

This set of minutes was approved at the February 15, 2010 Town Council meeting

**Durham Town Council
Monday January 11, 2010
Durham Town Hall - Council Chambers
7:00 P.M.
MINUTES**

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

MEMBERS ABSENT: Councilor Diana Carroll

OTHERS PRESENT: Town Administrator Todd Selig; Police Chief Dave Kurz; Fire Chief Corey Landry; Tom Johnson, Director of Zoning, Building Codes & Health; Town Engineer Dave Cedarholm; Mike Lynch, Director of Public Works

I. Call to Order

Chair Niman called the meeting to order at 7:06 pm.

II. Approval of Agenda

Councilor Smith MOVED to approve the Agenda as submitted. Councilor MOWER SECONDED the motion.

Councilor Van Asselt questioned why Item XI D was on the Agenda, when the Rental Housing Commission was already addressing it.

Councilor Mower said that a few months ago she had asked that this item be placed on the Agenda, because she thought it was in the interest of members of the public and members of the Council to learn some of the procedures and constraints on enforcement of all kinds of codes in Town. She noted that certain kinds of enforcement were less likely to happen because of resources and in some cases priorities.

She also said she didn't expect this discussion to focus specifically on matters that affected rental housing, and said she saw nothing wrong with having this opportunity to hear from Town staff.

Councilor Stanhope said he was still confused about the need for this Agenda item, which involved discussion but no action on the part of the Council. He suggested that if members of the public had an interest in these policies and procedures, they could direct their questions to Administrator Selig.

Councilor Mower said there could be questions and discussion by the Council based on examples provided by the department heads, who were experts on the student housing rental issues. She said this might be the first step toward understanding some of the constraints, and said any proposed changes would then reflect this greater understanding. She said the Rental Housing Commission or some other entity(s) might bring such changes forward.

Administrator Selig said the department heads were present to provide an overview of some of the things they were dealing with regarding student rental housing in the neighborhoods, as well as to provide some general information on their work.

The motion PASSED unanimously 8-0.

III. Special Announcements - None

IV. Approval of Minutes

November 30, 2009

Councilor Van Asselt MOVED to approve the November 30, 2009 Minutes. Councilor Mower SECONDED the motion, and it PASSED unanimously 8-0.

V. Councilor and Town Administrator Roundtable

Councilor Clark said the Economic Development Committee had recently met, and had spent a lot of time on the business visitation plan. He said the EDC planned to start visiting local businesses in February, and hoped to learn a lot of things that would help with their strategic planning.

Councilor Needell said the filing period for Town offices was coming up, and noted that his own term as a Councilor would be over in March. He said while he had enjoyed his role on the Council, he would not be seeking re-election. He encouraged residents to come forward to try to fill this position.

Councilor Smith said the Planning Board would be meeting on Wednesday, and would consider the acceptance of an application regarding a rental property on Newmarket Road. He also noted that the scheduled public hearings regarding a site plan application and conditional use application submitted by the Seacoast Repertory Theatre had been postponed.

He said there would be a public hearing on the Zoning amendment proposed regarding parking and buffering in the Court House District, noting that the most recently proposed version of this reflected changes the Planning Board had made based on some recommendations from the Town Council.

Councilor Smith said the previous week, a Durham police officer had come to his home

to deliver a subpoena that summoned him to appear in court as a witness in a trial. He said he had found it curious that the subpoena was addressed to him as "Julian Smith, Durham Town Councilor", and was not addressed to his home address.

He said this as well as a subsequent communication regarding the postponement of the trial, which was sent to his "office" at the Town Hall, had indicated that someone in the Durham Police Department seemed to be trying to hang the title of Councilor around his neck like a dead albatross. He said he therefore intended to speak that evening as a member of the public under Public Comments, in order to make the point that membership on the Council did not cancel or limit one's right or obligation to speak and act as a private citizen.

He said as both a Councilor and a private citizen, he wished to thank Administrator Selig for something he wrote in an e-mail to him on October 8th. Councilor Smith said this was in regard to questions he had posed in an e-mail to Chief Kurz on October 7th about events that had occurred on October 5th and 6th. He said Administrator Selig had promised to "make it overtly clear to the Police Department that you are acting as a private citizen". Councilor Smith noted that this message had been copied to the Council.

Councilor Mower said on a related topic, when Councilors spoke at any meeting for which Minutes were taken and they didn't identify themselves as speaking in the role of a Councilor, it would perhaps be best if they were not identified as Councilors. She said she didn't know if there was a policy on this, but said this was creating some confusion for some of the boards and Minutes takers.

Councilor Needell said he sympathized with Councilor Smith's rights as a private citizen, but said that it was a matter of fact that while serving as a Councilor, one was in a slightly different role in the community. He said while this did not limit a person's rights, it also did not diminish possible confusion as to whether one was speaking as a private citizen or a Councilor. He said the burden was on a Councilor to err on the side of caution, and to give up a little bit as a member of the public while in this service. He said while there was probably no legal aspect to this, it was the appropriate thing to do.

Councilor Smith said as the Council's representative to the Planning Board, he had been at a recent meeting of this board where there was discussion on Minutes of a meeting where Councilor Mower and Councilor Carroll had identified themselves as citizens. He said he had asked that they be referred to as citizens in these Minutes and not as Councilors, but other members of the Planning Board had raised the same point Councilor Needell had made, which was that it was very difficult to distinguish between members of the Council and the same people when they spoke away from the Council table as private citizens.

Councilor Smith then asked that Councilor Mower volunteer this year to be the Council rep to the Planning Board.

Councilor Van Asselt said the Zoning amendment process regarding parking in the Court

House District was taking too long. He noted that there had been two parties that were possibly interested in purchasing the Cumberland Farms property, but now there was only one.

There was discussion that the public hearing and deliberations would take place on Wednesday.

Administrator Selig said that concerning the police matter Councilor Smith had just described, citizen Smith had been active regarding this particular issue. He said it was his right to do this as a citizen, but said it did become very confusing for staff to distinguish these different roles, and said this weighed heavily on their minds.

He said in terms of this particular criminal investigation, he thought the Police Department acted appropriately in that they felt very uncomfortable prosecuting this matter themselves. He said given that a member of the Council who was also a citizen was actively involved, the Department turned the matter over to the County Attorney's office, which addressed the letter to resident Julian Smith as a Town Councilor. He said their office said they had done this as a matter of respect.

Administrator Selig said the filing period for Town offices was from January 20th -29th. He listed the following vacancies:

- Town Council , 3 positions (3-year terms)
- Library Board of Trustees, 3 positions (3-year terms)
- Town Moderator, 1 position (2-year term)
- Supervisor of the Checklist, 1 position (6-year term)
- Trustee of Trust Funds, 1 position (3-year term)

Administrator Selig noted that there were ongoing contract negotiations with three of the Town's four labor unions. He said that day, there had been a very fruitful discussion with the fire fighters union, and noted that they had all been working hard to find a middle ground. He said in concept there was now a tentative agreement, and said he hoped to be able to bring something forward for the February 1st Council meeting.

Councilor Stanhope said he took exception to Councilor Needell's comment that Councilors had to exercise caution in their behavior. He said he felt Councilors were capable of speaking their minds and not carrying forward prejudice in their voting. He said all Councilors by nature were involved, and said he had a problem with saying Councilor Smith should temper his comments as a citizen.

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

Roger Speidel, 7 Nobel K Petersen Drive, said that at the most recent School Board meeting, he had spoken to the Board about wasting taxpayer money. He compared what the Oyster River School District paid per student per year to what was spent in Bow, which was a town much like Durham in size and economic background. He noted that in the NE Common Assessment Program, Bow ranked 1st and Oyster River ranked 3rd. He

also said Bow ranked 3rd in the State regarding the number of seniors going on to four year colleges, while Durham ranked 5th

He said the Oyster River School District spent \$2,536 more per student per year than Bow, did, and got less for it. He said if the cost could be brought down, \$5 million could be saved per year, and \$25 million could be saved over 5 years. He said this would not reduce the quality of education, and said if Bow could do this, the Oyster River School District should be able to do it.

Mr. Speidel noted that Wednesday would be the 25th time he had spoken to the School Board, and said if he didn't think he was right, he wouldn't do it. He said between 2004-2007, Durham's School Budget responsibility increased an average of 9.5% per year, Madbury's responsibility increased 10.8% per year, and Lee's responsibility increased 14.2%. He said the School Budget had exploded, and something must be done about it.

Mr. Speidel asked that the three governing bodies of the district come together and hire an independent company to do a forensic audit of the Oyster River School system. He said the taxpayers needed their help now. He noted that the meeting on Wednesday would be a special School Board meeting to hear from citizens who wanted to speak about the Budget.

It was agreed that the Council would discuss this issue under Other Business.

Bill Hall, Smith Park Lane, said at the previous School Board meeting, Board member Henry Brackett had tried to bring up an issue, and other board members tried to avoid discussing this issue.

He then spoke in some detail about the stewardship plan that the Conservation Commission had recently provided to the Town. He said there had been no hearing where people could speak about the plan while it was being developed, and he also said there were some things missing from the plan.

Mr. Hall said that among other things, there was no recommendation regarding cutting forested acreage behind the transfer station. He said this area needed a commercial cutting, and said otherwise there would be the kind of mess they now were seeing at the Beaudette farm. He also said there was no forestry recommendations concerning the north 40 at Wagon Hill, and provided details on the kind of forest management needed there.

He noted that the trees on the Doe Farm were trust assets of that farm. He said he disagreed with the stewardship plan regarding this issue, stating that the trustees had no choice but to cut some trees there because they were over mature, and the asset was therefore being lost. He said the stewardship plan had recommended not cutting trees on the island, but he said these trees should be cut because there were the same kinds of problems out there now that had previously occurred at the Doe farm.

Mr. Hall spoke in some detail regarding the issue of not being able to cut trees within 50 ft of the shore because of the Town's shoreland regulations. He said the stewardship plan should say that permission should be granted for trees near the water that were close to falling in.

He also spoke in some detail about the Weeks lot, and then said he hoped the Council would take his recommendations regarding the stewardship plans seriously, stating that he had been involved with forestry his whole life.

Hillary Scott, Davis Ave, said she hadn't attended the recent charrette but had watched it by DVD. She said she was really excited about the idea of a new face for the downtown, and said she hoped the Town embraced this and moved forward with some of the recommendations that had been made

She noted that a speaker at the charrette had suggested that Durham residents should focus on what they wanted the downtown to look like, and should make Zoning changes that supported what they defined as good. She said she hoped there was support for migrating to a two-way Main Street downtown, which she said would help attract business. She noted comments made during the Mill Plaza redesign process that the current one-way Main Street killed the downtown.

Ms. Scott noted that at the end of the charrette, it was stated that this was just the start of the process and not the end. She said the current economic situation was a reason to move forward, and to define a phased approach for implementation, work within the Budget limitations.

Ms. Scott spoke about the increase in trash she had observed in the downtown once the fall semester had begun, and spoke about DPW staff working on weekends and getting paid time and a half to pick up this trash. She said this trash was due to the students, yet the Town was paying for it. She asked if Administrator Selig could look into the idea of a "green" UNH club of some kind volunteering to help clean up this trash, so the Town didn't have to do this.

Administrator Selig said this had been an ongoing topic over the years, and said sometimes the Town paid DPW staff time and a half to do the cleanup, and sometimes a part time person did the work. He said considerable Town resources were involved, and agreed the situation was greatly impacted by the return of students to Durham.

He said UNH had been willing to coordinate a cleanup program through the Durham - It's Where U Live initiative, but said it had been difficult finding student groups who were willing to commit to a cleanup effort over the long term. He said that as a result, this issue tended to be re-visited each year. But he said he would make a note to work on it

Ms. Scott asked if perhaps sign up sheets could be posted at the Town Hall for residents volunteering to help with cleanup efforts.

Peter Smith, Piscataqua Road, noted that he was in his 20th year of serving on a Durham board that was subject to the Town Charter. He said he was present to speak about the issue of the limits and difficulties of a Councilor or anyone who was serving on a Town board. He said the issue was not whether anyone on a Council had it within oneself to not vote in a particular way for the wrong reason.

He said the issue instead was one of perception, and said there was a whole legal doctrine that the appearance of a conflict of interest was just as significant as an actual conflict of interest. He said Councilors shouldn't think in terms of whether they could stand against pressures, and instead should think about whether people who worked for the Town had a legitimate concern as to who they were speaking to, a Councilor or a private citizen. He asked Councilors to put themselves in the shoes of the other person regarding this, and said it was important for them to think about those things before taking on substantive or procedural duties. He said if they didn't, there was something wrong with the Town's governing system.

Karen Mullaney, 8 Davis Avenue, noted that she had appeared before the Council the previous month, after writing a letter to *Foster's Daily Democrat* about student behavior problems in the neighborhoods. She said since that time, she had been approached by various people regarding this issue, and said an informal organization developed to address the problems had recently met with the Rental Housing Commission.

She said the various neighborhoods in Town could be represented on this organization, and said they would be meeting on January 26th. She said residents were invited to look at the problems and possible solutions. She said while it was understood that it was important to bring in additional tax base for the Town, right now the neighborhoods were being affected by the student rental problems. She said the problems were filtering out more and more, and were affecting the look and the value of neighborhoods, as well as the way people thought about Durham.

Ms. Mullaney said she hoped the neighborhoods could come to the Council on a regular basis regarding these problems, and also said she hoped the Council could really grasp what the people of the Town wanted. She said it wasn't as cut and dried as improving the tax base.

Julian Smith, 246 Packers Falls Road, noted that he was addressing the Council as a member of the public, and then spoke in some detail about a recent incident in Town involving gunshots being heard and a Durham gentleman thinking they were directed at him, and a subsequent arrest of a Dover man for resisting arrest.

He described the events that had unfolded, including the calling in of the Fire Department and at least four other police agencies, the blocking and detouring of traffic on a State highway, the arrest of the Dover man on his family's property for not doing as he was told as quickly as was desired, and the police breaking into four buildings in search of who knows what.

Mr. Smith said more than three months later, prosecution of the resisting arrest charge had been postponed twice, and the Dover man had not been charged with anything in connection with the shots allegedly heard by the Durham gentleman. He said the Town might not be able to afford the luxury of a police department that seemed to have over-reacted in this instance. He noted that under Unfinished Business, the Council would be getting a status report on the Goals it had adopted last year, and he reminded Councilors that the very last Core Value it had adopted was Justice.

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

- A. Shall the Town Council, upon recommendation of the Town Administrator, release the March 20, 1995 Town Council Nonpublic Session meeting minutes relative to the 1993 Rental Housing Ordinance and the Heidelberg-Harris abatement?
- B. Shall the Town Council, upon recommendation of the Town Administrator, award the contract for bulk safety salt to Morton Salt of Chicago, IL for the sum of \$42,914.10?
- C. Shall the Town Council, upon recommendation of the Town Administrator, approve the construction phase engineering contract with Wright-Pierce for the Wastewater Treatment Facility aeration blower upgrade project and authorize the Town Administrator to sign associated contract documents?
- D. Shall the Town Council authorize the award of a contract for services with UNH Facilities Design and Construction in the amount of \$35,486 to install a new generator at the Durham Fire Department?

Chair Niman said it had been requested that Items A and B be taken off the Agenda.

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

Regarding Item A, Councilor Smith said he didn't know why this matter had been made nonpublic so many years ago. He said he had no objection to unsealing the Minutes, but said he would like to amend the motion in order to remove from the release of the Minutes the item in the nonpublic meeting relating to the Heidelberg Harris abatement.

Councilor Van Asselt MOVED upon recommendation of the Town Administrator, to release and make public the Minutes of the Town Council Nonpublic Session held on March 20, 1995 as the items discussed in the Nonpublic Session pertaining to "Heidelberg-Harris Abatement: and "Rental Housing Ordinance" have both long been resolved. Councilor Sievert SECONDED the motion.

Councilor Smith MOVED to amend the motion to read "releasing and making public the Minutes of the Town Council Nonpublic Session held on March 20, 1995 as the item discussed in the Nonpublic Session pertaining to "Rental Housing Ordinance" has long been resolved. Councilor Needell SECONDED the motion.

Councilor Mower asked Councilor Smith why he wished to remove the Heidelberg-

Harris language from the motion, and Councilor Smith said it was not relevant to the discussion on the Rental Housing Ordinance. He said this Agenda item was brought to the Council by a member of the Rental Housing Commission, who he believed wanted to know why these minutes were sealed, or at least wanted to see them. He said he saw no harm in this.

Councilor Clark received clarification that the Heidelberg-Harris part was simply there because it had been discussed in the same Nonpublic session as the Rental Housing Ordinance, and it had been recommended that both be released because there was no longer a need to keep either matter confidential.

Councilor Needell said he agreed with Councilor Smith and supported the motion. But he said he thought there should be discussion on whether to unseal the Heidelberg-Harris portion of the Minutes.

Councilor Mower asked if there had to be a relevant request in order to unseal Minutes.

Councilor Smith said that was not the issue for him. He said it was appropriate and reasonable that the Council was responding to the request to unseal the Rental Housing Ordinance portion of the Nonpublic Session minutes. He said the Council could discuss the Heidelberg-Harris portion, but said he didn't think they needed to do that right now.

The motion to amend PASSED 7-1, with Councilor Van Asselt voting against it.

Councilor Stanhope said no member of the current Council had participated in the original debate to seal these Minutes. He said while these Minutes were pretty generic, the Council was setting a precedent in unsealing Minutes that had previously been sealed by another Town Council and Administrator.

He said he didn't see that the need was so great that the Council should begin a policy of overturning actions of prior Councils without serious consideration. He also said it bothered him that this item was placed under the Unanimous Consent Agenda. He said he would vote against the motion, stating that it was an unhealthy way to do business.

Councilor Needell referenced language in the State Right to Know law, and said its intent was not to seal Minutes of a meeting in perpetuity. He said while there might be circumstances that required this, in most cases, the intent was that Minutes shouldn't be kept hidden any longer than was necessary.

He said he felt the Council had the authority to release these Minutes, and said he didn't think it was relevant there was a different Council then than now. He also noted that the litigation matter discussed in the Nonpublic Session had been resolved, and was now a matter of public record. He also said the only comments at the Session were made by members of the Council, which the current Council couldn't protect from embarrassing themselves. He said there was no reason not to unseal these Minutes.

Councilor Mower asked how Nonpublic Minutes could ever be unsealed, if one had to rely on the original sealers of the Minutes to do so.

The motion to unseal the minutes pertaining to the Rental Housing Ordinance PASSED 6-2, with Councilor Van Asselt and Councilor Stanhope voting against it.

Concerning Unanimous Consent Agenda Item VII B, Councilor Smith said he had only asked that this be pulled off because he wanted to state for the public that the Town had gotten 795 tons of salt for Durham's Roads. He said that was a lot of salt.

Councilor Mower said she had spoken with the DPW director, who said every attempt was made to use as little salt as possible. She noted that the Department also got complaints from people who felt the roads were not salted adequately.

Councilor Van Asselt MOVED upon the recommendation of the Town Administrator, to award the contract for bulk safety salt to Morton Salt of Chicago, IL for the sum of \$42,914.10 Councilor Sievert SECONDED the motion.

Councilor Smith said he heated his house with wood, and when he put water on his stove to add moisture to the room, he found salt when the water evaporated. But he said he would vote in favor of this motion.

The motion PASSED unanimously 8-0.

VIII. Committee Appointments

None

IX. Presentation Items

Receive update on the four Stewardship Plans prepared for the Durham Conservation Commission by Ellen Snyder, Ibis Wildlife Consulting – Beryl Harper

Administrator Selig said the Conservation Commission had been proactive in getting grant moneys to pay for stewardship plans for four of the many Town parcels. He said Ms. Harper would provide an overview on them to the Council.

Beryl Harper spoke before the Council, and said it had been a great pleasure working on this project. She noted that the funding for the project had come from the Piscataqua Region Estuaries Partnership, Community Technical Assistance Program. She said Ellen Snyder had completed the work within the time frame, and had done more than had been expected.

She said recommendations had been provided for each of the 4 parcels, and said the Conservation Commission had been discussing them since receiving the plan. She encouraged the Council and members of the public to discuss the recommendations as well, and noted that the entire plan, including maps, was available on the Town website. She also said there were hard copies of the plan at the Town Hall and the Library.

Ms. Harper said that now the plans were completed, she hoped people would come forward with good ideas, would serve on committees, and perhaps would do some work on some of the properties. She noted that an interesting aspect of Town properties was that they were overseen by different entities, and said it would be helpful to be able to coordinate between the respective entities overseeing these 4 parcels in order to coordinate the stewardship work on them.

Ms. Harper said the next step that needed to be taken for each of the 4 properties, and probably a few others like the Willy lot south of Dame Road, was to make sure they were all officially surveyed.

She said the Commission was looking at the idea of developing more trails and other public usage possibilities on the properties. She also said forestry had been identified as a goal, including addressing invasive species. She noted that this was considered part of a secondary action plan at this point, but said if the Council and others felt some of the priorities should be moved around, the Commission was interested in hearing this.

Councilor Smith noted that he had spent a number of hours in the fall walking with Ms. Snyder along the Longmarsh Trail, across Langmaid Farm into the Horsehide Creek watershed, and up toward the transfer station. He said there was some lovely land in there, and asked if the Longmarsh Preserve included the Horsehide watershed.

Ms. Harper said it included three properties: Langmaid Farm, Colby Marsh, and Horsehide Creek, which were properties acquired by the Town at different times and under different circumstances. She said since they were adjacent and also surrounded by a tremendous amount of acreage of preserved land held by the Forest Society, Nature Conservancy, and other easements, it was worth looking at that entire picture in a broader sense.

Councilor Smith suggested that if a trail was cleared from the transfer station down to Langmaid Farm, there would be a continuous trail system all the way over to the Nature Conservancy site on Bay Road in Newmarket. He said it was a really wonderful system.

Administrator Selig asked Ms. Harper if she envisioned having Ms. Snyder come back, after feedback had been received from the Council and others on the stewardship plans. Ms. Harper said Ms. Snyder had done her job and had provided her professional opinions in the stewardship plans, but said it was now up to the Town and the townspeople to work with them.

Councilor Van Asselt asked if Mr. Hall's questions concerning forestry in regard to the stewardship plans would be answered.

Ms. Harper said since Mr. Hall had experience in forestry, it would be great to have him involved as they moved forward. She said the Conservation Commission needed people with experience and expertise.

Councilor Van Asselt asked if land use change tax money could be used for possible projects coming out of these plans.

Administrator Selig said yes, stating that protection and preservation of conservation lands fell within the jurisdiction of the land use change tax. He also noted that since the Doe Farm was managed by trustees, ultimately it would be their determination as to how that property was managed.

There was further discussion on the possible use of land use tax money. Administrator Selig also noted that proceeds from tree cutting could be used to fund other projects, such as long term maintenance of the tracts, trails, and signage. He said the Town should be doing more of this than it was currently doing.

Ms. Harper noted that there was a State mandate that the Conservation Commission do this work regarding Town properties, yet this work was done by volunteers with no budget. She said at least they had been able to get funding from another entity for the stewardship plans.

Councilor Clark said he hadn't had the chance to read the stewardship plans yet. He asked Ms. Harper what fell under the heading of stewardship.

Ms. Harper said Ms. Snyder had looked at what the intent was when each of the properties was deeded over to the Town. She noted that if land was taken for back taxes, it didn't come with an intent, so it was up to the Town to figure out what the best use was. She said the plan addressed the multi-faceted ways that the properties could be looked at.

She said these properties were located on water, so how each property was used in relation to water quality was important. She noted that possible impacts from logging was an important issue to consider. She also said consideration was given to farmland soils located on the parcels, and how best to manage these areas in terms of possible future agricultural use.

Councilor Needell noted that these stewardship plans had been developed because of a directive from the Council that the Conservation Commission should take a leadership role concerning stewardship of Town properties. He noted that a common theme in the plans was the issue of who was responsible for managing the properties. He said he thought a core question that needed to be answered was what the Conservation Commission's role was in regard to these properties.

He gave as an example the fact that the Commission couldn't go in and start doing forest management on Doe Farm unless it was invited in. He said forestry was certainly one of the issues that needed to be addressed, noting that forest management was more prevalent and appropriate in some parts of the plans than others, and that the stakeholders should look at the plans and use them as they saw fit. But he said the Conservation Commission was asking for some guidance on what its role should be on all of this, and said he

thought the Council should help the Commission sort this out.

Chair Niman said the Council would put discussion on the stewardship plans on the Agenda for a meeting in February, and Ms. Harper said that would be very helpful.

Councilor Sievert asked if land use change tax funds could be used for improvement and development of a property.

Administrator Selig said these funds could be used to survey a property, evaluate the flora and fauna, and develop a maintenance/management plan that among other things could include selective tree cutting and development of natural trails to provide accessibility to the public.

Councilor Smith noted that several years ago, he and George Thomas had borrowed a brush hog from the DPW in order to cut trails at Langmaid Farm. He said the Town had paid to rent this machine, and said the following year they borrowed equipment from resident Craig Seymour. He said he thought it would be very appropriate for some land use tax funds to be used to buy this equipment so it could be used to cut trails, and perhaps to pay for a DPW employee to do the work.

Councilor Mower asked if there had been discussion about hiring a professional forester, and Ms. Harper said yes. She noted that if the Town hired someone to do this, it would be more efficient to do more than one property, and said this had been recommended in the stewardship plans.

Chair Niman determined that the plans were silent on what should be done with the 138 acres behind the transfer station. He asked Ms. Harper if the Commission was planning to hire a forester, and if so, would be doing this within a relatively short period of time.

Ms. Harper said the surveying should be done first, and also noted that the present makeup of the Conservation Commission were familiar with and especially interested in the idea of developing trails. She said if forestry work were to be done, the Commission would need to work with people with that expertise. She said if the Council felt forestry was a high priority, the Commission wanted to hear this.

Administrator Selig noted that there were other tracts of Town land that had not been evaluated, and asked if there were plans to do this,

Ms. Harper said yes, and said ideally there would be a similar type of plan for each Town owned property. But she said the Commission was trying to take this one step at a time. She said what they did now could become a model for addressing the rest of the Town properties.

X. Unfinished Business

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

Administrator Selig noted the importance of checking in with the Council from time to time regarding progress being made on the Goals and sub-goals. He said substantial progress had been made on them, and noted his recent report that outlined this progress.

Councilor Smith suggested that discussion on this could take place toward the end of the meeting, during the Extended Roundtable, so they could get to the public hearings now.

Councilors agreed to do this.

XI. New Business

- A. **Public Hearing** regarding cable franchise renewal proceedings between the Town of Durham and Comcast to ascertain the future cable-related needs and interests of the community

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

Administrator Selig said the purpose of this public hearing was to determine the Town's future cable-related needs, in anticipation of negotiating a new franchise agreement with Comcast. He said the public had been invited to the hearing, and he explained that any resident or representative of a local organization would have the opportunity to speak. He noted that this was the first of at least two Public Ascertainment hearings.

He said the Town had received a letter from Comcast dated July 20, 2009 invoking the renewal process, under the Cable Act. He said this hearing marked the beginning of the public ascertainment process, and fully reserved the rights of Durham under the renewal provisions of the Cable Act. He noted that some topics were not included in Ascertainment Hearings, such as rates and channel availability, since the Town had no legal authority to negotiate these items.

Administrator Selig said the Town had engaged Attorney Rob Ciandella of Donahue, Tucker & Ciandella as special counsel for this process. He said Attorney Ciandella would make a brief presentation to explain the renewal process and describe the steps the Town would be taking as part of it. He said anyone wishing to speak on the future cable related needs of the Town would then be asked to come forward.

Attorney Ciandella briefly described the legal framework for the franchise renewal process, noting among other things that Comcast installed facilities in the Town right of way so needed a license from town. He said the renewal process was governed by federal and State law, and said a determination on the renewal would be made by looking backward to the existing franchise agreement, and ahead concerning whether it would meet the future needs of the Town.

He said there were two processes running parallel; the formal process as well as the informal process. He said most of the work to be done was part of the informal process,

which involved a lot of back and forth like any other negotiation.

Attorney Ciandella noted that telephone, broadband Internet and cable service provided by a company were treated separately from a legal perspective. He also explained that under both federal and State law, no franchise could be exclusive, but he said the de-facto monopoly in Durham had been driven by the economics of the cable industry. He spoke in some detail on this, but noted that it looked like the Town would be getting a competitor, Fairpoint Communications, once the company came out of bankruptcy. He said this had implications for the Comcast agreement, and he provided details on this.

He spoke further about the process that would be undertaken concerning Comcast, and noted that public input was a key element of the ascertainment hearings. He also explained that after the negotiations were complete, the recommended franchise agreement would come back to the Council.

Sam Flanders, Glassford Lane, asked how often this franchise renewal process took place.

Administrator Selig said the current agreement with Comcast was a 12 year agreement, and said the agreement ran through 2012.

Attorney Ciandella noted that how long the agreement lasted was a point to be covered in the negotiations.

Administrator Selig noted that the Town had received two letters from members of the public, one from resident Dick Gsottschneider, and the other from resident Diana Freeman. Both of these letters were read into the public record.

Administrator Selig read into the public record a letter from resident Dick Gsottschneider, who requested that as part of the renewal process, Comcast be required at its expense to extend cable services to the buildings within the vicinity of Mast Road Extension and Spinney Lane in Durham. He said this area was one of the few areas of Town not serviced by Comcast, and said his attempts over the past few years to engage in a dialogue with the company regarding this matter had not been successful.

The letter noted that part of Durham had been zoned MUDOR, which encouraged both office usage and student apartments. He said his company had built 2 new buildings for 14 residents in this zone, and said they were currently converting a former office building into a mixed office and residential use building, which would accommodate 7 residents.

Mr. Gsottschneider's letter said the lack of high speed internet at the site was an impediment to marketing the property. He said they currently had to use Fairpoint Communications, with their well-publicized problems, and said this was difficult. He also said they had to use Direct TV for each building. He said while this combination was workable, had lots of problems and created a competitive disadvantage for them.

He said they would like to build some additional units on the site, which meant Comcast would have plenty of customers to help justify their new investment. He also said the Sawyer family, one of the abutters, had recently build a new residential unit, and the Hoene family had recently expanded their property, so there was new potential demand in the neighborhood. He said he would be glad to provide more information if needed.

Administrator Selig read into the public record a letter from resident Diane Freeman, who first asked if Maine Public TV could be restored, at the basic cable level. She also asked if they could continue to access TV without having or using an HD TV, noting that she had no interest in it given the expense.

Ms. Freeman's letter asked if they could not have shopping channels in the lineup, or certainly not one on Channel 3, the default channel for those who still used VHS technology. She asked if they could have channels relevant to a university town on that basic lineup, such as Maine, NH and MA public television, the Discovery channel, History channel, A&E, and/or Comedy Central. She said she would also like to receive Lifetime and CNN. She asked if citizens could choose their top 10 channels, stating that she was sure the technology for this existed. Ms. Freeman said she would like the lowest possible cost for the fewest possible but select channels.

Administrator Selig said these were broad topics concerning the agreement that the Town would be thinking about. He said one was that there currently was not a franchise fee in Durham that went to the Town to support cable programming or to the General Fund. He noted that during the previous negotiations, the Town had decided not to include a franchise fee, but said there was concern that this created unfairness in that residents who didn't or couldn't subscribe to the cable system were still forced to support it through their local property taxes.

He said it was thought that it would make more sense for the cable users to support the ability to broadcast programming for them. He said a franchise fee would also allow the Town to do more than the minimal services they now provided.

Administrator Selig said another topic was whether the Town could get additional channels for local broadcasting. He noted that there presently was only one channel which faced competing use from the School and the Town boards, and also said there was little local programming. He said there was interest in getting an additional channel.

He said a third topic was the idea of expanding cable to areas of Town that currently weren't being served. He spoke in some detail on this, and also noted that some residents received their coverage from other towns.

Administrator Selig said a fourth topic was the issue of emerging technology. He said as part of the negotiations, Cable station 22 would like to see some new investment in the cable system. He noted that as part of the previous negotiations, Comcast had agreed to pay for setting up Channel 22.

Administrator Selig said a fifth topic for discussion was getting cable and high speed internet access for all the governmental facilities in Town, including the Schools, the Library, and municipal buildings.

He said he was sure there were other needs that would be identified as this franchise renewal process continued. He then said that going forward, DCAT would be the forum to gather data as part of the process. He said the next ascertainment hearing would therefore probably be through them. He noted that Town departments had been contacted to make sure they would provide input as part of this process.

Councilor Smith said as a Councilor, he had been visited by a neighbor who would like to get access to local Channel 13 in Newmarket. He explained why this was an issue for some Durham residents.

Councilor Mower asked if it was correct that the Town couldn't negotiate commercial channels, and Attorney Ciandella said that was correct. He said the Town could negotiate concerning local town programming, as well as concerning regional programming within certain limitations.

Councilor Mower asked if there would be guidance during this process as to what the parameters were, and Attorney Ciandella said this would be explained up front.

Councilor Needell noted comments during the Budget process about expanding wireless access for local businesses, and he asked if this could be worked into the agreement.

Attorney Ciandella said formally it could not be, but said the Town should be looking at the kind of robust technology infrastructure it needed in order to attract businesses to Town. He said he thought the work on the franchise renewal would lead to the kind of inquiry Councilor Needell was talking about.

Councilor Clark asked if the Town's contract with Comcast serviced most of the University.

Attorney Ciandella said formally speaking, it did not, but he said there were some things to explore with UNH as part of the renewal process. He provided details on this

Councilor Clark said he had noticed that when the students came back to Town, his computer slowed down. He said he would like the Town to address this if possible.

There was discussion on this.

Jay Gooze, 9 Meadow Road, asked if Durham was limited to having Comcast and Fairpoint as its cable providers.

Attorney Ciandella said Metrocast was a possibility, but said whether to come to Durham was an economic consideration for them.

Jay Summers, of Comcast said the company was looking forward to renewing the license. He said the hearing that evening had been helpful to get a sense of what they would be negotiating about. He asked that the letters the Town had received from residents be sent to him. He also noted that the company understood the issue of the slowing down of Internet access when the students came back to Town. He said they were currently exploring ways to expand bandwidth.

Bill Hall said in the 1980s, he recalled that the cable bill was considerably less than the electric bill, but it was now considerably more. He also said at that time, Durham's cable bills were greater than Lee's cable bills, and Durham residents were told at the time that this was because there was a greater build-out in Durham. But he said there were still areas in Town that didn't have Comcast.

There was discussion about UNH's cable contract and how this related to Durham's cable services. Mr. Summers said he was not familiar with the cable contract signed with UNH.

Craig Seymour, 110 Durham Point Road, asked if it would be possible to combine resources in Madbury, Lee and Durham in order to get more buying power.

Attorney Ciandella said according to NH law, agreements were negotiated on a town by town basis. But he said when there was a coincidence of the franchise agreements expiring at the same time, there had been negotiations involving more than one town. He said there would be a regional element to this present franchise renewal, concerning the School district.

Diane McCann, Oyster River Road, asked if there were any openings on DCAT, and also asked what the best way was to provide feedback regarding the franchise renewal.

Administrator Selig recommended that feedback should be provided to him, and he would share this information with DCAT. He also noted that the DCAT meetings where all of these issues would be discussed would be posted.

Bill Hall said the sooner there could be two channels for the Town and the School, the better. He spoke in some detail on this.

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

The Council stood in recess from 9:23 to 9:37 PM.

- B. **Public Hearing and Action on Resolution #2010-01** authorizing the acceptance and expenditure of grant funds in the amount of \$1,045,000 from the Natural Resource Conservation Service to design and construct a fish ladder and associated dam repairs/modifications and site renovations at the Wiswall Dam

Councilor Smith MOVED to open the public hearing. Councilor Mower SECONDED the motion, and it PASSED unanimously 8-0.

Bill Hall said he was on the Lamprey River Advisory Committee, but was speaking as a private citizen. He said the fish ladder was a great idea, and would not be unsightly. He also recommended that more parking was needed for this area. He provided details on how this should be done, and said he hoped it could be done as part of this project. He noted that among other things, it would be a tremendous help to those who were doing the dam repairs.

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

Councilor Smith MOVED to adopt Resolution #2010-01 authorizing the acceptance and expenditure of grant funds in the amount of \$1,045,000 from the Natural Resource Conservation Service to design and construct a fish ladder and associated dam repairs/modifications and site renovations at the Wiswall Dam, Councilor Stanhope SECONDED the motion.

Councilor Needell asked if this work would be done while the bridge was being built.

Town Engineer Dave Cedarholm said the bridge was supposed to be done this summer, and said it was hoped that the construction of the fish ladder could begin next fall and could be completed by September of 2011.

Administrator Selig explained that for logistical reasons, they both couldn't be done at the same time.

The motion PASSED unanimously 8-0.

- C. **First Reading on Ordinance #2010-01** amending Chapter 98 "Rental Housing Commission", Section 98-3 of the Durham Town Code to change the current composition of the Rental Housing Commission

Administrator Selig said these changes had been recommended by the Rental Housing Commission (RHC). He noted that they had been circulated to the Durham Landlords Association and they were in concurrence. He said the goal with these proposed changes was to have two representatives to represent the concerns of the neighborhoods.

He said it had also been clarified that the student representative would come from the UNH Senate. In addition, he said the RHC thought it was important to have constant representatives from the Police Department, the Fire Department, and the Code Enforcement office, so these changes incorporated that as well.

Councilor Clark MOVED on First Reading Ordinance #2010-01, amending Chapter 98 "Rental Housing Commission", Section 98-3 of the Durham Town Code to change

the current composition of the Rental Housing Commission, and schedules a Public Hearing for Monday 1, 2010. Councilor Sievert SECONDED the motion.

Councilor Mower said there was nothing in Ordinance #2010-01 that specifically addressed achieving some kind of balance in representation across neighborhoods. She said it might be in the interest of the Town if when people from different neighborhoods stepped forward to serve, this was taken into consideration if Councilors had to make a choice.

Councilor Clark said he didn't see why this particular committee would be singled out in regard to this kind of thing.

Councilor Van Asselt asked how this could actually be achieved, and also asked why Item F in the Ordinance said "affected by rental property." He said it confused the issue, and said without criteria for deciding which people deserved to be on the committee, there would be problems down the road. He spoke further on this.

Councilor Clark said the language was written in 1995, and said he thought the Council now would simply be changing the numbers of neighborhood representatives.

Chair Niman said Councilor Van Asselt had made a good point, that if the "affected by rental property" language was there, neighborhoods would demand representation on the Committee.

Councilor Van Asselt said he simply supported going from one neighborhood representative to two, and said he didn't think the "affected by rental property" language belonged in the Ordinance.

Councilor Needell noted that the Rental Housing Commission was created as an outcome of the court settlement that was worked out. He said it didn't appear that the original Commission included a neighborhood representative.

Administrator Selig said the neighborhood representative had been added in recent years in order to provide representation from neighborhoods affected by student housing. He said there was no statutory requirement that there be such a member.

Councilor Needell said he was trying to determine the possible repercussions of making this change Councilor Van Asselt was speaking about, and was willing to listen more to what other Councilors had to say.

Councilor Stanhope said he too was bothered by the wording "affected by rental property", and said he would be more comfortable with the wording "included rental properties". He said he supported the expansion to two members, and said it might even be reasonable to consider having three neighborhood representatives, given the location of the University in the middle of Town.

He also said he was not aware of any other Town committee where municipal employees served as voting members. He said their input on the issues was critical, but noted that the Council had been told that Town staff was currently overtaxed. He said assuming that solutions were developed for the current student rental problems, staff presence at future RHC meetings might not be needed. He asked whether they got paid to attend these meetings, and also noted that a police officer was taken out of service when attending a meeting.

Administrator Selig said historically, Deputy Police Chief Rene Kelley had been a member of the RHC, and noted that he was appointed by the Council several years ago. He also said the Fire Inspector, Deputy Fire Chief, and usually the Code Officer attended the meetings.

He said the Commission's strategy was to work collaboratively with various entities to try to come up with all-inclusive solutions, and said this was why the Commission had specifically requested representation by Town staff at the meetings. He said it was true that Town staff were not typically voting members of committees, and instead acted as a resource, or took the recommendations of committees. He emphasized that this proposed structure had come from the Commission itself.

Councilor Stanhope noted that he wasn't suggesting that Town staff shouldn't be at the meetings, but said if they sat on the Commission as members, they would have to be there for the full agenda, when their administrative services might be better used in other parts of Town.

Administrator Selig said there recently had been more RHC meetings than usual, which involved intensive use of staff time, who were working cooperatively with other Commission members. He suggested that perhaps there could be three or four neighborhood members instead of having staff representation on the Commission itself, but he said the Council would then need to get buy-in on this from the Durham Landlords Association.

There was discussion that the Rental Housing Commission met quarterly during quiet times.

Councilor Smith asked whether the Town Council member who acted as a liaison between the RHC and the Council was a voting member. He also recommended that at the top of the page, it should say "...the Commission shall consist of twelve "voting" members..."

Councilor Van Asselt recommended that suggestions like this should be provided to RHC Chair Paul Berton, for possible incorporation into the Ordinance.

Councilor Needell noted that the wording of the Ordinance came out of the court settlement, so they had to be careful about what language was changed.

Councilor Mower said the letter from the RHC to Administrator Selig that had started this process had addressed the concept of changing the membership, and not semantic issues. She said the Council needed to be explicit as to what it would like to see in terms of wording changes. She also said if the Council did recommend going back to the table to revise the wording, she thought the wording “including rental property” was a reasonable approach.

Chair Niman asked how the Council wanted to proceed.

Councilor Van Asselt MOVED to send Ordinance #2010-01 back to the Rental Housing Commission for further work. Councilor Stanhope SECONDED the motion.

Councilor Van Asselt said there was the voting issue, among other things, and said the wording in the Ordinance needed to be rethought.

Administrator Selig said it had always been clear who voted and who didn't vote. But he agreed that Councilor Smith's point was a good one.

Councilor Mower summarized that the wording “voting” member wasn't needed, so they didn't need to be concerned about changing that wording.

Councilor Needell said membership on the Commission in general was long term, with the exception of the Council representative. He said the proposal was to include Town staff as members, and said he was willing to go forward to public hearing with this. He said regardless of what role Town staff played, they would be spending a lot of time on this issue.

He said when things quieted down, he still didn't think it was a big burden on Town staff to support a quarterly meeting. He said it seemed that the only controversial issue was whether to change the word “affected” to “included”, and asked whether they did need to send this back to the RHC.

Councilor Van Asselt said it wasn't a requirement of the settlement that Town staff be represented on the committee. He said he thought it made more sense to have nine members, including two neighborhood representatives, and to not include staff members, who instead could be resource people who would still attend the meetings.

RHC Chair Paul Berton said it saved the Town time and money by having Town staff directly involved at the table, rather than having to bring issues to them after the fact. Asked if there was value in having Town staff be actual voting members, Mr. Berton said he didn't know.

Councilor Smith noted a copy of the Town Code regarding the Rental Housing Commission, which authorized it to adopt bylaws. He said he assumed that could cover who voted or didn't vote.

Mr. Berton noted that bylaws for the Commission had never actually been written. He also said while it had been in existence for 16 years, for 14 of those years, there were meetings involving 3 or 4 people, and little in the way of public input. He said they were in a new era now, and said there was no doubt that the single family rental issue was huge, and had to be addressed. He said the Commission was trying to get up to speed on an issue of this size.

Chair Niman asked Mr. Berton if he would have a problem with the wording in F: “include rental property”.

Mr. Berton said he didn’t think it made a big difference, and said at the end of the day, the proper people would come to the surface to help solve the issues.

Chair Niman asked if Councilor Van Asselt wanted to withdraw his motion.

Councilor Van Asselt said he thought things could probably be ironed out after the public hearing.

Councilor Clark said it seemed they were close, and said if they sent this back, he didn’t know who would make the decision on whether Town staff should be on the Commission.

Councilor Mower said she didn’t want to shortcut proper procedure. But she said the Chair of the Rental Housing Commission was comfortable with the language, and seemed to feel there was an important role for Town staff. She also noted that they were coming up against a new semester, and were trying to move forward some solutions to some problems.

She also noted that some Councilors sometimes spoke about delays in going to public hearing. She said she could say the same kind of thing regarding delaying this, and said it seemed reasonable to move ahead with it.

Councilor Van Asselt spoke further about the idea of rethinking the Ordinance, stating that this would only take a few weeks. He noted that as part of this, the idea of a third member representing the neighborhoods could be considered. He said this might be a good idea, given the situation they were in, and he asked when this would be discussed.

Councilor Needell said there was a reasonable proposal to go to public hearing, and said he would like to hear from the public on it. He said they might get a lot of suggestions, and it then might need to be thought through more. But he said the Council should not be rewriting this Ordinance, and said if they didn’t end up adopting it, it would have to go back to the Rental Housing Commission for more work.

Councilor Van Asselt withdrew his motion and Councilor Stanhope withdrew his second.

There was discussion about whether the Durham Landlords Association would have to

approve the revised Ordinance. Administrator Selig said the opinion of legal counsel was that there should be the concurrence of the DLA before making the change, because the impetus for the Ordinance had been the court settlement.

Mr. Berton said in some sense time was of the essence. He also asked that Town staff be represented in some way at the meetings as the Commission moved forward.

Administrator Selig said Town staff would be at the meetings, regardless.

The original motion PASSED unanimously 8-0.

- D. Discussion regarding general enforcement procedures and the existing tools at the Town's disposal to address issues including student rental housing within Durham neighborhoods, illegal parking, noise violations, vandalism, and general follow up

Fire Chief Cory Landry spoke before the Council. He explained that they regularly went out in pairs on Thursday through Saturday, generally more in the fall than in the spring, to do place-of-assembly checks. He provided details on this.

He said there were two things that had to happen in order to go into a single family home; if they could see that there were more than 100 people in the building, and were able to determine there was an imminent hazard. He said most of the time, they were invited in, and also said they could get an administrative warrant, but said this happened very rarely. Chief Landry said entry could be refused to a place of assembly, in which case the Department had to get a warrant. He said this didn't happen often either. He said there were times they worked with the Police Department because of blocked exits, etc., or something that represented a serious criminal safety issue, and said the two departments worked well together in addressing these things.

He said according to the life safety code, a place of assembly was 50 or more people in a public gathering, while the State said a permit wasn't needed until there at least 100 people. He said if alcohol was served, a permit was needed.

There was discussion that administrative warrants were served, but this was very unusual.

Councilor Stanhope asked how the Fire Department responded to the fact that a single family house had a number of people in it that exceeded a safe number, and was an imminent hazard.

Chief Landry said it was more difficult to come up with a determination of imminent hazard at a single family house without the 100 number, given the fact that there were often multiple floors, etc. He said it had to be really extreme in order for the Department to be able to determine this.

Councilor Stanhope noted that some landlords asked the Fire Department to come in and do safety checks, and asked how many of them were given population load numbers.

Chief Landry said this was only done if there was a common room for 50 or more people. He also said a room for 100 or more people needed a place of assembly permit, or shouldn't hold gatherings.

Councilor Stanhope asked if the Department would work with a landlord to determine what the safe number of people in the building at one time was. He noted that he had seen this done with some properties in Town, and said he had often thought doing this would solve some problems.

There was discussion, with Chief Landry saying this could be done, but involved a lot of legwork.

Councilor Mower asked what kinds of code violations the Department had to follow up on.

Chief Landry said the Town had prosecuted concerning having too many people in a place of assembly, and not having a permit, both of which involved fire and safety issues. Administrator Selig said one judgment had resulted in a payment to the Town, which was put into a special fund to support training of fraternities and sororities on proper protocol.

There was discussion that most of the time when the Fire Department said there were too many people gathered in a building, this was addressed voluntarily. Chief Landry said if someone refused to reduce the numbers, at that point the Police Department could be called in. He noted that a court order was needed for this, but said seeing a cruiser out front had an effect.

Councilor Needell MOVED to extend the meeting past 10:30. Councilor Mower SECONDED the motion, and it PASSED unanimously 8-0.

Administrator Selig said one of the challenges was managing very large numbers of young people with a minimum amount of staffing. He explained that the Fire Department and the Police Department therefore counted on having a working relationship with the landlords of multi-unit facilities, in order to get access and cooperation.

Police Chief Kurz next spoke on the role of the Police Department in regard to student behavior issues. He said in some situations at properties in Town, there were security staff that focused on code violations and lease violations, but he said these were not police matters. He spoke in some detail on this. He said the police could be called in if necessary if renters didn't cooperate.

He said the UNH student population had increased 17% over the past 10 years. He also said arrest data collected since 2004 indicated that it was not just students who were being arrested. He showed a graph that indicted the fluctuation in arrests over the course of 2009, and said it had been especially difficult the previous fall because the weather had been good for several weekends.

He said this had created a situation where people were walking from party to party, which had caused a lot of problems in the pocket neighborhoods. He noted that once people got to a particular house, there weren't as many problems. He said there had been 243 arrests in September.

Chief Kurz next reviewed various strategies that had been implemented to address the problems. He said the Department had gone from 8 hour shifts to 10 hour shifts, which resulted in having twice as many officers on the street on Thursdays, Fridays, and Saturdays from 9 pm to 3 am. He noted that this was why more vehicles were needed, so that the Department could provide high visibility with the additional officers on duty. He said it was known that crime went elsewhere, was delayed or was prevented if an officer present.

He next reviewed community initiatives to address the problems. He first described in some detail the process of sending letters to parents. He then spoke about weekly arrest reports, and noted that this information was shared with various entities, including UNH officials, who then required that the student involved meet with his/her Dean, which was a significant step.

He also said there was a landlord notification process, which was a cutting edge approach. In addition, he spoke about alcohol compliance checks, and said three were done per year, along with follow-up letters. He stressed that alcohol was the basis of everything they dealt with.

Chief Kurz said after the riots in 1999, the Department realized some strategies were needed to address them. He said they realized they needed to physically arrest people, book them, and as part of this get photographs so they could keep a record of what was happening. He said this approach was time-consuming, so they hired deputies from Strafford County to come in with the arrest van when needed, which kept the Durham police officers on the street.

He said other strategies implemented were the redesign of the patrol zones; the use of support staff to perform bookings so officers could stay on the street; and the use of bail commissioners on site to get people in and out as fast as possible unless they were combative, drunk, etc., so went to jail.

Chief Kurz said the Department had also tried to partner more with the UNH Police Department, but said this hadn't happened as much as they would have liked because that department was busy on campus.

He said one or more of the three Department administrators worked on weekends, especially in the fall and the spring. He also said overtime shifts were added during peak periods, rather than hiring additional officers.

Councilor Mower asked for some generic examples of situations where police officers chose to arrest or not arrest, and prosecute or not prosecute.

Chief Kurz said they arrested for everything, including littering, with the idea that perhaps these people wouldn't want to come back to Durham.

There was discussion about the extent to which drifters were coming to Durham.

Chief Kurz said they were arresting young people who were confused by alcohol and making bad choices, and when arrested, it didn't matter if they were UNH students or not. He said the data they collected later indicated this. He said they might be a student somewhere else, but didn't belong at UNH.

It was noted that "non student" referred to students from other colleges, high school students, and occasionally citizens.

Councilor Needell asked what percentage of arrests were prosecuted, and Chief Kurz said all of them. He said some pleas were negotiated, and said if cases were pled down to a Town ordinance such as the local open container law, that fine came from the Town. He noted that revenues from this last year were \$140,000. He said the reality was that they couldn't have trials for 1,000 people. He also said the conviction rate was more than 96%.

Councilor Needell said when someone was arrested for something like littering, that person had been identified as being a problem. He said while some of these arrests might look trivial, the idea was to get people away from where they were causing problems.

Chief Kurz said there was a policing theory called the broken window approach which was that they needed to deal with small matters because they inevitably turned into big matters if not dealt with. He stressed again that alcohol was the foundation of everything they dealt with, in situations where intelligent kids were making some bad choices. He noted that there were more drug arrests in Durham than in surrounding towns because arrests were being made, which involved searches. He said many of those arrested then became felons.

Councilor Van Asselt asked if data on arrests included where the person lived and where that person was arrested.

Chief Kurz said the arrests occurred mainly in the triangle of Madbury Road, Garrison Ave and Main Street. He said he didn't really know where the students being arrested lived in relation to this area. He noted that this data could be obtained, but said most addresses indicated home addresses, not Durham addresses.

Councilor Van Asselt said there was a great deal of concern about student movement from house to house, and asked if there was a way to track this.

Chief Kurz said this year there had been a marked difference in the extent of foot traffic, which was causing many of the problems. He said where people were coming from varied. He noted that they didn't see a lot of DWI's, because everyone was walking.

Administrator Selig asked what the challenges were in addressing the foot traffic aspect of the problems.

Chief Kurz said a significant challenge in the court system was that when people were walking around, even if there was a significant odor of alcohol and it was believed the person was under 21, the law didn't allow the Police Department to ask how old the person was. He said if they were making noise, or even yelling, it might not rise to the level of a crime unless there was a complaint that there was a disturbance. He said even then, determining which person in the crowd(s) was responsible was problematic.

Councilor Mower asked what the most likely violation was for which someone could be arrested, if a resident were woken up by rowdiness and saw some of the behaviors.

Chief Kurz said if a resident saw someone who was impaired, the police could step in. He said officers on duty looked for this, but said it became problematic to go into a crowd, stop people and ask for an ID. He said he didn't like having to say what the Department couldn't do, but said the laws were what they were. He noted that everyone scrutinized how the Department did its work.

Administrator Selig said a Rental Housing Commission discussion had noted a New London case, where there was an underage party and the police went in and arrested everyone. He said a question was why this couldn't be done in Durham.

Chief Kurz said it had taken five towns to do this, and noted that there was only one party going on. He also said he thought they could lose that case because there wasn't a search warrant. He also said every time someone came out of the house, they had to blow into an intoxalizer, and said in his opinion this was illegal.

He said he had asked members of his department to estimate a cost for putting a team together that would arrest everyone at a party, or at least all of the juveniles there. He said this would cost about \$17,000 per night.

Chief Kurz said when they got a noise complaint, they issued a summons or arrest to the renter of the apartment, but often when they got there, no one would identify themselves as the renter. He said at that point, the police would kick everyone out and lock the doors. But he said then these people were out on the street walking around.

He spoke about other reasons why people might be arrested, including having open containers, and said this applied to anyone of any age, including UNH alumni.

Tom Johnson, Director of Zoning, Building Code, and Health, spoke before the Council. He first reviewed the Zoning definitions of household and unrelated household, and also spoke about the grandfathering problem. He said there were a number of older single family homes in Town that could have several more than 3 unrelated people living there, yet they were right next to properties that could have no more than 3 unrelated people in them. He noted that the 3 unrelated rule applied in 8 of 13 Zoning Districts.

He explained that parking spaces and parking lots were considered structures, and said a lot of them in Durham were illegal. He also noted the definition of Administrative Officer, which included the wording “may request entry into a building.” He said he couldn’t demand this entry, and noted that he mostly dealt with properties during the day, when people were coherent, knew their constitutional rights, and had been drilled by their landlords so they knew exactly how to respond. He said this meant he didn’t get entry.

Mr. Johnson said one of his duties was to report findings on violations of the Town regulations to the Town Council. He said there was a problem with one and two family dwellings that were non-owner-occupied and where there were mostly absentee landlords.

He said the Zoning Ordinance had a provision for penalties, and said if someone was prosecuted, there could be a misdemeanor or felony charge.

Councilor Mower noted there had been some discussion about the fine structure, and that there was a State component to this.

Mr. Johnson provided details on this, based on RSA 676:17, stating that the fine was \$275 per day for the first offense, and \$550 per day for subsequent offenses. He also noted that RSA 651:2 said the maximum penalty was \$1,000. He said if they went after a landlord for multiple violations and expected this to add up to \$5,000 to \$10,000, in actuality the Town might not be able to collect more than \$1,000. He said this was one of the issues they were in the process of trying to working out.

He noted Section 175-10 of the Zoning Ordinance regarding violations or suspected violations. He said he could try to get entry to a property, but said if he was refused entry, he could issue the violation notice and the property owner would have 10 days to comply. He said it wasn’t that he had to wait 10 days to get in, and said he could try to get in the same day. But he said if he was refused entry, he then had to get an administrative warrant. He said a possible Zoning change was to reduce this time period 10 days.

Mr. Johnson reviewed the parking requirements in Section 175-111 of the Ordinance, which said a parking space was 9 ft x 18 ft. He explained that if there was a 12 ft wide paved driveway with two cars side by side on it, one of the cars was illegal, and he said in most cases, both were illegal because the two wheels were on the grass.

He reviewed the design requirements for parking in Section 175-111. He said according to Section 175-111.C., up to three vehicles were permitted in the front yard setback, but said each space had to be 18 ft long, and the parking must be on paved, gravel or a similar pervious surface. He also said only one driveway curb cut was allowed in the RA, RB, RC, and R Zoning districts, with some exceptions. He said violations of the driveway permit were specified in Section 175-117 F.

Mr. Johnson spoke about the Town’s solid waste ordinance, which he was in charge of enforcing. He noted the fine structure and the form he filled out, and said the process he

used with property owners was pretty effective. He spoke in detail about how it had been used effectively with a fraternity on Strafford Ave., and noted that he hadn't had any problems with this fraternity since that time. He also said there had been no problems with the fraternity across the street because they heard what had happened with the other fraternity.

He showed pictures of some homes around Town that were student rentals, and had various trash violations, parking violations and occupancy violations. He said while he hadn't gone after parking violations, these kinds of violations existed all over Town, and were a finable offense.

Councilor Mower noted that there were some open questions being explored with the Town attorney about what Mr. Johnson could do with some of this illegal parking evidence.

Mr. Berton said the presentation had really highlighted the battle they had on their hands. He spoke about the idea that had been discussed by the RHC regarding a social occupancy limit for non-owner occupied properties. He asked whether the community at large would be willing to have such a limit, and said the question was whether, if there was no large place to gather, this would take care of the issue of roaming students.

Chair Niman suggested that perhaps the RHC could make a recommendation to the Council on this, and there could then be discussion on it.

Councilor Needell said it sounded like there were a lot of existing tools, and said the question was how much enforcement could be tolerated, and how much the Town would want to undertake. He then asked Mr. Johnson if he was looking for some direction as to how to utilize the existing tools, if there was a lack of will or ability to enforce the existing tools, or if different tools were needed.

Mr. Johnson said he didn't have a prosecutor, and said if the Town decided it wanted to start going to court on these things, some legal help would be needed, which would cost some money. He said they could perhaps spend some money addressing several properties in the neighborhoods, which would send a message to other landlords.

He said the money received in judgments wouldn't be a revenue source, but said if they got tougher on enforcement and had that tool, it might scare some people out of being in the rental business. He also said going to a two unrelated rule, as had been discussed by the RHC, would give them additional tools.

There was discussion on when the RHC would actually be coming up with its recommendations, and Mr. Berton said the Commission was meeting the following day.

Resident Jay Gooze said a neighborhood group would provide a list of recommendations to the RHC tomorrow, and said he hoped this would be approved and go on to the Council. He said the Council should be seeing this within the next few weeks.

- E. Discussion regarding the rental of parking spaces within the Town of Durham
Discussion was postponed on this item.
- F. Discussion regarding annual evaluation process and discussion on renewal of
employment contract for the Town Administrator

Chair Niman said if Councilors were happy with the existing evaluation process outlined in the Council Communication, they would plan to move forward with it.

Councilor Needell noted that the evaluation document was a checklist, and received clarification that there would also be the opportunity to provide narrative comments, as had been the case last year.

Councilors agreed to move forward with the existing process.

XII. Nonpublic Session (if required)

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

XIV. Adjourn

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

Adjournment at 11:30 pm

Victoria Parmele, Minutes taker