

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

**Durham Town Council  
Monday October 4, 2010  
Durham Town Hall - Council Chambers  
7:00 P.M.  
MINUTES**

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

**MEMBERS ABSENT:** None

**OTHERS PRESENT:** Administrator Todd Selig, Police Chief Dave Kurz; Director of Zoning, Building Codes and Health Tom Johnson; 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, and it PASSED unanimously 9-0.*

**III. Special Announcements - None**

**IV. Approval of Minutes - None**

**V. Councilor and Town Administrator Roundtable**

Councilor Clark said that on Saturday, he had met with Library Director Tom Madden, Library Trustees Chair Doug Bencks, Chair Carroll and Councilor Gooze to talk about the new library. He also said Nolan Lushington was present to share his thinking on today's libraries, as facilities that could be community centers and not as much a repository for books.

He said there was a good discussion on the need for some big meeting rooms as well as smaller ones, teenage library services, a possible genealogy section, etc., and the importance of addressing the different demographics in Town. He said they also talked about how to create Town support for the public part of the funding as well as the need for a significant percentage of private funding.

Councilor Gooze said the Rental Housing Commission would meet on October 13<sup>th</sup> and would discuss the fact that the disorderly house ordinance had recently been passed. He noted

that at the Commission's last meeting, the decision was not made to initiate a property management ordinance. He explained that some residents had contacted him about some property management problems, and said it was now on the Council's agenda for purposes of discussion.

Administrator Selig said the previous week, the University had done a safety walk of areas adjacent to the campus. He said there was some interest on the part of some students to work with the University to install blue lights in areas where large numbers of students lived, and said this idea would be explored. He said if this system did move forward, he would expect that the University would support it financially, but also said there might be advantages for residents of neighborhoods located right next to the University.

Councilor Sievert noted recent information in a NH paper about a café that would be located in the new Business School UNH would be building.

Chair Carroll said she had talked to some professors in the hospitality area of the Business School, and said the idea with the café was to provide an opportunity for hospitality students to work there.

Councilor Niman said the plan was to put a small café in the new Business School. He also noted the café at the Diamond Library and Kingsbury Hall, and said the intent with them was to help build sense of community and also provide practical experience for the students working there.

Councilor Stanhope spoke in detail about the fact that the bike path ended at the new roundabout on Main Street, heading out to Route 4, which made it very difficult for bicyclists to maneuver safely there.

Councilor Mower agreed that the situation was confusing, and suggested that UNH transportation planner Steve Pesci could perhaps provide a diagram that showed what the route was supposed to be for bicyclists there, as well as some signage at the roundabout.

There was discussion, and Administrator Selig said he would look into the issue, He said it would be great if the University could provide a diagram.

Councilor Gooze referred to Councilor Sievert's question about the café, and said as there was more and more development downtown, consideration had to be given to the fact that there were large numbers of inebriated young people downtown on weekends after 10 pm. He noted that he had recently done a ride along with the Police Department on the weekend, and said it was quite an eye opening experience.

Administrator Selig said he and Ms. Jablonski had met that day with School Superintendent Howard Colter and Sue Caswell, the School District's new business manager. He said they discussed possible ways the Town and School District could make some energy efficiency improvements, including possibly purchasing energy wholesale. He said it was believed there could be about \$40,000 in savings by doing this.

He said they also talked about Revolution Energy, a company located in Durham that had been one of the Green Launching Pad award winners. He said the company worked with school districts on the development of alternative energy and energy efficiency infrastructure. Administrator Selig explained that the company had access to grant money, and would actually acquire the equipment and then work with a community to acquire the energy at a reduced cost. He said Ms. Caswell was aware of the company because she had worked in Newmarket, which had been looking at doing innovations like this.

Councilor Sievert noted that he had done a project with Revolution Energy at Exeter High School involving a large solar installation. He explained that the equipment was fully funded by the company, and said there had been discussion about bringing this idea to Durham for the downtown.

Councilor Mower said it was a great concept that should be of interest to the Town, and said Councilor Sievert was welcome to come to Energy Committee meetings to discuss his experience with this.

Councilor Sievert suggested that Revolution Energy should attend the meetings as well.

Administrator Selig said there was discussion at the School District meeting on tax rate projections, and said they would be working with the Department of Revenue Administration to get a more definite projection of the entire tax rate.

Administrator Selig said he would be meeting the following day with Jesse Gangwer to discuss the Tin Palace property, which Mr. Gangwer was interested in selling or developing in some way.

He said about two weeks ago, Capstone representatives were in Town with their engineering team, and were here now with their construction team. He also said they had met with Mr. Johnson, Mr. Campbell and himself about their plans. He said they would likely be meeting with the Conservation Commission later in October to get some feedback from them.

Councilor Mower suggested that the Conservation Commission should be provided with information on the project well in advance of the meeting.

Administrator Selig said Capstone was still working on the layout for the development, and wanted to have an informal conversation with the Conservation Commission to discuss the various overlays. He said there was some question on the accuracy of the wetland overlay in that area, and said there might be a request that the overlay be modified to reflect actual test data.

Councilor Mower said a site walk might be in order. Administrator Selig said Capstone was trying to get the site plan application to the Planning Board by November.

Councilor Smith said Planning Board member Steve Roberts had recently resigned, so there was an opening for a regular member. He said this was particularly significant because the Planning Board was starting the process of updating the Master Plan. He said it would be good if someone who had been on the Planning Board before, with experience in Town, would volunteer in part to take on helping with the Master Plan update.

Regarding the matter of the café planned for the new Business School, Councilor Smith said he had noticed that the University had put a café and snack bar in what was the Gwynne Daggett Memorial reading room at the Library. He said this was a sign our culture was going to hell in a handbasket. But he said he had no objection to cafés in academic buildings.

Councilor Smith said he was glad to hear that Councilor Gooze had gone on a ride along with the police, and noted that he had not yet done this himself.

Councilor Smith said he was glad Capstone was preparing a site application. He said there was a wonderful website for their facility in Gainesville, and noted the slogan for that community: “It’s your house, you make the rules”. He said he hoped Administrator Selig would suggest to Capstone that it might not be a good sales point to the Durham community to promote that concept.

Chair Carroll said there had been a dedication the previous day of a new sanctuary dedicated to Margery Milne at the Unitarian Fellowship. She said Margery had left a bequest to the Fellowship that enabled the sanctuary to be built as part of the redevelopment of the current building. She said there were now two properties in Durham, this building and the new Library building, that owed much to Margery Milne.

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

**Bill Hall, Smith Park Lane**, reviewed a number of documents relating to the 401 water certificate. Among other things, he said the 401 was meant to make the Wiswall impoundment and dam worthless. He said he didn’t understand why he had to keep coming back to speak to the Council on this issue. He also read a document that he said indicated that inter-basin water transfers were not allowed, which meant that Town plans to do recharge were illegal. In addition, Mr. Hall explained that the recharge system would be very inefficient from an energy perspective.

**Richard Kelley, Stagecoach Road**, noted that he was a Planning Board member and also was a member of the Lamprey River Advisory Committee. He also said he was a new member of the Water Management Planning Area Advisory Committee. He said he had told Administrator Selig last week that the Lamprey River was a critical element to the Town and University’s water resources.

He noted the large number of documents concerning the 401 certificate, which he said he had read, and he spoke in some detail about some of them. He said in October of 2000, the Town was seeking permits with its project to hard-pipe water from the Lamprey River to the water treatment plant. He said an environmental review done at that time found no significant change to surface water impacts as a result of the project, and also noted that this water transfer had occurred for the past 30 years.

Mr. Kelley referred to meeting minutes prepared by engineer Mike Metcalf during that time period, which Mr. Metcalf summarized in an email in 2006. The email said a 6 inch draw down in any 24 hour period was a compromise that everyone could live with. Mr. Kelley also said the US Fish and Wildlife Service said there should be no withdrawals below 90 cfs, which was over 58 million gallons per day. He noted that the treatment plant had a capacity for 1.5 million gallons per day.

Mr. Kelley said the Town's water interests were not being served by the regulatory authorities. He noted a letter from Vernon Langs of the Fish and Wildlife Service that said oversight could have the effect of encouraging Durham to retain the Wiswall dam and impoundment. He said his point was that the fish were being well represented. He said suggestions from Mr. Lang, and Mr. Fosberg of the National Parks Service were put into the final 401, but said a question was where Durham was in all of this.

He noted that he had written a letter to the Council four years ago voicing his concerns. He suggested that the Town wasn't strong arming regulatory authorities when asking about conditions of applicability, procedure, and provisions, and was serving residents well in doing this. He said public water supply was recognized as an outstanding characteristic and resource of the river, and was to be protected.

He also said DES's water quality rules and regulations were intended to protect public water supplies among other things. He said the Council needed to realize that it represented Durham in making sure the Town's best interests were served regarding water supply issues having to do with the Lamprey River.

Mr. Kelley said the protected in-stream flow study was finalized in the summer of 2009, and said this was not an easy process the State was going through. He provided details on this, and noted the management plan being developed as part of this process. He said he was on the committee working on this plan, and said Durham and the University were also represented on it by Mr. Cedarholm, Mr. Lynch, and Mr. Chamberlin. He said they needed the support of the Council as well, and asked them not to shoot the messenger.

**Mr. Hall** said the best thing to do was to keep the gates closed and to make the water go over the dam. He said that would provide the best aeration, and the best deal for the fish downstream.

**Paul Schlie, 95 Mill Road,** asked that the Council try to better serve residents regarding protecting the Town's water rights. He said it was fairly clear to him that there were numerous grounds for questioning the 401 restrictions, which had significant financial impacts on the Town.

**Heather Cloitre, 23 Deer Meadow Road,** said she was concerned about an unattended property nearby that had been vacant for at least 5 years. She said it had been a party house, and was concerned about having such a property close to hers, because of possible fires, etc. She said she had heard that the Council was considering the idea of a property maintenance ordinance, and said some thought should be given to addressing this kind of property with such an ordinance.

There was discussion, and Administrator Selig noted that Town departments were aware of the fact that there had been parties there.

Chief Kurz said there had been a police response to the property, but said he would need to research the situation further.

Councilor Smith said if it was a vacant house that was being used by trespassers, it sounded like an issue for code enforcement, and needed to be boarded up.

Chief Kurz said his department was aware of the property, and patrolled the area regularly.

Administrator Selig noted that this was a million dollar home that they were talking about, and said it was challenging to force the owner to be there. There was further discussion.

**Gerald Taube, 36 Frost Drive**, spoke about the need for a property maintenance code. He said he'd lived in Durham since 1975 and had been proud to be a resident. He then spoke about the fact that the bad economy was causing some people to either move out of their homes and rent them, or to walk away, and said the price of housing was making it much more attractive for someone to invest in a single family home. He also noted the negative effects on the neighborhoods of the University enforcing alcohol regulations on campus.

Mr. Taube spoke further about the idea of adopting a code to address run down properties in order to help maintain property values. He urged the Council to study this idea, and to get input from residents on it. He said he was concerned the issue could be brushed aside because it was not an easy one to address.

He said while there was the risk of coming up with an ordinance that wasn't needed, the other risk was that people like himself would conclude that the Town wasn't as committed as he was to maintaining property values, and would find another community that was committed to this. He said as committed as he was to the Town, he was also prepared to leave. He said this attitude was growing in Town, and said it would be hard to undo the situation if property values were not maintained.

**Sharon Meeker** said she had been on the Lamprey River Advisory Committee for 30 years. She noted the comments of Mr. Hall and Mr. Kelley, who were also members of the LRAC and had spoken on behalf of the Town's interests concerning water. She said all of the towns along the river had some concern for water, for various uses.

She noted that she had heard the terms "public water supply" and "drinking water" used interchangeably. She said no one would want to deny Durham the water it needed to drink, and said it sounded like more water would be needed. But she said when more water was taken for drinking by Durham and other towns, correspondingly, a more stringent conservation plan would need to be put into effect.

Ms. Meeker said the water in the Lamprey River was not inexhaustible. She noted that at her property located above the Wiswall impoundment, she sometimes saw fish jumping from pool

to pool because of drought conditions. She asked the Council to consider not only the Town's need for drinking water, but also its need to preserve this important natural resource, help the LRAC with suggestions, and strictly observe conservation principles when taking more water out of the river.

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

Chair Carroll said there was a request to take Item D off the Unanimous Consent Agenda.

Councilor Sievert also asked that Item B be taken off the Agenda.

- A. Shall the Town Council adopt a schedule of supplemental meeting dates for the purpose of deliberating the proposed FY 2011 Operating Budgets, Capital Budget, and 2011-2020 Capital Improvement Plan and schedule a public hearing for the proposed FY 2011 Operating Budgets for Monday, November 15, 2010?
- C. **FIRST READING ON ORDINANCE #2010-12** amending Chapter 153 "Vehicles and Traffic", Article VI "Schedules", Section 153-43 "Schedule XI: Stop Intersections" by creating a stop intersection at Quad Way

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

- B. Shall the Town Council, in accordance with Section 175-14 (B) of the Durham Zoning Ordinance, refer to the Planning Board for its review and study a Council-initiated zoning change that would amend Article XIX "Conservation Subdivision", Section 175-107(B) "Applicability", to add Office, Research & Light Industry and Multi-Unit Dwelling/Office Research zoning districts to the list of zones to which conservation subdivision regulations apply?

Councilor Sievert noted that he had recused himself on the original matter of changing the Zoning Ordinance to allow single family homes/duplexes in the ORLI and MUDOR districts. He said he therefore wasn't sure if he could vote on Item B.

Administrator Selig reviewed the process so far, and said this was a separate issue, so there was no need for Councilor Sievert to recuse himself from voting on it.

***Councilor Smith MOVED to refer to the Planning Board for its review and study a Council-initiated zoning change that would amend Article XIX "Conservation Subdivision", Section 175-107(B) "Applicability", to add Office, Research & Light Industry and Multi-Unit Dwelling/Office Research zoning districts to the list of zones to which conservation subdivision regulations apply. Councilor Mower SECONDED the motion, and it PASSED 8-1, with Councilor Sievert voting against it.***

- D. **FIRST READING ON ORDINANCE #2010-13** amending Chapter 153 “Vehicles and Traffic”, Article VI “Schedules”, Section 153-44 “Schedule XII: Yield Intersections” by creating a yield intersection on Madbury Road at Pettee Brook Lane

Councilor Smith said the motion and the ordinance itself should say “...entering the intersection from the south...”

*Councilor Smith MOVED on First Reading Ordinance #2010-13, as amended, amending Chapter 153 “Vehicles and Traffic”, Article VI “Schedules”, Section 153-44 “Schedule XII: Yield Intersections” by installing a yield sign on Madbury Road at the intersection of Pettee Brook Lane for vehicles entering the intersection from the south, and schedules a Public Hearing to be held on Monday, October 28, 2010. Councilor Mower SECONDED the motion, and it PASSED unanimously 9-0.*

**VIII. Committee Appointments - None**

**IX. Presentation Items**

- A. Receive annual report of the Durham Energy Committee – Kevin Gardner, Chair

Chair Carroll noted that Mr. Gardner’s house was one of the stops on the recent green energy tour she and her husband had attended.

Mr. Gardner reviewed Energy Committee activities in 2010. He said input had been received from the public regarding energy issues relating to the update of the Master Plan, and said the draft plan was being worked on. He said there could be a separate Energy chapter, or instead, elements of the draft Energy plan could be included in individual chapters of the Master Plan. He said the Committee would be happy to do this either way.

He said the Committee had been working with the Town on ways to achieve more energy efficiency and save money. He said recent work included an analysis of the Town fleet, the idea of bike racks, and promotion of alternative transportation especially where there were synergies, such as the Safe Routes to School grant program. He said some key goals of the Committee were to draft policies for municipal building construction and fleet management, and to champion municipal financing of clean energy

He noted that the Committee had met with the Code Officer regarding the issue of increasing building efficiency. He said the Committee had also done some public lectures and planned to do more things to increase public awareness on energy issues.

Councilor Clark asked how things were going in terms of the Safe Routes to School issue.

Mr. Gardner said from his personal observation, things were not going well. He said kids couldn’t ride their bikes safely in Town.

Chair Carroll asked for details on this, and on what would have to be done to make things safer.



Mr. Gardner said the Energy Committee had discussed this issue. He said there was a lot of traffic at 7:15 am on Mill Road, Main Street, Madbury Road at the Post Office, and said it was definitely dangerous for kids to cross these roads. He noted that the redesign on Pettee Brook Lane had made a big difference in terms of improving the safety of crossing that road.

He said Madbury Road was tricky, and said some decent bike lanes were needed there. He said the sidewalks were taken up by walkers, and said although there was a crossing guard near the Middle School, it still wasn't safe for bikers because there were a lot of cars.

Energy Committee member Charles Forcey noted some of the important intersections in town and the safety problems at each of them. He also spoke about the long line of cars at the Middle School because kids were being driven to school. He said that line of cars wouldn't be there if the Town could address the pedestrian and bike safety issues in the town core.

Councilor Smith asked what people thought about the idea of putting a stop sign on Main Street for west bound traffic, in front of the Post Office.

Mr. Gardner said that was a possible solution to the safety issue there. He said the Town needed to balance walkability in the downtown with other traffic issues.

Mr. Forcey agreed, and said it was important to identify the issues. He said stopping the traffic as Councilor Smith proposed would be a good idea, especially for cars coming down the hill from Route 108, noting that the merge near the Post Office caused people to be preoccupied with their forward motion.

Councilor Smith said this area was a raceway, and said he hoped Chief Kurz would put it on the Traffic Safety Committee agenda for discussion.

Mr. Gardner said equally dangerous was the two lanes of traffic heading east on Main Street, and noted that there were visibility problems there. He said especially with the new library that was planned, the traffic safety issues in the Town core should be investigated. He said it was important to look at downtown traffic flow as a whole in order to come up with the appropriate solutions.

Councilor Gooze said there used to be volunteer crossing guards, and suggested looking into that idea. There was discussion, with Councilor Cote noting that at one time crossing guards were paid, but previous Councils had chosen to eliminate the funding for this.

Councilor Clark said the short term solution was crossing guards, and said they could start with volunteers and then paid positions. But he said a longer term plan was needed, including how the safety efforts would be paid for. He agreed that they needed to start with the core of the town, where there were a lot of safety problems.

He said it would take some real planning and money to fix these problems, and said there needed to be discussion on how to raise the money to make the improvements and solve the problems once and for all. He noted the possible idea of having a TIF district.

Mr. Gardner said there would be a lot of synergies involved, in doing this, and said there were infrastructure changes that could make a big difference in the quality of life of the Town. He spoke in some detail on this.

Councilor Mower noted that transportation planner Rick Chellman had made the same points.

Chief Kurz told the Council that residents Cathy Leach and Jackie Spinney were going for a Safe Routes to Schools grant.

Councilor Stanhope said Durham didn't currently have a bike friendly environment for adults as well as kids. He also said that although the idea of volunteer crossing guards was good in theory, this would put a lot of the safety issues on the Police Department, to make sure things were covered. He said volunteers didn't have the same commitment level that paid employees had.

Councilor Gooze said any system like that would have to have a back up. He said it would take work but was something to consider.

There was discussion that this issue could perhaps be raised with Superintendent Colter.

Mr. Gardner said there were a number of inspiring examples now of communities that had been transformed as a result of effective infrastructure for pedestrians, bicyclists, etc. He noted the city of Portland, Oregon as a great example of this kind of transformation.

Chair Carroll said the Council would appreciate it if Mr. Gardner and Councilor Mower would keep the Council informed on this issue. She said this Council was interested in making these kinds of practical ideas a reality, and said now was an optimal time to do this.

B. Property Assessed Clean Energy (PACE) Program – Kevin Gardner, Chair, Durham Energy Committee (DEC) and Charles Forcey, DEC member

Administrator Selig provided some background on the PACE program, and noted that it had been permitted in New Hampshire by State statute in 2010.

Mr. Gardner said there were a number of benefits to the PACE program, including the creation of jobs and the reduction in greenhouse gas emissions. He explained that two big obstacles to homeowners adopting alternative energy technologies were the capital costs upfront, and the possible loss of the long term benefit/savings if the homeowner then sold the property. He said the PACE program overcame these two obstacles.

He said the program was adopted in over 20 states, and had been around for a few years. He said where it had been implemented, the adoption of alternative energy technologies had been phenomenal. He said there had recently been over 70 responses from Durham businesses and homeowners who were interested in participating in the program, and said if the Town adopted it, it would be the first town in the State to do so.

Mr. Gardner noted the issue that had recently come up, that Fannie Mae and Freddie Mac had suggested that property owners who had mortgages through them would be prohibited from participating in a PACE program. He said with this ongoing issue, the Energy Committee hadn't been sure whether it should wait to let the dust settle before moving forward with the PACE program in Durham.

He said they decided after meeting with the EDC that local businesses could take advantage of the PACE financing mode and not be tied up with Fannie Mae, so it made sense to go forward with the program. He also said this wouldn't be an issue for residents who didn't have significant mortgages, or didn't have mortgages with Fannie Mae. He said the Council could either decide to move ahead with the PACE enabling legislation, or could mull things over for awhile if there was concern about adopting the program when there was ongoing debate concerning Fannie Mae.

Councilor Mower said the purpose now was to present information on the PACE program to the Council and answer their questions. She said a Resolution for the Council to vote on would be included in a future packet.

Administrator Selig said at this point, if the Council was interested in moving forward, it would be adopting by reference the State statute, which would allow a PACE district. He said the district would need to be identified, and said the Energy Committee was recommending that the district include the entire town.

Administrator Selig said the Resolution would not require a public hearing, but said if there were then an ordinance developed to create a district, a public hearing would be required.

Councilor Mower also said a public hearing would be involved if bonding was involved.

Councilor Gooze asked how the Town would stand regarding the lien issue, and if the property went into default.

Mr. Gardner said if there was a foreclosure, the Town would be the first entity to get paid.

Administrator Selig provided details on the fact that people who wanted to get a PACE loan would have to get an energy audit, and decided on a viable energy solution that would be paid off over a period of time. He said the Town would need to establish due diligence that people requesting a loan were credit worthy. He provided details on this.

Councilor Gooze said there would need to be discussion about whether the Town would wind up as owners of property if there were foreclosures. There was discussion about this, and about the range of loan sizes that were available.

Chair Carroll asked Councilors how they would like to proceed.

Councilor Mower suggested that a Resolution for adoption of the PACE program could be put on the Unanimous Consent Agenda. There was discussion about doing this for the November meeting.

Chair Carroll said this was a very important program. She said she would be comfortable having Councilor Mower and Administrator Selig answer questions at the meeting if they came up.

Councilor Smith noted that he had expressed interest in the program as a homeowner, and asked if he would therefore have to recuse himself for this agenda item.

Administrator Selig said it was the Energy Committee that would select the projects, so everyone should be able to participate.

The Council stood in recess from 8:53 to 9:07 PM.

- C. Update on Durham's Section 401 Water Quality Certificate, Lamprey River Protected Instream Flows, and the status of the Town's and UNH's Water Supply and Demand – David Cedarholm, Town Engineer

Administrator Selig provided an overview on the discussion planned for the evening, and said hopefully it could answer once and for all the questions regarding the 401 certificate on the Lamprey River. He noted that this was an issue that had been brought up again and again over the last decade.

He said Town Engineer Dave Cedarholm would first make a presentation, and said Paul Currier, the NHDES Watershed Bureau Administrator was present for the discussion that would follow.

Mr. Cedarholm reviewed a list of Frequently Asked Questions he had put together answers for. He said additional questions and answers would be added to this list, and suggested that it could be a fluid document that people could refer to. He said it perhaps could be available online. He said there had been a lot of misinformation circulated on this issue, which had created some cloudiness that didn't necessarily need to be there. He noted that Mr. Currier had put together a timeline on the 401 certificate, and said he would let him discuss this. Mr. Cedarholm then went through some of the frequently asked questions.

Councilor Stanhope said he didn't doubt that former Councilors and Town staff had acted to the best of their ability. He asked Mr. Cedarholm if he could assure the Council that they were.

Mr. Cedarholm said Mike Metcalf was advising the delegation on the water resources piece of it. He said he had been the Town's consultant for more than 10 years, and there was no other consultant in the State who could have better advised the Town. He noted that Mr. Metcalf had had some serious issues with the 401 even after it was negotiated.

He said no one in the delegation was really happy with the document, and said one didn't necessarily get what one wanted in situations like this, and if they were lucky, there was a compromise. He noted that there was also the ability to modify the 401, and that was done. He said the most onerous condition, the maximum of 6 inches of drawdown, was now 18 inches,

which gave them a good 30 days of water. He also said the Town had been limited to a half inch a day initially, and now was allowed an inch a day. He spoke about the flow monitoring plan and the reasons why it had to be a fluid process.

Mr. Cedarholm said he was not fond of controlling the outflow of the dam through the gates, and said the gates were intended only to drain the reservoir. But he said in order maintain downstream flow while withdrawing out of the reservoir, that was their only choice. He said the plan for next year was to have a 5 ft by 5 ft notch cut in the spillway filled with stop logs, so the water level in the reservoir could be adjusted from the top, not the bottom. He said that would be a huge improvement over the current situation in terms of adjusting the water level, and provided details on this.

Administrator Selig provided details on the residents and Town staff who were involved with the original negotiations for the 401 certificate.

Councilor Clark asked if that group had the authority to commit the town to the 401 certificate, or if instead this should have come to the Council for a vote. He said the question was regarding the process that had been undertaken.

Mr. Cedarholm said from his research, he didn't see anything in the Charter that would have required this. He also said there was no State rule that governed the 401 certification process, and he provided details on this. He said no public hearing was required.

Councilor Clark said the concern was that the Town had been bound to this without ever taking a vote.

Mr. Cedarholm said this was the same thing that would happen with the NPDES (National Pollution Discharge Elimination System) permit.

Paul Currier spoke before the Council, and said the 401 certificate would be replaced by the Water Management Plan after being adopted by the DES Commissioner. He said Durham would have a seat at the table as part of this process.

Councilor Clark asked Mr. Currier to define what was meant by the Town having a seat at the table, and asked if the Town would get a vote.

Mr. Currier said yes, and said the three plans were being drafted by a consultant for DES, but were being reviewed and ratified by the Town. He said the purpose of the plan was to comply with the in-stream flow provisions of water quality standards for all of the in-stream protected uses, outstanding characteristics and resources listed in State Statute.

He said these plans and those for other Towns in the watershed would result in requirements, but said the details of them were fully up to Durham and the other towns to negotiate, in the context of the Watershed Management Plan Advisory Committee. He said the drafts were written, so now was the time to negotiate. He said they expected to have a water management plan ready for adoption by the Commissioner in the middle of 2011. He said the protected in-stream flows would be adopted at the same time as the plan was adopted.

Mr. Currier spoke in detail on the chronology of the development of the 401 certificate.

There was discussion on the role of the National Park Service and the fact that it had caused a flurry of activity in the midst of this process.

Mr. Currier said the provisions of the 401 certificate that were developed were consistent with the draft in-stream flow rules in existence at that time. He also noted that the 401 certificate was not a permit, and explained that a permit wasn't needed to take water out of the Lamprey River. He said it was a certification that the Town's activities would not violate water quality standards in the river from which it was taken, and said this was needed to get the SPGP wetlands permit.

He said the purpose of the water management plan being worked on now was to develop a collective understanding among all those taking water as to how they would operate, so the State could be assured that the required flow would stay in the river.

Councilor Mower asked if the reason Durham was the only Town that had the 401 certificate was that it was triggered by a wetlands permit.

Mr. Currier said that was correct.

There was discussion about who would actually have a seat at the table in the development of the water management plan. Councilor Gooze said a concern was that Durham would get the short end of the stick again.

Mr. Currier said the criteria for protected flows were substantially different than they were when the 401 certificate was developed. He provided details on this, and explained that while it was better for maintaining fish populations, it was also better for water users because it allowed manipulation of storage in the watershed, primarily at Pawtuckaway Lake, the Wiswall reservoir and Mendum's Pond in order to provide relief flow pulses for aquatic creatures while Durham and other water users continued to withdraw water from the Lamprey.

He said the protected flows were based on better science, and would be specific to the Lamprey River itself. He said this would provide greater flexibility as long as this was all agreed upon as part of the water management plan for the watershed. He noted that this was being done under the federal designated river provisions, and said if they were satisfied, the federal Clean Water act provisions would also be satisfied. He said this was why the water management plan would replace the 401 certificate, and there wouldn't have to be two separate documents.

Mr. Cedarholm said there were 4 representatives from Durham on the Water Management Plan Advisory Committee. He said he was the dam representative, and Mr. Lynch was the water system representative. He said Mr. Kelley was also a representative, along with Wesley East, a UNH water plant operator.

He said this committee was charged with helping DES with the Water Management Plan, but said there would also be a delegation of Town and University people to review the draft Water Use Plan, Water Conservation Plan, and Dam Management Plan. He said drafts of the first two plans were received in July, and said there were some aspects that didn't quite work for the Town. He provided some details on this.

He said the draft dam management plan has recently been received, and said he had quite a few issues with it. He said the Town/University delegation would provide comments in the plans that would suit their needs, and said this would all be vetted in public. He said it was very important that this happen.

Councilor Stanhope asked why these plans hadn't been provided to the Council and for posting on the Town website at this point in time, in order to ensure transparency.

Mr. Cedarholm said it was still a rough draft, and said there wasn't yet the language that would work at all. He described how unwieldy incorporating everyone's comments into a common document was, and said there would still then need to be back and forth discussion on them with DES. He said only after that process would it make sense to circulate it to the public.

Chair Carroll asked when the draft might be ready for the Council and residents to see, and Mr. Cedarholm said toward the end of next month.

Councilor Sievert summarized that there would be no permit associated with the instream flow rules, which would operate under the management plan.

Councilor Cote asked who ultimately was the decision maker on how much water the Town was allowed to withdraw. He said there would be competition among the Towns, and said it seemed that the further downstream a town was, the less it would get.

Mr. Cedarholm said he believed it was the DES commissioner who made the decision.

Mr. Currier said this was precisely the issue that the water management plan was intended to address. He said because it had plans for all the water users and dam owners in the watershed, everyone could see what everyone else's plans were. He said there was opportunity for them to communicate so what Councilor Cote had referred to wouldn't happen. He noted that Durham was the dominant water user on the Lamprey River, and was a big part of the management plan.

Councilor Gooze asked if there was assurance that there was enough water in the river to serve all the public needs, keeping the fish in mind.

Mr. Currier said yes, but said they all would have to be much more intentional about how they operated storage in the watershed, and how they operated withdrawals.

Mr. Cedarholm said 90% of the year, there was much more than enough water. He said the challenge everyone faced with a surface water source was that during a drought, the resource had to be managed very carefully. He said if they took a million gallons a day out of the river when it was flowing at 2 cfs, they would be taking out three quarters of the flow.

He said the river was flowing at 5 cfs two weeks ago, which was why they went into a water conservation stage II. He said during this time, the Town and University were able to drop down to take 600,000 million gallons per day by being more conscious of water consumption. He said his answer to Councilor Gooze's question was yes, but said they had to be careful at times like that.

Councilor Smith asked how much water the Town and University used each day, and Mr. Cedarholm said year round, it was a bit over 800,000 gallons per day. He said the challenge was during a peak month like September, when about 1.4 million gallons was used per day. Councilor Smith noted a memo to the Durham Selectmen from 1965 that said the Town and University would need 2.1 million gallons per day by 2010.

He asked if the Town and University were doing well in keeping water use down, and Mr. Cedarholm said he thought they were doing a fantastic job. He noted that the peak amount for 2010 projected in 1965 was 4 million gallons per day, which was why the pump station was built to accommodate that amount.

He said the intent at that time was in fact to use the Lamprey River as a primary water source, but said the pump would suck the Lamprey River dry and turn the Oyster River into a raging torrent, which was why the Town didn't use the Lamprey River water so much. He noted that there were some serious droughts during the 1960's, which was the whole impetus for that project. He said the Town and the University were completely dependent on the Oyster River at that time, which was a trickle during a drought.

Councilor Stanhope asked if there was modeling to show what the Town would be faced with in terms of a 100 year drought.

Mr. Cedarholm noted that there was some global climate change modeling being done. He spoke about planning for the future in terms of water needs.

Councilor Niman asked about the logic of how DES regulated surface water, and if it ever considered unintended consequences such as the impacts on the Oyster River of not being able to take water from the Lamprey River.

Mr. Currier said the same criteria applied to all the waters of the State, but said detailed studies had not been done on the Oyster River. He said aquatic species would be considered in such studies and said it was a balancing act.

Councilor Niman asked whether, when DES got around to regulating the Oyster River, it would severely limit the Town's ability to take water from that river.'



Mr. Currier said it would be a balancing act, and he provided details on this.

Administrator Selig noted that the Oyster River Advisory Committee and the Strafford Regional Planning Commission were proceeding with an application to designate that river as a protected river under the State program. He said this would trigger further review by DES on the Town's ability to draw water from that river.

Councilor Niman asked if as they negotiated with other towns regarding the Lamprey, they might also be dealing with less ability to withdraw from the Oyster River, so might have to go find water someplace else.

Administrator Selig said the Town's input was that it supported the Oyster River designation, but opposed any additional limitation on withdrawal capability. But he said he expected more regulation concerning this, which to him strengthened the need to have an additional water supply, which was Spruce Hole. He said this was part of why he had advocated getting that site designated.

Councilor Niman said given future limitations in surface water withdrawals, and even bringing into play the Spruce Hole aquifer, there wouldn't be enough water to meet the maximum demand in the future. He asked if this would mean the Town and University would have to cap growth, develop some other groundwater source or take advantage of a process where the Town could negotiate with other towns and the fish to meet its water needs.

Mr. Cedarholm said the Town had become more efficient, and would continue to improve concerning this. He noted that water conservation wasn't considered in the water demand projections Councilor Niman had referred to. He said simple things like replacing toilets and upgrading dishwashers, etc., would reduce water usage significantly.

Councilor Mower said given the projected water demand in the Metcalf memo, this was the time to ask the Planning Board to require low flow fixtures for new developments.

Mr. Cedarholm said these fixtures were already required by the Town code.

Chair Carroll asked if there was anything new that Councilors wanted to bring up regarding this issue.

There was discussion about existing storage capacity and perhaps the need for more water towers to store water. Mr. Cedarholm said these tanks were intended mostly to provide water pressure, and not storage. He noted that as it sat around in a tank, it stagnated. He also spoke about the fact that during the recent drought, the DPW only received one call about bad tasting Town water. He provided details on the water filtration process, and said because of it, it didn't matter whether Oyster River or Lamprey River water was being used.

In answer to Councilor Mower's notation of a comment from William McDowell, a water resources professor at UNH, Mr. Currier said the water management plan would include the whole upstream watershed.

Chair Carroll said she presumed the Council would like to see a draft of the water management plan when it was available.

Administrator Selig said it would be provided to Councilors.

Chair Carroll said she would like to get some idea how the pricing of water affected conservation, and noted that there were different ways of pricing water.

Mr. Cedarholm said tiered pricing was one of the options he had presented to the Council a few years ago. He said it would involve an adjustment to the connection fees for water users. He said right now these fees and water rates were quite low, and said this was one of the reasons the Town had scored low in recent competitive grant applications for water projects. He provided details on this.

Councilor Cote said they could raise the rates on the taxpayers and then get the grants.

Mr. Cedarholm said there were other reasons to look at water rates and sewer rates. He said it would be more efficient financially if the Town increased the rate slightly and put money in a trust fund in order to fund water and sewer projects. He said this was what the EPA had had in mind in that towns would do, in the 1970s when it began funding local wastewater treatment plant projects. But he said very few towns ever did that. He said that now, towns wanted to keep water rates down so development would come, and said it was a Catch-22 situation.

Councilor Stanhope said he would like the Council to publicly express whether it would or would not seek further action on the 401 certificate, and if the subject wasn't closed, what it planned to do. He said the residents needed to know this.

There was discussion on how this could be determined.

Councilor Niman said he thought it was a closed matter.

Councilor Smith said it was important to look at option #3 under Next Steps in the Council Communication. He said they needed to see what was coming down the river at the Town.

Councilor Gooze proposed that Councilors raise their hands if they felt the issue of the 401 certificate should not be pursued, from a legal standpoint. All Councilors but Councilor Clark raised their hands. He said he was offended by the whole thing, and said it was upsetting that all of these arbitrary rules weren't based on science.

Councilor Stanhope said the consensus was that there was no cost benefit to fighting this battle, and that the Town should take its money and fight the battle that would be coming. He said by the time there was a decision in court, it would be a moot point anyway.

Administrator Selig said the representatives of the Town in 2001 had acted in good faith and did their best to represent the Town, based upon the knowledge they had. He said the Town was subsequently bound by the decisions made at that time. He said Town staff and

representatives from the University were working hard to address this. He noted that Durham had been a big thorn in DES's side in trying to address this issue.

Mr. Currier said going forward, this was a pilot project, and said the concerns expressed were a real contribution to that process.

Councilor Mower said the entire discussion highlighted the need to work on a watershed level, with the awareness that Durham was one of several towns, and that the other towns in turn were aware that Durham was downstream. She said this may have been on the back burner in previous discussions.

***Councilor Smith MOVED to extend the meeting beyond 10:30 pm. Councilor Mower SECONDED the motion, and it PASSED 7-2, with Councilor Sievert and Councilor Stanhope voting against it.***

Chair Carroll thanked Mr. Cedarholm and Mr. Currier, and said this had been a very important discussion.

## **X. Unfinished Business**

Discussion regarding police enforcement efforts relative to student behavior and stepped-up zoning/trash enforcement efforts in and around Durham's central core

Police Chief Kurz provided a slide presentation on this issue that addressed strategies his department used to address student behavior in Durham's central core. He said things clearly got busier when UNH was in session, and he provided data on arrests in Town. He spoke about how changes in shifting and other approaches were used during the weekend, and also noted that 10 officers were on duty during the weekends, out of a force of 19 people.

He explained that the department provided letters to parents whose kids were arrested, developed weekly arrest reports, and shared arrest data with UNH officials. He said landlords were also notified of arrests at their properties. He also spoke in detail about policing initiatives, including physically arresting violators, redesigning patrol zones, having bail commissioners on site, and partnering with the UNH Police Department when possible.

Chief Kurz said there were multiple compliance checks to make sure alcohol was being sold legally, noting that alcohol was at the root of most everything the Department dealt with. He also said the Department coordinated with NH State Police.

Councilor Gooze noted that when a problem with student behavior was addressed in one location, the problem then shifted to other locations. He said the police did a great job, but said there was a waste of resources because of the shifting nature of the problem, and said he didn't know the answer for this.

Chief Kurz said he didn't really know the answer either. He spoke in detail on this, and said the department could do more, but said there would be a cost. He said the Police Department was maxed out.

Councilor Stanhope said the University had increased pushing students off campus, and asked Chief Kurz if this had exacerbated the roaming groups of students.

Chief Kurz said this was caused by a number of factors, and provided details on this. He spoke about the University's efforts to address the problems, and said they were very responsive.

There was discussion about the role of the attorney who represented UNH students who had violation issues. Councilor Mower asked if it would be worthwhile opening a line of communication with the UNH student body about when those services would and would not be provided through student activity fees.

Chief Kurz said that was already done, and Richard Peyser, UNH student body president, provided details on this. Councilor Mower asked for further clarification on this, and asked if there was any sense of reduced sense of accountability of a result of this service being provided. Mr. Peyser said he didn't think students thought having an attorney meant they could perhaps get away with something.

Councilor Mower discussed with Mr. Peyser whether there was anything the student government could perhaps do to help with this situation.

Mr. Peyser said they were looking at a number of ideas, including having weekend walkers. He said it was good to get input from the Council and residents to see if there was something they could do to help alleviate the problems.

Councilor Niman said he was uncomfortable about giving the impression that it was the view of the Council that students shouldn't have access to an attorney, or that it was appropriate for the Council to tell the student body how to govern their affairs. He suggested that Councilors sit down and speak with the students' legal counsel, who had a lot of experience and dealt with a lot of issues.

He said young adults at UNH were learning things for the first time, and occasionally made a mistake. He said he therefore appreciated that they had an attorney available. He said instead of viewing this as a negative, he thought having an attorney on staff at the MUB was a wise decision on the part of the student body.

Mr. Peyser noted that the attorney would be holding a question and answer session on October 10<sup>th</sup> at the MUB.

Chief Kurz spoke about the fact that once someone was arrested, it generally didn't happen again.

Administrator Selig said he believed the attorney would be willing to come speak with the Council if they requested this.

Councilor Cote said it was important to visit the Police station on weekends in order to see what really happened, and said it was an eye opening experience.

Councilor Gooze said it was an intimidating experience for someone to go through, and said although there generally weren't repeat offenders, there were a lot of people who wound up there. There was discussion, and Chief Kurz said the education never stopped.

Code Officer Tom Johnson spoke next before the Council. He said he had worked in Durham for nine years, and said every year, there was more and more work because there was more off campus housing. He said he had no problem with the professional property managers, and said there were rare problems there. But he said it was the absentee landlords who were his biggest headache.

He spoke about the role of the Rental Housing Commission, and about how neighborhood captains had been putting more and more pressure on the Commission in recent years to talk about new rules and ordinances. He noted the Powerpoint presentation he provided in January of what he saw over the course of the day. He said the students he saw were polite, knew the law, and were all on the debate team. He said it got very time consuming.

He spoke in detail about how enforcement of the Zoning Ordinance and the Noise ordinance had been stepped up this year, and how the marketing of enforcement efforts had been stepped up. He said the awareness level had increased significantly, and said the bottom line was that complaints from residents about violations had increased. He said violations letters had been sent to rental property owners as well as full time residents, and said this had generated a lot of discussion.

Mr. Johnson said he had gotten some part time help this year to help with gathering data for Zoning enforcement, and said the purpose was to allow the enforcement of the three unrelated rule. He said the term surveillance had been thrown out there, but said he drove a marked town car, stood on the sidewalk and took pictures of cars in driveways and recorded license plates, in order to look for repetitive vehicles. He said this data meant that they were successful in court.

He said full time residents were happier now that the enforcement was being done, because things looked better. He said more complaints had been received from part time residents and out of town landlords, but said they were working through these problems. He said they were still waiting for an answer on a Superior Court case, which was challenging the 3 unrelated rule. He said it was potentially an earth shattering decision if it over turned that rule.

Councilor Gooze said it made some residents quite happy that the exterior of properties looked better. He also noted that the ruling on the court case might not apply throughout the whole Town, and said they would have to wait to see what the court came up with.

He said very few fines had been given out, once warnings were given. He also suggested that it would be a nice thing if students who saw trash on a neighboring property would be willing to pick up the trash. He said that overall, the increase in enforcement had been a real help for the neighborhoods.

Councilor Stanhope noted a conflict between what Mr. Johnson had said now about enforcement regarding not just student rental properties, and what he had said previously at a

Rental Housing Committee meeting. He also noted that there was trash on the property of businesses downtown, and asked if any of these properties had been cited.

Mr. Johnson explained that he was charged with rental properties and dumpster enclosures. He said he hadn't had complaints about the alleyways downtown.

Tom Richardson, a local landlord, said he would be patrolling his property this weekend, and invited Councilors to come there and observe how this process went. He said it made a huge difference having owners and/or security on site.

Councilor Gooze asked if there was a way to be proactive in terms of vetting potential renters, or if this was too difficult when renting to large numbers of students. He noted that some landlords got the names and emails of parents, for students that were under 21.

Mr. Richardson said he had about 75 tenants this year, and got every parent's address and email address. He also said he sent a brief weekly newsletter to the tenants as well as their parents. He said if there was a serious problem with a particular tenant, all of the information went to the parents. He said alerting the parent to a problem was extremely effective in most cases, and would make the student very upset.

Councilor Gooze noted a party that had 25 people, and asked if there were consequences for this.

Mr. Richardson said yes, especially because this was their third offense. He said for the second offense, there was an additional rent charge of \$100, and for the third offense, there was an additional rent charge of \$200. He said this would be split 4 ways.

He said it wasn't practical to evict students, and noted that there just about was 100% turnover every year. He said students were the sole rental market in Town, so that if a tenant was evicted, the apartment would sit empty until the next semester and the rental money would be lost. He said landlords therefore had to deal with the problems in other ways than kicking people out.

There was discussion that there could be a security deposit which could be equal no more than one month's rent. Councilor Gooze asked if there could be the threat of losing the deposit automatically if there was a problem, and Mr. Richardson said no, because there then would be nothing to hold over the student.

Mr. Johnson said any Councilor who wanted to ride with him in the morning was welcome to do so.

There was discussion about how overcrowding was dealt with, with Administrator Selig noting that in addition to the Police Department, the Fire Chief, Assistant Chief, Deputy Chief for Fire Prevention and Fire Inspector were out doing assembly checks at bars, and also did spot checks at fraternities and any large gatherings.

Mr. Johnson noted the issue of occupancy load. He said there had been student rental situations elsewhere, where an upstairs bedroom of a single family home became a living room of an apartment, and large parties there had resulted in the collapse of the second floor.

Administrator Selig thanked Student Body President Richard Peyser and others from UNH for being there and remaining engaged. He said this spoke a lot to their commitment to help work through these issues.

Chair Carroll agreed, and said this was much appreciated.

## **XI. New Business**

### **A. Discussion regarding the concept of developing a property maintenance code**

Councilor Gooze said the Rental Housing Commission didn't want to touch this issue in terms of doing it just for rental properties, and said if done, it would need to be Town wide. He said some residents had spoken to him about abandoned properties, and noted that the issue wasn't the kinds of properties where the grass needed to be cut.

Councilor Stanhope asked if this could perhaps be incorporated into the disorderly house ordinance.

Mr. Johnson said an original concept was to tie it to a rental registry ordinance, where all rental properties would be licensed. He said it didn't look like that was going to happen, but said a property maintenance code would be another tool he could use to cite a property owner. He said the house referred to on Deer Meadow Road deserved a citing under the property maintenance code.

He also noted a house on Coe Drive that was on the market and would sell for under \$125,000. He gave another example of a rundown house in Town, and said these properties were affecting the neighborhoods they were in.

Councilor Niman said he didn't think this was a good use of the Council's time. He noted that he had bought a neglected foreclosure property, and had then done something about it. He said this was part of a normal cycle, and said he would hate to see that this was a vindictive community that would fine a property owner who had lost his job and couldn't take care of his property. He said there were more important issues for the Council to address.

Chair Carroll questioned whether that was a different kind of situation than the abandoned properties that had been noted.

Mr. Johnson and Administrator Selig provided some background on the particular abandoned property that had been referenced.

Councilor Gooze said he thought the Council should decide whether it wanted to look into this kind of problem.

Councilor Cote asked Mr. Johnson if he had done any research on the degree of success that other towns with property maintenance codes had had.

Mr. Johnson said he hadn't, but had developed a matrix of 53 towns, based on a survey, which had this kind of code. He also noted that there was a model code available.

Councilor Mower said that was a different level of regulation than something to address abandoned properties. She said she would be interested in towns that had a code that addressed this specific issue.

Mr. Johnson noted that the HDC was looking into the issue of demolition by neglect.

Councilor Cote asked if perhaps Durham could take aspects of the model code that pertained to it, and Mr. Johnson said that was the discussion they had had at the Rental Housing Commission meeting.

The Council agreed, on an informal 5-4 vote, to continue the discussion on this Agenda item at a future Council meeting.

B. Other Business

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

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

**XIV. Adjourn (NLT 10:30 PM)**

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

Adjournment at 11:33 pm

Victoria Parmele, Minutes taker