

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

**Durham Town Council  
Monday June 1, 2009  
Durham Town Hall - Council Chambers  
MINUTES**

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

**MEMBERS ABSENT:** None

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

**I. Call to Order**

Chair Niman called the meeting to order at 7:05 pm.

**II. Approval of Agenda**

*Councilor Van Asselt MOVED to approve the Agenda. Councilor Clark SECONDED the motion.*

Councilor Carroll noted that the Agenda didn't indicate that there might be possible action on Item X C, Continued discussion on the Oyster River Dam at Mill Pond, but that this was indicated in the Council Communication.

Councilors agreed this would be a friendly amendment to the approval of the Agenda.

*The motion PASSED unanimously 9-0.*

**III. Special Announcements**

None

**IV. Approval of Minutes**

April 20, 2009

Page 2, 2<sup>nd</sup> paragraph under V., the second sentence should be crossed out and replaced with: "She said sustainability goals of replacing throwaway plastic silverware with reusable silverware in the cafeteria had been achieved. Other goals of eliminating Styrofoam and replacing bottles of juice and water with a drink dispenser and reusable cups were being pursued. "

Page 4, bullets at the bottom, third bullet should read "a source water protection proposal by Councilor Mower"

Page 9, 3<sup>rd</sup> paragraph, should read "...and said he therefore didn't think a motion was needed for this."

Page 20, 3<sup>rd</sup> paragraph, should read "...to the Council and Planning Board, and also said that she had seen photos of the development."

***Councilor Van Asselt MOVED to approve the April 20, 2009 Minutes as amended. Councilor Mower SECONDED the motion, and it PASSED 8-0-1 with Councilor Stanhope abstaining because of his absence from the meeting.***

May 4, 2009

***Councilor Julian Smith MOVED to approve the May 4, 2009 Minutes. Councilor Van Asselt SECONDED the motion.***

Page 3, under #8, should read "...the estimated loss of annual tax revenues is \$2,100 according to the Town's Assessor"

Page 19, 2<sup>nd</sup> paragraph from bottom, should read "...Councilors could draw up a list of questions that would be grouped into categories and forwarded to the DPW."

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

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

Chair Niman said he had been at the most recent Planning Board meeting. He said the Board had approved a conditional use permit application submitted by Fall Line Properties to change a garage into a three bedroom apartment, and also approved the mixed-use redevelopment of the Houghton Hardware site. He said the Board had also talked to Paul Berton of Fall Line Properties about adding additional apartments to the building across the street from Stoke Hall.

He said there was also discussion about whether these should be Planning Board representation on the committee that would look at the CBD RFP's. He said he and Board member Kevin Gardner had volunteered to serve on this committee.

Councilor Carroll said the Durham Farmers' Market had opened for the season that day, and said it would run from 2:15 to 5:30 pm every Monday until October. She said there had been a good turnout, and that it was good to have the farmers back.

Councilor Carroll noted that there was a granite memorial stone in place on what had been the Milne property. She thanked the Trustees of the Trust Fund and the Public Works Department for their work on this, and said the exact words Margery Milne had chosen were now engraved on the granite stone. She said there would be a dedication of the stone in the future, with the date to be announced. She also said that as requested by Margery, a wildflower garden would be planted around the stone.

Councilor Mower said the Energy Committee had met that day, and had an interesting discussion on the application the Town Engineer had submitted to have Durham considered a bicycle friendly town. She said Mr. Cedarholm would welcome some help with the second part of the application, and she also noted that there were only two towns in New England with this designation.

She said the Energy Committee was looking for input from people with experience with energy efficiency consultants. She said the idea was to be able to share this information with others, and perhaps to do a handbook in the future that people would be able to refer to.

Councilor Sievert said the Parks and Recreation Committee had recently discussed Wagon Hill Farm. He said they discussed the idea of a new parking lot, and the fact that a community garden was being started there on a trial basis. He said there was also discussion on the idea of having more intensive recreation uses on the property.

He said the Committee had also discussed the idea of having picnics twice a month at various sites in Town, as an opportunity for people to come together as a community. He said people would be invited to bring their own food, Frisbees, etc., and said there would be more information on this in the Friday Updates.

Councilor Clark said the EDC had met the previous week, and was wrapping up some parts of the strategic plan, including a SWOT (Strengths, Weaknesses, Opportunities, and Threats) analysis, and was also reviewing the study UNH students had done, which would become a part of the strategic plan. He said they had done a great job. He said the Committee had also discussed the need for municipal centers, which led to a discussion on the need for collaboration.

He said the EDC had discussed that if one were to list all the pieces of property within a mile of the downtown, there were at least 16 properties that had the potential to meet at least one of the Town's needs. He also said he had listed 17 of these needs, and said the Committee felt that the Town would never get anywhere unless a comprehensive plan could be articulated that looked at all of these needs, in a way that balanced preservation and conservation with economic development. He said the Committee was hoping that the strategic plan would help to form that conversation. He said it would be a few months before the EDC would have something to present to the Council on this.

Chair Niman invited Councilor Clark to raise some of the other needs as part of the discussion with the Reverend Mary Westfall and Mr. Bencks that evening.

Councilor Mower said the consultant being hired for the CDB project would conceivably address this, and Councilor Clark agreed, but said that work was limited to looking at the downtown.

Councilor Smith said he had recently been cleaning up and removing the former home of a resident whose property had been condemned. He thanked the Public Works Department, especially Doug Bullen, Bonnie McDermott and Ray LaRoche, for their assistance with this work.

Councilor Smith said in reading over the May 4<sup>th</sup> Council Minutes and looking at the DVD in regard to the Public Hearing on Mill Pond on that date, he was struck by comments made by a resident who said it was an embarrassment that Mill Pond was a Town park because the pond was completely filled in, and represented a limited park experience.

He said he was struck by reading these Minutes after coming back from a recent vacation off the

coast of Georgia, where he had seen a park that had recently been re-done at a cost of a couple of million dollars. He said the thing he liked about the park at Mill Pond was that it was modest. He said while it might be a limited park experience, it did attract people.

He said if the Town were to remove the dam and develop a park along the restored river, this would be a very expensive park experience. He noted all the things the Public Works Department already did in Durham, and said he hoped the Council wouldn't put too much more work on them to develop an additional park experience besides the pond.

Councilor Smith noted that after a week away from his home, he had found beavers. He invited the public to visit his property to see what happens when beavers move in to the kind of new environment that would be created by removing the Oyster River dam at the Mill Pond.

Chair Niman thanked Amy Cunningham for the great job she had done organizing the Memorial Day parade. He also spoke about the fact that some residents had noted to him that the permanent plaques were in place at the memorial downtown, along with the stone bench. He asked if there would be a ceremony to commemorate this.

Public Works Director Mike Lynch said he had not planned a ceremony, but would love to take this challenge on if the Council would like to have one. He said he had many veterans come up to him to thank the Town's Trustees for providing the money for this and the DPW for providing the labor. He noted that the bench had been donated by Bill and Joan Drapeau.

Administrator Selig told Councilors that an RFP was being put together for the use of the Grange structure.

He said that regarding recent concerns about trash at rental properties in Town, the Public Works Department would engage the Durham Landlords Association on this issue in the coming weeks.

Administrator Selig said there had been a site walk to identify a suitable location for the plaque the US Department of the Interior was giving to Durham to mark the location of the Spruce Hole. He said the Conservation Commission would be discussing this at its next meeting, and said there would be a formal Agenda item on this at an upcoming Council meeting.

Administrator Selig said the likely date that the Governor and the Executive Council would be coming to Durham was July 15<sup>th</sup>.

He said the orientation session for Chairs and Vice Chairs of town boards and committees would be held on Wednesday.

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

**Bill Hall, Smith Park Lane**, said this was the eighth meeting where he would be discussing Code Enforcement Officer Tom Johnson. He spoke in some detail on a previous Code Officer for the Town, and said a recent characterization of him had been misleading. He then criticized in some detail the way in which Administrator Selig dealt with Town employees.

**John Kraus, 7 Cutts Road**, said the Council must act on behalf of all the citizens of Durham, not

just a special public that was paying attention. He quoted from Councilor Mower from a May 18<sup>th</sup> Council meeting that for many people who had lived there for many years, Mill Pond and the dam were iconic, but the younger families had not seen the pond and the dam at its glory, and saw it as a terrible burden for their children to have to pay for. He also noted Councilor Mower's campaign theme that all of Durham was her neighborhood. He said the hard question for the Council was who it was representing with its vote on this issue, and who held the future of Durham.

He noted Councilor Carroll's campaign slogan about preparing Durham for the future. He also quoted Councilor Smith's comments regarding the idea of putting a vote on the dam before the people, and the idea that sometimes the people knew best, and sometimes they didn't. Mr. Kraus asked Councilors if they thought the Durham public was incapable of making an informed decision, or if only a community involved public should decide on issues. He also asked if the Council objected to the Durham public being compared to 1950's racist southern segregationists.

Mr. Kraus concluded by reading what the Town Charter said about developing a citizen initiative. He said if all the Durham citizens were not represented in an action of the Council that evening, just 50 signatures could bring this issue back again to the Council.

**Phyllis Heilbronner, Mill Pond Road**, said the Friday Updates were wonderful, and said residents were grateful for the time and effort put into them. She noted especially the information provided in the previous week's Update, which had addressed complex issues in a thorough manner. Concerning the idea of doing a pre-feasibility study, Ms. Heilbronner asked how the Town could expect an objective study from NHDES when it already had a vested interest in taking down dams.

Chair Niman said the Council would answer that question.

**Starr Snyder, One Church Hill Road**, said Mill Pond and the dam were a part of the fabric of their lives, and said she would hate to see it go. She said windows in the Church Hill apartments looked out on Mill Pond, and said Oscar the great blue heron, the orioles and other wildlife there were a big part of residents' lives. She said her husband couldn't be at the meeting that evening, but she said the pond had been very therapeutic for him. She asked the Council to vote to keep the pond.

**Frank Pilar, 26 Newmarket Road**, said he had served on the Council, the HDC and the Parks and Recreation Committee in past years, and had lived at his present location since 1965. He said he made frequent use of the pond for recreational purposes over the years, including taking his children out in rowboats and canoes, kayaking by himself, and cross-country skiing to East Foss Farm.

He said there were often many tracks ahead of him when he skied, and said he met a lot of people out there. He said Mill Pond was also a wonderful place to fish, and noted that he had caught bass and perch there. He said if the dam was removed, he could guarantee that they wouldn't see bass anymore.

Mr. Pilar said a dam had been there for 350 years, and was an historic treasure. He asked what

they would have if it was removed, and said dealing with this would be a bigger expense than rebuilding the dam. He said a lot of mud would wash down into the Oyster River. He urged the Council to think long and carefully about all aspects of removal before taking an irrevocable action.

**Pedro DeAlba, 26 Mill Road**, said Mill Pond was beautiful, with an historic dam. He said if the dam was removed, the park would be a tangle of brush, and said having a real park there would be an extremely expensive proposition. He noted the invasive species issue, and the trickle of water when the pond had been drained. He also asked what would be done with all the sediment, and noted that they really didn't know what was in those sediments. He said if this sediment was removed, it would have to go into a secure landfill, which would be very expensive, and said he didn't think dam removal funds would cover this. Mr. DeAlba said he hoped the Council would consider these consequences of dam removal.

**Marion James, Durham, 4 Wood Road**, said she would like the dam to remain. She said the Town had missed some opportunities in the past, including the fact that it should have bought the land along the Oyster River in the early 20<sup>th</sup> century. She said if this had happened, people would have been devoted to the area. She said now, they must keep what remained; the dam and the pond, and they must have a plan for the future to beautify that area.

Ms. James said this was not a short term thing, and said many New Hampshire towns took on this kind of burden. She said the Town should have kept the mill. She said the Town needed to get back some of the land in the area if it could, and should include neighbors of the pond in a Town project. She said even if doing this cost more than tearing down the dam, it should be done. She said when there was a worthy project that was well publicized, attitudes changed and it became a town project. She noted the preservation of the church in Epsom as a great example of this.

**Bonnie McDermott, 82 Dover Road**, said she didn't think the Council should vote on this issue until the Environmental Protective Services report was looked at, and it was learned what the report's suggestions were, what had been done about them, and if nothing had been done about them, why this was the case. She said she would be getting a copy of the report this week, and said the Council should hold off on voting until it got all the facts.

**Essie McCubrie, Church Hill Apartments**, said the pond was a big asset for the Town, and said if the dam was taken down, Durham would become just another small town. She said elderly people living in the apartments lived for the pond with its herons, swans, etc. She said it was a very soothing spot and was part of the soul of Durham. She said the pond was one of the reasons she loved Durham, and said it would be a shame if the dam was removed.

**Sharon Griffin, 28 Newmarket Road**, said she was speaking for herself and her husband Paul Dubois, and noted that they would have been at previous meetings in regard to Mill Pond but had been out of the country. She said the previous week, she had sent a letter to the Council, the Conservation Commission and Mr. Cedarholm outlining several reasons for repairing the dam and dredging the pond in addition to others she had previously communicated to the Council.

She said the Council Communication had convinced her that doing a limited feasibility study

would serve no purpose, and would be a waste of time and money. She urged the Council to vote that evening to repair the dam, noting that there was already a cost estimate, and stating that a further request for more cost estimates would accomplish nothing.

She said Mill Pond and the dam was one of the few attractive public spaces in Durham, and said it would be a shame to destroy it. She also said housing values would plummet when word got out that the Town wanted to take it down. She said getting more information on the silt would increase the cost of the project, and said Town resources should be put to work on what had to be done right now.

She said if the Council wanted to placate the environmentalists in Town, they should be commissioned to do a study that would explore the option they wanted, and that would assess the costs before doing a full scale study. She said such a study wouldn't be unbiased, but if it was done properly, it would show how costly such a study would be, and that repair of the dam and dredging would be a good decision.

**Maggie Stier, statewide field representative for the NH Preservation Alliance, and the National Trust for Historic Preservation,** said whatever decision was chosen on the dam issue, it was a time-consuming process. She said that while her organizations often found themselves in collaboration with environmental groups, in this situation, they were at opposite ends of the spectrum.

She suggested that the Council look very carefully at the fact that it had already set aside this historic area as part of an historic district, and said she hoped that the Council understood that the dam, the homes there, and the context of open space there were a really important asset to protect. But she said it was up to the Town to decide the fate of the dam.

She said cost estimates were always variable, and there were always unanticipated costs. She said there was a lot of help available for the Town if it wished to repair the dam, and she offered the assistance of the NH Preservation Alliance and the Trust for Historic Preservation. She also noted that the Town's HDC and Heritage Commission were on board to help with this process.

Ms. Stier said Durham also was one of fewer than 20 certified local governments in NH that had an historic district, making it eligible for special grant funding for national register listed properties through the Department of Historic Resources, as was the dam. She also spoke about the Section 106 process, involving review and consultation carried out in the planning stages of a project to identify historic properties and propose strategies so that any harm to them could be avoided or minimized.

She said this was a federal mandate, and would be triggered if the Town decided to proceed with either dam removal or dam reconstruction. She said both would likely require a federal permit from one of several agencies or through action of a state agency like DES. She provided details on the process, and noted that they liked to see a feasibility study done covering natural and cultural resources, which would look at the different options concerning the dam.

Ms. Stier said it was important to have public input on the Section 106 process. Regarding funding, she said LCHIP funding might be available when and if it was restored to the State

budget. She said it was to the Town's credit that the Mill Pond area had remained largely unchanged, and said Durham's historic gateway was a defining and much loved feature.

She said her organizations acknowledged that communities should grow and change, but said they believed that the Mill Pond setting had such a high integrity of its historic resources that careful thought and planning should be part of any decision about its future.

Councilor Carroll asked Ms. Stier if she could provide a copy of the information she had shared with the Council, and Ms. Stier said she had provided this to Administrator Selig.

Councilor Smith said Ms. Stier had raised some interesting points the Council should be aware of, and asked that copies of this information be forwarded to Councilors.

**Phyllis Bennett, 14 Deer Meadow Road,** noted words spoken earlier that preservation of the dam was only in the interest of a special few who held dear to iconic images. She said despite her white hair, she would like to be the spokesperson for young people in Durham. She spoke about the beautiful ceremony on Memorial Day, and said there were an equal number of young and old people focusing on this landmark on that day. She said the Town had struggled to build a sense of community, and relied on the dam as an integral part of its Memorial Day ceremony. She said it came alive on that day, for all ages.

**Karen Myer, innkeeper of the Three Chimneys Inn,** said at least 50% of their overnight guests found them and Durham because of the history of the area. She said people loved the property, with the falls and the bridge, and she urged the Council to vote to save the dam. She said she would be happy to do a fundraiser in the future.

**Cathy Leach, Fairchild Drive,** said she thought there was another population in town that hadn't been as represented. She said that to them, what happened with the dam was not an emotional issue, and was an economic issue. She said there were many out there who might enjoy the dam and its beauty, but had no strong opinion either way regarding what ultimately happened to it. She said that on behalf of those people, she urged the Council to be as fiscally responsible as possible, whatever decision was made.

**Leslie Lewis, Church Hill Apartments,** said she would like to see a report from the Council that detailed the points of common ground on this issue, and she reviewed what these might be. She also said it needed to be considered how much bias there might be in this process, and what the Council's concerns were regarding possible hidden costs. She encouraged the Council to get more information if it needed to do so.

**James Houle, 95 Mill Road,** said he represented himself and the Conservation Commission, and what seemed to be a controversial opinion that more research and more information were needed. He said while there were deep interests involved, Durham was a rational community, with dynamic thinkers and reasonable people.

He said the position of the Conservation Commission from the beginning was that while both sides of this issue were represented on the Commission, all members agreed that the decision that was made on the dam needed to be based on clear and concise facts. He said the original



feasibility study that was proposed was thought to be a good compromise, and addressed issues people were concerned about. He said they couldn't make a decision based on assumptions, speculation and emotions, and he urged the Council to consider studying the issue, and making a decision based on sound facts.

**Ray Belles, 14 Dear Meadow Road,** said he had contacted NH Fish and Game, and it was clear to him that their policy was that any dam in the State should be removed, and that they would use their resources toward this. He noted the impacts of siltation on oyster beds, and asked how NH Fish and Game could worry about the fish but not the oysters. He said he was a fisherman, but said the agency had an agenda to remove dams.

Councilor Smith said it might be useful to have a show of hands for and against dam removal.

Chair Niman said he would like to hear from members of the public.

Councilor Smith said he was not trying to cut off discussion.

**Douglas Worthen, the Falls House,** said his family had bought this house in 1938, and said when he chose to continue the upkeep of the house, he realized this was something that would require a lot of work. He said he had found it to be a worthwhile project. He said the Council had the same question before it that a property owner had when he bought an historic property, which was to do the work in a way that was as historic as possible but also made the property livable.

He said the studies the Council was asking for would come from entities that wanted to prove the dam was wrong. He said as a landowner, he had to have the courage to put his money where his heart was. He said as a lifelong resident of Durham, he would like to ask the Council to think long and hard about whether it wanted to study this issue to death, leave property owners in limbo, or simply say that this was a ridiculous idea. He asked the Council to vote yes on repairing the dam.

**Derek Sowers, Oyster River Road,** said he was concerned with what appeared to be a scaling back of the feasibility study proposal and a rush to make a decision. He said this did a disservice to the larger community. He said there was an ongoing misconception that the feasibility study was to determine how to remove the dam. He said the study would not be done by an agency, but would be done by an independent consultant.

He said the Council didn't have the true cost yet of either alternative, and he spoke in some detail on cost figures. He said he thought the biggest mistake would be to commit to dam repair without more information. He said he wondered if dam repair was really the best option, and asked why its proponents were so against gathering more information.

Mr. Sowers said if dam repair was the best option, that was fine, but he said they didn't yet have that information. He said he did not discount what people said about what the dam and pond meant to them. But he said a free-flowing river was just as fulfilling, and could offer just as much.

**Jerry Olson, 55 Mill Pond Road,** said for those talking about a free-flowing river, he wasn't

sure they had gone further than Route 108. He said beyond the dam, there was not a free-flowing river, and noted photos he had taken of what the river looked like. Mr. Olson said anyone who spoke on this topic had a special interest, or would not have spoken.

**Luci Gardner, Durham Pont Road**, said her special interest was the beauty of Mill Pond and the dam. She also noted that the Town was required by the State to keep its dams in good repair. She said the dam was not presently broken and was working nicely although some repairs were needed. She said the dam had cost the Town nothing for 35 years, and said she disagreed that repairing the dam would lay a burden on the Town's children. She said this was called maintenance. She said this issue boiled down to a choice between certainty and uncertainty.

She said no feasibility study could say with certainty what the area would look like in 10 years if the dam was removed. She said the Town therefore had to choose the path that made the most logical sense, which was to repair the dam, and comply with the Statute that had brought them there in the first place.

**Phyllis Heilbronner, 51 Mill Pond Road**, said they needed to act in a judicious manner, and said the longer the Town waited, the more jeopardy the Town could be in if the dam was irreparably damaged. She said this was an historic site, and said demolition by neglect could be a serious financial burden for the Town. She said this was an economic issue that had to be looked at.

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

- A. Shall the Town Council schedule a Public Hearing for Monday, June 15, 2009, on a resolution to raise and appropriate an additional \$40,000 from the 2009 Capital Fund Budget to engage an architectural consultant to conduct a Space Needs Assessment to evaluate possible sites for the future Fire Station?
- B. Shall the Town Council approve a Non-Industrial Wastewater Discharge Permit Application for a proposed residential apartment building at 22 Rosemary Lane (Tax Map 2, Lot 12-8)?

Councilor Sievert recused himself.

***Councilor Van Asselt MOVED to approve Unanimous Consent Agenda Items A and B. Councilor Stanhope SECONDED the motion, and it PASSED unanimously 8-0.***

The Council stood in recess from 8:38-8:50 pm

Councilor Sievert returned to the table.

**VIII. Committee Appointments**

None

**IX. Presentation Item**

Introductory overview of an relative to the concept of a joint library/youth center facility – Douglas Bencks, Chair, Durham Public Library, and Reverend Mary Westfall, Durham Community Church

Councilor Stanhope said he was an abutter, so should recuse himself. But he said he would like to be able to discuss the idea of a teen center apart from the geography aspect.

Chair Niman said the Council was not voting on a particular location so he didn't feel Councilor Stanhope needed to recuse himself if he spoke about the idea for a center and not about the location.

Administrator Selig said the Library Trustees had been looking at various sites for a new library, and had tried to rank them. He said at the same, an initiative had recently developed to create a youth/teen center in Town. He said these two efforts had intersected over the last few months, and said there had been some discussion on identifying a site that might work for both potential uses.

He noted that the Town had said a new Fire Station was a long term need, and the Fire Department had recently embarked on looking for potential properties to locate it on. He said one such property, the Jacques property, had intersected with potential interest on the part of the Trustees and the Youth Center initiative. He said this property was located on Dover Road, across from Old Piscataqua Road. He said he had a discussion with Mr. Bencks and Reverend Westfall, and they thought it made sense for them to come speak with the Council about this.

Reverend Mary Westfall said she was present as the Chair of the Oyster River Youth Initiative, an organization that had started meeting about six months ago in response to an increasing desire to see an additional array of services, etc., for teens in Durham, and there was a growing interest in Town to find a facility where teenage students could go from 3 pm to 6 pm on school days.

She said that as Chair of the committee, she had looked at a number of possible sites and facilities. She said she had learned about the Jacques property, had talked with the Jacques, and among other things had found that six to nine acres were for sale. She said this property was a gateway into the community, but was more property than her organization needed. She said she had spoken with Mr. Bencks about a possible collaborative effort where on this property there could be an indoor and outdoor facility for teens, as well as community buildings and entities.

Mr. Bencks said the Trustees have been looking hard for a site for the new library, and noted that the most recent discussion on this was regarding a property on Mill Pond Road. He said this process had slowed over time because the idea of a long term ground lease for the new library there created complications with the way the owner's loan was written.

He said at the same time, he got a call from Reverend Westfall. He said Trustees had looked at the Jacques property before and had thought it was a little too far from the middle of Town for a library. But he said Reverend Westfall had thought of creating a right-of-way from the Middle School that would make it walkable. He spoke in some detail on this, and said there was now some excitement around this idea, given the fact that the property was one of the Town's highly visible gateways and that such a collaboration could really bring the community together.

Mr. Bencks said the Trustees were therefore very interested in pursuing this idea. He said they had a great sense of urgency about finding a site for the library, and said if this could do it for

them, it sounded fabulous. He noted that the Trustees continued to look at other possibilities as well, so were not solely focused on this property. But he said they felt a great deal of optimism about this one.

Administrator Selig said one of the question that remained was the buildability of the site for a library and a teen center, given possible wetlands on the property. He said he had spoken with Mr. Jacques that day and some months ago about the property and its value, and said this would drive some of the discussion on this concept. He said the Council's feedback right now on the concept would be helpful though not essential.

Councilor Needell asked what the status was of the right of way discussion, and whether it was an essential part of this idea.

Reverend Westfall said the right of way was an essential part of the idea, stating that something so close to the school that would allow walkability for teens was very appealing. She said she was also delighted that the back corner of the Jacques property came out near Coe Drive near the High School. She said John Yaeger owned two lots there, and said it separated Coe Drive and the High School from the Jacques property.

She said the Jacques property was a bumpy piece of land, and said there would be some challenges to create a passageway. She said they were still looking at other properties, but said this one especially appealing. She said whether they got this property or not, she invited the Council's support for the concept of a teen center.

Mr. Bencks said Reverend Westfall had had a very productive conversation with Mr. Yaeger. He noted that Mr. Yaeger was the tennis coach at the High School and had found the concept to be very appealing. He said the access to Coe Drive was a make or break aspect of the concept, so the conversation with Mr. Yaeger had provided the impetus to look at the property further.

Councilor Carroll said it sounded like what was envisioned was really a community center, in that when teens were not there, the facility could be used by younger people in the morning, and older people in the evening.

Reverend Westfall agreed, and provided details on this. She said when the Library Trustees had expressed some interest in the collaboration, it seemed to be a wonderful opportunity to bring different ages together.

Mr. Bencks said this kind of collaboration was what was needed to make these kinds of things happen.

Asked whether they were looking at two structures for this or one, Reverend Westfall said there weren't quite there yet. She noted that there were benefits of a shared facility, and that there could be wonderfully creative ways to configure and integrate the different spaces. She noted that there might be some times when activities of one age group would work against the activities of another. She also said it was yet to be determine how many buildable lots there were on the property

Mr. Bencks said how this would come together was a question of the way the site could be developed, and the way the community envisioned the long term goals for the site, so it was something that could continue to evolve over time as the needs of the Town changed.

Reverend Westfall said she had been approached by various entities about being involved, and said this was an opportunity yet untapped.

Councilor Clark said this lot had had been talked about for several years because of its proximity to the High School. He noted the School needed a track, and while there was an organization that would provide some money for it, there was no place to put it. He also said there was a need for other fields in town.

He said if a survey was done of all the different groups that needed buildings, fields or recreation facilities, there could be collaboration between the Town, the schools and other organizations in various ways to provide youth and adult activities. He said it was amazing how many people in the area had programs that needed homes. He said there was also the issue of the availability of land right now, and said the Town needed to take the lead and not squander this opportunity with land that was so close to Town.

Councilor Smith said he had a conflict of interest since he was a Library Trustee and also had a teenager in his household.. He said this idea was worth pursuing but needed some fleshing out in terms of cost sharing, who would own the land, etc. He said representatives of the Council and Library Trustees needed to walk this land together, along with the Town Engineer. He said he would like some understanding of how the Council might move forward with discussing this.

Councilor Van Asselt asked if the Trustees would be looking at how much of that land was buildable. He also asked if the library might be exempt from the soil requirements.

Administrator Selig said the buildability of the land would be determined, and he also said the Town would be exempt from the soils requirement but would endeavor to meet the requirements of the Zoning Ordinance.

Councilor Van Asselt said he was surprised to see the library being tied to this location, in that he didn't think that high school students and middle-schoolers had been the library's primary audience.

Mr. Bencks said he didn't mean to imply that this was the Trustees' ultimate reason for pursuing this idea.. He said the Trustees' goals had consistently been to find something walkable, and said how to define that and what the limit of this was, was something that they had constantly reviewed.

He said the Jacques property in past discussions had seemed to be outside of the comfortable walking zone. But he said a reasonable walk to the High School and Middle School changes that view, and noted that he personally hadn't made that connection before.

Councilor Needell asked whether the vision was that a teen center would be a town-owned or privately owned facility.

Reverend Westfall said this would depend on who had the money. She noted that there could be a variety of ways to finance and configure this. She said her organization had done some fundraising, and said she hoped the more people knew about this idea, the more they could think outside the box.

Administrator Selig said the next steps would be to try to flesh out what the relationship would be with the Town in such an effort. He said information was needed on the site, including its buildability, and said follow-up would be needed on easement access, cost, and other issues.

He said this concept would fit in nicely with future plans for the Town's Parks and Recreation Program, including the fact that there would be a new part-time Recreation Director and perhaps a full time director over time. He said there was also the potential for some new fields for the Town.

He also spoke of a possible easement from the Jacques property to Jackson's Landing, which would provide an easily walkable pathway for a big segment of the community to access recreational facilities.

He also noted that just over the overpass from the school was the Merrick conservation easement, which contained 22 acres and was open to public access. He said people used it, but not enough of them, and said the more these walkable areas could be linked, the better.

He said a linkage with Jackson's Landing could make the entire area more user friendly, and said if this was a goal, there would need to be a safe crossing of Route 108 to access Jackson's Landing, involving a narrowed roadway and other traffic calming, and perhaps a tunnel underneath the road.

## **X. Unfinished Business**

- A. PUBLIC HEARING ON RESOLUTION #2009-11** raising and appropriating an additional \$550,000 in the FY 2009 Capital Fund Budget for the Dover Road pump station rehabilitation project with said funds to come from the American Recovery and Reinvestment Act

Councilor Van Asselt left the table at 9:19 pm.

***Councilor Sievert MOVED to open the Public Hearing on RESOLUTION #2009-11 raising and appropriating an additional \$550,000 in the FY 2009 Capital Fund Budget for the Dover Road pump station rehabilitation project with said funds to come from the American Recovery and Reinvestment Act. Councilor Smith SECONDED the motion, and it PASSED unanimously 8-0.***

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

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

***Councilor Smith MOVED to adopt RESOLUTION #2009-11 raising and appropriating an***

***additional \$550,000 in the FY 2009 Capital Fund Budget for the Dover Road pump station rehabilitation project with said funds to come from the American Recovery and Reinvestment Act. Councilor Sievert SECONDED the motion.***

Administrator Selig noted a 2/3<sup>rd</sup>s vote was needed.

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

- B. PUBLIC HEARING ON RESOLUTION #2009-12** raising and appropriating an additional \$750,000 in the FY 2009 Capital Fund Budget for upgrades to the aeration blowers at the Wastewater Treatment Plant with said funds to be raised through application to the State of New Hampshire Revolving Fund and the acceptance of \$375,000 from the American Recovery and Reinvestment Act

***Councilor Clark MOVED to open the Public Hearing on RESOLUTION #2009-12 raising and appropriating an additional \$750,000 in the FY 2009 Capital Fund Budget for upgrades to the aeration blowers at the Wastewater Treatment Plant with said funds to be raised through application to the State of New Hampshire Revolving Fund and the acceptance of \$375,000 from the American Recovery and Reinvestment Act. Councilor Sievert SECONDED the motion, and it PASSED unanimously 8-0.***

Councilor Van Asselt returned to the table at 9:21 pm

There were no members of the public who spoke at the Public Hearing.

***Councilor Carroll MOVED to close the Public Hearing. Councilor Mower SECONDED the motion, and it PASSED unanimously 9-0.***

***Councilor Van Asselt MOVED to approve RESOLUTION #2009-12 raising and appropriating an additional \$750,000 in the FY 2009 Capital Fund Budget for upgrades to the aeration blowers at the Wastewater Treatment Plant with said funds to be raised through application to the State of New Hampshire Revolving Fund and the acceptance of \$375,000 from the American Recovery and Reinvestment Act. Councilor Clark SECONDED the motion, and it PASSED unanimously 9-0.***

- C. Continued discussion on the Oyster River Dam at Mill Pond**

Administrator Selig said at the last meeting, the suggestion was made to move forward with a pre-feasibility study that would considered how the impoundment would look if the dam was removed as well as what impacts there would be to the sediments, hydrology, etc., and to get a better sense of the real costs of dam repair and dam removal.

He said the concern at the last meeting had been that the tasks were too weighted toward dam removal, and he was therefore asked to put together a scope of work that was less weighted toward one of the options. He noted that his original list was not intended to be weighted toward dam removal, and was intended to answer questions that had been raised by a variety of interest

groups over several weeks.

He said for this meeting, he and Mr. Cedarholm had brought forward a slightly scaled back suggestion, and said it would be hard to perceive that it was weighted one way or the other. He said the first scope of work would focus on sediment sampling, and a bathymetric survey of the impoundment. He provided details on this, and said it would include some core sampling to determine if there was contamination in other locations within the pond.

Administrator Selig noted the previous core samplings done in the vicinity of the park, and said one sample had found a very low level of a petroleum product. But he said largely, the area the Town had planned to dredge was found to be clean. He said it was possible that other areas of the pond were not clean, and said sediment sampling would help to determine whether this was the case. He said if they were found to be clean, this would debunk the idea that there was widespread contamination, and that removal of the dam would release this contamination into the Oyster River estuary.

But he said the sampling would not get at core questions like hydropower potential, floodplain changes and changes in channel morphology if there was dam removal.

He said the second area of focus being proposed now was the dam itself, and said this would include an intrusive investigation of the dam's concrete, which would use core sampling to get at the integrity of the concrete. He said this would help develop a more refined cost of dam repairs. He also said a short term as well as long term strategy would be developed for repair of the dam, which would indicate among other things the minimum amount of work that was needed on the dam in the short term.

Administrator Selig said this was a scaled back scope of work, and would provide helpful information whether or not there was dam removal or dam repair. He said if they did subsequently want additional information about river restoration, some of the tasks outlined two weeks ago could be added in.

He said a comment in Council discussion had been that even if they moved forward with the three tasks outlined then, there would still be many questions left unanswered, and additional analysis would be needed. He said it would be a fallacy to imagine that the \$50,000 analysis would answer all the questions people had. He said it might answer some, but also might create more questions.

Administrator Selig said the suggested motions were to move forward with this more scaled back scope of services. He said NHDES would likely cover the first scope of services, estimated to be about \$30,000, and the town would pay for the second scope of services. He said there would be an RFP for both aspects of the study, which would be generated by the Town. He said the Town would select the firm to do the work, and said it was not the case that NHDES would be directing the outcome of the study. But he said he couldn't predict with any certainty what the conclusions of the analysis would be.

He said the second motion provided was the second one provided at the previous meeting, to proceed with dam repairs, and to not give further consideration to river restoration at this time.



He also said there was perhaps another approach the Council would want to take.

***Councilor Stanhope MOVED to request that the Town Administrator negotiate a service contract with Stephens Associates Consulting Engineers, LLC for the engineering phase to repair the Oyster River Dam. Councilor Smith SECONDED the motion.***

Councilor Stanhope said he would like to bifurcate the issue of Mill Pond from the issue of the dam. He said that in terms of what was in the best interest of the community, restoration of the river was a worthy goal. But he said the reality was that absent removing the second dam on the Oyster River, they wouldn't see a restored river, and only a short section of the river would be restored.

He said if the Town expended the amounts of resources necessary to find out all costs that would be incurred beyond the actual cost of dam removal, which the State was teasing the Town with, there were significant costs beyond that which would exceed the cost of repairing the dam. He said to him, what was in the best interest of the community was to repair the dam as efficiently as possible and to leave it in place because it had significant historic as well as cultural and economic benefits to the community.

Councilor Sievert said he agreed, but didn't feel the Council should jump directly to dam repair. He said he thought the sediments in the pond had a large impact even if the dam was left in place, and that this was a critical issue. He said the dam was filling in and if this wasn't addressed, there wouldn't be a pond. He also said more testing should be done to get a better idea of the cost of repairing the dam. In addition, he said perhaps other ways could be found to maintain the structural integrity of the dam without concrete.

Councilor Clark said he believed the feasibility study was treating symptoms, some of which, like the sediment, were important, and some of which were unnecessary. He said he believed the Town could be grouped into three categories: people who valued the historic relevance of the dam and the viewscape; people who valued water quality and habitat, with the flow that used to occur on the river; and people who valued how much a project would cost. But he said choosing between repairing the dam or taking it down was a false choice.

He said a question he had was whether the dam could be rebuilt, and said he was not sure he was ready to sign up to an early 1900's technology in 2009. He said it was important to get answers to questions regarding the sediments in the pond. He also said they needed to find out if there was a way to make the various constituents happy, by finding a way to preserve the impoundment, while allowing the water to get aerated and cleaned, and allowing the sediment to flow. He said maybe this could turn out to be the most economically feasible solution.

Councilor Clark said he wondered why the water quality of Mill Pond had seemed to be ok for hundreds of years, and had only started to fill in recently. He said he wondered if perhaps the floodgates simply needed to be opened and then closed again on occasion. He said there was an hypothesis that this had been what happened for the first couple of hundred years, and was why the impoundment had stayed healthy. He said probing questions like this needed to be answered, including how to have a dam that let water flow, let fish swim, and was more economically feasible than tearing down the dam.

Councilor Carroll said she wondered if the Council could combine what had been said by Councilor Stanhope, Councilor Sievert and Councilor Clark, in Councilor Stanhope's motion.

Councilor Stanhope said he wanted to find out what was wrong with the dam and the pond, but said it would be disingenuous to take the State's money for this. He agreed that maybe there were alternatives to dredging, and that for hundreds there wasn't a problem. He noted that drawing down in the winter in the past had killed off the growth, which was the net that kept the sediment in place.

He said the Town needed to figure out as community how to reclaim the pond, and said there might be a natural way to address this, rather than dredging it. He said he had no problem with looking at this issue separately, but said it didn't really go to the issue before them regarding what to do with the dam.

Councilor Smith agreed that the issues of sediments should be separated out from the issue of whether to repair the dam. He noted that Margery Milne had been concerned that the pond would fill in, and said he had shared with her some old photographs from the 1940's -1960's that showed quite a bit of plant growth adjacent to the Town park during those years.

He said he had spent time with the consulting firm that did the core samples of the pond and soundings of the channel, and said the firm had found that the channel was bare. He said it might make sense to find a consulting firm that dealt with the water issues in Durham, and said it would probably determine that it would take thousands of years for that pond to silt in and become a marsh. He said the force of the river, especially when the Lamprey River co-mingled with the Oyster River, was enough to scour out a great deal of sediment year after year.

Councilor Smith said he would be content to go with the motion before the Council, and to decide later what to do about addressing the silt and contaminants in the pond.

Chair Niman said he would like to ask Mr. Cedarholm some questions. He first noted the EPS report that Bonnie McDermott had referred to.

Mr. Cedarholm and Mr. Lynch said they were not aware of the report.

Chair Niman said that regarding sediment sampling, not included in the Council Communication was the cost of getting rid of the sediments, or if the dam was opened, that the sediments would disappear on their own. He said a concern was that the pond was filling in, so the Town potentially needed to do something about it, such as dredging, opening the gates, etc.

He asked if it could be determined what the best way was to get rid of the sediments, whether it would be possible in this instance, and how much doing so would cost. He asked if another \$10,000-20,000 could be spent to determine this.

Mr. Cedarholm said certainly. He explained that a sediment survey and a bathymetric survey would identify where the most vulnerable sediments would be if the dam was let out and the river was allowed to erode a new channel. He also said finding out how much it would cost to get

rid of contaminated sediments could be a part of this.

Chair Niman said he was not satisfied with the Stephens Associates report, which simply used the \$240,000 number the Town had supplied the company with for a tiny amount of dredging, and said his request was that there be more information on this issue. He also said core sampling of the concrete in the dam and strength testing might tell them that the dam was hanging by a thread and would have to be completely replaced, or would indicate that it could be patched.

Mr. Cedarholm said the reason for the core samples and the strength testing was that in the 1970's, most of the corroded cement had been chipped away, and new concrete was added. He said the concerns about cracking were that it might be occurring because of the sandwiching of good and bad concrete. He said if it was determined that the inner concrete was strong, it would give the Public Works Department confidence that a repair to the dam would last.

Councilor Smith asked if NHDES required and expected to see core samples.

Mr. Cedarholm said no, and said he assumed that part of Stephens Associates design to do final repairs would include core sampling.

Councilor Mower asked Mr. Cedarholm to explain the difference between the work done by Stephens Associates already and what was being recommended now.

Mr. Cedarholm said what had been done already was a visual inspection of the dam, and said there had been no invasive sampling

Councilor Carroll said a report had already been done by Stephens Associates, but she said it sounded like this had been one of the most important questions to answer. She said if the dam didn't pass, they would need to take a fresh look at the issue of repairing or not repairing the dam. She said she didn't read anything in the report that said dam repair couldn't take place.

Mr. Cedarholm said if the problem he had described was found, a repair could be devised so the dam could last another 20-30 years. He said the Stephens report included a conceptual design that was based on a visual investigation. He said the cost estimate was based on the costs for many similar dams with similar problems.

Councilor Needell said he was puzzled. He asked if the second part of the first motion would happen anyway, as part of the 2<sup>nd</sup> motion.

Mr. Cedarholm said to a certain extent it would. He said if they just decided that Stephens Associates should design repairs for the dam according to motion #2, the firm would develop cost estimates for short and long term repairs. He said in the first motion, they were asking that the firm first do the invasive investigation of the concrete, and then the estimates of the repairs needed. He said the firm would consult with him, and ask whether the Town wanted a 20 or 50 year repair, and said he might have to come back to the Council and ask what it wanted. He said this was similar to what was done with the Wiswall Bridge.

Chair Niman noted the picture provided by Jerry Olson of the Oyster River as a trickle, and the

fact that part of the reason for this was the second dam on the river upstream. He said a question was whether the Oyster River could be turned back into a river that was more than a trickle during low flow periods if the Town went to NHDES with their interest in a free flowing river, which: a) would only be possible if the Town could take more water from the Lamprey River, so the gates on the dam could be opened; or b) if NHDES paid to develop the Spruce Hole aquifer with artificial recharge so the Town could take the water from there and the Oyster River water wasn't so important.

He asked if the Oyster River could therefore be turned into more of a trickle during low flow periods.

Mr. Cedarholm noted that the Town had selected the time period for doing the dam inspection based on when it was expected that there would be very low flows in the river. He said they had been lucky that there was no big rainstorm during that time period. He said there were times when there was a lot of water flowing down the Oyster River, including the present, but he said there were other times when the river trickled. He said regardless of where UNH was drawing from the river, the flow would vary. He said if the river was trickling in August and September, it would definitely be challenging for the fish.

Chair Niman said he was intrigued by Councilor Clark's comments about creating a possible win-win situation through different ways of looking at things. He asked if it would be possible to think about this issue from a different perspective,

Mr. Cedarholm said he was sure there were management schemes to better control weed growth and to improve water quality. He said there were tradeoffs with this, noting that drawdown could impact fish migration, turtles in hibernation, etc. He noted that the Public Works Department had consulted with NH Fish and Game on this so the pond ecosystem wouldn't be impacted during the drawdown last fall. He said there were drawbacks to all kinds of management approaches.

Councilor Mower asked Mr. Cedarholm if had a sense of how long it would take to get answers to the limited set of questions that had been outlined.

Mr. Cedarholm said the Town would need to advertise, find a consultant and get this person on board by August. He said the report would need to be ready by September-October, given NHDES's December 1<sup>st</sup> deadline.

Councilor Smith asked whether, if the Council voted favorably on the motion before it, it would be possible for everything to come back from Stephens Associates, with appropriate figures for the repairs, so that these repairs could happen in the fall and could be finished before winter.

Mr. Cedarholm said absolutely not, and said they would be lucky to see a design by December.

Councilor Smith said if a contract was negotiated for sediment sampling and further investigation of structural issues, the whole process would take even longer.

Mr. Cedarholm agreed.

Councilor Mower asked Mr. Cedarholm to discuss the benefit NHDES saw in the Town getting

answers to these questions.

Mr. Cedarholm said NHDES realized that it was unlikely that the Town would remove the dam in this generation. But he said the information gathered about the sediments and the bathymetric survey would benefit everyone, and would provide fantastic baseline information for future dredging or if the Town was to move forward with dam removal.

He said NHDES realized that by helping the Town collect more information now, this information would be useful now and in 20 years.

Councilor Smith asked what information the bathymetric survey would provide.

Mr. Cedarholm said it would map the depth of the pond, and would be relatively inexpensive to do.

Councilor Sievert said if what Councilor Clark had suggested could be done, this would be helpful to everyone on both sides of this issue. He asked why they couldn't get this kind of thing going.

Mr. Cedarholm said it would be July before there was someone on board to do the study that had been outlined.

Councilor Sievert said he felt they should get this going, and said with the information from it, they could move into additional study and redesign. He said he thought all of this could be done by December 1<sup>st</sup>, and the dam could be ready for reconstruction by 2010.

Mr. Cedarholm noted that Stephens Associates was presently working on dam repairs for the Wiswall dam. He said there was a tight timeline for this, with a \$1,000,000 grant at stake if the work didn't get done. He noted that the Town had received an administrative order to get that work done, and said he had been told the Town wouldn't get an administrative order for the Oyster River dam.

Councilor Carroll said she was trying to get a sense of whether it would be possible to do the core sampling of sediments and core sampling of concrete under the umbrella of the Council voting to move ahead and repair the dam.

Mr. Cedarholm said if the Town said tomorrow that it would repair the dam, he didn't think NHDES would give the Town money for the study.

Councilor Needell said this flew in the face of what had been said earlier.

Mr. Cedarholm said he took back his previous statement, and said this would be an interesting test of NHDES.

Councilor Clark said he wanted to know if the Ambursen dam was the best design for the dam or if there was one that would be better to accomplish the various objectives they had.

Councilor Mower said the Ambursen dam was historical and couldn't be replaced.

Administrator Selig said they had specifically set aside the idea of replacing the Ambursen dam with a new dam for historic reasons, and said it was not included in the original scope of work for Stephens Associates.

Chair Niman said this wasn't the question Councilor Clark had asked. There was discussion.

Mr. Cedarholm said it was certainly possible that there was a better dam, and also said it would be possible to preserve a portion of the Amberson dam, and have a portion that was modern and among other things lasted longer and generated some electricity.

Councilor Smith asked if a composite of the Ambursen dam and other qualities would be more expensive than simply repairing the dam they had.

Mr. Cedarholm said if it could generate electricity, perhaps it could pay for itself.

Councilor Smith asked if the Ambursen dam would preclude having a hydroelectric component, and Mr. Cedarholm said certainly not.

Councilor Carroll asked how many years one could go back with core sampling of the sediment.

Mr. Cedarholm provided details on this, and said a vibratory core sample could only vibrate through loose sediment. He said presumably this could go back to when the river was an undisturbed river, or perhaps to before the glaciers.

Councilor Mower said her understanding was that Mr. Cedarholm believed the core sampling would be done at different locations than had been done previously, and at deeper depths, and that there was a technology that would allow them to determine what needed to be investigated further.

Mr. Cedarholm said previous samples were more limited than what could be done with a vibratory sample. He said that as part of the vibratory sampling a photo-ionization detector could be used to look for volatile organic compounds, and he noted that specific portions of the soil column could be sampled as part of this.

Councilor Mower asked if this could be used to address some of the concerns about what UNH might have dumped in College Brook.

Mr. Cedarholm said that was correct, and said that was why there was \$10,000 for analytical testing in the first scope of work.

Regarding dam maintenance, Administrator Selig asked to what extent dredging was an integral part of such maintenance. He noted the assumption that something different was happening now regarding siltation than had been the case in the past. He asked if this was because of additional stormwater runoff, or because years ago there was regular dredging and now there wasn't.

Mr. Cedarholm said with a hydroelectric dam, one wanted a large reservoir, so might dredge it or

at least lower it and let the water flush out on a regular basis. He said the same would be the case with a water supply reservoir. But he said for the health of the dam itself, there was really no reason to dredge.

Councilor Sievert said he thought the reason the pond didn't fill in historically was that there hadn't been a lot of development upstream until the last 35 years. He noted that his company had replaced a culvert on Mill Pond Road, and said the sediment had been all backed up there at one point. But he said there was now an arch culvert, so the sediment was down in the pond.

He said if they didn't know what was in this sediment, and let it out, it would go out into the tidal portion of the river and would silt that up even more. He said that was where he lived, and said he didn't want that sediment down by his dock, and wanted to know what was in the sediment. He said he didn't disagree that the dam couldn't be operated to remove the sediment, but said he didn't think the dam should all of a sudden be opened to let the sediment come out.

Councilor Needell said the Council had no business doing anything concerning the sediments until it did what was listed in the motion that was not before it. He said he was having trouble supporting the motion on the table because it didn't deal with the sediment, and said if the Council went forward with it, he believed it authorized the limited dredging which the Town had no business doing without the study.

He also said he would rather discuss the motion that had components to it. He noted discussion on possible alternative ways to use the dam, including the generous offer by abutters to provide hydropower in a plan that came forward. He said this kind of thing wasn't being considered. He asked if the dam repair was supposed to last for 20-30 years, and something like hydroelectricity would be talked about then, or now.

He said if they thought it was necessary, in order to protect public safety, and maintain the integrity of the dam, to do short term repairs, that was fine. He noted the comment that even NHDES was taking the longer term view on this, and said he thought their assessment was correct. He said it was not likely that the Town would take the dam out, and that the study described would make that more likely. He said it would be a long road for any study to convince enough people to make that likely.

He said that in the shorter term, he didn't think the Council wanted to go forward with the plan that was before them last year. He said the dredging aspect of this really bothered him, and said it would be irresponsible to do anything with the pond without studying it first.

Councilor Van Asselt said he agreed with Councilor Needell, and said they shouldn't nickel and dime fixing the dam. He asked if Councilor Stanhope's motion was to authorize Stephens Associates to come back and tell the Council what it would cost to do repairs, or if it was a motion to repair the dam at any cost. He said he didn't see how the Council could say right now that the dam should be repaired at any cost, and that it would worry about the cost later.

Councilor Stanhope said his intent was based on an assumption that the Council wouldn't give Administrator Selig a blank check on this, and he provided details on this.

Councilor Van Asselt said Councilor Stanhope's intent with the motion appeared to be different

than what he had heard other Councilors say the motion meant. He also said there were bigger issues here, and said he thought the public was fully capable of understanding them. He said perhaps they should be put out to the public, to see what they wanted to do.

He also noted that the Conservation Commission had spent time looking at these issues, but he said the Council had appeared to ignore this input. He also said hundreds of dams had been removed, and communities and the environment had been better off for this. He said the Council had quickly jumped to deciding that removal was not a possible option, and said he didn't understand this, and therefore wondered why the Council had gone through this whole exercise.

He said they had heard information on dam removal that did make sense, although noting that whether that was the appropriate course of action for Durham was another thing. He said he came down on the side of looking at more than just repair of the dam. He said there were bigger issues involved, and said Administrator Selig's two part approach made sense.

Councilor Smith said based on what Councilor Needell said, and what Councilor Carroll said or implied, he wondered if it would be appropriate to amend the motion to include #s 1 and 2 from the first motion in the Council Communication. He said if they really wanted to repair the dam properly, they needed to know the information that would be obtained from #2.

***Councilor Smith MOVED to amend the motion, to read:***

***The Town Council requests that the Town Administrator negotiate a service contract with Stephens Associates Consulting Engineers, LLC for the engineering phase to repair the Oyster River Dam, to include:***

- 1. Negotiate a service contract with a consultant to conduct a sediment sampling and Bathymetric Survey of sediments that have accumulated in the Mill Pond to determine where the accumulation has occurred and explore the degree to which the sediments are contaminated; and***
- 2. Obtain a Request for Proposal (RFP) from Stephens Associates to further investigate the seriousness of the structural issues associated with the dam and provide more detailed cost estimates for both short term and long term repairs.***

***Councilor Carroll SECONDED the motion.***

Councilor Sievert said he thought the investigation of the dam and the design could be grouped together. He also said it looked like they wanted to do #1 regarding the sediment sampling.

Councilor Mower said it seemed odd to negotiate to repair, and to investigate the seriousness of the structural issues and get cost estimates. She said they didn't seem to go together. She also said regarding what the Conservation Commission was asking for that she believed it would like to get answers the Council was saying it couldn't get with a pre-feasibility study.

Councilor Needell said he was confused by the amendment to the motion, noting that the original motion and #2 of the first motion on the Council Communication, which had now been added to the original motion, were somewhat conflicting. He said #2 included the short and long term view, and said he wasn't sure what the original motion offered regarding this part.

***Councilor Needell MOVED to extend the meeting beyond the 10:30 adjournment time.***



***Councilor Van Asselt SECONDED the motion, and it PASSED 8-1, with Councilor Stanhope voting against it.***

Councilor Needell said the idea of having a referendum depended on the question asked. He said he didn't feel that a question on dam removal should be put before the residents. He said a question on repair of the dam, and whether people wanted a full feasibility study on removal of the dam would seem to be a reasonable question to ask. He provided details on this, and noted that a feasibility study would take some years and a lot of effort and money. He said unless they were willing to go through that process, he didn't think they were going to get there.

He said realistically, he wasn't hearing discussion around the table arguing for a full feasibility study at this point, other than Councilor Van Asselt. He said he thought the amendment before them, if broken into short and long term, provided options as to what to do with the dam. He also said this discussion would be revisited 30 years from now. But he said he would like them to investigate long term plans for the pond.

Administrator Selig said he agreed with Councilor Needell that it didn't make sense to combine both sets of tasks outlined here, stating that they would seem to work at cross purposes. He said they might want to consider three additional tasks: whether there was a better design to accomplish an number of goals they had been looking at; focusing on a possible integration of a hydropower component; and including a reservoir management and dam operation plan, to better understand how they would work the dam to properly maintain the reservoir.

He said in that way, people who would want to preserve the dam would be comfortable that the Council was not proceeding toward dam removal and would be gathering information that would be generally beneficial to all of their goals. He said the people who would like more information regarding restoration would benefit from the analysis of the impoundment.

Councilor Stanhope said he liked what Administrator Selig had said, and was willing to withdraw his motion, with the understanding that Administrator Selig would come back to the next meeting with a single motion that adopted what had been discussed that evening.

Councilor Smith said he was willing to withdraw his motion to amend and Councilor Carroll agreed. But he said he thought Councilor Stanhope should stay with the original motion, which he had seconded, in order to start the process. He said somewhere down the line, the Town should do the things necessary to improve the health of Mill Pond.

Chair Niman summarized that the motion to amend had been withdrawn, but the original motion still existed. He said he would like the Council to confine its discussion to that motion, and to vote on it relatively quickly. He said if it didn't succeed, it should discuss what would replace it.

Councilor Van Asselt said if the motion failed, he agreed with Councilor Stanhope's suggestion that Administrator Selig should bring back real words to the next meeting.

Councilor Mower said she was concerned that if the Council went with the original motion, it wouldn't necessarily get to the second part. She said the sediments and the dredging were real issues, and said people who hoped to see the dam repaired and the historic elements retained,

and to see a pond that wasn't choked wouldn't necessarily be satisfied with the motion.

She said they were probably at a transition moment in society regarding a lot of the issues involving the dam. She said she personally didn't think the Town should be voting to remove the dam, but said with the opportunity to learn more about what the future might be, they should take advantage of it.

Councilor Stanhope said there could be a second motion that incorporated #1 of the first motion on the Council Communication. He said if they wanted to do the study of the impoundment as a community, they should do it.

Councilor Mower said what Mr. Cedarholm had explained to them about the long term view of DES was understandable, and said it was certain to come back in the future.

Councilor Needell said he would not support repairing the dam without a plan for the pond, so would vote against this motion. He said hopefully another motion could be brought forward.

Chair Niman said he agreed with Councilor Van Asselt, that in the best of all worlds, there could be more information before making a decision. He said he was not committed to either keeping or removing the dam. But he said he would like the information that was in a previous motion from two weeks ago, but was hearing was that this couldn't move forward in a limited period of time.

He said he was therefore hoping that this more limited study would allow him and the public to feel better about moving forward or not moving forward. He said if they found out that the pond was full of contaminants, and that it would cost a fortune to deal with it, a lot of people would probably feel good about keeping the dam in place.

He said before going full steam ahead with repairing the dam, he also wanted to know if the concrete was punky or not. He said he wanted to know what the short and long term costs were before he said to go full steam ahead to fix the dam. He said he thought it was irresponsible to enter into a contract with someone before figuring these things out.

He said he was still intrigued by the idea that there might be another way to approach this, and said while it didn't need to be in a motion that evening, he would like to explore that. He said he didn't believe the Conservation Commission was acting in bad faith, and thought they had raised some legitimate concerns and had a legitimate voice in terms of wanting more information. He said there might be a way to get some more of that information, and said he therefore wasn't ready to abandon this.

He said he would like to get the bathymetric survey, and the detailed costs of short and long term repairs, and said he was fully prepared to vote for this that evening. He said perhaps Town staff could write up something on some of the other intriguing ideas that had been discussed, and could look at them on another evening. He said this was why he was speaking against the motion.

Councilor Carroll said she was inclined to vote for this motion, in order to begin the process. She

said she wanted to know the other information, and said she thought it could be done as well as part of this process, and provided details on this.

Councilor Stanhope said Councilor Carroll had hit on something: that there was nothing in this motion that precluded looking at the longer term as well as the short term perspective.

Councilor Sievert said he had previously wanted to see the two motions combined, but said he now didn't agree on this. He said he had looked at it as a two phase proposal, where if the concrete wasn't punky and it wouldn't cost \$4 million to do repairs, they could go forward with the design. But he said the motion before them jumped into going forward with a design, and he suggested instead going with the motion that would include the sediment sampling/bathymetric survey and the dam investigation, which it sounded like they wanted.

***The motion FAILED 3-6 with Councilor Smith, Councilor Stanhop, and Councilor Carroll voting in favor of it.***

***Councilor Clark MOVED to request that the Town Administrator: 1. Negotiate a service contract with a consultant to conduct a sediment sampling and Bathymetric Survey of sediments that have accumulated in the Mill Pond to determine where the accumulation has occurred and explore the degree to which the sediments are contaminated; and 2. Obtain a Request for Proposal (RFP) from Stephens Associates to further investigate the seriousness of the structural issues associated with the dam and provide more detailed cost estimates for both short term and long term repairs.***

***Councilor Van Asselt SECONDED the motion.***

There was discussion as to whether the three items Administrator Selig had listed should be included in the motion: whether there was a better design to accomplish a number of goals they had been looking at; focusing on a possible integration of a hydropower component; and including a reservoir management and dam operation plan, to better understand how they would work the dam to properly maintain the reservoir.

Councilor Sievert said if they repaired the dam, it absolutely had to have a maintenance plan. Administrator Selig said the idea was to operate the dam so as to best preserve the health of the pond.

Councilor Mower said she was thrown by the idea of a better design for the dam that would allow water and sediments to come through in some way and still retain a pond.

Councilor Needell said if it came back that the dam was in pretty good shape, he wondered if they would entertain replacing it with some new technology. He said he hoped this would come out of the process naturally without specifically focusing on it.

Administrator Selig said they could ask the question, and Stephens Associate might have a simple answer for them.

There was discussion on the following additional tasks:

3. The Town Council further requests that the Town Administrator will have someone explore:

- a is there a better design that would be appropriate for the site
- b is it worthwhile to incorporate hydropower in a dam design
- c reservoir management and dam operation plan that would preserve the health of the pond

Councilor Sievert said he thought they already had the information on hydropower.

Administrator Selig said the information to date was that hydropower would provide a limited amount of energy, and that the dam could be an instructional site.

Councilor Van Asselt said this issue had been talked about so the Council should get some answers on it.

Administrator Selig noted that a fountain to help aerate the pond could be run with hydropower.

Mr. Cedarholm asked how much the Council would be willing to spend on these additional tasks.

Chair Niman suggested that they could vote on #1 and #2, and then perhaps task Mr. Cedarholm and Mr. Lynch to give them a cost estimate of what would be involved in looking at the tasks in #3 and bring this back as a separate item.

Councilor Needell said he thought c) the reservoir management plan was the most important part of #3, so would like to see it incorporated at this stage. He also said a question was if something could be done with hydropower at the dam that would be a show piece. He said he was comfortable with deferring this idea, but didn't want it to get lost.

Chair Niman asked if Administrator Selig should hire a consultant to develop a reservoir and dam operation plan. There was discussion about this.

Mr. Cedarholm said he would check on whether Stephens Associates could do this kind of work.

Councilor Van Asselt recommended passing #1 and #2, and then adopting #3 in two weeks.

Councilor Mower said if Town staff moved forward with the RFP soon, it would be missing that key component.

There was discussion that #2 could read "Obtain a Request for Proposal (RFP) from Stephens Associates to further investigate the seriousness of the structural issues associated with the dam and provide more detailed cost estimates for both short term and long term repairs and reservoir management and a dam operation plan that would preserve the health of the pond."

Mr. Cedarholm said first they first wanted to get an idea of what the repairs would be, and then in then process of designing the repairs, they could look at how they might potentially modify the dam for hydropower, and how they might best operate the pond to improve water quality.

Councilor Needell said the point was that they would need this information before they would

adopt the engineering phase.

Mr. Cedarholm said he could get ideas on pond management by doing a Google search.

Administrator Selig restated that #2 could read: Obtain a Request for Proposal (RFP) from Stephens Associates to further investigate the seriousness of the structural issues associated with the dam and provide more detailed cost estimates for both short term and long term repairs, with consideration given to reservoir management and a dam operation plan that would preserve the health of the pond.

Councilor Needell said it should be clear that the word reservoir here referred to the impoundment.

Councilor Clark and Councilor Van Asselt agreed to make this a friendly amendment to the motion.

Councilor Smith said he would assume that by voting on this motion, he was joined by other members of the Council who were slowly moving toward the time that they would vote to repair the dam. He said he saw these two items as steps toward a commitment to repair the dam.

Councilor Needell said he would agree to a certain extent, stating that the language was targeted to finding out what would be done to repair the dam.

Councilor Van Asselt said he had no interest in talking about something like this.

Chair Niman said he wouldn't interpret his vote in that way. He said he wanted there to be a reasoned, thoughtful approach to reaching a decision, and wanted people in town to feel good about the decision the Council reached. He said he needed more information in order to make a decision, and to justify his decision. He said this was a process of collecting that information.

Chair Niman restated the motion:

***Councilor Clark MOVED that the Durham Town Council requests that the Town Administrator:***

- 1. Negotiate a service contract with a consultant to conduct a sediment sampling and Bathymetric Survey of sediments that have accumulated in the Mill Pond to determine where the accumulation has occurred and explore the degree to which the sediments are contaminated; and***
- 2. Obtain a Request for Proposal (RFP) from Stephens Associates to further investigate the seriousness of the structural issues associated with the dam and provide more detailed cost estimates for both short term and long term repairs, with consideration given towards a reservoir management and a dam operation plan that would preserve the health of the impoundment.***

***Councilor Van Asselt SECONDED the motion, and it PASSED 8-1, with Councilor Stanhope voting against it.***

## **XI. New Business**

Discussion relative to FY 2010 Budget preparation

Councilors agreed that they would discuss this at the regularly scheduled June 15<sup>th</sup> meeting.

There was discussion that the Council should have a discussion on the memorial issue, which had been brought up earlier at the meeting.

**XII. Nonpublic Session (if required)**

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

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

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

Adjournment at 11:15 pm

Victoria Parmele, Minutes taker