

This set of minutes was approved at the Town Council meeting on August 24, 2009

**Durham Town Council
Monday July 6, 2009
Durham Town Hall - Council Chambers
7:00P.M.
MINUTES**

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

MEMBERS ABSENT: Councilor Mike Sievert; Councilor Doug Clark

OTHERS PRESENT: Town Administrator Todd Selig; Public Works Director Mike Lynch; Town Engineer Dave Cedarholm; Police Chief David Kurz; Assessor Robb Dix

I. Call to Order

Chair Niman called the meeting to order at 7:01 PM.

II. Approval of Agenda

Councilor Van Asselt MOVED to approve the Agenda. Councilor Smith SECONDED the motion, and it PASSED unanimously 7-0.

III. Special Announcements

None

IV. Approval of Minutes

April 6, 2009

Councilor Smith noted that the DVD had been checked, and that Councilor Stanhope had seconded the motion on page 11. He also said the word Agenda should be taken out of the title of the meeting on page 1.

Councilor Smith MOVED to approve the April 6, 2009 Minutes as amended. Councilor Van Asselt SECONDED the motion, and it PASSED unanimously 7-0.

May 18, 2009

Take "Agenda" out of the title on page 1

Header on top of each page should say May 18, 2009

Page 4, 3rd paragraph from bottom, should read "...the EDC had completed a SWOT

(Strengths, Weaknesses, Opportunities and Threats) analysis to see how other local communities.....)

***Councilor Smith MOVED to approve the May 18, 2009 Minutes as amended.
Councilor Van Asselt SECONDED the motion, and it PASSED unanimously 7-0.***

June 1, 2009

Take “Agenda” out of the title on page 1

Page 3, 4th full paragraph, should read “..wrapping up some parts of the strategic plan, including a SWOT (Strengths, Weaknesses, Opportunities and Threats) analysis, and was also reviewing...”

Page 8, 4th paragraph from bottom, should read “She said that to them, what happened...”

***Councilor Van Asselt MOVED to approve the May 18, 2009 Minutes as amended.
Councilor Smith SECONDED the motion, and it PASSED unanimously 7-0.***

V. Councilor and Town Administrator Roundtable

- Administrator Selig first noted that the July 4th Great Bay Rotary fireworks celebration had been amazing.
- He said the UNH outdoor pool was currently closed due to a mechanical problem with the filtration system that would hopefully be resolved by Saturday or Monday at the latest.
- He said the Durham Farmers Market was in full swing, and was open every Monday from 2:30 to 5:30.
- He said the Wiswall Road bridge removal would begin soon, and would involve the removal of the Bailey bridge that was currently there, and then the reconstruction process. He said the project would take about a year to complete, and said hopefully the RFP process for the construction phase would be finalized by August.

Councilor Mower asked if the fact that the Wiswall Bridge would be closed as of July 27th had been sent out on the Town listserv, and Administrator Selig said it would be put on the Friday Update.

- Administrator Selig noted that the Town website was in the process of being updated, and said there had been the opportunity for residents to vote on two possible options for the update. He said option 2, which was a simpler, more streamlined approach was preferred. He said 60% of those residents who voted were in favor of it.
- He noted the Durham Fire Department’s new program to recycle used car seats for children among residents, and said department employee Brendan O’Sullivan was the person behind this.
- Administrator Selig noted Councilor Van Asselt’s recent retirement from the Rochester Housing Authority after 27 years.

Councilor Stanhope said the HDC had recently met, and had reviewed and approved an application to do some cosmetic changes to the “stone house” just beyond the Oyster River dam. He also said the HDC was investigating the idea that Mill Pond was under the jurisdiction of the HDC because it was a created entity and not a natural entity, and that they would be coming forward with a proposal to address the degradation of the pond.

Councilor Carroll said she and her family had had the opportunity the previous day to spend some time at Jackson’s Landing, which was the first time she had been there since the revitalization project had been completed. She thanked all those involved with the project for doing a marvelous job, and also said people were really taking advantage of the site when she was there.

Councilor Smith said the Planning Board had met on June 24th, and he noted that that there had been a presentation by the owner of the current Chinese restaurant in Durham, who wanted to open an upscale Asian restaurant at the site of the former Movie Stop. Councilor Smith said he thought this would be a good re-use of that space.

He said the Planning Board had also accepted several site plan applications that evening, including one for an amendment to the already approved site plan application for 6 Jenkins Court, which would eliminate the parking at the side of the building and expand the commercial footprint. He said there would be a public hearing on the application on Wednesday.

Councilor Smith said the Board had accepted a site plan application for the expansion of the Durham Unitarian Universalist Fellowship, and said it had also accepted an application for a proposed amendment to a previously approved site plan for the Perley Lane section of the Fitts Farm subdivision. He said the public hearing for this would be held on Wednesday.

Councilor Needell asked if there was some expectation that there would actually be a development on Perley Lane.

Councilor Smith said storm sewer connections had been installed along with other construction such as the large box culvert on the site, so it looked like something was going to happen. He also explained that the amendment was to replace duplexes with single family houses, because the owner saw more opportunity to sell these kinds of units.

Administrator Selig reminded Councilors that Durham would be hosting Governor Lynch and the Executive Council on July 15th at the Three Chimneys Inn.

He said an RFP had recently been sent out regarding the potential productive re-use of the Grange property. He said the Town had received one response from resident Doug Green, who had put together a development team to potentially turn the property into an upscale Mexican restaurant. Administrator Selig said he would be speaking with Doug about the terms of an agreement, and said at the appropriate time this agreement would be

brought forward to the Council.

Administrator Selig updated the Council on the RFP sent out regarding Zoning review, strategic planning assistance and a master planning update. He said eight responses were received, and said information on the firm to be chosen would likely come forward at the next Council meeting.

He also noted that there had been a lot of recent discussion about the idea of a possible hotel and conference facility in the vicinity of the ATO fraternity site. He said discussions with a hotel company and a developer on this potential project were continuing, and he also said there was ongoing discussion with UNH about how the parking that would be needed for that kind of facility could be accommodated. He said he would be bringing forward some ideas on this to the Council.

Councilor Mower asked where things stood with the tax situation for the ATO fraternity, and Administrator Selig said the fraternity had paid off the oldest tax lien although there were still outstanding tax bills for 2008 and 2009. But he said this meant that the Town was not in a position to deed the property.

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

Peter Smith, Dover Road, said he was present as a member of the Conservation Commission to speak about Agenda Item VII E, which addressed the bronze plaque the National Parks Service wanted to give the Town to officially mark the Spruce Hole Bog as a National Natural Landmark.

He explained that 37 years ago, the Spruce Hole kettle bog had actually been designated as a national landmark, and about 6-7 years ago, the Town had been contacted by the National Parks Service, which said at that time that they wanted to commemorate this unusual geological feature with a plaque.

But he said for some reason, the Town hadn't heard back from the agency until recently. Mr. Smith said he and George Thomas had taken a National Park Services representative to see this remarkable site, and he noted that he personally had not seen it himself until that day. He said the representative surveyed the site, and the Conservation Commission had then discussed the matter and had done a site walk to determine where the plaque commemorating the bog should go.

Mr. Smith said a goal was to call attention, but not too much attention, to the bog. He explained that the kettle bog was several hundred yards across and in the form of a perfect circle, and said with the help of DPW Director Mike Lynch, a boulder located about 20 yards away from the rim of the bog was chosen as the place to put the plaque. He noted that there were no trails, and would be no trails going down to the bog itself.

He said the Conservation Commission had voted to approve the recommended placement of the plaque, and said it was now asking that the Council accept the plaque as well at

that location. He also said the Commission would like to have a formal presentation of the plaque.

Richard Whitney, Durham-Great Bay Rotary Club President, said that on behalf of himself and former Rotary Club president John Belcher, he would like to thank the Town of Durham for its assistance with the recent July 4th fireworks display. He described some of the details involved in having to move the fireworks display, which was their main fundraiser, to another location, and noted the key role Town departments had played in making this possible.

Mr. Whitney listed the other events the Rotary Club was involved with, among them the twice a year roadside cleanup; the boot and shoe fund; the donation and distribution of over 200 turkeys at Thanksgiving through the Food Pantry; scholarships for Durham and Newmarket high school students; the Oyster River Womenade's QuackFest; other community service projects as well as several international service projects.

William Hall, Smith Park Lane, said he had watched with interest the criticism of the Assessor at the last Council meeting, and the Council's discussion on what to do about this issue. He elaborated on this, and said the most important thing for the Council to elaborate was how Administrator Selig handled these kinds of situations.

Bill White, 18 Williams Way, noted that he had written to the Town concerning an abatement request he and his wife had filed with the Town. He read this letter out loud.

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

- A. **FIRST READING ON ORDINANCE #2009-05** amending Chapter 153 "Vehicles and Traffic", Section 153-49 "Parking Prohibited Certain Hours" of the Durham Town Code by allowing only vehicles with a boat trailer attached to park in the waterfront area of Jackson's Landing
- B. **FIRST READING ON ORDINANCE #2009-06** amending Chapter 153 "Vehicles and Traffic", Section 153-25 "Loading Zones" of the Durham Town Code by establishing loading zones on a section of Jenkins Court
- C. **FIRST READING ON ORDINANCE #2009-07** amending Chapter 153 "Vehicles and Traffic", Section 153-46 "Parking Prohibited at all Time", of the Durham Town Code by establishing no parking on a section of Madbury Road
- D. Shall the Town Council approve a non-industrial sewer connection permit application submitted by Thomas Christie for property located at 12 Jenkins Court as recommended by the Town Administrator?
- E. Shall the Town Council accept a bronze plaque provided by the US Department of Interior, National Parks Service, officially marking the Spruce Hole Bog as a National

Natural Landmark, and approve the location for mounting the plaque as recommended by the Durham Conservation Commission and Town Administrator?

- F. **RESOLUTION #2009-18** rescinding Resolution #2009-15 dated June 15, 2009 in its entirety and approving the submission of an application to the New Hampshire Clean Water State Revolving Fund Program in the amount of \$1,231,055 for the Dover Road Pump Station Rehabilitation Project, and authorizing the Town Administrator to sign the appropriate loan documents

Councilor Smith MOVED to approve Unanimous Consent Agenda Items A, B, C, D, E, F. Councilor Van Asselt SECONDED the motion, and it PASSED unanimously

Councilor Van Asselt said he had a hard time believing that the landlords on Madbury Road were supportive of taking away parking, and said he would like to see information on this.

Administrator Selig said this information would be provided when the Agenda Item came back to the Council.

VIII. Committee Appointments

None

IX. Presentation Items

- A. Receive update on progress with the second \$200,000 Brownfield's Grant from the United States Environmental Protection Agency and authorize the Town Administrator to award the engineering contract for continued cleanup of the abandoned Craig Supply site (Depot Road parking lot) to McFarland Johnson of Concord NH as recommended by the Town Administrator

DPW Director Mike Lynch said the Town was now moving on to Phase II of the cleanup of the Craig Supply site. He explained that the project involved the repair of the deteriorated 7 ft tall culvert running under the property, and noted that NHDES, EPA, and the Town were very concerned about the culvert. He reviewed the process of choosing McFarland Johnson as the engineering firm that would do the work, noting that this was the same firm that had done the stability analysis of the culvert.

He said there was almost \$112,000 in a revenue account for the site, which had been generated from money the Town received for renting parking spaces at the Depot Road parking lot. He noted that this amount reflected the fact that the Town had taken the match amount it owed for the first grant out of the fund, and also reflected operating costs for the parking lot.

Mr. Lynch explained that groundwater testing indicated that progress was being made in reducing contamination in a few places on the site, and that the contamination was

holding steady in others. He noted that there was an area out behind the Whittemore Center that had shown a bit of an increase in contamination, and said they would keep an eye on this. But he said it looked like overall, the efforts so far appeared to be working.

There was discussion about the level of success that had been achieved so far, and what could be expected in terms of further improvement in the future. Mr. Lynch noted the areas where improvement had been seen were directly underneath the parking lot, which made sense because these areas had been capped, which prevented contamination from going deeper into the ground there.

He spoke in some detail on how natural attenuation of the contamination would occur over time, and explained that some of the polluted areas would clean up relatively quickly, while others would take longer. He also noted that while chemical treatment of the contaminants was a possible alternative, this was not something the Town wanted to do.

Councilor Stanhope asked whether, if the culvert to be replaced was currently breached, that runoff flowing through the soil and beyond the capped parking lot could leach into the culvert and work its way into the stream flowing to the Oyster River.

Mr. Lynch said that was correct, and explained that there were mostly hairline cracks in the concrete, as well as a couple of voids in it.

Councilor Stanhope asked if replacement of the culvert would basically contain the pollutants from effectively running downstream, allowing them to degrade gradually over time.

Mr. Lynch said yes; the contamination would stay in place in the soil, and natural attenuation would occur over time, much the same as was happening now under the asphalt parking lot. He said in this way, the contamination wouldn't get into the downstream waters.

Councilor Stanhope asked if there were elevations immediate to the cap that were higher than the railroad bed, and was told yes. He asked if there had been consideration given to sealing them in order to insure there was no runoff adjacent to the cap that worked its way into the soils under the cap. He noted that the cap addressed only the precipitation falling directly on it.

Mr. Lynch explained how water hitting the cap itself was filtered before hitting the brook. But he said it would be difficult to cap the slopes on either side, noting they were very steep. He the soil scientists preferred to make progress where they could.

Councilor Stanhope noted that NHDES had offered to fund any additional expenses. associated with the project beyond the grant. He asked what the probability was that the funds beyond the grant amount would be needed, and if so, where this money would come from since NHDES wasn't likely to be able to provide the funding.

Mr. Lynch said the Town wouldn't know if the funds needed would exceed the grant amount until the project was put out to bid, but said his gut feeling was that it would be exceeded by about \$20,000-30,000. He said NHDES had been committed to this site for about 20 years, and was bound and determined to make it a clean site.

He said unless there was a complete change of administration, NHDES was committed to be involved in the project over the long run, and would assist the Town in any way it could. He noted that EPA had some stimulus money that the Town had been courting, and said the Town had been told that the Craig Supply site was one of the top sites to receive operational money from NHDES.

Councilor Stanhope said even for things NHDES had committed to, it was now saying it would not be able to fund them. He said it concerned him that they were only doing the best they could with the contamination on the site, and that the Town was running the risk of having a project where it was not clear where the additional funds needed to complete it would come from.

Mr. Lynch said if the money didn't come to the Town, his recommendation would be to take money from the \$112,000 revenue fund.

Chair Niman noted that this fund was specifically dedicated to cleaning up that site.

Councilor Van Asselt said the bottom line was that the Town had to fix this problem, and said he hoped the State and the federal government would be able to help them.

Councilor Stanhope said his address was adjacent to Beard's Creek, and said when there was a big amount of runoff, there was blue water, which he suspected came from the impoundment, one way or the other.

Mr. Lynch said testing done over time had indicated that by the time the runoff got to Garrison Avenue, there was no trace of contamination.

Administrator Selig said over the long term, the Town would need to remediate the site. He said right now, they were waiting for the EPA and NHDES to determine the preferred technology to accomplish this. He noted that soil removal was the most expensive option, and he also spoke about other approaches like injection of bacteria into the contaminated areas. He said the hope was that natural attenuation would work, and said there would be continued discussion, and ongoing monitoring of the site.

Councilor Smith noted that there were industrial solvents involved, and said it would be great if they could stay in one place.

Councilor Van Asselt MOVED upon recommendation by the Town Administrator to award the engineering contract for the repair of the 7 ft tall concrete culvert at the Depot Road parking lot to McFarland Johnson of Concord, NH for the sum of \$51,400 and authorizes the Town Administrator to sign such contract with monies coming from

account #07-0841-801-36-000. Councilor Smith SECONDED the motion, and it PASSED unanimously 7-0.

B. 2008 property tax abatement process – Robb Dix, Assessor

Mr. Dix said the Town had done a property assessment update in 2008, and as a result, got quite a few abatement requests. He noted that the economic climate had changed dramatically over the past year, which among other things had caused people to panic about property values falling.

But he said when the assessment update was done, it was found that overall, property values had increased in Durham since the previous time the assessment had been done. He provided details on this, and said the situation had been confusing for many taxpayers in Durham. He said Durham had actually been doing very well in the current market, and noted that he had talked with the Assessor in Hanover, NH, who had also seen a net increase in property values there over time.

Mr. Dix said his recommendations that evening concerning tax abatement requests were based on the integrity of the assessment update he had done. He said he believed that the process had been conducted properly, and he noted that outside sources had provided assurances that the process was done fairly.

He said most of his recommendations were denials, and were based on his belief that the work he had done was sound. He noted that Addendum A documented the major thrust of the valuation increase, which was the student housing segment. He pointed out that since the update was done, there had been five commercial type sales, which he had no knowledge would occur, when he did the update. Mr. Dix provided details on these transactions and how they validated his assessments.

He said Durham was in a pretty good place in terms of property values, because the University insured the economic viability of the area.

X. Unfinished Business

None

XI. New Business

A. Review 2008 property tax abatement applications and begin taking action on said applications

Chair Niman noted that the Town had been tardy in reviewing the abatement requests. He said he would like to see where Councilors agreed and disagreed with Mr. Dix regarding his recommendations for specific abatement requests, and said the Council could then discuss in detail the abatement request recommendations they didn't agree with. He asked if there were any recommendations to grant abatement requests that Councilors

disagreed with.

Councilor Stanhope said he disagreed with Mr. Dix regarding abatement request #23. He said he felt the logic the Assessor had used in this case was not sound, and said a larger abatement should have been granted. He also said he disagreed with the Assessor's recommendation for #35.

Councilor Stanhope MOVED to approve all the abatement requests where the recommendation is to grant, with the exception of #23 and #35. Councilor Van Asselt SECONDED the motion, and it PASSED unanimously 7-0.

Administrator Selig noted that the Town would inform those residents whose abatement requests had been granted.

Mr. Stanhope provided details on why he could not vote to support the granting of the abatement as recommended by Mr. Dix for #23, a property located at 116 Dover Road, which contained a single family home. There ensued detailed discussion about this abatement request.

Robin Mower MOVED to approve the granting of abatement request # 23, as recommended. Councilor Van Asselt SECONDED the motion, and it PASSED 6-1, with Councilor Stanhope voting against it.

There was discussion on #35. As part of this, there was discussion on the fact that Councilor Stanhope's approach to assessing properties was different than the approach used by Mr. Dix. Both of them elaborated on the approaches they used.

Councilors also discussed the fact that an overriding goal of assessment was to have a methodology that was fair to all segments of the community. It was noted as part of this that having good information on properties was important in order to be able to provide fair assessments of them.

Councilor Mower MOVED to approve the granting of abatement request for #35, as recommended. Councilor Van Asselt SECONDED the motion, and it PASSED 6-1, with Councilor Stanhope voting against it.

The Council stood in recess from 9:10-9:20 PM.

Chair Niman asked Councilors which of the abatement requests the Assessor had denied that they would like to discuss.

#17 - Whites, 18 Williams Way

Councilor Stanhope noted the private appraisal done of the property, and said it appeared to be reasonably put together. He said he could not support the denial of the abatement request.

Mr. Dix provided details on why he thought the abatement request should not be granted, and there was further discussion.

Councilor Van Asselt suggested that a motion be made that an appraisal of 18 Williams Way be done by a Town-hired independent appraiser, who would report back to the Town Council. He asked Administrator Selig how else this situation could otherwise be dealt with.

Administrator Selig explained that it would be highly unusual for a Town to have an independent appraisal done in a situation like this. He recommended supporting the denial of the abatement request, and then letting the situation play out at the next level of review. He said Mr. Dix had a different philosophical perspective than the appraiser hired to appraise the White's property.

There was further detailed discussion on whether an independent appraisal should be done, what the Council's role should be in evaluating this situation, and in evaluating abatement requests in general.

Councilor Stanhope MOVED that the Council not accept the Assessor's recommendation to deny the abatement request for #17. Councilor Smith SECONDED the motion.

Councilor Needell questioned the purpose of any motions to deny at this point, given the fact that all of the abatement requests were denied based on the timing issue.

After further detailed discussion on this and other issues, Councilor Stanhope withdrew his motion.

Councilor Van Asselt MOVED that the Town Council ask Assessor Dix to take another look at the abatement request for 18 Williams Way, based on the other appraisal done and the discussion tonight. Councilor Julian Smith SECONDED the motion.

There was further discussion on whether this approach made sense.

The motion FAILED 3-4, with Councilor Stanhope, Councilor Smith, and Councilor Van Asselt voting in favor of it.

There was discussion by the Council on items #6, #13, #16, and #21. No motions were made concerning them.

#87- Three Chimneys Inn, 17 Newmarket Road.

Concerning #87, Councilor Stanhope said he didn't feel there was enough write-up information to support the assessment of the Three Chimney Inn property. After discussion, a motion was made to get more information on the assessment.

Councilor Mower MOVED to determine where the assessment number comes from. Councilor Stanhope SECONDED the motion, and it PASSED unanimously 7-0.

Administrator Selig said the information would be provided at the next Council meeting.

Councilor Needell MOVED to extend the meeting beyond the 10:30 pm adjournment time. Councilor Mower SECONDED the motion, and it PASSED unanimously 7-0.

#88 - Goss International, 121 Technology Drive

Concerning #88, Councilor Stanhope said he believed the Town should set up a reserve fund to face the probability that the property owner would appeal the denial of the abatement request, and would demonstrate that the assessed value was substantially greater than the actual value of the property. He explained that the reserve fund would be needed because the Town might find itself having to refund property taxes for a couple of years. He provided details on his analysis that had led to this conclusion.

There was discussion with Mr. Dix, who agreed that the property was somewhat unique, and that there was some risk in trying to assess a property like it.

Chair Niman received clarification that if this went forward, the Town could potentially lose and that this could cost substantial dollars, so it should make provisions for this.

Councilor Stanhope suggested that the Town could take some time getting a sense of where the value of the property might be heading. He said if there was a lot of exposure, the time to address this was sooner rather than later. He provided details on how this might be done.

Chair Niman received assurances from Administrator Selig that he would carefully consider this issue.

Administrator Selig asked Councilors if they felt they had been provided with enough information to be able to evaluate the abatement requests and the Assessor's recommendations concerning them. He noted that this was the most information that had been provided in a number of years.

Councilor Stanhope said he didn't feel enough information had been provided, and said it was provided way too late.

Chair Niman said he thought the amount of information that had been provided was fine.

Mr. Dix summarized that all of the denials stood except for #87, which would be looked at further.

He also asked that Councilors and residents not blame Administrator Selig for the lateness of the abatement request review, and said it was his own fault.

- B. Schedule a date to hold a special work session meeting to discuss and review a list of potential Town Center municipal locations

Councilors agreed that the date for the special work session would be August 10th.

Councilor Smith received clarification that no votes would be taken, and said he was sorry that he would not be able to attend the meeting.

XII. Nonpublic Session (if required)

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

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

Councilor Van Asselt MOVED to adjourn the meeting. Councilor Stanhope SECONDED the motion, and it PASSED 7-0.

Adjournment at 10:41 pm

Victoria Parmele, Minutes taker