

This set of minutes was approved at the March 7, 2011 Town Council meeting

**Durham Town Council
Monday January 24, 2011
Durham Town Hall - Council Chambers
7:00 P.M.**

Members Present: Chair Diana Carroll; Councilor Neil Niman; Councilor Peter Stanhope;
Councilor Mike Sievert; Councilor Julian Smith; Councilor Robin Mower;
Councilor Jay Gooze; Councilor Bill Cote

Members Absent: Councilor Douglas Clark

Also Present: Town Administrator Todd Selig; Town Engineer Dave Cedarholm

I. Call to Order

Chair Carroll called the meeting to order at 7:06 PM.

II. Approval of Agenda

Councilor Smith and Councilor Mower to approve the Agenda as submitted.

Chair Carroll said there had been a suggestion that the Town Administrator's annual performance evaluation be moved from X D to become XI C on the Agenda.

Councilor Smith MOVED to amend The Agenda to move Item X D to XI C. Councilor Sievert SECONDED the motion, and it PASSED unanimously 8-0.

The motion as amended PASSED unanimously 8-0.

III. Special Announcements

None

IV. Approval of Minutes

December 6, 2010

Page 5, bottom paragraph, should read "...was required to pay the Town \$2,475."

Councilor Smith MOVED to approve the December 6, 2010 Minutes as amended. Councilor Mower SECONDED the motion, and it PASSED unanimously 8-0.

December 20, 2010

Councilor Gooze MOVED to approve the December 20, 2010 Minutes. Councilor Cote SECONDED the motion, and it PASSED unanimously 7-0-1, with Councilor Smith abstaining because of his absence from the meeting.

V. Councilor Roundtable

Councilor Gooze said the Rental Housing Committee would be meeting on February 2nd at 3:30 pm. He said there would be discussion on the letter received from the Durham Landlords Association asking that the Disorderly House Ordinance be rescinded. He said there would also be discussion by the RHC on the idea of rental housing being a commercial use when it occurred on a property that was used purely for rental income, and noted that this idea had been discussed at the previous Council meeting.

Councilor Gooze said the Inclusionary Zoning Implementation Program (IZIP) committee had met with Mr. Campbell and consultant Jack Mettee regarding the final draft of the Zoning changes that had been developed. He said this draft would be discussed with the Planning Board at an upcoming meeting, and said it should be an interesting discussion. He noted that there were a number of factors involved with the State mandate in terms of locating affordable housing, and said some thought needed to be put into this.

Councilor Gooze said the previous day he had attended a meeting with over 30 people to discuss the future of agriculture in Durham, and the new reality of local food and sustainability. He said the meeting was overseen by Durham resident Theresa Walker. He said the group was trying to decide if it wanted to bring forward an Agricultural Committee or Agricultural Commission, and would be meeting again.

He said there were farmers at the meeting along with other residents, as well as representatives from Lee. He noted that when Lee started its Agricultural Commission a few years ago, the Town had 13 farms, and said it now had 88 farms of various sizes producing food.

Councilor Mower noted that Durham's Master Plan Visioning Forum would be held on Friday, and said this would be a terrific opportunity to bring the ideas on agriculture into many of the break out sessions. She said the issue of local food and sustainability could have an influence on a number of different planning areas.

Councilor Smith said the Planning Board met on January 12th and accepted the two Capstone applications. He said the public hearings were set for January 26th, and also said the Board had also held a site walk on Saturday, which was well attended.

He said the Traffic Safety Committee had met on Friday, and said there was discussion on the kiosks planned for parking downtown. He said there was also a brief report by UNH transportation planner Steve Pesci regarding the proposed South Drive transit-way corridor development. He said this was a new half mile long street and utility corridor connecting the West Main Street roundabout with McDaniel Drive by way of the new railroad track underpass near Gregg Hall. He said this would divert some east-bound traffic from Main St to Mill Road, and would divert some west-bound traffic across the southern part of the campus.

Councilor Smith said the Integrated Waste Management Advisory Committee (IWMAC) had met the previous Thursday, and had asked him to pass on to the Council two questions about

the Transfer Station. He said the first was why the hours the Transfer Station was open to the public had been cut back to 7:30 am - 3:00 pm, twice a week from the previous 7:30 am - 3:30 pm. He said there was also a question as to whether the restroom could be cleaned on a more regular basis, or if a portable toilet could perhaps be installed.

Councilor Smith noted that on January 14th, there was a tour of the Grange property with developer Peter Murphy to discuss his proposal to redevelop it.

Councilor Mower said the Energy Committee had now embarked on collecting data on the Town's use of electricity in order to create an energy inventory. She said they would work with Administrator Selig to streamline that process.

Councilor Mower said the Conservation Commission had consulted with an applicant who wished to stabilize some shoreland using rip rap stone, and advised the applicant that a vegetated buffer was not only required by our Shoreland Protection Overlay but would provide better long-term stabilization. She said she was bringing this to the attention of the community as an educational point, and said the Commission was happy to consult with landowners on this. She noted that the obvious solution wasn't always the best for the landowner or the environment.

She said the Chair of the Commission and Mr. Campbell had compiled a set of review guidelines that outlined the jurisdictional responsibilities of the Commission, and clarified its role on matters that were also of interest to the Planning Board.

Councilor Mower said there was considerable discussion by the Conservation Commission about the presentation given on December 20th to the Council by the Town Engineer and the representative to the Southeast Watershed Alliance. She said the Commission had asked her to urge that the Town get a more balanced picture about the facts regarding nutrient impairment of the Great Bay and ways to address the problem. She said no one was telling them that the worst case scenario that the Council heard was actually going to happen.

She said it was important for the Town to understand what all the options were. She said they should take opportunities to learn more about the science, and not just rely on the interpretation of the Town Engineer, which was not shared by all towns that were members of the SWA, and in fact might not represent the majority opinion of the SWA.

Councilor Mower said there were some issues of interest to the Council that were being taken up at the State level. She said the first was a public hearing on the nomination of the Oyster River into the NH Rivers Management and Protection Program. She explained that this hearing had come up more quickly than had been anticipated, and said the process might not have been made clear. She noted that the Town had sent the same statement to the House Resources, Recreation and Development Committee for the hearing that it had sent out before in conjunction with the UNH water system.

She said the Town Engineer had also presented written testimony and answered questions that were asked by members of the House Committee. She said the Oyster River Watershed Association and the Strafford Regional Planning Commission, the organizations that had sponsored the nomination, were not represented at the hearing.

She said they were concerned that the statements made by Durham, which were very measured about representing the practical concerns of dealing with DES regulations but also may have been heard as less than supportive of the nomination, were perhaps more strongly tilted away from support.

Councilor Mower said there had been quite a bit of communication among interested parties regarding this, and said the Town Administrator had followed up with a Committee member to confirm that there was conditional support from the Town for the nomination.

She said there perhaps should be some discussion by the Council about whether there should be a formal position taken about this process, and about whether the Town was appropriately represented before the Committee. She said the bill had gone into a subcommittee, and would be taken up again on Tuesday.

Councilor Mower said there would also be a public hearing on Tuesday about a bill that would repeal the PACE program in NH.

Chair Carroll suggested that the Council first spend a few minutes talking about the Oyster River issue.

Councilor Gooze said there had been a lot of emails back and forth on this issue, and he asked for a brief synopsis on what had happened.

Chair Carroll noted that the Town Engineer's statement was available in written form.

Councilor Gooze said he hadn't seen it, which was why he was confused.

Administrator Selig said he didn't believe that the Town Engineer's written testimony had been shared with the Council. But he said his impression was that it wasn't the written testimony that had caused the majority of the discussion, and was instead the questions to Mr. Cedarholm by the Committee.

He said there was a great opportunity tonight with Ms. Copeland of SRPC present, noting that she had been involved with the Oyster River designation initiative from the start. He said some key issues for Durham were that the Lamprey River was a designated river, and this designation had created benefits and hindrances, which were not anticipated when the designation occurred.

Administrator Selig said because of this experience, the Town had been gun shy about embracing the designation of the Oyster River, so its support for this had been very measured. He said they supported the protection of the flora and fauna of the river, and the health of the river, but at the same time had to protect the interests of the water users in the Town and the University. He said that had been the theme all along, and noted the public forum on this issue where there had been open discussion about the Town's concerns. Administrator Selig said concern had recently been expressed that the letter from NHDES to the legislative committee really did not cover the Town's concerns in any way. He said he had therefore felt that it was important to send the Town Engineer to the public hearing.

He said it was hard for those who were supportive of the initiative to hear some of these concerns, and noted that they had been concerned that the initiative would be killed. But he said this had not happened, and said the bill had been referred to a subcommittee for further discussion and review.

He said those who were very supportive of the designation thought that it was important to have the Council weigh in and say it supported it, so it would be helpful for supporters of the designation to hear an affirmative statement from the Council on this. He explained that this would eliminate the opportunity for a legislative committee member who was not supportive of it to use as a reason for this the fact that Durham didn't support it.

Administrator Selig said there was substantial concern by some that the testimony the Town Engineer had provided had brought the bill into jeopardy. But he stressed that he had felt it was important for Mr. Cedarholm to provide a balanced perspective.

Councilor Sievert said the Council had already shown that it was not 100% in support of the designation. He said sending the Town Engineer to testify was the right thing to do, and said if it killed the bill, perhaps it was the right thing to do because the Council definitely had a concern with it. He said they needed to stay concerned, based on what the designation had done to the Lamprey River.

Councilor Mower said it was appropriate for the Council to get more information about what it really meant to get the designation. She said she had been told that the concerns of water users had already been taken into account and that the designation would not change the Town's ability to withdraw water from the Oyster River. She also said she didn't recall that the Council had given a formal directive to the Town Administrator to take a specific position.

Councilor Sievert said Councilors had stated that they were concerned about the nomination, because of the Lamprey River. He said he didn't see how the Council could go on record saying it was 100% in favor of the Oyster River nomination.

Councilor Stanhope said he didn't think the Town Engineer's measured comments fully addressed the broad concerns the Council had and had expressed, based on the Town's experience with the Lamprey River designation. He said to be asked now to pull back on those comments would be totally inappropriate. He spoke further on this.

Councilor Niman said he agreed with what Councilor Stanhope had said, and said he supported the comments made by the Town Engineer. He asked Mr. Figgenbaum of the Oyster River Watershed Association why that organization wasn't writing a letter to the State saying it supported the designation as long as the State respected the use of the Oyster River as a water supply for the Town of Durham, and that they would not support the designation being used to impair the Town's ability to use it as such. He spoke further on this.

Chair Carroll said the communities in the watershed, primarily Lee and Barrington, had stood up for Durham's drinking water. She said when those towns, which were upstream from Durham, protected the Oyster River, the Town's drinking water was better for it. She said she

wanted all of the towns in the watershed to work together in a cooperative way. She said of course Durham had to protect the Town's drinking water but said she would hate to see the Town walk away from this nomination process.

Councilor Mower noted that a letter from the Chair of the Lee Planning Board in support of the designation said that its Master Plan had a goal of protecting Durham's water supply. She said Lee had expended a tremendous amount of effort and money, as had Barrington, to protect the Oyster River, and said Durham had benefited from this.

Councilor Sievert said no one was saying that Durham didn't want to protect the Oyster River, but he said they were saying they were concerned about what was going to happen.

Councilor Mower said she had made it clear in her own communications that the Town had had experience with DES regarding the Lamprey River that had made it somewhat concerned. But she said given the political climate in Concord at the moment, there was definitely concern that this was heard as "no more regulations" please.

Chair Carroll said there would be a vote to protect or not protect the Oyster River, but she noted that there also would be a management plan.

Administrator Selig said if the Oyster River received the designation, he expected that there would at some point be an in-stream flow aspect to it, which would specifically regulate the Town's ability to withdraw water. He said for him, the issue was not whether to protect the river. But he said the legislation should be reviewed in some way so that the Town's water system was not handled the same way as for-profit users on the Oyster River.

Councilor Gooze thanked Administrator Selig for this explanation, and said he supported what he had done concerning this issue, in letting the legislative committee know of Durham's concerns because of some previous things that had happened with the Lamprey River. He said the Town was not saying it was withdrawing support for the designation, but was saying that this should be done right.

Councilor Cote said the Town Administrator's letter to Mr. Higgenbaum was well stated, and said it all.

Administrator Selig said he realized there had been a sea change in the composition of the State Legislature, but said even if this had not occurred, he would have sent Mr. Cedarholm to speak at the public hearing.

Councilor Smith said he thought the Council should come back to this issue later on at the meeting, or put it on a future agenda so there could be a more structured discussion.

Councilor Mower said the Council needed to discuss the bill before the House Committee on Municipal and County Government that would repeal the PACE enabling legislation. She said this was a time sensitive issue in that the Committee would be hearing that bill the following day.

Administrator Selig said unless the Council told him otherwise, he would be sending a letter stating that the Town was against the repeal of this legislation.

Councilor Mower said she had been in touch with State Senator Amanda Merrill, who had said she would read the letter before the Committee.

Councilors agreed they were fine with what Administrator Selig had proposed concerning representing the Town on this bill.

VI. Public Comments

Kevin Gardner, Chair of the Energy Committee, said he was present to speak about the proposed bill (HB 144) to repeal the PACE legislation. He noted that Durham had been the first town in the State to adopt the local authorization of the PACE program. He said this program created local jobs, reduced dependence on foreign oil, addressed volatile prices, used private capital and not tax or government subsidies, saved money for building owners and increased property values, was voluntary for the Town as well as those who engaged in it, promoted energy security, and reduced air pollution.

He said a key feature that made the program successful was the reduction or elimination of up front costs. He noted that a requirement of the legislation was that it had to be cash positive from day one. He said the lien stayed with the property, which was the tricky issue at the federal level. But he said this was a key element for people who might want to sell their property in the future.

Mr. Gardner said the program had been incredibly successful around the country, and noted that some of the larger states who had the program were suing the FHA right now. He said hopefully there would be some resolution on this. He assured Councilors and the public that Durham had moved deliberately in considering the PACE program. He said enabling legislation was just the first step, and said approval of bonding was another step. He explained this could be reconsidered at any time.

He said the Energy Committee remained concerned about unintended consequences of the program, and had been working behind the scenes to make sure that there weren't any, in terms of effects on taxes, mortgages, etc. He said there was a lot of information from the experiences of other states with the program, and said there didn't seem to be any evidence of such effects. He said the Energy Committee would continue to be diligent.

Mr. Gardner said he didn't know what would happen in Concord or at the federal level, and noted that HB 144 to repeal the PACE Statute had come up overnight. He said adopting the PACE bill at the local level in Durham had been the right thing to do and said if the federal government got its act together and the State didn't pass HB 144, the Town would be ready to act when the dust settled.

Bonnie McDermott, 80 Dover Road, said she had received a letter from the Town indicating that she was in a commercial/industrial district so her property had to be assessed every year.

There was discussion about this, and Administrator Selig said he would look into this and get back to Ms. McDermott.

Chair Carroll said this matter would be handled to Ms. McDermott's satisfaction.

VII. Unanimous Consent Agenda

- A. Shall the Town Council, upon recommendation of the Town Administrator, reduce the appraisal of property owned by Jay Connor, 3 Bayview Road, from \$188,600 to \$146,200 and grant a property tax abatement in the amount of \$42,000 of valuation to Jay Connor ?
- B. Shall the Town Council approve a Supplemental Property Tax Warrant for FY 2010 and authorize the Town Administrator to sign said Supplemental Property Tax Warrant to commit a missing tax bill totaling \$3,920.00 on property located at 262 Newmarket Road, Tax Map 18, Lot 408 ?
- C. Shall the Town Council, upon recommendation of the Town Administrator, approve a Special Event Permit submitted by the Durham Parks and Recreation Department requesting that Mill Pond road be closed from Route 108 to Faculty Road on Saturday, February 12, 2011 between the hours of 10:00 AM to 2:00 PM for the Winter Carnival ?
- D. Shall the Town Council abate the second-half property tax bill amount of \$7,017 for the property owned by the Town of Durham located at 49 Madbury Road (Tax Map 2, Lot 7-1) ?
- E. Shall the Town Council, in accordance with Section 7 of the Town of Durham Purchasing Policy and upon recommendation of the Town Administrator, waive the standardized purchasing process and award a contract to Burns Security of Dover, NH in the amount of \$22,172.00 for upgrading of the existing cameras, software and Digital Video Recorder at the Durham Police Department ?
- F. Shall the Town Council, in accordance with Section 7 of the Town of Durham Purchasing Policy and upon recommendation of the Town Administrator, waive the standardized purchasing process and award a contract to Mr. Roofs Corp, Inc. of Tyngsborough, MA in the amount of \$28,825 for replacement of the Smith Chapel slate roof ?

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

VIII. Committee Appointments

None

IX. Presentation Item

Report by Strafford Regional Planning Commission (SRPC)- Cynthia Copeland, Executive Director; Wayne Burton, MPO Policy Committee Member

Wayne Burton, the Town's representative to the Strafford Regional Planning Commission, spoke before the Council. He first noted that Ms. Copeland and her staff did a fantastic job, and said the resources they brought to the region were very important.

He spoke in some detail about the Strafford County Comprehensive Economic Development Strategy (CEDS) that was currently being worked on. He said the two primary inhibitors of the economic development of the region were the academic attainment level of residents, and the transportation infrastructure. He said Strafford County had the lowest academic

attainment level in the State. He said Durham wasn't an island, and was part of a regional economy. He noted that he was president of North Shore Community College in Massachusetts, and as part of this was deeply involved in regional issues.

Mr. Burton said he was pleased that Administrator Selig would be participating in the CEDS process, and said it was a way for Durham to take some leadership on an important issue. He provided details on training for skilled jobs that students at his school received, and noted that by the year 2020, 80% of the jobs in the country would require education beyond high school.

He said there should be bumper stickers that encouraged residents to think and act regionally. He said New England towns ran 18th century municipal systems in a 21st century economy, and said he hoped the Council could think regionally. He noted that Durham had been able to stop an oil refinery on Great Bay and an east-west highway that would have destroyed wetlands and aquifers in the area. He said the Town and others in the region had also helped rebuild Pease, and noted that he was on the Legislature at the time the Air Force base was closed. He said Pease had become more of an asset than it otherwise would have been because the people in the region had come together.

SRPC Executive Director Cynthia Copeland spoke next before the Council, and first said she was very appreciative of the different skill sets and experience that the people who served on the SRPC brought with them.

She outlined for the Council the SRPC's goals for 2011. She first noted that SRPC was working on the Comprehensive Economic Development Strategy right now, and spoke briefly on this. She then said she would like to talk to the Council about transportation issues.

She explained that because of the snow storm the previous week, the announcement of the projects that would be funded through the Congestion and Mitigation Air Quality (CMAQ) funds would be delayed until Friday. She provided information on UNH projects being considered through the CMAQ program:

- expansion of the Durham/Rochester bus route on Route 125. She noted that this was a route that had formerly existed but was shut down, and said the idea now was to provide it for UNH staff who lived in Rochester. She said the project would be paid for by 3 years of funding through the CMAQ funds.
- UNH Shuttle buses and replacement for some of the larger buses
- Real time information on bus service, so riders would know exactly when a bus was coming. She said this was the number one project in the region
- Ms. Copeland said there were three other CMAQ transportation projects for the region that were proposed to be funded, and said two were part of the mitigation for the Little Bay bridges project, in order to reduce the number of vehicles during commuting hours. She said the first was:
 - a park and ride in Rochester, across from Lowes, with about 215 parking spaces. She noted that Dover had 415 spaces, and was running at about 85-95% capacity. She said the region knew how to use transit, and was a model for the whole State
 - She said the second project was to reduce headway times, so there would be 30 minutes

between buses instead of an hour, during peak hours for both COAST and Wildcat Transit buses going to Portsmouth, Dover, Rochester and Durham. She said there would be funding for new buses and operating costs.

- She said the third project was bus service from Portsmouth to the Manchester Airport, with a stop at the Park and Ride in Epping by Wal-Mart, over to downtown Manchester.

Ms. Copeland said the announcement on whether these projects were funded should come early the following week. She said these projects were very encouraging, and said what had been built so far with COAST, Wildcat Transit and the DownEaster and inner city service had multiplied. She said residents should be proud of their use of the transit system.

She next explained that SRPC was currently doing solicitation for projects to be included in the State's most recent Ten Year Plan, for the years 2013-2022. She said the one project in the plan involving Durham was the bike shoulder project for Route 108, and noted that it was in the first four years of the Plan.

Ms. Copeland said SRPC was also soliciting for projects that were in the long range time frame, from 2022-2035. She said SRPC staff would meet with Administrator Selig and Town staff in February to talk about transportation system deficiencies and specific projects and planning studies the Town would like to have done. She said they would also meet with the University. She noted that they were the only planning commission in the State that had a university as a member.

She said SRPC staff had met with Administrator Selig about assisting the Town to increase energy efficiency through the Energy Technical Assistance and Planning for NH (ETAP) program, and had found that the Town was already well underway with its own efforts.

Administrator Selig said there was a student intern gathering some data, and said when this information was available, the Town would reach out to SRPC and go from there.

Ms. Copeland noted that all of the current staff at SRPC were UNH graduates, which was a policy goal, and said they were very proud of this. She said they were fantastic employees.

Councilor Gooze noted that the 10 year plan project to expand the Spaulding Turnpike had worked out very well.

Chair Carroll spoke about the role that small scale agriculture had to play in terms of regional economic development. She said there seemed to be a resurgence of interest in local food, and asked how this fit in with SRPC in terms of its regional economic planning efforts.

Mr. Burton said having local food available helped to reduce the cost of food, and said it was also a very clean way to get good food. He said it was an excellent economic development approach, and noted that his wife was an adamant supporter of sustainability.

Ms. Copeland told Councilors that the Town of Lee had a lot of properties with conservation easements on them that were also active farms. She said it was good to see land that had had an easement put on it that was actively producing food to provide for the needs of a community.

She said that as part of the Comprehensive Economic Development Strategy, there had to be over 51% private sector involvement. She said SRPC had invited several entities that made a living with local food, such as Wentworth Greenhouse in Somersworth, to participate in the Strategy, because agriculture and associated industries had a role in the economic development of the region.

Chair Carroll thanked Ms. Copeland for sharing such good news, and thanked Mr. Burton for his representation of the Town on the MPO.

The Council stood in recess from 8:18 - 8:31 PM.

Councilor Sievert left the meeting during the break.

X. Unfinished Business

- A. Public Hearing and Action on Ordinance #2011-01 amending Chapter 38 “Building Construction”, Sections 38-1 and 38-5 of the Durham Town Code relating to energy efficiency standards

Councilor Smith MOVED to open the Public Hearing on Ordinance #2011-01 amending Chapter 38 “Building Construction”, Sections 38-1 and 38-5 of the Durham Town Code relating to energy efficiency standards. Councilor Mower SECONDED the motion, and it PASSED unanimously 7-0.

Peter Ejarque, 30 Long Pond Drive, spoke in favor of the proposed change to the Town Code regarding energy efficiency standards, and said it was a great way to save energy and money over time. He noted that he was going to be using spray foam insulation to better insulate his home. He said if the code could be brought up from R30 to R49, a house would be better insulated and this would save energy and money.

Councilor Niman read into the public record a letter from resident **Susan Fuller, Bennett Road**, who said she was opposed to the passage of this Ordinance because it would add to the cost of building in Town and took away consumer choice. She said it was unnecessary rule making that drove the dagger of unaffordability deeper into the Town’s heart. (The full letter is available at the Town Hall.)

Councilor Smith MOVED to close the Public Hearing. Councilor Mower SECONDED the motion, and it PASSED unanimously 7-0.

Councilor Mower asked if Ms. Fuller had had access to the Council Communication on this agenda item, where it was explained that the difference in cost as a result of the code change was virtually immaterial, and ranged from \$200-300 for a 1000 sf footprint. She urged anyone with concerns about a cost difference to read the Council Communication.

She noted that there had been a lot of consideration about this code change at previous Council meetings. She said it would improve the overall energy efficiency of construction by bringing the Town to a level that would be equivalent, in terms of climate considerations, to those sections of Vermont and Maine at the same latitude as Durham.

Councilor Stanhope said he thought Councilor Mower's point about energy was critical in terms of the planet. He also said energy costs wouldn't be going down and would be going up, so if one looked at the value of money over time, putting in a higher standard of efficiency would overcome the \$200-300 cost up front because of lower operating costs.

He noted that he had initially had some concerns about the up front costs, but said he'd determined that these costs weren't so burdensome. He said there was a far greater burden from property taxes. He said he hoped the Council would support this proposal, stating that there were strong economic reasons to do so beyond the environmental reasons.

Councilor Mower said an individual property owner would benefit from this energy efficiency over the life of that structure.

Chair Carroll noted that she had walked through the Rivers Edge apartment complex with the owner after it had been completed, and had asked him about energy conservation measures that had been included. She said she had learned that it was an Energy Star building, was heated with geothermal energy, and the owner hoped in the future to put up solar panels to run the pumps for the geothermal system. She said the owner also used R61 insulation in the building. She said he was a smart businessman who realized he would own this property for awhile and wanted to save money and energy.

Councilor Mower said many commercial builders now put in more insulation than was required, because they knew that by doing so, the operational costs would be less.

Councilor Smith said now was a good time to pass this Ordinance. He noted the current Capstone application to build nearly 100 cottages and duplexes in Durham, and the fact that the company had never built this far north before.

Councilor Smith MOVED to adopt Ordinance #2011-01 amending Chapter 38 "Building Construction", Sections 38-1 and 38-5 of the Durham Town Code relating to energy efficiency standards. Councilor Mower SECONDED the motion, and it PASSED unanimously 7-0.

- B. Public Hearing and Action on Ordinance #2010-02 amending Chapter 132 "tax exemptions and Credit" of the Durham Town Code by Adding a New Section, Section 132-8 "Central Wood-fired Heating Systems"

Councilor Mower MOVED to open the Public Hearing on Ordinance #2010-02 amending Chapter 132 "tax exemptions and Credit" of the Durham Town Code by Adding a New Section, Section 132-8 "Central Wood-fired Heating Systems. Councilor Smith SECONDED the motion, and it PASSED unanimously 7-0.

Energy Committee member Peter Ejarque first explained why he wanted to use a wood boiler to provide heat for his house, and noted that he would eventually be expanding the house and wanted to heat the whole house with radiant heating from hot water. He said this was a very energy efficient type of heating system, and noted that he had 12 acres of land so had plenty of his own wood. He said wood boilers were a great source of heat, and said with upcoming

fuel costs he thought it was a good idea to encourage other home owners to try this kind of heating system.

Mr. Ejarque said there were currently only about two other residences in Durham that had wood boilers, and said he would be glad to show people the system he had. He said there were great environmental aspects to this approach, and noted that it was carbon neutral. He said it would be a great asset for the Town to offer this tax exemption.

Councilor Niman read into the public record a letter from resident **Susan Fuller, Bennett Road**, who spoke against the Ordinance, stating that the idea of burning wood as a renewal, sustainable energy source in NH was a ridiculous concept. She said these heating units were private incinerators creating noxiousness to surrounding properties, and she questioned the idea of promoting this in a town that didn't allow drive through windows. She said it was frivolous rule making.

Councilor Mower MOVED to close the Public Hearing. Councilor Smith SECONDED the motion, and it PASSED unanimously 7-0.

Councilor Stanhope asked Code Officer Tom Johnson what this kind of system would look like in a residential neighborhood.

Mr. Johnson explained that there were indoor as well as outdoor wood boilers, and provided details on each. He said State regulations were already in place for the outdoor boilers, and said there were setback requirements. He said the indoor systems were contained units that looked like fireplaces and could be mounted in a living room or installed in a basement. He said either logs, cordwood, or pellets could be used in them, and said there was no separate permit required for them. He said wood boilers were a part of the central heating system of a house, for water, etc.

Councilor Cote said the outside units looked like outhouses, and said he was concerned about air quality issues in regard to them. He said with only two systems in Town this wasn't a big issue, but said there could be a problem if there were more. He said he was sensitive to what Mr. Ejarque had said about being carbon neutral, but said he did have a concern about air pollution.

Mr. Johnson noted the air quality alerts in the Keene, NH region area and other areas of the State. He said an outside wood boiler would be considered a structure so would have to meet the setback requirements. But he said according to local Zoning, one could be located 10 ft from a property line in the Faculty neighborhood. He noted that people didn't want to construct wood boilers very far from the house because this would increase the cost of the piping that was needed.

Councilor Gooze said NH State law said phase I structures had to be located 100 ft from a property line, and phase II structures had to be located 50 ft from a property line. There was discussion that Durham could be stricter than that if it wanted to be.

Councilor Gooze asked if there was inspection of these systems over time to monitor whether they became less efficient. He said if there wasn't, he would have concerns about this kind of system.

Mr. Johnson said these were valid concerns, and were similar to concerns about proper maintenance of a wood burning fireplace. He said the Fire Department would respond when there was a chimney fire.

Councilor Gooze said he was concerned about pollution from these wood boilers if they weren't maintained, and if there wasn't some kind of inspection system.

Councilor Smith said concerns about air pollution had to do with old fashioned, free standing boilers that would burn anything. He said a homeowner who installed one of these new expensive wood boiler systems, with plumbing, water storage, and a back up generator would have a vested interest in keeping the system well maintained, or else the fuel cost would go up.

He said there was no such thing as clean energy except for the sun and wind, and said if heating systems were not maintained, there would be more smoke. He noted that he had been investigating the idea of installing a wood boiler in his basement, and had visited some who had them in their garages.

Councilor Gooze noted that these heating systems were already allowed in Durham, and what was proposed here was to give residents who had them a tax exemption.

Councilor Mower said the technology of wood boiler units had improved dramatically over the past few years. She said the phases Councilor Gooze had referred to were EPA emissions standards, and said what was required now was that the wood boiler installed now in NH had to be 90% more efficient than the previous systems.

She said much of the practical experience with smoke from these systems was more likely to result from poor installation of the system. She said fire safety officials inspected the systems, but if someone treated a system as an incinerator and wasn't burning clean wood or was burning trash, that was an issue. She said there wasn't Town staff to do inspections for a large number of these systems, but said it was also true that there was a tradeoff between greenhouse gas emissions from using fossil fuels and using renewable fuels.

She suggested that perhaps the setbacks for these units could be increased, and/or the wood boilers could be limited to certain zones in Town. She said it was more likely that a resident would want to install them where there was easy access to cordwood. She said many of them would think they weren't appropriate for some of the denser parts of Town.

Mr. Johnson said that in terms of enforcement, the Health Officer could respond to nuisance claims.

Councilor Mower said she had only heard of one complaint, regarding an outdoor system she knew of in central Durham, and said this had occurred when the owner was stoking the system.

Councilor Gooze said the question for the Council right now was whether it wanted to foster the use of this kind of heating system by giving those who had them a tax break.

Councilor Mower said there was no real contributory value to an assessment of a property that had a wood boiler. But said she that as she and Administrator Selig had discussed, there was the potential that they could become more attractive as fossil fuel costs rose, so at that time, there might be an impact on the assessed value of a property that had one. She said it then became more of an issue of the cost to the Town.

Councilor Stanhope said he would vote against this proposed Ordinance. He said while he encouraged people to make their properties more energy efficient, wood boilers could present an externality if a neighbor next door had one. He said they had to be careful about encouraging nonconformity in residential neighborhoods, and said he was concerned about the probability that over time, without close monitoring, they would become environmentally insensitive for one reason or another.

He said there were very few of these units in Town, but said he wasn't sure that using the tax code was the proper way to make people conscious about energy efficiency.

Councilor Gooze said he agreed with some of what Councilor Stanhope had said. He said with the PACE program, this wasn't costing the Town any money. He said with this program, the Town was giving up something, even though it was a small amount.

Councilor Mower noted that the tax exemption already existed for solar energy. She asked if the issue Councilor Gooze had with the proposal was the possible nuisance issue, or the tax exemption issue in general for renewable energy sources.

Councilor Gooze said he had a problem with both of these things, and said he didn't think the gain from providing the tax exemption was worth it.

Administrator Selig said this was an issue he didn't have an especially strong opinion on. But he said that regarding the issue of possibly losing revenue as a result of it, this wasn't a major concern. He said he didn't believe wood boilers would add very much anyway to the desirability and value of a property now or in the future. He said he didn't think they would be seeing a proliferation of these systems in Durham, and said if they did, the issue could be revisited. But he said he recommended passage of the Ordinance for a community that highly valued the idea of decreasing its carbon footprint and being good steward of the environment.

Councilor Gooze said he didn't agree, and said he didn't think this was appropriate for the dense areas of Town. He said perhaps some thought should be given to where to locate these systems.

Councilor Cote said there was an internal wood boiler system near his house, and said he was not bothered by it. He said it was no different than having a wood stove nearby, but said unlike solar energy, this energy source did transcend boundary lines because of the smoke. He said he was therefore very sensitive about having something like this proliferate in a dense residential area.

Councilor Gooze said perhaps the Energy Committee could come back with some restrictions as to where in Town these heating systems should be permitted to be located, and with some larger setback requirements for them.

Councilor Mower said requiring larger setbacks would de-facto regulate the systems out of some districts, without having to identify a particular district.

Councilor Gooze said if the system was sitting in the middle of a 12 acre lot, this wouldn't bother him, as compared to sitting on a half acre lot.

Councilor Stanhope said these systems could present externalities to abutting properties, which could devalue the value of these properties, so that tax dollars could be lost from there as well. He said the Town didn't have any control over the design of an outdoor wood boiler system. He said there didn't seem to be any urgency to go forward with this tax exemption now, and suggested that there should be an interim study, and the Council should let the Energy Committee come back with a broader solution.

Councilor Smith said the people who would be tempted to install one of these would be people like himself. He said right now, he heated his house with two wood burning stoves, and said they were not as efficient as wood boilers, which burned very hot and had fewer emissions than wood stoves. He said this Ordinance was a good idea, and said he would vote in favor of it.

Councilor Niman said there were a lot of other things he would rather be talking about, and suggested that they go ahead and vote.

Mr. Ejarque spoke about how much more efficient wood boilers were than fireplaces. He noted that a lot of people in Durham had wood stoves and fireplaces, and asked whether they should start regulating them because they created smoke. He also said outdoor wood boiler units could be made to look more decorative.

Councilor Gooze received clarification that the minimum State setback was 50 ft, so this did limit the use of these wood boilers on smaller lots.

Councilor Mower said the Energy Committee had asked her to bring this proposal to the Council, and she suggested that they could go back and ask the Committee to look at the setback issues. She said they could also visit an outdoor hydronic heater, to see how far one would have to go to not smell it. She said she appreciated Councilor Stanhope's comments about potential impacts on a neighborhood as opposed to the value of a system to the property owner.

But she said Councilor Smith had made an important point that for those residents choosing not to use fossil fuels, this was a far better choice than a stand alone wood stove. She said there was a value to this tax exemption if the setback issue could be addressed.

Councilor Gooze said he would be much more comfortable with this Ordinance, and would be willing to vote for it, if the setback issue was addressed.

Administrator Selig asked if the Town would have the authority locally to adjust the setback, and there was discussion.

There was discussion on how to proceed with this Ordinance proposal. Administrator Selig said the Council could vote it up or down, or table it, and then bring forward another ordinance to adjust the setbacks, etc. He said another public hearing would be required if that was done.

Councilor Cote noted House Bill 1405 regarding the authority of NHDES to determine whether outdoor wood-fired hydronic heaters violated air quality emission limits. He then recommended taking this proposed Ordinance off the table.

Chair Carroll said in the 1970s, 50% of the houses in Durham had wood stoves, and said there was a lot of wood smoke at that time. She said when energy prices went up, people looked for what was available, and said she would rather see people use wood furnaces than wood stoves in terms of their efficiency. She said there were some challenges ahead regarding energy, and said this evening, the question was whether there was interest in studying the tax exemption idea more, including looking at some different guidelines to include in the Ordinance.

After further discussion on how to proceed, Councilor Niman noted that there was no motion on the table yet, so the Council could simply choose to move on. He said this Ordinance could be brought back in the future.

Councilor Mower thanked everyone for their input, and said the Energy Committee would be willing to look at the proposed Ordinance again.

- C. Action on Ordinance #2015, a Council-initiated ordinance change that would amend Article XIX "Conservation Subdivision", Section 175-107(B) "Applicability", to add Office, Research & Light Industry and Multiple Unit Dwelling/Office Research Zoning districts to the list of zones to which conservation subdivision regulations apply

Chair Carroll noted that this Item had been tabled at the Council's previous meeting.

Councilor Gooze MOVED to take this Item off the table. Councilor Mower SECONDED the motion, and it PASSED unanimously 7-0.

Chair Carroll asked Councilor Niman to bring the Council up to date on this issue.

Councilor Niman said he had previously brought forward some wording that he had thought was a simple way to resolve some of the concerns expressed about the proposed Zoning change by some members of the Planning Board. He said he had also hoped that by reaching out to the Planning Board, this would allow the Council to mend some fences regarding this issue.

But he said there had been a problem communicating to the Planning Board the purpose and meaning of the wording he had come up with. He noted that he had made a commitment that

this Council would act on this matter rather than leave it for the next Council. He suggested that the Council should therefore vote on the proposed Ordinance change without the additional words he had provided.

Councilor Gooze said there were some people who had concerns about how the proposed Zoning change related to the lot size per dwelling unit for these districts in the Table of Dimensional Standards. He said that would still have to be addressed, whether the Council approved the Zoning change or not. He said there had also been concern on the Planning Board about dealing with the conservation subdivision regulations in regard to possible condominiums in the ORLI and MUDOR districts. He summarized once more the purpose of this proposed Zoning change.

Councilor Smith said he supported passing this Ordinance change, and said passing this Zoning change would inspire or encourage the Planning Board to take a look at unintended consequences. He spoke about the major change made to the Table of Uses the previous summer to allow the residential uses in the ORLI and MUDOR districts, which had resulted in these unintended consequences. He said the Town simply hadn't contemplated seeing there the kind of development represented by Capstone project.

After further discussion, it was noted that the motion had already been taken off the table, and the Council could now vote on it.

The motion to approve Ordinance #2015, a Council-initiated ordinance change that would amend Article XIX "Conservation Subdivision", Section 175-107(B) "Applicability", to add Office, Research & Light Industry and Multiple Unit Dwelling/Office Research Zoning districts to the list of zones to which conservation subdivision regulations apply PASSED unanimously 7-0.

XI. New business

A. Discussion regarding RSA 79-E, Community Revitalization Tax Relief Incentive

Administrator Selig provided background on the Statute, and noted that the Town had previously adopted it for Durham. He said when it was adopted, it was meant to apply only to improvements to existing structures, but was later amended to allow total tear downs and reconstruction as long as certain thresholds were met.

He said there had been one applicant to this program, the fraternity on Madbury Road, and said the Council after much consideration had granted the tax relief for the rehabilitation. He said it had recently become clear to him that there would be an application for another property downtown, and said it seemed to make sense to have a Council discussion, absent an application, about the criteria it was comfortable utilizing, the duration of the exemptions, and whether they wanted to consider total tear downs.

Administrator Selig spoke about the fuzziness regarding whether some properties would meet the intention of the Statute, including those properties that didn't necessarily have historical character but were considered to have some community benefit. He explained that

the Town could adopt additional criteria beyond those outlined in the Statute. He reviewed the following wording in the Statute for total tear downs/replacements.

RSA 79-E IV. (a) The governing body may grant the tax relief, provided:

(4) In the case of a replacement, the governing body specifically finds that the local heritage commission or historic district commission...has determined that the replaced qualifying structure does not possess significant historical, cultural, or architectural value, the replacement of the qualifying structure will achieve one or more of the public benefits identified in RSA 79-E:7 to a greater degree than the renovation of the underutilized structure, and the historical, cultural, or architectural resources in the community will not be adversely affected by the replacement. In connection with these findings, the governing body may request that the division of historical resources conduct a technical evaluation in order to satisfy the governing body that historical resources will not be adversely affected.

(b) If the governing body grants the tax relief, the governing body shall identify the specific public benefit achieved under RSA 79-E:7, and shall determine the precise terms and duration of the covenant to preserve the public benefit under RSA 79-E:8.

He said the Town also need to consider the duration of a tax exemption, and spoke about how this might be tied in with the economics of a particular project. He said a third issue was whether they in fact were comfortable with the idea of allowing total tear downs. He said the Town had discretion concerning this, and about whether a public benefit was met. He said the Town also had discretion as to what was considered to be a public benefit.

Councilor Gooze noted that concerning these provisions that any project that came in with 4 stories, including 2 stories of student housing, would meet those criteria, assuming they were labeled as residential housing.

Councilor Niman said what Administrator Selig was getting at was that the Town could place additional requirements. He said rather than focusing housing exclusively on undergraduate students, he would be willing to consider providing tax relief to someone who built housing that was more generic and could be rented to families, graduate students, and working professionals, so that once it was put up, it sort of defined the market.

Councilor Gooze said that was a wonderful idea, and asked where the Council could add that in.

Administrator Selig said it could be included as part of RSA 79-E: 7 a - Public Benefit Determinations. "Cities or towns may adopt according to the procedure in RSA 79-E:3 provisions that further define the public benefits enumerated in RSA 79-E:7 to assist the governing body in evaluating applications made under this chapter based on local economic conditions, community character, and local planning and development goals."

He said encouraging something other than student housing downtown could be one of the criteria. He said the applicant would provide a covenant, which could be for twice the time span of the tax relief. He said this would guarantee the public benefits for this period of time, and explained how this could work.

Councilors agreed that this was a great idea.

Councilor Cote said it addressed a lot of issues, including workforce housing issues,

Councilor Gooze said the IZIP Committee hadn't considered this, but said it could be added to the mix.

Councilor Mower said they might want to consider something like this in terms of contributing to a bicycle friendly downtown and community gathering spaces.

Councilors agreed further that these were great ideas.

Councilor Niman said in order to have a vibrant downtown in Durham, there needed to be a diversity of businesses people wanted to go to. But he said the challenge for a new business coming in was a high rent, when it wasn't clear whether the business would work or not. He said he might be amenable to providing tax relief on the commercial portion of a property if in exchange the owner would lease the building to someone who would bring in a new business to Durham that it didn't currently have.

Councilor Mowers noted that the Master Plan had a section concerning the downtown core that spoke about the uses the Town needed to bring in, and she said this could be referred to.

Councilor Smith asked if a new Ordinance would be needed in order to make this kind of thing happen.

Administrator Selig said the public benefits would need to be further refined, either through an ordinance or a resolution. He explained that what had prompted this discussion on RSA 79-E was a potential applicant who had gone to the Historic District Commission to see if his building had historic value. He said it wasn't clear whether it would be possible to bring forward additional criteria for RSA 79-E prior to receipt of that application.

Councilor Gooze asked whether if these additional criteria weren't in place, the Council would still have complete discretion.

Administrator Selig said the only recourse for an applicant would be if he could prove discrimination in some way. But he said the Board of Tax and Land Appeals would not set aside the Council's discretion. He spoke further on how this process could work.

Councilor Stanhope agreed that some language that allowed the Council discretion in terms of what it wanted to accomplish with tax relief was critically important. But he said he didn't think that developing those guidelines could be done quickly. He said the Council should look at this carefully before granting tax relief with some frequency.

He said the intent of the Statute was to address neglected buildings, so that someone would take them on and there would be an enhancement to the community. He said redevelopment for the sake of profit might not necessarily qualify for a tax incentive, and spoke further on this. He said in the mean time, the Council could table applications until after the guidelines were revised.

There was discussion that there was a timetable for an application that had to be followed.

Councilor Niman said he agreed with Councilor Stanhope that not everyone who built something new should get a tax break. But he said they were trying to give those watching on TV that evening a sense of what was going to fly and what wasn't. He said he hoped the Council would support tear downs, and said he saw that as a way of accomplishing redevelopment of the downtown.

He noted the potential hotel project, and said the numbers currently didn't work. But he said a program like this would hopefully bring the Town closer to the numbers working, and said such a project could provide a spark for further redevelopment downtown. He said he probably wouldn't want to provide the tax exemption for someone who wanted to replace poor student housing with nice student housing. He said other than it being nicer and providing more taxes, he didn't see the public benefit.

Councilor Mower said this was a very useful discussion, with some good ideas presented. She noted the downtown commercial core chapter wording on aesthetics and read from it:

"The uses located downtown, often dominated by student-oriented retail businesses, are an issue that is of concern. Promoting uses that offer a wider variety of goods and/or services for local residents and UNH faculty and staff, as well as for students, would bring a greater variety of people downtown and encourage a stronger identity for Durham. This is in keeping with the desire to prevent sprawl elsewhere throughout town. Addressing the types of uses downtown may also contribute to resolving the third issue of concern, the physical character and appearance of the downtown. The image of downtown, with its combination of public spaces, sidewalks, parking lots, and especially the private buildings, is inconsistent in style and massing of buildings, and fails to create an attractive character. The traditional commercial center of a small town with its continuous street facade of multi-story buildings, similar to Portsmouth, Dover, or Hanover, is a desirable image that establishes a town's commercial identity."

She said while this didn't provide specific guidelines, there could be a specific public benefit regardless of the use. She said this could be utilized along with consideration of uses that would provide more year round benefits for residents.

Administrator Selig suggested that he could pull together a small Council subcommittee to work on this issue and then bring something back to the Council.

Councilor Stanhope and Councilor Niman offered to serve on the subcommittee.

Councilor Mower asked if this would be a formal subcommittee, which meant that the right to know law would apply.

There was discussion that only one or two meetings would be involved, between Administrator Selig, Councilor Niman and Councilor Stanhope.

Chair Carroll thanked Administrator Selig for bringing this issue to the Council for discussion, and said it was a very timely issue.

B. Update by Town Administrator on the Request for Proposal for the redevelopment of the Grange (H.A. Davis building) located at 37 Main Street

Administrator Selig provided details on the current state of the Grange property, but said it presented a tremendous potential. He said it had a certain charm to it, and said he would like to bring the property back, and make it a functional part of the downtown.

He said developer Peter Murphy had responded to the recent RFP that was put out, and said it was open ended and allowed for negotiation. He said the initial proposal was to transform the structure into two floors of student housing. Administrator Selig said he had not thought that this approach was consistent with the Town's goals, and said there was a higher and better use for the main floor of the structure. He said it was recognized there was a strong market for student housing downtown and at least in the short term, it could help provide the economics needed to revitalize the structure.

Administrator Selig said with this feedback, Mr. Murphy had worked to develop a revised proposal to invest approximately \$275,000 into the property to create two high quality student apartments (which could later be turned into workforce housing) and a 1,200 sf commercial/retail space on the first floor under a 15-year lease (three 5-year options) and where the Town could opt out of the arrangement at 5 year intervals in case redevelopment around the property occurs and it is deemed necessary to include the Grange.

He noted that there had been a meeting on this proposal with the EDC Chair, the HDC/Heritage Commission Chair, the Parks and Recreation Committee Chair, Councilors Mower, Sievert and Smith. Administrator Selig said he was looking for feedback now from the Council on the proposal. He noted that there was a lot of flexibility to further refine the proposal, and said Mr. Murphy had been a terrific partner so far.

He provided details on the proposed layout of residential and commercial space in the building, and said this needed to be further re-defined. He said feedback was needed on this, and said the plan would then be to bring back a more hardened proposal for action some time in February.

Councilor Smith said he was basically very supportive of this. He asked what variance (s) would be needed for the project.

Administrator Selig said a variance would be needed to allow residential housing on a portion of the first floor. He said he believed that the number of renters Mr. Murphy needed to make the project work was permitted by right, so he had the square footage he needed.

Councilor Niman said he thought the redevelopment of the Grange in this way was a great idea, and should move forward.

Councilor Mower noted that there were members of the community who had expressed reservations about having any student housing in the Grange. She said when Mr. Murphy's

proposal first came forward with only student housing, she was not in favor of it at all. But she said she had now been assured that construction of the apartments on the second floor would be such that it could be modified for no student tenants in the future.

She said what was proposed was a good short term use of the Grange, which helped to bring the condition of the building up to a point where there might be more interest in using it. She noted that there were other things happening downtown that might bring additional interest to it.

Councilor Stanhope said one of the proposals was that the Town would lease the property. He noted that if the Town was the owner and leased the property, it wasn't obliged to seek any variances.

Administrator Selig said while the Town was not obliged to do this, he recommend that it do so. He said there might be a question about the use, and provided details on this. He also noted that in the Historic District, for the Council to take advantage of the exemption, a 2/3 vote would be needed.

Councilor Mower said there would be minor cosmetic improvement to the exterior of the building. She said it was requested that the developer pull together estimates of what some more substantive improvements from an historical structure point of view would cost, in order to allow the HDC to seek funding for those repairs.

Councilor Gooze said he wondered if the rental amount proposed would hold up over time,

Councilor Mower said Mr. Murphy had said he had a waiting list for his new building, and also sought out students who already knew each other. She spoke further on this.

Councilor Gooze said he believed that if landlords with substandard housing put the effort into making them like the new projects, they wouldn't have occupancy problems. He said students would rather live in town and walk places if they had the choice.

Councilor Mower said she wanted it to be absolutely clear that the construction would be modifiable for alternate residential use, unlike some of the buildings they had seen go up or that were about to go up.

There was discussion about possible affordable housing aspects of this project, with Administrator Selig noting that since the Town owned the building, it could perhaps subsidize some of the housing.

Councilor Mower said she had received clarification from Mr. Murphy that the monthly management fee would come out of rents, so the Town wouldn't be paying any of this.

Chair Carroll said she had spoken with Recreation Director Sandy Devins, who was very excited about Parks and Recreation using the ground floor for various uses. She said Ms. Devins knew of some groups that would like to rent that space, so it could bring in some income.

She said her vision of the Grange was community space on the first floor, and workforce housing for the rest of the building. She said she realized the numbers didn't work, but said somehow the model would have to change. She said the front yard would be available for whoever was renting, so they were giving up that space.

There was discussion that this might be negotiable, along with improvements to the access between Main Street and the Plaza.

Councilor Mower noted that this might also enhance bike connections to Main Street and the schools.

Chair Carroll said it sounded like there was consensus for Administrator Selig to move forward on this.

Councilor Mower said she would like the Town to retain ownership of the Grange.

Councilors other than Councilor Stanhope agreed with her.

The Council stood in recess from 10:10 to 10:17 PM.

C. Discussion on the Administrator's annual performance evaluation and employment agreement renewal discussions.

Chair Carroll outlined the process that had been used in getting input from Councilors as part of the evaluation process. She noted that Administrator Selig had asked that the discussion be held in public, and she said there would be a public discussion. But she said there had been a request from some Councilors to move to nonpublic session after that, so this would be done. She said the Council would then come back into public session.

Chair Carroll summarized the results of the performance evaluation. (These results are available at the Town Hall.)

Councilor Stanhope asked if Administrator Selig had done a self evaluation.

Administrator Selig said he had, and explained that he hadn't done this using the same scale that Councilors had used. But he said he had provided a lengthy summary, and said his evaluation of himself was good to very good. He noted this was the 10th evaluation that had been done, and said out of 23 categories, his rating had improved in 20 of them, had decreased in two, and had remained the same in one.

He said the two ratings where he had decreased slightly were regarding providing clear guidance to the Council on all issues (4.0 to 3.7) and regarding the financial performance of the Town (4.4 to 4.3). He said the category where he had remained the same was regarding improving the performance of Town staff, and when necessary, removing individuals who have failed to perform consistent with their job description or compensation (3.0).

Administrator Selig said that regarding the overall totals, the overall ranking was 3.83 last year, which was just under very good, and this year it was 4.17. He noted that he had listened

to feedback and had worked to improve, and said this seemed to be born out with the evaluation.

Councilor Stanhope asked Administrator Selig to discuss the 4th item under leadership, concerning improving the performance of Town staff, and when necessary, removing individuals who have failed to perform consistent with their job description and/or compensation. He noted that this was the lowest score, and said there seemed to be some consistency in that area.

Administrator Selig said his perception was that Town staff performed at a very high level. He explained that the way he intervened was quite subtle, and said when people chose to move on, this was because of candid conversations he had had with them over time. He said what the Town wasn't seeing was high profile firings, where the firing was challenged, legal expenses were incurred, and there was a lot of bad blood.

He said his reaction to the rating was that he wasn't perfect, he had a certain way of addressing disciplinary issues and he thought they had been successful. He said he worked hard to give people every benefit of the doubt, but said if they weren't performing after that, they moved on. He said he was hopeful when the Council talked in nonpublic session that he could provide some specific examples to crystallize this.

Administrator Selig said he probably had not done an adequate job of telling the Council what he was doing concerning staff issues, so they might assume he wasn't doing anything. He said they might also disagree with what he valued compared to what Councilors valued.

Councilor Gooze said he hadn't been a Councilor long enough to provide a rating concerning this evaluation item.

Councilor Mower asked Administrator Selig how he set expectations procedurally with staff. She asked if they were linked to the Council goals, which theoretically were goals for him to help accomplish.

Administrator Selig said the direction he gave to the departments flowed from the Council goals. He noted that he valued community input, which meant that he granted access to Town departments that took up time and resources. But he said this was valuable, and said he wanted local government to be responsive and connected to the residents.

He noted that he had told Councilors who had a general issue with a department to go talk to them, but not to tell them to do something, and to come to him if they had a problem with something. He said his value goals of open government, open information, being very transparent, and having a high level of being ethical and honest set a high standard. He said beyond that, the Council's goals would shift over time. He said if he saw problems, he engaged department heads, and didn't wait for the annual evaluation to do this.

Councilor Mower MOVED to extend the meeting beyond the 10:30 pm adjournment time. Councilor Smith SECONDED the motion, and it PASSED unanimously 7-0.

Administrator Selig said the focus of department heads would change based on Council goals. He noted a previous Council goal that the Planner's office be the gatekeeper in terms of applications, and said the Planner was clear what the expectations were at that time. But he said this had caused criticism at the time from a part of the community that thought things were too restrictive. He noted that the previous Council priorities had impacted who he had hired for Code Enforcement.

He said there had been a change in focus on the Council over time, toward promoting development and not making the Planning office the gatekeeper. He said the Planner's focus and efforts had then shifted, which then caused criticism from another part of the community. He said these same things had happened at the Fire Department, etc.

Administrator Selig said he relied on smart, capable people who could get the job done without a lot of guidance from him. He said that when he needed to spend a lot of time with someone, it was fairly clear to that person why. He said to the extent that staff were still here, this meant that he had determined that retaining the person was in the overall best interests of Durham.

He spoke in further detail on the way he worked with Town staff, and then said that when someone left a position, this would be challenged and overruled. He said the employee came to realize it wasn't a good fit, and moved on.

Councilor Mower asked whether, even if many Councilors respected that modus operandi, if there were times when this process had taken significantly longer, and could have been shortened with the same result.

Administrator Selig said he was a generalist, and said when he was concerned about whether a staff member or department head was performing properly, he sometimes needed to bring in an outside person to inform him if something was being done right or not. He said there had been times when the impartial person assured him things were exactly right, which made it challenging for him to dismiss that.

He said there had been other cases where there had been concerns about a staff member and he had a conversation that it might not be a good fit for the Town anymore. He also noted that feedback on a staff member's work wasn't always consistent, so he had to think about the perspective of the person giving the feedback, and had to consider on balance whether the staff member was a good fit or not. He said this could also change over time.

Councilor Stanhope asked whether goals or concerns with a staff member were put in writing and put into the person's file, so an issue could be revisited in the future.

Administrator Selig said absolutely, and said it could become a process toward termination. But he noted that the staff member could then rectify the situation by falling in line with what he wanted the person to do.

Councilor Mower asked if there were steps Administrator Selig believed he could take that would be helpful to him in his professional development, and if so, if the Council had been responsive to such a need.

Administrator Selig said Durham had been very supportive of his seeking and attaining professional development when needed and he provided details on this. He said he would be very interested in returning to a program at the Kennedy School on negotiation, but said it was a \$9,000-10,000 program.

He said sometimes the challenge in an evaluation was that people had different perspectives in terms of what he should and should not be doing. He said an area that was hard was whether or not he was providing enough guidance to the Council on issues. He noted that issues sometimes came up that he didn't care about and wished the Town wasn't dealing with. He also said to the extent that people felt he wasn't vocal enough, or wanted to know what he thought, they should ask him.

Councilor Mower asked Administrator Selig if there was ever a point at which something didn't get to the final agenda because he didn't believe it shouldn't be on it and was clear on this. She spoke further on this.

Councilor Smith said Administrator Selig had provided brief to the point answers on several things that evening, but said there were other times when he advocated very strongly on an issue. He gave an example of this, and noted that he had talked with him about this. He also said Administrator Selig sometimes summarized what was in the packet, and said Councilors really shouldn't need this summary.

Councilor Niman said he didn't believe the Town Administrator lobbied the Council, and said he appreciated every opportunity where he offered his opinion. He said he believed that was what he was paid to do, and said he was privy to more information, had a broader perspective, cared about the welfare of the Town and had professional expertise compared to Councilors. He said he didn't think Administrator Selig should change his approach at all.

Councilor Gooze said when Administrator Selig lobbied, he was following the wishes of the Council in terms of its goals, and was stating that he would advocate for those goals.

Councilor Stanhope said he strongly disagreed with Councilor Smith. He said four years ago when he came on the Council, he didn't think the Town Administrator was forceful enough in putting forward the administration's point of view on issues before the Council. He noted that he sometimes still couldn't figure out where Administrator Selig was on an issue. He said he wanted to hear from him, as the CEO, concerning what he saw was in the best interest of the Town, and said he realized that this might sometimes not be popular.

Councilor Mower said she personally valued a perspective from someone with longevity on issues. She also said it was important that Administrator Selig provide background information on an issue to Councilors in order to share this with the public. She said an informed public was more likely to become engaged, and noted that there was a premium on the number of people in Durham who would become engaged.

Councilor Gooze agreed that it was important for Administrator Selig to explain to the public why an issue was being discussed, and said he hoped this would continue although brevity would be appreciated.

Administrator Selig noted that the issue of providing guidance to the Council had been identified some years back as an area for him to work on. He said he had tried to be more forceful, and said he did see himself as the CEO of the Town. He said he owed it to Councilors to tell them what he thought.

He said that regarding legislative issues, the Council goals were very helpful to him. He said based on his longevity with the Town and his sense of Durham, he was bold about taking positions out in the world on what Durham thought. He said if it was an issue he didn't believe he had good direction on, or it was a very weighty issue for the Town, he brought it to the Council. But he said if he went too far, people should let him know.

Councilor Smith MOVED that the Council go into Nonpublic Session under the provisions of RSA 91-A:3 II (a) "The dismissal, promotion, or compensation of any public employee or the disciplining of such employee, or the investigation of any charges against him or her, unless the employee affected (1) has a right to a meeting and (2) requests that the meeting be open, in which case the request shall be granted." Councilor Mower SECONDED the motion and it PASSED unanimously 7-0.

The Council went into Nonpublic Session at 10:54 pm.

The Council returned to public session at 11:22 PM.

Councilor Niman MOVED to seal the Non public session Minutes. Councilor Smith SECONDED the motion, and it PASSED unanimously 7-0.

Chair Carroll said the Council needed to talk briefly about Administrator Selig's compensation package.

Councilor Niman said the way they had done this before was for the Chair to sit down with the Town Administrator and negotiate a proposal, which was then brought back to the Council. He said the Council then voted this up or down, in public session.

Administrator Selig proposed that his contract be extended for one year, which he said would push out the discussion on renewal of the contract by one year. He said there would be no change to anything other than the salary, which there would need to be discussion about.

He noted that the Council had budgeted for a 2% increase for non union staff, with an additional 1% market adjustment. He provided details on a 20 town survey of town administrator salaries, and said the average mid point salary was \$104,096, the lower salary was \$95,000 and the upper level salary was \$113,749. He said his present salary was \$101,630, which was about 2.5% below the mid point.

Administrator Selig said based on his performance evaluation, he was between very good and excellent, so there was a divergence between what he was being paid vs. his performance. He noted that he hadn't taken a wage increase in 2 years, in order to set an example and in recognition of the difficult economic environment. He said the market for town administrators continued to go up for that range, and he urged the Council to be as

competitive as possible. He said thinking long term, if the Town wanted to keep him, this was a factor he looked at in addition to the great quality of life in Durham, and the fact that he had roots here now.

There was discussion that the last two cycles, the contract had been renewed for one year.

Administrator Selig said the other parts of the contract were middle of the road in terms of what was out there.

Chair Carroll said they would take this up at the next Council meeting, and would finalize the compensation number at that time.

XIII. Extended Councilor and Town Administrator Roundtable

Councilor Gooze said the library committee was still meeting with the design team and the library consultant, and should have the design finalized in a few months.

XIV. Adjourn

Councilor Niman MOVED to adjourn the meeting. Councilor Stanhope SECONDED the motion, and it PASSED unanimously 7-0.

The meeting ADJOURNED at 11:20 PM.

Victoria Parmele, Minutes taker