

This set of minutes was approved at the Town Council meeting on September 21, 2009

**Durham Town Council
Monday August 24, 2009
Durham Town Hall - Council Chambers
MINUTES**

MEMBERS PRESENT: Chair Neil Niman; Councilor Karl Van Asselt (arrived at 7:05 PM); Councilor Jerry Needell; Councilor Julian Smith; Councilor Mike Sievert; Councilor Doug Clark; Councilor Peter Stanhope (arrived at 8:34 PM); Councilor Diana Carroll; Councilor Robin Mower

MEMBERS ABSENT: None

OTHERS PRESENT: Acting Town Administrator Gail Jablonski; Public Works Director Mike Lynch

I. Call to Order

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

II. Approval of Agenda

Councilor Mower MOVED to approve the Agenda as submitted. Councilor Sievert SECONDED the motion, and it PASSED unanimously 7-0.

III. Special Announcements

None

IV. Approval of Minutes

July 6, 2009

Councilor Needell MOVED to approve the July 6, 2009 Minutes. Councilor Mower SECONDED the motion, and it PASSED 5-0-2, with Councilor Sievert and Councilor Clark abstaining because of their absence from the meeting.

July 20, 2009

Page 10, 2nd full paragraph from the bottom, should read “..someone would be using the space for a reasonable amount of time.”

Councilor Smith MOVED to approve the July 20, 2009 Minutes as amended. Councilor Mower SECONDED the motion, and it PASSED 5-0-2, with Councilor Needell and Councilor Clark abstaining because of their absence from the meeting.

Councilor Van Asselt arrived at the meeting at 7:05 pm.

V. Councilor and Town Administrator Roundtable

Chair Niman said Durham Day would be held on Sept 20th, and said he hoped he could count on Councilors to bring grills, and help with the cooking that day.

Councilor Mower said the Energy Committee had met that day and discussed again what they should do about replacing the thermostat in the Council chambers. She said they had determined that a reasonable approach, which would save some energy and money, was to ask if there was a member of the Town staff who would volunteer to adjust the thermostat at the beginning and end of the weekend. She asked if perhaps Administrator Selig could ask a staff member to do this.

Chair Niman noted that Administrator Selig was on vacation, and said Business Manager Gail Jablonski, who was present at the meeting, was the acting Town Administrator for the week.

Councilor Carroll said the DCAT Committee had meet on August 12th, and said DCAT Coordinator Craig Stevens had reported that 3 new robotic cameras would be arriving soon, and would be used in the Council chambers. She also said the Committee was continuing to review DCAT's policies, and said this process would take a few months to complete.

She also said there was a discussion at the meeting on a recently produced video to promote Durham. She said there was an expression of disappointment among members that they were not invited to be involved in the project, especially since several committee members had skills in this area.

Councilor Carroll said the IWMAC had met on August 11th, and said the meeting focused on planning for the fall newsletter.

She noted the most recent edition of the College Woods newsletter, which was put out twice a year by Professor Jim Barrett, forestry professor emeritus at UNH, as well as several other professors. She said they valued College Woods, and wanted to remind people of the educational and recreational opportunities there, along with the ecosystem services they provided for everyone in Durham.

Councilor Clark said the EDC had met two weeks ago, and said they were trying to get their arms around the SWOT analysis for the strategic plan. He said people thought the analysis was pretty powerful and enlightening, and said a presentation on it would come before the Council by the end of September.

He also said this strategic planning effort would have some synergies with the strategic planning that would be done for the downtown, as well as with the discussions the Council had been having regarding facilities needs and possible sites for them. He said he hoped they could find a way to bring these things together.

Councilor Clark noted that he had made some comments to Administrator Selig about potential drug challenges in the schools. He said he was not suggesting that the

Administration for the schools was in denial about this problem, and noted that they had started some educational initiatives to address it. But he said they didn't seem to be working.

He said he thought this was both a school and Town problem, and said he thought it was time for the Town to get more involved. He said he thought there should be routine inspections of the school, and adoption of a zero tolerance policy, with consequences. He said he believed it was the parents who were in denial, not the administration and not the students. He said prescription drugs made the situation especially scary, and stated again that the Town needed to do something to address the problem.

Councilor Smith said the Planning Board would meet on Wednesday, at which time it would be holding its quarterly planning meeting. He said there would be discussion of the recent ZBA decision on 6 Jenkins Court, and how to address future appeals of Planning Board decisions. He also said there would be discussion of possible Zoning amendments, and possible scheduling of public hearings on these amendments.

He noted that one of the possible amendments was in regard to the definition for the word "contiguous", and said this should be an exciting discussion.

Councilor Needell said the Conservation Commission had met on August 13th, and said there had been discussion on the Colasante property, which abutted the future site of the Spruce Hole well. He said it was unclear how an appraisal of the property would come forward, and said the Commission would be contacting Administrator Selig to see what was going on with this.

He also said the Commission had discussed the fact that the Trust for Public Lands was negotiating a possible conservation proposal regarding the rest of the Spruce Woods parcel, which possibly involved the swapping of land. He provided details on this, and said the discussions on this were ongoing.

Councilor Carroll noted that she had sent an email to Councilors asking them, if they had time, to drive down Coe Drive to look at the duplexes across from the Middle School. She said she saw the Roundtable as a time to bring up something the Council could make people aware of. She said should a solution become apparent, they could deal with it at that time.

She explained that some residents had gotten upset that the student duplexes on Coe Drive weren't well taken care of, and said it was looking like a student ghetto. She noted that Mr. Johnson had dealt with properties like this when there were violations, which resulted in a marked improvement of the properties. She also said she had been able to determine that 9 ft of the 11 ft of land she had been referring to was actually Town owned land, which made other resolutions to the problem possible.

Councilor Mower asked if Councilor Carroll had considered contacting Ann Lawing, the UNH Vice President of Student Affairs, who sometimes meets with students living in neighborhoods where there had been complaints. She also noted that there were some guidelines Ms. Lawing had been updating with UNH staff and the Town. She also said

there was the 9 ft easement in front of a number of houses in Town, and said the Town couldn't necessarily take care of all of this.

Councilor Mower said the DCAT robotic cameras reminded her of a discussion with an Internet tech person about having meetings available as pod casts on the Internet. She said a bottom line reason why this hadn't been done in Durham was the lousy mike system in the Council chambers, but said otherwise, it would be a great opportunity.

VI. Public Comments (NLT 7:30 PM)

Susan Fuller, 68 Bennett Road, said she was there as a private citizen to make note of the book, *Communities and Consequences, the Unbalancing of Human Ecology*. She said there was a copy of the book in Mr. Campbell's office, and urged the Council to read it.

Ms. Fuller said she had listened with dismay to the August 10th meeting, regarding the resolution that had been proposed to increase the tax exemptions and credits for elderly residents. She said she didn't believe this was the kind of legislation that was good for New Hampshire. She said the book noted that preferential tax treatment meant that younger taxpayers were subsidizing tax bills of older residents in the wealthier half of the population.

She said senior tax abatement programs were growing rapidly, as was the proportion of NH residents over the age of 65, which had heightened the need to attend to the impact of tax shifting at the local level. She read further from the book and said it indicated that towns needed to take their thumbs off the scale and stop asking struggling young families to pick up the tab for senior discounts. She urged the Council to vote no on this proposed resolution.

Councilor Carroll provided Ms. Fuller with a copy of the Council Communication so she could see the numbers involved with what was proposed.

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 approve a special event permit application submitted by the UNH Wildcat Marching Band and the UNH President's Office to close a portion of Main Street for the band to march from Main Street in front of Thompson Hall to Cowell Stadium during UNH home football games?
- B. Shall the Town Council approve a special event permit application submitted by the UNH Campus Activities Board to close a portion of Main Street between Quad Way Courtyard to A-Lot on Friday, October 9, 2009 from 5:00 to 6:00 PM for the annual UNH Homecoming Parade?
- C. Shall the Town Council approve a special event permit application submitted by the UNH Office of Public Programs and Events to close a portion of Main Street between Edgewood Road and Garrison Avenue on Tuesday, September 15, 2009 (rain date: Wednesday, September 16, 2009) from 10:00 AM to 7:00 PM for the annual University

Day Picnic?

- D. Shall the Town Council, upon recommendation of the Town Administrator, grant an abatement for elderly exemption as identified in the communication presented to the Town Council for this item?
- E. Shall the Town Council, upon recommendation of the Town Administrator, award a bid to and authorize the Town Administrator to sign a construction contract with R.S. Audley, Inc. of Bow, NH in the amount of \$1,278,509.50 for the construction of the Wiswall Bridge?
- F. Shall the Town Council, upon recommendation of the Water, Wastewater, and Stormwater Committee, approve a non-industrial wastewater discharge permit application for an increased discharge associated with a proposed new mixed use residential apartment/commercial building located at 6 Jenkins Court?

Chair Niman said there had been a request to remove Item E from the Unanimous Consent Agenda.

Councilor Sievert recused himself for the vote.

Councilor Smith MOVED to approve Unanimous Consent Agenda Items A, B, C, D and F. Councilor Mower SECONDED the motion, and it PASSED unanimously 7-0.

There was discussion on Unanimous Consent Agenda Item E. Councilor Needell noted that he was not at the July 20th meeting, and apologized that his comments would have been more appropriate that evening. He said January 20, 2009 was when the contract to build the bridge was awarded.

He said July 20th had been the first opportunity to have a discussion since February 18th, when the Council had given its direction, over his opposing comments, to not follow some of the guidelines from some of the working groups that had met regarding the Wiswall bridge, and to find the least expensive approach, including not providing a sidewalk. He noted that the matter of the sidewalk was closed at that point.

Councilor Needell said he wanted to be sure that when the bridge was built, and there was no sidewalk, there should be no surprise about this. He said he was concerned about the chronology stated for the project, and about whether the absence of a sidewalk was communicated clearly to both those who had and had not participated in and followed the process. He noted that the issue had been debated by the Council. But he said he was trying to avoid the Packers Falls Bridge syndrome, where there had been complaints that what was built wasn't what people had asked for.

Councilor Needell said if he had been at the July 20th meeting, he would have voted against the motion to fund the project, in line with his position on this issue. But he said he would abstain from the vote at the present meeting because he felt it would be inappropriate to actively oppose the awarding of the actual contract.

Councilor Smith MOVED, upon the recommendation of the Town Administrator, to award a bid to and authorize the Town Administrator to sign a construction contract with R.S. Audley, Inc. of Bow, NH in the amount of \$1,278,509.50 for the construction of the Wiswall Bridge. Councilor Sievert SECONDED the motion.

Councilor Van Asselt asked if the funds were coming out of the Capital Fund, not bonding. Chair Niman said that was correct.

Councilor Carroll asked if there was the assurance that people who spoke at the public hearing knew what was happening. She said she would hate to see the Council operate in haste on this, and asked if there was time available.

Chair Niman said he didn't think they had been hasty with the process, noting the lengthy chronology.

Councilor Van Asselt said Councilor Needell might be right. But he said those who attended the meetings and stayed with the process received the same information the Council received. He said the absence of the sidewalk was made very clear in the material from Mr. Cedarholm and Mr. Lynch to the Council, and said he was very comfortable with the amount that was proposed when he voted to approve the expenditure.

Councilor Needell said he thought it was made abundantly clear to the Council that there would be no sidewalk. But he said it struck him that the chronology detailed recommendations, but didn't detail what this meant. He also said he was not voting against the present motion because he disagreed with the Council's process regarding what the construction of the bridge would consist of.

Councilor Smith said he would vote in favor of the motion, and he thanked Councilor Needell for calling the Council's attention to the missing chronology. He said there were some things they had talked about at various meetings that were not included in the chronology, and said he would hope that on serious matters like this, the chronologies would be more precise and detailed.

He also said that as the person on the Council who lived closest to the bridge and would use it the most, he was not concerned about the lack of a sidewalk. He said the old bridge didn't have one, and people who used the road knew it was a narrow, one lane bridge, which had a traffic-calming effect. He said when people jumped off the new railings into the Lamprey River, etc., that too would tend to be traffic-calming for the most part.

The motion PASSED 7-0-1, with Councilor Needell abstaining for the reasons stated.

VIII. Committee Appointments

Shall the Town Council appoint Christopher Mulligan, 79 Newmarket Road, as an alternate member to the Zoning Board of Adjustment?

Chair Niman asked Mr. Mulligan to say a few words to the Council.

Mr. Mulligan said he had lived in Durham since 2004, and was a practicing attorney with some experience in zoning and land use matters. He said he would like the opportunity to serve the Town.

Chair Niman thanked Mr. Mulligan for his willingness to serve the Town.

Councilor Mower MOVED to appoint Christopher Mulligan, 79 Newmarket Road, to fill the alternate member term vacancy on the Zoning Board of Adjustment, said term to expire April 30, 2012. Councilor Carroll SECONDED the motion, and it PASSED unanimously 8-0.

IX. Presentation Items

A. Quarterly Financial Report – Gail Jablonski

Ms. Jablonski said revenues to date were looking good, and said over 50% had been collected. But she noted that because of the State budget, they would be losing \$162,084 in shared revenues. She also said other revenues had come up short, including property tax interest, motor vehicle permit fees, town of Lee assessing services, recycling charges, interest on investments, courthouse rental, and the transfer from the parking fund.

She said some good news was about \$40,000 more than what was projected for the Rooms and Meals tax, and about \$40,000 more than was projected for court fees. She said they were still waiting to hear regarding the \$190,000 from UNH for policing services.

Ms. Jablonski said expenditures were in line with estimates, and noted that there had been discussion with Town departments about only spending what was absolutely necessary. She said they were all working to make sure the Town could get by without having to use some of the fund balance.

Councilor Needell noted that the pool rebate line item was under-spent, and Ms. Jablonski said UNH hadn't billed the Town for this yet.

Councilor Needell also noted that curbside collection and litter removal was way overspent, and Ms. Jablonski said there had been a major equipment malfunction.

B. Introduction of Bill Dennis of B. Dennis Town Design Sole Proprietorship and authorize the Town Administrator to sign an agreement with B. Dennis Town Design Sole Proprietorship for the review of the Central Business district zoning, strategic planning for commercial core, and specialized planning services as needed

Chair Niman noted that the Council had initiated a process the previous January regarding the Central Business District and whether the current Zoning there made sense and would accomplish they wanted it to accomplish. He said they had also discussed the need for a strategic plan on how to redevelop the downtown, and consider it in the broader picture of Durham. He also said the Town was in the process of starting to go

through an update of the Master Plan.

He said this whole process had resulted in this proposed agreement with Mr. Dennis and his design team. He explained that when the RFP was sent out, there were 8 responses to it. He said a committee comprised of Administrator Selig, Mr. Campbell, two members of the Planning Board (himself and Kevin Gardner) had narrowed the list down to 3 consultants. He said after speaking with them, the committee unanimously chose Mr. Dennis and his team.

He said Mr. Dennis was present to talk with the Council and share his previous experience with them as well as his thoughts on community planning and downtowns. He said Councilors were welcome to ask him some questions.

Mr. Dennis said he had formed a team of 6 people for this project. He spoke briefly about “new urbanism” concepts, and noted that 4 of the 6 people on the team were on the Board of the New England Chapter of the Congress for New Urbanism. He reviewed the qualifications and experience of members of the team.

He noted that Rick Chellman, who would be the traffic consultant for the project, was based in Portsmouth, and had helped re-write the American Association of Highway and Transportation Officials’ “Green Book”. He also said Mr. Chellman was finishing up a manual for St. Louis that integrated all the walking, biking, cars, etc., on any particular street, and then made the traffic behave and work efficiently to that standard. He described it as context sensitive transportation design.

Mr. Dennis said that with the process they had planned, the workshop would take place over a three day period. He noted that there would be some stakeholder meetings to gather information in advance of the workshop. He said the first evening of the workshop, there would be an opening lecture, and said people would then gather at tables of 8, with facilitators, to look at maps and get ideas out on what people would like to see on Main Street, etc. He said one person from each table would report on this.

He said during the three day process, there would be meetings with merchants, landowners, the University, and any other groups that might want to have input. He said every day before dinner, there would be a pin up of where they were at. He said after the three day workshop, a booklet would be put together to show the whole range of strategies, including master planning, road standards, building typologies, form-based codes, etc., and how to implement them.

Mr. Dennis said as part of their work, they would start to look at what a form-based code for the Town would look like, and whether it should be an add-on that could be inserted into the existing ordinance. He spoke in some detail about the concept of form-based codes.

He explained that new urbanism was based on the principal that the way people had lived for thousands of years was based on where they could walk to. He said Durham’s core was like that, and could be a starting point. He said within a neighborhood, one might want a mix of uses, but said trying to permit this was difficult because of existing zoning

codes, which tended to separate uses. He said traditional zoning was basically a use-based code.

Mr. Dennis said with a form-based code, the decision was made on how people wanted the town to look, and the zoning code was then wrapped around this. He noted that with a form-based code, something like a convenience store could be included in a building with an apartment above it, and said this could serve to encourage small businesses/home businesses without destroying the look of a town.

He said the team would be providing some examples of the use of form-based codes, and would be making some suggestions on how this approach might work in Durham. He noted that something called smart codes was available on the Internet.

Councilor Mower said she personally was not expecting a discussion on form-based codes to be part of this proposal, and said she imagined other people would be surprised about it as well. She noted that they were probably anticipating a review of the existing Zoning Ordinance. She said the commitment to form-based codes might be what the Town needed, but said it would be helpful to understand how they had wound up here.

Mr. Dennis said they would review the existing codes, and also would be thinking how something that everyone said they wanted could get through the approval and permitting process with a form-based code.

Councilor Mower asked if these two things could co-exist, or if one could replace the other.

Mr. Dennis said most places did it a bit at a time. But he said he didn't recommend parallel codes, stating that this could be tricky. He said to change the code everywhere could be difficult, but said what could work was to adopt a form-based code as an overlay for a particular area. He said it would be important to make sure that the Town was willing to administrate it, and noted that the code had to be easy enough for everyone to understand.

Chair Niman stated that hiring Mr. Dennis' firm was not making a commitment to a form-based code, and he said this had been made very clear. He also said this wasn't the only firm responding to the RFP that had proposed the idea of form-based codes. He said the committee had had an open mind on this idea, but was not committed to it.

He explained that the reason the committee had found Mr. Dennis' firm so attractive was their work on new urban living/working community planning approaches, and the way they addressed traffic patterns and looked to reduced reliance on cars. He also said their traffic engineer was considered the best, among all the firms that had responded.

Chair Niman said the committee had also liked the approach of having a 3 day workshop, and bringing an illustrator in, which he said was important to the process. He said Mr. Dennis would make the case about form-based codes, but said whether to use them would be the Town's decision.

Mr. Dennis said there were places he had worked where he had recommended making changes to the existing code.

Councilor Mower noted the argument that form-based code would help give Durham the town it wanted, because this would provide the look many people could accept, and it would fit into the environment, even if they wouldn't necessarily want the use.

Mr. Dennis said Durham had gone part way there, noting the existing sign standards, the look of the Irving station, etc. He said the team would be looking at what the Town already had in place.

Councilor Smith noted that there were plans for a large building on the Houghton's Hardware site, and asked if the team would perhaps suggest to the developer that he work with the owner of the abutting property on Main Street to consider a re-design that would be integrated with a build-out of the Main Street corner.

He said downtown Durham had a bunch of freestanding buildings with narrow alleys between them, and several convenience stores. He asked Mr. Dennis if the team's recommendations might suggest that there be some re-thinking of new development plans, to make possible better use of downtown land.

Mr. Dennis said yes, and said he would encourage them to talk with the team ahead of time. He said they would illustrate what the possibilities were, and he noted that showing the ground level views was crucial.

He said they would also do some things with SketchUp, software that was free from Google. He said he was working with a UNH student to model the whole downtown, in terms of what existed there now and what could possibly be added. He suggested that it could be made a requirement that a developer had to show how his proposed building would fit in, using a SketchUp model.

Councilor Van Asselt described a possible scenario where consensus was reached on a form for the downtown, but from an economic standpoint, it wouldn't make anything happen. He asked how they were supposed to deal with public input on a form that was not economically feasible.

Mr. Dennis said the team would try to illustrate the issues, both aesthetically and financially.

Councilor Needell said the people with the economic insights would be part of the public process, so this viewpoint would be represented.

Councilor Mower noted that with the Mill Plaza study, there had been competing arguments.

Mr. Dennis said with workshop process, and with people working together, they would find a solution together.

Councilor Van Asselt said unless the developers and the people with the money were part of the process as equal partners, nothing would happen in the end.

Mr. Dennis agreed, and said they must be at the table.

Councilor Van Asselt asked Mr. Dennis if his team would help the Council figure out the role of public financing in make things happen.

Mr. Dennis noted that there wasn't an economic person on the team, and said they didn't have an extensive element on public financing in what was proposed. But he said suggestions would be made on based on their experiences.

Councilor Van Asselt said at the end of the day, if a developer chose to do nothing, nothing would happen, in spite of a superb process.

Mr. Dennis said there would be general recommendations, including recommendations for some catalytic projects, and what should happen after that.

Councilor Van Asselt said infrastructure costs went along with this.

Mr. Dennis agreed, and said parking was an enormous component of this. He said there was no successful small town without a good parking strategy, especially when there was a University next door.

Councilor Needell said when he read through the contract, it was clear that form-based codes were thought to be the appropriate tools to use. He said the philosophy presented behind this was exciting, but said there hadn't been discussion on this concept by the Council. He said his concern was that things could get sidetracked into a philosophical discussion and a long-term process of adopting a new system.

He said he hoped when this discussion occurred, and if the direction was that it was the appropriate tool, that the expectations would be reasonable as to the immediate outcome. He said the discussion of the Council so far had been on tweaking the Zoning Ordinance to get what they wanted downtown, but he said the team was interested in doing a lot more than this.

He said he wanted to be sure that the Council's expectations were reasonable on what would happen next year, and beyond. He said if they essentially had to start with the Master Plan to work on this, this would take years, not months.

Mr. Dennis said it could go quickly, but said this depended on the politics.

Councilor Needell said he hoped the Council and the team would go into this process with their eyes wide open. He asked if the team intended to address the Master Plan, etc., as part of this process.

Mr. Dennis said yes, but said what was being promised was a thoroughly illustrated guide of what the downtown could be.

Councilor Clark said the proposal sounded to him like a tremendous amount of research had been done already, and that it would involve calling a spade a spade and telling Durham what its problems were. He said form-based codes sounded like a breath of fresh air, stating that he believed it would take that kind of vision to give them any chance of getting the support needed to actually make something happen.

He said he would like to hear how the team would address the student housing issue, and the economic reality of this land use, which meant that it had consumed too much of the downtown, including much of Church Hill, which he said never should have become student housing.

Councilor Clark said there were two kinds of property owners downtown, one of which was long-established owners managing their businesses while looking at the bottom line, which meant they were reluctant to put any investment into their properties.

He said the second kind of property owners was newer business owners who had paid a premium for their properties and were trying to manage their properties by driving the top line, which was why there was an overabundance of student housing and convenience stores.

Councilor Clark said as a result, what fell through the cracks was all the services everyone said they wanted, like a destination restaurant, a clothes store, a sporting goods store, etc. He said with the perfect plan on the table and 20 different property owners with different agendas, he wanted to know why this wasn't going to be another beautiful plan that would sit on a shelf. He asked how realistic it was that it would be implemented.

Mr. Dennis said the University represented its own set of issues, but said there were many towns that would love to have that opportunity. He said the need to build beds for students gave the Town an opportunity to link that use to retail space and shared parking.

He said with a central facility for parking, the owners who didn't want to spend any more money would have the benefit of the parking, which might mean they could put an addition on their store. He also there could be other incentives for owners to do things if they wanted to. He said for properties owned by family trusts small changes could be recommended that would make their properties better.

Councilor Clark asked if the plan would result in recommendations for each property in the downtown core, based on the owners' preferences and needs.

Mr. Dennis said there wouldn't be a recommendation for every owner, but said they could provide recommendations for those where they knew some extra effort might be required to figure something out that would encourage them. He said the goal was to have an overall set of regulations that would allow what they wanted to happen easily. He said there were many possible incentives to get property owners to buy into that, and said shared parking was one of the big ones.

Councilor Clark, asked Mr. Dennis if given his experience, there was any chance that five

years from now, the Council should think there would be roads in different places, pedestrian ways, etc.

Mr. Dennis said he could easily see this happening. He said the plan would have additional blocks, noting there was currently a mega-block downtown that made it very difficult for retail to work. He also said the one-way road system on Main Street was an issue that needed to be addressed. He noted his experience working with Albuquerque, New Mexico on this kind of issue.

He said one couldn't simply say that a pedestrian street should be put in, and said it was important to deal with the realities of traffic, which was very important to retail. He said it was like hits on the Internet; they wanted a lot of traffic going by, but relatively slowly. He said the traffic engineering of successful main streets indicated that 22-24 miles an hour could get the most cars through, and he also explained that the friction of two-way traffic acted as a speed reducer.

Councilor Sievert said hopefully Mr. Dennis wouldn't be discouraged by the response to his suggestions so far. He said they had been working on this since June, and said he was anxious to get going. He said Durham had a lot of development plans underway, and asked how easily projects in place and moving forward could be incorporated into this planning process. He asked if this was a better way to do things.

Mr. Dennis said absolutely, if development was already happening. He said trying to get the community, developers, the University, etc., directing the development stream would be a big part of the process. He also said it would be interesting to see the University's plans, and said perhaps they could see where some suggestions could be made.

Councilor Sievert said there would be a lot of attention paid to this planning process by the University, developers, a lot of the Town Councilors, and a good portion of the community.

Councilor Carroll said she had heard a lot of things she really liked from what Mr. Dennis had said. She said a reason she had looked forward to this process was that there would be a different set of eyes and a different set of skills looking at Durham. She noted the issue of bike paths as one that could benefit from this fresh view.

Mr. Dennis said it was important to get people interested in this process. He also said his team believed design mattered, and he said it was something his team could do something about.

Councilor Smith said he assumed the traffic engineer had driven through Durham, and asked Mr. Dennis if he had talked with him.

Mr. Dennis said they had exchanged knowing looks about this situation.

Councilor Smith said he would like to see Durham return to two-way traffic.

Councilor Mower asked if the area the team would be looking at had been defined.

Chair Niman said they were keeping it to the Central Business District, Professional Office District, Church Hill District, and the Courthouse District.

Councilor Mower said she was asking this because she was thinking of the UNH traffic that fed into these districts on Mill Road, Faculty Road, Mill Pond Road, etc. She asked if this traffic would be factored in.

Mr. Dennis said absolutely, and he noted that the traffic engineer had looked at a lot of town/gown situations.

Councilor Mower said she had seen a Plan NH charrette for Lee NH, on the idea of creating a community core. She said an element common to many of the solutions was re-routing a state road, Route 155, in small segments, and she asked if this was something Mr. Dennis had recommended in plans for other towns. She noted that Route 4 was supposed to take away a lot of traffic from the downtown, but it hadn't quite worked out that way.

Mr. Dennis said it always depended on the situation, and depended on the traffic counts, trucks, etc. He said in general, they thought traffic was a good thing downtown as long as it behaved.

Councilor Mower said it came down to what one wanted on the street, and then managing the cars around that.

Mr. Dennis said the cars were only one person at the party.

Councilor Needell noted that the Council hadn't been working on this since June, and this was the first time this was before them. He said asking questions about what the contract was proposing was the Council's duty. He said when he first read the communication, he had a hard time figuring out what was proposed other than form-based codes.

But he said what he was hearing that evening was exciting, and said he was delighted Mr. Dennis was there to present what was proposed in much more detail. He said Mr. Dennis seemed very experienced, and knew what he was getting into, which was incredibly important. He said he was not attacking what was proposed, and was just trying to learn something.

Mr. Dennis said the more questions and information the Council could provide, the better. He said he hoped that as the process went along, Councilors would be very involved in it. He noted that there were some projects he had done where councilors were required to participate in the process, and said after all, they were the ones who would have to vote on something down the road. He said the more the Council knew about what was going on with this process, the better.

He suggested that perhaps the first night of the process could start with a Council meeting, which could then be adjourned or continued. He said in that way, developers, citizens and others would see it was worth their time to come to the workshop.

There was discussion on the dates the workshop would be held, with Mr. Dennis stating that they were looking at the first week of November. He said they would also try to meet with stakeholders in September and October.

Councilor Mower asked Mr. Dennis how he envisioned bringing UNH into the process.

Mr. Dennis said he would rely on Councilors in terms of who the liaison was, and suggested making the official request at that level. He also said a UNH student involved in this process would be making contacts with the University.

Councilor Mower asked if UNH transportation planners would be involved, and Mr. Dennis said yes, and that they would definitely need to come to the workshop.

Chair Niman said he didn't anticipate any problems with getting UNH involved in the process.

Mr. Dennis said the earlier they could be involved the better.

Councilor Van Asselt asked Mr. Dennis how he would be able to tell the social scientists in Town that the traffic engineer knew more than they did. He said unless he could do that, they had a real problem on their hands.

Mr. Dennis said the idea was to find out what their issue was, try to find common agreement, and get them to buy into the process. He also said it was important to get people to look at the whole picture and see how everything fit together.

Councilor Van Asselt said he liked that answer. He asked if the Council could play a role at some point in saying form B was better than form A, and that they were going to do form B.

There was discussion with Mr. Dennis about the role of the political process in all of this, with Councilor Needell stating that while ultimately the team was supposed to charge up the Council to make a choice and take action, ultimately it was up to the Council to take the ball and run with it.

He said the action could be to make anything from sweeping changes to no changes, and said the Council would have to find out what the community really wanted and was willing to go after. He said the community had to step up and tell the Council, or make the Council do it in one way or the other.

Mr. Dennis said he couldn't guarantee that everyone would love what the team came up with, but said they wanted to be able to get a critical mass of champions for it, from enough different segments of the community.

Councilor Needell asked Mr. Dennis if any of his projects had ended with nothing being done.

Mr. Dennis said there was a project done in Flagstaff, Arizona that had failed, and he provided details on the political realities of that situation. He said it was important to balance what they thought could be done in the context of the realities that existed.

Councilor Mower asked what the track record was of acceptance and actual build-out of plans that had been provided for communities.

Mr. Dennis said each plan was a vessel to pour development into. He said in some cases, there were no developers there despite the fact that there was a good plan. He said politics was also a factor.

Councilor Mower said sometimes it was the will of the individuals who had the power to play.

Mr. Dennis agreed, and said it was important during this process to find out the objections to making changes, and to see how they might be accommodated. He said some people would not be accommodated. He noted that he had been very successful with greenfield projects, where there was one developer, but said it was more difficult in situations where there were multiple ownerships involved.

Councilor Mower said this was a very exciting opportunity for Durham because it was the first time there was the possibility of a comprehensive vision for the downtown.

Mr. Dennis said it was very specific, as well, and involved how something would happen and what it would look like. He said there was great raw material, and said Councilors seemed to care about what they were doing. He also said the Town appeared to be well cared for, and said that was why there were people with such strong opinions. He said the idea was to develop a master plan people could get behind, as something they really cared about.

Councilor Stanhope, who arrived at the meeting at 8:34 PM, came to the table 9:02 pm.

Councilor Clark MOVED to authorize the Town Administrator to submit a Purchase Requisition to the Business Office and sign an agreement between the Town of Durham and B. Dennis Town & Building Design for the development of a Central Business District Zoning, Strategic Planning for Commercial Core, and additional services as needed. Councilor Sievert SECONDED the motion.

There was discussion about the wording in the motion, regarding “additional services as needed.” Chair Niman explained that this wording allowed them to keep Mr. Dennis around if he was needed for other work.

Councilor Mower asked if the UDAG fund had been considered for payment of this, and if not, why not. She said she had thought this fund was for business development.

Chair Niman suggested that Councilor Mower check with Administrator Selig about this.

The motion PASSED unanimously 9-0.

Chair Niman thanked Mr. Dennis for coming. He said they were very excited about the project and looked forward to working with him.

The Council stood in recess from 9:04 to 9:19 PM.

X. Unfinished Business

None

XI. New Business

- A. First Reading on Ordinance #2009-08 amending Chapter 132 “Tax Exemptions and Credits”, Section 132-3 of the Durham Town Code to increase criteria and exemption amounts in order to offer meaningful property tax relief to qualified elderly residents

Councilor Carroll noted her presentation on this Agenda item, and ensuing discussion on it at the previous meeting.

Chair Niman said there had been consensus at that meeting that they would come back with something. He noted Ms. Fuller’s comments, and said he was cognizant of her concerns and agreed in part with what she was saying. But he said this was a very modest program, and said the income and asset levels were so low that there would only be a handful of people involved. He said it was not a general movement to shift the tax burden, and was intended to help those who really needed a helping hand.

Councilor Clark asked if there was an objective expert who could say that this population might go away, or grow over time.

Chair Niman said the current number was a dozen people, and said it was felt that number would slowly dissipate over time.

Councilor Clark said that if that was the case, he had no problem whatsoever with the Ordinance.

Councilor Carroll said this had also been a concern a few years back, but she said while it fluctuated, it had consistently been pretty low.

Councilor Mower said she had spoken with someone who worked in demographics at the Carsey Institute at UNH who said high property taxes weren’t the only reason there was a graying of the state, and that there were many other reasons young people were choosing not to live in New Hampshire. Councilor Mower said it wasn’t because they were subsidizing a very small portion of their society, who she felt in this case should be helped out.

Councilor Stanhope said the demographics suggested that they were probably dealing with some long-term residents of very modest means, but said that wasn’t the type of people who were moving to Durham, which was a very expensive town to live in.

He noted that when this issue had been discussed a year ago, he had thought it would also be nice to create this kind of program, if possible, for entry level people who therefore might be able to afford to move to Durham. He said with this Ordinance, they would be helping those most in need, and said he didn't think there would be any measurable impact on the Town's tax revenue.

Councilor Needell said he didn't think this property exemption would be a selling point for people thinking of coming to live in Durham, and would help people in the community, which was the intent.

Councilor Van Asselt distributed a document about programs in Saco and Kittery Maine, where an elderly person who couldn't afford the taxes could perform a community service in lieu of paying some of the taxes. He said it was an opportunity for the elderly to participate and was also an advantage to the Town, and was something that was used around the country. He said he wasn't suggesting this in lieu of what was proposed now, and said it was something that might be an addendum.

Councilor Mower said she thought it was a terrific idea, and was something they should perhaps talk about to a greater extent later on.

Councilor Smith MOVED on First Reading as recommended Ordinance #2009-08 amending Chapter 132 "Tax Exemptions and Credits", Section 132-3 of the Durham Town Code to increase criteria and exemption amounts for the elderly and schedules a Public Hearing for Monday, September 24, 2009. Councilor Mower SECONDED the motion, and it PASSED unanimously 9-0.

- B. First Reading on Ordinance #2009-09 amending Chapter 106 "Sewers", Section 106-2 (B) by authorizing the Town to grant waivers from the connection requirement outlined within this section pursuant to RSA 147:8

Chair Niman explained that this proposed Ordinance related to an issue the Council was made aware of at the previous meeting. He noted the new subdivision approved for Sophie Lane, and the fact that some residents who lived between where the new development would be and where the current sewer ended would be required to hook up to the extended sewer line.

He said many of these residents had working septic systems, and believed it was unjust to have to hook into the new system. He said Administrator Selig had contacted legal counsel to see if there was something in the existing ordinance that required that residents hook up to a new sewer line, and said it was determined that this would be required since there was no waiver provision.

He said the proposed amendment would therefore allow waivers, for those people who had certified system approved by NHDES after 1985, so they would not be required to hook up to the sewer system. He said the general thought was that when the resident's septic system failed, at that point they would be required to hook into the sewer system.

There was discussion that property owners would have the choice to hook into the system or not, so even if they had a working septic system, they could hook into the sewer system.

Councilor Sievert said the key to the wording should be that once a system failed, a property owner would need to hook into the sewer system.

Councilor Clark asked if there was a grey area between a failed system and one that needed to be fixed.

Councilor Sievert said a system could be fixed, but noted that the State regulations had recently changed, so that a property owner couldn't just replace a system in kind, and instead needed to have a design for the replacement system. He said it would be important to make that absolutely clear in the Ordinance. He also asked how they should deal with a resident with a septic system that was put in 1977, which didn't have a design plan, but wasn't failing.

Councilor Needell said most of the homes in this area pre-dated 1985, so the question was how many would benefit from this.

Councilor Sievert said the ones that had had failed systems had newly designed systems. He said those prior to 2008 could be replaced in kind, without a new design. He said he wasn't trying to make this complicated, but wanted to make it black and white.

Chair Niman asked if there was enough merit to this Ordinance to move it on first reading and have the public hearing, at which time the Town Engineer could be present, and amendments could be made to the wording. He said an alternative was to work on the changes before having the public hearing.

Councilor Needell said he agreed with the spirit of what was proposed, and noted that they were just adopting the RSA. But he asked if it would be enough. He also asked why this was a surprise now, stating that he believed there had been discussion on the idea of hooking up to the sewer line during the discussion on the TIF district.

Chair Niman agreed that he thought it had been determined that the residents didn't have to hook up to the sewer.

Councilor Needell asked a more general question of whether the Town should require a developer extending a sewer line that serviced a new development to pay for hookups of properties along the way that needed to be brought on line, or that wished to be brought on line.

Councilor Mower noted that if the Town was extending a sewer line, then perhaps it would be responsible for these kinds of hookups.

Councilor Needell said if the Town extended water and sewer, it would be requiring that people hook up to it, and said that would shape discussions in the future about extending water and sewer.

Councilor Smith said in the case of Sophie Lane, there was no condition of approval that would require the developer to hook up the properties. He also said that during the TIF discussion, he didn't think they were being realistic about whether or not people would have to hook up if their systems failed. He said he believed the discussion at the time was that people would have the option of hooking up to the sewer line or putting in a new septic system, but that it would be cheaper to hook up.

Councilor Needell said that discussion had not been correct, and Councilor Smith agreed.

Councilor Sievert said he thought the kind of requirement Councilor Needell had spoken about was a bad idea, stating that the Town wanted to encourage more hookups to public sewer. He also said this would kill any possible affordable housing projects. He said he thought the waiver idea was a good one from an affordability standpoint, but said it was important to have a clear cut-off line.

Councilor Needell asked if there was any way to get beyond the issue of systems installed before 1985.

Councilor Sievert said doing a proper inspection of a system was the way to go.

Councilor Clark asked what the life expectancy of a septic system was, and Councilor Sievert said it depended on what the soils were. He said it ranged from systems in clay and ledge that lasted 10 to 15 years to those in sand and gravel that lasted about 40 years. He said it also depended on the use of the system.

Councilor Clark asked if they could say something in the Ordinance to the effect of having to connect to the sewer after 25 years, instead of setting 1985 as a cut off date.

Councilor Sievert said that could be done, and also said the inspection approach could work.

Councilor Stanhope said the issue of where the line was drawn was important, and he noted that there was a lot of housing stock in Durham that was aged enough so there were some older systems. But he said he worried about the Town doing inspections for this kind of thing. He said he liked the idea of a waiver, but said it should not be unreasonably burdensome on the property owner. He said absent a total failure of the system or the inability to place an adequate system on the property, it should be something the Town should allow to continue.

Councilor Sievert suggested that the inspection could be done by a licensed designer instead of the Town. He said this would be an independent approach, and said this process could also be used to determine if a new system could be put on the property. He also noted that there was a septic system on the market that could last 50 years if it was used correctly.

Councilor Mower asked how to ensure that there would in fact be discussion on possible amendments to the Ordinance when the public hearing was held.

Chair Niman said if the Council said it was receptive to the waiver idea, but had some issues with the 1985 cutoff date, or the inspection process, etc., his suggestion was to pass the Ordinance on first reading, and to amend it after the public hearing.

Councilor Mower said she thought there would be the issue of making substantive changes to the Ordinance at that point.

Councilor Needell said the question was how much leeway they had to modify the language in the RSA. He also said that once they had the public hearing, if they rewrote it, it would be their responsibility to start the process over.

Chair Niman agreed, but said he thought there was probably a reason it was worded the way it was. He said he thought they should move the Ordinance forward and meanwhile find out why the language was the way it was. He said it would also be a good idea to find out how old these particular septic systems were.

Councilor Needell said he thought they should also look at possible alternatives to allow a homeowner with a system older than this to not have to hook up. He noted that if all the systems near Sophie Lane were not older, the question was moot.

Councilor Mower pointed out that if they passed this Ordinance, it went beyond addressing just those 6 houses.

Chair Niman summarized that there was consensus on the Council that this Ordinance was a step in the right direction and should be moved forward, but that there were still a lot of questions on where the language came from, and whether they could do more or not. He said perhaps they could get answers to this on September 14th.

Councilor Needell said the reason he thought there was some urgency to this was that he didn't want to be asked to approve a sewer hookup for Sophie Lane until this issue was resolved.

Councilor Sievert MOVED on First Reading Ordinance #2009-09 amending chapter 106 "Sewers", Section 106-2 by authorizing the town to grant waivers from the wastewater discharge connection requirement outlined within subparagraph B of this Section pursuant to RSA 147:8, and schedules the public hearing for September 14, 2009. Councilor Clark SECONDED the motion, and it PASSED unanimously 9-0.

XII. Nonpublic Session (if required)

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

Councilor Van Asselt said he didn't agree that the Coe Drive matter should be taken to the University. He said for an issue like this where the land involved was between the street and the sidewalk, he thought Administrator Selig should be asked to contact Mike Lynch, and the Public Works Department could mow the overgrown grass. He said there weren't many situations like this in Town that had areas like this, so this was a small

issue.

Councilor Stanhope said he agreed with Councilor Van Asselt. He said perhaps the owner wasn't being a good neighbor, but said that was the reality of private property rights, short of something being unsafe. He noted that there were other properties in Durham besides student housing that sometimes had weeds growing in front of them. He said a call to the ownership in most cases would get some cooperation from landlords, but said if this didn't happen, that was the reality.

Councilor Sievert said he thought it was wrong to contact the University on this kind of thing, especially if the Town owned the right of way.

There was discussion that the issue was about more than weeds. Councilor Carroll said they knew what the term student ghetto meant, and said calling Ann Lawing would be something that Administrator Selig could do. She also said that while it was Town property, other properties in the area maintained this area in front of their properties.

Councilor Sievert said he mowed part of the Town right-of-way in front of his own property but not other parts, and there was discussion.

Councilor Needell said he agreed that the Council should not be directing Administrator Selig to contact the University about this issue. He said he didn't think there was an intent in the email for Administrator Selig to contact anybody. He said anyone could contact the University about an issue like this, or could contact the landlord.

He said if people were concerned about the number of students, or health and safety codes, they should contact Mr. Johnson. He said they could also contact Administrator Selig or Mr. Lynch about the idea of mowing the grass because it was in the public way. He said anyone offended by the property had resources they could take advantage of.

XIV. Adjourn (NLT 10:30 PM)

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

Adjournment at 9:58 pm.

Victoria Parmele, Minutes taker