

This set of minutes was approved at the February 1, 2010 Town Council meeting

**Durham Town Council
Monday December 21, 2009
Durham Town Hall - Council Chambers
7:00 P.M.
MINUTES**

MEMBERS PRESENT: Chair Neil Niman; Councilor Karl Van Asselt; Councilor Jerry Needell; Councilor Doug Clark; Councilor Peter Stanhope; Councilor Mike Sievert; Councilor Diana Carroll; Councilor Robin Mower

MEMBERS ABSENT: Councilor Julian Smith

OTHERS PRESENT: Town Administrator Todd Selig; Business Manager Gail Jablonski; Town Engineer Dave Cedarholm; Public Works Director Mike Lynch; Fire Chief Cory Landry; Police Chief Dave Kurz

I. Call to Order

Chair Niman called the meeting to order at 7:03 PM.

II. Approval of Agenda

Councilor Carroll MOVED to approve the Agenda as submitted. Councilor Mower SECONDED the motion, and it PASSED unanimously 8-0.

III. Special Announcements - None

IV. Approval of Minutes

November 2, 2009

Page 13, 2nd sentence, 2nd paragraph, should read “..he said he did most of his work in the U.K.”

Councilor Mower MOVED to approve the November 2, 2009 Minutes as amended. Councilor Stanhope SECONDED the motion, and it PASSED unanimously 6-0-2, with Councilor Van Asselt and Councilor Sievert abstaining because of their absence from the meeting.

November 9, 2009 (work session)

Councilor Mower MOVED to approve the November 9, 2009 Minutes. Councilor Needell SECONDED the motion, and it PASSED unanimously 8-0.

November 16, 2009 Minutes

Page 3, 2nd line of next to last paragraph, should read “..analysis about the kind of model....”

***Councilor Mower MOVED to approve the November 16, 2009 Minutes as amended.
Councilor Clark SECONDED the motion, and it PASSED unanimously 8-0.***

V. Councilor and Town Administrator Roundtable

Councilor Needell said the Conservation Commission’s stewardship plans for the Doe Farm, Wagon Hill, Longmarsh Preserve, and the Weeks Lot had been received and were available. He said the Commission would make a presentation to the Council on them soon, and also said it was in the process of developing an action plan to implement aspects of the stewardship plans. He said the plans included a discussion on the history of forestry on these parcels, and the potential for forestry activities there in the future.

Councilor Needell also said that at its next meeting, the Conservation Commission would be hearing a presentation from the Trust for Public Lands concerning its possible project in Durham.

Councilor Stanhope noted the numerous emails that Town departments had been receiving from residents of various neighborhoods about their concerns, and he asked if perhaps these emails should instead be directed to the Rental Housing Commission in order to identify the more critical problems. He said he was beginning to see an imbalance in terms of the demands on the time of these Town departments.

Councilor Stanhope noted that there would be a discussion at the meeting as to whether it would be appropriate to bring the Town’s police force back to its prior number of employees. He said at the same time, the Town was expending critical funds to add personnel to the Code Enforcement office, but said he wasn’t sure what the cost/benefit of this was. He said he hoped Administrator Selig would speak about this.

He said over the last three years, there had been a reduction in the number of building permits. He also spoke about the practice of the code officer conducting a significantly larger number of inspections on all the permits that were drawn. He noted in particular the inspection by the code officer of replacement septic systems done by licensed engineers. He said generally speaking, this was not the practice in other towns.

Councilor Stanhope questioned the need for an additional code enforcement employee. He said he would rather see the money devoted to hiring a police officer to address things like noise complaints, rather than to a special code officer who would be taking pictures of cars in peoples’ yards. He asked that Administrator Selig provide the Council with a legal opinion as to how it was going to be able to proceed with this kind of thing. He said he wasn’t sure why the Code Enforcement Officer couldn’t do this work by reallocating his time more appropriately.

Administrator Selig said he had had a conversation with Councilor Stanhope about these issues the previous week, and had recommended that the Council have a discussion on

them He said there was a lot of concern within the neighborhoods near the downtown on impacts from students. He said Rental Housing Commission meetings had been well attended by residents, and said the Commission was in the process of putting together an action plan.

He said at this point, the Commission had been getting input from residents who were creating their own action groups to come up with solutions. He said these solutions included a licensing program or inspection program for rental properties, particularly the non owner-occupied single family house rentals. He said the Commission had also discussed changing its membership, and noted that doing this was somewhat complex because of a lawsuit that had led to the original formation of the Commission.

He said the Commission was also discussing the idea of changing uses around the Central Business District, to make single family housing a conditional use rather than an allowed use. He said the Commission was very interested in trying to more aggressively enforce the ordinances that were already in place, rather than considering new ordinances. He said this was what was driving the step-up in enforcement efforts.

Administrator Selig said the Code Enforcement office was quite busy, and said the Code Officer wore a lot of hats. He said there were a lot of rental properties in Town for which the owners sometimes knowingly and sometimes not, allowed greater occupancy than the Town permitted. He said the challenge was proving this, and bringing this forward in an assertive way that held people accountable to the letter of the current ordinance.

He said residents who were neighbors of these properties had been providing a lot of information to Town staff on the properties, including parking on the street in violation of the winter parking ban. He said enforcement concerning this by the Police Department had caused people to park on their properties, in some cases resulting in an illegal number of cars parked there. He said angry neighbors had asserted that the Town was knowingly ignoring its regulations concerning this.

Administrator Selig said in order to respond to these problems, the Town was bringing on a part-time temporary person to do selective enforcement on rental properties in Town, looking at over-occupancy as well as illegal numbers of cars parked in the front yard setback. He spoke in some detail about how complex and challenging it was to create a chain of evidence concerning illegal parking, and to do the actual enforcement.

He said they were working with Attorney Mitchell to see how enforcement could be stepped up when the Code Officer believed there was a violation and the owner would not grant access, or in situations where access was granted but Town staff had heard that beds were removed from the property just before the inspection, and were returned a few hours after the inspection. He said they were exploring whether administrative search warrants could be obtained from the District Court in order to catch people in the act of the violation or to determine that there was not a violation.

He said the Rental Housing Commission had had a lot of conversations about this, and

said he believed they were supportive of this effort. He said if the Council preferred that Town staff should step back, they should let him know. But he said he was trying to be responsive to the residents of these neighborhoods who were really suffering, and was trying to do this in a cost-effective way. He said over the next 2-3 months, this would cost \$2000-4000, and said these would be dollars that were well spent if they could preclude the need for a new statutory mechanism.

Councilor Sievert said the Parks and Recreation Committee had organized a winter carnival at Mill Pond and Smith Chapel for Saturday, December 26th from 10:00-2:00 pm. He provided details on what was planned.

Councilor Mower said the Energy Committee was actively seeking new members, and noted that committee members didn't have to be Durham residents.

She then read a memo from Councilor Smith regarding the applications heard at the December 9th Planning Board meeting, and the actions taken concerning them. Councilor Mower then asked for an update on the status of the appraisal of the Greens property.

Administrator Selig said the appraisal had been received, but said it was not being made public at this point pending ongoing discussions. He said they expected to receive the appraisal for the Greens parcel soon.

Councilor Carroll said DCAT had not met in December. But she noted that a goal of DCAT was to provide local programming, including videos created by residents. She said the previous evening and every Sunday over the next few weeks, DCAT would be broadcasting two short videos created by resident Andrea Bodo, one on the history of the Oyster River Dam, and the other on the history walk that had taken place in Durham in the fall. She said these videos were a great start to producing more local programming.

Councilor Carroll said the Integrated Waste Management Advisory Committee had met recently, and said among other things discussed was the recent newsletter that had gone out. She said about 5 residents had said the lead article on the Natural Step was inappropriate for a Town publication.

She said the Natural Step was a program on environmental sustainability that started in Sweden and was making its way around the world. She said it was a program that could be used at the municipal level, and noted that Portsmouth had embraced the Natural Step principles and was seeing good results from applying the Natural Step principles. But she said the IWMAC was pleased to get the feedback, and would take it into consideration in planning future newsletters. She noted that the Committee had been trying to be a bit more challenging in its articles.

Councilor Carroll said the Committee was looking for grant money and was also doing some other good activities. She then noted that there were several people present at the Council meeting to speak about the fact that the annual hazardous waste collection day had been taken out of the proposed 2010 Budget.

Councilor Clark said the Economic Development Committee had met recently, and said most of the meeting was taken up by a presentation from Eric Chinburg and another developer about a proposal, for a development across from the New England Center. He said there was a constructive discussion, and said there was agreement that the property was a critical buffer between the office/NE Center zone and one of the Town's neighborhoods, and that whatever was done to develop the site, this buffer needed to be maintained.

He said the EDC had also discussed whether it might be able to provide a good forum for having early community discussions on development proposals, in order to see early on what neighbors thought about these proposals before they became more concrete.

Administrator Selig said the idea of holding household hazardous waste day once every two years, at least for 2010, was a cost saving initiative. He said the setup fee every year was \$1,100, and said 40-50 residents participated each year. He noted that the concern was that people would not choose to wait to dispose of the waste and would inappropriately get rid of it, but said he hoped residents would be willing to store the waste for an additional year.

Administrator Selig spoke about a graffiti problem that had developed on some of the walls at the train station, and said a solution suggested was to have local businesses advertise on these same walls. He said the hope was that this would encourage people to visit Durham's downtown and the UNH campus. He said there would be discussion with the Durham Business Association about the idea, and said an annual fee of \$25-50 dollars would probably be charged to offset the Town's maintenance costs.

Administrator Selig showed pictures of some proposed signage at the intersection of Main Street and Pettee Brook Lane to welcome people to the downtown and the, UNH campus. He also spoke about plans to provide signage downtown that would direct people to businesses on Jenkins Court. He said the Town hoped to find some funds for this next year.

Administrator Selig said he had recently spoken with Eric Chinburg, who had a purchase and sales agreement for the Durham Business Park. He said Mr. Chinburg had said that the Northeast Rehabilitation Health Network was potentially interested in locating a rehabilitation center at the Business Park. He said the company had been working to locate at Pease, but was finding that this was a complicated process in part because the center would be funded partially by HUD funds, which didn't always coincide well with Pease rules.

He said the company was therefore looking for an alternative site, and was very interested in the Business Park. He said the center would be a 30,000-35,000 sf single use facility, involving one stand alone building for the entire site, which would be located toward the back of the property. He said the company was interested in taking over the entire property, and was interested in working with the Town and with Chinburg to be the

development partner.

Administrator Selig said a challenge was that the Business Park was a backup site and ultimately might not be chosen. He said this would depend on what happened in working with Pease. He also said the proposed use didn't fall precisely within the allowed uses for the Business Park, explaining that outpatient care but not inpatient care was allowed there. He said Chinburg was considering applying for a variance, but also was considering going to the Planning Board to ask for a modification or clarification of the Table of Uses.

He said the company's engineering firm was Appledore Engineering, which had done the engineering plans for Powerspan, a previous potential user of the site. He said this was helpful because the firm still had the plans that had been developed for the site.

He said Northeast Rehabilitation Health Network was open to allowing public access to the property. He said it would be important that development of the site would provide good views of the property from the road and the river, and would fit with the setbacks. He noted concerns about traffic impacts at that location along Route 4. He said the center would employ about 90 people, and said shift schedules would not coincide with peak traffic hours. He said a slip lane would probably be needed, and provided details on this.

Administrator Selig asked Town Engineer Dave Cedarholm to speak about recent developments concerning the Spruce Hole well drilling, and the assessment of the Oyster River Dam and Mill Pond.

Mr. Cedarholm passed around some sand and stones from the last bucket taken out from the bottom of the Spruce Hole well, which had recently been drilled. He said the well itself would be constructed soon, and said the pump test would probably take place in March.

He then updated the Council on the work being done to assess the Oyster River Dam and Mill Pond. He said twelve core samples of concrete on the bridge had been collected, and the lab was currently sampling them. He said so far, they were all very impressed with the strength of the concrete, at least in terms of how it looked, and noted that the spillway itself looked very solid. He said for the most part, the joint on the spillway between the 1913 concrete and the 1977 repair looked pretty good.

Mr. Cedarholm also said they had collected cores of the concrete in the vertical buttresses that supported the slab in the spillway, and said the concrete as well as the rebar in it also looked good. He said there was some surface weathering throughout the spillway, but said for the most part, the spillway and buttresses looked pretty good. He noted there was some serious cracking of the buttresses by the gate, and said he expected that a repair similar to what was being done at the Wiswall dam, involving a complete replacement of that buttress, would be needed. He also said some pretty extensive surface repair would be needed, and provided details on this.

He said they were still looking at the high end of the estimate Stevens Associate had provided last year. He noted that the purpose of the investigation was to see if there was punky concrete, and said so far, he had not seen this. He said he would have more updates on this in January or February, when the test results were in.

Administrator Selig said on January 11th, there would be a kick-off meeting and public hearing on negotiations with Comcast, and he noted that residents would have the opportunity to speak at this meeting. He said Attorney Robert Ciandella of the Donahue, Tucker and Ciandella law firm would be representing the Town in the negotiations, and would provide updates to the Council on the negotiation process.

Administrator Selig said he had recently provided notice to the Council that he would like to extend his employment contract, and also noted that his annual evaluation would take place. He said he was in the process of working on these things.

VI. Public Comments

Roger Spidell, 7 Nobel K. Peterson, spoke in detail about the recent resignation of School Board member Kim Clark. He read from her resignation letter, which among other things spoke about the loss of over 400 students in recent years while the School Budget had continued to go up, and asked that the School Board pass a 0% increase in the Budget.

Mr. Spidell said he was against wasting money, and was not against providing a good education for students. He said the guideline for class size at the School was 22 students, but said last year, there were 98 classes that had 12 students. He said this was a waste of money, and he asked Councilors to talk to their constituents, and to go to the next School Board meeting.

Neil Ferris, 24 Woodridge Road, said he was there representing the IWMAC, and urged the Council to reconsider the elimination of funding for this year's hazardous waste collection day, which had been working well. He said if hazardous waste was not disposed of properly, it could become a serious health issue. Mr. Ferris noted that the Committee was looking at ways to possibly save money on collecting hazardous waste by teaming up with Dover and other neighboring towns. He said if this made sense, it would take some time to accomplish, and asked Councilors for their patience in the mean time. He noted that the IWCAC was looking at ways to encourage people to buy less hazardous products, and to provide more information to them on how to properly dispose of waste.

Shelley Mitchell, 5 Denbow Road, asked the Council to reconsider the elimination of this year's hazardous waste collection day. She noted that she was a past Chair of the IWMAC, and said it was an important service that the Committee felt really good about, because it allowed residents to dispose of these wastes in the proper manner, and supported a quality environment and a sustainable community.

Malcolm McNeil, 44 Colony Cove Road, said he was present on behalf of himself and his wife regarding the discussion planned for that evening with the Trust for Public Lands. He said he was speaking about the proposal solely in the context of what he had read in the Friday Update, his brief conversation with Administrator Selig, and a review of the Minutes of the TPL's presentation to the Council on May 18, 2009.

He said he would like to be assured that if this matter went forward and involved public property, public resources and funds, further rezoning, and land swaps, there would be a transparent process by which residents would have an opportunity to be heard.

Mr. McNeill said he also had some issues of concern based on the facts he was aware of. He first asked if there was a need to conserve with Town resources a property that was unlikely to be developed anyway. He said a second point was that as recently as 2008, a portion of the property was rezoned ORLI to facilitate commercial development, and said this wouldn't have been done if water resources on the property were at risk.

He said if commercial development was viable, and as such conservation could serve a constructive environmental purpose, one would expect commercial development would have occurred by now. He said this had not happened, and said it was presumed that additional due diligence had disclosed that the proposal was not viable.

Mr. McNeill said a third point was that in his experience, conservation buys usually occurred when there was a strong probability of commercial development that was distasteful to conservation groups, or if there was an environmental asset to be conserved that was not otherwise protected. He said he wasn't certain that either criterion existed for the property involved.

He said a fourth point was that there were additional protections for the properties he believed were the subject of this proposal. He said the comprehensive Shoreland Protection Act would apply along the Oyster River portions of the properties, and also said municipal regulations were expansive and protective regarding wetland and water resources in the area, stating that this was one of the reasons for the zoning change in 2008.

Mr. McNeill said it was his understanding that a significant portion of the area under review was owned by UNH, and said the school had a history of being a reasonable steward of its land. He asked if an easement was therefore necessary in order for UNH to consciously preserve and protect its own land. He also said there were serious access constraints along Mill Road, which would further diminish the development potential of the areas allegedly needing to be conserved.

He noted a question from Councilor Clark at the May 18th Council meeting concerning what effect the proposal would have on providing infrastructure to the very few properties in the area that were zoned for development, were properties for which development was likely to occur, and for which one owner was actually considering all development options right now. He said these issues were directly relevant to his own

comments and concerns, and said no conservation action should deprive or restrict these areas from getting necessary infrastructure when they had been zoned by the community for development.

Mr. McNeill asked how reliable the appraisal done for the TPL was, how the highest and best use had been determined, and if Councilors had seen this. He also asked what value was attributed to property with the existing development constraints, and what hypotheticals might have been used by the appraisal to reach an opinion on value.

He said if UNH was involved, the Council should clearly determine what the committed level of participation by UNH was, and at what level of the UNH governance any decision had been made. He also asked whether, if there were private developers involved with the land that was the subject of the land swap and was to be developed in some fashion, there was a contract or letter of intent with the developer.

Mr. McNeill asked what due diligence the Town had done to assure that the deal was real, and that the developer was capable. He asked what assurance there was that the deal could be successful, and that the dilemma Colonial Durham had just experienced could be avoided.

He said he had the highest respect for the Trust for Public Lands. He said it was important to determine where this project would score relative to other competing projects, the extent of funds available, a time table for application, the probability of success, what collective factors needed to come together, how much money Durham was expected to contribute either in land or cash, and to what extent private developers and the University would be involved. He said after all of these questions had been answered, he believed the Town would be in a position to make an informed decision on the extent of its participation in this proposal.

Cathy Leach, Fairchild Drive, urged the Council not to vote on the Budget Resolution currently before it, and instead to revert back to Administrator Selig's default budget, which carried a 0% tax rate increase. She said this was not the time to be increasing taxes.

Ms. Leach said the items that had come forward at the last meeting had come from Councilors, who were not budget experts and didn't have the experience with budgeting that Administrator Selig had. She criticized the way in which the discussion on the Budget at the previous Council meeting had been conducted, but said she did not fault Chair Niman for this, stating that he had attempted to add order to the chaos of that discussion.

She said the items Councilors had brought forward to be added to the Budget had little or no forethought or supporting information. She said the discussion on how much to add to the Fire Department capital fund and the fund balance was insulting to Durham taxpayers, with numbers thrown around the table. She provided details on how much money each Councilor's recommended additions to the Budget came to, and said Chair

Niman was the only Councilor who had not recommended any additions. She also said he had come prepared to recommend an alternative funding option, the use of UDAG funds, and said she wished other Councilors had done the same.

Ms. Leach said the Budget as proposed now added \$300,000 to the Town Administrator's original Budget, and said this might be easier to swallow if the amount was arrived at thoughtfully and reasonably.

She also said if items that were already excluded came back at the present meeting, this would be disappointing. She said she echoed what Mr. Ferris had said about considering alternatives that would allow the Hazardous Waste Disposal program to continue with less of an impact to the general taxpayer, and she urged the Council to consider these alternatives.

Ms. Leach said she had been following the Budget process carefully, and said a comment to her by Councilor Carroll had questioned her motives in speaking out on the Budget. She spoke in detail about how disturbed she was by this. She stated again that the Budget discussion at the previous meeting was disrespectful to taxpayers, and said she had told as many as people as she could to watch the replay. She said she hoped that this evening, more Councilors would keep the taxpayers in mind, and would show increased understanding of the economic challenges many Durham residents were facing.

Dennis Meadows, 34 Laurel Lane, said he had been a Durham taxpayer for about 20 years. He noted that the Hazardous Waste collection fee for 2010 was not in the Budget, and that the Town was going to a two year program. He said he didn't like paying taxes, but said this would cost the Town more than it would save, and he questioned the assumptions behind cutting the Budget by 0.04%.

He said one assumption was that the current collections days were half subscribed, and a second was that people who had to wait two years to dispose of their materials would not be more likely to dispose of them improperly than people waiting for a year to do so. He said a third assumption was that someone who waited two years wouldn't accumulate any more wastes, and would be under the 5 gallon limit, and noted that some people already came up against that limit when they went to drop off their wastes.

Mr. Meadows said a fourth assumption was that it didn't cost the Town very much if toxic waste materials were dumped, and said the fifth assumption was that it was really important to the Town to save 0.04% on taxes, which was one dollar out of every \$2,500. He said he thought all of these assumptions were wrong, and said if Councilors thought they were right, it would be useful to provide empirical evidence to support them. He said if Councilors agreed they were wrong, he hoped they would change their minds about this Budget item.

Margaret Bogle, Croghan Lane, said she did not think it was a good idea to stop the annual Hazardous Waste collection, and said her concern was that this would make it seem that collecting hazardous waste and therefore protecting the environment from them

wasn't that urgent an issue. She also said she thought trying to combine collection services with those of other towns was a good idea.

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

Councilor Van Asselt MOVED to approve Unanimous Consent Agenda Items A-E as follows:

- A. Non-substantive correction to Thomas Elliott's appointment to the Economic Development Committee made at the December 7, 2009 Town Council meeting.
The Durham Town Council hereby moves Thomas Elliott from his current alternate member position on the Economic Development Committee to fill the unexpired regular member term of Peter Ventura, said term to expire on April 30, 2010.
- B. **RESOLUTION #2009-26** amending Resolution #1997-23 by renaming the Lois E. Brown-Wagon Hill Farm Expendable Trust Fund to the "Lois E. Brown-Wagon Hill Farm Trust Fund"
The Durham Town Council does hereby ADOPT Resolution #2009-26 amending Resolution #1997-23 by renaming the Lois E. Brown-Wagon Hill Farm Expendable Trust Fund to the "Lois E. Brown-Wagon Hill Farm Trust Fund".
- C. **RESOLUTION #2009-27** amending Resolution #2008-10 by renaming the Margery J. Milne Expendable Trust Fund to the "Margery J. Milne Trust Fund"
The Durham Town Council does hereby ADOPT Resolution #2009-27 amending Resolution #2008-10 by renaming the Margery J. Milne Expendable Trust Fund to "Margery J. Milne Trust Fund."
- D. **RESOLUTION #2009-28** creating the "Wilcox Trust Fund" with the income to be used for the further development and upkeep of the Old Landing Road Park located at the Newmarket end of Old Landing Road, and for the restoration and continued maintenance of the Mill Pond and the surrounding area
The Durham Town Council does hereby ADOPT Resolution #2009-28 creating the "Wilcox Trust Fund" with the income to be used for the further development and upkeep of the Old Landing Road Park located at the Newmarket end of Old Landing Road, and for the restoration and continued maintenance of the Mill Pond and the surrounding area.
- E. **RESOLUTION #2009-29** creating the "Hamilton Smith Memorial Trust Fund" to make repairs and perform necessary upkeep on a regular basis to the historic town-owned Chapel and the surrounding property
The Durham Town Council hereby ADOPTS Resolution #2009-29 creating the Hamilton Smith Memorial Chapel Trust Fund for the repair, improvement, and future upkeep of the Chapel and surrounding property

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

VIII. Committee Appointments - None

IX. Presentation Item

Update on discussion with The Trust for Public Land (TPL) for preservation of the Spruce Forest area and development opportunities for the Central Business District – Administrator Selig and Philip Auger

Administrator Selig said the previous May, Gregg Caparossi of the Trust for Public Lands had provided a presentation to the Council on an initiative to preserve the Spruce Forest area, which is near the Spruce Wood development. He noted that this property was rezoned in 2008 to ORLI, and said at the time this was done, there was a great deal of conversation about protection of the natural resources there. He said he thought it was important to provide the Council and the public with an update on what had occurred since that time.

He said there had been a number of conversations on efforts to preserve this property, and said there had also been ongoing discussion with the landowners, Jack Farrell and Dave Garvey, who had been looking for potential development scenarios for the property but were also interested in preserving it.

Administrator Selig said there had been discussion on possible win-win partnerships where in exchange for preserving that property, additional taxable value could be created in a portion of Town where there could be consensus for a development, primarily in the downtown area. He said there had also been discussion with the University regarding the possibility of putting a conservation easement on part of the College Woods property as a match toward preserving the Spruce Forest area.

He then introduced Phi Auger, who was on the Advisory Board of the Trust for Public Lands and worked for UNH Cooperative Extension.

Mr. Auger said he hoped to answer questions, including those raised by Mr. McNeill. He said they had come a fair ways down the track over the last month, including discussions with the University as recently as the previous week. He said he didn't have appraisal information with him, noting that it was confidential until they were further along with the process.

He said under the proposal, 170 acres of the 176 acre Spruce Forest parcel would be conserved. He noted that the parcel was located right near the Spruce Hole well and was part of its recharge area. He also said the parcel had 4,540 ft of frontage on the Oyster River, and directly abutted College Woods. He said the key funding opportunity they were looking at was a Coastal Estuarine Land Conservation Program (CELCP) grant, and noted that the parcel of land was in one of their conservation focus areas. He said the property was also listed on NH Fish and Game's Wildlife Action Plan as tier one habitat, including old field habitat.

Mr. Auger noted that this was not a project that he or one of the conservation partners had sought, and said it came to them initially from the developers and as a reaction to various

parties at the University and in the Town of Durham.

He said from the start, the Trust for Public Lands had understood that collaboration would have to result in both economic development and conservation, and he said he believed they were going down that path. He said they had engaged Durham and UNH in conversations to identify suitable swap properties, including considering placing a conservation easement over a portion of College Woods. He spoke in some detail on this, and said there was a proposal currently under consideration for a recommendation to the UNH Board of Trustees

He said the TPL had secured an option with the Spruce Woods/Tecce partners to purchase the property. He said the appraisal of the parcel had not been made public yet because of concern that if this project fell through and things reverted to the partners doing what they had previously said they were going to do with the parcel, the appraisal might influence their ability to do this.

Mr. Auger spoke in detail on what the TPL was proposing. He said a number of different scenarios had been looked at over the past 14 months, and said the following had been arrived at:

- Durham and UNH would partner in an effort to acquire the Spruce Woods/Tecce property, through a combination of cash and land.
- The Town would grant the TPL a free option on the Grange Lot, which it would then use as partial payment for the Spruce Woods/Tecce parcels.
- The Town would agree to apply the CELCP funds in March 2010
- The Town would agree to accept fee ownership of a portion of the property for use as Town recreational fields
- The Town would agree to accept ownership interest in the Spruce Woods/Tecce parcels

Mr. Auger said this approach would hopefully eliminate the need for a cash match from the Town. He said if this could be done and if they could also work through the funding applications, they were in a relatively good position to reduce Durham's financial commitment to close to zero.

He said the challenge to developing the Spruce Woods parcel was that the landowners were in negotiations with firms to build intensive mixed use development, which would result in impacts to water quality and quantity, sprawl, and increased traffic. He noted that these things had not been studied intensively yet.

Mr. Auger said an opportunity with the proposal was that it would perhaps expand the tax base while conserving a significant area. He said there might be a cost avoidance concerning the Town's water supply, and also said there would be the opportunity to add recreational fields in the portion of the property abutting Mill Road. He said there was also the opportunity to leverage things through a public-private partnership.

He said the TPL would pay for all related due diligence, and also said it was thought that Durham's contribution could be leveraged 10 to 1, using the Grange lot, which had a value in excess of \$600,000. He also said the TPL would take the lead role in raising the

necessary funds. He provided a flow chart that showed in detail how the project would come together.

Mr. Auger said if they couldn't get the College Woods portion of the proposal, the grant application to CELCP would not be as good as it otherwise would be, noting that it was a very competitive grant program.

Councilor Sievert asked how much of College Woods had already been lost.

Mr. Auger provided details on this, and on what portion of College Woods could be considered expendable in the future, if there was a decision on a core part of it that needed to be conserved.

Councilor Mower said her understanding was that UNH procedures meant that the time frame might not work for the CECLP deadline.

Mr. Auger said the TPL had urged UNH to work through things with this deadline in mind.

Councilor Van Asselt questioned whether such a complicated proposal could come together and receive the endorsement of the Council by March. He also questioned what unique resources were involved with this proposal.

Mr. Auger noted that the Wildlife Action Plan and the CECLP program had ranked the resources on the Spruce Forest property very highly. He noted the unusual high order riparian frontage on the Oyster River, and also spoke about the old field wildlife habitat there.

Councilor Van Asselt said he couldn't imagine that the issues related to this process could be addressed by March. He also asked what happened to the Grange if it was put up for collateral.

Administrator Selig said the application was a stronger one if the Town participated, and said it needed to have either cash or property as a match. He said over the last 3 months, there had been discussion about numerous Town owned and University owned sites that might be used as the match, including the Leawood Orchard, the Depot Road site, the Durham Business Park site, the Pettee Brook parking lot, the Store 24 parking lot, and the Town Offices lot. He provide details on reasons why none of these sites was suitable in this instance.

He said ultimately, the Grange came to mind, noting that it was not currently being used, was in decline, had been slated as a possible access point to the Plaza, and that the Spruce Forest property owners potentially had an interest in it. He said if it were thrown into this project and used as the match, and if the CECLP funds were awarded to the Town, the ownership would be transferred to developers, who would then have a fee interest stake in the downtown.

Administrator Selig said they could potentially use it as a way to interface with the owner of Mill Plaza to come to some agreeable development plan for that parcel. He said interest had been expressed in doing other development in the downtown area, and the Grange would provide a footing in the downtown to work from. He said the building itself could either be moved to a different location or torn down, and a new development would take its place.

He said the Grange had been appraised at \$650,000, which represented removing it and assembling the parcel with a parcel(s) around it to create a mixed use building with commercial/retail on the first floor and student housing above.

Chair Niman said half of this story seemed to be missing, which was the part about how the development in the downtown was actually going to occur.

Mr. Auger said the development density available out in the Spruce Woods area would get transferred to some project that included the Grange and some other development in downtown Durham. He said he wasn't privy to what that development might be, other than what Administrator Selig had outlined.

Administrator Selig said he would complete this story to the best of his knowledge. He first said there was a portion of the community that felt the Spruce Forest area should be conserved, and a portion of the community that felt it was one of the few remaining areas of taxable land in Town, and therefore should be developed.

He said Mr. Farrell and Mr. Garvey had tried to create an elegant solution for this, where everyone would get part of what they were looking for. He said the way they were proposing to do this was through the conservation of their Spruce Forest area, in exchange for some intensive development in the downtown of Durham.

He provided details on how this essentially would need to be a quid pro quo, in that the Town would have to be open to examining its zoning in the downtown and considering allowing additional height and density, in order to get to a dollar threshold needed to offset the land out at Spruce Forest that would be moved into conservation.

Administrator Selig noted that when the potential JLB project in that location had been considered a few years back, Mr. Farrell and Mr. Garvey had talked about a \$200,000,000 investment number. He said the goal now would be to have a substantial threshold of new development downtown such that it wouldn't be necessary to develop out at the Spruce Forest area, and to build consensus around the additional density downtown in exchange for the knowledge that open space would be preserved in the Spruce Forest area.

He said an external development company would be selected to do the development project downtown, and said there would be an expectation that the Town would work closely with the company to help create the opportunity for a taxable development

downtown. He said transfer of the Grange as a match would be contingent in some way upon reaching that development dollar threshold downtown.

Councilor Stanhope said he was frustrated that he was hearing the same smoke and mirrors the Council had heard during the TIF discussion, when the developers had promised that there were resources to stand behind the development of the Stone Quarry Drive site, but then the situation changed.

He also questioned that the land at Spruce Forest had a value that would be offset by the value of the Town's asset. He spoke in some detail on this, and said in doing some numbers on this, it seemed to him that the developers would have to give the Town a very large check along with the land, in order to get the Grange.

Councilor Stanhope also noted that they were only 90 days away from the grant deadline, when the developers didn't even want to show their cards yet. He said he would hate to see the Council spend a lot of time on something that he didn't think was economically feasible.

Chair Niman said he agreed with Mr. McNeill that this was a strange kind of arrangement being proposed. He then explained that he and Administrator Selig had met with a few developers who were interested in acquiring some properties downtown. He said one had talked about the idea of constructing several 6-7 story buildings downtown, and then leasing office space in these buildings to the Town and the University.

He said an odd aspect of this scenario was that while the Town would get property taxes from this development, the Town would also be paying lease fees to use the municipal space that would be constructed as part of this development.

Chair Niman said at a meeting with a second developer, Mr. Garvey had painted the picture that property owners downtown would magically sell their land at reasonable prices. But he said the idea again was to build municipal structures that the Town would then lease from the developers. He said he still hadn't figured out why the Town would want to commit to doing that.

He said he understood why the Trust for Public Lands wanted to tie the conservation and development ideas together, but said he didn't see it happening, because he wasn't sure that property owners downtown would want to sell. He also said in order to get their money back, the developers would need to use properties downtown more intensively. But he said he wasn't sure that he or the public was interested in seeing 6-7 story buildings downtown.

He noted that the second developer had talked about purchasing Mill Plaza, and doing a combination of 80 units of elderly housing, retail, and 200 beds of student housing, along with keeping the grocery store. Chair Niman stated again that there was this whole other end of the land swap proposal that needed to be put together, and said he just didn't see it happening.

Administrator Selig said it became more real and understandable if the community decided that it wanted to conserve the Spruce Forest area. He also said the Grange, which had an estimated value of \$650,000, would strengthen the grant application. But he said when the discussion was expanded to include the rest of the downtown, it became more precarious.

He noted that the Town would need to see the appraisal for the Grange and determine if it was fair, and would also need to understand more clearly how the value of the Grange helped to meet the match. He also said there was still the unanswered question of whether the University would be willing to include a portion of College Woods as part of the proposal.

Administrator Selig explained that the idea of creating the extra value downtown had come from his questions to Mr. Farrell and Mr. Garvey about how to satisfy the development portion of the community. He said the discussion in response to this was that perhaps the Town could evaluate the zoning in the downtown, and Mr. Farrell and Mr. Garvey could bring in a developer interested in development in the downtown.

He said this was to a certain extent a leap of faith unless the development dollar threshold was tied to the transfer of the Grange. He said a question was what that threshold was, and also what would happen if the grant funds were received and the development dollar value then wasn't realized. He said there would still be a great temptation to move forward to conserve the property.

Councilor Needell noted that in order to move this ahead by March, the Council needed to agree to include the Grange in the deal. He questioned when all of the other discussion on the proposal would need to occur. He also said that if one felt the goal was to conserve Spruce Woods, perhaps the land swap was a good deal. But he said if the goal was economic development, guaranteeing a certain amount of development would require a lot more work, and said he didn't think there was any way to get there by March.

There was discussion between Councilor Needell and Mr. Auger that there would be an 18-24 month period during which that additional work would need to be completed.

Councilor Needell noted that the Town would still have the option to turn down the proposal after all of this work was done. He then said he was interested in hearing more about the proposal, and seeing where it could go. He said the conservation aspect was very intriguing, and said this weighed heavily with him.

Councilor Clark said this project had started out as an interesting economic development project on the Spruce Forest parcel. But he said he was now having a hard time following the money concerning the land swap proposal.

Chair Niman said it was his understanding that in part to make the numbers work, a developer would have to provide some money. He and Administrator Selig said the only

dollars numbers they knew about was the appraised value of the Grange.

Mr. Auger said those numbers would have to be firmed up between now and March, but said it wasn't worth putting this together unless there was the confidence that the Council wanted to explore this, down the road. He said the TPL would be using the match of the University property, the Grange, and the CECLP fund to buy out Mr. Farrell's and Mr. Garvey's interest in the Spruce Forest property. He said the developer would be able to take the density and transfer it to a downtown location or locations. But he said the problem was that they didn't know right now what the extent of a proposed development in the downtown area would be.

Chair Niman said the second developer had made the representation that he would have to provide some money in order to make the deal work, and that in order to get that cash back, he would need to be able to develop some property in Town.

Councilor Mower said it was her understanding that the developer would get the benefit of a tax credit, by contributing to the conservation land, but she said he would need considerable density in order to get that benefit.

Mr.. Auger noted that the developer might have been willing to contribute some money before it had seemed that the University was interested in providing some of the match.

Councilor Sievert said he wondered what the real value of a development out at Spruce Forest was. He also said there was the question of where to come up with the density downtown. He then noted that the recent charrette had indicated that there were already some players interested in development of the downtown, and he said the question therefore was why this proposed development transfer was needed.

Administrator Selig said he and Chair Niman had raised the same question. He said Mr. Farrell and Mr. Garvey were trying to pull together a community-wide buy-in around this project. He said if there was a way to tie a development value downtown to the transfer of the Grange, there would be some leverage applied to the Town to work with a potential developer to create that value. He said the thought was that people who wouldn't otherwise be interested in additional density downtown would be willing to support it if they knew that a lot of open space would be preserved.

Councilor Needell asked Mr. Auger what the TPL wanted from the Council at this point.

Mr. Auger said they had wanted to get the conversation going. He said he had heard the Council's concerns, and said he and Mr. Caparossi would come back and talk with the Council again.

Councilor Carroll asked if the TPL had done this kind of project before, and Mr. Auger said this project was more complicated than others the organization had done.

Councilor Carroll noted that Councilors had various opinions about the Spruce Forest

property, and Chair Niman suggested that Councilor Carroll could put together a Council Communication on this, and that there could then be a discussion on it an upcoming meeting.

The Council stood in recess from 9:13 to 9:24 PM.

X. Unfinished Business

- A. **PUBLIC HEARING AND ACTION ON RESOLUTION #2009-30** awarding the construction contract for the Dover Road Pump Station Rehabilitation Project to Weston & Sampson CMR, Inc., for a total bid price of \$1,629,500, amending the SRF loan for the project from \$1,231,055 to the new total loan amount of \$1,997,840, and authorizing the Town Administrator to sign the associated contract documents

Councilor Van Asselt MOVED to open the Public Hearing. Councilor Stanhope SECONDED the motion, and it PASSED unanimously 8-0.

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

Councilor Van Asselt MOVED to close the Public Hearing. Councilor Sievert SECONDED the motion, and it PASSED unanimously 8-0.

Councilor Van Asselt MOVED to adopt Resolution #2009-30 awarding the construction contract for the Dover Road Pump Station Rehabilitation Project to Weston & Sampson CMR, Inc., for a total bid price of \$1,629,500, amending the SRF loan for the project from \$1,231,055 to the new total loan amount of \$1,997,840, and authorizing the Town Administrator to sign the associated contract documents. Councilor MOWER SECONDED the motion.

Councilor Needell noted that item 1 in the accompanying letter said a reason for the increase was that some design elements were added after the completion of the original estimate. He asked for details on what these elements were.

Town Engineer Dave Cedarholm said some controls were added to the electronics, and improvements were made to the HVAC system inside the building. But he said most of the increase resulted from the difficulty in estimating the earthwork that was involved for the project. He provided details on this, noting that it had been difficult to predict. He also said the Town hadn't gotten as many bids for the project as it had wanted.

Councilor Needell asked what impact this increase would have on the Town Budget.

Mr. Cedarholm said the previous estimate was that the cost to the Town would be \$300,000, and said the cost now was \$400,000. He noted that the State had said it would lend the Town as much money as possible, and had ARRA money to back that up. He said in the end, the Town would have a 50% principal forgiveness type grant.

Councilor Needell asked if there was a dollar impact on the 2010 Budget, if this expenditure was approved.

Administrator Selig said Ms. Jablonski would provide this information for the Council. He also noted that the cost increase would only affect sewer users, and also said he believed the Town would still be paying less for this project than had originally been anticipated.

Councilor Needell said he just wanted to be sure where this additional money would be coming from.

Ms. Jablonski arrived at the meeting, and said the Town had originally budgeted \$950,000 for the project, and it was approved for \$1.5 million. She said the cost was now up to \$2.3 million, and said the Town had already bonded \$233,350 and was paying on it. She said the Town now had the SRF loan, and would pay 50% of this. She said this would not impact the 2010 Budget, and said the first payment would probably be due in 2012.

Administrator Selig asked how much that would be, and Ms. Jablonski said she didn't have that number. She said the Town's share would probably be more, and she provided details on this.

Councilor Van Asselt received clarification that the sewer users would pay the debt service, so the increase didn't impact the tax rate.

Administrator Selig noted that the impact on sewer rates had been projected out in the Fiscal Forecast.

Councilor Needell said this was a significant increase in the expenditure, and said he had just wanted to be sure who was paying for it, and where.

The motion passed unanimously 8-0.

- B. PUBLIC HEARING AND ACTION ON RESOLUTION #2009-31** awarding the construction contract for the WWTF Aeration Blower upgrade to Penta Corporation for a total bid price of \$537,700, amending the SRF loan for the project from \$625,000 to the new total loan amount of \$678,8000, and authorizing the Town Administrator to sign the associated contract documents

Councilor Van Asselt MOVED to open the Public Hearing. Councilor Sievert SECONDED the motion, and it PASSED unanimously 8-0.

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

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

Councilor Van Asselt MOVED to approve RESOLUTION #2009-31 awarding the construction contract for the WWTF Aeration Blower upgrade to Penta Corporation for a total bid price of \$537,700, amending the SRF loan for the project from \$625,000 to the new total loan amount of \$678,8000, and authorizing the Town Administrator to sign the associated contract documents. Councilor Sievert SECONDED the motion, and it PASSED unanimously 8-0.

- C. Continued discussion and final **ACTION ON RESOLUTION #2009-32** approving and adopting the FY 2010 Operating Budgets, Capital Budget, and the 2010-2019 Capital Improvement Plan

Chair Niman summarized that the Town Administrator had proposed a Budget for 2010, and at the last meeting the Council had talked about amendments to that Budget. He said now, a motion would be made and seconded to approve that amended Budget, and then changes could be made to amend the Budget further. He said Councilors would then need to decide whether they wanted to vote for the amended Budget. He said if they voted against it, they were basically voting for the Town Administrator's recommended Budget. He said if they couldn't come to agreement that evening, they could either meet on another evening, or default to the Town Administrator's Budget.

Councilor Needell said if the amended Budget failed, he thought it would be in the Council's interest from a legal perspective to specifically move and adopt the original Budget, rather than letting it be the default Budget.

Administrator Selig said in terms of the ability to expend funds, there wasn't a legal difference. But he said he thought it was healthy for the Council to grapple with the Budget and to adopt something. He said typically, there wasn't a large divergence between the Town Administrator's proposed Budget and what the Council adopted, noting that in one out of the last nine years, the Council couldn't reach consensus, and allowed the default Budget to go into effect.

He noted that there were elements in the Resolution that would need to be addressed at a later time if the Council chose to leave the Administrator's Budget unaltered and become the Budget by default. He said this would include disentangling the UDAG monies from the Stone Quarry Drive TIF district; transferring revenues from the Depot Road fund to the General fund; and transferring municipal transportation improvement funds to the General Fund. He said this could be done at any time in 2010.

Councilor Mower said if the Resolution was not approved, her understanding was that at that point they could make amendments.

Chair Niman said he would like to see someone move the Budget Resolution in the Council's packet, and said if they then wanted to change it, he would like Councilors to propose amendments. He said after this was done, he would then like the Council to vote on the Resolution as amended. He said if this failed, the default Administrator's Budget

would pass unless the Council decided to meet on another day between now and December 31st to discuss the Budget further.

Councilor Mower asked if that could be done at the present meeting, and Chair Niman said he thought this discussion could be incorporated in the way he had outlined, before the Budget was voted on. He said if the Council didn't come to some resolution, or the Budget didn't pass that evening, they would have to decide whether to meet again or not.

Councilor Mower said she had anticipated incorrectly that this Resolution would identify the line items discussed and generally agreed on by straw vote at the last meeting.

Administrator Selig said the Resolution was reflective of the Administrator's proposed Budget plus the items the Council came to rough consensus on at the last meeting. He said \$200,000 was added to the Fire Department equipment capital reserve fund, 50% of which would be funded by UNH; \$200,000 was added to the contingency fund to bolster the fund balance; and an additional \$30,000 was taken from the UDAG fund for Master planning/zoning rewrite.

Councilor Mower noted that the UDAG fund was the community development expendable trust fund for economic development.

Councilor Van Asselt MOVED Resolution #2009-32, the amended FY 2010 Operating Budgets, Capital Budget, and the 2010-2019 Capital Improvement Plan. Councilor Stanhope SECONDED the motion.

Councilor Van Asselt MOVED to amend Resolution #2009-32 by taking \$200,000 from the contingency line out of the Resolution and out of the proposed Capital Budget. Councilor Sievert SECONDED the motion.

Councilor Van Asselt said he was fully aware that the proper amount for fund balance was subjective. He said there was \$740,000 in the fund balance at the end of the year, and the proposal was to add \$200,000, but said there was no data to support putting that in. He said the reason for fund balance was to take care of short term, small emergencies, but not large ones. He said a second reason for fund balance was to have money in the bank when the Town went to borrow money.

He said there was as yet no formula to determine how much fund balance was needed, and said to throw \$200,000 into this fund therefore didn't make sense. He said it made more sense to leave the fund balance where it was for now, and in 2010 to have a work plan item for the Council to develop a fund balance policy. He also said bond counsel could be utilized to determine what the fund balance needed to be in order to get the bond rating the Town needed in order to get good interest rates on the bonding it planned to do in the future.

Councilor Van Asselt said Administrator Selig and Ms. Jablonski could also look at the things that fund balance had been used for over the last 8-10 years, in order to make

projections. He said a policy could then be developed based on expected short term emergency expenditures and the desire to keep a good bond rating. He said this could then be the basis for a specific Councilor goal on how much of the operating Budget was used each year for fund balance.

He said if people had specific reasons for increasing the fund balance by \$200,000, he was willing to listen. But he said he had sat at the Council table for six years, and no one had given him a good reason on what the fund balance should be.

Councilor Mower said at a previous meeting, she had asked about a fund balance policy, noting that some other towns had this. She said she agreed this was something for the Council to look at. She also said she didn't believe Councilors had been throwing numbers around about adding to the fund balance. She said the auditor had said the acceptable range was from 5%-17%, but Durham was at 2%. She said the idea expressed by Councilors was to begin to build up the fund balance in small increments, and she noted that there was some variation on exactly how much individual Councilors had wanted to add.

She said one way to do this was by not touching some funds that were designated, such as the contingency fund, which was intended for short term emergencies. She said this fund had been cut back from \$100,000 to \$50,000 over the past few years. She also noted that emergency funding like FEMA funds wasn't available for all unseen events.

Councilor Mower said it was reasonable for the Council to choose not to add to the contingency fund, but stated again that it was not fair to say that Councilors had been trying to do add to it without any rhyme or reason. She said good arguments had been put forward by Administrator Selig and others about having an adequate fund balance.

Councilor Clark said he agreed with part of what both Councilor Van Asselt and Councilor Mower had said. He said the fund balance was on the low side, and said they needed to find ways to grow it. But he said they needed to figure out their financial objectives without passing this on to taxpayers. He noted the idea of selling some Town assets to benefit the fund balance.

He said it was prudent to try to grow the fund balance to fit somewhere within the guidelines. He said he assumed the fund balance had helped to pay costs incurred by the ice storm, and said he assumed those kinds of things would happen on a regular basis. But he said he didn't think this was the year to put tax payer money into the fund balance, when it wasn't a year that taxpayers themselves were investing.

Councilor Mower said although she wasn't comfortable with not investing in the fund balance for next year, she was willing to take out the \$200,000 for now as long as the Council would look at some other things that were a true investment for the benefit of the Town. She also noted that she was hesitant to vote on an individual Budget line item without knowing what some of the other options were.

Chair Niman said unfortunately that was the process.

Councilor Stanhope said he agreed with Councilor Clark, stating that it was in good years that people put money into investments. He also said there were some other things that had to be addressed now in the Budget, and said he therefore agreed with Councilor Van Asselt's motion.

Councilor Needell said he agreed with Councilor Van Asselt that they needed to understand better how large the fund balance should be, and noted that he thought any look at this would determine that it should be larger. But he said he didn't think it made sense to take money from the taxpayers to fund it. He said the Council needed to work out a long term strategy, which involved not spending fund balance and hopefully getting it to grow as a result of having surplus funds from good years when revenues exceeded projections.

Councilor Carroll said this was a rainy day fund, and said if this was a different kind of year, she would be looking to keep the \$200,000 in the Budget. She also said there were some other important programs and services they would be talking about that evening, and said she thought it would be better to use the money for them.

Administrator Selig said a very viable use of fund balance was to offset expenditure increases when times were difficult, which was what had been done over the past few years to keep the tax rate on projection. He noted that based on discussion at a recent Council meeting, when the tax rate was set in 2010, additional fund balance would not be used to come in artificially at the \$6.52 number, because this would bring the fund balance down to a critically unstable amount. He said this would be the first time since he had worked in Durham that this \$6.52 number would be a projection, if revenues and expenditures didn't come in as projected.

The motion PASSED unanimously 8-0.

Councilor Carroll MOVED to amend Resolution #2009-32 by adding \$4,500 back to the Budget to so that the Hazardous Waste program will take place in 2010. Councilor Mower SECONDED the motion.

Councilor Carroll said she was Chair of the IWMAC for several years, and said the Committee had noted that more and more people were taking advantage of the program over time. She said the Committee, as an advisory committee, had therefore asked the Council that the program be set up to run every year. She said at the time, the Council looked at the data provided and had approved this.

She said this had now been an ongoing program for several years, and noted that there had been a few years when people were turned away because the program was full. She said the committee had therefore looked at better ways to deal with the wastes, including a permanent location at the transfer station where people could bring the wastes. But she said this approach was very complicated because of EPA regulations.

She said the Council had spoken before about how to get more residents to volunteer to be on committees, and she noted that both current and former IWMAC members had come to speak that evening because they took their volunteer positions seriously, and knew about the hazardous waste issue. She said it behooved the Council to listen to them. She said this program had a minimal cost, compared to the work needed to improve something like the water quality of Great Bay. She said it surprised her that they were even spending so much time on it.

Councilor Carroll said the IWMAC had considered regional solutions for hazardous waste collection, but said if this were done, the Town would still have to pay to transport the wastes to a regional location. She said there was also a suggestion that people should have to pay to dispose of their hazardous wastes. She said it was interesting that they wanted to charge people to do the right thing, while people who did something wrong didn't have to pay for it.

She said the Town had a workable program at a nominal price, and said if they tried to create another approach in order to save some money, they would probably wind up spending more money on staff time. She recommended keeping the program as it was and funding it at \$4,500. She noted that last year, the program had cost \$3,762, and the remaining money had gone into the fund balance.

Councilor Clark noted that this Budget item wasn't on Administrator Selig's list. He also said he thought a once a year collection wasn't working for most residents, based on the numbers of residents who took part in the program every year. He asked if there was perhaps a better solution that was more in real time, would work for everyone, and would pay for itself. He also asked whether there was a place the Town could store these wastes so residents didn't need to store them.

Councilor Carroll said an aspect of this issue was the importance of setting an example to the younger generation as well as to other towns. She also noted the Council's sustainability goals. She said she believed the IWMAC had investigated alternatives, but said she believed it might cost more to participate with Dover. She said it was valid to investigate other ways to handle the collection, and suggested determining whether Administrator Selig could ask the DPW to check into alternatives. She also said perhaps there could be money at the DPW to handle this.

Councilor Needell said he thought it was a poor choice for Administrator Selig to remove this item. He asked him to address why he had done this, and whether he had changed his recommendation based on what he had now heard.

Administrator Selig said the Town was beginning to see tangible ways in which levels of service were being interrupted in some way, and said there were numerous examples of this in the Budget. He said he took full responsibility for the Budget cuts that had been made.

He said the Hazardous Waste Collection program was a good program which was very important to a number of people in town. He said 40-50 people participated each year, and he noted that they hadn't had to turn people away in recent years. He said his feeling was that in a difficult year, everyone needed to shoulder some of the consequences of holding the line on spending and reducing spending. He said he didn't think it was too much to ask residents to hold on to their hazardous materials until the program was renewed.

Administrator Selig said he understood fully the perspectives raised that evening, but he explained how the once a year program hadn't necessarily worked for him personally, as a homeowner. He also noted that the program cost for 2011 was likely to be higher because there would be more people needing to recycle hazardous materials. He said he accepted this, but said the goal right now was to try to keep the 2010 Budget as low as possible. He said if the Council chose to add this line item back, he wasn't opposed to that, but said it hadn't risen to the top of his list when he developed the Budget, and still wouldn't today.

Councilor Needell said he had used the program for the first time last year, and said it had worked well. He noted that the cost savings from not funding this now was \$1,200, which was the setup fee, not \$4,500, because those people who didn't bring their hazardous waste this year would simply bring it next year. He said he was disappointed that only 50 people had taken advantage of the program, and said it obviously needed some work. He noted that if more people used it, it would cost even more.

He said hopefully the program would take place in 2011, and also said he agreed with Councilor Clark that he was reluctant to get to this level of tinkering with the Budget that Administrator Selig had provided. He said if the Council voted not to fund the program now, it was not telling Administrator Selig not to have a hazardous waste program. He said he would like Administrator Selig and the DPW to find a way to make this program exist in 2010, given the current Budget, but said he was not asking to put \$4,500 in the Budget to spend on the program.

Councilor Sievert said what he had heard was a gross over-reaction, and said he didn't think anyone in their right mind was going to dump their hazardous waste in the backyard if the program wasn't funded this year. He also said they were only going to get rid of the program for this one year, and then would bring it back.

He noted that the DES website listed companies that would dispose of hazardous waste. But he said people who had smaller containers of waste would save them, and said the reason why they were seeing less people participating in the program was that product formulations were changing. He said it was not correct that the Council was not being sustainable by not doing the program this year.

Councilor Stanhope said it cost about \$85 per person for the program, and said he didn't see why Durham couldn't perhaps become the depository a few times a year, and do some tradeoffs with other Towns. He said they all would like to see the program

continue, and he asked Administrator Selig to find some way to do it.

Councilor Carroll said she would vote for this motion because it would be penny wise and pound foolish not to do so. She spoke about the risk to children when there were toxic materials around, and said the best thing to do was to deal with these materials. She also said she applauded the interest on the Council in revamping this program, and said while the IWMAC had tried to do this several years ago, it was very difficult. She said it might be easier now, although not less expensive, but she said it would be better.

Administrator Selig said regardless of the outcome of the vote, he would work with the DPW to evaluate whether there was a better approach. He said if funding allowed, regardless of this vote, they would try to pull something together.

The motion FAILED 2-6, with Councilor Carroll and Councilor Mower voting in favor of it.

Chair Niman recommended that the Council address Agenda Item XI B and then go back to talking about the Budget. Councilors agreed to do this.

XI. New Business

- B. Discussion regarding the potential sale of a 0.079 acre parcel of vacant land located in the Pettee Brook parking lot behind the former Don Thompson Real Estate building to Ionian Properties, LLC, to promote economic development within the downtown core

Administrator Selig said the purpose of the Agenda item was to provide an overview to Councilors about discussions with the owners of the former Don Thomson property about the possible sale to them of a portion of the Pettee Brook parking lot. He said the purpose of the nonpublic meeting was to determine a potential sale price for the lot. He said he hoped to cover both items at this meeting so he could follow up with the Costas, and hopefully bring something back to the Council at the next meeting.

Administrator Selig provided further details on the proposed purchase, and said a purpose of the transaction from the Town's point of view would be to promote economic development downtown. He said the Costas wanted to construct a new mixed use building on the former Don Thompson property, along with some parking. He said the parcel the Town owned would allow for an additional four units of housing to be added to the proposed building. He said the Town would still retain an easement across the parcel for sewer, water and pedestrian access.

Chair Niman determined that there was agreement that the Council would talk about a price for the parcel in nonpublic session. He asked for a motion to extend the meeting, with the understanding that the meeting wouldn't end until after the Council went into nonpublic session.

Councilor Sievert MOVED to extend the meeting beyond 10:30 pm. Councilor Needell

SECONDED the motion.

Councilor Needell said he wasn't sure that the public portion of this discussion had been completed, and noted that he had some questions to ask.

The motion PASSED unanimously 8-0.

After further discussion, it was agreed that Councilor Needell would ask his questions concerning XI B before returning to the discussion on the Budget.

Councilor Sievert and Councilor Stanhope recused themselves and left the table.

Councilor Needell noted that the owners wouldn't actually use much of the property the Town would be selling to build on but would use it in order to get the greater amount of density. But he said he was confused about the parking aspect of this parcel in the future.

Administrator Selig said the property had been appraised, and there were two numbers provided, one of which was the assemblage value of \$280,000 if it was put together with the larger property, and the value of \$10,000 if it was based on land available for parking spaces. He said if the Town was open to selling the parcel, the question was what price it was willing to sell it for, realizing that most of it wouldn't be used for building and would be used for density purposes.

He said the appraiser, Peter Knight from the Stanhope Group, had estimated the present value in incremental property taxes, which projected to \$235,000 to the Town if there were 4 new units in the development, and the Town was bringing in the tax revenue from this over time. He said assuming this was a tax-producing asset the Town had and it wanted to sell it, it was estimated that the value of the property would be \$235,720, and said this assumed the tax rate would not change over the 60 years, which was unlikely.

He said assuming the tax rate did increase at 3% per year, the estimate of present value was \$343,691. He said based on this, the Town should pay the developer to take the property because it would add value to the Town.

Administrator Selig said the Costas were not interested in purchasing the Town property for \$280,000, but he said he wasn't interested in selling it for \$10,000. He said he therefore wanted to talk to the Council about this in nonpublic session. He said the Costas were able to say what they were willing to pay for the parcel, and said the nonpublic aspect of this discussion was simply what the Council was willing to sell the parcel for.

Councilor Needell said on page 12 of the appraisal, there was a paragraph he found somewhat offensive. He read this paragraph, regarding the hotel project that was built in 2005 at the intersection of Route 108 and Main Street. He said it was dangerous to throw around characterizations regarding attitudes and actions of prior Councils, and also said he didn't see the value of this kind of characterization in an appraisal. He asked if it was typical for an appraisal to have this kind of language, and said he felt it had no business

being there.

Administrator Selig said an appraiser tried to provide a fair characterization of the development potential of a property at a given point in time, given various factors.

Councilor Needell said he didn't feel this was a fair and balanced portrayal.

Administrator Selig noted the Costas were present if Councilors wished to speak with them.

Mr. Costa said there would be 17 apartments with four bedrooms in each apartment, with commercial at the Rosemary Lane level. He said there would be parking at the Pettee Brook Road level, with a parking garage underneath this. He also said there would be accessible apartments on the Rosemary Lane level.

There was discussion about what the acreage under discussion would be used for, with Councilor Mower noting that it would be good if there was an improvement over what was there now.

Mike Sievert of MJS Engineering, said he had done the site design, and said there would be an improvement to this 0.08 acre parcel. He said most of it was paved now, and said with the proposed development there would be no pavement, and it would be used for density, drainage, and better treatment of stormwater.

There was discussion about how the B. Dennis Town Design design fit with this proposed development. Administrator Selig said their design envisioned turning Main Street back to two way travel, making Pettee Brook Road into two-way travel, creating a through street extending Jenkins Court out to Madbury Road, and creating an additional through street from the bank out to Madbury Road. He said there would be room between the Don Thompson building and the far edge of the Pettee Brook parking lot for another access.

Asked by Councilor Clark if the Costas' proposed development would fit with that plan, Administrator Selig said yes. He said right now people didn't typically want to park at the Pettee Brook lot and walk to the downtown because it wasn't a pleasant area to walk around in.

He said the proposed development created the opportunity for retail in the Pettee Brook area, which made it desirable for people to park there, shop and then walk over to Main Street. He said he was therefore very supportive of this project and was helping to move it through the process. He said it fit with Council goals and made a lot of sense for everyone involved.

Councilor Sievert and Councilor Stanhope returned to the table.

X. C. Continued discussion and final **ACTION ON RESOLUTION #2009-32** approving and

adopting the FY 2010 Operating Budgets, Capital Budget, and the 2010-2019 Capital Improvement Plan

Councilor Mower MOVED to amend Resolution #2009-32 by restoring the 19th police officer position back to the Budget. Councilor Needell SECONDED the motion.

Councilor Mower said she had heard about this Budget item from members of the Police Department and members of the community over the last few weeks. She said she thought the situation might be at a tipping point. She said while the additional officer might not address all the problems being experienced, there were several good reasons for restoring the position. She said among other things, it was an investment in the downtown neighborhoods.

Councilor Stanhope said he would vote to support this motion because the situation in the neighborhoods near the campus had reached a critical level. He said he thought this was a police enforcement matter, noting that emails from residents often spoke about large groups of people wandering around and onto peoples' properties. He said these were not code enforcement issues but rather violations of either the noise ordinance or private property rights.

He said he thought these problems were going to grow because the pricing of properties in the neighborhoods was no longer a barrier to parents buying them and putting their UNH students in them. He also said one of the Town's anchors of attraction for families used to be the school system, but said unfortunately it had lost much of its reputation.

He said a strong presence would be needed in the neighborhoods, and said restoring this position would only be bringing the force back to what it had previously been. He noted the statistics over the past few years, and said it was pretty clear there was a crisis which had to be addressed.

Councilor Sievert said he agreed, and noted that he had voted for this when it was brought up previously. He said this was a piece of the Budget which if not brought back now would cost a lot more in the future. He said he was in favor of bringing this into the Budget.

Administrator Selig said at the Rental Housing Commission meeting the previous week, the Commission had voted unanimously to endorse adding the 19th officer back in. He noted that Deputy Chief Rene Kelly, who was on the Commission, had abstained.

Councilor Sievert said the Rental Housing Commission was doing a great job, as long as they stayed together as a group.

Councilor Carroll said she had supported this Budget item two weeks ago, for the reasons that had just been stated, and said she would support it again now.

Councilor Needell said he would support this. He said Chief Kurz had made a compelling

argument, and noted that this would simply be restoring a position that had previously existed. He said this was a policy recommendation that the position should be restored, and was not simply changing a line item in the Budget.

Councilor Van Asselt said cities and towns all over the country were cutting budgets and laying off staff. He said this was a staffing issue, and said at the end of the day, Administrator Selig and Chief Kurz knew what was needed. But he said as a volunteer member of the Council, he didn't understand why he should be asked to make a judgment about how much staff was needed for the Police Department. He noted that Administrator Selig had said there were times the Town had to go without, and had also said this was the kind of times they were now in.

Councilor Van Asselt said what he could make a choice about was whether people could afford to pay more to live in Durham. He said as long as they were relying on single family home owners to pay the taxes, he didn't know how much more Budget they could afford. He said this was a time when people had less disposable income, and asked if it was therefore a year when they could do anything more than a level funded Budget.

Councilor Clark said this was the hardest Budget item for him. He noted that Administrator Selig and Chief Kurz didn't agree on it. He said it was obvious that hiring the 19th office wouldn't solve all the problems in the neighborhood, yet it was also a time when the problems in the neighborhood were reaching a crisis point, and had been escalating since work had begun on the Budget.

He said his real problem was that there was no way he would support a Budget that represented more than a 1% increase, and said he was therefore a bit upset with the order of the Budget items being addressed. He said it would be difficult for him to vote for this now, when he voted against it last time, and especially not knowing how the Fire Department Budget item would be resolved.

Councilor Mower suggested that they think about Administrator Selig's priority in adding things back to the Budget. She said as he had indicated, they were at a point where they were seeing an impact on services from choices made about the Budget. She noted there were people thinking of leaving Town because of problems in the neighborhood and not just because of property taxes. She spoke in some detail about the statistics Chief Kurz had provided.

Chair Niman said he would vote against the motion, and said this had nothing to do with the Police Department or the neighborhoods. He said before he came on the Council, the Council went on a shopping spree, going from a 4 person to a 5 person fire shift. He said the Fire Chief at that time said there would be a savings from doing this, but he said he hadn't yet seen this savings. He also said they got a second fire inspector/marshal, increased staffing at the Police Department, and got a Town Engineer.

He said while this was happening, the Town never came up with the means to pay for this. He said over the last 10 years, commercial development in Town had included a new

hotel and the Irving station. He said the consequence of this was that every year they had dipped into the fund balance to keep the tax rate at a reasonable level, which had created a problem now with the fund balance.

Chair Niman said he didn't know how the Town was going to be able to pay for all of the staffing, and said it wasn't just this year he was concerned about. He determined that adding the 19th police office would result in a 1.2% increase in the tax rate, but said he was worried about what would happen next year. He noted that the State's shortfall this year had cost the Town \$200,000, and said the State was facing a \$2.5 million shortfall in the 2011 Budget. He said he didn't know what that shortfall would cost the Town, but said there wasn't a fund balance to dip into anymore unless they sold some Town assets.

He said he worried about how they were going to be able to pay for everything if the State cut back on revenues to towns, and if people still weren't buying new cars so those revenues to the Town were down. He said he realized people wanted services, but asked what this would do to the tax rate. He also said he worried that the valuation of the Town might shift back again if student apartments were empty and their valuations went down, and other peoples' valuations went up. He said he couldn't figure out how the regular person would be able to live in Durham.

Chair Niman said until they came up with a plan that created a sustainable economic environment in Town, he would do what he had done previously, which was to vote against all kinds of spending.

Councilor Stanhope said Durham's local tax rate was very competitive with those of other towns, and said the Town was very efficiently run. But he said monies the Town should have available were being used to run the School District. He said until the School District got its situation in shape, the Town wouldn't have the funds it needed. He said it was a tragic situation, but said the Town couldn't solve it. He also said the number of employees of the Police Department had stayed relatively stable, while the number of UNH students had gone up.

The motion PASSED 5-3, with Chair Niman, Councilor Van Asselt, and Councilor Clark voting against it.

Councilor Van Asselt MOVED to amend Resolution #2009-32 by removing \$200,000 for the Fire Department capital reserve account from the 2010 Budget. Councilor Clark SECONDED the motion.

Councilor Van Asselt provided details on his reasoning for proposing this motion, noting among other things the argument that there would be a spike in the Budget in 2011. But he said Administrator Selig would not bring the Council a Budget with a 15% increase next year. He said if there was help from above, they might even have a broader tax base by then. He said he therefore didn't think a possible spike was a reason to say \$100,000 should be put into the Fire Department now. He said the reality of the economy far outweighed the need to start this now.

He said they should be looking at having this kind of fund for other Town departments as well, but said this wasn't the year to start one for the Fire Department. He said waiting one year wouldn't make that much difference.

Councilor Stanhope said he had labored over this vote. He said not having this as a Budget item was not postponing buying life safety equipment, but was reflective of a decision about whether to replace a piece of equipment in a way that burdened future taxpayers because of interest payments or increased the tax rate now.

He said he agreed there were a lot of people in the community who would find their tax bill burdensome, and he noted that as taxes continued to go up, this was driving property values down. He said there wasn't an immediate need for fire equipment, and said it was therefore probably a good idea to postpone this funding.

Councilor Sievert said this was the hardest Budget item for him. He said he agreed with Councilor Van Asselt, but said he didn't want to because he was angry about the email he had received. He said it was irresponsible of that person to say Councilors didn't do their research and had no right to haphazardly throw money into the Budget. He said that was untrue and was not what happened, and said he almost wanted to vote for this out of spite. But he said that of course wasn't the right thing to do.

He said he thought this fund was a great idea and was also the right thing to do for all the departments. He said he had seen this as an investment, and had thought this was the time to make an investment because the Town would get the most out of it. But he said it sounded like it could be pushed out a bit, and agreed that maybe this wasn't the right time to do it.

Councilor Carroll said this was a time when the economy was contracting, but said she was even more concerned about next year and the year after that. She said anything they could do to be ready for the future was important to do. She said with all due respect, the reasons Chair Niman had given for not voting to approve the 19th police officer were the reasons to vote for this program of putting money aside. She said there was a big piece of fire equipment that would have to be purchased, and asked for details on this.

Chief Landry said it was the water supply tank truck, which was 26 years old. He said it was used for the vast majority of the Town, and said there were some maintenance issues. He said the purchase had been put off for 3 years.

Councilor Clark said this was a great program, but said it was a bad year to start it. He said if they did need a new tanker truck, they'd pay for it the old fashioned way.

Councilor Needell said that was his opinion as well.

Councilor Mower said it was unfortunate not to be able to take advantage of the cost savings right now from such a program.

Councilor Carroll said she had looked at the Budget in terms of evaluating every dollar spent, but also in terms of looking at the economy and trying to figure out how much could be added to the Budget and still be a responsible Councilor. She said she had come up with no more than \$300,000, which represented \$50/per tax payment for the Town portion. She said she thought that would be the limit..

She said her first two priorities were the Police Department officer and the Fire Department program, and she spoke in some detail on her thinking concerning this. She said she would be very sorry to see this program go, and noted that this had been Administrator Selig's first choice of items that might be added back into the Budget.

Chair Niman said he would vote to take this out because there was an opportunity cost to paying taxes. He said if the Town could borrow money at 2%, the value from having that money right now was greater than 2%. He also said people needed to understand that residents' biggest investment was their house, and that property tax rates had a large impact on property values.

He said he was fortunate that he had a job he didn't have to worry about, and that he wasn't selling his house anytime soon. But he said there were a lot of for sale signs right now in Durham. He said he felt really bad for people being forced to sell their houses, yet realtors said no one wanted to come to Durham because the taxes were so high.

He said anything he could do to help this situation, including putting a lid on taxes, was what he was going to do. He said he was much more concerned about the overall tax rate than he was about saving some money on a new fire truck.

Administrator Selig said he wanted to applaud Chief Landry for pulling this proposed program together, and also applauded the University for their willingness to embrace this approach. He said Councilor Van Asselt had articulated well what was also his own perspective. He said there had been some great dialogue on the program, and said Councilors would see it come back for discussion next year. He also said they would try to evaluate expanding this approach to other Town departments.

The motion PASSED 7-1, with Councilor Carroll voting against it.

Chair Niman summarized that the amended Budget added the 19th police officer; removed the \$200,000 contingency funding; removed \$200,000 from the Fire Department capital reserve fund; and did not add back \$4,500 for the Hazardous Waste Collection day.

Administrator Selig noted that the Hazardous Waste collection program would be reevaluated over the course of the year. He said the Budget was essentially the Administrator's Budget plus the 19th police office position and the \$30,000 from the UDAG fund for strategic planning work.

Councilor Mower asked what they would lose in terms of opportunity costs by not

funding the Fire Department capital reserve fund this year.

Ms. Jablonski said it didn't cost anything in 2010, but said in 2011, it would cost \$425,000. She said if the purchase of the tank truck was bonded, interest costs would be about \$117,000 over 10 years. She said the Town's cost would be half of that.

It was noted by Councilor Mower that the change to the Budget represented approximately \$24 for a house assessed at \$300,000.

The motion to approve Resolution 2009-32, adopting the FY 2010 Operating Budgets, Capital Budget, and the 2010-2019 Capital Improvement Plan, as amended, PASSED 6-2, with Chair Niman and Councilor Van Asselt voting against it.

Councilor Van Asselt said he was impressed that Administrator Selig had given the Council the Budget, had told the Council that department heads didn't necessarily agree with him, and then gave the department heads the opportunity to talk with the Council about the Budget. He said this represented good management.

Councilor Mower said she had been impressed with the quality of conversation with Town staff.

Administrator Selig acknowledged department heads for putting together a good solid Budget, and also said Business Manager Gail Jablonski had done an outstanding job on it.

XI. New Business

Discussion regarding Council meeting dates in January 2010 – Robin Mower
After discussion, it was agreed that there would be one Council meeting in January, which would be held on January 11th.

XII Nonpublic Session

Councilor Sievert and Councilor Stanhope recused themselves.

Councilor Mower MOVED to go into nonpublic session to discuss land matters in accordance with RSA 91-A:3 II(d) Consideration of the acquisition, sale, or lease of real or personal property which, if discussed in public, would likely benefit a party or parties whose interests are adverse to those of the general community. Councilor Clark SECONDED the motion, and it PASSED unanimously 6-0 by roll call vote:

<i>Chair Niman</i>	<i>yes</i>	<i>Councilor Van Asselt</i>	<i>yes</i>
<i>Councilor Needell</i>	<i>yes</i>	<i>Councilor Clark</i>	<i>yes</i>
<i>Councilor Carroll</i>	<i>yes</i>	<i>Councilor Mower</i>	<i>yes</i>

The Council entered Nonpublic Session at 11:34 PM.

The Council returned to public session at 11:45 PM.

Councilor Van Asselt MOVED to seal the Nonpublic session Minutes. Councilor Clark SECONDED the motion, and it PASSED unanimously 6-0.

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

XIV. Adjourn (NLT 10:30 PM)

Councilor Sievert and Councilor Stanhope returned to the table.

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

Adjournment at 11:46 pm.

Victoria Parmele, Minutes taker