

This set of minutes was approved at the July 26, 2010 Town Council meeting

**Durham Town Council
Tuesday June 22, 2010
(Continued Meeting of June 21, 2010)
Durham Town Hall - Council Chambers
7:30P.M.
MINUTES**

MEMBERS PRESENT: Council 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

I. Call to Order

Chair Carroll called the meeting to order at 7:37 pm, and said this was a resumption of the Town Council meeting of June 21, 2010.

X. E. 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”

Administrator Selig noted that the Rental Housing Commission had been having conversations on the impact of student rental housing on neighborhoods, and had looked at strategies to address this. He noted that the proposed noise ordinance had passed the previous evening, and said a second idea was to create this ordinance.

He said the idea behind it was that it had been found that properties with absentee landlords, who didn’t take an active interest in managing their properties, were where most of the significant problems were seen.

He said the RHC believed that if there was a property with recurring problems and the Town couldn’t get the attention of the property owner, it needed to have a new mechanism to make it overtly clear that either the owner would become active in management of the property, or fines would be charged. He read from the ordinance concerning the definition of what a disorderly activity, a disorderly event and a disorderly house were.

Administrator Selig said with this ordinance, if a property was identified as a disorderly house, defined as where there had been two disorderly events, there would be an initial fine of \$300, and also, the owner or representative would be required to meet with the Police Chief or designee within 10 days, or at such time agreed to by the Chief. He said if the owner or designee failed to attend this meeting, there would be an additional fine of \$500.

He said there would be a progressive format in terms of the fines, and said on the third event, there would be a fine of \$500, and a requirement that the owner meet with the Chief or a representative as well as three members of the RHC, within 10 days in order to identify ways to prevent future disorderly events. He said there would be an additional fine if the owner failed to do this.

He said the idea with this approach was that with the first response, if the occupants were behaving illegally, the Police Department would charge them appropriately, but if there were recurring events, the progressive fine structure would be put in place in order to ensure that the owner was an active part of the solution. He said the fine could be waived in each case if at the discretion of the Chief, the landlord had undertaken good faith efforts to prevent disorderly events. He said the goal was to ensure that the owner was an active partner concerning addressing the behavior taking place at a property.

Administrator Selig said the ordinance had been reviewed and endorsed by the RHC and the Durham Landlords Association. He said that the fine structure was modified in the process of developing the ordinance, also noting that the initial drafts did not include a fine for failing to meet with the Chief and members of the RHC. He said the Commission felt strongly that there was tremendous value in sitting down with them in order to create a dialogue and partnership to address the problem.

He said the ordinance had been reviewed by the Town's attorney, and also had been "wordsmithed" by Councilors Mower, Smith, and Gooze, and was now ready for Council consideration and action. He noted that he had his own perspective to add concerning the ordinance, and also said Chief Kurz was present to speak about it.

Chief Kurz explained that the ordinance had originally been developed and proposed to the fledgling Durham Landlords Association in 2002, which wasn't really for it at that time. He said the ordinance was overtly designed to get the landlords to the table. He said as a result of a series of meeting at that time, the format was created where when a police officer responded to a rental property, the owner was sent an email the following day, or by Monday.

He said this process became so successful that there was no need to activate the disorderly house ordinance. He said things had now come full circle, so that now, the professional landlords were vested in the community. He said they realized the problem the Town had had with absentee landlords, and even with parents who had purchased houses for their children to rent.

Chief Kurz said he didn't want people to think that every time the police responded to a rental property, this ordinance would be activated. He said it wouldn't be activated unless they couldn't get the attention of the owner to work with them to resolve the issue. He noted two situations the previous year, one at 99 Madbury Road, and the other on Valentine Hill Road, that had resulted in a prolonged process because the Town didn't have this tool available.

Councilor Sievert said he had thought that the idea of a "disorderly activity" was subjective, but said from the explanation he had now heard, he didn't think it would be that much of a

problem. He also said he was concerned that multiple tools were being brought in, and asked how many ordinances the Town really needed. He said hopefully this one and the noise ordinance would be sufficient, and said he would be hesitant to go further than this. He also suggested that first class certified mail would be the way to go, concerning notification.

Chief Kurz noted that the noise ordinance had always been on the books, and had now been fine tuned, but said the disorderly house ordinance would be new. But he noted that he didn't think residents would be able to legislate themselves out of the difficulties of living in a university community.

Councilor Sievert agreed that this was simply a tool that could be used.

Councilor Gooze said he had already suggested to the RHC Chair that another possible tool, the large assembly ordinance, probably wouldn't be necessary. He said the RHC would be looking at the rental registration approach, but said he didn't think they would rush into this, and noted that the DLA and an attorney in Town were trying to work out something that would be acceptable to everyone. He said he couldn't answer for the entire RHC, but said he would be pushing for that agenda at the meeting the following day.

Councilor Stanhope asked how "excessively loud" was determined, and Chief Kurz said it was subjective. There was discussion about how "unnecessary noise" could be determined. Councilor Stanhope asked for clarification on what "fights in the vicinity of the building" meant, and Chief Kurz said this would be determined at the discretion of the officer. He said if there was a large party, and it seemed the fight had spilled out into the street, they could figure it out. He said they were trying to be somewhat inclusive, but not overbearing.

Councilor Stanhope asked whether, if there was a fight in front of his house, the police would respond, based on this ordinance.

Chief Kurz said he would probably notify Councilor Stanhope, as a landlord, that they had responded to the property. He said this wouldn't constitute a disorderly house, but said if the problem continued and after conversation and notification he seemed indifferent, things could be ratcheted up.

Councilor Stanhope asked how it was determined if someone was an invitee rather than a gate crasher.

Chief Kurz said the police didn't get phone calls about gate crashers showing up at a party, and said therefore by definition, these people were invited to remain at the party.

Councilor Gooze noted how parties in general could materialize these days because of Twitter, etc, but said he believed the owner was still responsible for what went on at that property.

Councilor Stanhope asked whether if someone was intoxicated outdoors, that necessitated an arrest.

Chief Kurz said that would depend on whether they were being disorderly, and things were problematic.

Councilor Stanhope noted that this ordinance wasn't specific to rental housing or students, and could pertain to an owner-occupied home and something like a daughter's wedding.

Chief Kurz said this wouldn't constitute a disorderly house unless the owner kept having parties there all the time. He said the reality was that they were talking about student housing.

Councilor Stanhope said Chief Kurz was making assurances to the Council based on his administration of the Police Department, but said the Council had to assume all the possibilities. He said other towns had seen police department administrations where there had been serious problems, and said it usually happened when there was a high degree of subjectivity involved. He asked if there would be an appeals process, if a determination was made that there was a disorderly house.

There was discussion. Chief Kurz said if the person was charged with having a disorderly house, he would go to court, and said other appeals processes would then kick in.

Councilor Stanhope asked if there was an appeals process after the first event, and Chief Kurz said no.

Administrator Selig provided details on the process that would take place.

Councilor Stanhope said a prudent owner, who investigated the first charge and found that the subjective conclusion of the officer was unfounded, would have no right of appeal.

Administrator Selig said the owner would be able to appeal in court if the Town proceeded to collect the fine. But he said the ordinance would give the Chief the ability to waive the fine if the owner was making earnest efforts to address the issue. He said it came down to the common sense of the Chief.

Councilor Stanhope noted that the wording on waiving of fees talked about the landlord, and not the owner.

Councilor Smith and Councilor Gooze agreed that this should say "owner", not "landlord".

Councilor Stanhope said the judicial body that would consider waiving the fine was in fact the RHC, which was made up of neighbors who had brought this ordinance forward because they were upset.

It was noted that there were only two neighborhood representatives.

Councilor Stanhope asked if those people would have to recuse themselves, if they lived in the neighborhood. There was discussion, and he said he would be happy if this only involved the Chief.

Councilor Gooze said the RHC was pushing this ordinance, and thought it would be appropriate for them to be involved.

Administrator Selig noted that Councilor Gooze had made a suggestion that hadn't ultimately been included in the ordinance, which was that rather than the Chief granting the waiver, it could be the Town Administrator, as an impartial source. Administrator Selig said his own preference was not to be involved at this time.

Councilor Stanhope said he thought the ordinance as proposed was flawed, but said conceptually it was excellent. He said when someone was identified as consistently failing to be a reasonable neighbor, there should be every mechanism available. But he said he worried about subjectivity. He said he wasn't worried about it in regard to the present Chief, but said there was no guarantee that they would always have that.

Councilor Gooze noted that the Council had the authority to discuss with the Administrator whether things were being done correctly or not.

Councilor Stanhope disagreed.

Administrator Selig said the Council could ask the Town Administrator to provide a report on concerns that the Council had about something regarding the Police Department. He said the Administrator could disagree, and said this would then be an issue between the Council and the Administrator.

Councilor Gooze said he had to have faith that there wouldn't ever be a Police Chief in Durham who would abuse this.

Councilor Stanhope said he respected the Chief, but said he had also seen behavior in the Police Department that had showed extreme bad judgment. He said they were now giving a high degree of subjectivity to the department, and said there was no guarantee that there couldn't be abuse. He said that was why he would like to see some degree of control that right now wasn't in the proposed ordinance.

Councilor Mower said in discussions she had with several police department representatives about the subjectivity issue in regard to noise problems, the emphasis over and over was being reasonable and prudent, on documentation, and on trying to work with the violator to solve the problem, rather than taking something to court. She said there might be that approach among other potential candidates for the police force.

Administrator Selig said another possibility would be to create the RHC as the appeal entity, and said the appeal could be heard as part of a public meeting.

Councilor Stanhope said the RHC was made up of special interest groups, and said that same commission had brought forth this ordinance, with an intent. He said he would prefer that Administrator Selig would be the final arbitrator.

Councilor Smith said Councilor Stanhope had raised a very good point about the subjectivity of the ordinance, and that it made possible a mistake by a member of the Police Department. He also said the danger of subjectivity was already in other ordinances and RSAs. He noted that right now, specific individuals could be charged with disorderly conduct. He said this ordinance attempted, and might be successful at putting pressure on landlord or parents who weren't paying attention.

He said he was philosophically leery of this ordinance, but not as much as he had been. He said it was basically a mistake to hold one person responsible for the conduct of another person, unless a person had been egregiously negligent in the choice of tenants or in and overseeing and managing the property. He said he hoped this ordinance would only be used for worst case scenarios. He asked Chief Kurz if it was to be used for the horror stories, and Chief Kurz said yes.

Councilor Niman said he understood why Administrator Selig would like to skirt being the arbitrator, but said he didn't think that was appropriate, and said he didn't think they were being fair to the Chief with this ordinance. He also said he didn't think that regulation would fix the problem, and said he would like to talk about how it would be fixed, and when the Council would talk about this. He said his concern was that in passing this ordinance, there would be the expectation that the Town was going to fix the problem.

He said his fear with the noise ordinance was that people would demand that the police would be on the streets waiting for noisy people they could give tickets to. He said he knew the Chief wouldn't do this, but said there were people in Durham who would demand this. He said this would put the Chief in a political position, and said there could be people questioning the discretion he was using, and asking why he wasn't going after people more. He said people would have more standing to complain because of the ordinance.

Councilor Cote said every day, police officers were tasked with having to have an inordinate amount of discretion. He said while he was sensitive to what had been said, he relied on the officer, regardless of the Chief, to use that discretion. He said it came down to being an experienced police officer.

Councilor Niman noted that he had raised this as a concern, and wasn't saying it was a deal breaker for him.

Councilor Gooze noted emails that had been received about problem properties in Town, and said there might come a time in the near future when this ordinance was applied to these properties. He said perhaps this would be the first test of this ordinance. He agreed with Councilor Cote that the police made discretionary decisions all the time. He also said this was the nature of these types of ordinances.

Councilor Clark noted that Councilor Stanhope had raised a point about the need for an impartial appeals process. He said he would be in favor of the Town Administrator being the person the appeal would go to. He also asked what the end game was supposed to be.

He said the reality was that every time a regulation was put in place, it caused a problem to shift to someplace else. He noted what had happened when the drinking age was raised to 21. He said drinking didn't stop, and said distributors were selling far more beer today than when the drinking age was 18, because instead of buying single beers, kids were buying kegs. He said some kids were drinking 30-40 beers, which created incredible problems.

Councilor Clark spoke about the financial realities landlords had to deal with, with resultant inflated rents and high maintenance properties. He said this meant that a house could be rented for the same price as an apartment, which put pressure on the neighborhoods. He also noted that creating regulations that only professional landlords took seriously meant that some kids ran for freedom in single family homes in the neighborhoods.

He questioned where this would end, and said the real problem was that when students searching for freedom ended up in a residential house, they would become a nuisance to neighbors and also would destroy the property, which would then be a drag on the entire neighborhood. He said they needed to find a legal way to not allow students to live in their neighborhoods, and get rents down to reasonable levels, in order to stop pressuring one area only to have a problem turn up in another. He said he wanted to make sure they weren't continuing this game.

Councilor Gooze said noted that with the higher rents landlords could get in the neighborhoods, kids were getting around this by putting more students in a house. He said a lot of people knew of properties where there 4-5 kids in a house, but didn't say anything until perhaps a few years down the line when there were problems.

Councilor Clark said if they could enforce the 3 unrelated ordinance, there would be a meaningful squeeze on the viability of renting single family houses.

Councilor Sievert said he thought the problem had started when the University cracked down on campus.

Councilor Sievert MOVED on First Reading Ordinance #2010-08 amending Part II "General Legislation" of the Durham Town Code by creating a new chapter, Chapter 45, entitled "Disorderly House"

Chair Carroll noted that Administrator Selig had some thoughts on the proposed ordinance, and would like him to express them before the Council went further with the motion.

There was discussion that there should be friendly amendments to the motion change "landlord" to "owner", and that the waiving of the fine would be at the discretion of the Town Administrator, and not the Police Chief.

Administrator Selig said he respected the way this ordinance had been crafted by the RHC, but said he had a difference of opinion regarding the way it was structured. He said he was concerned that the ordinance would fine a disorderly house too soon, and said his preference

would be to do the fine after the third disorderly event. He said with the first event, someone would receive the notice, and with the second, the owner would be asked to meet with the Chief to discuss the problems. He said if called by the Chief, he thought this would be a wakeup call to the owner.

He said it was after the third disorderly event when he thought there should be a fine imposed. He suggested that the fine start at \$500 after the third event, and then move from \$500 to \$1000. He noted that the landlords on the RHC thought the fines should imposed early to get the attention of the absentee landlords.

He said another concern of his was that while there was tremendous benefit in meeting with the Chief, he was troubled by fining the owner if he refused to do so. He said he didn't have a trouble fining the owner if there was disorderly activity, and said if there continued to be disorderly events, the solution should be to charge progressive fines. He noted that he had been the minority opinion on this.

Councilor Gooze said the intent with the fine structure was to provide an incentive for owners to control who was living there. He said the landlords on the RHC thought it should be written into leases that they would be passing these fines on to tenants if they occurred.

Councilor Stanhope said there was some self service in that the landlords wanted to drive students out of the neighborhoods and back into their buildings. He said they were not looking at this in an even-handed and impartial manner, and said he would have preferred that this proposed ordinance go from the RHC to the Planning Board, because this was a land use regulation, and the Planning Board wasn't a special interest group. He said both the neighborhoods and the landlords were special interest groups, and said it would be like putting the drilling companies in charge of writing the regulations in regard to how to take care of the Gulf of Mexico right now.

Councilor Gooze said with all due respect, everyone at the table had a special interest. He said he was a neighbor who had been woken up at night, and Councilor Stanhope was a landlord.

Councilor Niman said he agreed with Councilor Stanhope. He said as had been seen the previous evening from the Durham landlord cartel, an organized group designed to artificially raise rents by limiting supply, anything they could do to reduce competition helped them. He said this was why they were in favor of this ordinance now as compared to eight years ago, when they didn't view single family homes as a competitive threat.

He said he shared Councilor Stanhope's concern about who was drafting these public policy decisions. He said if the intent was to only bring this ordinance out in an egregious situation, it seemed that Administrator Selig's approach was the more reasonable one, which was to try to work with someone, and then, if everything else failed, to hit the owner in the pocket book.

Councilor Niman said the proposed ordinance would create a hostile environment, rather than work with the problem landlords to resolve things amicably. He said he was very much in favor of Administrator Selig's suggestion.

Councilor Niman MOVED to amend the proposed ordinance to incorporate Administrator Selig's suggested changes so that there would be no fine associated with the second disorderly event, but at the third disorderly event, there would be a fine of \$500 unless waived by the Town Administrator; and that three disorderly events would equate to a disorderly house.

After discussion on the process being followed concerning amending the proposed ordinance, Councilor Niman called a point of order. He said this was an ordinance the Council was initiating, and said if they wanted to make changes to it, this was the time.

Chair Carroll said that was correct, and said if the proposed ordinance then went to public hearing and there were substantive changes made, there had to be another public hearing. She said this was therefore a time for Councilors to make changes to the ordinance. She said this didn't mean they might not get other input, and that things might not change as well during the public hearing.

Councilor Sievert said there seemed to be discretion in terms of waiving the fines, with the existing proposal. But he said he would be in favor of having a higher fine after the third disorderly event.

Councilor Sievert SECONDED the motion.

Councilor Gooze said he could live with the ordinance either way, but said it would be cleaner to keep the ordinance proposal as it was. He said the RHC had discussed the issues that had been raised, which was why they put in the waiver.

Councilor Clark asked if there was any consequence after the second event if the owner didn't meet with the Chief.

Administrator Selig said there wouldn't be. But he said it could be structured so that there wouldn't be a fine unless the person didn't meet with the Chief. He noted that he personally didn't agree with this idea.

Councilor Clark said he agreed with the logic that first the owner should be notified, then there should be a meeting with him, and then if necessary there should be a fine. He also said \$300 was meaningless as a fine, and said he was in favor of going to at least \$500. He also said if the second disorderly event happened, the owner was invited to a meeting and failed to come, there had to be some mechanism such as a certified letter with a return receipt to give him notice to get serious.

Councilor Stanhope said perhaps the approach could be to impose the fine after the second event, but to say attendance at the meeting would mean the fine was waived.

Others agreed this was a good idea.

Councilor Mower said her understanding was that the Code Enforcement officer also sought compliance in this way.

There was discussion about how to amend the motion further to reflect this. Administrator Selig said there were some fairly comprehensive changes being discussed, and suggested reworking the ordinance and bringing it back for Unanimous Consent at the next meeting.

There was discussion that a fine after a second event would be waived if the owner met with the Chief, and Administrator Selig noted that in that case, a disorderly house would still be two disorderly events. He said he liked that approach.

Councilor Mower said this approach set high expectations, but also made it clear that the Town wanted to work with the owner.

There was discussion about what the fine would be after the second event, and it was agreed that it should be \$500, and the fine after the third event should be \$1000.

Councilor Mower said owners shouldn't want to get to the third event, and should crack down on tenants before getting to this.

There was discussion that the fine amount should be \$500, \$1000, \$1000 or more – and further discussion about the fine structure.

Councilor Stanhope suggested that the revised ordinance should be looked at by the Town Attorney before the next meeting.

Councilor Niman withdrew his motion.

Councilor Stanhope asked that the draft be circulated to the Council at the earliest possible date, to see if there were any issues. He said in fairness to Councilor Gooze that he didn't want it to be pulled off the Unanimous Consent agenda.

Councilor Gooze said this had been a very good discussion, and was done in an orderly way.

Administrator Selig said on a related topic that at a meeting with the DBA and at the Capstone informational hearing, there was discussion about how many single family non-owner occupied properties there were in Town that were being used as student rentals. He said this wasn't known right now, but said they did know anecdotally that in the spring time, Mr. Johnson had been working off a list of 90-120 properties residents had reported to him as problem properties, or that he had identified in his travels around Town.

He said a member of the DBA had suggested that they go through the tax records to see how many single family properties didn't have Durham mailing addresses. He said they went through an exercise to see this. He said it was somewhat inaccurate, and provided details on this.

He said there were 126 single family properties with apartments with non-Durham mailing addresses, and which weren't on the water. He said there were 29 such properties that were on the water. He said there were 18 condominiums with non-Durham addresses, three mobile

homes/duplexes, and 8 three-family properties, for a total of 184 properties. He noted that the thought with the properties on the water was that these wouldn't be student rentals because they would be high value properties, but said there were a number that actually could be student rentals.

Councilor Cote said that initial figure tied in with the number that Mr. Johnson had come up with.

Extended Councilor and Town Administrator Roundtable

Administrator Selig said the Planning Department was moving forward with a committee that was looking at affordable housing. He said they would like to have a Council representative for this committee, and said Councilor Gooze had volunteered for this. He said he wanted to be sure that everyone was comfortable with this.

He also said a Council representative was needed for the Master Plan steering committee, and said Councilor Sievert had volunteered for this.

Administrator Selig noted that the Wiswall Bridge had been opened that day, and said Councilor Carroll did a great job at the ribbon cutting ceremony. He then spoke about the fact that there was a safety issue with the bridge, noting that there was no longer a center pier and that ledge had been found in the vicinity of where the pier had been. He said it was fairly substantial and was only 30 inches below the water surface.

He said if someone jumped off the bridge and landed there, there would be a significant injury. He noted concerns in the past about people jumping off the bridge, and said there had been suggestions made then about prohibiting people from jumping or diving from the bridge. He said at the time, the Council was not interested in doing this.

Administrator Selig said there had been extensive discussion recently with staff, Primex and the Town Attorney about cautionary language that was needed to warn people about this location. He provided the language that was developed, but said they felt as well that in addition to cautionary signage, because the Town knew there was a hazard there and was posting the sign but wasn't enforcing what was on it, it was tacitly approving the jumping off, so there would still be some liability.

He said the recommendation had therefore been that the Council enact an ordinance to back up the signage. He spoke further on what the legal opinions were concerning this issue, including the opinion that enforcement of such an ordinance need only be frequent enough to demonstrate that the Town was in fact enforcing it, and that the fine could be small.

Administrator Selig said he was uncomfortable with that approach, noting that this area had been a swimming hole for generations. He said the Town had an obligation to warn people overtly that there was a danger, but said it wasn't the Town's responsibility to legislate behavior in a situation like this. He also said knowing the care used in designing the bridge, and the interest in aesthetics, there was concern about how the signage would be done. He also noted that signs there had been torn down in the past.

He said the solution had been to put signs leading up to the bridge on both sides that people would swim at their own risk, that the Town didn't provide lifeguards or any other form of supervision, and that the location contained underwater hazards. He also said stenciling had been done in bold black on six locations on the bridge, on the concrete railing, with the wording "Danger, shallow rocks and debris underwater".

He said he had been on the bridge that day, and had concerns that it was probably warranted to put an additional up-right sign on the bridge, because the stenciled signs weren't as overt as he had thought they would be. He encouraged Councilors to make observations at the bridge themselves, and then talk about this issue further as a group. He said there was a significant hazard.

Councilor Cote said he had driven out to the bridge that evening, and agreed there was a definite issue with the ledge in the middle of the river. He said the problem was what happened on a hot summer night, when the stencils couldn't be read. He said it was almost incumbent on the Town to take some immediate action, like putting in some buoys to mark this particular area. He said someone was otherwise going to get hurt.

Administrator Selig said there had been a lot of discussion about the buoy idea, but said there were several locations where they would be needed. He also said if people then jumped where there was no buoy, this could create additional liability for the Town.

Councilor Cote noted that a professor from the UNH Oceanography department had offered to map the bottom.

Councilor Gooze noted that there was also the issue of the ledge possibly catching debris. He then asked if signs needed to be put all along Main Street to tell people not to cross outside the crosswalks.

Administrator Selig said if someone didn't know, it looked like there was a lovely expanse of clear water.

There was discussion that the area of concern was where the central pier had been as well as the upstream side of the bridge.

Administrator Selig said Chief Kurz had spoken with some kids on the bridge, and said Town Engineer Dave Cedarholm would be doing this as well. He said the kids had told Chief Kurz that they knew the rocks were there, but did it anyway.

Councilor Cote said he had a painful memory of a week a few years ago when two kids had jumped off a trestle into the Lamprey River and were paralyzed. He said this would always stay with him.

Administrator Selig said right now he wanted to make the Council and the public aware of this issue. He said his plan was not to prohibit jumping or diving, because he didn't think they

wanted to be in the scenario of enforcing the unenforceable.

Councilor Gooze suggested putting something in the Friday Update about this issue. He noted that Durham had a lot of innovative people, and said they might come up with something.

Councilor Mower asked if this problem could have been averted when the bridge was designed.

Administrator Selig said the ledge outcropping was discovered during construction, and said the additional cost to blast out the ledge would have been about \$100,000. He said this was not budgeted as part of the project, for this free flowing river. He noted that it would have been a major wetlands issue if it had been proposed.

Chair Carroll summarized that Administrator Selig would follow up and put something in the Friday Update. She said they certainly didn't want to see anyone hurt.

On another topic, Councilor Gooze asked if it should be possible to designate properties that were used for rental only as a different use category under the Zoning Ordinance. He said if it was, perhaps something more could be put in terms of inspection, etc. He said rental properties were considered businesses by the State, but were called residential in Durham. He noted that restaurants had to undergo certain inspections. He said they'd have to check with what was allowed by the State.

Councilor Clark said the ideal scenario and goal would let them restrict certain commercial uses in residential neighborhoods.

Councilor Gooze noted that this wouldn't stop people from renting a room in their house to a student.

Administrator Selig said he would put this idea on the zoning list.

Administrator Selig asked if Councilors had gotten any feedback on the discussion the previous night with School Board member Jocelyn O' Quinn.

Councilor Gooze said it had sounded like something would be coming in the future. He said one person had said to him that School Board members hadn't said specifically what was going to happen, and had said there were plans.

Councilor Clark said he thought Councilor Niman asked the best question. He said the goal of the Resolution and the goal right now as to find a way to open up a respectful dialogue. He said this would take time, and said the goal should be to build relationships, and they should encourage this on a regular basis.

Councilor Mower said it was important that Administrator Selig had pointed out what the Town was facing, and how important it was that the School Board recognize that if the Town was going to meet all the needs of the residents, there needed to be greater creativity in how the School Board approached its own budget.

Councilor Clark said that was the hope, that there would be a willingness to be receptive to ideas from the Council.

Councilor Mower noted that the Town had seen some very good results from the Kaizen approach, and suggested that it would be a good idea to provide the School Board with an example of how it had been used .

Councilor Niman asked if there would be value in providing the School Board with a fact sheet at the end of the Budget season that listed things the Town wasn't able to do, the tax rate, etc., in order to highlight that the Town had to hold the line and give some things up. Chair Carroll said that was an excellent suggestion, and recommended that this be presented at a School Board meeting. She said this would make the School Board more aware of this, and said anyone who followed the school issues would also have the opportunity to see what the Town was doing,

Councilor Mower said this same kind of list would be a good idea for the Town to prepare for residents.

Councilor Clark said these were good suggestions, and said he would encourage them as long as they were couched with the overriding message that the Council wanted to start talking with the School Board.

Administrator Selig said he and Ms. Jablonski had had a quarterly meeting with Howard Colter and Blaine Cox. He said it was a productive meeting, but said it had been expressed that it was hard for some members of the School Board and the staff to hear the concerns being expressed.

He said many felt under the gun and very defensive at the moment. He said at this point, it was felt that making overt suggestions would be viewed as somewhat negative. He said the question had been raised as to what the perspective of the Council would be if the School Board provided it with feedback and recommendations.

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

Adjournment at 9:14 pm.

Victoria Parmele, Minutes taker