

**This set of minutes was approved at the Town Council meeting on April 20, 2009**

**Durham Town Council  
Monday March 16, 2009  
Durham Town Hall - Council Chambers  
MINUTES**

**MEMBERS PRESENT:** Chair Neil Niman; Councilor Jerry Needell; Councilor Karl Van Asselt; Councilor Julian Smith; Councilor Mike Sievert; Councilor Peter Stanhope; Councilor Doug Clark; Councilor Diana Carroll; Councilor Robin Mower

**MEMBERS ABSENT:** None

**OTHERS PRESENT:** Town Administrator Todd Selig; Town Engineer Dave Cedarholm; Town Planner Jim Campbell; MIS Manager Luke Vincent; Director of Public Works Mike Lynch; Police Chief David Kurz

**I. Call to Order**

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

**II. Approval of Agenda**

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

Administrator Selig noted that firefighter Peter Henny was away, so the employee service recognition for him would be rescheduled. He also said \$1,350 had not been included in Resolution #2009-06, under Agenda Item XII, and said this additional amount would be acknowledged.

*The motion PASSED unanimously 9-0.*

**III. Swearing-in of Council Members**

Town Clerk Lorrie Pitt swore in re-elected Councilor Neil Niman and new Councilors Diana Carroll and Robin Mower.

**IV. Selection of Council Chair and Chair Pro Tem**

Councilor Needell noted that the Town Charter required that a majority of Councilors vote to approve the appointment of the Council Chair. He suggested that those Councilors interested in and willing to serve as Chair state this, and Councilors could then have a discussion about who they wished to support. He said they could go through the list of names, and if one of these Councilors got five votes, this person would become the Chair.

Chair Niman said that was fine with him. He then said he would like to serve as Chair for another year.

Councilor Needell said he would be willing to serve as Chair.

Councilor Carroll said she too would be willing to serve as Chair.

Councilor Needell said he had put his own name forward because for several years, he had commented on his own interpretation of the role of the Council Chair. He said he felt it would therefore be hypocritical to not offer to serve in that position. He said he would see his role as Chair to run meetings, and said this would be his intent if he became Chair.

Councilor Carroll noted that she had previously been on the Council for three years, and during that time had served as Chair pro tem for two years and had served as Chair for several meetings. She said she felt she could make a contribution to the Council as Chair, and would be happy to serve in that role.

Councilor Mower said it was an interesting moment in time for the Council, and said she hoped that the outcome of the election might be reflected in the choice of the Chair and Chair pro tem.

After discussion on the process to be followed in choosing the Councilor Chair, it was agreed that one name would be brought forward at a time, and that one of the Councilors who had stepped forward would need to get at least five votes in order to become Chair. It was agreed that Councilors could vote for more than one person as Chair.

***Councilor Stanhope MOVED to appoint Councilor Neil Niman as Chair of the Council. Councilor Sievert SECONDED the motion, and it PASSED 5-4, with Councilor Needell, Councilor Smith, Councilor Carroll, and Councilor Mower voting against it.***

Councilor Van Asselt volunteered to serve as Chair pro-tem.

Councilor Smith recommended that Councilor Carroll be appointed as Chair pro-tem.

Councilor Needell said he heartily endorsed Councilor Carroll as Chair pro-tem, noting that she had served in that capacity before, and had shown herself to be open-minded and fair about bringing forth issues to the Council and giving them a proper hearing.

Chair Niman said he would support Councilor Van Asselt as Chair pro-tem. He said it had been a great honor working with Councilor Leach, and said Councilor Van Asselt shared many of her characteristics.

Councilor Julian Smith said Councilor Carroll would provide balance as Chair pro-

tem, and said he had liked the process when she had served in this capacity previously. He also said she had done a good job running Council meetings when needed.

Councilor Mower said she supported Councilor Carroll as Chair pro-tem, stating that Councilor Carroll was very interested and respectful in terms of hearing from the public.

***Councilor Smith MOVED to appoint Councilor Diana Carroll as Chair pro-tem of the Town Council. Councilor Robin Mower SECONDED the motion, and it FAILED 4-5, with Councilor Sievert, Councilor Niman, Councilor Van Asselt, Councilor Stanhope, and Councilor Clark voting against it.***

***Councilor Stanhope MOVED to appoint Councilor Karl Van Asselt as Chair pro-tem of the Town Council. Councilor Clark SECONDED the motion, and it PASSED 5-4, with Councilor Smith, Councilor Needell, Councilor Mower, and Councilor Carroll voting against it.***

## **V. Special Announcements**

Chair Niman presented Ray LaRoche with a plaque for his 20 years of dedicated service to the Town as an employee of the Department of Public Works. Chair Niman read through the numerous and varied kinds of work Mr. LaRoche had done for the Town over the years.

## **VI. Approval of Minutes**

January 12, 2009

***Councilor Van Asselt MOVED to approve the January 12, 2009 Minutes as presented. Councilor Needell SECONDED the motion, and it PASSED 7-0-2, with Councilor Carroll and Councilor Mower abstaining because they were not on the Council at the time of the meeting.***

February 16, 2009

***Councilor Van Asselt MOVED to approve the February 16, 2009 Minutes as presented. Councilor Sievert SECONDED the motion, and it PASSED 7-0-2, with Councilor Carroll and Councilor Mower abstaining because they were not on the Council at the time of the meeting.***

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

Councilor Clark said there had been an Energy Committee meeting that day, and said the Committee was making progress on the Energy Chapter of the Master Plan. He noted that Administrator Selig had been at the meeting. He said the Committee was at the point where it needed help in getting a plan crafted that was an appropriated representation of energy related opportunities in Durham.

Administrator Selig said Town staff was working on getting this assistance for the Energy Committee.

Councilor Mower thanked voters for electing her as a Town Councilor, and said she looked forward to working with the Council, and working for the good of the Town.

Councilor Carroll thanked the voters as well. She noted that revitalization of the downtown was something that all Councilors agreed on. She said as part of this, it was important for Durham residents to take their dollars and spend them downtown now, in order to help revitalize that area. She said the small independent businesses there were relying on residents to purchase from them.

Councilor Smith noted that this was the fifth Council on which he had served, and was the first Council on which he had been the only Smith. He also said it was his 45<sup>th</sup> wedding anniversary.

Administrator Selig said there had been a Council work session prior to the meeting that evening, to make sure new Council members were clear on the basics of serving on the Town Council.

Administrator Selig said he, Public Works Director Mike Lynch and Town Planner Jim Campbell had met that morning with staff at Strafford Regional Planning Commission regarding Stimulus Package funds. He said Durham had a good chance of getting \$400,000 for 100% of the Town's share of the Wiswall Bridge project. He said this was great news, and said Town staff would push to get these and other Stimulus funds as they became available.

He said Energy Committee members would be submitting a grant proposal to try to get funding through the Greenhouse Gas Emission Reduction fund.

Administrator Selig said there had been a meeting on Friday regarding resident Dennis Meadow's initiative to develop a community garden in Durham.

Administrator Selig said that under his own authority, the Town would be moving ahead with a pilot program for the community garden, which would most likely be developed at the Wagon Hill Farm property. He said 5-10 garden plots would be developed as part of this effort. He said residents could contact Mr. Meadows if they needed more information on the project.

Administrator Selig said the Trust for Public Lands had approached him regarding the idea of getting possible funding for purchase of the rear acreage of the Tecce property and the Farrell property. He said the deadline for the grant was Friday, but said he wasn't comfortable moving this forward on his own authority. He said it was a project that potentially had some merit, and suggested that it be targeted with for the 2010 grant round. He provided some details on some possible benefits to the Town from such a project.

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

**Henry Brackett, Lee**, made note of the fact that he was a newly elected member of the School Board, and he thanked those citizens of Durham who had voted for him. He said they all had to face the reality that these were tough times, and that there were some hard decisions that had to be made. He said he was very open minded, and would work hard to be receptive to all viewpoints and to make good decisions.

Mr. Brackett said his three main goals on the School Board were to provide transparency, within the guideline of the State; to promote open communications between the School Board and residents; and to ensure that the School Board and the Administration were accountable.

**Roger Speidell, Noble K. Peterson Drive**, said this was his last Council meeting, and he thanked members of the Council for their interest, patience, and support, in listening to him share information about the School Board over the past year or more. He said that on March 10<sup>th</sup>, the good guys had won.

**James Houle, 95 Mill Road**, said he had attended the preliminary meeting and the March 4<sup>th</sup> meeting concerning the future of the Oyster River Dam and Mill Pond. He said the second meeting was an information gathering session, and had not been billed as a referendum on the fate of the dam, but he said this was how the Council Communication had characterized the meeting.

He said there were many questions that were presented at the March 4<sup>th</sup> meeting that were not represented in the Council Communication, and said he wondered where these questions had gone. He said if the intention was to hold a referendum, the meeting should have been advertised as such. Mr. Houle suggested that perhaps a ballot initiative would be a truer reflection of the true intention of the Town and the taxpayers.

He said it was still unclear after the meeting whether the direct cost comparison between the range of options was available. He said there had been little discussion of funding available to the Town to diminish the burden on the taxpayers. He asked if the Council was prepared to hand the taxpayers a bill of this size that evening, without a formal or factual exploration of all the options available. He said it was hard to believe the Council would allocate funds and burden future generations with maintenance expenses without sufficient information.

He asked if the Council could responsibly recommend expenditures of this magnitude for a structure that provided no water supply benefits, when there was currently a need for an updated and more adequate drinking water supply infrastructure. He asked for an honest exchange of facts and a systematic decision-making process, once all the information that was needed was collected.

Mr. Houle also said he had preliminary comments concerning the recently released Instream Flow Report. He said what could be seen in the Town's response was a pretty thorough rebuttal of the science that was used, but he said there weren't any recommendations on what "good science" should be used instead. He said it would have been beneficial if an alternative had been offered to what was proposed.

He said that as a concerned citizen who drank the water in Durham, he saw the exploration of this issue as an opportunity to work with the State to develop other resources regarding drinking water. He also said this was an issue where cooperation was needed, noting that there were municipalities upstream who discharged their wastes into the Lamprey River.

**Steven Burns, 10 Newmarket Road**, said he had been worried about what he had perceived as an unbalanced representation at the March 4<sup>th</sup> Oyster River Dam meeting by professionals who advocated removal of the dam. But he said the roster for the meeting had indicated that this wasn't in fact the case.

Mr. Burns spoke in some detail about the potential for hydropower at the dam, and said he had done research on this in the past. He said he had extracted some information on a turbine that didn't damage the fish and also aerated the water while providing hydropower. He noted that he had learned at the March 4<sup>th</sup> that management of the Mill Pond ecosystem was needed in order help the fish population.

Ms. Mower asked if the hydropower information Mr. Burns had spoken about had been provided to the Energy Committee.

Mr. Burns said he would be happy to provide information on the firms that did hydropower projects, and said there was a lot of information available on this subject.

**Andrea Bodo, 20 Newmarket Road**, thanked Mr. Cedarholm for inviting her to speak at the March 4<sup>th</sup> public information meeting, and said it had been a good meeting, with a lot of good information provided on all sides of the issue. She provided some history on the Oyster River Dam, and said the dam and Mill Pond defined Durham. She noted that the Durham Heritage Commission had met and had endorsed the nomination of the dam to the National Register of Historic Places. She said she hoped this would open up some funding from the State.

**Bill Hall, Smith Park Lane**, said resident Richard Kelley was the right person at the right time to be appointed to the Water Management Planning Area Advisory Committee, stating that Mr. Kelley looked for technical information to support his positions. Mr. Hall also said Durham had found its second source of water, which was the Lamprey River, and he provided details on this.

Mr. Hall then noted that this was the fifth Council meeting where he was present to discuss his dissatisfaction with Code Administrator/Enforcement Officer Tom Johnson. He said he had been told that no action was being taken by the State licensing board, but said that wasn't the issue. He said there was no provision that said work he had done according to the electrical code in force at the time later had to be brought up to the standards of the new code. He spoke in further detail about his dissatisfaction with the way the Town had handled this issue.

**Duane Hyde, Emerson Road**, said he was present on behalf of the Conservation Commission in regard to the future of the Oyster River Dam at Mill Pond. He then

read a memo from the Conservation Commission regarding this issue.

Mr. Hyde said that at its March 12<sup>th</sup> meeting, the Conservation Commission had discussed the Oyster River Dam. He said the Commission did not focus on whether the dam should be repaired or removed, and instead focused on the lack of adequate information to make an informed decision on the two options which were on the Town Council's agenda.

He said the Commission's membership currently appeared to have a variety of personal opinions as to whether the dam should be removed or replaced, but said the Commission unanimously endorsed a recommendation to the Town Council that the Council pursue a more detailed analysis and study that examined the scientific, ecological, social, historic and financial issues associated with dam removal and dam repair.

Mr. Hyde said what was clear from the public forum was that there were a lot of unanswered questions in pursuing either option. He said without pursuing the answers to these questions, the Town would be making a decision prematurely and with inadequate information. He said a lot of good questions had been asked, and asked why anyone would not want to get the answers before proceeding.

He said even if after the study was completed the Town decided that for whatever reason repairing the dam made the most sense for Durham, the results of the study would hopefully help in providing better management of the impoundment for improved water quality and habitat values.

Mr. Hyde said the New Hampshire Coastal Program has generously offered funding to assist in this analysis, with the only caveat that the Town keep an open mind and seriously consider dam removal as an option. Mr. Hyde said he had confirmed this sentiment in a phone conversation with Ted Diers from the NH Coastal Program on March 13<sup>th</sup>.

He said if the Council was not interested in pursuing a full feasibility study and instead had a narrower set of questions it would like to have answered, he believed that the Coastal Program might be willing to provide funding for something less than a full feasibility study. But he said this funding would come with a caveat that the Town has an open mind that provides serious consideration to not only dam repair, but also dam removal.

Mr. Hyde said the Conservation Commission was not recommending that the Town pursue "analysis paralysis." He said the Commission believed that the outcome of thorough examination of the options would result in a better and more informed decision, no matter which option was chosen.

**Nick Isaak, 35 Oyster River Road**, noted that he was the current Chair of the Durham Historic District and Heritage Commission (DHDHC), and said the Commission had met the previous Thursday, March 5<sup>th</sup> and discussed its role in the

discussion surrounding the Oyster River Dam at the Mill Pond.

Mr. Isaak said the Commission had prepared the following statement for the record: “The Durham Historic District Commission and Heritage Commission respectfully submit to the Town Council its full and unwavering support for repair and restoration of the Oyster River Dam at the Mill Pond. It is the position of the HDC / HC that the dam is a *bona fide* historic structure and landmark, as well as an emblematic monument to the history of the town of Durham and the New Hampshire Seacoast.”

**Kevin Gardner, One Stevens Way**, said a decision on the future of the Oyster River Dam and Mill Pond seemed like it was being made much too early, without sufficient information about any of the options available. He said a lot more input and consideration was needed. Mr. Gardner said there was a false choice between historical preservation and dam removal, and said the dam could be notched, partially removed, etc. while still being retained for historical purposes.

He said it was important to consider the ecosystem benefits associated with removal of the dam. He said a serious environmental injustice had been done many years ago when the dam was constructed, but said on the other hand, the dam had preserved a lot of really nice open space, which could be preserved if the dam was removed. He said there were ecosystem benefits in this area that needed to be characterized, including a fishery and an estimated 5 square miles of riparian habitat upstream.

Mr. Gardner noted that he was the Chair of the Energy Committee, and said there was a pretty small amount of hydropower energy that could be obtained from the dam. He provided details on this, and said if someone wanted to tap the dam for energy, perhaps the Town could sell it for a dollar.

He said he could envision restored riparian habitat where the existing Mill Pond now was, along with a restored stream, walking trails and bike pathways. He said this could go for miles upstream and could also connect to the downtown area. He said this option should be considered along with the option to retain the dam.

As a result of questioning from Councilor Smith, there was discussion on the actual extent of riparian habitat available upstream from the dam. Councilor Smith said he doubted that there were 5 square miles. He said during a 100 year flood, the Lamprey River did come into the Oyster River basin, but said that otherwise, Hamel Brook upstream of the Oyster River was less than a mile long.

Councilor Sievert noted that three residents had now said there wasn't enough information yet on these issues, so the Council shouldn't act on it. He said this was exactly what some Councilors had previously been saying.

**Former Councilor Henry Smith** said he wanted to congratulate Councilors Carroll, Mower, and Niman for being elected to the Council. He then said this was an opportune moment for the Council to reverse the trend he had seen over the past few years on the Council. He said they should choose the route of impartiality, civility and mutual respect, and said if they did so, citizens would take notice and would be



grateful for these efforts.

He urged Councilors to fire up the better angels of their nature, for the long term well being of the Town.

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

- A. **RESOLUTION #2009-04** establishing regular Town Council meeting dates for April 2009 through March 2010
- B. **RESOLUTION #2009-05** authorizing the acceptance of private donations and unanticipated revenues received by the Town of Durham between January 1 and December 31, 2008

Councilor Needell asked that Item IX A be removed from the Unanimous Consent Agenda.

*Councilor Van Asselt MOVED to adopt Unanimous Consent Agenda Item IX B, and to include the additional \$1,350 donation received from Anonymous. Councilor Clark SECONDED the motion, and it PASSED unanimously 9-0.*

Regarding Item IX A, Councilor Needell noted that there were five Mondays in August, and said it therefore might make sense to shift the Council meetings that month from August 3<sup>rd</sup> and August 17<sup>th</sup> to August 10<sup>th</sup> and August 24<sup>th</sup>. He said otherwise, there would be almost a month between meetings. He also noted that he would not be able to attend a meeting on August 3<sup>rd</sup>.

Councilor Van Asselt said he agreed with shifting the August 17<sup>th</sup> date to August 24<sup>th</sup>.

*Councilor Needell MOVED to adopt Unanimous Consent Agenda Item IX A, with the change of shifting the Town Council meeting for August 17<sup>th</sup> to August 24<sup>th</sup>. Councilor Van Asselt SECONDED the motion, and it PASSED unanimously 9-0.*

**X. Committee Appointments**

- A. Shall the Town Council nominate Richard Kelley, 47 Stagecoach Road, for appointment by the Governor and approval by the Executive Council to the Water Management Planning Area (WMPA) Advisory Committee?

*Councilor Smith MOVED to recommend Richard Kelley, a Durham resident and member of the Durham Planning Board, for nomination by the Commissioner of The Department of Environmental Services in consultation with the Rivers Management Advisory Committee for appointment by the Governor and approval by the Executive Council as a “government official representative” to the Water Management Planning Area (WMPA) Advisory Committee. Councilor Stanhope SECONDED the motion.*

Administrator Selig said he strongly endorsed this recommendation, stating that Mr. Kelley followed the issues, was a member of the Planning Board, and was

professionally suited for the position. He said he would make a great addition to the Committee and would represent the Town's water users as well as the ecosystem.

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

- B. Shall the Town Council appoint Charles (Chuck) Cressy, 578 Bay Road, as an alternate member to the Economic Development Committee?

***Councilor Van Asselt MOVED to appoint Charles (Chuck) Cressy, 578 Bay Road, as an alternate member to the Durham Economic Development Committee, with said term to expire on April 30, 2012. Councilor Smith SECONDED the motion, and it PASSED unanimously 9-0.***

Councilor Carroll said Mr. Cressy had done much for the Town of Durham, and she thanked him for this. She said one of the things he had recently done was to redefine Durham in the summer, with the opening of the ice cream stand at Durham Marketplace. She said it was good to see him step up forward to join the EDC.

There was brief discussion about the fact that residents nominated to serve on non-statutory boards were no longer asked to come before the Council on the evening of the appointment process.

## **XI. Presentation Item**

Receive update on the draft Lamprey River Protected Instream Flow Report – David Cedarholm, Town Engineer

Town Engineer Dave Cedarholm reviewed the Memo developed for the Council on the Town and the University of New Hampshire's formal response to the NHDES's Instream Flow Report. He first noted Mr. Houle's comment that the response did not provide any solutions to the problems that were found in the report.

Mr. Cedarholm said what the letter to NHDES had done was to support the Instream Flow Study process, but he said it also said that water supply issues needed to be revisited. He then reviewed points 1a and 1b in the memo to the Council, which summarized comments made to NHDES:

- a. Public water supplies are considered an "instream public use" in addition to the flora and fauna, but the Study dismissed public water supplies as "opportunistic".
- b. Durham's drinking water supply is "a resources for which the river is designated", by being described in the original 1990 Lamprey River designation under the NH River Management and Protection Program (under RSA 483).

Mr. Cedarholm said the Instream Flow Study had dismissed the water supply issue when it established baseline conditions that weren't realistic and ignored the Wiswall Reservoir. He noted that these baseline hydrologic conditions represented a pre-colonial river without human impact, and excluded impoundments. He also said the baseline fish community represented a target or "expected" fish community that the researchers believed should have existed in pre-colonial times.

Mr. Cedarholm next said the timeline for establishing the proposed instream flows was completely unrealistic, because it didn't give NHDES any time to respond to any of the questions and comments posed by the Town and the University, or to develop a management plan for the River. He noted that the Souhegan River Instream Flow Rules had been adopted, but the management plan for that river hadn't even been started yet.

Mr. Cedarholm said that in developing the Town's response, he had worked closely with attorney Dana Bisbee, who had been an attorney at NHDES when the Instream Flow Rules were established.

Chair Niman said Mr. Cedarholm had done a good job on the response to the Instream Flow Report.

Councilor Smith agreed, and then asked if at the heart of the study, there was the beginning of a process of encouraging the removal of the Wiswall and the MacAllen dams.

Mr. Cedarholm said that from the point of view of the wildlife and fish community, removing the dams would create a more desirable habitat.

Councilor Needell said he appreciated Mr. Cedarholm's comments about the timeline. He then said it was not clear what the expectation was in terms of what NHDES would do with the comments in the Town's letter, and whether it was thought that the study could be revised to incorporate the comments. He also asked whether the management plan would be developed only by NHDES or if the community would also be involved, and in addition asked if this plan would be imposed on the community.

Mr. Cedarholm said these were great questions, and said he anticipated that NHDES would ignore the comments and would adopt the proposed instream flows. But he said the document would stand as having raised some questions, and he said this was something that should have been done more, in regard to the 401 certificate.

He said the Town and the University were supposed to be involved with the development of the water management plan, but said it was not clear how this process would work. He said he, Public Works Director Mike Lynch and Richard Kelley were on the committee involved with developing the plan.

Councilor Clark said he wished the deadline wasn't so close, and asked what else the Town could do to raise its voice.

Mr. Cedarholm said the Town had raised some serious questions. He said this deadline didn't have to happen, and said he would continue to pound the table to try to get the attention of higher up officials at NHDES to try to make sure that this process was done with some common sense. He noted that this was a pilot study, and said if local people didn't buy into it, it would be a complete flop. He provided details on this.

He said that in general, this was an important study, and said it was important not to destroy the habitat of the river. But he said the cutoff for instream flows had to be more realistic. He said he had asked at the hearing whether there was a problem with the Lamprey River, and was told no. Mr. Cedarholm said if there wasn't a problem, there shouldn't be a need for the Town to correct anything, or to change its practices dramatically.

In answer to a question from Councilor Clark as to whether the Town could say no to NHDES, Mr. Cedarholm said potentially, but said once in place, the Instream Flow rules would be the law, and he provided details on this. There was discussion that the rules and the water management plan would replace the 401 certificate currently in place.

Councilor Mower asked Mr. Cedarholm if he had spoken with any of the upstream water users.

Mr. Cedarholm said there had been discussion with Raymond, Epping, and Newmarket, and noted that there were letters to NHDES from Newmarket and Raymond. In response to comments from Councilor Smith concerning whether Newmarket was thinking of taking water from the impoundment, Mr. Cedarholm said Newmarket was only looking to do so in the Spring, as part of an artificial groundwater recharge process.

He said this raised the question of whether the instream flows that were proposed were for all four seasons of the year. He said there could be competing interests if the Town of Durham was looking to do artificial groundwater recharge in the winter.

## **XII. Unfinished Business**

- A. **PUBLIC HEARING AND ACTION 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 to open the public hearing 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 Sievert SECONDED the motion, and it PASSED unanimously 9-0.*

**Malin Clyde, 51 Mill Road**, said she supported this rule change, stating that it made a lot of sense because a lot of people drove fast in that area.

Administrator Selig said he had received several emails in support of this Ordinance.

Councilor Needell noted the letter Councilors had received from resident Eric Lund

asking why there were no crosswalks at Academic Way or Faculty Road, and how one would go about requesting that they be considered.

Chief Kurz said there was no process per se for this, but said the Traffic Safety Committee could talk about the idea if it was raised.

Councilor Needell asked that emails on this idea be forwarded to the Traffic Safety Committee.

***Councilor Carroll MOVED to close the public hearing. Councilor Sievert SECONDED the motion, and it PASSED unanimously 9-0.***

***Councilor Van Asselt MOVED to Adopt 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 Smith SECONDED the motion, and it PASSED unanimously 9-0.***

- B. PUBLIC HEARING AND ACTION ON RESOLUTION #2009-06** authorizing the acceptance and expenditure of grant funds in the amount of \$6,000 from the Oversight Board of ONE Voice for Southeastern New Hampshire, representing the United Way of the Greater Seacoast, 112 Corporate Drive, Unit 3, and Portsmouth, NH for the purpose of alcohol enforcement initiatives

Administrator Selig explained that the Police Department had identified this grant opportunity, and noted that State statute indicated that the Council had to hold a public hearing on it.

***Councilor Smith MOVED to open the public hearing on RESOLUTION #2009-06 authorizing the acceptance and expenditure of grant funds in the amount of \$6,000 from the Oversight Board of ONE Voice for Southeastern New Hampshire, representing the United Way of the Greater Seacoast, 112 Corporate Drive, Unit 3, and Portsmouth, NH for the purpose of alcohol enforcement initiatives. Councilor Van Asselt SECONDED the motion, and it PASSED unanimously 9-0.***

***After a member of the public spoke, Councilor Van Asselt MOVED to close the public hearing. Councilor Smith SECONDED the motion, and it PASSED unanimously 9-0.***

***Councilor Van Asselt MOVED to Adopt RESOLUTION #2009-06 authorizing the acceptance and expenditure of grant funds in the amount of \$6,000 from the Oversight Board of ONE Voice for Southeastern New Hampshire, representing the United Way of the Greater Seacoast, 112 Corporate Drive, Unit 3, and Portsmouth, NH for the purpose of alcohol enforcement initiatives. Councilor Sievert SECONDED the motion, and it PASSED 8-1, with Councilor Stanhope voting against it.***

The Council stood in recess from 9:45-9:55.

C. Discussion regarding the Oyster River Dam at Mill Pond

Administrator Selig spoke about the fact that there had been some discussion on this issue leading up to the meeting on March 4<sup>th</sup>. He said it seemed to be a good idea for the Council to have further discussion on it now. He said there were a number of courses of action that could be taken on this issue, and said the Town would be required to take action of some kind.

He said one course of action was to repair the dam, and said there was some preliminary information on what the engineering costs for this would be. He said another possible course of action was to replace the dam at the same location with a new structure. He said no estimate had been done of what this would cost, but said this option wouldn't be considered because of the value of the existing dam to residents.

He said a third possible course of action was removal of the dam and restoration of the original stream channel. He said a fourth option was to remove part of the structure, leaving some of the historic dam works along with an education display and some restoration of the stream channel.

Administrator Selig said when the Town had originally set out to evaluate the situation with the dam, staff had been thinking solely in terms of dam repair. But he said that along the way, and in discussion with Stephens Associates, there had been discussion on other options that might be available. He provided further details on how the process had unfolded, and noted that the Council Communication outlined the chronology of events.

He said it had become clear leading up to the March 4<sup>th</sup> meeting that most people he came into contact with felt strongly that the dam should be retained. He also said that at the forum on March 4<sup>th</sup>, the overwhelming sentiment there was in favor of dam repair.

He said his own conclusion was that he had been sufficiently convinced on March 4<sup>th</sup> that while removal of the dam would be a good thing for the Oyster River, both upstream and downstream, he wasn't convinced that this benefit would ultimately outweigh the cultural significance of the Mill Pond.

He said staff of the Public Works Department had done a nice job identifying the questions that came up at the forum. He said a lot of time and resources could be spent on this issue, but said he thought the threshold question was whether the Town was really open to removing the dam. He said he felt that the majority of the community was not open to this, and said even with additional information, he wasn't confident that this would sway peoples' perspectives.

He said he therefore recommended acknowledging that reality, and moving forward with the engineering design for the necessary repairs. He said if any other groups

would like to provide additional information on the benefits of dam removal, they were free to do so. But he said given scarce resources, he was not prepared to recommend additional analysis, and was not confident that spending time and money on this analysis would be well spent.

Councilor Mower asked Administrator Selig what his perspective was based on.

Administrator Selig said it was based on the public information meeting on March 4<sup>th</sup> and on the strong sentiments residents had expressed to him. He said it was also based on his own sense of Durham.

Ms. Mower asked about the issue of improving the ecological health of the impoundment and other water upstream from the dam.

Administrator Selig said he thought that the restoration of Mill Pond and the repairs to the dam should be linked together, and said the Town should devote the resources necessary to accomplish this.

Ms. Mower asked if more information was needed on this approach before committing to it.

Administrator Selig said as always, the devil was in the details. He said the Town knew the cost for minimal dredging, and noted that there was still a permit in place to move ahead with that project. He said money in the Town's conservation fund had been identified for dredging, and noted that this would be a recurring maintenance cost over time.

He said there was great merit in dam removal for environmental reasons, but said he was taking the utilitarian view, considering community sentiment as well as the Council's time and the time of Town staff. But he said this was an issue for the Council to consider. He also noted that if the total project cost resulted in the need to issue a bond, this would require a 2/3 vote of residents.

There was discussion about the fact that the dredging and the dam repair were separate issues, so if each project was under \$1 million, the bond threshold wouldn't be triggered.

Councilor Smith noted the letter from the Conservation Commission to the Council regarding the idea of doing a feasibility study. He said repairing the dam would be a good opportunity to bite the bullet and do what was needed to improve the water quality of Mill Pond, including aeration of the pond.

Councilor Needell said he thought that some of the requests at the public hearing for a feasibility study reflected a desire to understand the entire ecosystem, with and without the dam. He noted that the word restoration applied to the ecosystem as well as the dam.

He said if the Council voted that evening to go in one direction or the other, he

thought it would be doing a disservice to the process he thought they were following. He said leading up to the March 4<sup>th</sup> meeting, there had been an outcry that the process was being railroaded, in favor of removal of the dam. But he said one could make the opposite argument now.

Councilor Needell said the Council Communication said an extensive feasibility study would be needed to compare dam repair/rehabilitation to dam removal. He also said there would be a lot to consider in terms of the idea of possible restoration of the Mill Pond. He said with all of the things that needed to be considered, there should definitely be a public hearing before any decision was made by the Council. He also said he didn't feel everyone was well informed enough at this point.

Councilor Needell said he didn't disagree with Administrator Selig's conclusion. He said the Council could make a political choice, but said at this point, it couldn't be an informed choice. He said he felt the process should be continued, and a public hearing should be held before making a formal decision.

Councilor Sievert said he had been thinking that the dam should be repaired in part because of the momentum in favor of this. But he said he had then heard from people in Town who didn't live near the dam who weren't in favor of this idea at all, and were concerned about why they should have to pay for these repairs. He said perhaps these people hadn't come forward publicly yet. He also questioned whether the Council was sufficiently well informed at this point.

Councilor Stanhope said he had been struck by the fact that there was a healthy debate between the historic preservationists and the conservationists. He said he didn't think there should be a political decision on this issue, and said the decision should be based on knowledge about the implications of dam removal and habitat restoration.

He said he had watched the March 4<sup>th</sup> meeting, and said he agreed that there was a segment of the public that hadn't had the opportunity to be heard fully yet. He said he had no objection to scheduling a public hearing, and listening carefully to the two sides of this issue so that everyone would be well informed.

Councilor Clark said he thought Administrator Selig's inclination was right, but said the public information session had definitely raised more questions than answers. He said the Council had to do more than throw out the idea of dam removal, and said he didn't think just having a public hearing would be enough. He asked if the Town could get some funding for some kind of feasibility study.

Councilor Carroll said a feasibility study would take three years, which was a long time. She said a lot of questions had been raised, and agreed that more information was needed. She thanked Administrator Selig for looking at the issue of a healthy Mill Pond, and said not only dredging needed to be looked at as part of this issue. But she said she would hate to get into a three year study.

Chair Niman agreed that there should be no decision without having a public hearing.



But he said he didn't think there was yet enough information in order to have the hearing. He also said he understood the concern about Mr. Cedarholm spending a lot of time on this issue, given all of the other things he had to do.

He asked if perhaps the Conservation Commission could take a leadership role on this issue and collect additional information. He said he didn't want the Town to spend three years on a study, but he suggested that the Commission might meet on the fourth Thursday in March and explore Mr. Hyde's suggestion that there could be a partial study. He said if the Commission could come up with plans for a study, and could identify money for this as well as a timeframe, a public hearing could come after this.

Councilor Needell said he couldn't speak for the Conservation Commission on this. He asked what the time constraints were.

Chair Niman said there were a lot of residents with vested interests who were concerned about this issue, and said if the Town was going to go ahead and collect some additional information, he would like to minimize the time these people would have to wait.

Councilor Smith said he hoped the public hearing would be scheduled for the next Council meeting or the one after that. He said the stakeholders were not only the abutters to Mill Pond; they were also the many people who used the pond and appreciated it. He noted that the Town and the University owned frontage on the pond, and said there were 26 separate private parcels and property owners who abutted the impoundment.

He said if there was going to be any use of recovered land as a result of removing the dam, some of those people would have to be dealt with, in order to get access to the recovered land. He also said draining the pond would put a heavy maintenance burden on property owners and the Town, and said the Public Works budget would increase. He said trees would grow up where the pond had been, which would attract beaver and their dams, there would not be a free flowing river.

Councilor Smith said removing the dam would cause a tremendous disruption, and would mobilize a great number of people in Town. He said further analysis of this issue should be avoided, and said the Council should accept the Town Administrator and Mr. Cedarholm's recommendations and move forward as expeditiously as possible. He said there had already been lots of opportunities to discuss this issue with the public.

Councilor Mower noted that Mr. Hyde had spoken about the importance of having an open mind on this issue. She also said the public had been led to believe that there would be some meetings where this issue would be discussed. She said it was important not to forget that College Brook contributed to Mill Pond, and that it was an impaired waterway because of runoff from Mill Plaza. She also noted that the Conservation Commission was currently down several members, and said it was important to remember that it was comprised of volunteers, so might not be as quick

to respond as was desired.

Councilor Sievert noted that it wasn't just the Town that was creating runoff into College Brook.

Councilor Van Asselt commended Administrator Selig, and said the pond was not going to go away. He said even if there was further study, a public hearing, etc., the truth was that in the end, an issue like this was a political decision. He said there was nothing wrong with that, but said the Council should try to minimize costs and maximize the benefits.

He said the Council needed to be willing to say to the public that repairs to the dam and restoration of the pond would cost a certain amount of money. And he said the Conservation Commission needed to step up and use land use change tax funds in the conservation fund for this.

But he said whatever the cost for this was, the question was how to maximize those dollars to keep the dam the public wanted and also to restore Mill Pond. He said there had to be a way to mix the two, and said this issue should be sent back to Administrator Selig and Mr. Cedarholm to figure out.

Councilor Needell said he didn't disagree regarding the likely outcome of further study of this issue. But he said he didn't think there had been enough opportunity to hear from the public about the benefits of removing the dam. He acknowledged that making this case would be a huge uphill battle, but said there were still important questions that needed to be asked, regardless of the decisions that were ultimately made.

He said it was important that the Council be prepared concerning this, and said a public hearing soon would provide the opportunity for people on all sides of the issue to come forward.

Chair Niman said the issue for him was whether the public hearing should be held right away, or if people should be given time to collect information so the Council could listen to a greater breadth of ideas and opinions. He said he wanted people to perceive that the process was fair, and that the Council had a good understanding of the issues involved.

Councilor Needell said he thought a public hearing should be scheduled at least 4 weeks out. He said this would allow time for the various Town boards to meet, and he suggested that they should be invited to attend the hearing.

Chair Niman said his sense was that Councilors felt there should be a public hearing. He said the question was what the time frame should be.

Councilor Carroll asked when the numbers on dam repair would be ready, and there was discussion with Mr. Cedarholm.

Councilor Stanhope asked if it was possible to get an estimate of the economic impact of removal of the dam, and Mr. Cedarholm said not really. He said there were many factors involved, and said a feasibility study would look at all of these things.

Councilor Stanhope said if the Council was going to go through this process and listen to people who wanted to remove the dam, yet there wasn't a sense of what the economic impacts of this would be, a question was whether the Council would just be giving lip service to the conservationists.

Councilor Mower said there might be another way to look at this. She said this was a community resource that all residents had a stake in. She said regardless of the decision that was ultimately made, people might want their voices to be heard. She asked Mr. Cedarholm if replacement of the dam was addressed in the Stephens report.

There was discussion. Mr. Cedarholm said if the dam was replaced, he doubted that the design would be the same as the design of the present dam. He explained that repair of the dam involved a 30-year design, working with the existing innovative design of the dam, which had chambers. He said the dam replacement would involve a 50-year design for a monolithic type dam, and he provided details on this. He said dam replacement wouldn't be the Public Works Department's first choice right now.

Councilor Smith asked when the dam repair might be done, if the Council voted to go forward with this after a public hearing.

Mr. Cedarholm said it could be done in phases, and he spoke in some detail on this. He explained that the repairs needed now weren't as extensive as the repairs needed in the 1970's. He said the engineering report he would soon see would include a conceptual design. He said he expected that the repairs would be pretty straightforward except for the work needed on the southern soil embankment, and he discussed the repair work in some detail.

Councilor Needell said that from the conversation, it sounded like unless a compelling argument was made, the Council wanted to take the dam removal option off the table, and wanted to move forward with repair of the dam. He said he was still looking to hear from people who thought this was the wrong decision.

***Councilor Needell MOVED to hold a public hearing on May 4<sup>th</sup>, 2009. Councilor Van Asselt SECONDED the motion.***

Councilor Needell asked if there was any possibility that Mill Pond could be dredged before the permit expired in October.

Mr. Cedarholm said yes, and Councilor Needell then asked if having a public hearing on May 4<sup>th</sup> would jeopardize that.

Mr. Lynch said these were really two separate projects. He also explained that if Mill Pond wasn't dredged by October, the existing permit would expire, and the Town would have to apply for another permit, which would cost \$6,000-7,000. He

said if the Council was leaning toward keeping the dam, he recommended moving forward with the dredging while the existing funding was in place.

Administrator Selig said the funding proposed for dredging was from land use change tax money. He also said that while there was funding in place for the engineering for the dam repairs, there was no funding in place for the actual construction. He said unless minimal funds were needed for this work, the Budget would need to be amended, and said he therefore recommended doing the repairs at a later date.

Councilor Smith said the total impoundment was about 20 acres, and said dredging would be done of 1/80 of this acreage. He said repairing the dam and doing the dredging would be a lot less expensive than removing the dam, and having to deal with the sediments that would result from this.

Administrator Selig said the public hearing would allow all residents to express an opinion, and to use the data available to date.

Chair Niman also said if people wanted to provide additional data, this certainly would be allowed.

There was discussion as to whether the Council would make a decision on this issue on the same evening that the public hearing was held.

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

**D. Discussion regarding the status of the Purchase and Sale Agreement between the Town of Durham and Chinburg Builders, Inc., for the Durham Business Park**

Administrator Selig said he recommended extending the Purchase and Sales agreement. He noted that Mr. Chinburg had recently spoken with the Planning Board about how challenging it had been to try to develop the Business Park property. Administrator Selig said Mr. Chinburg had spoken about the idea of developing a residential co-housing project on the site instead.

He said if the focus was going to change to do residential development, a new RFP should be put out, and he provided details on this. He said a challenge was that the Zoning Ordinance currently didn't permit residential development at the Business Park, so a change to the Ordinance would be needed to allow this kind of development.

He said it would probably be a year before anything happened, but said it made sense not to lose that year. He said Mr. Chinburg had already put \$50,000-60,000 into the project, and said while he recognized the challenges of developing the property, he was still interested in doing so, and was also interested in working with the Town on some possible Zoning Ordinance changes.

He said the Town would put out a new RFP, and Chinburg Builders would respond, along with other possible developers. He said extending the Purchase and Sales

agreement an additional year would allow for these things to happen. He said he wanted a sense of whether the Council was comfortable with this approach.

Councilor Stanhope said if they were going to explore alternative uses of the Business Park and put out an RFP, it made sense to do this without committing to accept any particular proposal. He said if the current Zoning limitations were taken off the property, other developers might be interested in it.

He said by extending the Purchase and Sales Agreement, the Council was locking themselves in. He said he realized Chinburg Builders had invested money in the property already, but said they knew what they were getting into. He said this was a tough site, including traffic issues with the State.

Councilor Mower said if the Zoning restrictions were taken off, this didn't seem much different than trying to tailor the Zoning to what Chinburg Builders would like to do now. She said she would like to hear what others had to say on this.

Councilor Van Asselt said the advantage of extending the agreement was that it would take a year for the Zoning Ordinance to change. He said this would let Chinburg Builders continue to work with their ideas, and possibly come up with something. He said that meanwhile, if other developers wanted to come into the process, they could bring their ideas forward to the EDC or the Planning Board with an RFP.

Councilor Stanhope said these other people probably wouldn't come forward, knowing that Chinburg Builders could exercise its contract during that period.

Councilor Van Asselt said he didn't agree, and said he didn't think the agreement would preclude other ideas from coming forward.

Councilor Clark said the Council should facilitate ideas coming forward, including a possible restaurant on the water, extending the boundaries of the downtown to the Business Park along Old Piscataqua Road, etc.

Councilor Needell said he thought the Town should be leading this discussion, should revisit what it wanted to see at the Business Park, and should rezone the area accordingly. But he said he wasn't convinced about what was gained by extending the agreement at this point.

Councilor Van Asselt said by extending the agreement, this gave license to Chinburg Builders to actively pursue something currently permitted within the Zoning Ordinance. He said if the Council had confidence in the company, it could be aggressive in pursuing what Councilor Clark had described within the Zoning Ordinance. Councilor Van Asselt said to him that was a good enough reason to extend the agreement. He said if the agreement wasn't extended, there was no one actively pursuing the development of the site.

Councilor Needell said he thought the idea was to revisit the Zoning there.

Councilor Van Asselt said in working with Chinburg, if it was identified by the Town that Zoning changes should be made, the Town owed Chinburg nothing. He said the agreement could be written to protect the Town if that kind of change came out of the discussions.

Councilor Smith said the Council should extend the agreement and start the process of talking with Chinburg Builders and the community about a Zoning change.

Councilor Sievert recused himself from the discussion as a Council member. He then left the table, and as a member of the public asked if it would be all right to allow Chinburg Builders to bring proposals forward that weren't allowed under the current Zoning Ordinance.

There was discussion that the agreement could say that if the Zoning Ordinance changed, the old contract would be null and void.

Councilor Mower asked how they could combine what Councilor Clark was suggesting on planning what the Town would want to see at the Business Park site with allowing Chinburg Builders to continue to have an option there. There was discussion.

Councilor Clark first said he wouldn't mind if the property became a business park. He also said the other ideas for the property he had spoken about extended Chinburg's idea. He said if the Town could envision what the area should look like and could put something together on this, it could encourage Chinburg to be part of this vision.

Councilor Stanhope said it was important that the Zoning change be capable of creating additional real estate value. He provided details on this, and said this was a reason to go back out to the market with an RFP.

Administrator Selig said he was comfortable with the comments received from Councilors, and said he would craft an extension of the Purchase and Sale Agreement that included these things.

Councilor Carroll asked if there was anything new on the traffic issues Chinburg Builders had been dealing with in regard to the entrance to the Business Park.

Administrator Selig said there had been limited movement on this, and noted that the State would only respond to a specific proposal. He said there were tentative parameters for different types of land uses on the site, which would have to be honed based on a specific use proposed.

### **XIII. New Business**

- A. Annual appointments of Council representatives to the various Town boards, commissions, and committees

There was detailed discussion on which Councilors wanted which board and committee positions.

Administrator Selig recommend not appointing a Council member to the Churchill Rink Committee.

Councilor Needell said he would like someone other than himself to serve as the alternate Council member on the Planning Board. He said that while it was a time commitment, it was a valuable role for a Councilor to play, and he encouraged another Councilor to step up and take the position. He said it was unfair to the planning process in Durham to leave it unfilled.

Councilor Van Asselt recommended leaving the alternate position open for now, and to let Councilors think about it for another two weeks.

There was discussion that Councilor Needell was no longer serving as the Planning Board alternate, and that the position was now open.

***Councilor Smith MOVED to extend the meeting beyond the 10:30 adjournment time. Councilor Sievert SECONDED the motion, and it PASSED unanimously 9-0.***

The following appointments were approved by the Council.

Charter/Administrative Code-Established Boards

***Councilor Van Asselt MOVED to appoint Jerry Needell, Peter Stanhope and Neil Niman to the Cemetery Committee for one-year terms, to expire March 2010. Councilor Mower SECONDED the motion, and it PASSED unanimously 9-0.***

***Councilor Van Asselt MOVED to appoint Jerry Needell to the Conservation Commission for a one-year term, to expire March 2010. Councilor Smith SECONDED the motion, and it PASSED unanimously 9-0.***

***Councilor Van Asselt MOVED to appoint Doug Clark to the Economic Development Committee for a one-year term, to expire March 2010. Councilor Mower SECONDED the motion, and it PASSED unanimously 9-0.***

***Councilor Van Asselt MOVED to appoint Peter Stanhope to the Historic District Committee for a one-year term, to expire March 2010. Councilor Smith SECONDED the motion, and it PASSED unanimously 9-0.***

***Councilor Van Asselt MOVED to appoint Michael Sievert to the Parks and Recreation Committee for a one-year term, to expire March 2010. Councilor Mower SECONDED the motion, and it PASSED unanimously 9-0.***

***Councilor Van Asselt MOVED to appoint Julian Smith as the regular Council representative to the Planning Board, for a one-year term, to expire March 2010. Councilor Mower SECONDED the motion, and it PASSED unanimously 9-0.***

***Councilor Sievert MOVED to appoint Karl Van Asselt to the Rental Housing Commission for a one-year term, to expire March 2010. Councilor Clark SECONDED the motion, and it PASSED unanimously 9-0.***

Appointments to Town Working Committees

***Councilor Van Asselt MOVED to appoint Diana Carroll to the Durham Cable Access Television (DCAT) Governance Committee for a one-year term, to expire March 2010. Councilor Mower SECONDED the motion, and it PASSED unanimously 9-0.***

***Councilor Van Asselt MOVED to appoint Robin Mower to the Durham Energy Committee for a one-year term, to expire March 2010. Councilor Smith SECONDED the motion, and it PASSED unanimously 9-0.***

***Councilor Van Asselt MOVED to appoint Diana Carroll to the Integrated Waste Management Advisory Committee for a one-year term, to expire March 2010. Councilor Mower SECONDED the motion, and it PASSED unanimously 9-0.***

B. Other business

There was no other business.

**XIV. Nonpublic Session**

***Councilor Van Asset MOVED to go into nonpublic session for the purpose of discussing personnel matters in accordance with RSA 91-A:3 II:***

***(a) The dismissal, promotion or compensation of any public employee or the disciplining of such employee, or the investigation of any charges against him or her, unless the employee affected (1) has a right to a meeting and (2) requests that the meeting be open, in which case the request shall be granted; and***  
***(c) Matters which, if discussed in public, would likely affect adversely the reputation of any person, other than a member of the body or agency itself, unless such person requests an open meeting. This exemption shall extend to any application for assistance or tax abatement or waiver of a fee, fine, or other levy, if based on inability to pay or poverty of the applicant. Councilor Sievert SECONDED the motion.***

Councilor Needell said he didn't have enough information on why the Council was going into nonpublic session.

Administrator Selig said Councilor Stanhope had approached him about having the Council discuss a matter that fell within two of the categories of discussion that could be held under nonpublic session. He said this related to a member of Town staff, and he noted that he had spoken with this person on the matter in question.

Councilor Needell said he wanted to be certain that the criteria for going into



nonpublic session were met. He also said it was an unusual circumstance to have a Councilor recommend going into nonpublic session to discuss an employee, and said it was important that the Council be careful that it was appropriate to discuss this matter in nonpublic session.

Administrator Selig said based on what he knew to date, it was appropriate to begin the conversation in nonpublic session.

Councilor Needell asked if it was appropriate that the employee in question be involved at this point, and Administrator Selig said at this point, this was not appropriate.

There was further discussion on this between Councilor Needell, Councilor Van Asselt, and Administrator Selig.

Councilor Smith noted that the matter would affect the reputation of a private citizen who was involved, and who would prefer that the issue not be talked about in public.

***The motion to enter into Nonpublic Session PASSED unanimously 9-0 by roll call vote: Chair Niman, yes; Councilor Van Asselt, yes; Councilor Needell, yes; Councilor Smith, yes; Councilor Sievert, yes; Councilor Stanhope, yes; Councilor Clark, yes; Councilor Carroll, yes; and Councilor Mower, yes***

The Council entered Nonpublic Session at 10:41 PM.

The Council returned to Public Session at 11:25 PM.

***Councilor Smith MOVED to seal the Nonpublic Minutes. Councilor Van Asselt SECONDED the motion, and it PASSED unanimously 9-0.***

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

None

**XVI. Adjourn**

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

Adjournment at 11:28 pm

Victoria Parmele, Minutes taker