

This set of minutes was approved at the Town Council meeting on December 7, 2009

**Durham Town Council Agenda
Monday October 19, 2009
Durham Town Hall - Council Chambers
7:00P.M.
MINUTES**

MEMBERS PRESENT: Chair Neil Niman; Councilor Karl Van Asselt; Councilor Jerry Needell; Councilor Julian Smith; Councilor Doug Clark; Councilor Peter Stanhope; Councilor Mike Sievert (arrived at 7:09 PM); Councilor Diana Carroll; Councilor Robin Mower

MEMBERS ABSENT: None

OTHERS PRESENT: Town Administrator Todd Selig; Police Chief David Kurz; Public Works Director Mike Lynch; Town Planner Jim Campbell

I. Call to Order

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

II. Approval of Agenda

Councilor Smith MOVED to approve the Agenda. Councilor Stanhope SECONDED the motion, and it PASSED unanimously 8-0.

III. Special Announcements

IV. Approval of Minutes

September 14, 2009

Page 16, 4th paragraph from bottom, strike "He then moved the question."

Councilor Smith MOVED to adopt the September 14, 2009 Minutes as amended. Councilor Mower SECONDED the motion, and it PASSED unanimously 8-0.

V. Councilor and Town Administrator Roundtable

Chair Niman said he and Administrator Selig had taken a ride with the Police Department the Saturday night before homecoming, and said it was an educational experience. He said if there was time at the meeting, he and Administrator Selig would like to share their thoughts on this experience.

Councilor Stanhope asked what the status was of the study on the Oyster River Dam.

Administrator Selig said they had been in a holding pattern waiting for the Governor and Council to approve the grant money. He said that approval had now been obtained, and the contracts had been executed with the different firms that would be doing the work. He noted that it would be more cost effective to break up the work this way. He said Bob Stevens was the dam engineer and had started some of the structural analysis of the dam to determine the viability of the concrete. He said the contract for the core testing was also in place.

He noted that there was a great survey instrument from NOAA called LIDAR (Light Detection and Ranging), which would be able to use light waves to penetrate foliage in order to get a sense of the bathymetric contours of the impoundment, both below and above the dam.

Councilor Stanhope said they had been waiting a long time for this work to be done, and asked if the contracts had a timeline in them.

Administrator Selig said he believed they did, but did not know them off the top of his head. He said he could find this out and could let everyone know in his Friday Update.

Councilor Clark said the EDC had met, and continued to move forward with creating a strategic plan for the Committee. He said an external SWOT analysis was being done, and also said the Committee was initiating a business invitation program.

He said he had been asked to point out that the Committee knew it was there to serve the Council. He said a suggestion was made at the meeting that the EDC should ask the Council if it wanted to provide specific direction on what the Committee should be focusing on.

Chair Niman suggested that the EDC could provide a list and the Council could then prioritize it.

Councilor Mower noted that she represented the Durham Energy Committee, and said there had recently been a “thermal solar raising” at a property in Town. She said there would also be a photovoltaic installation at another house in Town on Saturday. She also mentioned that she was having foam insulation installed in her 1948 house, and recommended that people consider upgrading attic insulation with their own older houses.

Councilor Mower said she had learned a lot about water resources issues over the past few years, and said it was important to talk about conserving water, and the issue of peak water. She noted that UNH Professor Emeritus James Barrett had written a memo to the Council regarding College Woods, and a possible combination conservation/economic development project that might include protection for it, as well.

She read the memo out loud. Mr. Barrett said an ecological world view was important,

and that in order to have a quality life in this century, a blending of views, on ecology, economic, engineering and other disciplines. Mr. Barrett quoted from Charles Krebs' book, *The Ecological World View*, which said that natural ecosystems provided a large number of services for human beings, including watershed protection, and used the reservoir system for the New York City water supply as a great example of this.

Mr. Barrett said the 206 acres in Durham planned for development was near the Oyster River and Spruce Hole, so would impact the Town's water supply. He recommended that there be a conservation easement to protect this area as well as the 250 acre College Woods, and said as part of this, the land slated for development could be located nearer to the downtown.

He said this approach would be a triple play, because it would better protect the Town's water supply and College Woods while at the same time allowing the development to be placed in a more suitable location. He said protecting critical green space almost always turned out to be a winner, and said future generations would be thankful that the Council had the foresight to protect this greenway along the Oyster River.

Councilor Mower said she realized this wasn't going to be an easy project to work out the details on, and she spoke in some detail on this. But she said it was an important project, and said they should try to figure out a way to do it.

Councilor Smith said the Planning Board had met the previous Wednesday, and had held a public hearing on the Mill Plaza site plan and conditional use applications to extend parking. He said the hearing was well attended, and a number of issues had come up. He said the hearing was left open and would be continued to the next meeting on October 28th.

He said the Planning Board had also had a site walk regarding a site plan application from Doug Greene to put in a Mexican restaurant in where the Movie Stop used to be. He said there would be public hearing on this application on October 28th.

Councilor Smith said he was glad to hear Administrator Selig say he and Chair Niman would speak about the police presence during Homecoming weekend. He said he had noticed that 115 people were arrested that week, and said there was only one other week in the last 3-4 years when there had been more arrests than that, in May of 2007. He said he hoped Administrator Selig would have a simple explanation for why the arrest rate for the first week in October had gone from 13 in 2005, 36 in 2006, 50 in 2007 and 59 in 2008 to 115 in 2009.

Councilor Carroll said the Integrated Waste Management Advisory Committee had met earlier in the month. She noted that their Fall newsletter, *Down to Earth* had been mailed out to residents, and said it contained a lot of good information, including information on fall pickup.

Councilor Carroll noted that there had been a dedication on Saturday of a large inscribed

granite stone in memory of Loris and Margery Milne. He said the stone was located on the land given to the Town by the Milnes, which was located on Mill Pond Road adjacent to the Mill Pond Park.

She said 64 people attended the ceremony, and said the stories shared that day were proof that there was still a strong bond between the Milne and many Durham residents. She said it was a meaningful community event that was palpable.

Councilor Carroll said there was also a bond between the Milnes and the community. She said the Milnes had left in their trust a good amount of money for the Town of Durham, including \$475,000 toward a new Library. She also noted that the Unitarian Fellowship was able to add on to their building because of a gift from the Milnes, and that the Milnes had provided an amount of money being used by the University Library to sponsor and pay for their Writers' Series. She said these were just a few of the beneficiaries of the Milne Trust.

She said the land given by the Milnes would be maintained as a wildlife refuge. She noted that there was also a granite bench there, given in memory of Margery, who was a long time garden club member. Councilor Carroll said it was a great place to sit and enjoy the beauty of the area.

Councilor Carroll noted that Erica Mantz of Durham: It's Where U Live had recently led a tour of UNH for residents, which 18 residents had signed up for. She said those attending received a variety of information on the University, including where to park. She said those attending said they had enjoyed learning about the buildings, programs and services available at UNH for Durham residents, and she provided details on this.

She said this program had the promise of bringing residents and the University together, and said it was clear from that day that there was merit in continuing the tours. She said the UNH President and Vice President had contacted her and Erica to tell them they were pleased the tour had been put together. She said she personally had been pleased to see the University and the Town come together in this meaningful way.

Councilor Van Asselt asked if the Planning Board had taken care of the Cumberland Farms Zoning issue.

Councilor Smith said the Board was talking about Zoning amendment language Mr. Campbell had provided. He said they hoped to agree on language, have a first reading and public hearing, and then get the proposed Zoning change to the Council.

Councilor Needell said the recent Conservation Commission meeting had covered preparations for the placement and unveiling of the Spruce Hole Bog plaque. He also said an update was provided by the Trust for Public Lands that time was running out, and that the organization was looking for help in order to allow the project to move forward.

He said Mike Mengers, the new Parks and Recreation Director introduced himself to the

Commission at the meeting, explained the work he was doing, and said he welcomed partnership with the Conservation Commission.

Councilor Needell said the Lamprey River Advisory Committee also made a presentation to the Conservation Commission, and asked them to support their efforts to negotiate an easement on the Thompson property. He said the Commission was very supportive, and agreed to contribute \$1,500 toward the appraisal of the land.

He said there was a lengthy discussion about the Conservation Commission's advice to the Planning Board regarding the Mill Plaza parking applications. He noted said the Commission had no issues with the shoreland incursion, and also said it appreciated the stormwater management plan that was proposed. But he said that regarding the wetland incursion, the Commission had expressed reservations as to whether the Conditional use criterion, of whether there was a possible alternative location for the proposed parking spaces, was met.

Administrator Selig said that there was a new format for Friday Updates, and asked for feedback on it. He noted that the most recent Friday Update indicated that the confirmed tax rate was the same as the projected tax rate. He also noted information provided on employee wages, that it was unlikely that any nonunion employees would be receiving a wage increase. Administrator Selig also said that unfortunately, the Town was expecting a 27% increase in health insurance rates. He said they were looking hard at all aspects of the Budget.

Administrator Selig reminded Councilors that the Durham Community Breakfast was scheduled for Oct 26th, and said there would be presentations by Doug Bencks, Chair Niman and Jim Campbell on central core activities.

He said he would like to update the Council on the Trust for Public Lands topic under Other Business.

Administrator Selig said the charrette by B. Dennis Town Design would take place from Nov 5-9th, and said postcards on this would be sent out to all households in Durham.

He said the statistics on arrests quoted by Councilor Smith could be explained by the fact that Homecoming wasn't on the same weekend every year. He also said the number of arrests rivaled 2005, and said the number of arrests correlated with the increased activity they were seeing in the neighborhoods.

Administrator Selig spoke briefly about the Thompson parcel conservation easement project that the Conservation Commission was working on.

Councilor Mower thanked residents from Lee and Madbury for sharing in the work that went into the Milne wildflower garden, granite bench, etc. She also thanked Councilor Carroll for organizing the event.

VI. Public Comments (NLT 7:30 PM)

Roger Spidell, 7 Nobel K. Peterson Drive, said he needed the Council's help. He said he would be speaking with the School Board on Wednesday, and asked Councilors to show up at the meeting, and/or call everyone they knew and tell them to show up.

Mr. Spidell said he would press for a 0% percent increase in the Budget, and noted that the Superintendent was kicking around a 3-4% increase. He said he hoped people would come to the meeting because they understood that they couldn't take another rise in taxes, because taxes were already too high. He then passed around a draft of what he was going to say to the School Board.

Mr. Spidell congratulated the Council for having decreased the Town Budget for 2009.

Bill Hall, Smith Park Lane, said he commended Administrator Selig and Mark Huddleston for coming together to create a payment to the Town. He said it was a good first step, but provided details on why it was not enough.

He spoke in some detail on how the payment to the University for water had been phased out. Mr. Hall also said that charging the Town \$30,000 a year in rent for the use of the Fire Station, for renovations the Town had done that the University could take advantage of, was obscene.

He said another issue between the Town and the University was the water tank on Foss Farm, which the Town had to build. He said if the University didn't exist, the Town could probably get along with the Beech Hill tank. He also explained why the Edgewood Road tank should be shut down. He said the \$200,000 payment per year from the University over two years would essentially pay its 2/3 share of the \$650,000 refurbishment of the Foss Farm tank.

Mr. Hall said \$200,000 per year was an excellent first step, but he spoke in detail about why the Town should review the agreement every 2 years, not every 10 years.

Mr. Hall noted that the lawyer recently had said the Town should have hired a lawyer 8 years ago concerning the 401 water quality situation. He said that was exactly what he himself had said, 8 years ago, and expressed his frustration, i.e., that the Council needed to listen to what he had to say.

Councilor Mower said the Council didn't address Mr. Hall the way he addressed the Council, and said it was important for him to be aware of this. She said she didn't think it was appropriate for him to attack individuals, and said the public was tired of this as well.

Mr. Hall said he understood that, but said Councilor Mower needed to understand the absolute lack of effort that had gone into understanding these problems.

Ed Valena, 9 Bagdad Road, said he collected full and unopened beer cans and bottles,

lying in full view in places like the Middle School, and presented them to the Council. He said this collection was assembled over 2 years, and also said there might be other collectors out there, some of them only 13 years old.

He said there were 4 stages of a neighborhood: growth, stability, decline and revitalization. He said the beer collection was one example of how his neighborhood, at Bagdad Road and Madbury Road, was in decline under the watch of the Council and the Town administration.

Mr. Valena said another example of decline was the increased number of smashed beer bottles on the sidewalks, which among other things made dog walking precarious. But he said the more important example of this decline was the flight of single family owners, including families and seniors, from the neighborhood. He said their properties were being bought out by absentee landlords, who were renting these homes to student tenants and a free wheeling atmosphere.

Mr. Valena said there was a general decline in most of the downtown residential family neighborhoods. He noted the recent doubling of arrests compared to previous years, and said this flew in the face of comments by Councilors that this was nothing new. He said such comments were Pollyannaish and naïve. He said things were getting worse, with more trashed out properties and vandalism,

He said the Council was going to have to make some tough decisions in the coming months concerning this growing problem, and said hopefully it would stand up for the year-round residents of the downtown neighborhoods.

Annmarrie Harris, Oyster River Road, said she had lived in a pocket neighborhood for 40 years, and said fortunately she lived south of Main Street. She said she had attended a Durham Landlord Association meeting recently, and said she entirely agreed with Mr. Valena. She noted that his house had been seriously vandalized about a week ago. She said the seriousness of the escalating problems with non-owner occupied single family homes was much worse than many Council members realized.

Ms. Harris said she had read in the Friday Update about the agreement with the University that it would make a \$200,000 per year contribution to the Town. She said that amount was grossly inadequate. She noted that there had been efforts for years to get a combined police department, and said the present situation was not working out. She said the Council should not endorse the \$200,000 agreement that evening without going strongly in favor of a reconsideration of the agreement in a shorter period of time than 10 years.

Ms. Harris said her husband taught at the University, and said he had a meeting with one of the deans and some faculty members where alcohol was served. She said when she came to Durham, it had recently changed from being a dry town to allowing liquor, because a few kids had gotten killed in an auto accident. She said the idea had been to try to protect kids from themselves.

She said after this, what used to be a pleasant university community with a balance between residents and students had changed. She said she hoped the Council would figure out how to get better agreement with the University. She said Durham: Its Where U live was not realistic.

Sarah Wilson, 9 Cold Spring Road, Chair of the Parks and Recreation Committee, said new Parks and Recreation Director Mike Mengers was doing a great job. She said they were planning to have a “Meet Durham Parks and Recreation” night at the Court House, and noted that there was a yoga class going on there right now. She said the idea with the get together on November 10th, from 7-8 pm, was to have everyone meet Mr. Mengers and the Committee so everyone could see what the Parks and Recreation Department had become in a short amount of time. She thanked the Council for making this happen.

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 adopt a schedule of supplemental meeting dates for the purpose of deliberating the proposed FY 2010 Operating Budgets, Capital Budget, and 2010-2019 Capital Improvement Plan and schedule a public hearing for the proposed FY 2010 Operating Budgets for Monday, November 16, 2009?
- B. Shall the Town Council amend the language contained within the first goal of its 2009/10 goals list adopted on May 18, 2009 as recommended by the Town Administrator?
- C. Shall the Town Council, upon recommendation of the Town Administrator, approve a contract with AECOM USA, Inc. of Manchester, NH for the estimated sum of \$261,958 for the engineering phase of the Dover Road Pump Station Rehabilitation Project and authorize the Town Administrator to sign said contract on behalf of the Town?

Chair Niman said Items A and B would be taken off the Unanimous Consent Agenda.

Councilor Van Asselt MOVED to approve Unanimous Consent Agenda Item C. Councilor Sievert SECONDED the motion, and it PASSED unanimously 9-0.

There was discussion on Item A. Councilor Van Asselt said he had asked that it be taken off because he didn't understand why it was there. He said there was no evidence that they needed additional Budget meetings, so he didn't understand why these meetings were being scheduled, and why he should support this.

Administrator Selig said historically the Council had reserved several dates to talk about various aspects of the Budget. He provided details on this, but said there was no requirement to schedule them.

Councilor Van Asselt asked if this motion was therefore saying that except for the public hearing date, the Council was saying it would try to keep those dates open in case they were needed.

Administrator Selig explained that with this motion, the Council would in fact be scheduling the meetings.

Councilor Van Asselt said he didn't understand why they were doing this. He said in the last 5 years, the Council had changed about \$60,000 out of about \$5,800,000 of expenses. He said that wasn't a reason not to have the meetings. But he said unless Councilors were planning to come to the meetings with specific program and policy changes, he didn't think the meetings were necessary. He said he would prefer that the motion would say that the public hearing would be on November 16th, and that the Council would agree to meet on the other dates if they needed to.

Chair Niman said traditionally at the first Budget meeting, Administrator Selig had presented the Budget to the public and the Council. He asked if Councilors thought this was a worthwhile exercise.

Administrator Selig said typically at the first meeting in November, he would go through the Budget, and there would then be more detailed discussion on it at the next meeting, with the public hearing coming after that. He said he was not wed to the idea of having additional meetings, and suggested that they could hold them if needed. He said the approach he had presented was simply what they had done in the past.

Councilor Needell said last year was an unusual year, with the Budget being accepted without much comment. He also said proposals had been brought forward in the past, including some from Councilor Van Asselt, and said there had had been valuable discussions at these times. He said if the Council came to quick resolution on the Budget this year, there was nothing to say they couldn't cancel the other meetings. But he said he had no problem with scheduling these meetings, and said he thought there would be significant discussion this year on the Budget.

Councilor Van Asselt said he would vote in favor of the motion. But he said if they were going to have additional meetings, he encouraged Councilors to come to the table with something more specific than questions on line items.

He noted Budget proposals he had made in the past, which hadn't done very well. But he said he also recalled Chair Niman coming forward with a major recommendation regarding the Fire Department, which resulted in a healthy discussion, and also resulted in some changes in the Fire Department since that time. He said he hoped the Council saw the additional sessions as an opportunity to talk about things at the program level, not the line item level.

Chair Niman noted there were two separate motions that needed to be made.

Councilor Van Asselt MOVED to adopt the following schedule of special meeting dates, in addition to its regular legislative meeting dates, to deliberate, discuss, and take action on the proposed FY2010 Operating Budget and 2010-2019 Capital Improvement Plan:

Monday, November 9, 2009 - 7 pm
Monday, November 30, 2009 - 7 pm
Monday, December 14, 2009 - 7 pm

Councilor Mower SECONDED the motion, and it PASSED unanimously 9-0.

Councilor Smith MOVED to schedule a Public Hearing for the proposed FY 2010 Operating Budgets for Monday, November 16, 2009, in accordance with Section 5.3 “Budget Hearings” of the Durham Town Charter. Councilor Van Asselt SECONDED the motion.

Councilor Mower asked if there was also a public hearing for the CIP.

Administrator Selig said there was no requirement to have a public hearing on the CIP, and also noted that any items in the CIP for 2010 were also in the Budget. But he said a public hearing on the CIP could certainly be scheduled.

Councilor Needell asked if it was correct that the earliest date the Budget could be voted on was November 30th, and was told that was correct.

The motion PASSED unanimously 9-0.

There was next discussion on Unanimous Consent Agenda Item B, regarding amending the language in the first Council Goal. Councilor Smith said he had asked that this be taken off the Unanimous Consent Agenda because of the specific language “targets the global marketplace”. He asked if someone could come up with a word other than “targets”, and provided details on why he thought this word was inappropriate

Councilor Mower noted the word targeting was often used in marketing. She suggested the word “focuses” instead.

There was further discussion. Councilor Sievert said he thought the existing language was fine.

Councilor Stanhope MOVED to amend the language contained within the first goal of its 2009/2010 goals list approved on May 18, 2009 by adding the words “targets the global marketplace”. Councilor Sievert SECONDED the motion.

Councilor Carroll said she would vote for this, but said she did appreciate what Councilor Smith was saying. She said language meant a lot, and said she didn’t like the violence in that word.

Councilor Needell said Councilor Smith was welcome to offer an amendment, and Councilor Smith said he chose not to do so.

The motion PASSED 8-1, with Councilor Smith voting against it.

VIII. Committee Appointment

Shall the Town Council appoint Samuel H. Flanders, 6 Glass ford Lane, as the neighborhood representative to the Rental Housing Commission?

Councilor Van Asselt said 13 days ago, former Rental Housing Commission member Diane Woods had resigned. He asked if there had been public notice made that there was an opening, and said if so, he had missed it. He said there was a long standing tradition of allowing anyone who wanted to serve on a committee or board to have the opportunity to apply.

Administrator Selig said typically there was a public notice or widespread announcement that a position was available, but said they had not thought of it in this instance. He said there were a number of pressing issues before the Commission, Mr. Flanders had stepped forward and Commission Chair Paul Berton had recommended him. But he said it was a fair question.

Councilor Carroll said she spoke with Diane Woods, and said it was Ms. Wood's understanding that she had resigned several months ago. Councilor Carroll said she hadn't attended a meeting in a long time, and had let this be known. She said the Commission had been going on for some time without a resident member.

Administrator Selig said his office was only recently formally notified of the resignation, and Councilor Carroll said Ms. Woods may previously have simply let the Chair know she was resigning. Administrator Selig said Ms. Woods had been at the last meeting, and Councilor Carroll explained that this was because Ms. Woods was an affected resident, and hadn't been expecting to be called up to sit at the table.

Chair Niman said the question here was whether anybody and everybody should have the opportunity to serve, or to allow Mr. Flanders, who had come forward, to serve.

Councilor Carroll said her point had been that the Commission had not had a representative from the public for some time, and said she wasn't sure why it hadn't looked into this. She said it was obviously a missing link.

Councilor Mower said she appreciated the protocol issue Councilor Van Asselt had raised, and said there was a shared responsibility of recognizing there was an opening, and notifying people. She then noted that Chair Berton had suggested that the Commission could possibly have more than one neighborhood representative. And said it was useful for the public to know this, regardless of what happened now with this appointment.

Councilor Van Asselt said the question was whether the Council would follow the procedures it had always followed. He said it had to be public so everyone had the chance to serve. He said there were issues coming before the Commission that a lot of people were interested in, and said it was important that everyone have the opportunity to apply. He recommended tabling this issue until public notice had been put out.

Councilor Mower asked if there could be an interim resident representative, given the significant, pressing concerns of the neighborhoods about student misbehavior, many of which were related to absentee landlords.

Councilor Van Asselt said urgency was not relevant in this case, and said what was relevant was whether a different procedure would be followed.

Councilor Needell said he was puzzled, because there would be a discussion later about the lack of tradition to the Council's policies regarding committees. He said certain committees were governed by statute, but others were not, and said he was glad there was an agenda item on this. But he said he wasn't sure this appointment was the time to take a stand on this.

He said he didn't have a problem with moving ahead with the application before them, stating that for most committee appointments the Council had made, that was the criterion for accepting an application and moving ahead on it. He said that was the tradition that had been followed for most non-statutory committees, and said he saw no reason to change that tonight. But he said he would be happy to discuss this issue in the future.

Councilor Stanhope said he had no problem with the applicant, but noted that there recently had been a similar situation, where the issue of the residency of an applicant had come up, and the Council had postponed action on approving the application. He said in order to be consistent and attentive to procedural issues, it was reasonable to post the opening in the Friday Update and make a decision at the next Council meeting.

Councilor Clark asked if this would allow for the right notice period, and Administrator Selig said there was no formal notice procedure for this. He also said there would be one Rental Housing Commission meeting before the next Council meeting.

Councilor Sievert noted that the last Rental Housing Commission meeting was considered a public meeting, and that the resignation announcement was made at the meeting. He also asked if there could be more than one resident on the Commission.

Administrator Selig said there were several specific membership classifications for the Rental Housing Commission, and he provided details on this. He said there was currently one position for a Durham resident. He said typically notice was put out for openings, but said it was not a hard and fast policy. He also said applications had been held up before to allow notice.

He noted that Mr. Flanders was a member of the Cowell Drive Neighborhood Association, which represented residents living on several roadways in that area. He said Mr. Flanders was actively in contact with the residents, so would be a good contact. He said Councilor Van Asselt had raised a good point regarding advertising, and said it had slipped the mind of Town staff. He also said there was so much happening right now

regarding rental housing, that they thought it made sense to get someone on the Commission sooner rather than later.

Councilor Mower said she recognized the point being made, but said at the Rental Housing Commission meeting where Mr. Flanders had offered to be a representative, the Chair had asked those in the audience, comprised mostly of residents, if they wanted to serve. She said she didn't believe anyone other than Mr. Flanders had come forward.

Councilor Van Asselt MOVED to postpone this Item until Administrator Selig advertises the opening on the Rental Housing Commission in the Friday Update, and to put it on the Agenda for the next Town Council meeting. Councilor Stanhope SECONDED the motion.

Councilor Mower asked if there were extenuating circumstances in which the Council would be willing to not require this step. She said there was some urgency to the situation, if there was no resident representative at the next meeting. She said if there hadn't been a neighborhood representative for several meetings, this wasn't brought to the attention of the Council, no effort was made to see if the previous representative was still active, and no attempt was made to advertise the position, there was then a responsibility on behalf of the Commission that should be acknowledged.

Councilor Sievert asked what the downside was of approving Mr. Flanders that evening. There was discussion.

Councilor Van Asselt said to him it was a procedural question, and said he wanted everyone interested in these controversial issues, including some people who had recently talked with him, to have the opportunity to be considered for the position.

Councilor Mower said she would like to see a representative of the neighborhoods at the next meeting, and said an alternative was therefore to postpone the meeting until there could be a representative. She said at that postponed meeting, the Commission could also discuss the idea of having more than one neighborhood representative. She said perhaps several people would step forward in that case.

Councilor Van Asselt noted that he was on the Rental Housing Commission, and lived in a neighborhood. He said at the next meeting, the Commission wouldn't be making formal decisions other than sorting through the issues discussed at the public hearings.

Councilor Mower asked if the November 2nd Council meeting could be a time to consider other applicants, and the November 3rd Rental housing Commission meeting would then have at least one representative from the neighborhood.

Councilor Van Asselt said that was correct, and noted that at the meeting the following day, the Commission would discuss the issue of whether there should be two resident representatives, an issue that would come to the Council.

Chair Niman said he agreed with Councilor Needell that sometimes committee appointments were made in a haphazard way. But he said he believed that in the past when this was done, the public had been notified that the positions were available. He asked if there were situations in the past when notification wasn't made.

Councilor Needell said it was unusual to have a vacancy occur and an application come in without having a public notice out there. He noted that most times, people applied to committees in the spring when various appointments expired, or because there was an issue they cared about.

Administrator Selig said what was driving this situation was a sense of urgency from the neighborhoods, and the fact that it had been found out that Diane Woods had resigned. He said Chair Berton had asked if there was an interest in serving, and Mr. Flanders had stepped forward. But he said typically, the positions were advertised.

Councilor Smith said he agreed with Administrator Selig, and noted he was at the meeting when the opening was announced. He said it was a well attended meeting, with a lot of citizens present, mostly from the neighborhoods. He said he would vote against the motion. He said Mr. Flanders was well qualified, and was at the Rental Housing Commission meeting, in the middle of a weekday, which to him was a crucial thing.

Councilor Carroll said she appreciated the logic of Councilor Van Asselt's words. She said a compromise would be to move forward with this application, while also looking at adding another member of the public to the Commission, something which the Commission was planning to do. She said it was really important to do this, and said this was a compromise she could live with. She noted that one could almost say that each of the neighborhoods should be represented, because they all had somewhat different situations.

Councilor Mower said the Council had already heard from one member of the public who had suggested the Council hadn't done anything about a problem that had been growing recently. She said this was a sentiment that was shared by many people in Town with whom she had spoken. She also said she wasn't sure approving this application would be completely circumventing the rules, given a well attended Rental Housing Commission meeting where the opening was announced by the Chair. She said this didn't mean that there couldn't be additional applicants. She noted that whoever was interested was probably watching this meeting.

Councilor Van Asselt said if they followed a procedure the Council didn't traditionally follow, they were not depriving the Commission of neighborhood representation at the meeting tomorrow. He also said by the time the Commission discussed at length the proposals before it, the neighborhood representative would be on it.

Councilor Mower asked what Councilor Van Asselt meant by neighborhood representation, and Councilor Van Asselt said he was referring to himself. Councilor Mower asked him if he was also a landlord, and Councilor Van Asselt said yes.

Councilor Mower said it seemed the Commission was a little tipped toward the landlords in Town, and said there was a desperate need for representation by a purely residential neighborhood rep.

Councilor Van Asselt said 60% of property owners in Durham had accessory apartments, so were all landlords.

Councilor Mower said people who had to get up in the middle of the night to talk to young people needed representation.

Chair Niman said things were getting a bit heated, and asked the Council to vote unless there were any further pertinent remarks.

The motion FAILED 4-5, with Councilor Needell, Councilor Carroll, Chair Niman, Councilor Smith and Councilor Mower voting against it.

Councilor Smith MOVED to appoint Mr. Samuel H. Flanders, 6 Glassford Lane, as the neighborhood representative to the Rental Housing Commission. There are no term expirations for members on the RHC. Councilor Mower SECONDED the motion, and it PASSED 8-1, with Councilor Van Asselt voting against it.

It was noted that Mr. Flanders was at the meeting, and he was asked to introduce himself.

Mr. Flanders thanked the Council for appointing him. He said the Rental Housing Commission needed someone with the perspective of the affected homeowner, who could help create a dialogue, working together in order to develop policies that would work for everyone. He said that was what he hoped to do.

Councilor Mower said that view was shared by many who had attended the Commission meeting, and said the idea was to work out something that was fair for everyone.

Chair Niman thanked Mr. Flanders for his willingness to serve.

IX. Presentation Items

None

X. Unfinished Business

- A. **Public Hearing and Action on Ordinance #2009-10** 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

Councilor Smith MOVED to open the Public Hearing on Ordinance #2009-10 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. Councilor Mower SECONDED the motion, and it PASSED unanimously 9-0.

There were no members who came forward to speak.

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

Councilor Smith MOVED to adopt Ordinance #2009-10 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. Councilor Stanhope SECONDED the motion.

Councilor Mower said her understanding from speaking with Mr. Campbell was that the onsite landscaping and exterior screening Zoning change was not intended to open the larger issue, which was that this was an opportune time to bring forward the ideas of low impact development and green building into the discussion. She said it would be great if the Planning Board considered the bigger picture when it addressed rewrites in the future.

She said she would liked to have seen an introductory paragraph for this section, which recognized the value of specific types of surfaces and landscaping in mitigating stormwater runoff.

Mr. Campbell noted that there had been an update of the Parking Regulations in 2008, and said at that time, there was mention of putting low impact development language in. But he said the Planning Board felt the Parking Regulations were not the place to put this, and instead wanted to put the low impact development stormwater provisions into upcoming updates of the site plan regulations and subdivision regulations.

Councilor Mower said she appreciated this. But she said it was important to have this language in many different places, and said it was important to keep this in mind, moving forward.

Councilor Sievert said what Councilor Mower proposed was the right thing to do, but said now was the wrong time to do it. He said right now they were trying to clean up some things in the Zoning Ordinance. He said getting into comprehensive design issues could clouded things up, which would mean the proposed Zoning amendments wouldn't get done soon.

Councilor Van Asselt asked if the proposed Zoning change concerning “contiguous“ wasn't just a word change, and in fact was a rather significant change to the Zoning Ordinance. There was discussion that this issue related to the Stonemark case, and Councilor Van Asselt asked what they did to future development when two non-touching contiguous pieces of land were restricted.

Councilor Needell said the definition of contiguous should never have been in dispute. He said if they had wanted to change the Ordinance so things didn't have to be contiguous to be treated in the way they were, they should have talked about that.

Councilor Van Asselt asked if what the Council was being asked to do in approving this Zoning change was to say what the word "contiguous" actually meant, in the Ordinance, and was told that was correct.

Councilor Van Asselt then asked what the proposed Zoning change concerning the elderly housing density issue meant.

Mr. Campbell said all these proposed changes were a result of confusion between how the Planning Board interpreted sections of the Ordinance, and how the ZBA interpreted them. He said the intention was that the elderly density bonus was for the whole development when the Zoning rewrite was done in 2004, and he said this was the way the Planning Board had been interpreting it. He said the wording had now been changed to make that clear.

Councilor Needell said what was still missing here was that nowhere in the Ordinance did it say the age categories, which federal laws governed. He said he wanted to make sure that when a developer came in, this was understood, and that a developer couldn't contrive a different mix.

Mr. Campbell that wouldn't happen because the Federal government wouldn't allow it, and the Planning Board couldn't go against that.

Councilor Needell asked if this wording was clear enough so that there wouldn't be a misinterpretation of these rules.

Mr. Campbell said he would make it clear to all applicants that they had to do 80% elderly housing at least. He said it would be grounds for not approving the application if the applicant wanted to push for less.

Councilor Mower asked whether the use of the word elderly triggered recognition of the federal regulations. She said she didn't want to have to depend on the town planner telling the developer what could be done.

There was discussion that the Planning Board would make it clear to the developer that at least 80%, by federal law, had to be elderly housing.

Councilor Needell said he thought there should be a legal opinion on whether something should be added to the Ordinance to reference the HUD regulations.

Councilor Smith asked if the Planning Board should include more specific language on the federal requirement.

Councilor Van Asselt said the federal regulations supersede the local ordinance anyway. He said writing in the formulas for elderly housing was crazy, and said the wording on this was fine the way it was.

Councilor Stanhope asked if Councilor Needell had an amendment to propose.

Councilor Needell said no. He said he had heard that others were comfortable with the current wording, so he was not concerned.

Councilor Van Asselt said Councilor Needell had raised the right question, because there had been a lot of confusion with the Stonemark case about the federal regulations. He said his own question had related more to the density issue, and received confirmation that for people who thought building up was smart growth, this Zoning change would not changed the developer's ability to secure density.

The motion PASSED unanimously 9-0.

The Council stood in recess from 8:46 - to 8:55 pm

- B. Shall the Town Council approve the "Omnibus" Municipal Services Agreement between the Town of Durham and the University System of New Hampshire relative to roadways, traffic control, and policing services and authorize the Town Administrator to sign said agreement on behalf of the Town?

Administrator Selig said he had provided a written overview, and noted there had been several drafts of the agreement over the last few years, including analyses of cost impacts. He said while he could argue that the \$200,000 should be much, much larger, the University had argued that it should be much lower.

He said this agreement was a major step forward, in that there was acknowledgement that there was a financial impact from having the University in Durham. He said it was believed that the number was reasonable and reflected some of the cost, and said it was a step forward. He also said the 10 year timeline was consistent with the water agreement and the wastewater agreement, both of which required that the University pay 2/3 of the costs.

Administrator Selig noted that under the Fire services agreement, the University paid 50% of costs, and also noted that the University maintained its swimming pool for the use of residents out of courtesy to the Town. He said the Town allowed the University to use space at Jackson's Landing for the crew house. He reviewed other smaller agreements with the University, noting among other things that the University had paid out a lump sum to the Town for what had been the Town library at the Diamond Library. He said as part of this agreement, all residents had free access to the University library.

He said a challenge in the negotiations was that while there were many social benefits to people living in Town who chose to take advantage of University offerings, there were

negative impacts from the University as well. He noted another positive impact was that Durham as a university town had been insulated from the economic slowdown, which among other things meant that there had been a retention of property values.

He said the costs included policing, and said it had been argued that there was a major impact on the Town from students coming off campus on weekends. He said the Town had 18 police officers, a higher number than for a typical town of 7500 people. He noted that the Police Department could justify that it needed more than 18 officers.

Administrator Selig said the University Board of Trustees had spoken supportively about the agreement. He said it was a wonderful first step, and said the time frame was consistent with other agreements in place. He also said it created a foundation from which to move forward and address other impacts in the future.

He said having this foundation in place allowed the Town to focus on working further on cooperative arrangements between the Town and the University, in order to move forward with development that helped the Town and broadened the tax base, and helped the University by providing a more vibrant downtown and community that it needed in order to sell itself.

Councilor Needell said this agreement was a welcome thing to see, and also said it would be good to have the money in the Budget over the next 10 years. He spoke about the importance of the language in the agreement, which for the first time sounded like the University was a partner to the Town. He said this represented a tremendous improvement in the dialogue between them, and he complemented Administrator Selig and the University administration for their work on this.

Councilor Smith said he acknowledged the hard work that had gotten them to this point, but said he would vote against endorsing the agreement. He said it was not enough, and didn't reflect the real costs. He noted that Administrator Selig's memo to the Council on the agreement stated that "by nature, students were young adults whose living habits resulted in a disproportionately large number of requests for service."

He said universities were founded originally to nurture future leaders and scholars. He said if they thought that students acted the way they did by nature, they might as well get out of the business of running a university, or a town with university students. He said the University had a responsibility to do more, either in recruiting and admission of students, or in helping them be better neighbors. He said if they couldn't do that, the Town was entitled to recover more.

Councilor Mower said she agreed with residents who had said this agreement was inadequate compensation for the extra services the Town provided. She received clarification that the \$200,000 would increase by 3% annually, and said this didn't recognize retroactive costs for things like the student rioting, etc. But she said she recognized that the agreement was a first step. She asked if there was a tradeoff being made, with this agreement, and said perhaps this needed to be discussed.

Administrator Selig noted that with major ramp up events, typically the University had been billed and had been paid, and said this practice would continue in addition to having the agreement.

Councilor Clark said he agreed that the language in the agreement ushered in a whole new era. He said they had been talking about this for decades, and said it took two years to draft this. He said ten years would go by fast, and would allow the time to think about what the next contract would look like. He said he fully supported this, and complemented Administrator Selig on his work in getting this done.

Councilor Stanhope said an agreement where both sides were not terribly happy with it was probably a pretty good one. He noted that the Town would receive about \$270,000 out at 10 years. He said this agreement established a positive precedent, and said instead of debating if the Town should get more, it was time to put this issue to bed, and continue to build on the positive relationship with the University.

He said there was a healthy administration in place there that was willing to work with the Town. He also said it was difficult to quantify monetarily some of the things that flowed back to residents from having the University in Durham.

He noted that he lived near Young Drive, and said the Town had been able to temper the student behavior there. He said this was a university community, and said if they worked with the University on the problems now, they would solve them. He noted that when he ran for the Council, he said the relationship had to be resolved. He complemented Administrator Selig and the University for getting to this point.

Councilor Sievert said he agreed 100%, and said they should go forward with approving the agreement without more discussion.

Administrator Selig recognized the efforts of University President Mark Huddleston, who he said had been an honest broker in the negotiations. He also recognized Dick Cannon, Mark Rubenstein, and David Proulx. He noted that Chair Niman participated in many of the discussions, and helped keep things moving along.

He said Police Chief Dave Kurz had provided a large number of fiscal analyses, and said without having these to help frame the impacts on the Town, this agreement wouldn't exist. In addition, he said Business Manager Gail Jablonski had been a valuable asset in cranking the numbers, and describing with numbers what the impacts were.

Councilor Van Asselt said 5 years ago when there was a vote on an issue involving the University, former Councilor Peter Smith had lectured him about the need to have a unanimous vote on the issue. He said Councilor Julian Smith had the right to vote the way he wanted on any issue, but said he thought it was important that the Council vote unanimously on this agreement, because it sent a message not just to the University people in Durham, but also to the Board of Trustees. He urged Councilor Smith to think about supporting the agreement, as a good starting point.

Councilor Mower said this was very well spoken.

Chair Niman noted that a few Council members and members of the public had said this wasn't enough money. He said the University's position had been that people moved to Durham because it was a college town, so what was the Town complaining about. He said the Town's position was always that there were various costs that were incurred by the Town because of the University, and said they went around on this several times. He noted analyses that were done on the costs, including one he did, which came up with a much bigger number.

He said he had then said there was a different way to look at the issue, and had asked how much property value would have to be created in order to generate the taxes that would compensate the Town for all the costs. He said that helped to reframe the discussion, because the University had been maintaining that they had been generating property value for the Town, with apartments and various businesses downtown.

Chair Niman said the numbers he had put together indicated that the number was in the \$200-300 million range, so he was able to say to the University that the property value it generated for the Town wasn't enough. He said it was at that point that they all started thinking about how to create additional property value in Town, which was what generated the discussion on the hotel. He said the University asked how the Town would feel about coming up with a dollar value on costs, and working together to create more projects in Town.

He said he and Administrator Selig had said that would be great, and would be a good foundation for moving forward. He explained that he had found it increasingly difficult to advocate the Town's position because there had been lots of opportunities to create property value in Town that it hadn't taken advantage of. He noted that when the Town had said the University had to house 60% of students on campus, none of those dorms paid taxes. He said if instead those students were housed somewhere off campus, the tax dollars from this could help to compensate the Town for its expenses.

Chair Niman said the Town had actually chosen through Zoning, policy positions, lack of business development, etc., not to allow property value to be created to generate the tax dollars to support the additional expenses of hosting the University. He said over time, he had seen that the University had a point that it wasn't fair for the Town to ask for money when it wasn't willing to work with the University to create the means for generating the dollars to cover the expenses.

He said that was how the present agreement, and the strategy for moving forward with generating additional tax dollars to offset costs, had come about.

Administrator Selig said a prime example of this strategy was the University's decision to locate a new business school in a downtown location, noting that their preferred location was on the western side of campus.

Councilor Carroll said she would like to ditto the positive comments that had been spoken, and reminded everyone that politics was the art of the possible. She thanked Administrator Selig and Chair Niman for their efforts.

Administrator Selig noted that in these negotiations, they were also dealing with the entire University system, which was concerned about all of their campuses, and precedents on any one campus that might impact other campuses. He thanked University System Board of Trustee Chair Ed Dupont, Chancellor Ed MacKay, and General Counsel Ron Rodgers, all of whom were Durham residents. He said the time had been right, in that people were willing to think outside the box in these discussions.

Councilor Van Asselt MOVED to approve the “Omnibus” Municipal Services Agreement between the Town of Durham and the University System of New Hampshire relative to roadways, traffic control, and policing services and authorizes the Town Administrator to sign said agreement. Councilor Sievert SECONDED the motion, and it PASSED 8-1, with Councilor Smith voting against it.

Councilor Van Asselt MOVED to amend the Agenda to do Agenda Item IX A next.

After brief discussion, he withdrew his motion.

C. Discussion regarding the appointment of nonresidents to Town non-statutory advisory committees

Chair Niman said Councilor Needell had brought this Agenda Item forward because he wanted clarity on the policy. He said traditionally they had been reluctant to appoint nonresidents, and if that was the case, he believed Councilor Needell wanted the Council to codify that.

Councilor Needell said if that was the Council’s position, he would like it to be codified and made clear. He said he had some thoughts about whether they should or should not do this, but said his concern had been that there had been an implicit understanding on this. He also noted that the Energy Committee charter used the word “resident”, which muddled the waters further.

Administrator Selig said for statutory committees, it was clear that a member must be a resident, but for advisory committees, which provided guidance to the Council, it was optional as to whether members had to be residents or not. He said for advisory committees that specifically said members had to be residents, to him it was clear that this meant Durham resident.

He said in some instances for some of the committees, it hadn’t been clear whether a committee member had to be a resident, but he said as long as he had worked in Durham, this had been the preference. He noted a situation where there was an opening for a tenant representative on the Rental Housing Commission, and no applicants came forward from Durham but one did come forward from Newmarket. He said ultimately it was felt this

was acceptable.

But he said typically this kind of situation triggered a red flag. He noted the issue had come up as to whether a business owner in Durham who didn't actually live in Durham could be on the EDC.

Councilor Mower said if the Council didn't require residency but preferred it, if two applicants put their names forward, she wondered if they would be required to choose the resident. She questioned why anyone would want to apply if precedence would always be given to one category.

Councilor Needell said one issue was that they didn't have a huge number of applicants for committees, and people usually applied because they had an interest or had been asked to apply. He also said he understood there was no flexibility for statutory committees. But he said for the rest, he didn't see what difference it would make. He noted that the burden was always on the Council to ask why any applicant would want to serve.

He said he would think it would be a welcome thing if a business owner who was not a resident was able to serve on the EDC, or the Rental Housing Commission. He said he didn't think the present situation with the Energy Committee would happen on a regular basis. He said he thought the Council would be justified in weighing the residency issue if there were two applicants and one wasn't a resident. He said what was unclear was why the Council would want to take out the option for a nonresident to serve.

Councilor Clark said all the committees benefited from a diversity of opinion and expertise, and said a problem living in a town like Durham was that there wasn't a lot of diversity. He said his preference was that committees be populated by residents, and suggested that one nonresident should be allowed as a voting member on each committee, to bring additional diversity and expertise to these committees.

He also said he strongly believed that as the Council appointed people to committees, they should be thinking about diversity and balance, and not just appointing people because they had a specialized interest. He said this tended to pit groups against each other, when all of the same kind of people were on a particular committee.

Councilor Carroll noted that when she chaired the IWMAC, it was thought that Dick Houghton, who was a great recycler at his hardware store in Town, would make a great member of the Committee. But she said they never approached him because he wasn't a Durham resident. She also noted Roger Hayden, who lived in Dover.

She said these people were motivated and had expertise, and may have been willing to serve on a committee. She said there was value in extending membership on the committees to nonresidents. She said perhaps they should have guidelines for accepting applications, but could do this on a case by case basis.

Chair Niman said three Councilors so far had expressed interest in having nonresident members of committees, and Councilor Clark had suggested there could be one per committee. He asked Councilor Carroll and Councilor Needell what they thought about this idea.

Councilor Carroll said she thought this might tie the hands of a committee, and said it might work having more than one nonresident on a bigger committee.

Councilor Needell said allowing one nonresident member per committee seemed to be a reasonable compromise. He said he wasn't opposed to the idea.

Chair Niman asked if there was anyone who thought that non-statutory committees should only have members who were Durham residents, and there was no response. He then asked what others thought about limiting the number of nonresidents to one per committee.

Administrator Selig suggested more clearly identifying the statutory committees and non-statutory committees, and then seeing if there was language on residency for each of the non-statutory committees. He said if there was, they could strike that language and add language allowing one or more nonresident.

Councilor Needell said if the general sense of the Council was that where it wasn't prohibited statutorily to have a nonresident on a committee, the Council was open to having a nonresident serve, he wasn't sure they needed to write that down. He said if they wanted to limit this to one nonresident, they had to find a way to include language on this, and said his only concern was that this could become cumbersome. He said they also had to address situations where the word "resident" already appeared for a particular committee.

Councilor Mower said they would also have to define "resident" more clearly, noting that some people had questioned this.

Chair Niman said the Council would direct Administrator Selig to come up with a list, look at the language, and come back with a proposal that anywhere it said "resident, it should say "individual" for non-statutory committees.

Councilor Needell noted that he thought this was a fairly low priority item. He suggested that those non-statutory committees that had language on residency should be set aside, and the Council needed to decide if this language should be changed or not. He said for those committees where there was no language on residency, unless the Council wanted to put a limit of one nonresident member, he didn't think they needed to do anything right now.

Chair Niman said perhaps they could have this done somewhere around the first of the year, before March of 2010. He said this would allow the Town to get the word out that nonresidents could apply.

Councilor Mower noted that in the appointment process this year, there had been some applicants who applied to two committees, but only their first choice was picked up in the Council Communications so they may have been ruled out. She asked that this not happen next time.

Chair Niman said they would take care of this administratively.

Councilor Carroll said since this policy change would affect the committees, it was appropriate for Council representatives to mention it to the committees they served on.

D. Discussion regarding property located at 17 and 21 Madbury Road as a possible location for a Town Center

Administrator Selig said this topic had to do with looking for potential locations for a new Library, Town office, youth center and perhaps a fire station. He said two locations had been targeted since the last time the Council had discussed this. He said progress had been made in identifying wetlands on the Jacques sites, and said some initial conceptual layouts had been created for this site as well. He provided a rendering Walter Rous had put together for the Jacques property, which showed how the Town buildings could conceivably be laid out on the site. He said with this property, there was a willing seller who was working collaboratively with the Town, and he said good progress had been made.

He said the other parcel was the Greens, at 17 and 21 Madbury Road He noted a site plan for the two properties that Councilor Sievert had put together for the Council, and provided details on it. He said the properties were owned by the Gangwer family, and said 21 Madbury Road contained a wood framed structure and had 0.22 acres, while 17 Madbury Road contained 2.3 acres, and extended all the way back to Pettee Brook and included the green bungalows, a fraternity house and a brick structure. He also noted that it abutted the Pettee Brook parking lot.

Administrator Selig said the major challenge with these parcels was that the owners were not necessarily willing sellers at this point in time. He said Sam Gangwer, the principal owner, had been willing to talk with him on the phone, but on more than one occasion had said he wasn't certain he was open to selling the property, and didn't know if it would be time well spent talking with him about how the property could be looked at, and if there would be room to negotiate.

Administrator Selig said he would like to have the parcel appraised. He said the 2000 Master Plan had identified this property as well as the present Town Hall site as the two possible locations for a new Town Center. He noted that the present Town Hall site was no longer viable for this use, since the Smitty's site had now been developed.

He said a key issue with the Greens parcel was the cost, and said it was hard to discuss this further until the property was appraised. He noted that an advantage of having the Town as a partner in this location was that it had the ability to partner with the owner

over the long-term.

He said the Town could purchase the property outright, could create an annuity for the owner, or could partner so some of the property would be municipal and part would be privately owned. He said with this last scenario, the owners could continue to operate some portion of rental property on the site. He said there were a lot of possibilities, but said until they could sit down to determine the family's goals and how they could intersect with the Town's goals, it was hard to put together a package for them.

Administrator Selig said the question was how the Council would like to proceed. He said he had made every effort to talk with the owners, but had not been successful to date. He said Sam Gangwer had said he would talk with his family and then get back to him. He said Jesse was willing to sit down, but said the primary interest of the property was in Sam's name.

Chair Niman said Councilor Sievert had provided some renderings of what might be put on the site. He noted that in addition to the Town Hall, Library and Community Center, the Council had been talking about having a structured parking lot that could provide a number of advantages, especially on this site. He said he didn't think they would be able to find this kind of space anywhere else downtown.

He noted that the Town owned the Pettee Brook parking lot, and said the Greens property abutted it. He said the renderings showed a structured parking garage that would span over Pettee Brook, and explained that there needed to be a certain footprint in order to have the on and off ramps and still preserve enough parking spaces to make it economically viable.

Chair Niman said what was really attractive about this property was that it opened up opportunities to potentially change the flow of traffic through Town. He said if they moved forward with this, it would open up access to Madbury Road, so that instead of having everyone go around the circle, some people could enter the parking structure from Madbury Road and then walk to the downtown businesses.

He said given the new relationship to the University, the Town could perhaps in the future sit down with the University to talk about gaining access over its property onto Garrison Ave., which could potentially help with the flow of traffic. He said the idea was to make it easier to navigate the downtown, and eliminate the congestion around the circle.

Chair Niman said people had asked him why Durham needed structured parking. He said the Town had been working toward bringing a new hotel to Town, and said parking would be needed for that. He also said the University would be constructing a Business School near the downtown, next to Health Services. He said there could be synergies between what was going on at the University and what would go on to support businesses downtown. He said visitors to the Business School might park in the parking garage and stop at a business on their way to their car.

He noted that the University had been talking about a new performing arts center somewhere on campus, and said his preference would be that it be somewhere near the downtown. He said a parking structure could support this as well, and noted that having such a center would bring people to Durham, who would hopefully leave some of their money in Town.

He spoke further on the possible synergies that could be created, and as part of this noted that Franklin Pierce Law School might be merging with the University, and that perhaps there could be a law school in Durham that would be located near the downtown as well.

He said there could be the basis for a triangle that would include structured parking, University destinations, and the downtown, and said perhaps they could then see restaurants that sold more than pizza, and could see shops like Tastes of New England actually flourish downtown.

He said a structured parking lot in this location seemed like a perfect opportunity to bring downtown business and the University closer together, where they could support each other and make the economics of the parking structure work. He said that was what would drive the project ultimately.

Chair Niman said what was also exciting about this was the possibility to reconfigure traffic patterns that would make it easier for people to come into Town, and would create some exciting things for visitors to do and opportunities to spend their money.

Councilor Mower noted the upcoming charrette, and what a challenge it would be to create a vision for the downtown with some different scenarios. She said she would hope to see both the Jacques and the Greens options, and asked if the Council could ask B. Dennis Town Design for different scenarios.

Chair Niman said he thought so. He also said this was the perfect time to consider the Greens site because of the University's decision to locate the Business School near the downtown. He also said a hotel developer would be coming before the Planning Board on November 18th. In addition, he said that hopefully the University was about to complete its strategic plan. He said hopefully as part of this there would be plans for a performing arts center, and they could all start to talk about where it might be located.

Chair Niman said it would be nice if the Town could finally have a coherent plan of how it was all going to work.

Councilor Sievert noted there were several draft site plans/sketches for the Greens property, and said the one that contained individual buildings for the Town Hall, the Library and the Youth center went against the idea of energy efficiency as well as other efficiencies. He said this was why he had come up with the combined building complex. He also said the reason the proposed build-out for this looked large was that a parking garage had to be large. But he said it could also look nice.

Councilor Mower asked what the size was of the parking garage in Portsmouth.

Councilor Sievert said he didn't know, but said the footprint of the parking garage in the sketch he had done was about 250 ft by 270 ft. He noted that there would be good access to the Middle School and the High School from the property. He also said a police station could possibly go there, noting that it was a central location.

He noted that Robbi Woodburn and Nick Isaak had also worked on these sketches. He noted that the front of the parking garage had room for commercial and retail on the bottom floor. He said the frontage on Pettee Brook Road was set back about 35 ft, so there was good pedestrian access there.

Councilor Sievert said closing Pettee Brook Road would be even better, but said access in and out of the parking structure would have to be configured. He provided details on possible accesses, and noted that some of this could tie in with the hotel/conference center. He said that facility would probably want to have its entrance on Main Street.

He said what had been drawn wasn't necessarily the exact configuration, but said the parking garage, for 200-400 vehicles, would have to be big.

Councilor Needell determined that the Mill Plaza parking lot had 341 parking spaces right now. He said what was proposed for the parking garage seemed to be a reasonable scale, and said there was reason to expect it to be used given the amount of other parking available in the downtown.

Councilor Mower asked what the reason was for having an outside parking lot in addition to the parking structure, and also asked if there were wetlands where the outdoor lot was proposed.

Councilor Sievert said the at-grade parking lot was for ease of access to the Library, Town Hall, etc.

Chair Niman noted that there was a deed restriction on that part of the property that said a structure there couldn't be more than one story.

Councilor Sievert said that regarding the wetlands, Pettee Brook, which in theory was an asset to the Town, went through the area. He explained that the way the garage was designed, the ramp would start at Pettee Brook Lane, and go up at an adequate percent so it would be over the brook, so the brook could stay open. He said access from the back of the property was about 3 ft higher at the back corner, and he provided further details on this.

Councilor Stanhope said he had supported the use of this site for some time, and said there were a lot of good reasons to focus here, including the fact that the Master Plan had identified it. He noted that he lived on the other side of Beard's Creek, opposite the Jacques property. He said he knew that site reasonably well, and said it would be a

complex site to build on.

He said more importantly, there would be real issues traffic wise. He said there had been a number of serious accidents in the area, and said there was a high volume of traffic on Route 108. He described a scenario of a significant number of right and left turns onto Route 108 if the site were developed with a town hall, library, etc. He noted that having a fire station there would result in a much lesser amount of traffic on and off the site. He also said a fire station there would have good access to traffic routes serving all segments of the community.

Councilor Stanhope said clearly, concentrating development of the downtown area with the cooperation of the University and private development, the Town could accomplish a number of things. He said they could attract merchants to the downtown, and could see a mix of retail that was more upscale. He said a density of population was needed downtown in order to do this. He said the possibility of having a performing arts center along with the Business School was really fascinating.

He said unfortunately, the property owner was reluctant to discuss with the Town how this could be made attractive to him from a financial perspective. He noted that he had mentioned the idea of eminent domain at a previous meeting, and said it was a vested power within the governmental body that could be utilized if it was believed doing so was in the best interest of the municipality and the Master Plan.

Councilor Stanhope said if the Council went on record that it would consider eminent domain, it didn't mean it would immediately exercise this. But he said it would at least provide an understanding that the Council was at least considering this option, and might make the owners more open to proposals, including long term payments, or even a 100 year lease. He said there were a lot of ways they could replace the income or create an annuity type of ownership rather than a real estate ownership. He said the Greens property had really been allowed to decline, and said it would require a substantial infusion of capital in the near future.

He said he hoped the Council wouldn't just talk about this, and would draw a line in the sand and say they were committed to the site and would take it by eminent domain if agreement couldn't be reached. He noted the estimates of the cost of developing the Jacques site and the Greens site, and said clearly the Jacques site would be considerably more expensive to develop, although somewhat less costly to purchase.

Councilor Stanhope said there were safety as well as environmental reasons to pursue the Greens site over the Jacques site as a Town center. He then said he would like to get a sense of how many Councilors would be willing to consider eminent domain.

Councilor Smith said he would consider it, and said he had encouraged it in the past.

Councilor Mower said she didn't know, because she didn't know what the parameters were for eminent domain.

Chair Niman said he would be willing to consider eminent domain.

Councilor Van Asselt said eminent domain had been used effectively in some communities. He said he would consider it.

Councilor Sievert said he would consider it.

Councilor Carroll said she wouldn't consider it at this point.

Councilor Needell said he wouldn't consider it for this property.

Councilor Clark said this was by far the best property for what the Council was contemplating. He said he would hope they wouldn't get to the point of using eminent domain, but said he might consider it if it came to the table.

Councilor Stanhope said it was important that he note for the public record that there was a property at 13 Madbury Road that he didn't personally own, but had a financial interest in.

Councilors agreed that an appraisal should be done of the property. Administrator Selig said he would provide appraisal proposals to the Gangwers, and said he thought a collaborative approach could be really effective. But he said if they were unwilling to sit down with the Town, the Town could proceed with the appraisal without them. He noted that this wouldn't be an optimal approach.

Councilor Needell said he wasn't wildly enthusiastic about pursuing an appraisal or other activity without the active participation of the property owner. He said he didn't like this type of approach.

Councilor Mower asked Councilor Needell if this was because he would perceive this as the first step toward eminent domain.

Councilor Needell said yes, and said this was a slippery slope heading toward wielding a big stick in the discussion. He said this was not the way he preferred to work with friends and neighbors.

Chair Niman said Administrator Selig would proceed, and report back to the Council.

Councilor Stanhope asked what the timeline was.

Administrator Selig said Sam Gangwer had said he would talk with his wife. He said if he didn't hear from him, he would call him back. He also noted that while he was focused primarily on the Budget right now, he would get a proposal out to different appraisers.

XI. New Business

- A. **First Reading on Ordinance #2009-11** amending Chapter 153 “Vehicles and Traffic”, Section 153-43 “Stop Intersections” by installing a stop sign at the intersection of Deer Meadow Road and Fox Road located off of Durham Point Road

Councilor Smith MOVED to PASS on First Reading Ordinance #2009-11 amending Chapter 153 “Vehicles and Traffic”, Section 153-43 “Stop Intersections” by installing a stop sign at the intersection of Deer Meadow Road and Fox Road located off of Durham Point Road. Councilor Mower SECONDED the motion.

Chair Niman noted that Chief Kurz had previously indicated that the residents had requested this, and he said the next step would be to hold a public hearing.

The motion PASSED unanimously 9-0.

- B. Discussion regarding proposed Town Charter amendment for placement on the March 9, 2010 Town Election that would raise the amount of bonding which requires a Town referendum vote from \$1,000,000 to \$2,500,000 with an automatic inflation increase linked to the Consumer Price Index

Administrator Selig said this was a direct outcome of the recent bond referendum the Town had regarding the Dover pump station. He said since 1989, when the \$1 million amount was set, the cost of living had increased considerably. He said the sense of the Council now was that the \$1 million threshold was no longer reasonable, considering the time, expense and inconvenience for residents to have to come out to vote on an item that was perhaps not worthy of a referendum.

He explained that in regard to the pump station, the Town was receiving federal American Recovery and Reinvestment Act (ARRA) funds to complete the project, and noted that in net terms the project would cost the Town less than it would have before it received the ARRA funds. He said the total Town contribution would be much less than \$1 million, but said because the Town was going to bond the \$1 million, the referendum was required.

Administrator Selig said taking into account inflation, it was thought that \$2.5 million was a more reasonable number for today. He said the Council had also thought this dollar amount should be linked to the cost of living increase, so the Town wouldn't be caught in the same situation again in the future.

He said after speaking with legal counsel, some suggested language was put together to amend the Town Charter, and he provide details on this. He suggested that the Council move this forward, and noted that the goal right now was to discuss what was proposed, and to take formal action at the next Council meeting under Unanimous Consent. He said that would then trigger a time frame to get this on the warrant for the 2010 election. He said there would be a public hearing so the public could weigh in and become more informed on it, and it would then go to referendum.

He said a question for the Council to consider was whether the existing \$500,000 threshold, which had to be reached before requiring a 2/3 vote of the Council in order to issue debt, should be increased. He said he didn't see this as a major issue, and hadn't recommended this increase.

Councilor Van Asselt said he didn't have any concerns with what was proposed, and asked if it prohibited the Council from putting a bond referendum out there.

Administrator Selig said if this were approved, the Council could choose after a public hearing to issue debt up to \$2.5 million on a single project, before triggering a referendum. But he said the Council could also choose to get the advice of the public through a referendum before it took action, and said this would be a nonbinding vote of the community, to guide the Council.

Councilor Van Asselt said in other words, making this charter change would not prohibit the Council from putting a \$3.5 million project on the ballot before it voted on it.

Councilor Clark asked if the math had been done on how close to \$2.5 million it would be if the CPI rate had been applied to the \$1 million twenty years ago.

There was discussion.

Councilor Needell said he would prefer that the number be raised to \$2.5 million and then left as it was until people got tired of it. He said the request to increase the amount could then be made again.

Councilor Stanhope said he was one who had suggested that it be tied to the CPI. He said at some point a future Council would be put in the same position of spending money on a special election where few people showed up. He noted that it had been almost a unanimous vote. He said they were being fiscally responsible by saying the cost of living would be going up.

Councilor Needell said it wasn't clear to him that the community would go along with this proposed charter change. He said this was a significant vote of confidence being asked for, and said hopefully the community would give it to the Council. He said the Council was asking residents to up the ante of what they were willing to let the Council do without their approval.

He noted that with the Town Charter forum, a tremendous amount of authority had already been given to the Council. He said while it was true that an unnecessary referendum was recently triggered, and that this would likely happen again within 20 years, it was worth going back to the community for that vote of confidence in 20 years.

Councilor Carroll said she felt confident that this was in the Charter, and said the check and balance here was that the Council had leeway to spend up to a certain amount of money. She said they were all in agreement that \$1 million wasn't enough, and it had to

be more.

But she said she wondered how much leeway the populous wanted to give present and future Councils. She said she had considered \$2 million and \$2.5 million, and noted that it was important to pick a number they hoped would be passed in March. She said she wasn't sure, and said perhaps it could be \$2 million, \$2.5 million, or \$2.5 million without the CPI increase every year.

There was discussion about why Councilor Needell had chosen 20 years.

Councilor Van Asselt said he thought they should keep it as simple as they could, and agreed that the CPI aspect should be taken out if they wanted this to pass. He said he understood what Councilor Stanhope was saying, but said politically they had to sell this.

Councilor Needell MOVED to strike paragraph B. Councilor Van Asselt SECONDED the motion.

Administrator Selig explained that this motion wasn't needed because if the indexing was eliminated, it was much simpler to make the wording changes to the Charter, by replacing \$1 million with \$2.5 million or another dollar amount.

There was discussion about what number should be used.

Councilor Needell MOVED to change the number to be \$2.5 million. Councilor Van Asselt SECONDED the motion.

Councilor Clark said the whole point of this was for the Council to have the same authorization it had 20 years ago, but in today's value. He said they only would handicap future Councils by not tying this number to inflation. He said he didn't think it was a good idea to have to bring this to the Council every time there was a problem. He noted that he had been curious about the particular CPI that was used, but said he was comfortable with the \$2.5 million figure.

Councilor Mower said having a specific number that was not a moving target might be an advantage with residents. She said she realized having to revisit this was annoying, but said perhaps now that the Council had done this, it could be revisited in 5 years rather than in 20 years.

The motion PASSED 7-2, with Councilor Clark and Councilor Stanhope voting against it.

Chair Niman said if Councilors wanted to stay a bit longer, he and Administrator Selig would talk about their recent ride with the Police Department.

Councilor Sievert MOVED to extend the meeting past 10:30 pm. Councilor Smith SECONDED the motion, and it PASSED unanimously 9-0.

XII. Nonpublic Session (if required)

None

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

Chair Niman said he thought the ride he had taken with the Police Department was very informative and educational. He noted that he arrived at the station at Saturday at 10:00 pm and called it quits at 1:30 am. He said in those 3 ½ hours when he rode with a police officer, most of their time had been spent dealing with violent issues, which had really surprised him.

He noted the recent cover story in the New Hampshire, which said University police were hassling people about open containers. He said the police officer he traveled with spent little time doing this. He said after 10 minutes in the police car, they were called to an apartment building where the tenants had wanted to end a party they had hosted. He said one of the partygoers was unhappy about this and hit the tenant with a beer bottle, knocking him down the stairs, which broke his collar bone. He said this kind of thing went on all night long, and said they had basically responded to one act of aggression after another.

Chair Niman said the statistics underreported this kind of activity. He said the police got called to altercations, but by the time they arrived, the people who got pounded on had left the scene and didn't want to make a report. He said his hands were off to Tom Richardson, who owned the Coops, and was out there all night defending his property, He said that evening, people there would be fighting in his parking lot, and when the police showed up, they would split.

He said another thing that confirmed what he suspected was that the biggest source of the problems themselves was the 17-23 year olds who came to Durham because they were bored and looking for action. He noted a kid who was arrested for beating up people who was bragging that the police couldn't do anything to him because he didn't go to UNH. He said this kid was arrested for underage intoxication.

Chair Niman said UNH students created problems too, but said a comprehensive solution had to address the young people who came to Durham and didn't go to UNH.

He said a reason he had been motivated to ride with the Police Department was that he had heard about hordes of students on Edgewood Drive and other areas. He said he hadn't seen this on the night he was out, and said he and the police officer had visited all the trouble spots.

He said he was not disputing that there were absentee landlords renting single family houses. But he noted that the police officer he was with responded to a noise complaint on Madbury Road, and when he got there, determined that the tenant owned the property with his mother, so was not an absentee landlord. He said the officer did a great job of

breaking up the party, wrote the kid a summons, and said if he had to come back, he would arrest him. He said the kids at the party got out of the house fast.

Chair Niman said he hadn't had much interaction with the Police Department previously, and said the officers did an exceptional job working together. He said they went to the Greens, where there were a lot of people milling around and also some fighting going on. He said the officers swooped in and dealt with it. He also said he was impressed with the response time. He said he could see that it was very stressful work. He said they were dealing with loud, angry people who were looking for someone to hit.

He said he was surprised to see how many kids liked to hang out on Main Street really late at night, even after the bars had closed. He said part of this was about alcohol, and part was about being seen and meeting people, and said he didn't know how to channel that energy. He said the kids wanted to be off campus and wanted to be in the commercial district, and asked how they could have a positive place to hang out so they didn't go off into the neighborhoods.

Administrator Selig noted that there were a lot of kids with rectangular looking backpacks walking around at 1-2 am. He noted that 99 Madbury Road had been the source of complaints over the past several weeks, and said they visited the site that evening. He said the owner had posted two tenants out by the front driveway to prevent anyone from coming in, and said one of these people was subsequently beat up.

He said they pulled over someone for drunk driving on Dennison Road. He said a major issue was ambient noise, down Madbury Road from the Post Office past the Greens. He said previously it had been pretty quiet from Bagdad Road on, but said now they were seeing the hordes going all the way out Madbury Road to 99 Madbury Road and beyond. He said as the kids walked with their racks of beer, they were loud. He said they weren't making enough noise to break the law, but were disturbing the neighbors. He said this was something the Rental Housing Commission would be looking at.

He said another issue was that UNH had been reaching out to students, but so many of the kids were from out of town. He said a question was how to reach out to them. He said they saw that UNH students were trying to be somewhat responsible and were guarding their properties from people who would cause issues for them. He commended the teamwork of the police officers, who kept people moving but also backed each other up in these tension ridden situations.

There was discussion of whether other Councilors would want to ride with the police officers. Chief Kurz noted that things did tend to calm down when the weather changed.

Councilor Carroll asked if UNH administration was out looking at what was going on, on weekends.

Administrator Selig said yes, and provided details on this.

Chief Kurz said there was a grant that helped pay for some of the Town's and UNH police officer, but said there were also Student Life personnel who walked around in pairs.

Councilor Needell spoke about traveling with the fire inspector on weekends, and noted that this was a very different role relative to the students.

Chair Niman said the UNH walkers acted as spotters for the police. He said the problem then was that rarely did people want to press charges. He said people had often dispersed by the time the police got there.

Administrator Selig said the sense was that at night the UNH campus was vacant, and everyone was downtown partying, But he said the campus had been so active during Homecoming that the UNH police department had no resources to supplement the Town's resources, off campus.

Chief Kurz noted that University police were making significantly more arrests on campus than the Town police were making in the downtown area.

Administrator Selig also noted that there was a lot of activity on campus to encourage students to stay there on Homecoming weekend.

Chief Kurz said there was a concert on Wednesday night that attracted a lot of people from Massachusetts and other places, and brought in a crowd that was problematic for the department on and off campus. He said there were about 30 arrests from that concert alone.

Chair Niman said there had been a lot of different kinds of enforcement people out there on Homecoming weekend.

There was discussion on the tailgating issue.

Chief Kurz said he appreciated the feedback from Chair Niman and Administrator Selig. He said there were a lot of residents who were very upset, and said he sometimes got confused about the direction the Council would like to see the Police Department go in. He said he knew there were great officers working in Durham, who were very skilled at talking. But he said they did need tools on their belts to make decisions when things didn't work out.

Councilor Smith Julian said it would be useful if in the Friday Updates there was some sense of what the arrests were for.

Chief Kurz said he was hesitant to provide this information because it took a person to make that correlated data happen. He explained the complexities of figuring out what people would actually be charged with, for various reasons.

Councilor Needell said the picture Chair Niman painted was similar to what he had seen as well when he went out with the police department, regardless of what the arrest record showed.

Councilor Clark noted that he had owned a few bars and had seen the activity downtown for 7 years. He said they knew alcohol created behavioral problems, but said he thought things had gotten a lot worse. He said there was far less beer being consumed when the drinking age was 18, not 21, and said this was half the problem, because kids were drinking beer in unsupervised settings. He said he didn't know what to do about that, but said he agreed with university presidents who said the drinking age should be 19.

He said he was open to creative solutions. But he said the bigger problem was drugs. He said while alcohol created behavior problems, drugs destroyed lives. He said he didn't know how to get at this, but said he wasn't satisfied with what the Town was doing about it. He said it was Durham's own kids who had these problems, and said once they got into this, it was really hard to get out.

Councilor Stanhope said people came from out of town looking for house parties. He said when he saw the numbers of people at house parties, he saw they were far exceeding the ability of the structure to house them. He said he didn't know how this was dealt with.

Chief Kurz said the Fire Department routinely followed the Police Department in these situations, as part of a collaborative approach. He provided details on this. He then explained that what the Police Department couldn't do was enforce a lease, which was a civil matter. He said this had previously caused problems between his department and the landlords, but said this had been resolved by landlords who now had their own property management on site.

Chief Kurz noted that parents were sent letters to everyone under 21 who got into trouble. Regarding the drug issue, he said it required a major discussion and he would be glad to have it. But he said they wouldn't be able to solve this problem alone. He said partnerships were needed for funding and other reasons, and said it would take a combination of parents, police and everyone else working together.

He noted that more kids were in rehab for marijuana than for any other drug, because it was so powerful today. There was also discussion on the prescription drug problem.

Councilor Clark said awareness that drugs were a problem in Town came first, and said hopefully that would create more active engagement by everyone who had a stake on this.

XIV. Adjourn (NLT 10:30 PM)

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

Adjournment at 11:07 pm

Victoria Parmele, Minutes taker