

**This set of minutes was approved at the November 2, 2009 Town Council meeting**

**Durham Town Council  
Monday October 5, 2009  
Durham Town Hall - Council Chambers  
7:00 P.M.  
MINUTES**

**MEMBERS PRESENT:** Chair Neil Niman; Councilor Karl Van Asselt (arrived at 7:04 PM); Councilor Jerry Needell; Councilor Julian Smith; Councilor Doug Clark; Councilor Peter Stanhope; Councilor Diana Carroll; Councilor Robin Mower

**MEMBERS ABSENT:** Councilor Mike Sievert

**OTHERS PRESENT:** Town Administrator Todd Selig; Town Engineer David Cedarholm; Town Planner Jim Campbell

**I. Call to Order**

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

**II. Approval of Agenda**

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

**III. Special Announcements**

None

**IV. Approval of Minutes**

None

**V. Councilor and Town Administrator Roundtable**

Councilor Van Asselt arrived at the meeting at 7:03 pm.

Councilor Stanhope said he had heard some people in Town express concern that the municipality hadn't offered any direction or comment on the closing of the New England Center. He noted that there were a variety of proposals being floated about improving the Town economically and changing the downtown to something that was more upscale. But he said if there wasn't a plan for replacing the NE Center, this could further damage the local economy.

He said he understood that the University had made its decision on the NE Center for a variety of reasons, but said he was concerned that a major loss like this would have a significant impact on downtown merchants. He said the HDC had given some thought to the fact that the structure itself should be preserved because it was very unique and was designed by a recognized architect. He then asked if the Council should say nothing about this situation.

Councilor Smith asked if Councilor Stanhope was recommending to the University that it should do something.

Councilor Stanhope asked if the University had sought to get someone in there who really knew how to run a facility like that. He said a bigger question was whether the University wanted to hold on to the property and was looking to use it as housing. He said he would like to see it in the hands of someone who would continue its present use.

Chair Niman said he didn't think this would be economically feasible, and he spoke about the deferred maintenance costs involved with the building at this point. He said while the building was lovely to look at, it was not economical to run and didn't meet today's needs. He said that was why the University was open to the idea of a new hotel downtown that would be owned by a hotel developer and that would be taxable. He said he thought the University was hoping that this kind of project downtown would come to fruition.

Councilor Needell said Councilor Stanhope had raised some questions that were out there and that needed to be addressed publicly. He asked if it would be possible to invite someone from the University to talk with the Council. He said there were different assumptions about what was happening, and said it would be good to have an open discussion where concerns could be aired. He said the NE Center was a facility that was important to the Town, and said it was in everyone's best interest to have this discussion.

Chair Niman noted that the University would be holding a community breakfast on October 22<sup>nd</sup>, and said the featured topic would be new ideas for the downtown. He also said the Council would like someone to come forward with a new hotel proposal, and said his hope was that this would happen some time in November. He said there could be a very fruitful discussion at that time.

Councilor Needell said that was another discussion that was needed, but he said regardless of the possibility of a new hotel, the NE Center was a large building whose doors were being shut, and it was important to know what the long range plan for it was.

Councilor Mower said a discussion with the University on this issue was an excellent idea, and said she would prefer that it be held in the Council Chambers and televised on DCAT, so people could learn from it. She said residents had a sense of pride in that particular building, which was an extraordinary architectural monument to a particular time and place. She said there was interest in seeing what its future could be.

Administrator Selig said in his conversations with the University, he had seen that they had been considering this issue for a long time. He said the NE Center had been losing money and the University was facing a great deal of deferred maintenance on the building.

He said one possible future use of it was to put graduate housing in the towers, which was something the Town had expressed interest in having near the downtown. He said another possibility was to move some offices to the NE Center. He said an outstanding issue was how they would want to use the Acorns restaurant space. He said he thought it would be appropriate to invite the University to speak with the Council, and said he would be glad to do so. But he said it would be important to be respectful about their timetable.

Councilor Needell said the idea would be to have the opportunity to bring the public up to speed, and not to have an adversarial situation.

Administrator Selig said the University understood that people loved this building, which was built in the 1960's and blended into the landscape. He said the University was willing to share where they were at with the building. But he said there was the reality of today's marketplace. He noted that he had suggested the idea of using the building as a future Town office/library/police station, but said a question was whether the Town wanted to be strapped with the maintenance costs.

Councilor Carroll thanked Councilor Stanhope for bringing this issue up, noting that people in Town were talking about it, so the Council should talk about it as well. She agreed that it would be good to have someone from the University speak with the Council sooner rather than later, in a non-adversarial atmosphere.

Councilor Stanhope said he didn't expect that these buildings would be coming down, and said the University would spend the \$18 million not spent on maintenance on something else. He said while the University had been proactive in recent years in working with the Town to solve problems, this situation represented a significant closing of a business in the community.

He said the Town shouldn't simply stand by and say there would be some graduate housing over there. He said the University had allowed the facility to deteriorate to this extent, and now was saying it would cost so much money to fix it and it couldn't support itself. He said he would rather they give it to a developer who would continue its current use. He also said the idea that it wasn't on Main Street didn't defeat its viability as a business. He noted that a few decades ago, this was one of the destination restaurants in New Hampshire, and it had been allowed to fall out of grace.

Chair Niman said this assumed that the University hadn't tried to find someone to take it over. He said he didn't believe this was true, and said it had been left with no choice but to close. He said the University had been very supportive of business development downtown and would potentially be doing some things in the future to make it possible to have successful development downtown.

Administrator Selig said if the hotel project did move forward, this could have a transformative effect on the community.

Councilor Smith said the Town had seen a number of things once cherished become endangered or lost. He said at the end of the 19<sup>th</sup> century, Hamilton Smith had built the Red Tower, which was a showcase at the time, and did so in part to be able to look down into his garden.

He said it was called Smith Park because it was open to the people of Durham, and said residents took pride in showing visitors the house and garden. He said that garden was now a wooded parcel immediately east of the Plaza, about 1.75 acres in size.

Councilor Smith said there were a number of gifts to the Town from Hamilton Smith and his family, which had been neglected or forsaken by the Town. He noted the poor condition of the old stone Smith Chapel which was dedicated to Hamilton Smith's memory. He also said Hamilton Smith's daughter had given the Town the Oyster River dam 13 years after his death, which the Council had so far declined to repair despite what seemed to be strong support for doing so.

He also said Hamilton Smith had provided the funds to build Hamilton Smith Hall to serve as both the College and Town library. He noted that this building was eventually turned into classrooms, the library was moved into a new building on campus, and the Town and University libraries were subsequently separated.

Councilor Smith noted that the Library Trustees had been searching for a new home for the Town library, and said he couldn't think of a better home for a combined Town Hall/Library than the former garden of the Hamilton Smith family, which was the large parcel to the east of Mill Plaza.

Councilor Smith next updated the Council on the Planning Board. He said at its next meeting on October 14<sup>th</sup>, the Board would be holding a public hearing on an application to put new parking in at Mill Plaza, some of which would replace some other parking spaces that would be eliminated in conjunction with a drive-thru window for a bank, and expansion of the building where the Movie Stop had been located as a Mexican restaurant.

He noted that there had been some significant changes at the Plaza over the past year, as well as some additional changes planned, including the remodeling of the Chinese restaurant, which would serve alcohol. He said October 14<sup>th</sup> might be a good time for members of the public to show support for a parking plan at the Plaza that would do more to benefit businesses on Main Street and other members of the community, as well as the Plaza.

Councilor Needell spoke about some recent email exchanges concerning whether residency was required in order to be on a Town committee. He said he would like the

Council to discuss this and affirm what the policy was, stating that this wasn't clear to him right now from discussion. He asked if this discussion should be done as an agenda item, or if it could take place during the extended Roundtable.

Councilor Mower agreed with Councilor Needell's suggestion, and noted that she had heard discussion about this issue in the context of whether a commercial property owner had the right to sit on a local board or committee. She said maybe it was time to revisit this issue. She said she wasn't sure whether an RSA drove this, and if there was some leeway with some committees.

Chair Niman said the Council could discuss this issue during the extended Roundtable, and said if there was a diversity of points of view at that time, it could be put on a future agenda.

Councilor Needell noted that there were two wastewater permit items on the Unanimous Consent Agenda. He said he would like to make a plea that these kinds of items be approved prior to Planning Board approval. He said if the Council were to not approve one of these, the question was what this would do to the Planning Board approval. He said the process seemed backward and extremely inefficient, and put the Council in an awkward position.

Chair Niman said he agreed with what Councilor Needell was saying, and asked how the Council would go about doing what he was saying.

Administrator Selig said in order to review a permit application, the DPW needed specific technical information on the design that was proposed. But he said the challenge was that frequently an applicant was reluctant to do a detailed design unless he knew the application would be moving forward as a result of the Planning Board's review process. He said the Town had been using a tandem process, so that getting the permit was a condition of site plan or subdivision approval by the Planning Board.

He said if it was definite that there wasn't the sewer or water capacity for a development, it was well within the Council's right to say no to a permit. But he said if there was the capacity, but the Council decided it didn't want to allow the connection, this did create a challenge and a fairly awkward scenario. He noted that there had been discussion with the Planning Board about this issue in the past.

Mr. Cedarholm said Administrator Selig was right that a developer needed to do a fair amount of work up front before a sewer extension design could be reviewed. He said in the case of the Sophie Lane project, a sewer capacity analysis was done prior to the Planning Board's review process. But he said typically at the start of things, he got a call from a developer asking if there was sufficient capacity and if there would be some issues.

He said although the present process seemed awkward, it made sense that the Council provided the check and balance. He said the DPW didn't really have the authority to say a developer couldn't tie in, but the Council did.

Councilor Needell said the Wastewater committee did the vetting, and presented the Council with the recommendation, and said this put the Council in a situation where it was rubber stamping the permit. He said he could understand the timing and expense issues, but said it seemed that the current process presented the opportunity for a situation where there was political wrangling over a permit application.

Mr. Cedarholm said at the opposite extreme, a developer could come to Town and get the support of the Council before the project was checked by the Planning Board, etc.

Councilor Stanhope said he appreciated what Councilor Needell had said, but said the Council relied on the Town Engineer and the Committee. He said when Mr. Cedarholm came before the Council under the Unanimous Consent Agenda, at that point the Council was essentially tying the knot, and said he couldn't imagine that the Council would have cause to not approve a permit when it had already been reviewed by the Town Engineer, the Committee and the Planning Board. He said this responsibility had been delegated.

He said Councils had used this authority in the past to delay progress in the community, and said he hoped they were not going to go back there. He said he didn't see any problem with the way the process worked now, and said the Council would be hard pressed to bring itself back to the entry level for a permit, because it wouldn't have the wisdom of these other town entities before casting a vote.

Administrator Selig said another aspect of this was that the Council was taking a lot of its direction from the Council goals. He said particularly with the Bryant project, where there would be a utility extension, there was the goal of broadening the tax base. He noted that portions of the corridor had recently been rezoned to facilitate additional development in that area, and staff was looking for ways to allow for expansion of utilities there.

He also said there was the financial agreement as backup for this development, which he had provided to the Council. He noted that the Town would build the sewer extension and the developer would pay the full cost of it. He said this was in complete concurrence with the Council's goals, and said this agreement had been going back and forth over the past several months.

Administrator Selig also said if the connection permit was brought to the Council up front, people would want to know more details on what this was for.

Councilor Carroll said on Saturday, October 10<sup>th</sup> at 11 am there would be a dedication at Mill Pond Park of a large granite stone in memory of Margery and Lorus Milne, who were noted UNH professors, authors of over 50 books on natural history, Durham swan keepers, and long term residents of the Town.

She said Councilor Smith had found the stone, and said engraved on it were words that Margery had dictated in her trust. She said it was surrounded by a wildflower garden

planted by the Durham Garden Club.

Councilor Carroll also spoke about the fact that there were many residents who moved to Durham because of the University, but then didn't know how to access the many programs there. She said Erika Mantz would offer a tour for Durham residents of the UNH library, the Paul Arts Center, the Memorial Union building and more on October 17<sup>th</sup> from 9:30-11:00.

She said this would be a great opportunity to learn how residents could use and benefit from the University. She said most residents probably didn't know things like the fact that they could get a library card for the University library. She said this tour was a great addition to Durham.

Chair Niman said the Council would have an extended Roundtable that evening to cover issues that hadn't been completed under the Roundtable.

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

**Bill Hall, 1 Smith Park Lane**, said the area on the Hamilton Smith property Councilor Smith had referred had been an orchard.

On another issue, Mr. Hall said the New England Center had been a real destination 20 years ago, when there was a very competent manager there. He said the University had chosen not to renew this person's contract, and instead chose someone who was friendly with the Trustees. He said the NE Center had been in the red since then, and said the University had gotten exactly what they had asked for.

Mr. Hall noted the rain garden the DPW had constructed on Madbury Road, and spoke about health and safety issues if the Fire Department and Police Department had to negotiate the rocks. He said it was ridiculous that the DPW had even considered doing this.

Mr. Hall noted on the issue of water that with the Hotel New Hampshire project, this had come before the Council as a conditional use and there were questions at the time about whether there was enough water for such a project. He said he didn't know where this information had come from. He said the University had then created many beds with its new dorms.

Mr. Hall said a few weeks ago, the treatment plant had stopped taking water from the Lamprey River. He said the Council did not understand the numbers. He spoke in detail on this, and said it was shameful that this had gone on as long as it had.

**Marty Gooze, Meadow Road**, said she had been asked by Donna and Warren Brown to read a letter. She said she agreed with the letter so would read it for them. The letter said that as long-time residents, the Browns were increasingly concerned about bands of students traveling on Edgewood Road, who made it difficult to sleep on Thursday,

Friday, and Saturday nights. The letter said the neighbors were all concerned about the problem, and provided details about what was going on.

Councilor Mower noted that there was a Rental Housing Commission meeting the following day, and said some of these issues would be discussed.

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

- A. **RESOLUTION #2009-10** amending Section 12 “Structure” of the Durham Cable Access Television (DCAT) Governance Committee Policy Manual by adding an alternate member
- B. Shall the Town Council approve the water and sewer warrant for Fall 2009 totaling \$393,628.96 and authorize the Town Administrator to sign said warrant?
- C. Shall the Town Council, upon the recommendation of the Durham Water, Wastewater, and Stormwater Committee, approve a non-industrial wastewater discharge permit application submitted by Smithfield Construction and the associated sewer extension for the parcel referred to as Tax Map 10, Lot 7 located on Bagdad and Canney Roads?
- D. Shall the Town Council, upon the recommendation of the Durham Water, Wastewater, and Stormwater Committee, approve a non-industrial wastewater discharge permit application submitted by Perry Bryant for a proposed mixed use development and associated sewer extension on Mast Road Tax Map 13, Lot 5) known as Bryant Park West?

Councilor Needell asked that Item A be taken off the Unanimous Consent Agenda.

***Councilor Smith MOVED to approve Unanimous Consent Agenda Items B, C and D. Councilor Mower SECONDED the motion, and it PASSED unanimously 8-0.***

Regarding Item A, Councilor Needell said he didn’t understand the purpose of having an alternate on the DCAT Committee, and what was the Committee was trying to accomplish with it.

Councilor Carroll said DCAT Chair Diane Thompson could not be present at the meeting, and had asked her to explain why this was on the Agenda. Councilor Carroll said she had provided the Council Communication, and explained that DCAT would like to have some flexibility and saw an alternate as someone who might be on the Committee for awhile, perhaps for a particular project.

Councilor Needell said that was the way he had read the Council Communication. He said he didn’t see the need for this, and said if the Committee needed expertise for a particular project, it could go and get it. He said he wasn’t sure that having alternates would provide the Committee with the flexibility it was looking for.



Councilor Mower said she had read this the same way, and said she wondered why a person would have to sit on the Committee in order to provide expertise.

Councilor Carroll said she had heard at a DCAT meeting that some of these projects could go on for a long time. She also said some people who had been approached wanted to be a member of the Committee.

Councilor Mower asked if for some people this was seen as a stepping stone to becoming a regular member.

Councilor Carroll said she thought this could be interpreted in that way.

***Councilor Smith MOVED to approve RESOLUTION #2009-10 amending Section 12 “Structure” of the Durham Cable Access Television (DCAT) Governance Committee Policy Manual by adding an alternate member. Councilor Carroll SECONDED the motion.***

Councilor Mower said to the extent some other committees did have alternates, she didn't think this was an unreasonable request.

Councilor Van Asselt said he agreed with Councilor Needell, and noted that the Council had spent time two years ago going through the structure of these committees, and now there was this proposal to change that. He said if they wanted expertise, they should go out and get it. He said he didn't realize there were so many people who wanted to serve on DCAT, noting that there had been quorum problems a few years ago.

Councilor Mower said one of the goals of restructuring the committees had been to encourage greater participation, and said the question was whether this change would create that result. She said if for some people, the only way they would participate was to have that alternate position, the question was whether it was reasonable for the Council to offer that opportunity, especially when other Town committees had alternates.

Councilor Stanhope said he had been troubled for a long time that Durham had too many committees, and had a limited supply of residents with either the time or willingness to participate. He said he agreed with Councilor Van Asselt that the Council had recently gone through the process of looking at committee needs and membership, but here they were again adding a position to a committee. He said he was uncomfortable creating seats on committees when other committees were not filled.

Councilor Clark said he didn't have a strong opinion either way. But he said if the goal of having an alternate was to be able to bring experts in, he thought this could be done with term changes. He said what was proposed here didn't sound like it had been thought through terribly well.

Councilor Carroll said DCAT hadn't had to cancel any meetings because of a lack of a

quorum. She also noted that there was a dynamic chair right now, and also said they were working on some rather complicated projects. She acknowledged the committee restructuring that had recently been done, but said this committee said it wasn't working for them, and would like to have an alternate.

She recommended that the Council grant what the Committee wanted, and said she didn't think this would impact the ability to get a quorum. She said if people with expertise would like to be on the Committee this way they should be able to do so.

Councilor Mower said she disagreed with Councilor Stanhope regarding the idea of adding a position when other committees were not filled, because people didn't have interchangeable interests and expertise.

Councilor Needell said he had no problem with supporting the Committee's request, but said he still didn't think having an alternate was the right approach. He said it didn't seem to be the solution to the problem they wanted to solve.

He also said if this motion was not approved, this didn't mean that he was unwilling to revisit the committee restructuring done last year. But he said he thought this request should have been thought through a little more, and possibly explained a little better.

Councilor Mower asked if perhaps this request wasn't ready for prime time.

Administrator Selig said he didn't want to give a negative message to a Committee that was trying to work hard on behalf of the Town. He said there should be discussion on whether the issue was about bringing on some expertise, getting a quorum, or training alternates who would eventually become regular members. He suggested that the Council table the motion, send the resolution back to the DCAT committee for further discussion, and then bring it back to the Council when it was ready.

***Councilor Mower MOVED to table the motion. Councilor Clark SECONDED the motion, and it FAILED 4-4, with Councilor Smith, Councilor Stanhope, Chair Niman and Councilor Van Asselt voting against the motion.***

Councilor Van Asselt asked which vote would assure that this didn't come back to the Council, and Councilor Smith suggested that passing the original motion would achieve this.

Councilor Mower said given the discussion, the representative to DCAT could convey the concerns of the Council and could make suggestions on the need for clarity.

***The original motion PASSED 7-0-1, with Chair Niman abstaining because he hadn't heard a persuasive argument one way or the other.***

## **VIII. Committee Appointments**

None

## **IX. Presentation Items**

Durham: It's Where U Live and the activities, services, and opportunities available to Durham residents on the UNH campus – Erika Mantz, UNH Director of Media Relations

Ms. Mantz noted that she was also a Durham resident, and she provided some background on the development of the Durham It's Where U live initiative. She said it was breaking down the "us vs. them" mentality, and reminded students and staff about the great benefits of being one community.

She said she and Councilor Carroll had recently been meeting and talking about the fact that it could be intimidating to try to access activities on the UNH campus, as well as find parking there. She said the tour on October 17<sup>th</sup> was the first step in addressing this.

She said there would be a short tour of the Diamond Library, the Paul Creative Arts Center, and the Memorial Union building, and there would also be an explanation of where people could park. She said the tour was by reservation only, and would be advertised in the Friday Update. She said if the tour was successful, it would be done again.

Ms. Mantz spoke in some detail about the various opportunities for town residents on the UNH campus. She made note of the community resource guide, an online searchable database of resources at UNH that was available to the community, [www.unh.edu/communityresources](http://www.unh.edu/communityresources). She also spoke about UNH Today, a daily email that included various kinds news on UNH. She said this information was also available directly from the UNH website

Ms. Mantz next provided details on parking options on campus. She said it cost a dollar an hour to park wherever there was metered parking on campus. She also noted that visitors could get a day pass for \$8.00 at the Visitors Center, and could then use the shuttle bus for free on campus all day.

In addition, she said people could park at C lot near Mill Plaza at an hourly rate of one dollar for up to 3 hours. Finally, she said people could park in any faculty, staff, or commuter lots after 6 pm and before 6 am.

Ms. Mantz said another bus option was Wildcat Transit, which had routes servicing Dover, Newmarket, Newington, and Portsmouth. She said these buses were open to the public, and the fare was \$1.50. She said children under 5 could ride free, and passengers over 65 paid half price. She said the first day every month, this bus service was free. She encouraged people to go online to learn more about this.

She said people with questions could contact her at [erika.mantz@unh.edu](mailto:erika.mantz@unh.edu).

Councilor Clark asked Ms. Mantz if she was going to include discussion on recreational opportunities that were available for kids on the UNH campus. He noted that 20-30 years

ago, kids in Durham grew up using the UNH Field House, etc.

Ms. Mantz said she would be talking about some of those opportunities, such as the outdoor pool and indoor pool. She also said she would be open to questions like this on the tour, and if she didn't have an answer to a question, she would get one.

Councilor Mower said she would like to see follow-up through the Town website about the various opportunities on the UNH campus.

There was discussion that if Ms. Mantz provided the content, the Town website could provide links to them.

Councilor Carroll said she was glad that the issue of recreational opportunities had been brought up. She said the tour wouldn't be going to the Field House, but said some recreational opportunities would be talked about. She said the tour had been set up with the idea of expanding it in the future, and said this was a good first step.

Councilor Stanhope said as compared to when he was younger, there now seemed to be a series of economic and bureaucratic barriers that discourages residents from using the recreational facilities. He noted that he had been unable to get a family membership at the fitness facility for his family, and that his 13 year old had been unable to be on the premises. He said it was important to dig deeper as to why these facilities were not available.

Ms. Mantz said she could look into this, but said she wasn't presenting any illusions that all of the economic barriers to facilities could be broken down. She said finances were an issue. She said she would be happy to facilitate whatever she could, and noted that in some cases facilities had been made available. She said hopefully they could continue along those lines. She said she hadn't realized there used to be a family membership available at the fitness facility.

Councilor Mower said another facility that was less accessible than it could be was Mendums Pond. She said she had been there when it was almost impossible to find a parking space, yet there were cars there from other towns and states in the parking lot. She said she would hope UNH would like Durham residents to get a good shot at using the facility.

## **X. Unfinished Business**

Receive a status report from the Administrator on the list of 2009/10 Town Council goals adopted on May 18, 2009

Administrator Selig said it was important for the Council to track how it was progressing with the various Goals it had set for 2009-2010. He then reviewed the progress that had been made on these Goals.

*Adopt a strategic planning process and move forward with efforts to increase taxable*

***value and social capital in the Central Business District and downtown commercial core***

Administrator Selig said something that had come out of the SWOT analysis was to focus on broadening the tax base not just by catering to University staff and full time residents, but also by catering to the global market place. He said he had suggested a modification to the first goal in order to make that more clear.

Councilor Mower said one way to look at this was that they wanted to tap into the fact that the Internet didn't depend on having a geographically captive audience.

Administrator Selig said there had been a major effort to select a consultant who would be focusing on the commercial core. He said the consulting firm had been selected, and said a charrette was planned for the November 5-9. He said the schedule for this was on the home page of the Town website.

***Support continued efforts to encourage Mill Plaza redevelopment***

Administrator Selig said the Town had been doing this, but said so far, little had transpired. He said whenever he spoke with a developer, he pointed out the Plaza as a great opportunity, and said he had done so that day with a major development company. He said he was hopeful that something would take root there.

***Support continued discussion concerning potential downtown location for new UNH Business School and UNH Performing Arts Center***

Administrator Selig said he was pleased to announce that the University was planning to locate its new Business School at a downtown location,

Councilor Van Asselt left the table at 8:19 pm

***Facilitate continued discussion concerning potential downtown location for new UNH Business School and UNH Performing Arts Center***

Administrator Selig said UNH was also interested in locating a performing arts center downtown.

***Facilitate continued discussion concerning the development of a new Hotel/Conference Center within the downtown area***

Administrator Selig said there was a lot of effort going into trying to locate such a facility in the downtown area. He said the ATO fraternity site on Main Street was being focused on.

***Facilitate various development and redevelopment projects***

Administrator Selig said there were numerous projects at various stages of moving forward.

***Identify a site and develop a plan for a possible Town Center, Library, and potential recreational opportunities***

Administrator Selig said two sites were being focused on: the Pines and the Greens property. He noted that the Master Plan had identified the Greens property as a location for a potential Town center.

Councilor Clark asked if the Council would be trying to get creative with these properties. He said his sense was that the EDC had looked into possible incentive programs. He said perhaps there was the opportunity to entice someone to sell one piece of property if the Town gave them good reasons to take the money and invest in another property.

He said perhaps they could create more economic value by redeveloping existing properties, using some of those proceeds, and said the Town could make this more desirable if it pointed them to some of these incentive programs. He said rather than wait to see if they wanted to sell, the Town should give them a proposal they couldn't say no to.

Administrator Selig noted that the Council had adopted the provisions of RSA 79 E. He said he agreed completely with Councilor Clark, and said a winning scenario particularly at a downtown location would involve some kind of public/private partnership.

***Provide clear direction on Budget goals for FY 2010***

Administrator Selig noted that the Council had already provided some guidance on the Budget at its June 2009 budget work session. He said initial department head proposals for the Budget indicated a 9.5% increase in spending, while the estimate was that there was a 5% decrease in revenues, largely because of the reduction in State revenue sharing. He said the resulting net projected tax rate increase was 19.4%. He said there was a lot of work to do in the next few weeks.

Councilor Clark said this didn't shock him at all, and said it was obvious that they all would have to do a more fundamental investigation this year of the structure of Town departments. He said he hoped department heads would look at this, and said it was a great opportunity to create greater efficiency.

Administrator Selig said the challenge was that Town departments had been doing restructuring all along, and so had been well positioned to come in with a 0% tax rate increase last year with the economic downturn. He said they would work hard to do this year as well.

He said there would be some targeted initiatives that he thought would probably take them over a 0% tax rate increase, but which he thought the Council would want to do based on the Goals it had set. He said these should be good topics for conversation during the Budget process.

Councilor Van Asselt said he thought Councilor Clark had made an interesting point, because next year would be a lot worse than this year. He said perhaps after the beginning of the year, they could talk about going to a volunteer Fire Department. He

said this was the only way to get at what Administrator Selig was talking about concerning the Budget.

Administrator Selig said another possible approach was to go to pay per bag trash disposal. He said this would bring in a lot more revenue, and the tax rate would reflect that. He said the cost would be greater to residents, but would be more proportional to what they actually generated in terms of solid waste. He also said they could eliminate curbside collection altogether, and have everyone bring their solid waste to the transfer station, which had to be operated anyway.

***Continue to explore cooperative efforts with UNH - Complete policing cost negotiation***

Administrator Selig said that on October 19<sup>th</sup> he would be bringing forward a proposal to the Council to authorize his signing of a new agreement with the University to focus on some of the cost impacts it had on Durham. He said the agreement focused on policing as a major cost driver, but said the scope had been expanded to include other things like roadways, etc.

He said the agreement accomplished a number of major goals the Council had including an acknowledgment by UNH that there was an incremental impact on the Town from hosting them. He said a second goal had been to work cooperatively for cooperative well-being, and said a third was a way to find win-win solutions. He said the hotel and the NE Center were potential areas where this could be done.

He said the agreement would result in approximately \$200,000 in revenue per year for the next 10 years, adjusted for inflation. He said combined with other municipal agreements in place, it touched on all of the major impact areas. He said while they might not all agree on what the impacts were, and he could argue that there should be more of a contribution from the University, the agreement was the result of a lot of work over the past two years, and was a step in the right direction.

He noted that these discussions had settled the issue of whether there should be one or two police departments. He also said the University's Financial Affairs Committee had recommended approval of the agreement to the Board of Trustees.

***Continue collaborative efforts to address joint infrastructure issues to include water (401 Certificate, Lamprey Instream Flow Study, Spruce Hole Well development), wastewater (west end bottleneck, treatment plant upgrades, Great Bay Estuary nitrogen study), storm water (new regulations and monitoring requirements, etc.)***

***Inflow/infiltration issues, etc.***

Administrator Selig said the Town had retained the services of environmental attorney Dana Bisbee, to help the Town with the 401 Certificate and the Lamprey Instream Flow Study. He said they had also been looking at various bottlenecks in the system, together with UNH, and putting together engineering solutions for them.

***Explore the viability of locating potential technology spin-off ventures developed at locating UNH within taxable parcels located off campus in Durham***

Administrator Selig said the EDC had been spending a lot of time on a SWOT analysis, and he said he thought the information gained from this would be very beneficial.

***Determine future location of the Fire Department***

Administrator Selig noted that an architectural firm had been hired and was helping the Town to evaluate various sites and provide a more realistic sense of the size and scope of a new facility.

***Work to more closely align efforts of boards and committees with broad goals of the Town Council and strengthen communication and collaboration between committees***

Administrator Selig said there had been an effective orientation session for all Town boards, commissions, and committees earlier in the year, and said there would be a follow-up session before the end of the year to see how things were progressing.

***Expand recreational opportunities by increasing and/or defining opportunities in recreation to include walking trails, playing fields, programs, facilities, and additional regional offerings, and by continuing to explore cooperative efforts with existing entities serving the community.***

Administrator Selig said great progress had been made on this goal, noting that the Town had hired a part time Parks and Recreation director, had moved the Recreation Department and ORYA to the space formerly occupied by the Durham District Court, and were moving forward with a host of new programs.

***Preserve and maintain open space, vistas, farmland, forest, and conservation areas through land and easement purchases utilizing conservation bond and land use change tax proceeds in such a manner as to balance the benefit of such acquisitions against the broader tax implications these acquisitions and other municipal priorities have upon the community as a whole.***

Administrator Selig said discussions had continued with the Trust for Public Land regarding their interest in the Spruce Wood project. He also said the Town was working with the Rockingham Land Trust and the Lamprey River Advisory Committee on the Thompson parcel along the Lamprey River. He said there had also been discussion on the two Colosante parcels near the Spruce Hole bog.

***Enhance affordability for Durham's citizens***

He said the Council had been working a great deal on this, and said a good example was an update to the Elderly Exemption program. He said they had also worked to broaden the tax base and to make Town departments more user-friendly.

He also said they continued to talk about workforce housing, and said Councilor Van Asselt had a proposal he would like to bring forward.

Administrator Selig noted the promotional video that had been developed for the Town.

He said they had worked a great deal over the years to maintain the integrity of Durham neighborhoods. He said they were clearly hearing that there were new concerns in some



residential neighborhoods, and said they would continue to work to address these concerns. He noted that the Rental Housing Commission was meeting the following day, and would discuss this. He said he saw this as the primary board to develop solutions to these problems.

Councilor Mower said this was a tough challenge, and said they welcomed input from residents on it.

Administrator Selig noted that Code Enforcement and the Durham Police and Fire Departments would continue to do their part as well to respond to residents.

***Explore avenues to create “Municipal wealth”***

Administrator Selig said there were some interesting programs available to encourage renewable energy approaches, and he provided details on this. He also said clean transit was a key issue, and noted that the Town was fortunate to have Wildcat Transit, the largest public transit system in the State. He said they were identifying with the Traffic Safety System ways that buses from the system could be sent more effectively through some of the residential neighborhoods so residents would have better access to public transit.

He said the Town had leveraged its natural resources for recreation and commerce in the promotional video of the Town that had been developed. He also said the EDC was working with a UNH marketing class to develop a marketing plan for the Town.

***Invest in infrastructure to promote long term affordability***

Administrator Selig said they been making some positive investments in water and wastewater infrastructure.

***Work toward broadening the tax base***

He said a great deal of effort had been put into this item. He said the challenge he and the staff had was that a lot of staff time was put into this efforts, yet it wasn't always certain that a particular initiative would come to fruition. He said it was somewhat reassuring to see that there were new taxable structures going up on Rosemary Lane, and on Jenkins Court. He said there were pockets of success, and said there were a lot of other irons in the fire.

Councilor Mower said that regarding the renewal energy item, the Legislature's Energy committee had been discussing various ways to approach funding renewable energy initiatives, including bonding by local towns. She asked if anyone had spoken with Durham's State legislators about this.

Administrator Selig said he had not done this as yet. He noted that Energy Committee Chair Kevin Gardner had contacted the town of Epping about what it was doing in this area.

Councilor Mower asked if the Town's Energy Committee should perhaps initiate this.

Administrator Selig said what was happening at the State level was in sync with one of the Council's goals, and said he thought it would be fine to have the Energy Committee have an initial conversation with legislator Amanda Merrill on this.

Councilor Needell said some great progress had been made toward meeting Council goals. He asked if there were real problems with trying to achieve any of these goals them.

Administrator Selig said the biggest challenge with all of the goals was that there were some big ideas and a lot of great goals, but the Town was minimally staffed to accomplish all that it wanted to do. He said this meant that some things fell through the cracks, or it took longer to move some things forward.

He noted the student behavior issue, at a time when there was reduced staffing of the Police Department. He said the department was feeling the effects of this, and said Chief Kurz had said that in order to see something happen regarding the behavior issues, more staff would be needed.

Administrator Selig also spoke about the Kaizen efficiency initiative introduced to Town departments, and said while some good progress had been made, it was very slow going. He said resident Jerry Gottsacker, who was helping the Town with this initiative, had indicated that it was not unusual for an organization to take quite a bit of time to change. He provided details on this, but said a real commitment to the initiative had been made.

Councilor Clark said if they were to think of the Town like it was a business, they could talk about making an investment if there was going to be some kind of return. He said if the Town was short-handed in terms of staffing, he would like to see an analysis that showed what the return would be if money was invested in more staffing. He said then the Council could have an informed discussion on whether it did want to invest in particular areas.

Councilor Carroll noted that a number of student apartments going in downtown. She said while this might help the tax base, it might mean that students would want to look for a place to assemble and socialize. She said landlords didn't allow this kind of assemblage in the apartment buildings, so the question was where the students would go, including possibly erupting into the neighborhoods.

She said this was a difficult issue to deal with, and noted that whenever the Town moved forward in one area, there were other effects. She said this was something the Council would have to keep in mind as new buildings were built downtown and there were more people living in them. She said if there was anything that the Council could do prevention-wise, that would be very helpful.

Administrator Selig said the challenge they faced was that the students were in Durham, and unless a place was found to create new housing for them that was desirable, they

would continue to float out into the residential neighborhoods. He said the biggest solution he could come up with was to create new housing that was desirable, which would create tax benefits for the community, and would pull the student housing out of the neighborhoods. He said right now, they were continuing to see an expansion of student housing into the neighborhoods along Madbury Road, Edgewood Road, and Emerson Road.

He noted that it had also been found that well-managed, professional housing tended to have very few problems, and said as long as the new housing downtown was well-managed, he didn't anticipate the problems found in the single family non-owner-occupied properties.

Administrator Selig spoke about the new Rivers Edge apartment complex on Old Concord Road, and said they were not seeing police calls to this area. He said there weren't that many residences around this location, and also said the complex was professionally managed. He said developments like this could potentially reduce impacts on the neighborhoods, and said it was important to find a balance between increasing the tax base and preserving the gateways to the community.

He said if they weren't going to allow student housing to be consolidated in new locations, they would have to accept that it would continue to bleed out into the residential neighborhoods. He spoke further on this. He said it was possible that new regulations could help create a balance, but said he predicted that the biggest positive impact would come from the creation of new housing.

Councilor Van Asselt said he didn't have problem if Administrator Selig had a proposal to make \$5 million with an investment of \$1 million. But he said the difficulty with this was that projects in Durham tended to get stopped when it came time to move.

Administrator Selig said even something like the idea of transitioning the dispatch center to the County had dragged on. He said at a certain point they had pushed it forward, but not without a lot of anxiety and pain from Town departments. He said ultimately the process was successful, and would save the Town money over time.

Councilor Van Asselt said when the Council made an investment of money in an area that needed a sewer, Administrator Selig would have to tell people that that was where they were headed.

Administrator Selig said the Bryant development was a good example of a change in approach. He said the DPW approach was that on a private property, the Town did not build the infrastructure. He said ultimately, the developer agreed to pay for the infrastructure work, while the Town would build it, which meant that the developer didn't have to post the bond.

He said the Town was looking for new approaches like this in a variety of areas. He noted the decision to have smaller Fire Department equipment maintained by the DPW on a

trial basis, and said they were moving forward with this as part of the proposed Budget. He said it was hoped there would be somewhat of a savings from this, and that in the long term it would lead to the DPW maintaining all Fire Department equipment.

He said things like this were starting to happen in part because of the Kaizen approach that had been introduced. He said often residents made the assumption that government was wasteful and inefficient, but said the Town had been doing many things over the years to be more efficient. He said in some ways, they were doing this as good, or better, than a lot of other places.

He noted that they had been looking at some metrics at the DPW, and said this would be included in the Budget proposal. He said this might allow them to make comparisons with other towns during the Budget process, and ask why services were being provided in Durham that were not provided in these other towns. He also noted that the Fire and Police Departments were working with a UNH graduate accounting class to do some benchmarking, which would be available in the future.

Councilor Stanhope noted Councilor Carroll's questions about more student housing in the downtown area. He said smart growth theory said to concentrate as much development as possible in the core, and said this brought both benefits and burdens. He said the more housing that was provided in Durham for students, the more competitive rents would be, and the more there would be an economic draw of student housing out of the neighborhoods. He said he would be happy if a few thousand beds were built downtown.

He said unfortunately, the University was increasing its enrollment, and said this trend would continue. He said this related to the experience in the neighborhoods. He said he realized that the University had become aggressive in terms of policing at their facilities, and was shutting down the fraternities as a social environment where drinking went on.

He also said student housing privately owned on places like Young Drive had a big vacancy rate this year in part because they were managing their properties more aggressively. He said the noise had decreased dramatically. But he said the natural phenomenon resulting from this was a spillover of student housing in other neighborhoods near the campus.

He said in terms of alternatives for addressing this, he thought there should be an officer patrolling in residential neighborhoods late at night.

Councilor Mower said she wondered whether they were putting too much faith in the theory that they could draw the students away from neighborhood houses by providing attractive housing in other places. She said she thought some students would still want to live in unsupervised areas, and a lot of the issues they were hearing from residents had to do with students wandering the streets between locations. She said as long as UNH didn't allow drinking on campus, there would be kids coming from dorms as well. She said they had to look at more than where students were housed.

Councilor Stanhope said a problem right now was that people were unable to sell their single family residences, so putting three students in a house provided some cash flow. He said if the general economy recovered, he thought some of those properties would be sold back into single family ownership.

Councilor Needell said economics would drive students out of the neighborhoods. He said it was only because of the economy right now that it was affordable for three students to rent a house. He noted that in many cases, there were more than three students there, so enforcement of the three unrelated rule was important. He also said ongoing discussion at the Rental Housing Commission was important.

Administrator Selig said transforming a single family home into non-owner-occupied student housing wasn't really economically viable unless the Ordinance was violated and more than three unrelated people were put in. He said there needed to be more discussion on how to prevent this, and if there were additional tools that could be given to the Code Enforcement Officer to get at this.

Chair Niman said any further discussion on this Agenda item would take place under the extended Roundtable.

The Council stood in recess from 9:03 - 9:13 PM.

## **XI. New Business**

- A. **FIRST READING ON ORDINANCE #2009-23** amending Chapter 175 “Zoning, Article II “Definitions”, Section 175-7; Article XXI “Off-Street Parking and Loading”, Sections 175-116 and 175-117; Article XII “Zoning Requirements”, Sections 175-41, 175-43, and 175-56 of the Durham Town Code

Mr. Campbell said these proposed amendments were the result of some recent ZBA decisions on administrative appeals of Planning Board decisions. He said some Planning Board members had wanted to have a rehearing of the ZBA decisions, or to take the matters to court if needed. But he said he didn't feel either way was the appropriate approach to take. He said it made more sense to amend the Zoning Ordinance to say clearly what the Planning Board's intent was with these particular provisions, and said the proposed changes reflected this.

He said that at the August 26<sup>th</sup> and September 9<sup>th</sup> Planning Board meetings, those at the public hearing on the proposed Zoning changes mostly spoke in favor of the definition of contiguous as revised at the September 9<sup>th</sup> hearing. He said the rest of the proposed Zoning changes didn't get a lot of attention, and said the Board unanimously approved forwarding the proposed amendments to the Town Council.

***Councilor Smith MOVED on First Reading ORDINANCE #2009-23 amending Chapter 175 “Zoning, Article II “Definitions”, Section 175-7; Article XXI “Off-Street***

***Parking and Loading”, Sections 175-116 and 175-117; Article XII “Zoning Requirements”, Sections 175-41, 175-43, and 175-56 of the Durham Town Code, and schedules a Public Hearing for Monday, October 19, 2009. Councilor Needell SECONDED the motion.***

Councilor Needell said he would like to offer a friendly amendment to help clarify the intent of Section 175-56. He noted that there was a long discussion during the site plan application review process for a proposed elderly housing development on Madbury Road, about whether the density bonus applied to 80% of the development or all of it. He said it was widely agreed by the Planning Board at the time that the intent was that it applied to the whole development, and that there was precedence based on previous applications.

But he said the Court had said that this was not what the Zoning Ordinance said. He said he didn't think the current wording that was proposed achieved what the Planning Board now wanted to achieve. He said he would therefore like to suggest a simple wording change, which was to remove “or elderly occupancy” from the first two bulleted items, and to remove “elderly” from the third bulleted item.

***Councilor Needell MOVED to amend the motion by striking “or elderly occupancy” from the first two bulleted items, and striking “elderly” from the third bulleted item.***

There was brief discussion on whether or not this was a non-substantive change that Councilor Needell had recommended, and said it was exactly what the Planning Board was trying to get at. Mr. Campbell said he saw it as a grammatical issue, so it was a non-substantive change.

Councilor Smith agreed that if the wording Councilor Needell wanted to remove was left in, it would take them right back to the problem they had to start with. He thanked Councilor Needell for catching this.

***Councilor Smith SECONDED the motion, and it PASSED unanimously 8-0.***

Councilor Mower received clarification from Mr. Campbell that the proposed change to Section 175-116 did not need to reference the provisions on landscaping in the Ordinance.

Councilor Stanhope asked if at the public hearing before the Planning Board, there was anyone who spoke negatively about any of the proposed Zoning changes.

Mr. Campbell said there was one comment, from resident Hillary Scott, who said she didn't feel an elderly housing development should get a density bonus for the 20% of the development that wouldn't be for elderly residents.

Councilor Stanhope asked if there was any input from the ZBA on the proposed Zoning changes.

Mr. Campbell said ZBA chair Jay Gooze had spoken in favor of the changes, noting that the ZBA was looking for more clarity in the Zoning Ordinance.

***The original motion, as amended, PASSED unanimously 8-0.***

B. Discussion concerning zoning changes relative to the Durham Business Park – Karl Van Asselt

Councilor Van Asselt explained that after the agreement on the Business Park was renewed with Chinburg Builders, the Council had created a committee to talk further with Mr. Chinburg. He said the most recent meeting of the Committee was attended by himself, Administrator Selig, Mr. Chinburg and Susan Fuller from the Planning Board.

He said Mr. Chinburg had brought everyone up to date, had said he was not in a position right now to exercise the purchase and sale agreement, and had talked about a possible mixed use development at the Business Park site that included housing.

Councilor Van Asselt noted some of the Council's goals concerning the Business Park and affordable housing, and said a way to get there was to make some changes to the Table of Uses and the dimensional requirements in the Zoning Ordinance. He provided details on this.

He said the purpose of doing this would be to allow the buyer of the Business Park another option to do something with it, and said this would also meet some Council goals. He said a related purpose could be if this would fit with the idea of connecting up with other properties in the area like Jackson's Landing, the Jacques property, etc., an idea the Council had recently been talking about. He said allowing maximum options at the Business Park could contribute to that objective.

Councilor Van Asselt said the procedural question was whether a proposed Zoning change should come from the Council or the Planning Board. He said the question for the Council right now was whether a majority of Councilors were interested in considering a Zoning change to increase the options for the Business Park, and if so, what the preferred process was for doing this.

He said it made sense to him to give the developer another option, and also said he felt this should be a Council-initiated Zoning change. He said it seemed to be a logical step in order to go after a goal that the Council had set, and said it also put it on the record that the Town wanted to do something out at the Business Park.

He said Mr. Chinburg had said that as he looked at the land to be developed and the economy, he most likely had room for the development of three pods, with the front part perhaps for a medically-related use. He said the thought was to develop the middle section with some kind of housing, and then closer to the river, to create some condos/townhouses with amenities like walking trails and other public amenities.

Councilor Van Asselt said it was fair to say that when the Council selected Chinburg for the Business Park, it was because he did this kind of development well. He said he thought allowing housing as part of mixed use development there made eminent sense.

Councilor Stanhope said this property would probably never be developed under the current Table of Uses. He also said he thought the Council had the fiduciary responsibility to the Town, if it was going to change the underlying Zoning at the Business Park, to open up the RFP to other developers. He provided details on this, and questioned why they would tailor a change in the Ordinance to Chinburg's idea.

He suggested that the Council should say it would look at anything, such as building a marina, high end condominiums, etc. He said if they were going to look at maximizing the return to the Town on the property, they should say a developer could come forward with any plan, and they could ignore the Table of Uses.

Councilor Van Asselt said Mr. Chinburg had made it clear that what he was suggesting with mixed use wasn't necessarily going to be done by him, and was saying that having at least this option of having housing opened up opportunity for a developer. He also said he was reluctant to discuss possible other uses, because it opened up a bigger set of options for the land. He said doing so would be good from a developer's perspective, but bad from a political perspective.

Councilor Stanhope said if they declared this an enterprise zone and asked developers to come forward with whatever plan they wanted, this didn't mean the Council would choose to rezone for a Wal-Mart, etc. He also said he didn't think that developers, knowing the Town of Durham, would propose something like that.

But he said he didn't think they should place any limits on this, and instead should allow the imagination of the marketplace to come into play. He said he didn't know that it would be politically problematic to entertain interesting uses for this land.

Councilor Smith said he thought any redevelopment of the Business Park should be tied in with the extension of Old Piscataqua Road all the way to the Business Park, and the abandonment of the entrance onto Route 4.

He said if that were to happen, he thought it would make sense to rezone everything along Old Piscataqua Road from Dover Road into a new district that would include the town owned land at Coe's Corner north of the skating rink, Jackson's Landing, the RA properties next to it, and the piece of University property next to the sewage treatment plant. He said mixed use development could be encouraged in such a zone, and noted that it would make some Town land that was not being used more valuable.

Councilor Van Asselt said if they were going to get into another kind of thing, the Old Landing Road would have to be developed. He said the more limited scope suggested by Mr. Chinburg didn't require having more access than what was provided on Route 4.



Chair Niman asked Councilors whether or not they agreed with Councilor Stanhope's approach of getting good ideas and then modifying the Zoning Ordinance, or looking at the more modest mixed use approach that had been presented.

Councilor Smith said the approach Councilor Stanhope was talking about required a larger discussion, one they might end up having to have.

Administrator Selig said the only instance where the Town was bound to continue the relationship with Chinburg was if the company closed on one of the pods on the land. He also said he agreed completely that if they were going to change the Zoning, they should put out the RFP again.

In addition, he noted that there were very stringent design guidelines for the Business Park, which had been a constraint for developers, so the Council should think about whether it wanted to keep these or not. He also said while he understood the efficacy of extending Old Piscataqua Road, this would be costly, and would not be without controversy. He said some of the residents would not necessarily be enthused about breaking that roadway through.

Councilor Smith said there were four residential properties involved.

Councilor Needell said there was some merit to the idea of an enterprise zone, and said they could discuss the idea of creating that capability, which would then allow a developer to create zoning on a parcel. He said the Zoning Ordinance would have to be amended to allow this.

He also said the Town owned the Business Park, and that the Council set goals to further its collective agenda. But he said he was generally opposed to Council-initiated Zoning changes, and said he believed they needed to bring a broader part of the community into play in order to adopt Zoning changes in general.

He said what Councilor Smith had suggested was a completely valid thing to do, and noted that he had never liked the Business Park approach. He said changing the way they had zoned this was a fair discussion. He thought they had learned not to zone something to suit an immediate developer's needs, or an immediate Council goal. He said that instead, they should discuss whether they wanted to use tools like enterprise zones. Administrator Selig said his preference with this parcel was that they not be an entrepreneurial partner, take a new look at possible uses there, rezone it, and then sell it. He said they could then take the money for this to replenish the wastewater fund and invest that into infrastructure into other parts of Town.

Councilor Mower said she would like to see the Planning Board take a look at this, and also said it would be very interesting to hear what the B. Dennis design team would have to say about this. She said she found it ironic that the Council had hired professionals to guide it in one part of Town, but was willing to make a decision on its own in another

part of Town. She said she would not be opposed to looking at new Zoning options, but would like to see a much broader base of input, and not have the powers all vested in this one body.

Chair Niman asked Councilors if they agreed that zoning options beyond the Business Park should be considered.

Councilor Mower said the UNH parcel was a challenge, but it would be great if the Town or UNH could do something with it. She said she wondered if UNH would respond to the idea of rezoning or selling it.

Councilor Clark said he thought an overall plan should include all the land from Jackson's Landing to the Business Park and should include mixed use. He said he was one of the people who bought into the vision of development in this area being a combination of municipal and commercial property. He said they obviously had to consider how the residential houses in the area would fit into this, but said they had to think long term.

Councilor Carroll agreed that they should open this up to look at other ideas, rather than change the zone to meet something Mr. Chinburg would like to build. She also said if the Town moved forward with the Jacques property and other development in the area, it would be nice to know that the Town had some options with the Business Park property.

Chair Niman asked if any Councilors were against the idea of mixed use at the Business Park or those adjacent properties, and there was no response. He then asked if any Councilors were against the idea of looking at all the properties from Jackson's Landing to the Business Park, and there was no response. He said the issue then seemed to him to be who would come up with possible additional uses. He said an alternative approach was to let the market come up with these uses, and the Council could then respond to this.

Councilor Mower said this didn't address the point Councilor Clark had made that the Council needed to be looking at this in terms of the big picture.

Councilor Clark said the reason the Council had hired the consultants was to have objective experts give the Council suggestions on how to put a strategic plan together. He said while the consultants were going to be focused on the Central Business District, there had been discussion about them extending their work beyond that, if time and money allowed.

Mr. Campbell said the consultants were looking at the CBD, but said they would also be looking at the strategic plan for the community core, which extended beyond the CBD to the Professional Office District, Church Hill, the Courthouse District, and Coes Corner. He said the plan would be reaching out into that direction.

Chair Niman said the Council could ask the consultants to extend their work out to the Business Park.

Mr. Campbell said this would only involve a few more parcels.

Councilor Mower noted that there would be a qualitative difference in the properties because they were waterfront parcels.

Chair Niman asked if this was the way the Council wanted to go.

Councilor Van Asselt said it was important to be realistic. He said the politics of this were real, and said the room would be filled the day they took all of the current requirements off the Business Park. He also said the Durham Business Park meant a place where revenue could be generated. He said it was still sitting there, and said his frustration was that no one had really said what should be done with it. He said maybe it was too early to say what should be done with it, but he said it had been twelve years.

He said he didn't think Councilor Needell had been wild about the idea of developing the Business Park, and Councilor Needell said this had never been a position he had taken.

Councilor Clark said he wished it could be a Business Park too, but said the only way he could justify commercial activity there was if it was a commercial extension of the Town. He said the logical discussion should be on how to connect to it, and consider how it interacted with the surrounding areas. He said he believed that if they had a plan for this, this would only add value to the Business Park. He said he thought this lack of a plan was what had plagued the property in the past.

Councilor Stanhope said he appreciated the idea of getting away from spot zoning out there, and tying the Business Park into other properties. He said it allowed the possibility for a grander plan out there. He also agreed that at some point there needed to be access other than from Route 4. He said development in that area would bring traffic down to Route 108 but said it would be better if it came there than to Route 4.

He said he was not concerned if the room filled up with people. He said a well-informed and thoughtful Council would look at proposals, and if they weren't reasonable, they wouldn't get attention. He said he thought everyone there was willing to take the political risk that what was good for the Town should be looked at carefully and approved.

Councilor Mower said this might be an instance where they needed to do a good job of evaluating what they would get for what they had to give up. She said most people recognized that it was a beautiful site, and many would also recognize that there needed to be some business in Town. She said she thought it would depend on the appearance out there, and continued access for the public in some way.

Councilor Stanhope said Mr. Chinburg was an astute developer and had done some interesting projects around the State. He said if he thought he could have done something else the Council would look at fondly, he would have done so. He suggested they go back

to him and ask what he would do with the property if there were no zoning on it.

Councilor Van Asselt said it was the Design Guidelines that were the problem, and Councilor Stanhope asked what Chinburg Builders would do if they were pulled off.

Chair Niman said he agreed with Councilor Van Asselt. He said he was a supporter of mixed use from Jackson's Landing to the Business Park, and said opening up a roadway was a great idea. He also said he thought Councilor Van Asselt had a good read on the situation politically.

He said malls existed and died based on anchor tenants, and said the anchor tenant set the tone for everything in such a development. He said if the Town was going to redevelop this area, it would be because of the anchor tenant. He said he thought Chinburg Builders would be a good anchor tenant, and noted that Durham wasn't an easy place to do business.

Chair Niman said his preference would therefore be to give him the ball and let him run with it, and then build their plan around what he did at the Business Park. He provided further details on this. He said this would enable them to get the ball rolling, and would be better than coming up with a plan and then not finding anyone to build there, and running into one problem after another.

Councilor Mower said because of the site on the water, she thought of this differently than if it were like the Goss location. She said if one of the goals was to have a connected, extended Durham, they needed to look at not just what business(s) would be out there, and would need to consider what would enhance the community center.

She said something like bike paths could benefit the larger Durham as well, and said access to the water could also come from things like restaurants. She said to the extent there was faith in Eric Chinburg, this was still only one person's view. She said the idea of having professional designers with a whole tool kit was appealing to her.

Chair Niman said the Nubanusit housing idea was why he had gotten interested in having housing at the Business Park. He also said Chinburg did really good work, and said he had the track record to do something that would look very attractive. He said that was what he was looking for, as a possible model for development elsewhere in Town.

While Chair Niman was speaking, Bill Hall came up to the table and spoke to Councilor Smith, who left the table to speak to Mr. Hall in the lobby. Councilor Smith returned to the table a minute later as Councilor Mower said linking in with other sites was what she was wondering about.

There was discussion about this issue in regard to the Mathew Crape site downtown.

Councilor Needell said he didn't advocate protecting and preserving the Business Park property, and wanted to sell it to a private owner. He noted that the Town had gotten it

because of the sewage treatment plant next to it. He said if they wanted to protect the waterfront, they could zone it residential, noting that the rest of the waterfront area there was residential.

He said he had thought Chinburg would do a wonderful job there, but had said his hands had been tied because of the design guidelines and other constraints on the property. He said they needed to decide what they wanted there, and said if they wanted to unload it, they needed to rezone it. But he said it would be shortsighted to zone it for one project. He also said if they wanted to conserve it, they should do so.

Chair Niman said the Council needed an action plan. He said one group was saying to wait to come up with a comprehensive plan that would involve B. Dennis Town Design, include other properties, come up with Zoning for the whole area, integrate it into the downtown, and then try to sell it.

He said another group was saying the Zoning should be changed in some way and they should then unload the property. He said if there was a third point of view, he would like to hear what it was. He said the Council needed to come to some consensus on this.

Councilor Mower said she wondered if they were setting up a false dichotomy, to the extent that people were led to think the master plan type thing would only exist years from now. She asked if the time frames from the two different projects that were planned with the consultants could converge in some way.

There was discussion. Councilor Mower asked whether, if they included the Business Park in the work done by the consultant, there was a chance the Council would have a sense of direction before it needed to make a decision on the Purchase and Sale for the Business Park. She said it wasn't inconceivable that they could dovetail, and said that would be her preference.

Councilor Stanhope said his preference was to go back to Mr. Chinburg and ask him whether, if he were given a wider range of options without the Table of Uses or the Design guidelines, he could do something that he would be happy with. He said he thought he was a great anchor tenant, but also noted that he could close on the property and flip it the following day.

He also said the use of a property and the value of a property could change in a different economic environment, and noted that this wasn't the best time to be selling anything. He said Mr. Chinburg could be asked whether, if the constraints were taken off, there was a way he could make it work, and if he could guarantee that he would be the player who would do the development.

Councilor Clark said he wanted this property to be developed. He said he agreed that a way to get the highest and best use was to get a new access, and said the best way to make this economically viable was to think of not just that piece of land. He said he had

no problem with housing on this property as long as there was mixed use and it became something that stimulated the kind of development they wanted the rest of the way up the river.

He said they could pick uses that wouldn't scare people but would give developers plenty of flexibility, like a blend of commercial/residential/light office and maybe some light industry.

Councilor Needell said his preference was much like what Councilor Clark had described, and said they needed to change the zoning in a way they were comfortable with and then let it be developed. He also suggested that some Councilors should sit down with Planning Board members and Mr. Campbell to discuss these things. He said the Board had a greater familiarity and expertise with the Table of Uses and other aspects of the Ordinance.

Councilor Smith asked Councilor Needell, as a former Planning Board member, if it would work to have a waterfront enterprise overlay district that encompassed some of the RA District and the Coe's Corner and Business Park districts, running from Old Landing along the north bank of the river, and which would have some design standards and some goals.

Councilor Needell said that was the type of discussion that needed to happen.

Councilor Carroll agreed they should go for the long view and see how these things tied together. She said this was nothing against Eric Chinburg, who did very fine work. She said they might come back to him.

Councilor Van Asselt said there was a third option, which was to go back to Chinburg and say the Council was willing to consider the removal of some restrictions on the land, and ask him how creative he could be, and how this might be able to tie into a bigger plan.

He said he liked this approach because Chinburg was familiar with what was out there, and also understood Durham. He said he agreed with Councilor Needell that they should then take this to the Planning Board and see what kind of help they could get from them.

Councilor Mower said the idea of the Planning Board and the Council working together was really great, and said she had been thinking earlier about the idea of a joint meeting.

Chair Niman said it sounded like they had a plan for how to proceed.

Councilor Van Asselt said the discussion had been helpful, and said they at least had the Business Park back on the table.

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

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

Administrator Selig told Councilors that the brass plaque to memorialize the Spruce Hole bog as a national historic resource had come in, and said a dedication ceremony would be organized.

Administrator Selig said he would be doing a brief presentation before the Durham Great Bay Rotary on what was going on economically in Durham.

He said the Town had been served by the Strafford County Superior Court regarding the appeal of the recent variance approved for the Seacoast Repertory Theatre regarding the former Mill Pond Center property.

He said tomorrow afternoon, Durham resident Nell Neal would be doing a presentation to department heads on the Natural Step program. He noted that this was a follow-up to a presentation to the Council on the Natural Step a few weeks ago.

Administrator Selig said COMCAST would like to start the negotiation process for a new contract. He noted that there were still three years left in the contract. He said a public hearing would be required as part of the process, and also said DCAT would provide input. He said legal counsel with expertise in this area would also be involved.

***Councilor Smith MOVED to extend the meeting. Councilor Mower SECONDED the motion, and it PASSED unanimously 8-0.***

Councilor Mower asked how long the contract with Comcast was for, and was told it was a five year contract.

Councilor Needell asked if the policy regarding whether committee members had to be residents of Durham could be put on the Agenda for the next Council meeting.

The Council agreed to put it on the next Agenda.

Councilor Smith asked if anyone now on the Council other than himself and Administrator Selig was at the meeting of the Town Council seven years ago when the agreement with Powerspan was broken. He said this agreement, which was to develop the Business Park, was broken over the design requirements.

He said it took several years of negotiations around the Council table to change these requirements into guidelines. He said while there might be some political blowback, the Council could and should remove those guidelines. He noted that the Council was not afraid to stand up to the public, since it hadn't yet agreed to fix the Oyster River dam.

Councilor Mower noted the Planning Board public hearing on October 14<sup>th</sup> for proposed additional parking at Mill Plaza. She said the issue wasn't as simple as connecting more people to the downtown business area, and said there were issues that went beyond that.

She suggested that the public might want to follow this issue.

Councilor Stanhope noted the email received from Administrator Selig regarding the site work comparison between the Jacques property and the Greens property. He said it looked like it would cost about \$800,000-900,000 more to develop the Jacques property. He also noted emails that the Greens ownership hadn't been responsive to inquiries to at least listen to Councilor Clark's proposal.

He said perhaps at their next Council meeting, the Council could discuss making the owners a proposal they couldn't refuse, like taking the property by eminent domain, if they wouldn't sit down at the table. He said the Master Plan called for that as the site to pursue, and said if they were looking at an \$800,000-900,000 shortfall to develop the Jacques parcel, they had to use their authority to attract their attention.

He said he was not suggesting that the Town pursue eminent domain, but that it should make the owners know it was an option. He said he would hope this could be on the table for discussion at the next Council meeting.

Councilor Needell said he just wanted to be sure it was clear that this was the word of one Councilor.

Councilor Smith said he wasn't afraid of eminent domain.

Councilor Van Asselt said he had been a member of the Rental Housing Commission, and said as Councilors they needed to be responsible about this issue. He said he was very disappointed at the most recent meeting of the Commission. He provided details on this.

He said the conclusion of the Commission's task force over the past few years had been that of all the things that could be done, including assembly permits, licensing, professional management, and changing student behavior, the latter was considered to be the one that was the most important to work on.

He said UNH had stepped up to the plate and had done this. He said the Council needed to be responsible in recognizing this, and realizing that there was no quick solution to the ongoing problems. He also said he hoped the people who came to the Commission meeting tomorrow recognized that. He said it was too easy to get on the bandwagon and blame the students or UNH, or to think there was a simple solution.

Councilor Mower said she didn't think it was a question of stirring people up, it was a question of people waking up, and said some people were very upset by the student behavior. She said she appreciated that UNH had addressed this in some ways, and agreed there was no simple solution.

But she said clearly something they were facing was a general societal change that was much more difficult to address than it might have been in an earlier time. She said the



student behavior had become a significant problem for many residents, and said she hoped they could work toward something that would be fair for everyone.

Councilor Carroll said she was at the meeting, and felt very badly afterward that there were many exemplary landlords there who were feeling pushed into a corner and attacked. She said she had also heard people say that they weren't trying to put extreme pressure on the good landlords, and that it was mainly out-of-state landlords that they were frustrated with.

She said she had talked with Ann Lawing the next day, who said she had also gotten a lot of support for what UNH was doing, and that she recognized there was still more work to do, and that people who wanted to help with this.

Councilor Carroll said it wasn't that people were stirring other people up. She said people came in because they were stirred up by the student behavior itself, and felt they couldn't take it anymore. She noted that it was not just one neighborhood; it was several neighborhoods where this was happening.

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

***Councilor Stanhope MOVED to adjourn. Councilor Clark SECONDED the motion, and it PASSED unanimously 8-0.***

Adjournment at 10:41 pm

Victoria Parmele, Minutes taker