

**This set of minutes was approved at the July 12, 2010 Town Council meeting**

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

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

**MEMBERS ABSENT:** None

**OTHERS PRESENT:** Administrator Todd Selig; Public Works Director Mike Lynch; Police Chief David Kurz; Town Engineer David Cedarholm

**I. Call to Order**

Chair Carroll called the meeting to order at 7:05 pm.

**II. Approval of Agenda**

*Councilor Smith MOVED to approve the Agenda. Councilor Mower SECONDED the motion.*

*Councilor Gooze MOVED to move the disorderly house discussion from Old Business to New Business on the Agenda. Councilor Mower SECONDED the motion, and it PASSED unanimously 9-0.*

*The Agenda as amended PASSED unanimously 9-0.*

**III. Special Announcements**

**A. Purchase and Sale Agreement for 49 Madbury Road as possible future library site**

Chair Carroll said this was a very special announcement, noting the work that had been done on this issue for quite some time.

Administrator Selig said Library Board of Trustees Chair Doug Bencks was present to make the announcement.

Mr. Bencks said this was a very exciting evening for the Library Trustees, stating that they had been looking for a site for over 10 years, and that with the encouragement of the Town Council,

have been actively pursuing a site over the past few years. He said he was pleased to announce the Purchase and Sale agreement for the 49 Madbury Road property as the future home of the library.

He said this site met all the criteria the Trustees had been looking for, but noted that they had never seriously considered it until the owner came forward. He said it contained three acres and had a wonderful brick house on it, built in 1935 that would make a wonderful front entrance for the library. He said significant expansion of the building would be needed, but said it was believed that the site could handle this as well as a parking area.

Mr. Bencks said the deal in place was to purchase the property for \$600,000, and said it would be paid for by funds the library currently had, based on private donations. He said the appraised value of the property was \$500,000, but the owner wanted \$600,000 for it, and explained that an anonymous donor was willing to pay the additional \$100,000.

He said it was understood that there would need to be a public hearing so there could be an open discussion on what was proposed. He said due diligence would be done, and said this would be done as soon as possible in order to close by September.

Administrator Selig explained for the public that he, the Town Council and Mr. Bencks had recently discussed this site in nonpublic session, and said at that time, the Council had authorized him to execute the Purchase and Sale Agreement. He explained that the Town could still walk away from the deal if something were to come up, but said the Council was very excited about it.

He said they would like to hear from people with concerns about the site as well as those who felt good about it. He noted that the Council was already strongly in favor of it, and said there was therefore no need for an overwhelming positive response from the community in order to sway himself and the Council.

Administrator Selig said due diligence would be done on the property, but said it was a good sized site, with tremendous possibilities. He noted that there had been some initial discussions with the owner of the former Follensbee house, which abutted the DiMambro property, to see if there might be some interest in selling it. He said if there was, the Town could look at having a possible combined library and Town Offices. He said there were ongoing negotiations concerning this, and said he would keep the Council up to date on them.

He recommended that the Council talk briefly about when to have the public hearing, and suggested that this could be part of a Council meeting or could be a separate meeting.

Councilor Gooze asked if the hearing should be held before or after the due diligence was done.

Administrator Selig said it could be done either way, but recommended having the public hearing first. He noted that the summer season was coming quickly so it would be better to have it soon before people left on vacation.

Councilor Mower asked how long it might take to do the due diligence, and Mr. Bencks said it

would take about 6 weeks, stating that it wasn't an especially complicated site. Councilor Clark asked if the public hearing was expected to be typical, or instead could be something along the proportions of the public hearing on the Oyster River dam.

Administrator Selig said some questions were expected regarding issues raised when Durham broke away from the UNH library, and he provided some details on this. He said there were also some people who questioned whether Durham needed a new library since there was already a UNH library, and he also said there were people who questioned the need for a new library in general. He said the Trustees had very good answers for all of those questions, but said the feedback so far had been very positive. He said people had told him they really liked the site and viewed it as a way to help stabilize the Madbury Road corridor.

He said at first, he had suggested that a separate Council meeting might be needed for the public hearing, but said he had heard from some Councilors who were not certain this was needed. He said the thought was that if the public was clear that the Council overtly liked the site and was going to move forward with it unless something came forward that would cause it to act otherwise, the separate meeting wasn't necessary.

***Councilor Smith MOVED to schedule the Public Hearing for the regular Town Council meeting on June 21<sup>st</sup>.***

Councilor Smith said he believed Administrator Selig was correct that although there would be some people who said the Town didn't need new library, or liked another site, the overwhelming response to the 49 Madbury Road property would be positive. He also said he admitted to being biased since he had had served on the library site selection committee.

After discussion on the date to hold the public hearing, the consensus of the Council was to hold it on July 12<sup>th</sup>.

Administrator Selig said he would put out the complete Purchase and Sale Agreement as a public document on the Friday Update.

Mr. Bencks said the Library Trustees were very grateful for the support of the Council to date and were also appreciative of the efforts of Administrator Selig. He said the Trustees looked forward to the public hearing.

Chair Carroll thanked Mr. Bencks for his efforts as Chair of the Library Trustees, and also thanked current and past Library Trustees, Library Director Tom Madden, and many library supporters for their support and good work.

**B. Designation by the State of New Hampshire Department of Resources and Economic Development of Durham's Downtown Economic Revitalization Zone**

Administrator Selig explained that the State had allocated \$850,000 for this designation, and said Durham was one of only a handful of towns that had qualified for this. He said this presented some real economic opportunities for businesses in the downtown core, and said he hoped it would result in some additional investment in economic development, which among other things

could provide some tax relief for residents in the future.

#### **IV. Approval of Minutes**

April 19, 2010

Page 18, paragraph after 3<sup>rd</sup> motion, should read “..in having members who were not residents.”  
Page 21, 2<sup>nd</sup> paragraph, should read “...to store them so no additional expense...”

***Councilor Gooze MOVED to approve the April 19, 2010 Minutes as amended. Councilor Cote SECONDED the motion, and it PASSED unanimously 9-0.***

#### **V. Councilor and Town Administrator Roundtable**

Councilor Mower spoke about the fact that the Legislature was looking at the LCHIP program as one that might be used to help close the State’s Budget gap. She said Durham’s representatives were aware of the impacts to Durham if this happened, and were doing everything they could to avoid using those funds.

Councilor Clark said there had been a terrific presentation by Mark Galvin at the most recent Economic Development Committee meeting, concerning UNH research partnerships and commercialization opportunities. He said it was exciting that UNH appeared to recognize that while it got a lot of federal grants, other universities were able to convert this to revenue streams, and said the University was therefore ramping up its capacity to do this.

He said the Town needed to understand how that process worked in regard to developing its own economic development opportunities. He noted that there had been discussion about the idea of incubator businesses, and said what Mr. Galvin had discussed was the kind of thing that could make something like that a reality. He said Mr. Galvin had spoken about some of the challenges Durham faced.

Councilor Sievert asked if Mr. Galvin was the person who had been looking at incubator space for Pease, and Councilor Clark said Mr. Galvin had been renting a lot of space at Pease for this purpose.

Councilor Mower noted that while she had a strong interest in conservation, she had brought Mr. Galvin to the attention of EDC Chair Tom Elliot. She said she was glad to hear that the meeting had gone well.

Councilor Gooze said the Rental Housing Committee would meet on June 23<sup>rd</sup>. He said they were hoping that the proposed ordinances would go forward, and also said the attorneys were working with the landlords and the Town attorney regarding developing something concerning rental registration that would be acceptable to all sides. He said they were pretty sure that the large assembly ordinance would not come forward because it was thought that the other ordinances would take care of that issue.

Councilor Sievert spoke about the fact that Parks and Recreation Director Mike Mengers was

doing a great job, and said recreation programs in Town were expanding. He said the Parks and Recreation Committee would probably be asking that Mr. Menger's position be expanded. He also said the Committee would be recommending that the Town make better use of the Wagon Hill property.

Councilor Smith said the Planning Board had had several busy meetings in recent weeks. He said on May 26<sup>th</sup>, a subdivision proposed at the corner of Edgewood Road and Meadow Road was approved. He also said a boundary line adjustment was approved on Cold Spring Road.

In addition, he said after a public hearing, the Board recommended to the Council a proposed Zoning Ordinance amendment to change the maximum height of mixed use buildings in the Central Business district, allowing a fourth floor if there were at least two floors of non-residential space.

He said at that same meeting, there was a first reading on a site plan application and conditional use permit application for a mixed use development on Pettee Brook Lane proposed by Ionian Properties. He said there was also an application for boundary line adjustment as part of this, which involved the Town selling a small parcel of land adjacent to the former Don Thompson property to the developers.

He said the Board also deliberated on the CWC site plan application and conditional use permit applications, and said deliberations were continued to a meeting on June 2<sup>nd</sup>, where the applications were approved.

He also said at both meetings, the Board continued discussion on the draft stormwater provisions. He said it was hoped that the last discussion on them would be held at the June 9<sup>th</sup> meeting, and the public hearing date could then be set. He said the Board would also have a discussion on the issue of leasing of parking spaces at the June 9<sup>th</sup> meeting.

Councilor Cote noted that over the last few meetings, the Council had received some tax abatement requests based on assessments that had been done. He also said Councilors had received a communication from a former Councilor that questioned whether some previous assessments had been accurate. He asked if this was therefore something that needed to be looked into.

Administrator Selig said a sufficient number of abatement requests had been granted to warrant a look at this. He said he had sent an email to Jim Rice, who had been contracted to do assessment work for the Town, and said they would discuss the idea of putting together a presentation for the Council on this issue.

Councilor Mower noted that other Councilors in addition to a former Councilor had raised this issue.

Councilor Niman noted the abatement process the Council usually went through at about this time of year, and Administrator Selig said he would be talking with Mr. Rice about this.

Councilor Stanhope explaining that State statute required that process be reviewed and updated periodically, every 4 years, so there was almost an automatic review process in place. He also noted that he had expressed some concerns to the Council in the past on the abatement issue, but hadn't gotten very far with this. He said when told by Administrator Selig that the number of abatement requests had not been statistically out of line, his concern was that this meant that a large number of properties were under-assessed, and the owners of those properties wouldn't file abatement requests.

He said most of the appeals the Council had seen were for challenging properties such as commercial and waterfront properties, which didn't lend themselves to the mass appraisal practice. He also noted that the Town's former Assessor had relied heavily on computer models.

Chair Carroll noted that Phyllis Bennett and Susan Reed had planted a beautiful hosta garden near the Smith Chapel, and said it was much appreciated that these residents had taken on this job.

Administrator Selig provided an update on various items. He first provided details on the upcoming July 4<sup>th</sup> celebration. He also spoke about the new signage at the intersection of Pettee Brook Lane and Main Street, which created a much clearer sense of where the downtown business district was and where the University was.

Administrator Selig thanked everyone who had been involved with organizing the Memorial Day parade, and especially thanked Parks and Recreation Director Mike Mengers for the great job he had done on it. He asked residents to provide feedback on the parade to Administrative Assistant Jennie Berry.

Administrator Selig noted that there had been a lot of discussion in Town about the large, professionally managed rental property by Capstone Development near Goss International. He said the Durham Business Association would be hosting a forum on it on June 10<sup>th</sup> at the UNH Memorial Union Building, and said a representative from Capstone would be there. He said there would be an opportunity for everyone to ask questions.

Administrator Selig said the B. Dennis plan was now available online, and he encouraged people to look at it

He noted ongoing discussion about improving mass transit opportunities in Durham so it could be a more sustainable community. He said as part of this, he had talked with the Traffic Safety Committee and University transit people about the idea of adding a bus route along Madbury Road and Edgewood Road. He said this would involve using smaller, quieter, low emission natural gas buses, and said there would be a trial period of traveling this route on June 21<sup>st</sup>, so the public could observe them. He said it was hoped that this route could be added this year.

Administrator Selig noted that at the last School District board meeting, there was discussion on the idea of having a School Budget committee. He said he had subsequently received some questions on what an advisory budget committee was as compared to a statutory budget committee.

He said the Durham Farmers Market had opened that day at the Mill Plaza parking lot, and would be open every Monday afternoon, rain or shine.

Administrator Selig noted that as part of the B Dennis analysis, the idea of making the downtown more pedestrian friendly had been explored, including the idea of possible two way traffic pattern on Main Street. He said this would only be possible if there were some additional streets as part of the street network, but said an interim step, while continuing to evaluate these ideas, was to move forward with a pilot program to narrow Pettee Brook Lane, which was currently a raceway, down to one lane.

He said a wider road fostered faster speeds, and said with a travel lane that would be down to 10 ft, the thought was that this would foster traffic calming. He said as part of the pilot program 17 new parking spaces would be created on the southerly side of Pettee Brook Lane, and also said a six foot wide bicycle lane would be added on the right side of the road, which would integrate with the bicycle lane on Main Street.

Administrator Selig said the main goal of the experiment was traffic calming and the second goal was making the area more bicycle friendly. He said the third goal was to provide 17 additional parking spaces downtown, which was directly supportive of the downtown business community without having to make major modifications to the downtown area.

He said the street design would be monitored carefully over the summer, when there was generally much less traffic, and said if they were happy with it, it would be continued into the fall when the students came back. He said if people were still happy with it after that, it would become a permanent part of the downtown. He noted that it would be important for the Town to keep local businesses informed as to what was happening with the program.

Administrator Selig said the parking along Pettee Brook Lane would be free, noting that there was no ordinance in place to regulate those spaces, and there wouldn't be one unless the Town was confident that this design made sense. He said there was minimal cost to doing the changeover, and said if it didn't make sense, the Town could go back to the ways things had been on Pettee Brook Lane.

He said discussions would be held on the development of a parking strategy for the downtown, and noted that an EDC subcommittee was looking at whether the current parking strategy made sense. He said if the parking spaces on Pettee Brook Lane remained, they would tie in with the overall parking strategy for the downtown.

Councilor Clark said at the recent EDC meeting, the Committee had learned that something that gave Pease an advantage over Durham was the existence of free parking near buildings. He said parking should be treated as a necessary amenity, and not as a business, in order to help create a viable and robust business district in Durham.

Councilor Gooze said the Council needed to consider whether there should be a work session in order to go over the B. Dennis report and decide what it wanted to take from it in terms of

meeting Council goals.

Administrator Selig said there also needed to be a Budget work session scheduled.

## **VI. Public Comments (*NLT 7:45 PM*)**

**Roger Speidel, 7 Nobel K. Petersen Drive**, shared his most recent discussions with the School Board. He noted that he had referred to the chart of NH school systems with budget committees, as well as information on the Bow school system, a Town which most closely resembled Durham, and had reduced its school costs without hurting student performance. He said if the Oyster River School District could get its spending down to the level of the Bow School District, this could save Durham taxpayers over \$9 million per year. He provided details on this.

Mr. Speidel said the ORSD needed to establish a Budget Committee immediately, and said the voters had spoken clearly on this, and on the need for a zero Budget increase. He asked the Council to email the School Board in support of establishing a Budget Committee, noting that this topic would be on the Board's agenda for June 16<sup>th</sup>.

Administrator Selig asked Mr. Speidel what response he had gotten from the School Board when he raised these kinds of profound questions with them.

Mr. Speidel said they didn't respond, and said he thought for a long time that they weren't listening to him. But he said the voters had shown that they wanted a change.

Councilor Mower asked if it was the policy of that board not to respond to public comments.

Mr. Speidel said yes. But he said some Board members had questioned him, but then didn't let him respond.

Councilor Stanhope asked what a \$9 million savings translated to in terms of an impact on the tax rate, and Mr. Speidel said it meant about a 15% reduction.

Councilor Gooze noted that when his wife had been on the School Board, there had been a Budget Committee.

**Sarah Badger Wilson, Cold Spring Road**, reminded everyone that the Parks and Recreation Committee would be having its first Durham Bazaar on Saturday at the Jackson's Landing rink, from 9 am-1 pm. She said a lot of the spots were filled, but said there were still some openings.

**Bill Hall, Smith Park Lane**, said there were some recent problems with boat trailers backing into the mud at the Jackson's Landing ramp, and provided details on this. He also spoke in some detail about the fact that the fire lane sign for Adams Tower had been removed.

Mr. Hall said he had watched the School Board deny that the student population in the Oyster River School District was going down. He provided numbers on the decline, and said it appeared that the economics of the times had caught up with the student population. He said it was conceivable that the population would be down in the vicinity of 1500 students over the next several years, and said this would escalate the already out of proportion cost per student.



Mr. Hall said the Barrington School Board had said it wouldn't tolerate the staff/student ratio or cost per student that the Oyster River School Board did. He said the Council needed to commission a report from a School Budget Committee on these issues. He said there were a lot of homes for sale in the surrounding areas, and said Durham properties had to compete with this.

Councilor Sievert noted that he had used the Jackson's Landing boat ramp several times and had seen several other people use it, and hadn't seen the kinds of problems Mr. Hall had described. Councilor Mower said she had heard the opposite. Councilor Sievert said it depended on what the tide was when one put the boat in, and he noted that the river needed to be dredged.

Administrator Selig said Town Engineer Dave Cedarholm would be meeting with Dori Wiggin of the NHDES Wetlands Bureau to talk about the idea of expanding the ramp.

There was further discussion.

**Kitty Marple, 82 Madbury Road**, expressed her support for the disorderly house ordinance that was proposed. She noted that she was a member of the Rental Housing Commission and said she thought the ordinance would provide some positive motivation for landlords who currently chose to be disengaged, and she provided details on this. She said the negative emotional toll and financial impact on those living near a disorderly house could not be overstated.

**Karen Mullaney, Davis Ave**, said she wanted to reiterate what Kitty had said, and said the proposed ordinances were put together after a lot of discussion. She said the big picture was what they could do to save their neighborhoods and discourage students from destroying them.

She said looking toward the future, there would be new buildings the Town saw as providing tax benefits. But she said students would want to live in houses without supervision, where they could cause noise and other trouble. She said the noise ordinance and the disorderly house ordinance would benefit everyone, stating that currently, there was not teeth to what the neighborhoods were asking the Town to do.

**Malcolm McNeill, Colony Cove Road**, spoke regarding the proposed amendments to the ORLI and MUDOR districts. He said his wife's property would be directly affected by what was proposed, and he asked the Council to move them on for a public hearing. He noted that the Planning Board had voted to support this Zoning change after its public hearing. He said the Council was in a unique position with Capstone coming to Durham to describe how the proposed Zoning change would affect its project. He said having the public hearing after that would mean that the Council was more informed about the impact of the Zoning change.

Mr. McNeill spoke about the importance of having an open debate on this issue. He said he primarily endorsed Councilor Niman's comments. He also noted allegations and rumors regarding his wife's property that McMansions would be developed as a result of this ordinance. He said he found this shocking, and among other things, said such housing was not built on State highways. He said no developers had spoken with him and his wife about this type of development.

He said the ability to have a mixed variety of uses provided additional flexibility and creativity for developers with regard to projects and residents. He also noted that any project that came forward would have to go through the Conditional Use process, so that protection would still be in place.

Mr. McNeill said if significant tax stabilization was going to occur in Durham, it would occur in these two zones. He asked the Council to imagine desirable student housing located where there were no abutters, where there would be onsite security and amenities, and where there was an established transportation system to the downtown.

He said they might not need to consider a noise or disorderly house ordinance if students were located on the outskirts of the community in the most desirable forms of housing. He said this would also generate an improvement in downtown facilities because the downtown landlords would have to compete with this housing.

Mr. McNeill said when he opened his taxes this year, it was a staggering number. He said this, along with the comments on the schools, the lack of economic development in Durham, and the amount of land in the community that wasn't developed all said to him that flexibility and new approaches were necessary in order to provide the tax relief spoken about in the Master Plan. He asked that the Council give everyone a chance to speak on this proposal at a public hearing, and to give it the attention that it deserved.

The Council stood in recess from 8:23 - 8:31 PM.

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

- A. **FIRST READING (CONTINUED) ON ORDINANCE #2010-06** amending certain sections within Chapter 85 "Noise" of the Durham Town Code
- B. Shall the Town Council amend the composition of the Wiswall Historic Interpretation Committee to add representatives from the Lamprey River Advisory Committee, the Parks and Recreation Committee, and the Conservation Commission as well as expand the Committee's scope of work to include the 2010/11 fish ladder historic mitigation and overall park planning?
- C. Shall the Town Council, upon recommendation of the Town Administrator, award a bid to American Excavating Corporation, Salem NH, in the amount of \$153,742 for the Phase II construction of the West End Sewer Rehabilitation Project, and authorize the Town Administrator to sign a contract with American Excavating Corporation?

Chair Carroll said there had been a request to take Item A off the Unanimous Consent Agenda.

Councilor Niman said he had requested this in order to discuss when to schedule the public hearing. He noted that his preference was to discuss the noise ordinance along with the disorderly house ordinance and rental registry idea, at a single meeting, where the public could also express their views. He said it would be difficult for him to form an opinion without seeing

the big picture. He said he wasn't trying to prevent making progress on these issues, and said he would like the Council to vote on them before the students came back in September.

Councilor Gooze said the consensus of the Rental Housing Commission was to get done what they could before the school year started. He said he personally had always separated out the behavior-oriented ordinances from the rental registry idea, which he said would be difficult to do. He said the Town could work on health and safety issues, which the behavior ordinances could address.

He said the RHC had discussed the large assembly ordinance, but thought that it fell into the disorderly house approach. He said he didn't know when the rental registry proposal would come forward, but said he would like to see public hearings on both the noise ordinance and disorderly house ordinance before July.

Councilor Stanhope said he had some concerns about the noise ordinance, as drafted. He said the removal of the table of restrictions allowed a degree of subjectivity on the part of a police officer. He also questioned the 10:00 PM curfew, noting that bands often didn't start playing until 9 pm, at that a 10:00 PM curfew could impact entertainment businesses downtown. He said he didn't object to the proposal going forward, and agreed that the various proposals should go forward as a package. But he said as drafted, the noise ordinance would be a challenging ordinance to pass.

Councilor Mower said there were many other towns that didn't have an objective measure of noise using a decibel meter. She noted that Dover's approach was totally subjective, and said she would provide the Council with details on how other towns addressed noise issues.

There was discussion that there was a definition for "disturbing" in the noise ordinance proposal although this word was not actually found in the ordinance. Administrator Selig said the word "disturbs" but not "disturbing" was in the ordinance proposal.

Councilor Gooze said it had been a long road for the RHC to develop these proposals, working with the landlords, who had been as involved in the process as the neighborhoods were. He said the proposals now deserved a hearing.

Councilor Clark agreed that the proposals deserved a hearing, but said Councilor Stanhope had made a great point regarding possible impacts on commercial properties downtown with apartments above them, which depended on entertainment. He asked if these businesses had been consulted regarding the 10:00 PM curfew.

Chief Kurz said he didn't anticipate that there would be a problem if the curfew was 10:00 PM, noting that while the current ordinance included an 11:00 PM curfew, bands routinely played until 1 am, and this hadn't been a problem. He said either no one was hearing the noise, or those who were weren't offended or disturbed by it. He also noted that the ordinance revision that was proposed was in part a result of the fact that he had seen some things in it that needed to be changed.

Councilor Cote said the proposal eliminated objectivity and required more discretion on the part

of police officers. He described a possible situation where someone who lived above Libby's, where a band was playing, had an exam the next day and so called the police because of the noise after 10:00 PM.

There was discussion, with Chief Kurz stating that a person living above Libby's would have a certain expectation regarding noise.

Councilor Stanhope asked if what they were all talking about was mediation and hand holding when there were noise issues, as compared to using a decibel meter.

Chief Kurz said the expectation in Durham was that the Police Department responded to situations and dealt with them. He provided details on this.

Administrator Selig recommended moving the noise ordinance proposal forward for public hearing. He said the reality was that when the police cited someone for the noise ordinance, they weren't using a decibel meter, and were citing the provisions of the ordinance concerning making excessive, unreasonably loud noise.

He said the language proposed to be added tried to better quantify and qualify what that meant. He noted that he had some concerns about the 10:00 PM curfew that was proposed, and he encouraged the Council to consider whether this was a reasonable hour, taking the full time population into account. He said this was a key issue to talk about.

Councilor Gooze said those in Town who had dealt with noise issues knew that waiting until 11:00 PM to call the police meant that it was then about an hour before things got shut down. He said the issue was the student parties, and not parties of adult residents. He said they were trying to be able to get a reasonable amount of sleep, and thought they had a fighting chance if there was a curfew at 10:00 PM.

Councilor Cote suggested that the Council could observe whether the 10:00 PM curfew worked, and if not, the ordinance could be amended.

Councilor Gooze said they might decide to say the curfew was 11:00 PM on Friday, Saturday and Sunday nights, but he also noted that some people worked on the weekends.

Councilor Mower provided details on other NH towns that had 10:00 PM curfews, and Councilor Niman asked that Councilor Mower provide a list of these towns to the Council.

Chair Carroll said it sounded like the consensus of the Council was to move the noise ordinance proposal on to a public hearing, and said they would look forward to hearing from the public. She asked Councilors when they wanted to schedule it

Councilor Niman suggested waiting until there could be public hearings on both the noise ordinance and the disorderly house ordinance.

Administrator Selig recommended proceeding with the noise ordinance first, on June 21<sup>st</sup>, stating

that it was fair that there be a distinct session on that topic.  
Councilor Niman said this was fine with him.

Councilor Gooze said if the disorderly house ordinance passed on first reading, it could also be scheduled for June 21<sup>st</sup>.

Councilor Smith recommended not moving forward with the noise ordinance proposal yet, stating that he was particularly bothered by the removal of the table and the measurement of noise levels. He also said there were problems with the definitions.

***Councilor Gooze MOVED on first reading Ordinance #2010-06 amending certain sections within Chapter 85 “Noise” of the Durham Town Code. Councilor Mower SECONDED the motion, and it PASSED 7-2 with Councilor Stanhope and Councilor Smith voting against it.***

***Councilor Smith MOVED to approve Unanimous Consent Agenda Items B and C. Councilor Mower SECONDED the motion, and it PASSED unanimously 9-0.***

Administrator Selig noted that the Phase II construction of the West End Sewer Rehabilitation Project was a very significant item, in that it would increase the capacity of the sewer system in that area of Town, which would allow for additional development. He said the project was the result of three years of intensive discussion between the Town’s Wastewater Committee and UNH.

#### **VIII. Committee Appointments**

None

#### **IX. Presentation Item**

Update and next steps for Oyster River Dam – David Cedarholm, Town Engineer

Administrator Selig briefly summarized that the dam was in need of significant repair and rehabilitation. He said Mr. Cedarholm would provide the Council with an update on some of the findings to date from analyses being done, and steps they were planning to take in the short term.

Mr. Cedarholm said two studies had recently been done, one of Mill Pond, and the other of the structural integrity of the Oyster River Dam concrete. He explained that there were three aspects of the Mill Pond investigation:

- To map the bottom of the pond/river bed, and estimate the area of possible tidal inundation if the dam was to be removed, using a bathymetric and topographic survey
- To assess the extent and thickness of sediments
- To investigate the degree of sediment contamination

He noted in a photo a particularly deep area of the pond that had been scoured by the river over time. He also showed where tidal water would inundate if the dam were removed, and stated that during extreme high tides, where the elevation might come up 5.7 ft - 8 ft, it would extend quite a ways up the river. He noted that Mill Pond would still exist as a freshwater pond between

periods of high tide events. He said the report done by VHB included a large amount of interesting information, including mapping of native and invasive species, which wasn't even a part of the contract. He said this report was available for anyone who wished to read it.

Mr. Cedarholm said 32 sediment probes were done, and said their thickness ranged from 0.6 to 4 ft, with an average of 1.9 ft. He said the thickest sediments were located south of the river channel. He said the contaminant analysis found no VOCs, PCBs or pesticides, but did find naturally occurring arsenic and atmospherically caused mercury above the maximum contaminant levels. He noted that the highest amount of mercury was detected downstream from the dam, in the channel near the landing.

He said quite a few samples detected Polycyclic Aromatic Hydrocarbons (PAHs) exceeding the Freshwater Ecological Screening Level Criteria. He said none of the concentrations dramatically exceeded these criteria, and said they weren't surprising, considering the level of development above the pond. He provided details on this.

Mr. Cedarholm next spoke about the results of the Oyster River Dam concrete investigation. He explained that an assessment was done by Stephens Associates to determine the degree of structural deterioration of the concrete, using acoustical sounding to search for voids and internal deterioration, surface scanning and concrete core sampling, laboratory testing to assess the concrete's compressive and tensile strengths, as well as petrographic analysis of the concrete to look at the microscopic structural integrity of it.

He said a determination was then made of the physical and economic viability of performing needed repairs. He first noted that the analysis determined that the rebar in the concrete was in quite good shape. He said most of the core samples, particularly from the spillway and the walls looked very good. He showed the original 1913 concrete, and noted that the aggregate from this came from local sandpits, and was comprised of mostly large, rounded stones, which tended to weaken the tensile strength of the concrete in particular.

Mr. Cedarholm said a core sample taken in the face of the dam near the gates came out in quite a few pieces, and said it was difficult to patch the area after taking the sample.

He said the petrographic analysis results were very revealing, and indicated very small cracks in the concrete. He provided details on this, and said Alkali-silica reaction (ASR) cracks were found, which were the result of a chemical reaction where the alkali in the cement reacted with the silica in the aggregate stone. He explained that a gel formed in the cracks as a result of this, which then expanded and caused more cracking. He said if further expansion occurred, moisture got in, and freezing and thawing became an important issue in further weakening the concrete.

Mr. Cedarholm showed photos that indicated that ASR cracks in the aggregate and the cement of the dam appeared to be a real problem. He explained that these cracks were more extensive in the 1913 concrete found in the back slab and vertical buttress walls that were holding up the dam. But he said it was also found in the 1970 concrete found in the cap on the very top of the spillway and in much of the right abutment where the gates were. He said they were primarily concerned with the ASR in the older concrete, and noted that the lowest portion of the abutment,

where the major cracking occurred during core sampling, was 1913 concrete.

Mr. Cedarholm summarized the dam concrete investigation results:

- Acoustic sounding, using a hammer, indicated that there were only a few voids in the spillway, but indicated that the left abutment of the dam was extremely deteriorated, especially in the lower area of the 1913 concrete.
- Strength testing of the concrete core samples indicated that although compressive strength was found to be adequate, there was 50% lower tensile strength than expected. He noted that tensile strength could not be measured on core samples that broke, so the percentage might be even lower than the data suggested
- Petrographic analysis revealed extensive micro-cracking
- Alkali-silica reaction and freeze-thaw was suspected to be the cause of micro-cracking, and reduced tensile strength was indicative of the micro-cracking

Mr. Cedarholm said he asked Stephens Associates what the cost and viability was of doing a 5-10 year repair, as compared to a 10-30 year repair. He said Stephens Associates thought the dam was structurally sound today, and the Town could get another 5-10 years out of it. But he said they thought getting another 10-30 years out of the dam was a different situation, especially because of the suspect ASR issue and the micro-cracking.

He said the long term repair of the spillway and cell walls was doubtful if the ASR was ongoing, because if the concrete was still expanding as a result of it, they wouldn't be able to get new concrete to stick to it. He said additional testing was needed to determine if the chemical reaction process was complete, and he provided details on this. He said this test would take 3-4 months, and would cost \$11,500.

Mr. Cedarholm said the right abutment would need to be repaired because of soil erosion around the right side, as well as the stone wall deterioration. He noted that the wall had been reconstructed several times. He said a sinkhole had formed since the spring floods, and said the stone wall needed to be reconstructed with structural fill behind it.

He said short term repairs would cost \$50-150,000, depending on how much work the Town wanted to do on the right abutment and the soil around it. He said long term repair of the dam was estimated to cost \$600,000-1.5 million or more, with the higher amount reflecting the possibility that the ASR reaction was continuing, and the concrete was still expanding.

Councilor Gooze asked whether, if the ASR reaction was still on going, the short-term repair would still be viable. He also asked if 30 years was the maximum for the long term repairs

Mr. Cedarholm said the short term repair would be viable, noting that the ASR reaction was slow. Regarding Councilor Gooze's second question, he said if the ASR was really an issue, he wouldn't recommend anything short of replacing the dam, and said they needed to determine whether the ASR had gone to completion. He recommended doing a temporary stabilization of the right abutment and retaining wall, which would give them another 5-10 years, and collecting additional concrete cores and performing supplementary ASR laboratory tests.

Administrator Selig said the Town was planning to do the additional ASR testing and the

stabilization of the retaining wall. He said they would be taking an incremental approach. Mr. Cedarholm said they would like to do the stabilization work soon, because another flood could rip out the entire retaining wall. He said the DPW would like to design the fix in-house, if the State would allow this. He said this could save the Town a lot of money for the short term, and noted that a contractor could be hired to do the stabilization work.

Councilor Clark determined from Mr. Cedarholm that \$50,000 would be enough money to do the abutment.

There was discussion that \$65,000 was available to do the work. Administrator Selig said this was hazard mitigation money, and said the Town hadn't yet heard if it would get this funding from FEMA.

Mr. Cedarholm said having seen the recent studies, he was anxious to address the soil instability issues.

Administrator Selig said he and the DPW would proceed as proposed unless the Council felt strongly that they should do otherwise.

Chair Carroll determined that the consensus of the Council was to proceed with the ASR work and the stabilization work. She thanked Mr. Cedarholm for his work on this issue, which was so important to the Town. She also said it sounded like some great work had been done by the research teams.

Administrator Selig spoke about the fact that the water quality issues facing Mill Pond were challenging, especially because it was a man made body and needed better circulation. He spoke briefly about the possible approach of using a solar powered circulator for the pond, and there was discussion.

Mr. Cedarholm said there could be several small solar panels or a few big ones, and said whatever they did, electricity would be required to drive the bubbler for the circulator. He said the DPW had looked at a similar type of aerator for the wastewater treatment plant.

Chair Carroll noted the issue of College Brook, and said it was important to keep it in mind as well.

## **X. Unfinished Business**

- A. **PUBLIC HEARING AND ACTION ON ORDINANCE #2010-05** amending Chapter 153 "Vehicles and Traffic", Section 153-43 "Schedule XI: Stop intersections" of the Durham Town Code by placing stop signs at the intersection of Ross Road and Stagecoach Road

*Councilor Sievert MOVED to open the Public Hearing on Ordinance #2010-05 amending Chapter 153 "Vehicles and Traffic", Section 153-43 "Schedule XI: Stop intersections" of the Durham Town Code by placing stop signs at the intersection of Ross Road and Stagecoach Road. Councilor Smith SECONDED the motion, and it PASSED unanimously 9-0.*



**Belinda Curtis, 14 Ross Road**, said there were 51 houses, with 2-3 cars per house, and said there were 94 children in the neighborhood. She said she was deaf so couldn't hear the cars, which were speeding ridiculously, and said she had complained to the homeowner association and the Police Department about this. She said the stop signs might help, but said perhaps something else was needed. She said she would like to see a three way stop, and provided details on this

**Jeff McKenna, Ross Road**, said the residents there were the victims but also the perpetrators of this problem, stating that most of the traffic was local residents, along with some service trucks. He said the Association was aware of this and had discussed things they could do legally, including putting in speed bumps. He said the speed was excessive where Ms. Curtis lived, and he asked her to work with the Association, which was open to suggestions. He said he was not against a stop sign, but said he didn't really think it would work.

Ms. Curtis said stop signs were only part of the solution, and said more was needed than this.

Councilor Niman asked if the Homeowners Association was in favor of the stop signs, and Mr. McKenna said they would discuss this at their next meeting. He said he couldn't speak for them.

Councilor Gooze asked who had brought this Ordinance proposal forward, and Chief Kurz said this had been an ongoing issue. He said he had thought that the email requesting that the Traffic Safety Committee do the stop signs was representative of the entire neighborhood. He said the reality for his department was where to put limited resources, and said this location was not high on his priority list. He noted that this was a neighborhood with a dead end, and said there were more challenges on Route 4, Durham Point Road, and Packers Falls Road, where there was through traffic.

He said a speed trailer could be put there, but said there was no ordinance or Town code for enforcement of the stop signs at the intersection of Ross Road and Stagecoach Road. He said the two stop signs were being proposed, and noted that the Traffic Safety Committee was against the idea of a three way stop sign, which if done, would mean that three way stops signs would be requested all over Town.

Councilor Smith asked if having the stop signs there would make it easier to prosecute if there was an accident.

Chief Kurz said possibly yes. He said there should be a stop sign at the intersection of Ross Road entering Stage Coach Road, and said the idea of having a stop sign at the intersection of Stage Coach Road and the Class VI road was ok.

Administrator Selig asked if the Council would like to wait to hear from the Homeowners' Association before making a decision.

Mr. McKenna suggested also getting the names of complainants who weren't members of the Association, and said they would be invited to an Association meeting.

Chief Kurz said typically, when there was an ordinance that would impact a neighborhood, letters concerning the process were sent to the residents there. He said if the hearing was going to be continued, he would re-send the letters.

Administrator Selig said he thought it was appropriate to close the public hearing and then delay making a decision until after hearing from the Homeowners Association.

Councilor Sievert said he thought the Council should take the vote on the stop signs, which had been recommended.

**Annmarie Harris, Oyster River Road**, said she objected to the Council having to spend time discussing something that was a neighborhood association issue, for an area with minimal traffic.

***Councilor Stanhope MOVED to close the public hearing. Councilor Niman SECONDED the motion.***

There was discussion on whether to close the public hearing yet. Councilor Gooze noted that if the public hearing was closed and then a letter was received from the Association, the hearing would have to be reopened. He said Chief Kurz had said the stop signs were needed and no one had spoken against this, and said the Council should proceed.

Councilor Stanhope said the Council was taking a lot of time to discuss something that was fairly insignificant. He said the stop signs should be put in, and if there was additional input needed from the Association, this could be considered in terms of future possible actions.

Councilor Smith agreed.

***The motion PASSED unanimously 9-0.***

***Councilor Mower MOVED to approve Ordinance #2010-05 amending Chapter 153 “Vehicles and Traffic”, Section 153-43 “Schedule XI: Stop intersections” of the Durham Town Code by placing stop signs at the intersection of Ross Road and Stagecoach Road. Councilor Smith SECONDED the motion.***

Councilor Clark said he had thought this issue was about the safety of the intersection, but said he had now heard that it was about slowing cars down. He noted that some people had said three stop signs were needed.

Administrator Selig said a three-way stop sign was not warranted, and also said if this were done it would create a precedent to put three stop signs at other intersections in Town where they weren't warranted.

Councilor Clark said he assumed the Traffic Safety Committee was the entity to figure out how to slow cars down. He said it was logical to put in the stop signs, but said another discussion was needed about how to slow the cars down.

Councilor Cote said the Traffic Safety Committee could get input from the Association on this. Councilor Gooze said Chief Kurz had said that at least a single stop sign was warranted at the intersection, and said he trusted him on this.

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

The Council stood in recess from 9:58 - 10:06 PM.

- B. **FIRST READING ON ORDINANCE #2010-07** amending Chapter 175 “Zoning”, Article XII “Zone Requirements”, Section 175-53 “Table of Uses” to allow single-family homes and duplexes in the ORLI zone as a conditional use and to allow single-family homes in the MUDOR zone as a conditional use

Councilor Sievert said he thought he should recuse himself.

After lengthy discussion with other Council members on whether this was appropriate, he did so.

***Councilor Gooze MOVED to move on First Reading Ordinance #2010-07 amending Chapter 175 “Zoning”, Article XII “Zone Requirements”, Section 175-53 “Table of Uses”, “III Residential Uses” of the Durham Town Code to allow Single-Family Homes and Duplexes in the Office Research & Light Industry (ORLI) Zone as a Conditional Use and to allow Single-Family Homes in the Multi-Unit Dwelling/Office Research (MUDOR) Zone as a Conditional Use, and schedules a Public Hearing for Monday, June 21, 2010. Councilor Niman SECONDED the motion.***

Councilor Gooze said this was an issue that had a lot of different aspects to it, and said groups of people on each side of it felt strongly. He said it was important to hear the different views.

Chair Carroll said she had given a great deal of thought to this issue, and noted that she had met with Mr. Campbell about it. She said she was not opposed to the purpose of the proposed Zoning change, which was to allow some student oriented development complexes near Goss. She said there were many good reasons to develop out that way.

But she said there was a more appropriate way to change the Zoning than what was proposed. She read the purpose statement for the ORLI zone and the purpose statement for the MUDOR zone, and said she thought the kind of development they were talking about was multi-unit development, which fit more under MUDOR than it did for ORLI.

Chair Carroll said she also didn’t understand why the entire ORLI district needed to be changed, when they were really only talking about a pretty small land area that happened to be adjacent to the MUDOR district. She also suggested that MUDOR could be extended across Route 4. She said she didn’t think single family housing fit the purpose statement for the ORLI district, and said with the Zoning change that was now proposed, the ORLI district was being made into a melting pot for all kinds of development in the future.

Councilor Gooze asked Chair Carroll if she recommended not passing this proposal on first

reading, and wanted to see another proposal come back.

Chair Carroll said yes, but noted that she not interested in dragging this out. She said she and Mr. Campbell had discussed how to possibly do this.

Councilor Stanhope asked Chair Carroll if she was saying she didn't want the public to speak to the Council on the current proposal.

Chair Carroll said she would prefer that the public see what she had outlined first, and if they then preferred that proposal, that would be the way it was.

Councilor Smith said when the Planning Board had its public hearing on the Zoning proposal, one member of the public spoke in favor of it, and another sent an email against it. He said he was supportive of what Chair Carroll was suggesting, although he would also suggest extending MUDOR along Old Concord Road. He said it made sense to have what Capstone proposed right across the road from another student housing development, and would have transit available to the site.

But he said he would prefer to change the Zoning of that parcel and perhaps some others from ORLI to MUDOR. He said the original process of Zoning MUDOR and ORLI was arbitrary to some extent, and did not reflect the reality of what people might want to do with their property. He suggested not moving forward the current Zoning proposal on first reading, and developing a new proposal.

Councilor Niman noted that single family homes were already permitted in the ORLI district, and simply had an age restriction. He said he agreed with Chair Carroll that the purpose statement for the ORLI district said one thing but the Table of Uses said something else. He said the question wasn't whether there would be single family homes there, but whether they would be age restricted.

He said there seemed to be a perception that if this proposed Zoning change was stopped, that there wouldn't be multi-unit development in that district. But he said Capstone could go to the Planning Board now with an application for a student housing development, and said the only challenge would be that it would have to be a bunch of big buildings.

Councilor Niman said he didn't view this proposal as a Zoning change for Capstone, but as one that was responsive to the marketplace, which had changed over the past 10 years. He said students wanted a mix of housing choices. He also said for those who were concerned about students living in single family houses in Durham, what Capstone offered was something that most approximated that lifestyle. He said he didn't see the Zoning proposal as a radical change, and said it simply removed the age restriction in order to give developers more flexibility to provide housing that students wanted.

He said he also thought that part of what had motivated the re-imagining of the downtown core was a fear of having too many students downtown. He said if the Town was going to provide housing that appealed to grownups downtown, it needed to provide housing that appealed to students someplace else. He said the Woodward property was an excellent location for this, and

said there might be other good locations in the ORLI district.

Councilor Niman said he had thought the MUDOR district was a farce from the time it was created, because most of the land there was owned by UNH. He said that was why multi-unit development was allowed as a Conditional Use in the ORLI district. He said he didn't object to the idea of expanding the MUDOR district, but said if the idea was to keep pace with changes in the market, and to create developments that were appealing to developers and those who might live in them, this was a Zoning change that made sense for the entire zone. He said he therefore saw no reason not to pass it on first reading.

Chair Carroll said she too was very interested in student housing that offered alternatives, including single family units and duplexes. She said she was in favor of extending the MUDOR district to allow these, but didn't see the need to open up the ORLI district for this. She provided further details on this.

Councilor Gooze said good points had been made by both Councilor Niman and Chair Carroll. He noted that with the form based code approach, there was flexibility concerning allowed uses and there were fewer restrictions, which could fit better with the market and with what the Town wanted in terms of development. He said he would like to see few restrictions in order to get the best development they could get out there. He said he would also like to hear from business people who were worried about development out there, so would like to see this go to a first reading.

Chair Carroll said business owners would be stepping forward because with both districts, there were things in the Table of Uses that could hurt the business district downtown. She said the Council and the Planning Board would need to deal with this.

Councilor Stanhope said he hoped this proposal would go forward and would not be delayed. He noted the problem of student housing in single family neighborhoods in Town, and said behavior modification would come hard. He said high quality student housing would rescue the neighborhoods, and said delaying this proposal would postpone drawing some of the problems out of these neighborhoods.

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

Councilor Mower said they should focus on the most elegant solution, involving the smallest change that would achieve the desired result with the least impact on larger areas. She said there were very good reasons to have student housing away from the downtown, and said this was an excellent proposed location. She provided details on this, but said they should be looking at more than solving short term problems.

She said students looking to live in single family homes were looking for independence and didn't necessarily care about the architecture of a single family dwelling. She said she assumed that there would be property management at any large student housing complex.

Councilor Mower also said they should remember that the ORLI district was designated for

office, research and light industry, and said just because there hadn't been interest in that yet, there was evidence of some interest by UNH in developing some research/incubation areas. She said instead of opening the floodgates for student housing there, they should focus on what was appropriate for this particular moment in time, for this developer, and figure out what was wrong with the Table of Uses.

She said she didn't think it was appropriate to put this proposal out for first reading when some Councilors saw some major alternatives to it. She noted that there had been very little discussion on this proposal by the Planning Board.

Councilor Clark noted that a question he'd had was how this Zoning proposal had gotten through the Planning Board process, for the Council to then second guess it. He said what Councilor Mower had said about the Board's discussion was disturbing. He said another issue was that this was a changing world. He said UNH was able to react with new forms of housing that students were migrating to, and he said it was important that the Town have zoning that reflected what students wanted.

He encouraged the Council not to be short sighted, and to instead think about what was in the best long term interest of the Town. He said the Central Business district was in distress, and student housing was a large part of this. He said one of the best long term solutions for the downtown was to have adults living there and not students, and said it was in the Town's interest to encouraging higher end housing for everyone, and to find ways to repurpose and give incentives to completely renovate buildings. He said right now, the worst uses were put in the houses they seemed to cherish the most, like those on Church Hill.

Councilor Mower said she agreed with this, and agreed about the specific project proposed. But she said she didn't think the proposed Zoning change, which would open all of ORLI and MUDOR, was the way to go about this. She said they should leave open some possibilities for the future.

Councilor Clark said ORLI and MUDOR were close to identical in terms of the Table of Uses, and he also noted the existence of the Conditional Use process. He said they weren't going to fix this right now, and he suggested going forward to see what the public had to say, and then making sure the Council did the right thing.

Councilor Gooze noted that it had been a long time since the Master Plan was updated. He said they needed to be flexible, and said with this type of development, offices and research facilities could still be placed nearby, noting that the Conditional Use process would be involved.

He agreed with Councilor Mower that there were people who wanted the independence of an absentee landlord, which was why the noise and disorderly house ordinances were needed. But he said he thought this Zoning change proposal could still go forward.

Administrator Selig asked if the Council was at a point where it could vote on whether to schedule the public hearing.

***The motion PASSED 7-2, with Chair Carroll and Councilor Smith voting against it.***

- C. Discussion on an application submitted by the Sigma Beta Alumni Association for short-term property tax relief under the Community Revitalization Tax Relief Incentive Program (RSA 79-E) adopted by the Town Council on May 4, 2009 and schedule a public hearing on said application for Monday, June 21, 2010

Councilor Clark noted that he would receive no financial gain from this, but had been advised that he should still recuse himself.

Administrator Selig said he thought it made sense for Councilor Clark to make a brief presentation on this. He said the Council would need to determine if there was a public benefit associated with granting the request, and if so, would then need to memorialize this. He provided details on what the possible public benefits could be. He also noted that the fraternity had spent about \$750,000 to do a complete renovation of the interior of the structure.

Councilor Mower said it wasn't just the physical structural improvements that had been made, and said the alumni had tried to restructure things so the inhabitants would be better neighbors in the downtown.

Councilor Gooze determined that the Council's only charge that evening was to decide whether there should be a public hearing.

It was agreed that the presentation by Councilor Clark wasn't necessary right now.

Councilor Clark recused himself.

***Councilor Stanhope MOVED to schedule a public hearing an application submitted by the Sigma Beta Alumni Association for short-term property tax relief under the Community Revitalization Tax Relief Incentive Program (RSA 79-E) adopted by the Town Council on May 4, 2009. Councilor Sievert SECONDED the motion.***

Councilor Niman asked that Councilor Clark bring his presentation to the public hearing, and Chair Carroll asked that as part of this, Councilor Clark bring any appropriate information on behavioral changes that had been made.

***The motion PASSED unanimously 8-0.***

Councilor Clark returned to the table.

***Councilor Mower MOVED to adjourn, but there was no second.***

- E. Discussion on the Oyster River Cooperative School Board's response to Town of Durham Resolution #2010-02 requesting adequate documentation regarding the expenditure of surplus funds from the ORCSD's 2009 Fiscal Year

Councilor Niman said he would hate to put this discussion off, noting that he had watched the

last School Board meeting, where the idea of meeting with the Council was discussed. Administrator Selig summarized that the Council had passed Resolution #2010-02 in February, and said the School Board had responded to this in a letter dated April 22, 2010. He provided details on this response:

- Recommended that he and the Superintendent continue dialogue
- Outlined the manner in which the School Board undertook to use fund balance, in what they saw as a prudent way
- Dealt with the recent technology purchases issue
- Evaluated the tax burden from the schools over the past 10 years
- Addressed the student enrollment issue
- Addressed the fact that the School Board was working on a strategic plan
- Highlighted that the cost of running the schools had increased to a greater degree than the consumer price index, as a rationale for why their spending had increased more than the CPI

Administrator Selig provided details on the lengthy discussion at the last School Board meeting as to the best way the Board could ensure good communication between the School District and the three towns. He then said he had extended an invitation to the June 21<sup>st</sup> Council meeting on behalf of the Council to Jocelyn O'Quinn, Durham's representative to the School Board, and Jennifer Rief, an at-large member of the Board who lived in Durham.

He said Ms. O'Quinn had agreed to do this and would provide an update to the Council as well as answer questions, speaking as a member of the School Board but not for the Board as a whole. He said Ms. Rief would prefer to have an itemized list of questions the Council had, and said if needed, the ORSD administration would attend in order to provide more specific responses. He said he would be willing to organize these questions from Councilors to share with the School Board.

Administrator Selig said he had recently spoken with the Superintendent about the need for a dialogue between the School Board and the Council, in order to improve the level of trust and understanding between them. He also noted that there was a lot of discussion underway at the School Board level about creating an audit committee and a budget committee. He said they had agreed to create an audit committee, but hadn't yet fleshed out exactly what it would do.

He also said they were talking about having an advisory Budget committee, one where the School Board would have complete autonomy to determine who would be on the committee, and would also have the discretion to accept or reject all of the committee's recommendations. He said there had been some delay in scheduling that discussion, and noted concerns expressed by members of the public that if the budget committee wasn't formed soon, there wouldn't be time for it to participate in this Budget cycle. He said if the Council wanted to weigh in on this issue, now was a good time to do so.

Councilor Gooze said the School Board meeting where the audit was presented was informative, noting that the auditors didn't have much chance to get the information they needed. He also said the recent audit report for the School District was minimal compared to audit reports for the District he had seen in the past. He said he would like to let them know that this wasn't the way to do things.



Councilor Niman said he was disappointed in the School Board's response, not because there was incorrect information, but rather because they had missed the point of the Resolution. He said he had tried to engage the School Board in a number of ways over the past few years, and none had been successful. He credited Councilors for trying different strategies, and said the Resolution was one such strategy, to get the School Board to talk with the Council.

He said hopefully the invitation could create a better relationship with members of the School Board so they would engage in a conversation with the Council. He said he needed some way to communicate residents' concerns to the School Board and get good responses that answered specific questions. He said he wanted to talk with the School Board members about a way to make this happen.

Councilor Clark agreed, and said what had become more and more frustrating was the continued isolation of the School Board relative to the rest of the Town. He noted the Town's Budget discussions last year, as compared to the culture of budgeting by the School Board, with a certain amount of surplus budgeted in. He spoke in some detail on this, and also said he was hearing increasing frustration from residents that money was being spent on things, and not on programs and education. He said taking a hard line wouldn't be effective, and said they needed to find a way to have an open dialogue. He said inviting the two School Board members was a good start.

Administrator Selig said there did seem to be some deep seated disagreement among School Board members, with on one side a very protectionist view of the district, and on the other side an openness to a new way of thinking about the relationship between the district and the taxpayers, and the real struggles the towns were facing. He also noted that an increasing number of citizens were going to School Board meetings, ranging from young families with students just entering the system, to retired, long term residents of the Town, who were speaking on behalf of the elderly population.

Councilor Clark said it was obvious that the relationship between the School Board and Durham was strained because of years of challenging the funding formula. He said the Council had to make it clear that they were over this, and would be happy to just have a dialogue about the concerns of citizens.

Chair Carroll summarized there would be one and possibly two School Board members at the next meeting, so there could be an open dialogue with them.

Councilor Smith said he hoped the disorderly house ordinance would be redrafted before the next meeting, stating that there were some real problems with it, and with the Resolution itself. He said he would like to see some serious revisions made to what they had been given, and said he would discuss this with Administrator Selig. He said he hoped the Chair would support him on this.

Chair Carroll said this could be brought up at the Agenda setting meeting.

Administrator Selig said there would likely be a recommendation in the future to disband the Jackson's Landing rink committee. He said the rink had been successful, so the members didn't

see the continued need for the committee.

He also said there had been a request to have a formal dedication for the new monuments in Memorial Park, He said he didn't see the need for this, noting that two years ago on Memorial Day, there had been mock up monuments in place. He asked Councilors to think about this.

He said a suggestion was received that day to commemorate residents involved in the Aristotle Onassis proposed refinery in Durham. He said Councilors interested in bringing this forward could do so, noting that he wasn't planning to bring it up on his own.

Administrator Selig said a few language modifications had been made to the Firefighters' agreement, and said it had now been ratified. He also said a tentative agreement had been reached with the Durham Middle Managers Association, and said this might come forward for ratification on June 21<sup>st</sup>. He also provided details on the ongoing DPW contract negotiations.

## **XI. New Business**

- A. **FIRST READING ON ORDINANCE #2010-08** amending Part II "General Legislation" of the Durham Town Code by creating a new chapter, Chapter 45, entitled "Disorderly House"

(Postponed to Unfinished Business on the June 21, 2010 Agenda)

- B. Other business - None

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

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

## **XIV. Adjourn (NLT 10:15 PM)**

*Councilor Gooze MOVED to adjourn. Councilor Clark SECONDED the motion, and it PASSED unanimously 9-0.*

ADJOURNED at 11:26 PM.

Victoria Parmele, Minutes taker