

This set of minutes was approved at the Town Council meeting on June 1, 2009

**DURHAM TOWN COUNCIL MEETING MINUTES
MONDAY MAY 4, 2009
OYSTER RIVER HIGH SCHOOL
7:00 PM**

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

MEMBERS ABSENT: None

OTHERS PRESENT: Town Administrator Todd Selig; Town Engineer Dave Cedarholm; Public Works Director Mike Lynch

I. Call to Order

Chair Niman called the meeting to order at 7:04 pm.

II. Approval of Agenda

Councilor Van Asselt MOVED to approve the Agenda. Councilor Sievert SECONDED the motion.

Councilor Van Asselt said given the large number of concerned citizens, he suggested asking those who wished to speak to limit their comments to five minutes, and then if there was more time, they could speak again after others had spoken.

Councilors agreed that this approach would be used,

The motion PASSED unanimously 9-0.

III. Presentation Item

Chair Niman said the Council wouldn't be following the traditional format, and would go right to the public hearing. He said Town Engineer Dave Cedarholm would provide an introduction first.

Mr. Cedarholm said he would review what he called the nine important topics to be considered in regard to either repairing or removing the dam. He said NHDES had noted deficiencies with the Oyster River Dam that the Town needed to address in some way, but said the agency wasn't ordering the Town to do anything. He said the Town needed to initiate a plan to address the deficiencies, or to initiate a plan to investigate removing

the dam.

He said the first step in the process had been to hire Stephens Associates, and he noted that Bob Stephens was present to describe the cost estimates his firm had arrived at, as well as to answer questions. He said the Council needed to decide what direction to go in, whether to do repairs to the dam, or to investigate the feasibility of removing it.

He noted that the investigation had been completed in 2008 and was available on the Town website. He said the investigation had included dewatering the impoundment in September of 2008, and said a dam stabilization analysis had showed that the dam was structurally sound. But he said there were found to be a number of deficiencies in it, including the concrete of the dam, especially on the downstream face, inside the cells.

He said the right abutment had extensive cracking and deteriorating concrete. He also described problems with the wooden gates on the dam, which were believed to be the original mechanisms. He said the concrete around the gates had also deteriorated.

Mr. Cedarholm, said the right soil embankment, looking downstream, was in bad shape, and also said the training wall downstream, which was part of the original foundation of the mill that had been located there, was in bad shape. He said the soil in that area, which was the backyard of the Bodo property, was essentially part of the dam, and had eroded. He said that wall had collapsed a number of times, especially with the floods in 2006 and 2007.

Mr. Cedarholm reviewed in detail the nine key considerations for dam repair or removal:

1. Pre-colonial history - prior to the creation of the Mill Pond impoundment on the Oyster River, it likely provided more extensive tidal and salt marsh habitat and allowed unencumbered migration of anadromous fish
2. Historical significance of the Oyster River Dam and Mill Pond
3. Hydropower - Restoring hydropower to the Dam has some potential for alternative energy generation, but also could provide a valuable interpretive reuse and promoting alternative energy educational opportunities
4. Dam removal/river restoration & feasibility study - NHDES and NOAA's habitat restoration program are promoting removal of head-of-tide dams, and have offered to fund a feasibility study to examine a full range of environmental and socio-political issues.
5. To dredge or not to dredge - The Town may wish to remove sediments accumulated in the Mill Pond over many years while dam repairs take place.
6. Recreational considerations - Dam removal would force a shift from the existing pond style of recreation (human powered boating) to that of stream side activities with a potential opportunity for expanding the existing town owned Oyster River Park. Expanding a town facility will eventually require increased services.
7. Comparison of costs - Preliminary estimated range of costs for dam repairs (\$490,000 to \$1 million) are similar to the range of estimated costs for dam removal (\$390,000 to \$980,000) State LCHIP funds may be available to fund a portion of the dam repair. Multiple sources of grant opportunities appear to be available for removal and river restoration

8. Impact on residential assessments regarding both options - Altering the type of waterfront may negatively impact the taxable assessed value of properties on the Mill Pond. Based on an estimated \$315,000 decrease in total assessed value, and the current tax rate (Town's portion of \$6.52 per thousand), the estimated loss of annual tax revenue is \$2,100 according to the Town's Assessor)
9. Complexity and uncertainty -
 - Dam repair is relatively straightforward; completion schedule is predictable, and final product is relatively certain, but with a limited lifespan. Costs are controlled by availability of labor and economy.
 - Dam removal is a lengthy process complicated by socio-political factors and varying interests; completion schedule can be unpredictable and take many years; and outcome can be relatively unpredictable and difficult to comprehend. Product is permanent, other than considering floods. Costs are dependent on many factors, some of which are unanticipated.
 - Consideration of historic resources will complicate both repair and removal options, especially if Federal funding is used.

There was discussion as to whether Mr. Stephens should provide some comments, including how the cost estimates were arrived at, before the public hearing began.

Councilor Smith said he would like the Council to stick with the Agenda, and suggested that they should hear from Mr. Stephens later in the meeting, or at a time when there was confusion about the cost.

IV. Public Hearing

Councilor Smith MOVED to open the public hearing. Councilor Mower SECONDED the motion.

Chair Niman said what was important to him was that everyone feel comfortable speaking. He said there were people on both sides of the issue, and said it was important for the Council and the community that everyone be heard. He asked that those in the audience help people feel comfortable.

He said Councilors could ask for clarification, but said this hearing was not meant to be a debate between citizens and the Council, or between citizens. He said the goal was to share ideas with the community. He also said that if there were lengthy comments, people should hold them until after others had spoken. He said the goal was to hear from as many people as possible.

The motion PASSED unanimously 9-0.

Councilor Carroll MOVED to allow Mr. Stephens to take a few minutes to explain how he had come up with the dollar figures. Councilor Mower SECONDED the motion, and it PASSED 8-1, with Councilor Smith voting against it.

Mr. Stephens said the scope of work had evolved from evaluating the dam, to weighing how to proceed with the dam. He said his firm had been asked to provide preliminary

costs, not hard costs, and said they were based on a conceptual design for each of the options. He explained the sources of the cost estimates that were done.

He said rehabilitation of the dam, without consideration of operation and maintenance over 30 years, would cost \$492,000 - 1.6 million, and said there was a similar cost range for decommissioning the dam. He provided details on how these estimates were arrived at, including cost figures from other dam de-commissioning projects in New Hampshire. He said a big unknown was the cost of addressing sediments in Mill Pond, and the cost of ground remediation. He said they wouldn't know how much restoration work was needed until they got there.

Councilor Needell said he wanted to be clear on whether the sediment and ground remediation cost did not consider river restoration costs. He asked what the level of remediation was that was covered by that cost.

Mr. Stephens said based on the research he had done, including looking at recent projects in the vicinity, these costs would include river restoration. He provided details on this.

Councilor Smith said the estimates made referred only to the costs to the Town, but said the Town owned only a small part of the impoundment pond, and none of the upstream impoundment along Hamel Brook. He said the estimate didn't include the costs to two dozen property owners who had a steady state environment in their back yards right now. He said if the dam was removed, many would be left with mud flats, sloping land, invasive species, etc. He asked for an estimate of the cost to the property owners of maintaining the new environment they would have if the dam was removed.

Mr. Stephens said he didn't have that estimate at the present time.

Phyllis Heilbronner, 51 Mill Pond Road, said she had have lived in Durham for 50 years, and hadn't always live along the Pond. She said she was speaking for many others who couldn't be present at the hearing, regarding the deep attachment to the pond. She said they included former UNH students, visitors to Three Chimneys and other visitors to Town, people who worked in Durham, artists, photographers, etc. She said they wanted to preserve what was meaningful and valuable to themselves and their pasts.

She said a sense of place was extremely important, and said a value couldn't be put on this. She said it was ironic that there was a proposal to hire a parks and recreation director, when there was also consideration of taking a natural recreation spot and removing it. She said Mill Pond was a source of recreation for all ages and interests.

Mrs. Heilbronner said until the sources of pollution flowing into the river and pond were contained, taking the dam down wouldn't solve that problem. She also said unintended consequences from doing this could be costly. She suggested that people concerned about environmental issues should look at the sources of pollution of those waters.

She noted that delaying the repairs to the dam would be costly, given the current low interest rates. She also said that if Margery Milne, who had given the Town a spot of tremendous beauty, were there that evening, she would want to see the Oyster River dam

and Mill Pond preserved.

Frank Pilar, 26 Newmarket Road, said he had lived about 4 houses south of the dam since 1965. He said he had once enjoyed kayaking on Mill Pond as well as fishing for large mouth bass, perch, and hornpout. He said a concern about removal was that silty material would wash downstream, especially at times of high water. He said it seemed inevitable that if the dam was removed, siltation issues would be worse. He said he thought Stephens Associates had done a good job of summarizing the issues.

Gerald Smith, 1 Back River Road, said once the dam was gone, it would be gone forever. He provided a picture of the area when the mill was still there, before it was taken down in the 1950's. He said the mill and the dam together should have been saved, but said it had been easy to get rid of historical things in Durham. He said a lot of people had regretted this.

James Houle, 95 Mill Road and member of the Conservation Commission, read the official position of the Conservation Commission:

“At its March 12th meeting the Durham Conservation Commission discussed the Oyster River Dam. At the meeting the Commission did not focus on whether the dam should be repaired or removed. Instead, the Commission focused on the lack of adequate information to make an informed decision on these two options which are on tonight's Town Council agenda.

Although at this point in time the Commission's membership appears to have a variety of personal opinions as to whether the dam should be removed or replaced, the Commission unanimously endorsed a recommendation to the Town Council that the Council pursue a more detailed analysis and study that examines the scientific, ecological, social, historic and financial issues associated with dam removal and dam repair.

What was clear from the public forum is that there are a lot of unanswered questions in pursuing either option, and without pursuing the answers to these questions the Town would be making a decision prematurely and with inadequate information. A lot of good questions have been asked, so why would we not want to get the answers before proceeding?

Even if after the study is completed the Town decides that for whatever reason repairing the dam makes the most sense for Durham, the results of the study will hopefully help us better manage the impoundment for improved water quality and habitat values.

The New Hampshire Coastal Program has generously offered funding to assist in this analysis, with the only caveat that the Town considers dam removal as an option. This was confirmed on two separate phone conversations with Ted Diers from the NH Coastal Program first on March 13th and a second time on April 8th.

If the Council is not interested in pursuing a full feasibility study and instead has

a narrower set of questions it would like to have answered, the Coastal Program may be willing to provide funding for something less than a full feasibility study, provided a list of core questions could be provided that would be needed to make an informed decision . The key criteria to receiving this funding would be that the Town Council approach the information with an open mind that weighs the options equally.

The Commission is not recommending the town pursue a strategy that paralyzes the process with excessive analysis; instead we believe the outcome of thorough examination of the options will result in a better and more informed decision no matter which option is chosen.”

Dave Schwartz, 24 Laurel Lane, said the removal of the dam would definitely impact the assessed value of properties along Mill Pond. He said he could guarantee that after litigation was taken into consideration, the cost to the Town for removing the dam would be much greater than the present estimate.

Kevin Gardner, 1 Stevens Way, said he thought there was a legitimate difference in peoples’ values, and said it was important that those different values be listened to, and that there be a civil discourse on them. He said it would be unconscionable not to hear those values and a full set of information on this issue. He said he had heard some things that were not credible information, and said the process of looking at this issue was critical, and could not happen in only two meetings.

He said it was a bit of a false choice between historic factors and ecosystem factors, and said both represented important values. He said a decision either way was ok with him, as long as it was made in an informed manner, and represented the values of the citizens of the Town.

Mr. Gardner said he thought it was an embarrassment that Mill Pond was the Town’s park. He said it was completely filled in, and represented a limited park experience. He said with restoration of the river, he could envision a real park that could be a real resource to the Town, and that would offer a lot more access to the natural resources than was available now. He said he was not saying that this was the right vision, but said this option didn’t necessarily result in destruction of the park and the character of the Town.

Martha Burton, 9 Burnham Avenue, said if she were on the Council, she would want to see nuts and bolts information from engineers, biologists, etc. She said from what she had heard so far, river restoration would be a better choice, and she spoke about some other river restoration projects in New Hampshire that had been successful.

She asked whether the Oyster River dam was needed now, noting that there was no longer a mill there. She said the only purpose she had heard was that it created a view from the top of the river, and said she wasn’t sure that was a sufficient reason to keep a dam.

John Kraus, 7 Cutts Road, said opinion should be separated from facts, and said costs and facts should be used to make a decision. He said this issue was as important and

expensive as the purchase of Wagon Hill, and said the citizens of Durham should choose.

He said this issue was not about the dam, it was about the pond. He said they should be thinking creatively about the possibilities that would result from removing the dam, including locating a new library, creating a walking bridge in the area, etc. He said a portion of the dam could remain to illustrate its history, and said as part of this, the cell construction of the dam could be shown. He said it could be a real showplace for historic preservation and engineering education.

Mr. Kraus noted that Mill Pond had been called the Town green, and a visual symbol of the Town. He said it was in fact a big open space in the middle of Town, but said unless one could walk on water, it was no more than a viewscape. But he said with some imagination, it could become a Town center that could be used by everyone. He said they shouldn't be locked into the past.

Henry Smith, 93 Packers Falls Road, said the costs of repairing and removing the dam were similar, but said it might cost more to restore the river in the long run. He read from a letter that said the Mill Pond and dam was an enormously important environment for recreation, and was a key piece of the puzzle being pieced together regarding the dam and the pond. The letter said the two needed to be looked at together, as both an historical and recreational resource for the Town.

Mr. Smith noted the HDC recommendation to restore the dam, and commented on a letter that had said the HDC was serving someone else's agenda. Mr. Smith said he strongly supported the restoration of the dam.

Malin Clyde, 51 Mill Road, read a letter from **Nancy Lambert**. Ms. Lambert wrote that while she understood that the Oyster River Dam and Mill Pond were the heart of the historic district, she supported the removal because she believed the benefits would be great, and would more than compensate for the losses. She said these benefits were a healthy ecosystem and improved water quality for the Oyster River and Great Bay.

Ms. Lambert wrote that Mill Pond was lovely, but said there was also a tidal portion of the river. She said if the dam were removed, there could be a waterside park similar to what currently existed below the dam. She said historically there had been no dams on the river, and said if the dam remained, this would mean that great significance would have been placed on a relatively brief time when the river had been dammed.

Ms. Lambert wrote that she thought the Town had a responsibility to address the concerns with a systematic evaluation. She said recent research suggested that property values wouldn't decrease, and might even increase if the dam were removed. But she said she understood that others in the community would place a greater value on keeping the dam. She said she hoped the final decision would be based on a careful analysis of the facts.

Larry Harris, 56 Oyster River Road, said he liked to fish on the Oyster River, and also said his perception was that Mill Pond represented an important, year round recreational area. He read a statement from research scientist Ray Grizzle, who studied the

restoration of oyster reefs in the area, and said a major concern was what might happen to accumulated silt during storm events if the dam were removed. Mr. Grizzle said any evaluation should include an assessment of this.

Mr. Harris also read a letter from Tom Lee, a forest ecologist working on invasive species issues. Mr. Lee's letter said the impact of dam removal on the spread of non-native plants needed to be considered. He said with lower water levels, the exposed land would be colonized by plants, many of which would be invasive species and would form monocultures, especially glossy buckthorn, because there was already a large local seed source for this plant in the area. Mr. Lee's letter said the growth of these plants could be limited by vegetation management, but said there would be a perennial management cost for many years.

Mr. Harris said there was a third issue regarding restoration. He said he lived right near the Oyster River, which fed into the backwater of Mill Pond. He said the Town and the University were using most of the water that was behind the reservoir. He said to get an idea of what the river would look like most of the year if the dam was removed, one should go to College Brook.

He said he didn't see any fish in that area, and said it was about as much water as would be allowed to go down the Oyster River for a good portion of the year. He said it was really important to understand this, and said they needed to consider the costs of restoration, and what the Town would get for this.

Bonnie McDermott, 82 Dover Road, said she was in favor of keeping the dam. She spoke in detail about chemicals from UNH buildings that had gone into College Brook in decades past, noting that the spills had been documented. She said right now, Mill Pond acted as a safe for these chemicals. She said the EPA should be contacted about doing a grid study, where core samples would be taken in order to see what was down there. Ms. McDermott also questioned some of the figures in the Stephens Report.

Steve Huebner said he represented Great Bay Trout Unlimited, and said the organization's vision was that robust populations of trout would thrive on the Oyster River so children could enjoy them. He said Atlantic salmon had once been plentiful on the Oyster River, but was long gone. He also said the populations of river herring, brook trout and other species were struggling.

He spoke about a comprehensive, cost-effective strategy his organization was involved with to restore brook trout populations. He said the organization advocated that old, unsafe, uneconomical dams were doing more harm than good, and he provided details on this.

Mr. Heedner said there were over 467 case studies of dam removals across the country, and he noted a book that showed the various success stories. He submitted the book as part of his testimony, and said he believed several of the case studies were of situations that were similar to the situation with the Oyster River dam. He said he realized that removal of the dam wouldn't solve all the issues facing the Oyster River watershed. But he asked that the Town give full consideration to the removal option.

Timothy Horrigan, 7 Faculty Road, said a healthy fishery was a high priority, and said there were ways to preserve fisheries as well as the dam, which was a valuable resource for the Town. He said the dam had been there for at least 350 years, and noted that the area was many centuries past being a wilderness area. He said Mill Pond was a feature of the natural landscape now, and said Durham residents were a part of the ecosystem.

He said residents did need to be more in tune with nature, but he said removing the dam altogether was not the way to go about this. He said he thought small scale hydropower would be much more important in the future, and said removing the dam would be short-sighted.

Derek Sowers, 32 Oyster River Road, said the decision on whether to remove or repair the Oyster River Dam was an important one that would have financial implications for Durham, and ecological implications for the Oyster River over the next 20-30 years. He said the Town should determine the best option based on solid, fact-based findings on the social, economic, and ecological merits of the two options. He said he believed the only responsible course of action for the Town was to engage in a feasibility study that would rationally and fairly evaluate the merits of repair versus removal.

Mr. Sowers noted that he had worked in the environmental restoration field for the past 15+ years in New England and the Pacific Northwest. He spoke about time spent in the 1990's trying to restore eelgrass beds in the Great Bay estuary, and said over the last 15 years, the eelgrass beds had disappeared, and both the local anadromous herring and native oyster populations had experienced major declines. He also said serious water quality problems had increasingly been documented for local rivers and the Great Bay estuary.

He said more and more stormwater runoff was emptying into local waterways, and forestland was being converted to pavement. He said the business-as-usual approach to development was going to further degrade these ecosystems, and said it was important to take actions to fix these problems.

Mr. Sowers said his father had recently had emergency surgery to open up some blockages in his heart, and now seemed to have a new lease on life. He said this was an appropriate analogy to the condition of the Oyster River. He said the tributary rivers to Great Bay were like the circulatory system for the coastal ecosystem they all lived in, and needed surgery to restore their circulation in order to keep the system from ultimately crashing. He said removal of non-essential dams was the single most effective way to restore the circulatory system of local rivers, because it improve aquatic habitat, water quality, and the ecological connectivity of the bay with its tributary rivers all at the same time.

He said the dam's historical value and past economic value could be respected without clinging to it, and pouring taxpayer money into a costly repair of a dam that was negatively impacting the health of the river, and was a financial liability for the Town. He said a decision about the future of the dam presented a major restoration opportunity, and said if citizens were provided with good information about the merits of dam removal and what this would look like, they'd begin to understand what a positive action this

would be for the environmental health and beauty of Durham.

Mr. Sowers said the engineering consultant had estimated that dam repair was likely to cost the Town of Durham \$1.2-1.7 million, and that dam removal would cost \$0.4-1.0 million. He also noted that there were a variety of grant funds the Town could use to cover most of the cost of dam removal, but said there were no major reliable grant funding sources to pay for the cost of dam repair, operation, and maintenance. He said the cost to Durham taxpayers would therefore be far greater with the dam repair option, and he spoke in some detail on this.

Mr. Sowers spoke in detail about the fact that Mill Pond currently failed to meet several water quality standards established under the federal Clean Water Act. He explained that the presence of the dam created stagnant warm water conditions that resulted in very low dissolved oxygen levels in the pond. He noted that E. coli bacteria multiplied rapidly in such water, but died off fairly quickly in salt water.

He said public perception was that dredging Mill Pond would address the water quality concerns there, but said there was currently no factual basis supporting that assumption. He spoke in some detail on this, and also questioned whether the Town would spend money on any other public works project if it couldn't explain how the project would meet its objectives.

Mr. Sowers spoke in detail about how restoring natural marsh habitat near Mill Pond would help reduce the amount of nitrogen pollution entering Great Bay, along with reducing stormwater pollution at its source. He said these two approaches were the solutions to the Oyster River's water quality problems.

He said the desire to preserve the history of the dam, the aesthetics of the area, along with concerns about how dam removal could affect adjacent property values were all valid questions,. But he said there was good evidence that these concerns could be addressed. He suggested that the history of the dam could be preserved with interpretive displays. He also said restoration of a free-flowing Oyster River would have major aesthetic appeal.

In addition, he said people needed to be provided with good information on how the impoundment would change following dam removal, in order to be able to envision this. He noted that he lived on a free-flowing stretch of the Oyster River directly upstream of the impoundment, and said it was absolutely beautiful. He said there should be simulations, based on credible information, of how the natural channel could be restored. He also said with careful restoration design, the aesthetic features now at Mill Pond could be preserved and improved.

Mr. Sowers said there was good evidence that suggested that removal of the dam would not harm, and might in fact improve, property values of landowners along the Oyster River impoundment. He said better information was needed on this.

He asked how the Town Council could responsibly commit the Town to a taxpayer-funded expenditure of \$1.2-1.7 million without providing a plan for how this would be

paid for, and what the actual cost, including interest on loans, would be to taxpayers. He also said that while dam repair might keep it functional for 20-30 years, at future generations of Durham residents would again need to have this same discussion and decide if they want to spend more money on paying for an obsolete structure.

Matt Carpenter, NH Fish and Game, said he was present to speak for the fish and wildlife, and said dam removal was the preferred option. He noted that he had written the aquatic section of the State's Wildlife Action Plan, and said in that plan, he had spoken in detail on fish species in the area that were in trouble. He also noted that Chesley Brook was spring fed, and had an invertebrate community that was similar to what was found in the White Mountains. He said his agency had surveyed most of the area above the dam, and said the species there would prefer to have a free flowing system, where the flows fluctuated.

He said the invasive species and sediment contaminant issues could be dealt with, and noted that the work done on the Skowhegan River, which was quite a beautiful river now, was a good example of this. He said it was important to remember that abundant runs of herring were a part of the history of this area, and said bringing them back would be a huge benefit to the public.

Mr. Carpenter spoke about alternative visions described for a park in the area if there were a free flowing river, and said if this happened, it would be a unique situation for the northeast.

Peter Whalen, Portsmouth NH, Board member of the Coastal Conservation Association of New Hampshire, said his organization's mission was to preserve and protect marine resources on the Seacoast. He said he was in favor of doing a study, noting there was funding for it. He said he felt that when the study was done, the conclusion would be that the dam should be removed.

He said this would help the water quality of the water currently behind the dam, which was currently impaired. He said the Oyster River dam was a head of tide dam, where there was a fresh and saltwater interface. He said if the dam came down, this would open up at least 4 miles of spawning area. He noted that habitat played a critical role in spawning.

He spoke about other restoration projects his organization had been involved with, and urged the Council to go forward with a study where there would be professional help to look at all sides of this issue.

Pedro de Alba, 25 Mill Road, said they didn't really know much about the sediments that had accumulated behind the dam, and questioned what could be done about this. He said they couldn't simply remove the dam and release the sediments. He noted that oysters in Great Bay were already endangered. He also asked who would pay for the land-filling of the sediments and said he hoped the Council would look into this issue.

Jennifer Hunter, Piscataqua Region Estuaries Partnership, noted that she had submitted written testimony. She said she was there that evening to highlight potential benefits of removal of the dam. She urged the Town to undertake an evaluation process

that fully and fairly considered all options, including the dam removal option.

She said the Oyster River was an important part of the Great Bay Estuary, and said that for years, her organization had worked cooperatively with towns and conservation groups within the Oyster River watershed to protect and improve the ecological integrity of the system through land conservation, wetlands protection, stream buffer protection, stormwater management, and habitat restoration.

She said the negative impacts of dams had been well documented, and said the Town had a real opportunity to restore the ecology of the river. She said removal of the Oyster River Dam would improve the ecology of the river and would restore functions and habitats that were lost long ago. She said these long-term ecological benefits represented important community benefits, as well as benefits for the larger Great Bay estuary system. She spoke in detail on these ecological benefits, which included improved water quality, expanded estuarine habitat, and improved access to critical fisheries habitat.

Ms. Hunter said dam removal was a widely accepted approach to restoring rivers, and explained that many of the concerns about controlling sediment movement during dam removal, ensuring re-establishment of healthy native vegetation, and ensuring quality wildlife habitat were all important considerations that were carefully incorporated into a final dam removal and river restoration plan for a site.

She said there was evidence that suggested that dam removal would not harm property values of landowners along the Oyster River impoundment. She provided details on a 2008 study that had concluded that residential real estate fronting free-flowing rivers was greater than or equal to property values adjacent to dam impoundments, and that real estate values of properties adjacent to impoundments remained stable or increased in value following dam removals.

Ms. Hunter said the Town should do a thorough scientific evaluation of the feasibility, short and long-term costs, and the environmental, societal, and economic benefits of both dam removal and dam repair options, in order to make a well-informed decision on this issue. She noted grant funding that was available through the NH Coastal Program for such a study.

The Council stood in recess from 8:47 to 9:01 PM.

After discussion Councilors that a comment had been made by a resident during the break that several people from outside the Town were speaking, they agreed to continue with the process in place.

Mitchell Kalter, 16 Laurel Lane, said he had enjoyed Mill Pond over the years, but said his enthusiasm had been dulled over the last decade by the realization that the impoundment was filling in and appeared to be eutrophying. He provided details on this, and also noted that he had been reading disturbing articles on the health of the Great Bay estuary, as well as problems with other estuary systems in the country where action may have been taken too late. He said this had opened his eyes to a larger picture than just his backyard.

He provided details on some of the historic record on the natural resources that the founding fathers of the area had experienced, and said there appeared to be little acknowledgment that this was the environment just a few hundred years ago. He said recording history was important, and also said it was important to learn from history.

Mr. Kalter said the engineering history of the dam had been well recorded, but said the historic lesson it should be teaching everyone didn't appear to be in the public consciousness, in terms of what the dam had cost the citizens regarding the natural environment, and what it would continue to cost them.

He said unfortunately the human lifespan was too short to perceive these environmental losses. He said history was important, and said they needed to look back a little further, to consider the lessons it was trying to teach them. He said they should not repeat the unintentional environmental mistakes of their founding fathers, without full studying these issues. He said perhaps history was trying to tell them to make different decisions about dams. He said he was becoming concerned that he was living in a town that didn't appreciate its stewardship responsibilities as a coastal town that surrounded coastal rivers.

Mr. Kalter asked why water withdrawals were being made from the Oyster River under normally low water conditions in the summer, and asked if alternatives were being sought. He asked why there were large parking lots a few feet from Oyster River tributaries, and also listed other issues that were impacting the river. He asked if Durham would set a high standard for other communities in addressing these things, and said he would like to feel proud to live in such a community.

He said what seemed to make sense to rational and responsible people was not necessarily reality, and said a thorough investigation was needed on the issue of dam removal, so the Town could make the best overall decision. He said he was ready to accept that the peaceful view of the water impoundment in his backyard was something he might have to give up for the future benefit of the place where he lived. He said he hoped his fellow neighbors and townspeople could open their minds to that same possibility.

Mr. Kalter asked that the Council approval a thorough feasibility study, considering both options concerning the dam, and make a good decision, as active stewards of the Town's natural resources, upstream and downstream from the dam. He said their children depended on it.

Ray Konisky, The Nature Conservancy, said The Nature Conservancy had a strong vested interest in the stewardship of land in Durham, and keeping that land to its highest and best purpose. He said he realized the complexity of this issue, but said significant questions remained.

He said he advocated a full assessment of the two options, instead of rushing to judgment. He spoke about the Nature Conservancy's concerns about siltation resulting from the removal of dam structures. He noted the erosion of land on properties that abutted the dam as a result of significant flooding in the past few years, and asked where that erosion had gone to. He also asked where the erosion would have gone if the dam

hadn't been there. He said these were legitimate questions to raise as part of a full and thorough review, which looked at hydrological, economic, and cultural issues.

Daniel Day, 89 Bagdad Road, said Mill Pond was a great public place in Town, and said he loved to go there. He also said the history of the Oyster River dam was very important to him, and noted that the dam was one of only seven dams like it in the State. He said losing the dam and Mill Pond would be a huge loss for Durham.

Dick Lord, 85 Bennett Road, said he was speaking that evening as a citizen. He noted reports about how the river had degraded, and said these problems had to do with what was being put into it. He said Durham had serious stormwater problems, including problems with College Brook.

Mr. Lord said he had spent three hours upstream of Mill Pond that afternoon, and said there was a wonderful natural area up there. He said if the dam was removed, it would be a precipitous event, in that a lot of the existing habitat would disappear, and other habitat would come in.

He said it was important to look at the dredging issues and at cleaning the Oyster River itself before considering dam removal. He also said he thought Mill Pond had been an important part of Durham, and would like to see it preserved. He said it was important to consider nature too, but said he didn't think removing the dam would fix all the problems, which would take decades of work. He said Councilors had a lot to think about, and asked them to consider all the possibilities.

Crawford Mills, 12 Cutts Road, said he had formerly lived one house up from the Oyster River Dam. He said his understanding was that abutting properties went to the water line, and said if this was the case, and the water line changed, those properties would be extended. He said the land would become wetland with mudflats, mosquitoes, etc., and would no longer be a recreational area.

He asked that the Council clarify this, in regard to the thinking that if the dam was removed this would create some dry features where there were natural wet features now. He said if a feasibility study was done, it should include a cost/benefit analysis, including an analysis of what had happened to property values and economic development in other towns that had removed dams.

Luci Gardner, 61 Durham Point Road, said she was opposed to taking down the dam, and said it had stood for almost 100 years with minimal cost to the taxpayers. She said the dam and Mill Pond was a beautiful spot, and should not be dismissed.

She said it was not known what the final result would be of tearing the dam down, noting that there had been a hundred years of silt accumulating in Mill Pond. She asked to what time period one would want to restore the area to, and said it was naïve to think that by tearing down the dam, people could reach back so many years. She said Durham shouldn't throw away what it had for what people thought had existed there hundreds of years ago.

Andrea Bodo, 20 Newmarket Road, member of the HDC, said that in 2002, while on the HDC, she had researched with the NH Department of Historic Resources the status of the Oyster River dam as an historic landmark. She said in 2008, when NHDES did an inspection of the dam, and it was revealed that the dam was in danger of being torn down, she contacted the NHDHR again. She said as a result of communication with them since that time, the agency now considered the dam eligible for listing on the State Register of Historic Places in 10 different categories. She said this qualified the dam for possible preservation grants such as LCHIP.

Ms. Bodo said NHDES was concerned about what dams were doing to the environment, but said she was concerned about what they all were doing to the historic environment. She said Durham must act to preserve and maintain its historic assets for current and future generations. She said it was a highly visible Town treasure on one of Durham's busiest gateways. She said they needed to address the environmental problems being concealed by the dam, and said the management of the dam should embody exemplary stewardship practices for others to follow, and should be their legacy to Durham, not tearing down the historic dam.

Steven Burns, 20 Newmarket Road, first noted that he had provided written information on hydropower, economics, and flooding issues as they related to the Oyster River Dam and Mill Pond. He said that about a month ago, the NH Preservation Alliance had held its annual meeting in an old mill building, which the town of Belmont had decided to preserve instead of tearing down. He said it was now the centerpiece of the town, and said the selectmen there had said saving the building had given the town a sense of purpose.

Mr. Burns said many people were concerned about the environment, but said this issue had to do with human behavior, and had nothing to do with the dam. He spoke in some detail about the problems with College Brook, and said Mill Pond concealed the problems that would have to be addressed. He said if the dam were taken out, the tide would come in twice a day and flush the sediments.

Nick Isaak, 35 Oyster River Road, and Chair of HDC, noted that he had written two letters. He said Mill Pond acted as a giant catch basin for the University, so was essentially preserving the Oyster River below the dam from a lot of contaminants that would otherwise go there. He also said if they were to remove the dam, the bigger issue would be to mitigate all of the upstream contamination first, before being able to restore the river to a pristine quality. He said they weren't going to remove the development that already existed, or limit the growth that was coming. He said they therefore needed to think about what was going to go into that water before pulling the dam out.

Gregory Lund, Newmarket Road, noted that he had lived near a very polluted lake where the fish had died, and said he didn't believe the dam was the main reason why the fish and the eel grass were gone. He said he thought they needed to look at restoring Mill Pond, rather than restoring the Oyster River. He said while the Lamprey River was a fast flowing river, the Oyster River was more like a brook, and said he therefore didn't see how removing the dam would do much for it.

Larry Harris, 56 Oyster River Road, said he was a marine ecologist and had studied the Gulf of Maine for 40 years. He said the changes in the coastal zone and estuaries were so dramatic that the area was almost unrecognizable compared to how things had been in 1969. He said one could point the finger at human activities of all sorts.

He said he had heard several people talk about all of the area that would be made available for spawning fish, and 4-5 miles of river that would be open and available, if the dam were removed, but said the upstream area couldn't be more than 2 miles. He provided details on this, and said the only place fish that had spawned historically was in the Oyster River itself, in a section that was less than 2 miles long. He said when he considered how little water came down that river for most of the year, he wondered if the problems with Mill Pond were in part due to the fact that the river didn't have the water it needed to cleanse itself.

Dudley Dudley, 25 Woodman Road, said she had seen in this instance that it wasn't until something was threatened that one realized how important it was. She said taking out the dam and losing Mill Pond would be short-sighted, immensely unpopular, and a great mistake.

She noted the Council's goals to create economic development while maintaining town character, and said achieving this required a balance. She said people moved to Durham because of its schools, natural resources and scenic character, and said older residents stayed despite the taxes.

She spoke about the drive coming into Durham compared to driving into Exeter, and said the view as one drove past the Oyster River dam fed the soul, just as the view at Wagon Hill did. She said both scenic vistas reminded people of Durham's history of protecting its natural resources.

Ms. Dudley noted recent Council discussion about Durham being a destination, and the importance of capitalizing on its unique scenic and natural resources. She said these resources should be utilized, and she urged the Council to vote to preserve the dam and Mill Pond. She said they should accept having the dam registered with the State Division of Historic Resources so it would be eligible for LCHIP funds. She said with NHDES encouraging removal of dams in New Hampshire, the Oyster River dam would become even more of a treasure.

Dave Howland, 5 Chesley Drive, said this was a tough problem with various dimensions to it, and said he agreed with other voices that said they should know about the issues involved as a community before a decision was made. He said Bonnie McDermott's comments about pollution that had occurred in the 1960's and 1970's were the most troubling words he had heard that evening, and said he could only imagine how it was then. He said the silt in Mill Pond would be an issue whether the dam was taken down or not.

He recommended that given this conundrum, core samples should be taken as part of a more comprehensive study that would involve the Town of Durham as well as the University and the EPA. He said with the 300 years of history in Durham, and the natural

history of the area before this, it was worth the extra time it might take to get some useful information on this multi-faceted problem. He said if this approach was taken, the Town would feel better about whatever decision was made, which would affect Durham for decades.

Stephen Roberts, 174 Packers Falls Road, said he had lived in Durham since 1966, and said not all rivers were created equal. He noted an article he had read about the removal of a dam from the Susquehanna River in New York, which indicated that this had resulted in an increase in the contaminants that had gone into the river because of the movement of the silt behind the dam.

He urged that the Council to be cautious in the situation with the Oyster River Dam and Mill Pond, and noted that the proposal for the repair of the dam and the dredging of the pond was something that it was known would have some positive effect. He said stories had indicated that there was a healthy pond system there in the 1930's. He said a second phase would then be based on data, which didn't exist now. He said corrective actions were needed first.

Sara Badger Wilson, 9 Coldspring Road, Chair of the Parks and Recreation Committee, said the committee supported whatever decision the Council made, and expected that the Council would make the best informed decision, including recreational opportunities for the Town.

Ted McNitt, 101 Durham Point Road, first noted that if the dam was take down, this would invalidate all the weddings that had taken place on the bridge. He then said the primary case for taking down the dam was environmental. But he said having watched the lower half of the Oyster River for many years, he thought there would be minimal environmental gains above the area of the dam, and enormous environmental risk below the dam if it was torn down.

Mr. McNitt said he supported what others had said about the history of the dam, and also said the problem was the silt, not the dam. He said if they were going to study something, they should study the best way to get rid of the silt.

Michael Schidlovsky, 100 Newmarket Road, spoke about the significant impact of flooding in recent years, including the merging of the Lamprey River and Oyster River watersheds during floods. He said the Lamprey River had a big impact on the Oyster River when there was flooding, and said if the dam was removed and flooding happened again, the silt would be moved right down into the lower Oyster River and Great Bay, and would also impact the Lamprey River. He said the cost of mitigating this would be enormous, and he urged the Council to consider this.

Lesley Lewis, 20 Mill Road, said she lived across from Mill Pond, and noted that the swan had come back to the pond on Town meeting day. She said people at the housing complex she lived in were feeling badly about losing the pond. Ms. Lewis said she had seen ospreys, hooded mergansers, wood ducks, muskrats, etc., at the pond, and said these had been magical moments.

She said she saw lots of people come to the pond: mothers teaching their children,

married couples, kids partying. She said it was generally a quiet place. She said she appreciated the different values the Council was struggling with, and said she didn't believe a sharp debate would help. She said more information needed to be obtained and processed.

Doug MacLennan, 21 Newmarket Road, said he was concerned about the sediment problem. He said he and Steve Burns had spoken to NHDES's dam department, and he estimated it would take 4,200 dump truck trips to remove the sedimentation from Mill Pond.

He said the dam hadn't changed, although the number of fish at the fish ladder had changed. He said it was important to know what would happen if the dam was taken down, and said there could be unintended consequences.

Steve Burns said defining how a study should be conducted was a hard thing to do. He said if there was going to be a study, a lot of work needed to be done to define it, if it was going to be a good one.

Jerry Olson, 55 Mill Pond Road, noted the pictures taken on September 18th, 2008 when the pond was drained, which showed a flow that he could jump over. He said if the University didn't take the water out of the Oyster River, there might be more water, but said for a good part of the year, there was no water. He said he went down to the pond every day, and questioned where the three miles of river was that people were talking about.

Martha Burton said one couldn't jump over this same river, three houses up from the Olson's house. She provided details on this.

Annmarie Harris, 56 Oyster River Road, noted that her husband was a marine biologist who loved to fish and observe the wildlife in their backyard. She said the river Ms. Burton couldn't jump over was spread out over a wider area than the channel further down.

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

Chair Niman asked if the Council wanted to continue its discussion the Oyster River dam and Mill Pond that evening, or instead would like to have the opportunity to digest the information received at the public hearing and have the discussion at the next meeting.

Councilor Stanhope said there were some questions he needed answers to, and suggested deferring the discussion to the next meeting.

Councilor Smith said his hope was that there would be some discussion at the present meeting because there were people present who wanted to hear what the Council had to say. He also noted that if one excluded from the calculation people not from Durham who represented particular interests, approximately twice as many people had spoken in favor of keeping the dam and pond, as opposed to removing it.

He said he thought this had provided the Council with a fairly clear indication of what most members of the public who had informed themselves had to say. He noted that resident John Kraus had spoken about wanting the public to have a say, through a referendum. But he said he wasn't sure that a simple referendum question would provide an accurate sense of the real desires and intentions of those involved in the community. He also said he had a suspicion about the idea that the public always knew best, and said this depended on who the public was.

Councilor Van Asselt said he agreed with Councilor Stanhope, and said he didn't believe in tackling substantive topics late in the evening. He also said he didn't see the urgency of doing this. Councilor Van Asselt also said this wasn't a game about numbers. He said this issue should be put on the Agenda for the Council's next meeting.

Councilor Needell asked if there were other materials on this issue that the Council would be receiving prior to the next meeting.

Administrator Selig said the Council had all the information that was presently available.

Councilor Needell said he agreed that this issue wouldn't and shouldn't be resolved that evening. But he said a common theme of many of the speakers was that there was no good reason to make a decision given the information that was currently available.

He said a decision to remove the dam would be inexcusable at this point, given the amount of information available. He said if this was something the Town wanted to consider, it needed to commit to a tremendous amount of work and research to understand that, which was perfectly valid.

He said there were also many comments by those speaking in favor of keeping the dam that it was important to know a lot more about what that meant. He said he hoped that if the Council decided to commit to repairing the dam, that there was more to this than repairs. He said he had heard that evening that they should be thinking more broadly than that.

Councilor Mower agreed, and said many people who had spoken had raised questions that the Council didn't have answers to right now.

Councilor Carroll agreed that the Council should enter into its discussion at the next Council meeting. She also said she was interested to how this discussion would be organized, given the complexity of the topics. She said they could spend a lot of time just speaking their minds, and asked if there was perhaps a more efficient way to have the discussion.

Councilor Mower said to help focus the discussion, perhaps Councilors could draw up a list of questions that would be grouped into categories and forwarded to the DPW.

Councilor Sievert said he felt the Council was leaning toward gathering more information, and also said he liked the idea of formatting the discussion, in part to define the scope of the study that would be required.

He said there were a lot of unanswered questions, and said in order to make a decision, he would need to have more information. He said there was degradation going on behind the dam, whether it was removed or not, and said it would fill in entirely over time unless the upstream discharge into the river was completely changed. He said the situation wouldn't improve unless something was done with the pond.

Councilor Clark said he had found the hearing to be clarifying, but said it seemed that the biggest thing that had come out of it was that this was not just about the dam, it was about the sediment, silt, and water pollution that the Town had to deal with no matter what the decision on the dam was. He said the most important thing to discuss was figuring out what issues connected with one another, and which ones were independent. He elaborated on this, and said they would need to be really careful about what needed to be studied in order to make an informed choice.

Councilor Smith said he suspected that if the Town spent 2-3 years studying these issues regarding restoring the ecosystem to a pathetic approximation of its natural condition, it would end up repairing the dam and taking care of Mill Pond. He said he had spent many hours with Margery Milne years ago, and she had often asked when the Town was going to clean up the pond.

He noted that he had helped prepare for a survey of the pond and had watched core samples taken 4-5 years ago.. He said there had been a lot of discussion about the health of Mill Pond by the Conservation Commission in past years, so it was not something new. He said the health of the pond was not the result of the dam, it was the result of the Town's failure to do some basic maintenance.

Councilor Smith also said the dam did provide flood control, and said if it was taken out, the Route 108 Bridge would become a dam. He said the dam slowed down the river, and he spoke in some detail on this. He also said the Mill Pond impoundment was a huge recreational area, and noted that if the dam was taken away, much of the land that was exposed would be private property. He said some of the landowners would welcome pedestrians, and many would not.

Regarding the issue of habitat restoration, he noted the habitat and species that existed in that area now. He also said that ultimately, this issue was about human beings, not about fish.

Chair Niman said the Council would have a discussion on these issues at its next meeting.

VI. Unfinished Business

- A. **Resolution #2009-10** adopting and implementing the provisions of RSA 79-E relative to a Community Revitalization Tax Relief Incentive program

Councilor Clark MOVED to Adopt RSA 79-E relative to a Community Revitalization Tax Relief Incentive program. Councilor Van Asselt SECONDED the motion, and it PASSED unanimously 9-0.

- B. Continued discussion regarding the development of Town Council goals for 2009-2010

Postponed

VI. Adjournment

Councilor Stanhope MOVED to adjourn the meeting. Councilor Sievert SECONDED the motion, and it PASSED 8-1, with Councilor Smith voting against the motion.

Adjournment at 10:25 pm

Victoria Parmele, Minutes taker