

This set of minutes was approved at the April 19, 2010 Town Council meeting

**Durham Town Council
Monday March 15, 2010
Durham Town Hall - Council Chambers
7:00P.M.
MINUTES**

MEMBERS PRESENT: Councilor Julian Smith; Councilor Doug Clark; Councilor Peter Stanhope; Councilor Mike Sievert; Councilor Diana Carroll; Councilor Robin Mower; Councilor Jay Gooze; Councilor Bill Cote

MEMBERS ABSENT: Councilor Neil Niman

OTHERS PRESENT: Town Administrator Todd Selig

I. Call to Order

Councilor Smith called the meeting to order at 7:01 pm. He noted that Chair Niman was unable to be present because he was flooded in, and said he would sit in temporarily because he was the senior member of the Council present at the meeting.

II. Approval of Agenda

Councilor Smith said Chair Niman had asked that Item XII D, concerning the rental of parking spaces in Town, be postponed so he could be at the meeting when it was discussed.

Councilor Mower MOVED to amend the Agenda. Councilor Gooze SECONDED the motion.

III. Swearing in of Council Members

Councilor Smith welcomed new members Councilor Gooze and Councilor Cote to the table.

Town Clerk Lorrie Pitt swore in Councilor Gooze and Councilor Cote, as well the other Council members.

IV. Selection of Council Chair and Chair Pro Tem

Councilor Gooze MOVED to appoint Councilor Carroll as the Chair of the Town Council.

Councilor Gooze said Councilor Carroll had experience and would make an excellent

Chair, noting that she had previously served as Chair Pro Tem of the Council.

Councilor Mower SECONDED the motion.

Councilor Stanhope MOVED to amend the motion to add additional names and allow the Council to consider all names concurrently.

Councilor Smith asked for clarification on this, and Councilor Stanhope said the idea was that there would be more than one name in nomination for Chair.

There was discussion on what the motion meant, and whether there was a precedent for such an approach.

Councilor Sievert SECONDED the motion.

Councilor Smith asked who Councilor Stanhope wanted to nominate and Councilor Stanhope said he wished to nominate Councilor Gooze.

Councilor Gooze said he would respectfully decline, as a new member of the Council.

Councilor Stanhope said he would therefore enter the name of Councilor Niman.

Administrator Selig provided clarification that if the amendment passed, there would be two names under consideration for Chair. He said discussion on the amendment could help clarify what peoples' perspectives were.

Councilor Smith respectfully suggested that Councilor Stanhope withdraw his motion, noting that Councilor Niman wasn't present to accept the nomination.

Councilor Stanhope respectfully declined to withdraw his motion.

Councilor Mower said after four years of good service by Councilor Niman, it might be appropriate to have a new Chair.

Councilor Smith noted that there would have to be 5 votes in order to pass the amendment. He called for the vote on it.

Councilor Clark asked that there be more discussion. He said he had always felt that the process of electing the Chair was awkward, and also said however things were handled procedurally, he wanted there to be the opportunity to provide perspectives on who should be the Chair.

Councilor Smith recommended getting the motion to amend out of the way. He said if it failed, they would discuss the original motion, which nominated Councilor Carroll as Chair.

Councilor Cote asked what happened if the amendment passed.

Councilor Smith said he doubted that there would be the votes to pass it. He said he thought they should move on before this process became an embarrassment.

Administrator Selig said the Charter was clear that there could only be one Chair, and said if the amendment passed, there therefore would be some problems in complying with the Charter. He suggested continuing the discussion, voting on it, and seeing what happened.

The motion to amend FAILED 3-5, with Councilor Stanhope, Councilor Clark, and Councilor Sievert voting in favor of it.

Councilor Sievert asked if the Council had to go forward with appointing a Chair when Councilor Niman wasn't there.

Councilor Smith said the Council did need to appoint a Chair, noting that the Charter required this.

Councilor Sievert said this was a situation where Councilor Niman couldn't get there, and said he therefore didn't think it was fair to go forward with appointing a Chair.

Councilor Smith said it should be considered that Councilor Niman had not wished to be there.

Administrator Selig read from the Charter concerning the fact that the Chair needed to be chosen at the first regular meeting after the election. He said the Charter was silent on whether all the Councilors had to be present at this meeting when the Chair was chosen. He noted that business was always conducted as long as there were 6 Councilors present. He also said because there were 8 Councilors present that evening, there would need to be a vote of at least 5 Councilors in favor of the motion in order for it to pass.

Councilor Sievert noted that Councilor Smith was sitting in as Chair.

Councilor Smith said he was doing so as the Councilor with the longest tenure on the Council right now. He said he was very supportive of the selection of Councilor Carroll, who had been Chair Pro tem for two years, and had chaired a number of meetings during that time. He said he hoped the Council would now get on with electing the new Chair, and would get on with the business of the Town.

Councilor Clark said he believed they were at a crossroads of opportunity, and said he gave Councilor Niman a lot of credit for the work he'd done behind the scenes building relationships. He said the Town was at a pivotal time that required leadership that was capable of navigating very serious issues. He said they needed to think about today but also needed to plan for tomorrow.

He said they had to acknowledge that the Chair was the face of the Town with entities like the University and industrial leaders who would be asked to invest millions of dollars in the Town. He said they would have to have confidence that this was the town they wanted to put money in, and said the Town needed a leader who was strategic, thoughtful, and really had a good grasp on the issues they were faced with and might be faced with.

Councilor Clark said it was critical that they turn relationships that had been adversarial into those that were win-win. He said Councilors had stopped pointing fingers and had started talking to one another about creating win-win situations. He said they could elect people who made them feel good personally, or could elect people who could carry on what had been started.

He said he believed Councilor Niman was the best choice to continue this work for another year, and also said the Council should elect as Chair Pro Tem someone like Councilor Gooze, who would be well prepared to step in as Chair in the future.

Councilor Smith said Councilor Niman would be on the Council for two years, and said he hoped he would continue to do the good work he had been doing with the business community.

Councilor Mower said she admired Councilor Clark's analysis of the situation the Council found itself in, and said she agreed with much of it. But she said she believed they did have a very strong leader in Administrator Selig. She said she would like to see some of the principles of sustainability brought to the forefront of discussion, and said she didn't believe this had happened with Councilor Niman.

She also said she didn't believe Councilor Carroll would be acting alone, and said she would be an excellent face for the Council in terms of building relationships with the University and the business community. Councilor Mower said she felt strongly that no one person should remain the Chair for any longer than 4 years. She said they could still work together, and perhaps better than in the past, toward common goals.

Councilor Sievert said sustainability had been brought to projects in Town, noting the Perry Bryant's project, Peter Murphy's project, and others.

Councilor Gooze said he had been a member of six different boards in other towns, some of which had not gotten much input from board members, and others where each member took on a lot of responsibilities. He spoke about what the role of the Chair of the Town Council actually was.

He said Councilor Niman had done a great job as Chair, and said there were some great projects going on. But he said the Town shouldn't be dependent on one person to get these projects, and said Councilor Niman could be a part of this. He said Councilor Carroll could do a fine job as Chair, as could others. He said he didn't think they should be dependent on one person to do the work of the Council.

Councilor Smith suggested that they move on.

Councilor Stanhope said he had heard from a number of people that a criticism of Councilor Niman was the way he ran meetings. He said it was interesting that some of those who voted against the previous motion were those who were frequently vocal at meetings, and Councilor Niman allowed to go forward. He said Councilor Niman had had a soft hand in allowing those voices, yet was a very effective Chair. He then said Councilors should be clear that a vote in favor of the motion before them was effectively voting out a Chair.

Councilor Smith agreed that Councilor Niman had been an effective Chair.

Councilor Clark said he wasn't necessarily saying that Councilor Niman was the individual the Council needed. But he said he was saying that the University president didn't want to sit in front of 9 people, and said the role of the Chair was therefore critical because it was going to be the representation of the face of the Town.

Councilor Mower suggested that there could be a discussion soon about a possible role for Councilor Niman to continue discussions with the University, but not necessarily as Chair of the Council.

The original motion PASSED 5-3, with Councilor Clark, Councilor Sievert, and Councilor Stanhope voting against it.

Councilor Carroll took over as Chair at that point in the meeting. She asked Administrator Selig to read the duties of the Chair Pro Tem.

Chair Carroll said if the Council would like, they could go around the table to see how many nominations there were for Chair Pro Tem, before getting into motions.

Councilor Mower suggested nominating Councilor Smith as Chair pro tem

Councilor Clark said they would be smart to choose someone with several years to go on the Council, and said he would therefore prefer to have Councilor Gooze or Councilor Cote be the Chair Pro Tem so either of them could see the behind the scenes work, and could then lead in the future.

Chair Carroll said that was a very good point, but she noted that this wasn't always the way it was done.

Councilor Clark said this approach was particularly important at this time, and said he would like Councilor Gooze to accept the role.

Councilor Gooze said his problem was that if he was serving as Chair of a meeting, he would cut people off. He also said he wasn't sure he could make the time commitment

right now.

Councilor Sievert recommended nominating Councilor Niman as Chair Pro Tem.

There was further discussion on the issues of longevity and succession in regard to the Chair Pro Tem position.

Councilor Gooze said there seemed to be a difference of opinion regarding the role of the Chair, and he spoke further on this.

Councilor Clark said he understood the role of the Chair, but said he also understood that the reality of the situation was that the Chair was the face of the government of Durham. He spoke in detail on this, and said they needed to be realistic about how the Town was run and how things got done.

Administrator Selig said the charter was clear in terms of the duties of the Chair. He also said in reality, citizens and the University looked to the Chair for a leadership role. and said the longer someone was in that role, the more this was the case. He noted that Councilor Niman had been the Chair of the Council for 4 years, and had been able to build a cordial and strong relationship with University President Mark Huddleston.

Administrator Selig said he talked to President Huddleston as well. He said his own experience was that when he first came to work in Durham, the University didn't know who to talk to when it came to the Council: all 9 members, committees, or individual Councilors. But he said a strong working relationship had now been created with all levels of the University.

He said over the past 2-3 years, Councilor Niman had been very capable in expressing what the majority perspective of the Council was on some key issues. He said it had therefore made sense for him to be involved in certain conversations about development in Durham. He also said Councilor Niman had been good at thinking outside of the box, so was extremely influential and helpful in moving forward the Council goals. He noted discussion on the Council the previous year about whether Councilors were comfortable with the role Councilor Niman was playing, and that it was determined at that time that they were comfortable, and that he should continue with the work he was doing.

Administrator Selig said the Council had to be comfortable with what the role of the Chair was. He said the Chair couldn't promise what the Council would do, but would sometimes have a sense of what broad ideas the Council would and would not be receptive to.

He said that regarding the idea of succession planning, it was good practice to have the Chair Pro Tem in a training role to move into the Chair position, but he said it didn't have to be that way.

Councilor Smith noted the time, and said this discussion would be better handled under

the Roundtable.

Councilor Smith MOVED to amend the Agenda, to take Item VI. Minutes and VII Councilor and Town Administrator Roundtable and place them after XIII. New Business.

Chair Carroll asked for forbearance from members of the public waiting to speak.

Councilor Smith asked to add to his motion the nomination of the Chair pro tem.

There was still no second, and it was noted that they were therefore still in the discussion phase.

Councilor Gooze said the Council would be able to do the things it needed to do about ordinances and make it easier to develop, and said there didn't necessarily need to be one person to make this happen. He said if they did things right, there would be developers coming to develop in the right way and in the right places. He noted that this was what the whole charrette process had been about. He also said he would be happy to have Councilor Niman continue with all the work he was doing.

Councilor Mower said she agreed with this. She also said there was nothing that precluded two Councilors and Administrator Selig from talking with someone.

Administrator Selig said that was true.

Councilor Stanhope asked if having Councilor Niman be the Chair Pro Tem would be seen as a recognition by the Council of his representation of the Council in its entirety, as a liaison with the University. He also said it was important in the Agenda setting session that there were different points of view represented by the Chair and Chair Pro Tem, and noted that this had been the case when Councilor Carroll had been the Chair Pro Tem.

He said there were a number of points of view on the Council, and said Councilor Carroll and Councilor Smith seemed to fall into the same camp. He said having Councilor Niman as Chair Pro Tem would mean there was equal representation of the different points of view. He said that would be his argument for fairness, but said if the Council wanted to stay divided, that was their choice.

Chair Carroll said this was not a vote on division, taking sides or polarization, and said however the vote turned out, they needed to work together. She noted that Administrator Selig had said Councilors could work in specific areas where they had talents and expertise, and she said Councilors would at times direct other Councilors to do so. She said she hoped they would move forward. She said Councilor Stanhope had made some good points, but cautioned Councilors not see the vote as polarization.

Councilor Mower said at this time last year, she made the argument that the Chair and Chair Pro Tem represented the broader community. She said she had found that to be a

very strong argument, and said she hoped that if they went in that direction, people would act accordingly in representing that they were trying to work together. She noted that at Agenda setting meetings she'd attended, each of the four Councilors there had provided input into making the Agenda, although the Chair had a bit more to say.

Chair Carroll asked for a motion.

Councilor Stanhope MOVED to select Councilor Niman as Chair Pro Tem. Councilor Clark SECONDED the motion, and it PASSED 6-2, with Councilor Smith and Chair Carroll voting against it.

V. Special Announcements
None

Chair Carroll said before continuing further, she wanted to thank Councilor Niman for the time and effort he had put in as Chair of the Council over the past 4 years. She spoke highly of his problem solving, creative thinking, and ability to run a smooth Council meeting as best he could. She said he along with others, including Administrator Selig, had worked hard to create a cooperative working relationship with UNH. She said they were all now seeing the positive results of that hard work.

Chair Carroll suggested that this was an area that Councilor Niman should be asked by the Council and the Administration to keep working on, and said they would do well as a Town to see that his skills and abilities were used. She said it was also very important to note that there were a lot of skills and abilities on the Council, and said she hoped these too would be used in the year ahead.

VI. Approval of Minutes

February 1, 2010

Councilor Clark MOVED to approve the Minutes. Councilor Stanhope SECONDED the motion.

Councilor Mower said page 19, second full paragraph, should read "He noted that questions had been raised during Phil Auger's recent presentation..."

The motion as amended PASSED 6-0-2, with Councilor Gooze and Councilor Cote abstaining because they were not on the Council when the meeting was held.

VII. Councilor and Town Administrator Roundtable

Councilor Mower said the Energy Committee had recently met, and said there was a presentation by Green Power Management, which had worked with the Town of Newmarket to purchase power with a wholesale pricing program. She said the Committee would look into this kind of program for the wastewater treatment plant.

She also said the company had a device that recycled wasted energy, and said it would take a look at this as an option for the Town. She noted that Administrator Selig had met with the company president previously, and said she would bring back information to the Council on these possible projects.

Councilor Smith said the Planning Board had met the previous week. He said the Seacoast Repertory Theatre applications were continued again at the request of the applicant. He also said there was a presentation from B. Dennis Town Design on the downtown redevelopment report.

Administrator Selig said the Trust for Public Lands application was submitted on Friday. He said NH Fish and Game would be the primary applicant for the grant, and said the Town had submitted a letter of support as the co-applicant.

Councilor Sievert noted that this represented a change from what had been presented to the Council, which was that the Town would be the applicant. He asked how this change would impact things.

Administrator Selig said to his knowledge, it wouldn't mean any change for the Town. He said it would allow the Town to decline at a later date if it wasn't comfortable with the particulars, and would allow the Trust for Public Land to continue to move the application forward. He said whether the TPL could raise the funds without getting up to \$400,000 from the Town wasn't clear.

Councilor Sievert said if the Town wasn't a co-applicant, it wouldn't pay the money.

Administrator Selig said the Town could still choose to pay the money even if it wasn't a co-applicant.

Councilor Sievert asked if there had been a misrepresentation in the way this was presented to the Council.

Administrator Selig said he didn't believe there was interest on the part of the Trust for Public Lands in misrepresenting anything. But he said the organization had observed the Town's concerns about the application in a variety of areas, and then approached NH Fish and Game. He noted that he was not involved in that decision, and was surprised by it as well.

Chair Carroll asked Councilor Sievert if he was concerned that the Town might be hurt in some way by this change.

Councilor Sievert said he wondered if the Council had been duped, in that they voted on this and agreed to put up money, and things then changed.

Chair Carroll said the land would be conserved if the application was accepted, and everything they voted for would stay the same. She also noted that there would be no

money upfront.

Councilor Sievert asked if they knew things would stay the same.

Councilor Mower said her understanding was that the terms the Town wanted remained the same, and she noted that the TPL letter indicated this.

There was discussion that one of the possible terms was workforce housing.

Administrator Selig described his involvement in the process, as the application was developed. He said it was fairly general in terms of exactly what the particulars of the easement on the land would be. He said the Town would receive a fee ownership of the approximately 176 acres; 10-15 acres to be set aside for recreational fields; and said the Conservation Commission was considering allocating up to \$400,000 as a local Durham match for the project.

He said he had seen no draft of what the easement would look like that would prevent the Town or anyone from developing the land. He said the Southeast Land Trust would hold the easement, and said the Town would have to decide if it was willing to accept the 176 acres, given the particulars of the easement, which they had not seen yet.

Councilor Stanhope determined that the Council would be able to review the easement at some point. He also asked whether the Town would still be able to do due diligence regarding the price of the property. He spoke in detail on the need for this, and asked if having NH Fish and Game as the primary applicant would mean this would be circumvented.

Administrator Selig said the Town would have the ability to decline to accept the fee interest of the land, and could also decline to contribute any money toward the project. He also said they would be able to review the appraisal information, and said the TPL had agreed to submit that final appraisal to peer review, which would be jointly selected by TPL and the Town.

He said if in the final analysis the Town decided it didn't like the terms, a benefit to this new twist was that it could say no, and the TPL could then still work with NH Fish and Game to preserve the land.

Councilor Smith suggested that this issue could be discussed at greater length later in the meeting. He also noted that the Council had agreed to direct Administrator Selig to cooperate with the application process, but had not actually taken a vote on this.

Administrator Selig said when he received the application that was submitted, he would make it available, and would keep the Council updated on its status.

Chair Carroll said if Councilors needed more time to talk about this subject, they could do so at a future meeting.

Chair Carroll noted that she had been the Council rep to DCAT, and said at their meeting on March 10th, there was general discussion on the upcoming Comcast negotiations, and the possibly of establishing a second channel, which would be devoted totally to the School System. She noted that this might be one way to get more information out about the system. She also said DCAT members had met with library representatives who were interested in installing an old robotic camera at the library for taping live programming.

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

Roger Speidel, 7 Nobel K. Peterson Drive, welcomed new members to the Council. He then said he would share with the Council what he planned to say to the School Board at its meeting on Wednesday. He said he'd contacted 10 school systems in NH, and got their total 2010-2011 budgets and cost per student per year. He said the average cost per student was \$4,286 less than this cost for the Oyster River School District. He said if this cost could be brought into the range of those other 10 school systems, the Town could save over \$8 million per year, which was astounding.

Mr. Speidel said each of the 10 school systems had a budget committee, but he said the Oyster River School District did not. He asked why the budget was allowed to explode the way it had over the last 10 years, noting that the cost per student per year had been only \$374 over the State average 10 years ago. He said the recent School Board election showed that the taxpayers didn't want more of the same runaway budget increases. He said on Wednesday, he planned to propose that the School Board move to form a budget committee immediately.

He thanked the Council for their support of the taxpayers, and said he appreciated the time that Administrator Selig, Councilor Niman and Councilor Clark had taken to meet with the School Board and the Superintendent. He asked the Council for its help in establishing an Oyster River Budget Committee, which he said was long overdue.

Bill Hall, Smith Park Lane, provided to Councilors a list of fire lane issues, noting that it didn't necessarily cover all of them, but was a good place to start. He spoke about the fact that he had previously recommended fire lanes at the skating rink, Wagon Hill and Davis Ave, and was ignored, but yet within 2-3 months of this, there were three catastrophes near each of these locations. He provided details on this, and also spoke in detail about the need to have fire lanes on both sides at Adams Circle, near the Whittemore Center.

Mr. Hall said he'd been looking further into the fire lanes issue, and said he had found that a number of signs for fire lanes on Town property had been removed. He said there were no fire lanes at Wagon Hill, or at the rink, and he suggested that there had been an effort to remove these signs, and the Town's fire lane control at the University. He said the only sign he could find on Town property was at the Grange, but said the lanes were not painted. He said there was some real work to do. He then spoke in detail on the specifics of the fire lanes list he had provided to Councilors.

Councilor Stanhope said this was an important life safety issue, and asked Administrator Selig to follow up and identify which of these should be designated. He also said the Town should get the signage up where needed. In addition, he suggested that the police officer who monitored parking downtown could also monitor fire lanes. He said if the Town began to police these lanes, there would be less parking in them, and a higher level of life safety.

Administrator Selig asked for further details on some of the items on the list.

Mr. Hall spoke further, and then said the lack of fire lanes at some locations at the University said to him that there were no pre-plans, which marked out a building and laid out where the trucks had to go, and then determined where the fire lanes went. He said he was pleased that Councilor Stanhope had picked up on this, and noted that Cote would be speaking about the Field House doors. He said he would be glad to get out of this issue, but said he would come back if needed.

Administrator Selig said Mr. Hall had brought this up before, and said the Chief would follow up on the list. He suggested that there be an Agenda item at a future meeting when it could be addressed.

Chair Carroll agreed that this would be put on a future agenda.

Councilor Gooze asked who decided where the hydrants went.

Administrator Selig said it became a funding decision, ultimately. He said the Town had opted not to have a hydrant at Morgan Way, as part of the CIP, but said if money was not an objective, the Fire Department would have agreed it would be good to have one there.

Councilor Smith noted that the Town had designated some fire lanes by Town code, and said he hoped there would be signs, and proper markings at anything already designated.

Chair Carroll thanked Mr. Hall for bringing this list forward, and said it had been very helpful.

She asked Councilor Cote if he would like to respond now or later concerning some things Mr. Hall had stated..

Councilor Cote said a discussion later would be fine, and said the issue had been well stated.

Warren Daniel, 4 Palmer Drive, said he was the Seacoast regional manager for the Small Business Development Center, and also owned the Bagelry. He said in his role with the SBDC, he saw downtowns and understood how businesses and towns interacted. He said he was present because he was concerned about what would happen if the Town Hall was moved, noting that it was a gateway to the community.

He said it seemed like the downtown was getting squeezed by conditions outside of the Town's control, with the growth from Dover and Newmarket down the Route 108 corridor. He said it would be a mistake for the vitality of the downtown for this piece of property to be converted into something that would compete on a large scale with downtown businesses. He said his concern was what would replace the Town Hall if it moved. He said he didn't have the answer, but said he had questions, and offered his services to be a part of a committee to study this.

Councilor Mower asked for details, and Mr. Daniel said there had been rumors about this.

Administrator Selig said that regarding possible sites for the new Library, the Town had looked at the Pines location but had been unable to come to terms on a price. He also said the Town had just gotten an appraisal for 17 Madbury Road (the Greens), and said he wasn't sure whether there would be movement forward in negotiations concerning that property. He noted that the Greens property had been looked at as a possible site for a fire station, library, town office, parking structure, or some combination of them.

He said most recently, the Town had been looking at the DiMambro property on Madbury Road as a potential library location, and said they were currently having that property appraised. He said it was possible there would be some movement on that site, but said time would tell.

Administrator Selig said there had been no movement to market the Town hall site, but noted that the owner of the Irving Station, as had been discussed in the past, had expressed interest in purchasing the property contingent upon a new drug store being permitted on the site. He said the owner had come to talk to him that morning, and had said he was still interested in the site. Administrator Selig said he explained to him that at this point, the Town wasn't sure how it was going to proceed, and that it was hard to discuss this parcel until it was clear where the Town Hall could move.

Mr. Daniel said that was the rumor he had heard as well. He said a competing drugstore was a concern, noting that many people came downtown to fill their prescriptions, and shop in the existing drugstore at Mill Plaza.

Administrator Selig said a drugstore was the intended use if the Town Hall site was sold. Councilor Mower said anyone who had heard the number \$2 million should realize that it was unlikely to be that.

Administrator Selig noted that the market had changed in the past few years.

Mr. Daniel questioned whether going after the highest bidder was the proper use of this space, stating again that it was a gateway to the community. He said although he was a strong believer in economic development to try to mitigate some of the tax increases, he thought in this situation, it would be a mistake, because it would compromise the downtown, and the tax base downtown where there were small independent businesses.

He said in a lot of ways, these business were what drove the community, and said it wasn't going to be a drugstore that did so.

Peter Smith, Piscataqua Road, said it was hard to find people who wanted to do their share in running the Town. He thanked the two newcomers to the Council, as well as the returning Councilor. He said Durham needed people who were willing to serve, and who viewed this as an obligation of citizenship.

He also said he congratulated the new Chair, who he had known for many years. He said she had given as much or more public service to the Town already as anyone he could think of. He said she was held in great stead by the voters, noting the previous year's election, and said he had every confidence in her as a fair and strong leader of the Council. He thanked her for taking on this extra burden.

Jeff Hiller, Laurel Lane, said he welcomed the new Council. He then noted that he had sent a letter that weekend to the previous Chair, which had to do with his concerns about the Mill Pond Center property, and the Seacoast Repertory Theatre's use of that property. He said the previous Chair had said Administrator Selig was ultimately responsible for enforcement of the Zoning Ordinance, and said he hoped he would do that. But he said he wanted to let the Council know his concerns as well. He said while he was not opposed to Seacoast Rep's use of the property in some form, the process had to be fair, and followed.

Administrator Selig said he would forward Mr. Hiller's letter to Councilors.

Councilor Gooze said there was a court case concerning this property, and said he therefore wasn't sure how much response there should be from the Council.

Mr. Hiller said that was a very good point. He then read his letter out loud. He made reference to the pending Superior Court case, which he said was mostly related to the issue of 14 actors being able to live on the property. He noted that he had asked the Planning Board to table the application until the legality of the variance had been addressed.

He also said he had taken the Planning director to task regarding the need for a site plan review, and said the applicant had subsequently agreed to do one. He read further from his letter, and noted his concerns that the application wasn't complete. He also spoke in detail about why he thought the nonconforming uses on the property had in fact been abandoned, and said it was the duty of the Code Officer to rule on this.

Mr. Hiller also spoke about the facility use report done for the property. He then asked the Council and Administrator Selig to be aware of all of these issues, and said he didn't think Town officials were acting in the best interest of the Town regarding health and safety.

Administrator Selig said he hadn't read this communication, but said the facility use report Mr. Hiller had cited was reviewed by the Town in the course of conversation with

the Mill Pond Center as to whether the Town wanted to purchase the property. He said he believed that the Mill Pond Center had refused to allow the Code Officer to do a walk through of the property at that time.

Chair Carroll noted that this was an active court case, and said while Councilors would read the email on this, there would be no more discussion on it.

IX. Unanimous Consent Agenda

- A. **Resolution #2010-04** establishing regular Town Council meeting dates for April 2010 through March 2011
- B. **Resolution #2010-05** creating the “Cemetery Maintenance Fund”
- C. Shall the Town Council, upon recommendation of the Town Administrator, approve a sewer abatement for the fall of 2008 in the amount of \$128.78 for property located at 5 Beard’s Landing and authorize the Town Administrator to sign said abatement?
- D. Shall the Town Council, upon recommendation of the Town Administrator, approve a water abatement for the fall of 2009 in the amount of \$432.48 for property located at 2 Old Piscataqua Road and authorize the Town Administrator to sign said abatement?
- E. Shall the Town Council, upon recommendation of the Town Administrator, approve the reduction of an appraisal of property owned by Susan Herhold at 6 Glassford Lane and grant a property tax abatement for Tax Year 2008?

It was agreed that Item A would be taken off the Unanimous Consent Agenda.

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

Councilor Mower noted that there some large gaps of time between the Council meetings in August and September. She asked if Councilors were interested in shifting the August Council dates to become August 9th and August 23rd.

There was discussion, and the consensus of the Council was to leave the meeting dates as they were.

Councilor Mower MOVED to adopt the Town Council meeting dates as written in Resolution 2010-04. Councilor Smith SECONDED the motion, and it PASSED unanimously 8-0.

Break from 8:48- 8:56 pm

X. Committee Appointments

None

XI. Presentation Items

None

XII. Unfinished Business

A. Discussion relative to residency requirements for membership on Town non-statutory boards, committees, and commissions

Administrator Selig first noted that over the last two years, there had been consideration of whether existing Town boards and committee were necessary, and he also said the length of terms had been looked at. He said an additional question had come up as to whether Town boards and committees were open to allowing non-residents to serve on them.

He said it was determined that this was an issue that was dependent on the particular board, because with some boards, it was required that members be residents, while for others, it was up to the Council. He said the non-statutory boards were then polled to see if there was interest in having non-residents serve on them. He said all 4 boards polled indicated a willingness to consider this.

There was discussion that another committee to consider this change for was the DCAT committee.

Administrator Selig recommended that the Council discuss whether it was open to this idea in general, and said he could then come back with a Resolution on it.

There was discussion that the IWMAC committee would like to be able to have non-residents on the committee, despite the way they had answered the question sent to them.

Councilor Gooze said he had a little trouble with the EDC response, and the issue of non-residence and where such a person would be coming from.

There was discussion that people with expertise might not be residents, and also that it was sometimes hard filling the committees.

Councilor Clark said it was ok to consider non-residents as long as there was discretion by the Council and the chairs of committees to make sure this made sense.

Councilor Stanhope said the Council had a filter to make sure that someone going on a committee would work in the best interest of the Town. He also said with the University, there was a Town within a town, and there was therefore the possibility that someone with a strong interest in the Town might live in a nearby town. He said if such people came forward, it was likely that they wouldn't have an agenda. He said if the Council thought there would be resources available to Durham through non-residence, he thought they should keep that door open.

Chair Carroll said that seemed to be the feeling of the Council.

Administrator Selig noted that the language would need to be brought forward for each committee.

Councilor Mower urged that this be brought forward at the next meeting, because the Energy Committee was very interested in bringing in someone with some good expertise.

Administrator Selig noted that there were business people in Durham who didn't live in Town but might have an interest in being on the EDC.

The consensus was that Administrator Selig would bring the required language to the Council at its next meeting. Administrator Selig said he could include language for the DCAT committee.

Councilor Mower asked if Items XII C and B could be switched, but the Council decided to go forward with Item XII B.

B. Continued discussion on next steps for commercial core and B. Dennis strategic plan

Administrator Selig noted that there had recently been a Planning Board work session on this, which some Council and EDC members had attended. He also said there was a pre-meeting with downtown business owners. He said he had not attended the meeting, but said some skepticism was raised there as to whether some of the vision in the plan was doable. But he said there was also interest and excitement in some of the ideas that were generated.

He said at the Planning Board work session, what hadn't happened was discussion by those in attendance on what aspects of the strategic plan they were comfortable with, and how they all would like to proceed. He said that discussion was needed. He said one broad topic to consider was the idea of moving toward a form-based code, and said a question was whether they were comfortable in moving in that direction, staying with what they had, or finding some hybrid between the two approaches.

Administrator Selig said another question, which was more of a master plan issue to be addressed by the Planning Board, was the need for an update of 5 chapters of the Master Plan. He said there should be discussion on whether work should be done on integrating some of the strategic planning ideas into updating the Master Plan.

He also said there were aspects of the B. Dennis plan that were separate from Zoning and Master Planning aspects, which could perhaps be integrated into the Council's goals. He said one of these was the idea of possible two-way traffic on Main Street, and said if the Council was open to this, they could have the DPW start working in that direction.

Councilor Mower said she recalled that Councilor Clark had said at the work session that they might be putting the cart before the horse if they started talking about form-based codes before they talked about a vision they could all sign on to. She said a question was how to come to a sense of this. She also said they should decide whether they wanted to continue to work with B Dennis, in terms of whether they were getting what they asked for, etc.

Councilor Cote said he thought the vision presented was somewhat pie in the sky, and said he thought they needed to filter down the strategic plan, take pieces of it and start working with it. He said he thought some of the rendering were over the top in terms of what fit the community. He also said there should be a presentation on form-based zoning, if they were going to be considering going down that road.

Councilor Mower noted that there had been discussion about the idea of Mr. Campbell going to a form-based code seminar in Portsmouth in April.

Councilor Clark agreed that they had to compartmentalize this in order to manage it. He said there was a sequence of decision-making that needed to be laid out, noting that he was worried that some people would otherwise be overwhelmed.

He then said he found the work that was presented to be the most tangible, practical solutions he had ever seen for the Town. He said B. Dennis had given them a logical basis for why to make the changes, and had also provided illumination as to why the Town's preconceived notions about parking and traffic didn't work.

Councilor Clark said he believed the first step was to look at the principles they had talked about other than the formed based code, to see if there was consensus about things like parking on side streets and not in parking lots, and two-way streets rather than one way streets. He said they should then understand what the form-based code was, and make a decision as to whether that was the right way to make some of these things happen.

He also said he thought they needed to finish the strategic plan before jumping into the Master Plan, although stating that he agreed that they would need to be integrated. He said he believed these were very separate plans, with the strategic plan being a practical way to make things happen, and the Master Plan a long range guidance document. He noted that normally, the Master Plan was done first, but said in this instance, they'd had the opportunity to do the strategic plan first, which would make the Master Plan far more durable, long-lasting and innovative.

Councilor Cote said he had used the phrase "pie in the sky" in a positive sense, in that it was a vision that brought together everything they had talked about over the years, and had given the Town a vision to look toward. He said whether all the things in it would unfold remained to be seen. But he agreed it was there, and they should start marching toward that vision.

Councilor Gooze said after seeing the presentation, his vision of what they could get from the plan was a two-way road and structured parking. He also said he also thought a form-based code could perhaps be used for sites downtown that didn't have to deal with environmental and other constraints, and could therefore get quicker approvals. He said he thought that would be the way to start things out, and said he thought it was doable.

Councilor Sievert said he agreed with Councilor Clark in that it would be nice to continue on with B Dennis, and ask them to focus them on the strategic plan; what part they could do and how to do it; and then put that together. He also said at another meeting, the Council could get a good introduction to the form-based code to make sure they understood it, and could then determine whether they wanted to include it.

He spoke briefly about the problems with the existing regulatory system, which the B Dennis plan had pointed out. He said he thought they should take one district to try the form-based code out on, and said the Central Business District would be the obvious place to do this.

Councilor Stanhope said he had often heard people say they didn't look to develop in Durham because the process was so burdensome, and there were so many points of risk. He said there was the opportunity now to preserve what they wanted Durham to be, while creating an avenue for developers to come there and not be overly burdened. He said it was critical that both of these perspectives were represented.

Councilor Gooze noted the whole conditional uses issue, which was pointed out by B. Dennis. He said it wasn't that a form-based code would eliminate consideration of uses. He said they should decide which ones they wanted in a particular area, and should then make it easy for a developer.

Councilor Mower said it was great that the Town now had a possible tool to get what they wanted, but said she worried about how far things would go right now in a direction they might not want, when they hadn't completed this process first. She suggested the idea, for discussion, of having a moratorium and a deadline in order to codify what they wanted.

She also said they could consider the idea of having a regulating plan, where they could decide what the form would be at the macro level of blocks. She said a third thing would be to move forward with design standards, which could move forward with or without form-based codes.

Councilor Mower said it would be important to talk with the University about whether it would be possible to move the intersection of Mill Road and Main Street, which could take some time. She also said there was the issue of a two-way street at Quad Way. She said she had thought it was the Town that didn't want that to be a two-way road.

Councilor Clark said he wouldn't be in favor of a moratorium, but said they needed a quick win, while they were working on considering form-based codes, etc. He said he personally had come to like form-based codes because he believed this was the easiest way to put in design standards. He also said some serious, cross-functional working groups would be needed to get this done. He said these groups would need to be empowered to make recommendations, which he hoped the Council would then go for.

He said if they were serious about changing the traffic pattern, putting in side streets,

moving Madbury Road, etc., they would need to get ahead of these issues. He said they were the things they would otherwise lose, before they knew what their layout was going to be. He said the only way to make that happen was with small groups that could focus on this, with real expertise.

Chair Carroll agreed that such groups were needed, noting that among other things that the Council needed a lot more information on these issues.

Councilor Gooze said a question was how much of the building downtown should be student housing, and there was discussion.

Councilor Clark said a committee was needed for this issue. He said there was a misconception that the EDC thought student housing was the be all and end all of development downtown. He said the Town was at an interesting point where there were some vacancies, which were starting to drive the cost of rental housing down. He said this could lead to a stabilization of student housing, so that professional office uses would be more viable. He said there was a demand for professional offices, and said it had been a supply issue. He said they needed to figure all of this out.

Chair Carroll said it would be good to have some documentation on supply and demand.

Councilor Smith said having been on the Mill Plaza Study Committee, he understood some of the pitfalls. He said B Dennis had recently given the Town more than it asked for, and said he wasn't sure if that was a good thing or not.

Councilor Mower said a missing piece was the market analysis, the economic component, and whether the Town was willing to spend some money to evaluate what kind of viable businesses could come to Durham.

Councilor Sievert said he thought they should do this. He said he got the feeling there weren't enough places to locate, while there were enough businesses who would like to locate in Durham

Councilor Clark said the people he knew about were opportunistic. He said he wanted to go through the University to see if there were incubator possibilities, and find out why those people were going to Pease. He said he would like to see if they could identify an industry for Durham that wasn't pizza or beer.

Councilor Gooze said this would also involve changing the Zoning Ordinance, noting that the Town was having some trouble related to that right now.

Councilor Sievert noted that he had recently read an article about starting an incubator at Pease, which involved the University.

Administrator Selig suggested that these topics were key to the upcoming Council goals session. He said they should think about how to integrate two-way traffic downtown; get

more information on the form-based code; deal with UNH regarding new streets and intersections; and deal with the economic analysis and market research. He noted that B. Dennis had recommended doing a market analysis before doing the charrette, but he said this wasn't done for cost reasons. He said it would be important to do this analysis in order to see if the B. Dennis recommendations were grounded in what was real.

Councilor Clark said rather than an analysis of what was missing downtown, he wanted to see an analysis of opportunities, and what might come.

Councilor Mower said they might want to get a sense of how long that would take, and get right on it before doing anything else.

Administrator Selig noted that Sora and Capstone were actively evaluating Durham, so might create some market analysis they would be willing to share with the Town. He also said the Council should nail down how they would deal with the Master Plan update, which he agreed should be separate.

He said Councilor Stanhope was right that they needed to define further what they wanted. He summarized that there was some consensus in this discussion about finding ways to take down some of the barriers as long as they were explicit about what they wanted, which could fold back into the form-based code discussion or not. He said they could decide on this after they found out more about the form-based code. He also noted that design standards and traffic analysis had been mentioned in this discussion. He said he was not supportive of the idea of a moratorium.

Councilor Mower said she had just thrown it out there to get people to realize that there were some things happening already downtown, and unless they moved quickly, they could get a 2010 version of the 1970s.

There was brief discussion about the moratorium idea, and it was dismissed.

Administrator Selig noted that the two RFPs with B. Dennis had been combined. He also said the company had significant resources to provide to the Town, if people were comfortable with them.

Councilor Gooze asked if B. Dennis could work on parts of the vision, like the traffic, if that was what the Council wanted.

Administrator Selig said they could do this, on a time and material or contract basis, beyond what they were already contracted for.

Councilor Mower asked Administrator Selig if the Town had gotten value for the money spent.

Administrator Selig said it had. He said he had dealt with many consultants, and said although some concerns had been raised about some items in the draft, the team was very

well qualified, and had a great background in terms of other projects they had done. He spoke further on this.

Councilor Clark said based on his experience in business and in life, he thought the Town had gotten extraordinary value in hiring the firm.

Councilor Mower said she had raised the issue because a substantial amount of money had been spent, and she didn't think people had a benchmark on this.

Administrator Selig said a lot of people in Town were intrigued and cautiously optimistic, and said that was good.

Councilor Mower asked whether, if they wanted to focus on traffic and possibly re-routing it, they could hire Rick Chellman.

Administrator Selig said he thought so, and provided details on this.

Councilor Mower said she thought figuring out the basic structure of the downtown was more important right now than looking at the individual siting of everything.

Chair Carroll said what the Council had been discussing here was going to be the core of its work this year. She said residents were expecting great things and said they were going to have to deliver, while relying on the experts to work with them. She said they needed to be clear on their vision, and to engage others to help achieve that vision. She also said they needed to hear from residents throughout this process.

C Receive update on meeting with Oyster River Cooperative School District officials

Chair Carroll noted that Administrator Selig, Councilor Clark, Councilor Niman and others had recently met with School District officials.

Administrator Selig said he had a memo from the Superintendent to the School Board regarding the meeting concerning Resolution 2010-02. He read the memo out loud.

Councilor Clark said he believed the School Board would have a discussion on this at its meeting on Wednesday, and would then draft a response. He said the meeting was successful in not just talking about an accounting of money, but also about opening a dialogue. He said they were in fact now having that dialogue, and said this reflected being responsive to residents. He said they all should work hard to make progress on this.

Councilor Mower asked if there would be an appropriate role for someone to be a communication link between the Council and the School Board.

Administrator Selig said Josselyn Quinn was open to touching base with the Council periodically. He also said they could send someone to School Board meetings. He said it might be useful to have someone there if the Board as a whole wanted to ask questions.

Councilor Clark said he thought Administrator Selig should be the person to do that, rather than an individual Councilor.

Councilor Mower suggested that they could invite the Durham School Board rep to come to the Council as often as she could.

Councilor Clark said that could be a start. He said it had been a very open and civil discussion, and said Councilor Niman did a terrific job explaining how the Town's budget process had become more transparent. He said there was always room for improvement, and said right now, the School Board could benefit from a more comprehensive approach to budgeting and communicating. He said he thought they would find that there were underlying questions they would want to dive into.

He said there had been an increasing groundswell of concern about a number of things regarding the School District. He said they lived in a pro education town, but said things had gotten away from them according to some people. He said to him, it was about getting things back in control, getting public support where it should be, and getting the schools where they needed them to be.

Councilor Gooze noted that his wife had served as chair of the School Board. He said the Town had been here before, and he noted that there had been budget committees in the past. He said the citizens needed to get involved and go to School Board meetings to make sure their voices were heard.

Councilor Stanhope said the 10 communities Mr. Speidel had pointed out all had a budget committee. He said the \$4,000 difference was a concern, and said Durham was unique in that there wasn't this kind of oversight. He said there was no question that if Mr. Speidel's numbers were real, there had been some mistakes made by the OR administration.

Chair Carroll said the Council was trying to say that the School District was a big part of its tax bill, and based on that, it was trying to be a facilitator for the residents in getting information. She said something to ask was why there was this \$4,000 difference. She said they wanted to make sure to invite Ms. Quinn to give updates from time to time. She also asked if Administrator Selig could perhaps go to the School Board meeting on Wednesday.

Administrator Selig said if he went, he would answer questions School Board members might have. He noted that at the meeting with them the previous week, there were specific questions about where the Resolution had come from.

There was discussion about the idea of finding out why there was the \$4,000 difference in cost per student per year. Administrator Selig said he thought the Council was better off making general suggestions, asking for information, and focusing on its other goals. He said they could also ask for a meeting of all three towns with the School Board, noting

that the issue of confidence in the School District was shared by all three towns, so was something all the towns' governing bodies were therefore interested in looking at.

- D. Discussion regarding the rental of parking spaces within the Town of Durham
Postponed

XIII. New Business

- A. Annual appointments of Council representatives to the various Town boards, commissions, and committees

Chair Carroll noted Councilors had been asked to list what committees they would like to serve on.

Councilor Gooze said he would withdraw his request to be on the EDC, since Councilor Clark was already on that committee.

Councilor Mower suggested that the Cemetery Committee be filled last.

Councilor Gooze said he would like to stay involved with the Rental Housing Commission, stating that he had been actively involved in it since it had started up again.

Councilor Stanhope said he was ok with that, and would agree to stay with the HDC.

Chair Carroll said she would not be serving on any committees.

It was noted that Councilor Niman had said he was interested in serving on the Cemetery Committee, as well as on DCAT.

Councilor Cote said he had expressed interest in being an alternate on the Planning Board.

Councilor Sievert said he would like to stay on the Parks and Recreation Committee.

Councilor Mower said she would like to continue on the Energy Committee, and would also be willing to be on the Conservation Commission. She noted that she currently sat on the Water Resource Protection Committee, which was a subcommittee of the Planning Board.

Councilor Stanhope said he would not be continuing on the Strafford Regional Planning Commission. Administrator Selig said there were three positions on the SRPC, and one would still be filled, with Councilor Stanhope stepping down.

Councilor Mower brought up the idea of a Town/Gown committee.

Councilor Clark said he had been on this in the past. He said eight people had met

monthly, and said while it was useful, it could have been more constructive. He said it could be a good idea, if they collaborated on what its mission would be.

Chair Carroll asked if they made decisions, and set direction.

Councilor Clark said they talked about problems, and said it hadn't been a very high level of discussion.

There was discussion about the UNH transportation policy committee, which had a Durham resident on it who was not appointed by the Town. Administrator Selig said Mr. Campbell was appointed to represent the Town, but said if there was someone else interested in filling that role, that would be fine.

He spoke about the Town/Gown committee, and said it hadn't been especially useful, although it could be. He provided details on this, and said the Council had therefore decided to sunset it.

Councilor Cote noted the accomplishments of Councilor Niman and Administrator Selig concerning the University, working at high levels, and said he therefore didn't see the need for forming another committee to do the same things.

Chair Carroll said the IWMAC would be coalescing into a small group, and asked if anyone would be interesting in being the Council rep to that committee.

Councilor Mower asked if Council representation was needed on it, and Chair Carroll said a liaison could bring relevant ideas and issues back and forth.

It was agreed to leave this position open until the date and time of the IWMAC meetings was determined.

Councilor Smith MOVED to appoint Councilor Niman, Councilor Stanhope and Councilor Sievert to the Durham Cemetery Committee for one year terms, said terms to expire March 2011. Councilor Mower SECONDED the motion, and it PASSED unanimously 8-0.

Councilor Smith MOVED to appoint Councilor Robin Mower to the Durham Conservation Commission for a one year term, said term to expire March 2011. Councilor Cote SECONDED the motion, and it PASSED unanimously 8-0.

Councilor Mower MOVED to appoint Councilor Clark to the Durham Economic Development Committee for a one year term, said term to expire March 2011. Councilor Stanhope SECONDED the motion, and it PASSED unanimously 8-0.

Councilor Smith MOVED to appoint Councilor Stanhope to the Durham Historic District Committee for a one year term, said term to expire March 2011. Councilor Gooze SECONDED the motion, and it PASSED unanimously 8-0.

Councilor Smith MOVED to appoint Councilor Sievert to the Durham Parks and Recreation Committee for a one year term, said term to expire March 2011. Councilor Clark SECONDED the motion, and it PASSED unanimously 8-0.

Councilor Clark MOVED to appoint Councilor Smith to the Durham Planning Board for a one year term, said term to expire March 2011. Councilor Mower SECONDED the motion, and it PASSED unanimously 8-0.

Councilor Smith MOVED to appoint Councilor Gooze to the Durham Rental Housing Committee for a one year term, said term to expire March 2011. Councilor Mower SECONDED the motion, and it PASSED unanimously 8-0.

Councilor Smith MOVED to appoint Councilor Niman to the Durham Cable Access Television Committee for a one year term, said term to expire March 2011. Councilor Mower SECONDED the motion, and it PASSED unanimously 8-0.

Councilor Smith MOVED to appoint Councilor Mower to the Durham Energy Committee for a one year term, said term to expire March 2011. Councilor Cote SECONDED the motion, and it PASSED unanimously 8-0.

B. Discussion regarding the development of Town Council goals for 2010/11

Chair Carroll said there would be short discussion on this. She said the goals were meant to be a guideline to provide continuity over the next few years. She said Councilor might want to add some goals and take out other, and she asked for suggestions on this.

Councilor Mower said it might be interesting to consider Administrator Selig's recommendation to have very explicit goals relative to downtown redevelopment. She said they could focus on getting something accomplished in order to jumpstart that process.

There was discussion that Councilors should email there ideas for modifying the goals document; these could be incorporated into the existing goals; and Councilors could then respond to the draft.

Chair Carroll recommended that a discussion on the Council goals should be integrated into the next Council meeting, rather than having a separate meeting for this.

Administrator Selig said there would be enough time to take an initial crack at the goals document at the next meeting, and said his sense was that it would take about three meetings to finish it. He said he would include his own thought as well on the goals document. He said Jen Berry would send Councilors a Word copy of the document to respond to on March 24.

C. Other business

XIV. Nonpublic Session (if required)

None

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

Administrator Selig provided details on the fact that the tentative 3 year contract for DPW employees had been rejected, so they were back to the negotiating table. But he said tentative agreement had been reached with the professional middle managers union, for a 4 year contract, with a 0 wage increase in 2010, and a 2% increase in both 2011 and 2012.

XVI. Adjourn

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

Adjournment at 10:28 pm.

Victoria Parmele, Minutes taker