would be a matter of months, not years. He said there was the possibility that the Town's hand would be forced if a decision wasn't made soon.

Administrator Selig asked Councilor Julian Smith if he would like the Council to say that the preliminary report was interesting, but that the Town was committed to rehabilitating the dam. He said what the Public Works Department was trying to move forward was information gathered to date, and information those interested in the various issues wanted to convey. He said it might or might not turn out to be a balanced presentation, but he said they were trying to educate and inform those interested in this issue. He said he didn't know if Councilor Julian Smith's approach was helpful, and said he didn't know where he was coming from.

Councilor Julian Smith noted that at the December 15, 2008 Council meeting Administrator Selig had said he wanted feedback from the Council. He asked how many Councilors had actually read the Stevens Associates report. Several indicated they had.

Councilor Leach MOVED to adjourn. Councilor VanAsselt SECONDED the motion, and it FAILED 2-6, with Councilor Van Asselt and Councilor Leach voting in favor of it.

On another matter, Councilor Needell said that at a recent Planning Board meeting, Eric Chinburg had spoken with the Board. Councilor Needell asked what the status was of the Purchase and Sales Agreement with Chinburg Builders for the Durham Business Park.

Administrator Selig said this agreement had been put in place two years ago, was extended last March, and ran out in March of 2009. He said Chinburg Builders had expressed interest in doing a residential development that would require a Zoning change of some kind. He said a question was whether it would make sense to put out a new RFP for this, since the earlier one was predicated on developing the Business Park per the Zoning Ordinance.

He said he felt the Town should do this, and said a question was then whether the existing agreement should be renewed before the Zoning Ordinance issue was talked through. He said his preference was to renew the agreement for an extended period of time, in the hope that Chinburg Builders would continue to try to market the property as a Business Park. He said during that time, rezoning ideas could be looked at, and suggestions on this from Chinburg could be provided. He said if the Zoning Ordinance was in fact changed, a new RFP would be needed.

Councilor Needell said he hoped this wouldn't come before the Council at a meeting where it had to be decided on then. He said there needed to be enough time allowed to discuss it.

Administrator Selig said it would be helpful to get some feedback from the Council on the purchase and sales agreement issue that evening.

Councilor Clark said that over the long-term, he believed there would be a demand for some kind of business park or incubator space, and said the Council had to be careful not to make a short term decision on the site based on the present economy. He said considerable analysis would be needed to see what the long term potential of the property was, while recognizing that it had been sitting there for some time.

Chair Niman said he had watched the Planning Board meeting that Mr. Chinburg had attended, and said he had made some compelling arguments about why the property wouldn't be developed commercially in the near future. He said what Mr. Chinburg was suggesting with the residential concept was something that tied into the idea of Durham as a sustainable community, using the Business Park as a test case, with the thought that this could perhaps happen in other parts of Durham and New England. He noted that there was a lot of interest at UNH in doing a community like this.

He spoke about the potential for retail uses at the Business Park, and of possible rezoning

there that would allow the creation of a commercial hub along with the residential development, and would connect recreation, restaurants and other commercial development with the sustainable living model.

Chair Niman said there could be positive social benefits from this without giving up much of the economic potential of the property. He said this could be a really attractive proposition, and said he would like to explore these ideas further. He said he was reluctant in terms of renewing the existing Purchase and Sales agreement, noting the lower cost of commercial space in nearby towns. But he said it would be nice to hear from Chinburg Builders to see if something forward looking could be done on the property.

Councilor Clark said he was in favor of a comprehensive, mixed use vision for the property, but said he wouldn't want to see just residential development there.

Councilor Needell said this might be a good test for the PUD approach, and also said it would take some time to put things in place. He said Chinburg Builders had already put money into the property, but said the idea of changing the entire scope of the development and turning it over to one person concerned him. He said there needed to be some discussion on this, and said he didn't see why Chinburg would care about extending the agreement, and also didn't see what the Town would get out of this.

Chair Niman asked what the status was of the draft PUD ordinance, and there was discussion. Councilor Clark said he didn't think a tremendous amount of progress had been made on it.

Councilor Julian Smith said he had been puzzled a few years back, when the TIF was developed, that the Council hadn't wanted to include the Business Park in it. He said he had suggested to Steve Schuster several months ago that it might make sense for the Town to extend Old Piscataqua Road over to the Business Park, something which NHDOT preferred that the Town do. He noted that the Town as well as the University owned a considerable amount of the land on either side of the road.

Councilor Smith said there would be advantages to rezoning the area and adopting PUD or some other kind of mixed use ordinance. He said there were a lot of opportunities at the Business Park, but said this would take awhile. He said Mr. Chinburg was worked hard on ideas for developing the property, and would need some reasonable expectation that the Council, the Planning Board, and the EDC would be willing to pursue them. Chair Niman noted that the TIF could be amended at any time to include the Business Park.

Councilor Leach asked what the Planning Board had done so far concerning the ideas Chinburg Builders had presented regarding the Business Park property.

Councilor Needell said the Board had said the next step was to see what the Council thought about extending the Purchase and Sales Agreement.

XIV. Adjourn (NLT 10:30 PM)

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

Adjournment at 10:00 pm

Victoria Parmele, Minutes taker