

This set of minutes was approved at the Town Council meeting on November 16, 2009

**Durham Town Council
Monday August 3, 2009
Durham Town Hall - Council Chambers
7:00P.M.
MINUTES**

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

MEMBERS ABSENT: Councilor Jerry Needell

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

I. Call to Order

Chair Niman called the meeting to order at 7:02 PM.

II. Approval of Agenda

Councilor Mower MOVED to approve the Agenda. Councilor Clark SECONDED the motion.

Councilor Stanhope MOVED to amend the Agenda by removing Item XI E. Councilor Van Asselt SECONDED the motion.

Councilor Stanhope said he realized some felt that each Councilor could add an item to the Agenda, but he said he felt that the Chair and Vice Chair should set the Agenda. He said any Councilor had the right to seek their attention to add an Item to it, and if not successful, could seek a majority vote of the Council to add the item, during approval of the Agenda.

He said his understanding was that Item XI E. was added to the Agenda without consulting the Chair or the Vice Chair. He said under the duties and powers of the Town Administrator, it said it was under his control to manage the rental and use of all Town facilities.

He said this was clearly an item that fell beyond the control of the Council, and also said Administrator Selig had always been transparent in bringing the Council his intentions. He quoted further from the Town Charter, and said what they seemed to be getting into here was the micro-managing of a Town property. He said he had full confidence that Administrator Selig could address this without the counsel of the individual members.

Councilor Mower noted that she had brought the issue of the use of the Courthouse building to the attention of the Council during a previous Roundtable discussion. She said she felt there should be a discussion because this was an unusual and prominent building in Town, and also noted that there was

currently a lot of discussion about promoting Durham.

She said she thought there might be an opportunity for some combined usage of the Courthouse building. She said she didn't know if an historic building fell beyond the Charter language Councilor Stanhope had referred to. She said she had not intended to micro-manage the situation, and said there was more than enough room for the proposed use, so it was appropriate to consider other uses in addition to it.

Councilor Van Asselt said he supported what Councilor Stanhope had said, and said he didn't feel it was the role of the Council to decide things like office allocation. He said this was clearly Administrator Selig's job. He also said Administrator Selig had been very open about his intentions for using the space over the past few weeks, and said he couldn't imagine that the Council would want to be in the business of questioning decisions like this.

Councilor Smith asked Councilor Stanhope if he would be more comfortable if Administrator Selig had brought the issue in Agenda Item XI E to the Council on his own.

Councilor Stanhope said no, and said he didn't think Administrator Selig needed to bring it to the Council at all. He also said Administrator Selig could seek the consent of the Chair and Vice Chair to add something to the Agenda, but said he didn't see that he had the authority to set the Agenda.

Councilor Smith said that was a very good point. He said he would vote against the motion to amend the Agenda, but said whether or not it passed, he hoped that at the Council's Work Session the following Monday, the use of the Courthouse building would be brought up when the Council discussed the notion of a Town center, and where the Town Hall would be located.

Councilor Carroll suggested a compromise, that if the Council voted to remove Item XI E from the Agenda, something could be brought forward regarding the issue during the Extended Roundtable discussion. She also asked whether Councilor Mower could perhaps write her own Council Communication and bring it forward.

She said she was not questioning Administrator Selig's judgment, but said this was an opportunity to have a simple discussion, ask some questions and do some brainstorming on some other possible creative uses for the Courthouse, as an add on.

Councilor Mower noted that she didn't see this as a classic discussion about office space, because of the location of the building.

Councilor Stanhope said he was willing to entertain a discussion on this issue during the Extended Roundtable, but said he believed the current Agenda violated the Charter. He said there was a history of micro-managing a variety of activities in Durham, and said he believed that when the Charter was developed, it was very specific to remove certain authority from the elected body and transfer it to the Town Administrator. He also said Councilor Mower was welcome to hold a public hearing on her own.

Chair Niman said he thought Councilor Mower had brought up this issue at the last Council meeting, and Councilors had commented on it at that time. He said the allocation of space was Administrator

Selig's job.

He also said Councilor Mower had brought up an interesting idea regarding having a Town welcoming center, and said he would like to see a proposal on this put forward in a memo. He elaborated on this, and said he would support the motion to amend the Agenda.

The motion PASSED 5-3, with Councilor Mower, Councilor Carroll and Councilor Smith voting against it.

The motion to approve the Agenda, as amended, PASSED unanimously 8-0.

III. Special Announcements

None

IV. Approval of Minutes

None

V. Councilor and Town Administrator Roundtable

Administrator Selig noted that this had been Robb Dix's last day of service as the Town Assessor. He said he had put out a Request for Proposal for external assessing services, but said he was open to different types of approaches, and said the RFP reflected this. He also said he was in the process of connecting with the Town of Lee regarding possible continuation of shared assessing services.

He said once he talked with Lee, he would come up with a process where an employment ad would be put out to see how a full time or perhaps part time person would contrast with contracting out this work. He noted that in 2001, it was decided that it made more sense to hire within, and he said he would go through the same process this time.

Administrator Selig said there had been a meeting that day with Chief Kurz, DPW Director Mike Lynch, himself, and several DOT staff to discuss safety concerns at the Morgan Way/Route 4 intersection. He noted that there had been a number of accidents at this location, but said there was currently nothing in the State's 10 Year Plan to address the problems.

He said they were evaluating ways to make some improvements at the location, and said if the idea was to make the improvements soon, Town funds would be needed. He said this project would probably be included in the CIP that would come forward to the Council in October.

Administrator Selig said Town staff were continuing with the Kaizen total quality management approach, and noted that staff meetings now began with a Kaizen exercise on how a particular process could be improved. He also noted that later in the month, the Maine Department of Transportation, which used the Kaizen process, would be hosting Durham department heads in order to share ideas.

He said Durham resident Jerry Gottsacker, a former executive with experience in total quality management, had been volunteering his time to work with the Town on the Kaizen approach. He said

Mr. Gottsacker was currently working with Fire Department staff and the Code Enforcement office to eliminate duplication in permitting and inspecting processes. He provided details on this.

He said they were also looking at the fee structure, including the idea of charging a penalty to a contractor if an inspection was done, the work didn't pass, and the inspection had to be done again and again. He said they were also looking at what other Towns did regarding their fee structures, and were also looking at costs. He noted that the Fire Department was putting together some changes to its fee structure

Administrator Selig noted that the Fire Department was responsible for permitting and inspecting fireworks displays. He said the Kaizen process had led to a discussion on fireworks, and explained that there was a concern about whether the Town should continue to permit people to display fireworks that were not professionally done. He said something would be brought forward on this in the future.

He said so far, Kaizen had been an effective approach, and said the next department to look at be looked at in terms of process improvement would be the Code Enforcement Office.

Councilor Stanhope complemented DPW Director Mike Lynch and his department for the speed with which they had recently filled a pothole in Town that the State was actually responsible for. He said it was nice to know Durham had a department that took the initiative even when the State could not.

Councilor Smith said he would not be at the Council workshop the following Monday. He said he had passed out an article to Councilors at the request of the Library Board of Trustees on why libraries could be one of the best economic engines for a downtown. He said he hoped Councilors would read the article by next week.

Councilor Smith also noted that shortly before the meeting, Administrator Selig had forwarded Councilors an email regarding a guide for students on living harmoniously with Durham residents. He said he wasn't sure this guide was appropriate for Durham, and said he wished the University could do a better job of advising students how to live in family neighborhoods.

Administrator Selig passed around letters from Governor Lynch and Executive Councilors Pignatelli and Hollingsworth regarding the recent hosting of the Governor and Council in Durham.

Councilor Mower asked if it might be appropriate for residents with suggestions regarding students living harmoniously with the neighborhoods to send their ideas to Administrator Selig's office. She said there were some things that were not covered in the guide.

Administrator Selig said the University had heard the concerns of Durham residents that there was an impact in residential neighborhoods from renting students. He said the guidelines Councilors had referred to provided some good basic information for students.

He noted that UNH had set up a meeting on how to approach this issue in the coming school year. He said it was intended to troubleshoot how to approach this issue productively. He said residents with specific suggestions should email them to his office, and they would be taken into consideration.

Chair Niman said that under the Extended Roundtable, he would like to discuss the recent ZBA meeting. He said he didn't want to talk about an individual case, but did want to discuss and what he perceived as possibly general problem in Durham, and did want to talk about some policy issues.

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

Cliff Zetterstrom, 82 Dover Road, asked why the Town's front end loader was being used by an outside source in the Packers Falls gravel pit. He said the dirt being moved around that day had a substantial amount of tar in it, and was being buried along with the dirt. He asked for an explanation of these things, and said part of his concern was the money being spent.

DPW Director Mike Lynch said every 5-6 years, the Town rented a bulldozer to clean up the gravel pit on Packers Falls Road. He also explained that construction had recently begun on the Wiswall Bridge, and said part of the Town's responsibility for this project was to remove the ramps that had been needed for the temporary Bailey bridge that had been installed there.

He noted that the pit provided winter sand for Town roads, and said there was plenty of material left in the pit for this. He also explained that the gravel pit was a storage area for material removed from various sites as part of projects the Town was working on.

Mr. Lynch noted that the Town didn't have a heavy equipment operator, so it had hired out the equipment and operator, and had paid \$7,000 for two weeks of work.

Mr. Lynch said when they did a road job, they stripped off the asphalt, most of it could be recycled but a few pieces got mixed in with the overburden and wound up at the pit. He said it was hard to avoid this, but said he wasn't too concerned about it. He noted that the gravel pit had been used to mix asphalt for 20 years, so there was a substantial amount of residue there now. He said the pit was tested once a year, and had undergone extensive testing because of the Spruce Hole water supply. He said it had tested clean, and there were no issues.

Councilor Stanhope asked who certified that the fill was clean, and Mr. Lynch said Town staff did the sampling, and took it to a certified lab, which tested it for metals and petroleum products.

Councilor Stanhope asked if the contract for the equipment specified who was responsible for repairs to it, and Mr. Lynch said the Town took on the liability for the equipment, and noted that in this instance, the loader had a flat tire.

Councilor Smith asked if the testing of the water in the aquifer under the pit had revealed any leaching of hydrocarbons from the previous asphalt-making at the pit, and Mr. Lynch said no.

Councilor Mower asked if some screening was done before the sand was taken from the pit to be used, and Mr. Lynch said yes. She asked if screening could be done as well at the front end to avoid putting asphalt in the pit.

Bill Hall, Smith Park Lane, said he had listened with interest to the discussion on Jackson's Landing. He said if people needed to uncouple their boat trailers, they should take them across the street. He said

otherwise, the trailers were left there for a week. He said this was especially important because there were now only 3 spaces instead of 4.

He spoke further on this issue, and said there seemed to be special people who didn't have to follow the rules. He said the police would probably be needed to address these issues at the Landing. He said it was pretty untenable to try to launch a boat, and said he had the pictures to prove it.

Councilor Sievert said the width for 4 spaces was there, but the spaces were striped incorrectly, creating 3 wider spaces. He also said he had a boat, and had no problem un-loading it there. There was further discussion with Mr. Hall on the measurements of the spaces.

Nell Neil, 11 Riverview Road, said she was a member of the IWMAC. She said she and Ellen Karelitz had both participated in Natural Step study groups over the past year, and said last year she had invited Ellen to speak about this topic with the IWMAC. She said this seemed like a good fit because the Natural Step was planning with an eye toward sustainability. She said she had asked the committee to endorse this approach to town planning, and also to support the idea of Ellen and herself going to other committees in Town to discuss the Natural Step. She said the IWMAC enthusiastically supported this idea.

Ms. Neil said that over the past year, she and Ellen had made presentations to the IWMAC, CC, Energy Committee, and the School board. She said in the fall, they hoped to meet with the Library Board of Trustees, the Parks and Recreation Committee, the Planning Board, and the Town Council. She said they also planned to invite the ZBA to one of these presentations.

She said the goal and dream was that members from each team would be so enthusiastic about this approach that they would join a Natural Step study group, and Durham would become a Natural Step community. She said they were excited that Bert Cohen was present that evening, and said there were already quite a few people in Durham who were supportive of this approach to planning.

Susan Fuller, 68 Bennett Road, noted that she was the Vice Chair of the Planning Board and the Planning Board representative to the EDC. But she said she was present as a private citizen to recommend that the Council read "Communities and Consequences: the Unbalancing of Human Ecology". She said one of the most important concepts in it was the debunking of the myth that adding children to the school system added costs for taxpayers.

She said children and young families helped keep a town economically viable, and said she hoped that as the revamping of the Master Plan went forward, those involved would have the knowledge of this book behind them.

Cathy Leach, 14 Fairchild Drive, said she was present to speak regarding the hiring of the part-time Parks and Recreation director. She said she hoped the Council would support this, noting that Mr. Mengers was the unanimous choice of the selection committee. She said the committee's only concern had been that 20 hours per week wouldn't be enough. She said she hoped the Council and the community would welcome Mr. Mengers, and would have patience with him.

She also said that regarding the Council meeting next week, an issue to consider was the UNH pool. She

said that from a financial standpoint, it had become difficult for the University to justify fixing the pool. She also said given Budget issues this year, the fact that the University had put the pool in operation this summer was amazing. She said the time could be coming when the Town wouldn't be able to depend on UNH providing the pool.

Ms. Leach also noted that the issue of playing fields in Town had been around for a long time, and she said it would become more of an issue. She said she would like the Council to think about that. She also said she very much supported the idea of having offices for Mr. Mengers and ORYA in the Courthouse. She said having them together would create synergies, and said it would be a very convenient location for the community.

Otho Wells, 65 Bagdad Road, said he was present to speak about the Agenda item regarding the sewer line for the Sophie Lane development on Bagdad and Canney Road. He asked for clarification regarding the requirement that existing residences located along the new sewer line would be required to tap into the line, at their own expense. Mr. Wells said he had a good septic system, and said he would not like to see that requirement imposed on him.

Town Engineer Dave Cedarholm explained that the way the code was written, homeowners adjacent to the sewer line were in fact required to connect to it at their own expense but he said the Town attorney was looking to see what authority the Council might have to waive that requirement. He said the code referred to residents with inadequate facilities, and said if the septic system for a residence was adequate, he would think the Council would be in the right to approve a request not to connect to the sewer.

He noted that a public hearing was required, which abutters were invited to, as part of the process of approving the sewer line. He also noted that if the Council didn't accept for referral the sewer line application that evening, there wouldn't be a public hearing.

Administrator Selig said he hoped to have a more definitive answer regarding the sewer connection requirement at the public hearing. He noted that there had been some concern about this requirement, and he provided details on this

Chair Niman asked whether there was some way the Council could more definitively create a process to reassure people that they wouldn't be required to connect to the sewer line until their septic system failed.

Administrator Selig said one option would be to amend the Ordinance and require the tie-in when a septic system failed. He said this change could also be made administratively, so that when a system failed, a resident would receive a 90-day notice that he had to connect to the sewer line.

Chair Niman asked if there would be a definitive answer on this before the sewer line application came back to the Council.

Administrator Selig said there hadn't been many sewer extensions in Durham, especially in areas with septic systems. He said when this came back to the Council, there would be a recommendation on how to address the issue.

Sara Wilson, Chair of Parks and Recreation Committee, said she echoed what Cathy Leach had said. She said she fully supported approving Michael Mengers as the part-time Parks and Recreation director, and said she applauded the Council for creating this position. She said it was great that they were taking an interest in improving recreation opportunities in Durham, and said the Courthouse building was a great location to put the Parks and Recreation department.

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 provide its “advice and consent” for the appointment of Michael Mengers to the position of Part-time Parks and Recreation Director by the Town Administrator?
- B. Shall the Town Council accept for referral a non-industrial wastewater discharge permit application submitted by Smithfield Construction for a proposed development on Bagdad and Canney Roads (Tax Map 10, Lot 7) known as Sophie Lane and refer said application to the Water, Wastewater, and Stormwater Committee for a detailed review and development of recommendations?
- C. Shall the Town Council schedule a Special Referendum Town Ballot Vote for Tuesday, August 18, 2009, on the proposed bonding of \$1,231,055 for the Dover Road Pump Station Rehabilitation Project to secure the American Recovery and Reinvestment Act of 2009 (ARRA) Federal Stimulus Funds offered to the Town on March 20, 2009 by the New Hampshire Department of Environmental Services (NHDES) and order the proposed language to be placed on said August 18, 2009 Special Town Ballot for a Vote?
- D. Shall the Town Council approve and sign the Warrant for the Special Referendum Town Ballot Vote to be held on Tuesday, August 18, 2009?

Chair Niman said there had been request to take Item B and Item D of the Unanimous Consent Agenda.

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

Councilor Carroll noted that regarding Unanimous Consent Agenda Item B, she would like to discuss some issues concerning the Sophie Lane subdivision that related to issues the Council had discussed. She noted that she had been a Council representative to the Planning Board when the Sophie Lane subdivision application had come before that Board.

She said there were two aspects of this development that the Council had discussed in the abstract, and said one was the issue of workforce housing. She said when the subdivision application had come before the Planning Board, she had asked if it was possible that one of the houses could perhaps be priced at a moderate price, so it was more affordable. She said Mr. Caldarola had said he couldn’t do this.

Councilor Carroll said she’d been saddened to hear this because it was going down the same road in Durham where only people who had above moderate incomes could afford a house there. She said Durham needed moderately priced housing, and said she would like to see a certain number of moderately priced houses for any subdivision in Durham.

Councilor Carroll noted that there would be a private drive for the subdivision, and said some people

had spoken about being unhappy living on private drives in Durham for various reasons. She said this issue was something to bring up at another time.

Councilor Carroll asked for clarification on the houses not part of the subdivision that would be connected to the new sewer line. She said she applauded Mr. Caldarola for doing this. She asked who would pay for the sewer extension pipe, who would do the work, and if DPW would oversee the work.

Mr. Cedarholm said the former Bradley house and the Clark house on Ambler Way would be connected to the sewer line. He said the Bradley house in particular had had septic system problems as well as drainage issues. He said Mr. Caldarola would help with the sewer line, and would also make some significant drainage improvements on the Bradley property. He said this work would add some real value to this property.

Concerning the second question, Mr. Cedarholm said the developer would pay for the sewer extension, and DPW would oversee the construction.

Councilor Carroll said the application for the sewer connection permit indicated that 4,620 gallons of wastewater per day would be going to the wastewater treatment plant from the development. She asked which houses this included, and Mr. Cedarholm said it included 11 houses, the 9 houses in the subdivision and the 2 houses he had mentioned on Ambler Way.

Councilor Carroll said most of this large amount of wastewater was clean, treated, expensive, potable water in the toilet. She said she realized that Durham was using its water up, and noted that a lot of the Town's response was to go get more water. She said the groundwater in the Spruce Hole aquifer was pretty old, and said she wondered if there was a way to conserve more of it.

She said she realized that toilets were generally using less water these days, but said there were technologies that would result in even less water being used. She said her concern was that Durham needed to find a better way to handle its wastewater, noting that all of this fresh water was going into Great Bay. She said she realized that the DPW did a great job with using cutting edge technologies, and that Administrator Selig was interested in this issue. She asked if there was more that the Town could do.

Mr. Cedarholm said there was a lot that the Town could do. He said the 4,600 gallons per day number was based on 110 gallons of water per bedroom per day. He said this number was a bit on the high side, but allowed the DPW to plan for the high end amount that might come to the treatment plant.

He said it was entirely up to customers to decide how much greywater was used, and he noted that the Town could create incentives for them to use less. He said one way was to increase water rates, and he provided further details on some things that could be done. He said he would schedule some time to give the Council an update on wastewater issues.

Councilor Stanhope MOVED to accept for referral a non-industrial wastewater discharge permit application submitted by Smithfield Construction for a proposed development on Bagdad and Canney Roads (Tax Map 10, Lot 7) known as Sophie Lane and refer said application to the Water, Wastewater, and Stormwater Committee for a detailed review and development of recommendations.

Councilor Van Asselt SECONDED the motion, and it PASSED unanimously 8-0.

Councilor Carroll said that regarding Unanimous Consent Agenda Item D, she wished to note the language in the last phrase “..with \$615,528 to be raised by taxation. 2/3 ballot vote required.” She said in actuality, 1/3 would be paid by the Town, and said she felt the ballot wording was therefore misleading. She said she realized that if the University didn’t pay the 2/3, the Town would have to pay it, but she said that was not going to happen.

She also said that only the sewer users would pay for this, and said she wondered if there could be some kind of notation regarding this. She said Durham water users would have to pay approximately \$200,000, and said she would like the voters to have the correct information on this.

Councilor Smith asked if the wording could in fact be amended.

Administrator Selig said he would not recommend amending the wording, noting that a great deal of time had been spent with legal counsel, bond counsel, and the State Department of Revenue developing wording that was appropriate and laying out a lawful process.

He said what could be done was to do a better job of explaining all of this in the information that was provided to residents. He noted that the bottom line was that if the sewer fund defaulted, the taxpayers would have to pay for it. He explained that the issue Councilor Carroll had brought up was part of the reason he had argued against the idea of having a referendum, but he said the attorneys had disagreed with him.

Administrator Selig recommended approving this Agenda item as written, and said Town staff would explain more accurately where the funding would be coming from.

Councilor Carroll said she had gotten the specifics on the Budget information for this project. She suggested that a breakdown of these numbers be given to the taxpayers.

Councilor Van Asselt MOVED to approve and sign the Warrant for the Special Referendum Town Ballot Vote to be held on Tuesday, August 18, 2009. Councilor Sievert SECONDED the motion.

Administrator Selig noted that if the motion passed, there would be hard copies of the warrant for the Town Council to sign.

The motion PASSED unanimously 8-0.

VIII. Committee Appointments

None

IX. Presentation Item

The Natural Step for Communities – Bert Cohen, UNH Professor

Administrator Selig noted that a specific goal of the Council was to work toward sustainable practices. He noted that the city of Portsmouth had adopted the Natural Step process, and said Professor Cohen

was very active in this process. He said Professor Cohen would walk the Council through this program, and said this might be a process the Council and the community might want to consider as it embarked upon its own Master Plan revision process.

Mr. Cohen first focused the Council's attention on a large poster with a tree on it, which included branches with the various issues a town had to address on it, such as Economic Development, Recreation, Natural Resources, Energy, Transportation, etc., and with the 4 System conditions addressed in the Natural Step as the base of the tree.

He said with sustainability, almost everyone had a passion. But he said the Council had to try to get its mind around this entire complex system demonstrated by the tree. He said he was passionate about how these issues would be addressed, for the coming generations. He said he taught this subject academically, but said it was not an academic subject, and was a real subject that he believed concerned them all in a deep way.

He said the Natural Step used a systems approach to sustainability, as a compass to guide towns toward addressing the issues they faced, including some that had already come up at the Council meeting that evening such as workforce housing and water quantity and quality issues.

He said one often couldn't solve a problem at the level of the problem, and said a systems approach and guidelines such as those provided by the Natural Step could help them move in the right direction in addressing the issues the Town faced.

Mr. Cohen next presented a slide show that described in detail the unfolding of the Natural Step process in Portsmouth, NH on the way to becoming an eco-municipality that was moved toward a sustainable future. He explained that an eco-municipality aspired to develop an ecologically, economically, and socially healthy community for the long term using the Natural Step framework for sustainability as a guide, and democratic, highly participatory development process as the method.

Councilor Sievert asked if the different groups Mr. Cohen had said were at work in Portsmouth were able to help other municipalities, or if instead these groups needed to be formed in the individual communities.

Mr. Cohen said the groups were interested in sharing with other towns like Durham what they had learned. He said that was one of the reasons he was there that evening.

Councilor Clark said the Energy Committee had a lot of conversations on the need for cooperative energy projects in the region, and gave as an example a possible cooperative effort some offshore wind power opportunities. He said his reading of the information Mr. Cohen had provided was that it recommended collaborations and cooperatives across multiple towns.

Mr. Cohen said the Portsmouth Sustainability Initiative was a regional entity, noting that there were people from Maine as well as people from many communities in New Hampshire involved. He said while some of the sustainability projects needed to go bigger, the most effective unit for change in the coming turbulence was probably the local community, because this was where things hit the ground. He noted that Portsmouth's head engineer had become the sustainability coordinator, and he spoke in some

detail on his efforts.

Councilor Clark said Durham had a real interest in pursuing this kind of thing, but had no direction. He said there were a number of disjointed efforts, with no priority setting for projects in order to make meaningful progress.

Mr. Cohen said the first step was awareness; the second step was getting baseline data; and the third step was to create a vision. He said a neutral convener, similar to Portsmouth Listens, was needed in Durham in order to get people on board to articulate their visions. He said the fourth step was actions to be taken toward sustainability. He said this whole framework could be shared with Durham so they didn't have to reinvent the wheel.

Councilor Clark asked how they could engage in order to get the benefit of this process.

Mr. Cohen said the way Portsmouth had gotten started was to go to the City Manager with the book ***The Natural Step for Communities***, by Sarah James and Torbjorn Lahti. He said they had also gotten a grant, which the city had matched. He said Sarah James had done three workshops with department heads, who were the people who would actually have to implement changes.

He said a workshop was then held with the City Council and committee chairs, and after that there was a workshop for citizens. He noted that there were people available to do these half day workshops, where among other things they would go into more depth on the 4 principles of the Natural Step.

Councilor Carroll said she was very interested in this approach, and saw real value in doing the three workshops with department heads first. She noted that the Mill Plaza process had been successful in that people had come up with a vision. But she said it was not going anywhere now because the timing had been bad for the developer. She said she wondered whether the approach of starting with department heads would work in Durham.

Councilor Mower said Portsmouth Listens was already in place for Portsmouth when their process began, so it seemed they already had a sense of a groundswell from the community. She said she didn't think Durham had this, and needed to work from the bottom up.

Mr. Cohen noted that Portsmouth had been in the process of updating the Master Plan, and wanted input from the public.

Councilor Mower asked if the public input sessions in Portsmouth were guided by someone who helped people think about these 4 conditions Mr. Cohen had described. She noted that Durham was starting the process of making revisions to the Master Plan, and said unless discussion was encouraged along the lines of the 4 conditions, they might not get this.

Mr. Cohen said this was not easy work, but also said there were many ways to go about it.

Councilor Sievert said in Portsmouth the grassroots group and Portsmouth Listens were already in place before the workshops were done. He asked if the process could instead be taught from the top down, where the community would be brought in later.

Mr. Cohen said the hard thing was to get the people with passion to get involved. He said Portsmouth Listens helped with this, as a neutral party to facilitate this. He said with the kind of important issues involved with sustainability, the dialogue process worked. He said Portsmouth had this process, and also did grassroots education on the Natural Step.

He said some of this already existed in Durham. He noted that if the Town Council was on board, it would know whether or not a sewer project was meeting system conditions #4 or #2.

Councilor Sievert noted that Sarah James had taught this program to Portsmouth employees, and asked if that was where Durham could start to teach this process. Mr. Cohen said yes, and Councilor Sievert asked what kind of timeframe was involved with learning the system conditions and following the path of integrating those processes into the Master Plan, building design, etc.

Mr. Cohen said in a half morning workshop, one could learn more deeply what the system conditions were, and said the session then typically broke up into groups on how to apply the conditions to what was going on in the town.

He said advantages of this process were that people were not working at cross purposes, and could start to communicate as a system. He said a systems approach was holistic, and seemed to result in a more powerful outcome.

Councilor Sievert asked when Portsmouth had become an eco-municipality, and was told it was 2007.

Chair Niman thanked Mr. Cohen for his presentation, stating that it was very enlightening and informative.

The Council stood in recess from 9:09 to 9:20 PM.

X. Unfinished Business

None

XI. New Business

- A. **PUBLIC HEARING** on a Special Referendum Town Ballot Vote to be held on Tuesday, August 18, 2009, for the purpose of bonding \$1,231,055 for the Dover Road Pump Station Rehabilitation Project; said funds to be raised through the State Revolving Loan Fund and the American Recovery and Reinvestment Act of 2009 (ARRA) Federal stimulus funds. This Public Hearing shall satisfy the requirements of the Durham Town Charter, Section 5.12(A)

Councilor Smith MOVED to open the Public Hearing on a Special Referendum Town Ballot Vote to be held on Tuesday, August 18, 2009, for the purpose of bonding \$1,231,055 for the Dover Road Pump Station Rehabilitation Project; said funds to be raised through the State Revolving Loan Fund and the American Recovery and Reinvestment Act of 2009 (ARRA) Federal stimulus funds. This Public Hearing shall satisfy the requirements of the Durham Town Charter, Section 5.12(A), Councilor Stanhope SECONDED the motion, and it PASSED unanimously 8-0.

There were no members of the public who spoke at the public hearing.

Councilor Smith MOVED to close the Public Hearing. Councilor Mower SECONDED the motion, and it PASSED unanimously 8-0.

- B. **PUBLIC HEARING** on a Special Referendum Town Ballot Vote to be held on Tuesday, August 18, 2009, for the purpose of bonding \$1,231,055 for the Dover Road Pump Station Rehabilitation Project; said funds to be raised through the State Revolving Loan Fund and the American Recovery and Reinvestment Act of 2009 (ARRA) Federal stimulus funds. This Public Hearing shall satisfy the requirements of the RSA 33:8a.

Councilor Smith MOVED to open the Public Hearing on a Special Referendum Town Ballot Vote to be held on Tuesday, August 18, 2009, for the purpose of bonding \$1,231,055 for the Dover Road Pump Station Rehabilitation Project; said funds to be raised through the State Revolving Loan Fund and the American Recovery and Reinvestment Act of 2009 (ARRA) Federal stimulus funds. This Public Hearing shall satisfy the requirements of the RSA 33:8a. Councilor Sievert SECONDED the motion, and it PASSED unanimously 8-0.

There were no members of the public who spoke at the public hearing.

Councilor Smith MOVED to close the Public Hearing. Councilor Clark SECONDED the motion, and it PASSED unanimously 8-0.

- C. **RESOLUTION #2009-22** authorizing the borrowing of money and incurrence of debt in the amount of \$1,231,055 for the Dover Road Pump Station Rehabilitation Project in accordance with the provisions of the Durham Town Charter and the Municipal Finance Act, RSA Chapter 33. Of said funds, \$615,527 is to be funded through the State Revolving Loan Fund and the American Recovery and Reinvestment Act of 2009, with \$615,528 to be raised by taxation. 2/3 vote of the Durham Town Council is required.

Mr. Cedarholm said what the Town was applying for was an SRF loan in the amount of \$1,231,055, and said he was concerned that the Resolution indicated the amount of \$615,528 and provided details on this.

Administrator Selig said the language in the Resolution had come from the attorneys, so he assumed it was what was needed.

There was discussion on the language in the Resolution. Administrator Selig said the Minutes could reflect the fact that the Town was taking out a loan from the State Revolving Loan fund for \$1,231,055, and of this, \$615,527 would be obtained from sewer fees.

After further discussion, Councilors agreed to table this discussion until there was further clarification from Administrator Selig and Business Manager Gail Jablonski as to whether the wording in the Resolution was correct.

- D. Discussion regarding criteria for the Elderly Exemption Program – Councilor Carroll

Councilor Carroll said an issue that often arose when property taxes were discussed was older residents in Durham on low or moderate incomes, and if there was a way to offer them some assistance. She said many of these people had lived in Durham for a long time, and many of them desired to continue to live in their home. She said most if not all Councilors were asked what they would do about property taxes to make it easier for older people to continue to live in their homes. She said the program she would speak about would give assistance to those in need.

She reviewed the current qualifying criteria and property tax exemption information, based on the latest update to the program in 2008.

Income at age 65 or older (from all sources including social security, pension, dividends), shall not exceed:

Single	\$28,077
Married	\$37,647

Assets (value of all assets including savings, stocks, furniture, cars - does not include primary residence) shall not exceed \$150,000. She noted that this had been \$100,000 in 2007, before the most recent adjustment was made.

She said if both of the above criteria were met, the resident could have their assessment reduced through an exemption according to their age:

Exemptions

65-74	\$96,000
75-79	\$128,000
Over 80	\$175,000

Councilor Carroll noted that she had been looking at this issue for a couple of years. She said page 3 of the Council Communication indicated that Exeter and Lee in 2007 updated their programs, and at that time, they basically allowed double what Durham did in terms of income and asset criteria. She also noted a website that had data on all the towns in NH that had an elderly tax exemption program.

She said there were currently 9 residents in Durham who benefited from this program, and noted that there were 13 residents in 2007. She said Exeter had 297 residents who qualified for and were recipients of this program. She said of the 297, 199 received a total property tax exemption. She said a reason for this was that they had 2 mobile home parks.

She said approximately \$30 million was removed from the tax rolls as a result of this.

She said Lee had 72 residents receiving aid from the program, and said this reduced the Town's assessed value by over \$11 million.

Councilor Carroll said she had been looking at this program for a few years, and had an idea of where she thought they should be going as a town. She said she believed Councilors were voted in for their judgment, and noted there was a check on this because there were nine Councilors.

But she said she thought she needed more than this, so spoke with Administrator Selig and decided they needed to anchor these numbers in a database, to justify the increase. She said the table they had decided to use was the “Federal Poverty Level Guidelines“.

Councilor Carroll next outlined the elderly exemption increase recommendation.

Income at age 65 or older (from all sources including social security, pension, dividends), shall not exceed:

Single	\$32,500	(3 times the poverty level)
Married	\$43,700	(3 times the poverty level)

Assets (value of all assets including savings, stocks, furniture, cars - does not include primary residence) shall not exceed \$200,000. She said in some ways, they didn’t want to punish people for having assets and saving money.

She said if both of the above criteria were met, the resident could have their assessment reduced through an exemption according to their age:

Exemptions

65-74	\$125,000
75-79	\$175,000
Over 80	\$225,000

Councilor Carroll said in doing her research, she had talked with assessors in several different towns. She said they had shared with her some of the interactions they had with people who were accepted into the program. She said she was told that some of them sat in the town office and cried because they were so thankful that they would now be able to stay in their home and in their town as long as they could. She said assessors said these people were grateful that other residents in town were willing to assume a greater tax burden to help out.

She said in 2007, Durham took on an added tax burden of \$37,500, when there were 13 people in the program. She said currently there were 9 people in the program, and noted that some of them were paying 25% of their income in property taxes. She said she didn’t think the recommended increases would open the floodgates, and also didn’t think it would cause a hardship to other taxpayers.

Councilor Stanhope asked if the Chair would entertain a motion to adopt the recommended changes.

Chair Niman said he would first like to get a sense of whether the Council wanted to make these changes. He said if they did, what Councilor Carroll had proposed would be brought back as a formal resolution.

Councilor Stanhope said the impact of what Councilor Carroll had proposed would continue to decline because of the affordability of housing in Durham. He said people with net assets of a certain amount wouldn’t be moving to Durham, so the Town would probably be assisting a very small number of elderly residents in allowing them to stay in their homes a few more years. He said he suspected that even with these changes. He said he was in favor of making these changes.

Councilor Van Asselt noted that he had been interested in this issue in 2007, but had had questions about making the changes so quickly. He said he didn't know how many of these exemptions would come forward. He also noted that Durham's numbers had been compared with Exeter and Lee, which had the highest numbers. He asked where the \$50,000 less in taxes as a result of this change would come from.

He said this was a subsidized program for the elderly, and said someone would have to pay for it or the Budget would have to be cut. He noted that there were a lot of other groups that needed this, and said perhaps 2010 should be the year to give an exemption to people who had been laid off and couldn't pay their mortgages.

Councilor Van Asselt also said each time a proposal came forward, Councilors said it would only cost so much, but he said these things added up. He asked at what point this made a difference in the Budget. He said he was not opposed to the elderly exemption, but said he was not prepared to do what Exeter did.

Councilor Mower said she would hate to live in a community that didn't feel it had an obligation to help the people who had helped make it the town that it was. She said this was a fairly small amount, spread across the community, which allowed a small number of people to stay in their homes. She also said the cost didn't approach what Exeter and Lee did, and if not paid, would come back to the Town in some other way. She said as an ethical society, they must do this.

Councilor Smith said he agreed, and said he supported what Councilor Carroll was suggesting. He noted as an irony that he had helped an elderly gentleman apply for the exemption, but his home had been condemned, so the application was denied because he could no longer live on his property.

Councilor Van Asselt said this was not an emotional thing, and said it was strictly a business question, as to whether residents could afford to spread that tax amount over working people and unemployed people. He said this was a fair question to ask. He also said proposals like this were constantly being brought forward, and said he was frustrated about what it all was going to cost. He said these things added up.

Regarding the idea that there were other groups that should get equal consideration, Councilor Stanhope said when that issue had been brought up at the Council table, he was open to looking for relief for young families. But he said the RSAs did not allow the Council to address the needs of the unemployed and single parents.

He stated again that he didn't think what was proposed would have a significant impact, and also said the people it would help were mainstays of the community. He said if it could keep them in their residence, he would pay the penny on the tax rate. He said he thought other residents would agree that it was not an unreasonable economic burden to address this small demographic.

Councilor Carroll said Exeter and Lee didn't offer the highest numbers in the state, and said she had chosen those towns as a comparison because they had recently revamped their programs. She said there were other communities in NH that had programs that were more generous.

Chair Niman said he thought Councilor Van Asselt had made a very important and valid point, but said he wasn't sure this was the issue to take that stand on. He said he didn't want to lose track of what he was saying, and said he hoped that when the Council had its Budget discussions, it would come back to this point.

Councilor Mower agreed, stating that it was important to keep track of minor incremental additions to the tax rate.

Chair Niman said his sense was that they would bring this proposal back at a future meeting.

Administrator Selig said that a State website indicated that the asset levels in Seacoast communities were high. But he said if one looked at the 34 communities in the immediate region, one would find that the income level to qualify for an exemption tracked almost exactly at 300% of poverty. He said right now, Durham's exemptions were at 250%, so moving up to 300% would track with the region. He said this seemed like a reasonable program, and said it didn't appear that it would open the floodgates.

Councilor Van Asselt said he was not arguing against the exemption idea, and said he supported the idea of people staying in their homes. He said his concern was not inconsistent with the fact that when proposals came forward this affected the tax rate. He said they had to pick their battles, and said each time a proposal came forward, someone had to pay for it. He said the Council had to figure out a way to increase the tax base.

The Council went back to the discussion on Agenda Item XI C.

Administrator Selig said Business Manager Gail Jablonski was comfortable with Resolution #2009-22 as it was currently written. He explained that the first part authorized the Town to borrow \$1.3 million, and the second part talked about how it would be paid for. He said the second "Whereas" in the Resolution made it very clear that the Town had applied for \$1.3 million, and that \$1.3 million was the amount that would be taken out from the SRL fund.

Councilor Smith MOVED to adopt RESOLUTION #2009-22 authorizing the borrowing of money and incurrence of debt in the amount of \$1,231,055 for the Dover Road Pump Station Rehabilitation Project in accordance with the provisions of the Durham Town Charter and the Municipal Finance Act, RSA Chapter 33. Of said funds, \$615,527 is to be funded through the State Revolving Loan Fund and the American Recovery and Reinvestment Act of 2009, with \$615,528 to be raised by taxation. Councilor Van Asselt SECONDED the motion.

Councilor Van Asselt said this would cost the water and sewer users money. He asked Mr. Lynch how much it would cost, and Mr. Lynch said he didn't have this answer.

Councilor Van Asselt said he thought Councilor Carroll was correct in asking about this earlier, and said he hoped the information would be provided. He also said if the Council didn't vote to approve this, the water and sewer users and the tax payers were in for a real shock. He said it was important that this referendum pass, and also to make it clear what it meant if it didn't pass.

Councilor Smith said it was important to point out that the funds would be paid by the water and sewer

users.

The motion PASSED unanimously 8 -0.

- E. Discussion regarding future use for the first floor of the Durham Historic Association building formerly occupied by the Durham District Court – Councilor Mower

This item was removed from the Agenda.

XII. Nonpublic Session (if required)

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

Chair Niman said he wanted to know if anyone else was concerned about the recent ZBA meeting, and Councilor Sievert said he too was concerned. Chair Niman noted that this was in no way a criticism of the ZBA, and said it was doing exactly what it was supposed to be doing. He said if he had been on the Board that evening, he would have voted that way as well.

He said his concern was that the ZBA had been turned into a pseudo planning board. He said no document could be 100% complete, but said his sense was that when the Zoning Ordinance was written, thought was given to outdoor parking but not indoor parking. He also said common sense would say that a parking area buffer of trees and shrubs wouldn't grow if not exposed to the sun.

Chair Niman said the Planning Board to its credit had tried to consider the intent of the Zoning Ordinance and reach some kind of balance. But he said they weren't really allowed to use this discretion with the Zoning Ordinance.

He said anyone who didn't like a decision of the Planning Board could go to the ZBA. He said the reality was that the Zoning Ordinance was incomplete and inconsistent, so the ZBA used its interpretation and said the Planning Board didn't have the discretion what some wording in the Ordinance meant because it hadn't been given the power to do this. He said a process had been created that said if there was a grey area, an applicant should go to the ZBA to get a variance, and said as a result, the ZBA became the de-facto Planning Board, either before or after the fact.

Chair Niman said he saw it as a serious problem that the Planning Board and the ZBA were working at cross purposes. He noted again that he was not talking about a specific application. He said he was very concerned that the Zoning Ordinance as it existed was so flawed that it made it difficult for the Planning Board to do its job.

He said if others agreed with him, he wondered what the solution to this was. He said the Council was trying to encourage development, but there was an untested Zoning Ordinance that had some problems.

Councilor Smith said the ZBA and the Planning Board were creatures of State statute. He said to the extent there were some ambiguities and things not specified in the Ordinance, this was why there was a ZBA. He said in this case, the ZBA had responded to the appeal of a citizen. He said he didn't think the Zoning Ordinance could ever be crafted or tweaked so that there was no possibility for ambiguity, so

didn't think this was a problem that could be corrected. He also said this kind of thing didn't happen that often.

Councilor Clark said his sense was that a lot of what was in the Ordinance was written with the intent to be ambiguous and that it was time to go back and make it as clear as possible. He said there was no way they were going to be able to make it black and white, but said they could at least get it to the point where they didn't make all these conditional uses.

Councilor Smith said he agreed with Councilor Clark. He noted that he had been on the Planning Board seven years ago, during the Zoning Rewrite process, and had commented on the ambiguity of some of the wording at that time. He noted that he was currently the Council rep to the Planning Board, and said it was frequently frustrating trying to apply what was in the Ordinance to what came before the Board. He said fortunately some things could flow to the ZBA, and said that was better than flowing to the court system.

Councilor Sievert said he agreed that the Zoning Ordinance was put in place with ambiguities in order to cause problems with development. He said this had happened the other night at the ZBA. He also said one of the things he saw that evening was a lack of understanding of the process. He said there were three members of the Planning Board at the ZBA meeting, and they, along with Code Administrator/Enforcement Officer Tom Johnson could have done a lot more in the way of explanation of the process.

Councilor Sievert said the Zoning Ordinance needed a rewrite. He said it would be easy to change a lot of it and still provide the control people wanted and needed. He said some of the regulations currently in the Zoning Ordinance could easily be placed in the site plan regulations and also said the conditional use process could be used more.

He said this would give applicants the ability to ask for waivers instead of a variances, which in some cases was the right thing to do. He said this made sense especially with what the Town was trying to do with the downtown area. He said the Council, DPW, the Planning Board, and the Planning Department are on board with this, but the next step hadn't been taken. He said the planner being hired would help with this and said he hoped he would be coming on board soon.

Administrator Selig said the number one concern of people in terms of investing time and money in their properties was whether there was predictability. He said the more vagueness there was in the process, the more hesitant they were, and said this was a real concern.

Councilor Mower said she had come to see that there were instances where there were minor errors in the Zoning Ordinance, and because the Planning Board was over-extended, it didn't get to work on rewrites. She asked if there was the possibility of going through the Ordinance and making changes that were non-substantive, in order to clarify particular provisions, without going through the full procedure done for more substantive Zoning changes.

Administrator Selig said this would be challenging in that what was non-substantive to one person might not be for someone else.

Councilor Stanhope said he frequently saw very respected business people who would like to do business in Durham, but felt the process here was ambiguous. He spoke in some detail on this, and said they didn't come to Town as a result. He said this was unfortunate, and said if they didn't correct the "gotchas" in the Ordinance, that opinion would continue. He said as a result of this, as well as high taxes and too much code enforcement, the growth the Town experienced might not be the growth it wanted.

Councilor Mower said the question was that as they went through the Master Plan update and the Zoning evolved from this, if there was a different process they should be looking at, or they should be inviting a different set of eyes to look at it. She said ambiguity wasn't appropriate for a Zoning Ordinance.

Councilor Van Asselt said maybe it was time to look at the Zoning Ordinance again. He said times had changed in the last 6-7 years, and he noted that the Table of Uses didn't fit with what they were talking about for the downtown, etc.

Chair Niman noted the challenges for Wildcat Fitness, in terms of what kind of use they were and how this fit with the Table of Uses.

Councilor Mower said perhaps if things were spelled out in more detail, with things like design standards, and there were fewer conditional uses, they would get what they wanted without the ambiguity. She also perhaps a broader set of choices in the Table of Uses would be useful.

Chair Niman said the Council would continue this discussion.

Councilor Clark said the consensus here was that they did have to look harder at a rewrite of the Zoning Ordinance. He said when conditional uses were included in a zone, this was saying that a project might be allowed, but that the Planning Board would decide on a case by case basis. He said his sense was that this was intentional, and said the only way to get rid of that was to do a major rewrite.

Councilor Mower said there should be a discussion about conditional use because there were some situations where it was appropriate. She said it was an element of control the Planning Board could use, and said it was important to retain that.

XIV.Adjourn (NLT 10:30 PM)

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

Adjournment at 10:30 pm