

This set of minutes was approved at the May 2, 2011 Town Council meeting

**Durham Town Council
Monday March 21, 2011
Durham Town Hall - Council Chambers
7:00 P.M.
MINUTES**

MEMBERS PRESENT: Council Chair Diana Carroll; Council Chair Pro Tem Neil Niman; Councilor Julian Smith; Councilor Peter Stanhope; Councilor Robin Mower; Councilor Jay Gooze; Councilor Bill Cote; Councilor Kitty Marple; Councilor Jim Lawson

MEMBERS ABSENT: None

OTHERS PRESENT: Town Administrator Todd Selig, Public Works Director Mike Lynch; Town Engineer Dave Cedarholm; Town Clerk Lorrie Pitt; Wastewater Treatment Plant Supervisor Dan Petersen

I. Call to Order

Chair Carroll called the meeting to order at 7:02 pm.

II. Approval of Agenda

Chair Carroll welcomed new Councilors Kitty Marple and Jim Lawson, and thanked them for stepping forward to serve on the Town Council. She also noted that Councilor Julian Smith was beginning his third term on the Council, and thanked him for wanting to serve again.

Councilor Smith MOVED to approve the Agenda. Councilor Stanhope SECONDED the motion, and it PASSED unanimously 9-0.

Chair Carroll noted that Agenda Item XI A should be struck, since Jim Rice, the Town's Assessor, could not be at the meeting, and would be making his presentation to the Council at a future meeting.

The motion to approve the Agenda, as amended, PASSED unanimously 9-0.

III. Swearing in of Council Members

Town Clerk Lorrie Pitt swore in the new as well as returning Town Councilors.

IV. Selection of Council Chair and Chair Pro Tem

Chair Carroll suggested that they should wait until all nominations were made before voting.

Councilor Gooze MOVED to nominate Diana Carroll to serve again as the Chair of the Town Council. Councilor Mower SECONDED the motion.

Councilor Gooze said he thought meetings had been run well, and that things were getting done, with Councilor Carroll as the Chair of the Council. He said he appreciated the work she had done.

Chair Carroll said she would be honored to serve in that capacity again if chosen.

The motion PASSED 8-0-1 with Councilor Niman voting against it.

Chair Carroll thanked Councilors for the vote of confidence.

Councilor Stanhope MOVED to nominate Councilor Gooze as Chair Pro Tem. Councilor Mower SECONDED the motion.

Councilor Stanhope said he had seen Councilor Gooze serving as Chair of the ZBA, and knew that he could step in at a moment's notice to serve as Chair of the Council if needed.

Councilor Smith said he hoped that when Councilor Gooze did chair a meeting, he wouldn't use the ZBA practice of asking Council members to explain their votes.

Councilor Gooze said he liked to have a full discussion

Councilor Mower said she thought many members of the public would probably concur with that, but said she was sure that Councilor Gooze would respond appropriately given the circumstances.

Councilor Gooze said he would, and thanked Councilors for their support.

The motion PASSED unanimously 9-0.

V. Special Announcements

Presentation of \$52,454.00 from Public Service of New Hampshire through its New Hampshire Saves At Work program for installing energy efficient aeration blower equipment at the Durham Wastewater Treatment Plant

Chair Carroll introduced Gary Lemay and Catalina Celentano of PSNH as well as Wastewater Treatment Superintendent Dan Petersen, DPW Director Mike Lynch and Town Engineer Dave Cedarholm.

Mr. Cedarholm said the improvements involved replacing the four old aeration blowers at the plant, which had been generating up to \$18,000/month in energy bills, with new ones that were 30% more efficient. He said the old blowers were large and loud, while the new ones were about twice the size of a tall file cabinet and hummed, and said the difference was amazing. He said Wright Pierce had done a wonderful job.

He said the electricity bills were already dropping, and said it was expected that the new blowers would pay for themselves in 4-5 years. He noted that the Town had received a 50% grant, and said with rebate, they would put the money back into the plant and hopefully install a solar heating system. He said the building was currently heated with electricity.

Dan Petersen said the old blowers ran at about 17,000 rpm, and the new ones ran at about 30000 rpm. He said the old ones had bearings and were belt driven, while the new ones had no bearings, so there was no oil and no friction. He said this was where the big energy savings came from. Mr. Cedarholm and Mr. Petersen said there was much more flexibility with the new blowers, and said they were extremely excited about it.

Mr. LeMay from PSNH said NH Saves was a great program. He explained that the company offered rebates, and said towns should take advantage of this because PSNH customers paid a systems benefit charge that went toward the program. He explained that towns got to choose the project, and said that after analysis of whether the payback for the project Durham had chosen met the program requirements, PSNH had given it the go ahead.

Chair Carroll said this sounded like a program that was an incentive for energy conservation and efficiency.

Mr. Lemay agreed, and said it was in fact incentive based. He said the Town of Durham had taken advantage of rebates in the past, and hoped it would do so again in the future. He noted that this project had been a custom project that had required a lot of work..

Administrator Selig noted that the Town had just gone through an RFQ process to select a partner to help the Town assess what kind of energy improvements and retrofits it could make. He noted that the Town had selected Revolution Energy, which was based in Durham. He said this rebate provided \$50,000 in seed money for whatever the new project would be at the Wastewater treatment plant.

Councilor Smith said it was ironic that the Town was being offered the \$52,000 rebate, but was also being asked to pay out \$52,000 for the overage on the pumping station. He said the two seemed to cancel each other out.

Chair Carroll said they would have a chance to talk about that when they got to that item on the Agenda. She also said that more and more, energy efficiency was becoming a reality. She said when there was money offered as an incentive for energy conservation, this was making it even more real, and was indicating that it would n fact be rewarded.

Mr. LeMay said if he could just get PSNH customers started with energy efficiency and they started getting some money back, this opened their eyes, and could then lead to some bigger and bigger improvements. He noted that Durham had started with some very small rebates.

Chair Carroll thanked PSNH for the rebate, and also thanked DPW staff for stepping forward to apply for it.

VI. Approval of Minutes

November 8, 2010

Page 1, motion on the page should read "...unanimously 7-0."

Page 2, 2nd paragraph should read "...and said Mr. Nolan Lushington had been in..."

2nd paragraph from bottom, should read "...and SMP Architects of New London..."

Bottom paragraph should read "...had budgeted, and more than what was in the..."

Page 9, 4th paragraph, should read "...was the new addition to the tax base..."

Page 13, 5th paragraph, should read "...concern about how high the demand..."

Page 18, motion to adjourn should read "...PASSED unanimously 7-0."

Councilor Smith MOVED to approve the November 8, 2010 Minutes as amended. Councilor Mower SECONDED the motion, and it PASSED 5-0-4, with Councilors Stanhope, Cote, Marple and Lawson abstaining because they were either not at the meeting, or not on the Town Council yet.

February 7, 2011

Page 12, 5th paragraph, should read "...some were blue collar oriented..."

Page 13, 3rd paragraph from bottom, should read "...build to the rear and would therefore..."

2nd paragraph from bottom, should read **CHECK**

Page 14, 3rd paragraph, should read "...from the Grange heading up Church Hill..."

Councilor Smith MOVED to approve the February 7, 2011 Minutes as amended. Councilor Mower SECONDED the motion, and it PASSED 6-0-3, with Councilors Gooze, Marple and Lawson abstaining because they were either not at the meeting, or not on the Town Council yet.

February 7, 2011 (Nonpublic Session)

Councilor Cote MOVED to approve the February 7, 2011 Nonpublic Session Minutes as amended. Councilor Niman SECONDED the motion, and it PASSED 6-0-3, with Councilors Gooze, Marple and Lawson abstaining because they were either not at the meeting, or not on the Town Council yet.

VII. Councilor and Town Administrator Roundtable

Councilor Gooze said the library people would meet on Tuesday, and said the following week there would be a discussion with the build team about the actual pricing to see if what was proposed looked reasonable or if changes needed to be made.

He said the Rental Housing Committee hadn't met recently. He noted that there was some signage that would be put up in the neighborhoods. He said Ann Lawing of UNH had been doing a tremendous job in getting information out to the rental properties in Town that were particularly egregious, through hand delivering letters, etc. He said mailings were also going out for the spring term to real estate people about the rules in Durham.

Councilor Stanhope noted that at one point, the RHC had been looking at the idea of licensing/registration, and asked what the status of this was. He noted that he hadn't formed an opinion on this approach, and said he had hoped that competition in the marketplace would make landlords more attentive to their buildings.

Councilor Gooze noted the concept of giving a student rental property a seal of approval, which the University was hopefully getting on board with, and said it could include some kind of inspection of properties. He said information on properties receiving the seal of approval could be compiled and sent out to parents. He said the RHC was discussing this approach.

Councilor Mower said she thought this seal of approval approach would be a voluntary program, where landlords would request a health and safety inspection through the Town, and the University would only be involved in terms of providing the list of properties.

Councilor Gooze said the incentive for a landlord would be to be on this list.

Councilor Stanhope said he remained concerned that there were number of landlords who didn't do work on their properties because this would trigger an inspection by the Code Officer. He said he was troubled about how the Town would address this situation, which was a health and safety issue.

Councilor Gooze suggested that Councilor Stanhope should bring this up to the Council representative to the RHC.

Councilor Marple asked if anyone had picked up a sign yet for their property that said "A family lives here", and was told no. There was discussion that the idea was new.

Administrator Selig provided an example of the sign, which came from the town of Plymouth and had been provided to the RHC by Paul Berton. He said there 40-50 signs available, and said they were free of charge to homeowners. He also noted that the Town was putting together some welcome to the neighborhood signs.

Councilor Mower said if a Councilor could convince a landlord who was in favor of these programs to come to the RHC meetings and make suggestions that would be helpful. She said there was minimal representation by the landlords at those meetings, and said those coming forward might be able to sway others.

Councilor Smith said the Planning Board had met on March 9th, and approved an application to convert the Hickory Pond Inn to an elder care/assisted living facility. He also said the deliberations continued on the Capstone applications.

He said there would be a public hearing on Wednesday for an application for a small takeout restaurant in a concession trailer on the Kostis property next to the Don Thompson building, which would be located on the land the Kostis family had purchased from the Town. He also said there would be a public hearing regarding the proposed new UNH Business School building, which was being held as a courtesy to the Town.

Councilor Smith said the deliberations on the Capstone applications would continue on Wednesday, and said he expected that it would be a long evening.

Councilor Mower said the Energy Committee had recently met with the Planning Board concerning an energy checklist for the Planning Board to go over with applicants. She said it was also suggested at the meeting that this checklist be provided to people applying for building permits, and said it had been a very positive meeting.

She said at the Capstone deliberations at the March 9th Planning Board meeting, the Conservation Commission's recent communications to the Planning Board were discussed. He said there was a lengthy discussion by the Board on the memo on the Conditional Use permit application as well as on the memo concerning the conservation easement, and said each point the Commission had raised was gone through carefully. She said there hadn't been any true deliberation yet by the Board. She also said some additional information had come forward that would need exploration.

She said the Master Plan survey committee had finalized the survey, which would be reviewed by the Planning Board on Wednesday, and should be going out to the public soon. She provided details on this and said she hoped for deadline for completion of the surveys was April 25th.

Councilor Mower asked if the Town had received an explanation of the cutting of the NHDOT projects for Durham, and whether there was a sense of why these specific projects were cut as compared to other town projects.

Administrator Selig said there was a long list of projects throughout the region and the State that had been cut. He noted that there would be an \$85 million shortfall if the State ultimately approved a bill to rescind the \$35 surcharged on motor vehicle registrations. He said there was no further explanation from NHDOT on this.

Councilor Mower asked if it would be useful to find out where Durham stood concerning going forward, and Administrator Selig said it might be.

Councilor Mower asked for clarification on the role of the Design Guidelines review panel/committee for the Business Park. She said it was her understanding that the guidelines themselves were not open for discussion at this point.

Administrator Selig said that was correct, and noted that they were established by the Council and integrated into the Purchase and Sale agreement for the property. He said the committee was the final arbiter of whether a project was consistent with the guidelines.

Councilor Mower asked if Councilors or members of the committee could suggest changes to the guidelines to bring to the table.

Administrator Selig said with any project brought forward, there would be a series of hurdles, noting that the first was the design guideline committee, and then there was the Planning Board's review process. He said he thought Chinburg Builders was very open to suggestions, so if people had them, they should make them. He noted that the company would be under no obligation to comply with the suggestions.

He said the guidelines were very general, concerning the look and feel of the property. He noted that there was no project for the committee to look at to date, and said Chinburg Builders was currently talking with Great Bay Aquaculture. He said they were targeting the summertime to bring something forward to the Planning Board.

Councilor Mower noted that on the Unanimous Consent Agenda, there was an item regarding the role of Strafford County in addressing issues of regional concern. She also noted that the Town was updating its Master Plan, and said according to State statute, there could be a chapter that addressed regional concerns. She suggested that the Council should at some point discuss the possible benefits of having such a chapter and provide a recommendation through the Council representatives to the Planning Board about such an idea.

She noted that the towns of Jaffrey, Richmond, New London, Derry, etc. included such a chapter. She said Derry's chapter included the following regional concerns, which had emerged from the community profile done there:

1. Retain agriculture and farms.
2. Prevent watershed contamination.
3. Mitigate traffic issues.
4. Determine future feasibility of Exit 4A.

Councilor Mower said she had discussed New London's master plan chapter on Regional Context with a staff member in charge of their master plan update process there, and had sent here the current draft along with an email, noting that UNH was big in Durham and surrounding communities. She said the email also said Durham was also an upscale residential community that responded to growth that was generated by many other seacoast commercial drivers like Pease, Portsmouth, etc., and that there was no question that the Town needed to look beyond its immediate borders in order to plan effectively.

She said the Town might benefit from a regional discussion about traffic and transportation issues, and noted some possible issues concerning Back River Road, what happened when Pease was built out, floodplain management, etc.

Councilor Cote noted that he, Councilor Mower and Councilor Smith had recently met at La Paz Taqueria to sample the menu there. He said the food was very good, and noted that there was a very experienced chef there. He said they hoped it would be a welcome place in Town to dine.

He said the Local Government Center, through its Health Trust, had formed a health and safety coordinator academy. He said Gail Jablonski would be attending a full day academy workshop, and he provided details on how the program would develop. He said hopefully it would contain healthcare costs, and would also promote a healthy workforce.

Councilor Gooze said he had watched recent Planning Board meetings where work was being done on rewrites to some Zoning provisions. He said the Council hadn't really talked about this list of provisions that was recommended by the B. Dennis report, yet the Board was moving forward with them. He asked whether it was perhaps appropriate for the Council to have some discussion on where it stood concerning these recommended changes to the Zoning Ordinance, and which parts should be implemented. He said it could save some duplication of effort if this was done sooner rather than later.

Councilor Smith noted that there had been discussion with consultant Beth Della Valle last week on recommendations coming out of the B Dennis charrette and report. He said these would come to the Council at a later stage, but said there would be a Planning Board public hearing on them first, so this was still a ways off. He said there were a number of small changes being worked on, and a number of substantial changes as well, particularly those concerning cutting back on the Conditional Use process.

Councilor Gooze asked Councilors if they wanted to wait for the recommended changes to come to the Council, or would prefer to discuss them sooner than that.

Administrator Selig said the B Dennis report was the result of a collaborative process, and said the report recommendations reflected what community members had contributed to this process. He said it appeared at the time that there was a lot of consensus around many of those ideas, and said the suggestions were consistent with what his understanding was of the look and feel for the Town that Durham would want to achieve. He said the B. Dennis report recommended some near term changes to make now, before revising the Master Plan, and said some other recommendations could form the foundation of that process, so there wouldn't have to be yet another visioning forum. He said Ms. Della Valle's information represented the short term fixes, and noted that he had instructed Mr. Campbell to have her bring these forward to the Planning Board. He said his thought was that the Planning Board would vet them, hold hearings, and then bring them to the Council, which would then decide whether it liked them.

He noted that the B. Dennis report had also recommended that a fiscal analysis, a downtown parking report, and other information be developed. But he said if the Council wanted to have a conversation about whether it liked what had come out of the B. Dennis process that was fine too.

Councilor Gooze said some of the proposed Zoning changes were very long term, in terms of their effects on the Town. He noted that Zoning implemented the Master Plan, and said when he saw these long term effects being discussed, this seemed backward. He said he realized that all of this would be vetted, but said he wasn't sure where the Council stood in regard to this process.

Administrator Selig noted that while the Council might want to provide guidance on the Master Plan, it was a Planning Board document, and the Town Council didn't approve it.

Councilor Gooze agreed, but said he just wanted to be sure that things were being done in the right order. He said he was for whatever the Council wanted to do, and just wanted to be sure that he had brought this issue up.

Councilor Stanhope asked if it would be helpful if the Town Planner provided the Council with a summary of the bullet points before the Planning Board, and circulated it to Councilors. He said if individual members then felt strongly that the Council should offer an opinion concerning any of them, this could be put on an agenda, and a Council Communication could be developed concerning it.

Councilor Gooze said the Planning Board was very busy, and said this process, which would be a long one, took up a lot of their time. He said Councilor Stanhope's suggestion was a good one.

Councilor Smith agreed, but noted that the Planning Board was only part way into the process, and that Mr. Campbell had a lot on his plate. He said he hoped Councilor Gooze would report back to the Council on what was going on with these Planning Board discussions.

Councilor Mower asked who owned the B. Dennis plan, and Administrator Selig said he believed that it was a Town document. He noted that many of the Council's goals had been worked around it.

Councilor Mower agreed, and said it seemed that the Council had a stake as to whether those Council goals were translated well to the Zoning rewrite. She said it would have been ideal to have bulleted recommendations.

Administrator Selig noted that they were very clear in the report.

Councilor Mower said she had gotten a sense that there was not always a tight tie back to the B. Dennis report, and said perhaps there should be.

Councilor Gooze asked Councilor Niman for his perspective.

Councilor Niman said the Council had commissioned the work of the B. Dennis team because of a fear that they weren't getting the downtown they wanted, the fact that the Master Plan hadn't thought of these things, and the fact that the Zoning Ordinance was precluding them from having the kind of downtown they wanted. He said he agreed with Councilor Gooze that the Town should go through the Master Plan process, but noted that the concern had been that his process took a very long time, and in the mean time, they were shooting themselves in the foot.

He said right now, the Planning Board was going after the low-hanging fruit with the list it was working with. He said perhaps some of the items on it might be crossing the line, and said he agreed that it was important to be cautious, and not rush into some recommendations. He said he would like greater clarity on whether there were some things that did in fact cross over that line, and said if there were, perhaps a Council discussion was needed on them.

Administrator Selig said the severity in terms of crossing over the line was in the eye of the beholder.

Councilor Gooze agreed that it was still early in the process, and said he just didn't want the Planning Board to waste its time, given all that they had to do. He said he would like to see them focus on the recommended changes that could be done now, and said perhaps the bigger recommendations could wait. He said he was comfortable waiting awhile before the Council saw recommended changes.

Administrator Selig suggested that Ms. Della Valle could attend an upcoming Council meeting.

Councilor Gooze said perhaps it was a bit early for this, but said he was comfortable as long as he knew that would happen.

Chair Carroll said they had found at the Agenda setting meetings that it was hard to frame a discussion on the B. Dennis report. But she said there were things happening now, and said they needed to get those discussions framed and on the Agenda when it was time, so they ended up with what they wanted, and didn't find that a lot of work was done and people weren't happy with it.

Councilor Cote noted the 100th anniversary ceremony the previous week for the Durham Fire Department, where he had represented the Council. He noted that some other Councilors had been there, as were many past members of the Fire Department, and said it was great to see them.

Chair Carroll thanked Councilor Cote for representing the Council, noting that he was the perfect person to do this given his tenure with the Fire Department.

Councilor Mower said Councilor Cote was also the perfect person because he gave a perfect speech. She asked if there was a way to get the videotape of the ceremony onto DCAT, noting that there was a lot interesting history revealed. There was discussion that some people had taped it, and said perhaps it could be put on the Town website.

Administrator Selig provided a number of updates to the Council. He said letters would be sent out soon to property owners in the downtown core and realtors in the Seacoast area on Durham's restrictions concerning no more than 3 unrelated people in a house.

He said last Tuesday, he, Councilor Mower, Councilor Stanhope, Steve Roberts, Mike Lynch, and Mike Sievert went to meet with Dori Wiggins of NHDES concerning a possible modification to the wetland permit for the boat ramp. He said he would do a write up of the meeting.

He said Dori Wiggins was very clear that this project would not qualify for a major dredge and fill permit. He said in her mind, dredging, extending the ramp out much farther, scraping mud off the old ramp was a major project, and the Town would not qualify. He said Ms. Wiggins felt strongly that vehicles trying to launch in the mud was an issue of enforcement, and said they could expect additional enforcement from DES concerning this. He said boat owners should be more cautious.

Administrator Selig said that in regard to the idea of extending the ramp, Ms. Wiggins said 23 ft was what she had permitted, and in determining this, she had taken it on good faith that the numbers concerning depth and length of time available for launching were accurate. He said she was very clear that she would not permit the Town to go any deeper than the existing asphalt there, which was the crux of the issue.

He said the question was whether they had matched in the final piece of concrete log with the asphalt, or if it the asphalt was somewhat below that, and the log came into the dirt. He said when MJS Engineering did the plans, they used the best engineering data they had. He said no one at the table knew that it tied in exactly to where the asphalt was.

He said he had planned to engage the services of an independent third party to determined this. He said the core group would work with the third party so it would be clear to everyone what this person would be doing, and if there could be a bit more slope by going deeper. He said Ms. Wiggin had said the only thing she would allow the Town to do was to remove the logs and reposition them, as long as they didn't go below the asphalt.

Councilor Gooze asked if the funds for this would come out of the \$6,000 the Council had authorized for the ramp.

Administrator Selig said yes, and said the work would involve data gathering.

Councilor Mower said there would be no cutting into the sides, but possibly some rock replacement.

Administrator Selig said the Town had received DCI's second draft of the economic analysis of the downtown, and said he hoped it would be ready to distribute soon. He said he was also working with Rick Chellman, who had developed the downtown parking report. He said this would be sent on to Councilors, and said from this would come forward some short term recommendations for metering the spaces on Pettee Brook Lane, which would involve some form of automated metering system. He said there were recommendations for expanding this approach throughout the downtown core.

Councilor Mower asked if the terms of the metering could be adapted to fit with the larger plan for the downtown, and Administrator Selig said yes.

Administrator Selig noted that there was now live streaming of DCAT videotaped meetings on the Town website. He said as part of this, people could scroll through the agenda to watch the particular section they were interested in.

He provided details on the number of properties seeking tax abatements for 2008-2010, and the amount of exposure the Town had if abatements were granted for the full amount being requested. He said he would be re-scheduling with Mr. Rice so he could provide the Council with further details on this.

Administrator Selig said he had recently met with the Kane Company regarding the idea of a possible hotel project for Durham, and said the company remained interested in the idea. He noted that there had been several development companies that had visited Durham in the past, including the Sora Holdings, which had previously tried to acquire Mill Plaza. He said he had asked him to come to Durham for a meeting, and had also invited Councilor Niman to be there. He said there had been a very productive discussion, and noted that the company was quite motivated about Durham.

He said some additional feedback was expected from Sora over the next few weeks. He said he had also arranged a meeting for Sora to talk with University officials to see if there was any room for a partnership between them to do a development project downtown.

Administrator Selig said developer Peter Murphy was in discussions with the Town concerning the Grange property, and said he expected to see a revised proposal on this.

Administrator Selig noted that the following day, he would provide comments to a Senate committee in Concord regarding SB 120, which would legalize the advertising for happy hours and alcohol sales outside of establishments. He said his message would be that there should be a local opt out provision, in order to allow for local control.

He said that regarding discussions with the Department of Public Works ASCME unit, the Town's negotiating team had gone back to the table. He said there had been an initial meeting, and said he hoped they were on track to have another meeting this month about a successor contract.

Administrator Selig noted that there was a very nice new business in Town, named What a Crock, that was not a typical student dive.

VIII. Public Comments (NLT 7:45 PM)

There were no public comments.

The Council stood in recess from 8:30 to 8:37 PM.

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

- A. **RESOLUTION #2011-08** establishing regular Town Council meeting dates for April 2011 through March 2012
- B. **RESOLUTION #2011-09** expressing the Town of Durham's desire to participate in regionalization exploration efforts with communities throughout Strafford County in order to explore and potentially realize cost savings opportunities for the Durham community
- C. Shall the Town Council, upon recommendation of the Town Administrator, approve an amendment to the engineering construction phase contract with AECOM USA, Inc. for the Dover Road pump station rehabilitation project and authorize the Town Administrator to sign said contract amendment?
- D. Shall the Town Council authorize the Town Administrator to execute on the Town's behalf a subordination or partial releases of the Town's mortgage from Grant Drive development, provided it meets the requirements for issuance of the subordination as contained in the deed and Commercial Promissory Note to Grant Drive development, and provided that the document is reviewed and approved by the Town Administrator and the Town's legal counsel as properly protecting the Town's interests?

Chair Carroll said there had been a request to remove items A and B from the Unanimous Consent Agenda.

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

Councilor Mower asked if Councilors would consider changing the December 19th meeting to December 12th, and reserve the 19th if needed for Budget purposes. She noted that December 19th was close to Christmas.

Councilor Mower MOVED to change the regular meeting date of December 19th, 2011 to December 12, 2011. Councilor Marple SECONDED the motion.

Councilor Gooze said it would be great if the Council didn't have to have an extra meeting on December 19th.

Administrator Selig said moving the meeting to December 12th was ok.

The motion PASSED unanimously 9-0.

Councilor Smith said that regarding Unanimous Consent Agenda item B, the only person representing the Town was Ms. Jablonski, and asked if Council members were invited.

Administrator Selig said no, and said he had sent Ms. Jablonski as the Town's representative. He noted efforts already made by Durham concerning regionalization of services, and said other towns in the region were now looking at this approach.

He said services he thought there might be some benefit in evaluating were assessing, using a single methodology, and welfare.

Councilor Smith said he would like to vote against this item, and said this was his primary reason for pulling it off the agenda. He said he didn't wish to express interest in this effort, although others would probably want to do so.

It was noted by Chair Carroll and Administrator Selig that this Resolution was just to allow exploration of possible regionalization efforts with other communities in the county. Administrator Selig said he would brief the Council on whatever came out of this effort, unless it seemed very minor. He provided details on this.

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

X. Committee Appointments

None

XI. Presentation Items

- A. Status report relative to the appeals process and update on 2008-2010 property tax abatements and appeals – Jim Rice, Assessor, Cross Country Appraisal Group, LLC

Postponed

- B. Applications for the Community Revitalization Tax Relief Incentive Program (RSA 79-E) submitted by Bosen & Springer, PLLC, on behalf of Matthew Crape, for properties located at 8 Jenkins Court and 9-11 Madbury Road – Christopher P. Mulligan, Bosen & Springer, PLLC

Councilor Stanhope said he would recuse himself for this Agenda item, noting that he was negotiating with the applicant concerning an abutting property.

Attorney Chris Mulligan spoke before the Council, and noted that the two applications from Mr. Crape would be presented together. He reviewed the purpose of RSA 79-E. He then showed slides and discussed the original buildings on the 8 Jenkin's Court property and what they had been replaced with. He said the pictures clearly showed that there was a severe loss of historic integrity with this project, and also said no piece of historic structure remained. He showed slides of the replacement structure, which he said was a handsome, code compliant mixed use building.

Attorney Mulligan next reviewed the structures still in place at the 9-11 Madbury Road property, which he said would be replaced with an elegant mixed use structure that would be more oriented toward the streetscape, and would be a showpiece in Town.

Attorney Mulligan reviewed the qualifications of the properties under RSA 79-E.

- Property located in Central Business District
- Architectural historian and Heritage Commission provided reports
- Redevelopment is consistent with the Spirit of the Act

He said neither property was found to have any significant historical or cultural value at the time his client acquired them. He said the request for relief required that the applicant establish a public benefit. He said under the Statute, it had to be found that the replacement provided one or more public benefits to a greater degree than rehabilitation of the existing building would have:

- Enhances economic vitality of downtown
- Enhances structures cultural or historical importance
- Development of municipal centers
- Increase residential housing in Town centers

Attorney Mulligan said the applicant believed that the applications met the first criterion, regarding enhancing economic vitality of downtown. He said the amount of retail and office space for 8 Jenkins Court property was more than doubling, and the number of residential opportunities was increasing from 8 student beds to 60 beds.

He said at the 9-11 Madbury Road property, the amount of retail and office space would triple, and also said a significant number of residential opportunities would be added there. He said it would engender a larger consumer base in the Central Business District, and would encourage the mixed use environment that the Master Plan spoke about. He referred to the Master Plan citations that related to this.

Attorney Mulligan reviewed how his client's projects provided a public benefit in terms of development of municipal centers, and noted that the Jenkins Court project, which had been substantially completed, would encourage other private developers to meet that standard. He said the Town should expect existing landlords to meet the bar that had been set.

He said because this was dense, mixed use development downtown, it would promote a pedestrian friendly environment. He said increasing housing in the downtown core was important to Durham, noting that students in the residential neighborhoods had been an ongoing problem. He noted Master Plan citations that spoke to the public benefit of development of municipal centers.

Attorney Mulligan noted that only one public benefit needed to be found in order to grant relief under RSA 79-E, but said yet another public benefit created by these two projects was providing an increase in residential housing in town centers. He said the two projects clearly met that criterion by a significant margin. He said better quality housing would

result in better quality tenant behavior, and said Mr. Crape intended to raise the bar for other residential developments in Town. He provided Master Plan citations that related to this public benefit.

Attorney Mulligan noted that there were currently no architectural standards in place for the Central Business District, but said in good faith, his client had provided a quality product, which was a public benefit. He said Mr. Crape intended to do the same with the Madbury Road project.

He said another public benefit was tenant safety, noting that the Jenkins Court property included a keyless entry system, internal memory records of individual tenant traffic, and a high tech camera security system. He said his client was protecting his investment, and was also protecting the community by investing in this technology.

He compared his client's project on Jenkins Court to other recent projects on that street, which did nothing to improve the streetscape. He said his client had spent \$3 million to creating a building that wasn't a student dive. He said for that reason, they believed the applications met or exceeded the criteria under RSA 79-E.

XII. Unfinished Business

- A. Discuss and schedule Public Hearings for Monday, April 4, 2011 on two applications for the Community Revitalization Tax Relief Incentive Program (RSA 79-E) submitted by Bosen & Springer, PLLC, on behalf of Matthew Crape, for properties located at 8 Jenkins Court and 9-11 Madbury Road

Councilor Marple asked how the parking issues would be addressed.

Attorney Mulligan said the project was vetted through the Planning Board process, and met or exceeded the parking requirements.

Town Planner Jim Campbell agreed that the parking issue was addressed by the Planning Board, and explained that the applicant was essentially paying an impact fee into the parking fund.

Administrator Selig noted that these funds could be used for maintenance of the existing parking, or for new parking.

Councilor Mower said there was a question about what happened with pent up parking demand. She said the waiver for parking fees was outdated, but noted that this issue was ancillary to the current topic, and suggested that the Council discuss it at another time.

Councilor Marple noted that there were groundwater issues in that area of Madbury Road.

Councilor Niman said he was having a difficult time understanding the draft covenants.

Attorney Mulligan said these would need to be worked on by the applicant and the Town. He said those that were provided were appropriate to rehabilitation, not a replacement.

Councilor Niman asked what the applicant would be offering the Town, and Attorney Mulligan said the benefit was the increased residential housing downtown, the encouragement of mixed use downtown, and the encouragement of smart growth principles there. Said because it was replacement, not a rehab, the covenant would need to reflect the fact that it was a new building.

Councilor Niman asked what benefit the applicant was prepared to offer other than the building that currently existed on Jenkins Court, in order to get tax relief.

Attorney Mulligan said the statute anticipated that where a rehab wasn't feasible or necessary to protect cultural, historical, architectural benefits to the Town, a replacement structure was also eligible for relief. He said the fact that the project was already further along was not in itself a reason to dismiss the application.

Councilor Niman said he wasn't saying that, but said he was asking if the statute said the Town must offer tax relief if any of the criteria were met.

Attorney Mulligan said the statute offered discretion to the Council to offer tax relief if any of the criteria were met.

Councilor Niman said if there was discretion, the Council wasn't mandated or obligated to offer the tax relief.

Attorney Mulligan said the Town had already offered the relief by adopting the program. He said whether the applications met the criteria was at the Council's discretion. He said the provision of the statute regarding the covenants simply said they would be in place to protect the Town. He said the idea that the covenants had to be some kind of quid pro quo being offered to the Town in order to get the relief went beyond what the Statue authorized. He said he didn't think the Town had the discretion to simply say the building was built so the relief wasn't offered.

Councilor Niman said his question had gone beyond that, but said he would let others speak for now.

Councilor Mower said she shared Councilor Niman's concerns that there wasn't a more final covenant, and said it was key to the Council's decision. She also said she wasn't sure that the Council could approve something on a retroactive basis.

She noted that the Board of Selectmen in Enfield, NH had held a public hearing on the retroactivity issue on July 2, 2007, coincidentally about the rehabilitation of a an old hardware store, i.e., to discuss a property tax abatement requested under the Community Revitalization Tax Relief Incentive Program, RSA 79-E. She read from the Minutes of the public hearing on the application held in 2007:

The owner “thought, after the vote passed in March to adopt RSA 79-E, that they were entitled to an abatement of property taxes for improvements made to their building which is located in the specified area. ...Major improvements have been made to the building itself, the fire escape and the old horse barn. The building is now pleasing to look at and houses an excellent group of tenants. They’ve taken a piece of property in Town and increased the value. They feel they’ve improved the neighborhood.....”

...It was noted that the building improvements made by [the owners] were done primarily in 2006. The Board received an opinion from Attorney Paul Sanders of the NH Local Government Center stating that the Community Revitalization Tax Relief Incentive Program is not retroactive. [The owner] pointed out that improvements are on going.

[The Town Administrator stated that he] would like to contact the Town’s attorney to see if there is a way to give credit for work already done. [He] would also like to meet with [the owners] to discuss their investment into the property

Councilor Mower also noted that the town of Lisbon, NH had dealt with a similar matter. She said the Board of Selectmen held a public hearing on June 18, 2007, and the Minutes showed that:

[The Town Administrator] spoke with legal council regarding RSA 79-E. LGC (Local Government Center) stated if the law does not state you can retroactive a bill, then you must agree that you can’t. Bob Boley from the DRA (Department of Revenue Administration) stated that if there is no language stating, then the State has no jurisdiction and it is a local issue. [One of the Selectmen present] requested [the Town Administrator] contact LGC and get the “legal” opinion in writing.

Councilor Mower said it seemed that the State statute was silent on this matter, which would lead one to conclude that the tax relief was not available retroactively, unless the local government decided to do that. She said the Council had not done this in adopting RSA 79-E.

Attorney Mulligan said he was not familiar with either of the opinions or projects Councilor Mower had made note of, but said it seemed that the opinions could be interpreted either way. He said he was familiar with the adoption of RSA 79-E in Durham, and said the Sigma Beta project was substantially complete at the time its application under RSA 79-E went in. He noted that the application was approved. He said whether or not there had been a specific enabling act by the Council adopting retroactive applicability, it had already done this.

Councilor Mower asked if a certificate of occupancy was a determining factor.

Administrator Selig said the spirit and intent of the statute was for projects that had not come forward yet, and he provided details about the fact that the Town was in an odd situation concerning the buildings that had already been built. He said this was a new Statute, and noted that very few towns had adopted it and even fewer had any experience

with using it.

He said he thought the Town had some flexibility. He said the purpose this evening was to see what was on the table with the applications, to see if Councilors had additional questions for the applicant to answer at the public hearing, and to see if Councilors had additional questions for him to get more information on.

Councilor Lawson said for the Madbury Road project, he didn't see any description of the proposed project other than the handwritten application. He asked if the applicant felt there was a complete application for that property.

Attorney Mulligan said he did feel there was a complete application, and noted that the technical detail had been presented to the Planning Board.

Councilor Lawson said the RSA required a description in the application itself, and not just in the Planning Board documents.

Attorney Mulligan said the technical details could be provided as part of the application if this was desired. There was further discussion, and Attorney Mulligan said he would be happy to supplement the application with this information.

Councilor Lawson questioned the idea of scheduling the public hearing for an application that wasn't currently complete.

Councilor Gooze said part of this came down to whether a project such as this was what the Town wanted in order to promote economic vitality downtown. He said the Council wanted mixed use, and had also talked about workforce housing. He noted that these projects would result in a large increase in the number of students downtown. He said the Council would have to decide if these applications met their criteria, and said the statute said the Council had a lot of discretion concerning this.

He said that regarding the issue of whether a project that had already been built qualified, there was no question that the fraternity was a done deal when that project was granted tax relief under RSA 79-E. He said in a sense, a precedent was set with that project, but said that was not to say that in the future, the Council couldn't make a resolution saying it wouldn't do that. But he said at this point, it hadn't done that.

Chair Carroll noted that the fraternity was a very historical building, and no one was living in it.

Councilor Gooze said that was a reason the Council thought it was a good idea to grant the relief, even though the project was essentially completed.

Councilor Cote noted that RSA 79-E:13 III said "The tax relief granted under this chapter shall only apply to substantial rehabilitation or replacement that commences after the governing body approves the application for tax relief and the owner grants to the municipality the covenant to protect the public benefit as required in this chapter." He said he wondered if the Legislature had already answered their question concerning the Jenkins Court property.

Councilor Mower said it was possible to interpret that clause as saying that the period of tax relief could only start after the decision of the governing body. But she said what concerned her more was that the Agenda has set up a difficult conflict, noting the discussion on RSA 79-E planned for that evening. There was discussion, and Councilor Mower said she thought the Council had expected to have the guidelines in place before an application came in.

Administrator Selig said that wasn't practical, and said the date of the previous Council discussion on RSA 79-E and the receipt of this application were very close together. He said the purpose of the discussion on the agenda now was to address the criteria, because they weren't as clear as the Council would like them to be.

Councilor Mower suggested that the mindset concerning the criteria as a result of that discussion could perhaps be brought to bear in the decision on this application.

It was noted that there were time constraints with this application, and Administrator Selig provided details on this. He also pointed out that the decision the Council made was a discretionary one, but said if the application was denied, it had to give the reasons for doing so.

Chair Carroll asked if the timeframe for the application could be extended. There was discussion about whether the application was complete, and Administrator Selig said it would not be difficult to provide the Council with the technical information on the application that the Planning Board had seen.

Councilor Gooze suggested that the Council should schedule the public hearing, and in the mean time Administrator Selig would get input from the Town Attorney regarding the retroactive nature of the Jenkins Court property. He said if the opinion of the attorney was that the Council didn't have to approve the application because it was retroactive, that would be a reasonable reason to deny the application.

Administrator Selig said that approach sounded reasonable. He noted that while there had been some verbal communication with the Town Attorney on this issue, it would be helpful to have something in writing. He also said there had been a detailed historical analysis of the properties.

Attorney Mulligan said Mr. Crape had been before the Heritage Commission/HDC in August of 2010.

It was noted that the project was complete at that time, but there was no certificate of occupancy. Mr. Campbell said on August 31, 2010, Mr. Crape received a temporary certificate of occupancy for the second and third stories, and said he had been before the Heritage Commission earlier in August.

Administrator Selig said he had interpreted the Statute as saying that for a tear down, in order for the Council to properly determine whether a proposed redevelopment was more

beneficial than the existing structure, it should have the opportunity to weigh in before the existing structure was eliminated. But he said the Town Attorney didn't feel the statute was clear on that.

Councilor Smith said the Council needed to schedule the public hearing. He said there were two buildings involved, one of which was built, and one of which wasn't. He said he thought the spirit of the RSA was to encourage rehabilitation and redevelopment, and said Mr. Crape didn't need any encouragement for the Jenkins Court project. But he said he felt the Madbury Road project met that condition.

He said regarding the issue of whether the application was complete, the application form said to attach materials that helped illustrate the project. He said he thought the applications for both buildings were complete, and said they should schedule the public hearing. He said the retroactive issue could be researched before the hearing.

Chair Carroll also noted that some new information had come in that evening.

Councilor Niman said he hadn't meant to get caught up in the retroactivity issue. He said he would like Administrator Selig to ask the Town Attorney to clarify the extent to which the Council was allowed to apply discretion. He said a question he had was whether Durham could decide it didn't want to encourage just any kind of residential housing downtown, and did want to support certain kinds of housing that catered to adults and not students, as a public benefit. He also said a question would be whether merely constructing retail square feet was a public benefit in terms of enhancing the economic vitality downtown, or if there was discretion in terms of how that square footage was used.

Chair Carroll asked Councilor Niman if would be willing to work with Administrator Selig on this issue, noting that time was of the essence. Councilor Niman said he would be fine with this.

Councilor Mower said she hoped that concerning the issue of discretion in evaluating whether a project enhanced economic vitality, they would go beyond structures. She said there were planning elements that encouraged vitality downtown, such as public gathering places, greenways, pedestrian facilities, etc.

Councilor Smith MOVED to schedule the Public Hearing for April 4th, 2011 on two applications for the Community Revitalization Tax Relief Incentive Program (RSA 79-E) submitted by Bosen & Springer, PLLC, on behalf of Matthew Crape, for properties located at 8 Jenkins Court and 9-11 Madbury Road. Councilor Mower SECONDED the motion, and it PASSED unanimously 8-0.

Councilor Gooze suggested that perhaps Councilor Marple or Councilor Lawson could meet with Councilor Niman on this issue, noting that he had a lot on his plate at the moment.

Chair Carroll said she wanted to speak for the Houghton's Hardware building, which had had a lot of charm and character. She said the Houghton family had run the business well, and said it was missed. She noted that people now needed to use precious energy to go to a hardware store out of town.

Attorney Mulligan said he couldn't agree more, and said he had spent a lot of time and money at that store when he lived in Durham. He said he hadn't meant to cast aspersions on the property.

Mr. Campbell noted that the Council would have 45 days after the public hearing to make its decision.

Councilor Stanhope returned to the table.

B. Discussion on draft resolution regarding enhanced guidelines for use by the Town Council in considering applications under RSA 79-E, Community Revitalization Tax Relief Incentive

Administrator Selig said he'd planned to sit down with Councilor Niman and Councilor Stanhope on this, but had not done so because of time constraints. He said he instead had put something together for the Council to look at. He said he had revisited the rationale for adoption of the statute, in the Resolution, and had offered suggestions in terms of defining what the "public benefit" might be, specifically regarding the vitality of the downtown.

He said he had also suggested language regarding the financial evaluation that had to be done in terms of weighing the duration of the tax benefit to be provided. He noted specific wording he had provided in the Resolution concerning these things.

He next explained how he had expanded upon the criterion concerning enhancing the economic vitality of the downtown, and said a project would need to accomplish three or more of the eight objectives he had listed. He read through these objectives, and noted some themes in them were to create an environment that was not just for students, and a walkable/bicycle-friendly downtown.

Administrator Selig said in the revised III, which dealt with development of municipal centers, he had spelled it out that RSA 9-B encouraged smart growth. He said for IV, he had expanded the existing language to say "It increases residential housing in urban or town centers resulting in well managed and well designed (including external features and internal floor plans) multi-housing stock that can both provide for the community with a variety of housing types (i.e., student, non-student, affordable, senior, workforce housing), and also be a fiscal benefit to the community."

He said in the final Whereas, he had said "...the duration of the tax assessment relief shall be considered in the context of each specific application, and shall only provide that level of tax relief necessary to effectuate the specific targeted public benefit outlined as determined by the Town Council." He said the Town should not provide the relief unless

the benefit could not happen without the relief being provided, and said that would allowed the Town to put in the covenant that certain things would happen, because if they didn't happen, the relief would go away.

Councilor Smith said this last Whereas got to the issue of retroactivity.

Councilor Gooze said he was still trying to determine where the discretion was, with this wording.

Councilor Smith said the Council had this discretion, and needed to put its decision in writing. There was discussion that an applicant could appeal a decision.

Chair Carroll said she understood that there needed to be more criteria as to why the Council would approve an application or deny it. She said they were all trying to sort this out.

Councilor Mower said she couldn't believe that the Council would be held hostage concerning just any property that simply increased residential housing in Town, and said there had to be discretion available concerning this, if the Council enumerated the reasons why there didn't seem to be a public benefit.

Councilor Gooze said that was his concern, about projects that might result in more police presence, etc.

Chair Carroll said she was hearing consensus that the Council didn't want to grant this relief for every student housing project.

Councilor Niman said he wasn't going so far as to say there had to be affordable, workforce housing, but said he thought that in order to get the tax relief, the housing needed to be configured so other people than students could live in them. He provided details on this, and said the Council wanted to encourage a more diverse population downtown. He said that was the public benefit, and not to simply increase the amount of housing in Durham.

Councilor Stanhope said he regretted that there wasn't a discussion on this before the Sigma Beta application was voted on. He also said that when this law was enacted, he thought there would be a supporting financial need outlined in applications, indicating that the tax incentive would make a project economically viable. He said he thought the criteria needed to reflect this, and said it seemed that the projects the Council was looking at didn't need this incentive.

Councilor Smith said he agreed. He said if someone wanted a law office in the Red Tower, or perhaps senior housing there, the Council would be more likely to give weight to that application than to some other application to tear down an ugly old building and replace it with an ugly new building.

Councilor Cote referred back to the retroactivity issue, and said he thought the verbiage that addressed this already existed in the statute.

Councilor Stanhope said he didn't think there would be a lot of retroactive applications. He said the Council had probably made a mistake with the Sigma Beta application.

Councilor Gooze said from a Zoning perspective, one decision didn't set a precedent.

Councilor Niman said he didn't think the Council was wrong with the Sigma Beta application, because it was a step forward in trying to change Greek culture in Durham. He said he thought there was a tremendous public benefit with that, and also said the applicants had taken a huge financial risk in effectuating that change.

Councilor Stanhope said the Council should have had its criteria in place first.

Councilor Gooze said perhaps Administrator Selig should redefine the criteria in terms of what a project really did for the Town.

Councilor Mower said what Administrator Selig had outlined quite specifically as examples of public benefit had provided much more guidance.

Administrator Selig said it was becoming more apparent that a better way to approach this was to strip out the enhancements he had provided to this section, and to provide a new section that said that "...in fulfilling its local discretion, the governing body, in addition, also will consider whether the proposed project meets these things."

He said in this way, even if someone made a plausible case that a project qualified under the existing section, the Council could still say that wasn't enough, in terms of the things it wanted to see. He said this would be an additional screening of a project for Durham specifically. He said he would raise this issue in talking with the Town Attorney about the retroactivity issue.

Chair Carroll said this had been a fruitful discussion, and said it sounded like they were on the right track.

The Council stood in recess from 10:08 to 10:11 PM.

XIII. New Business

- A. **PUBLIC HEARING AND ACTION ON RESOLUTION #2011-10** authorizing the acceptance and expenditure of a rebate in the amount of \$52,454.00 as unanticipated revenues from Public Service of New Hampshire through its New Hampshire Saves At Work program for installing energy efficient aeration blower equipment at the Durham Wastewater Treatment Plant

Councilor Smith MOVED to open the Public Hearing on Resolution #2011-10 authorizing the acceptance and expenditure of a rebate in the amount of \$52,454.00 as unanticipated revenues from Public Service of New Hampshire through its New Hampshire Saves At Work program for installing energy efficient aeration blower equipment at the Durham Wastewater Treatment Plant. Councilor Mower SECONDED the motion, and it PASSED unanimously 9-0.

There were no members of the public who came forward to speak.

Councilor Smith MOVED to close the Public Hearing. Councilor Mower SECONDED the motion, and it PASSED unanimously 9-0.

Councilor Smith MOVED to adopt Resolution #2011-10 authorizing the acceptance and expenditure of a rebate in the amount of \$52,454.00 as unanticipated revenues from Public Service of New Hampshire through its New Hampshire Saves At Work program for installing energy efficient aeration blower equipment at the Durham Wastewater Treatment Plant. Councilor Marple SECONDED the motion.

Councilor Gooze noted that a constituent had emailed him to ask why this money wouldn't instead be put in the General Fund and used to reduce taxes.

Administrator Selig explained that the funds raised and used for the wastewater treatment plant were from the sewer fund, and said only people on the sewer system contributed to that fund. He noted that it would be possible for the Council to receive this as general revenue to offset costs within the sewer fund, but said it would not be appropriate to return the money to the General Fund for all taxpayers.

He said a better long term use for these funds was not to return them to the sewer fund, fund, and to use them instead to bring down long term energy costs for the wastewater treatment plant. He said this was more consistent with the Council's goals.

Chair Carroll thanked the DPW for doing the work to take advantage of this program.

The motion PASSED unanimously 9-0.

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

Councilor Cote said at the request of Administrator Selig, he would agree to serve on the Cemetery Committee. He noted that his work schedule conflicted with the Council rep to the Planning Board position, which was the reason he had decided not to continue with it.

Regarding the Cemetery Committee, Councilor Mower asked if in the future it might be appropriate to appoint members to this committee at the end of the list. There was discussion.

Cemetery Committee

Councilor Julian Smith MOVED to appoint Councilor Neil Niman, Councilor Peter Stanhope, and Councilor Bill Cote as the Council representatives to the Cemetery Committee for one year terms, said terms to expire March 2012. Councilor Mower SECONDED the motion, and it PASSED unanimously 9-0.

Conservation Commission

Councilor Smith MOVED to appoint Councilor Robin Mower as the Council representative to the Conservation Commission, for a term of one year, said term to expire March 2012. Councilor Marple SECONDED the motion, and it PASSED unanimously 9-0.

Economic Development Committee

Councilor Gooze said Councilor Lawson had been a big part of the EDC, and provided significant analytical capabilities and other skills on that committee.

Councilor Gooze MOVED to appoint Councilor Jim Lawson to the Economic Development Committee for a term of one year, said term to expire March 2012. Councilor Mower SECONDED the motion, and it PASSED unanimously 9-0.

Historic District Commission

Chair Carroll said Councilor Stanhope had done a remarkable job on the HDC, noting that this committee had been dealing with some difficult issues. She said he had been at the forefront of moving forward things like the restoration of Smith Chapel.

Councilor Stanhope noted that there had been some vacancies on the HDC, and said there were times when they had difficulty getting a quorum. He said he still worried that there were too many committees and not enough people with the time and energy to devote to them.

Councilor Mower said she was hearing this as a plea to for residents to consider serving on a committee.

Councilor Stanhope said the alternative was to abolish some of them.

Councilor Mower MOVED to appoint Councilor Peter Stanhope as the Council representative to the Historic District Commission for a term of one year, said term to expire March 2012. Councilor Cote SECONDED the motion, and it PASSED unanimously 9-0.

Parks and Recreation Committee

Councilor Mower MOVED to appoint Councilor Neil Niman as the Council representative to the Parks and Recreation Committee for a term of one year, said term to expire March 2012. Councilor Smith SECONDED the motion, and it PASSED unanimously 9-0.

Planning Board

Councilor Cote MOVED to appoint Councilor Julian Smith as the regular Council representative and Councilor Jay Gooze as the alternate Council representative to the Planning Board for a term of one year, said term to expire March 2012. Councilor Mower SECONDED the motion.

Councilor Niman MOVED to amend the motion, and appoint Councilor Gooze as the regular Council representative to the Planning Board, and Councilor Smith as the alternate Council representative to the Planning Board. Councilor Stanhope SECONDED the motion.

Councilor Niman said it was time for a change. He said Councilor Smith had done yeoman service on the Planning Board, and said if he had been at the meeting last year, he would have suggested that Councilor Cote be the regular Planning Board member. He said Councilor Gooze had shown tremendous leadership on the Council in his first year, was knowledgeable about Zoning issues, and was greatly appreciative of his suggestions on how the Council could work more closely with the Planning Board.

He said he thought Councilor Gooze would be a more effective representative of the Council on that board. He said the person from the Council who was a voting member on the Planning Board should be the person who would best represent the interests, concerns and views of the Council.

Councilor Stanhope said Councilor Gooze was a breath of fresh air as a Councilor. He said he had run a business, and as a Councilor, weighed the issues, just as he had when he was on the ZBA. He said he had always been struck by his fairness and impartiality on the ZBA, and his willingness not to have an agenda. He said he was not saying that Councilor Smith had an agenda, and said he had done yeoman's duty, but said change was healthy. He said Councilor Gooze would bring a perspective of the Council as a total body.

Councilor Mower reminded the Council of the now infamous vote on whether to extend the conservation subdivision regulations to the MUDOR and ORLI districts. She said she thought Councilor Smith had understood much more thoroughly than others what was involved with this change, and said she had appreciated his perspective on this, and his willingness to stand up for what he believed was the appropriate decision, regardless of what the rest of the Council believed. She said he believed that this was in the best interest of the Town, and would take that kind of position on the Planning Board. She said Councilor Smith dug into the details, and showed a level of practical concern that was lacking in current Planning Board members, and was needed.

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

Councilor Smith said he would prefer to stay on as a voting member. He said he had been tracking one issue before the Planning Board for a year, and would like to be able to vote on it. He said if he found that he could not vote favorably on it, he might very well step away from the table, declare his judgment, and expect Councilor Gooze to vote.

He said when he was first appointed to the Planning Board as a Council rep, Jerry Needell, who had been the regular voting member, served as the alternate. He said on one occasion, he had recused himself so Councilor Needell could vote on a particular issue because he was more passionate and interested in it, and had a better understanding historically of the issue. He said he thought that was a very workable arrangement, and said he would prefer for this year as a voting member.

Councilor Gooze said he would accept being a voting member of the Planning Board **this** year. He also said he didn't think it would be the right thing to do if Councilor Smith stepped away and didn't vote on the Capstone application.

Councilor Smith said he would make his reasons plain, if it came to that.

Councilor Gooze said he would accept the will of the Council.

Councilor Cote said he believed in changing things from time to time, but said he was cognizant of how deeply involved Councilor Smith was with the projects sitting before the Planning Board. He said if Councilor Smith were to stay on as the regular member for this year, the change could be made next year.

Councilor Smith noted that a few years before, there was no alternate Council rep. He said it wasn't a problem in that he didn't miss any meetings, and noted that when Councilor Niman volunteered to be the alternate, he rarely came to a meeting. He said they could at any point during the year appoint someone else

Chair Carroll asked what people thought about that idea as a possible compromise.

Councilor Gooze said he would accept the will of the Council, but said the position should be for the year. He said he had watched the DVDs and read the documents for Planning Board meetings, and was pretty well up to speed. He said there were a lot of things concerning the Zoning rewrite process that he felt very comfortable with, and said he would like to be involved with that.

Councilor Mower said Councilor Smith had been on the ground doing due diligence regarding the Capstone application, in a way that one couldn't get from reading documents, and said this was a very valuable perspective. She said this was a big project for the Town.

The motion to amend PASSED 6-3, with Councilor Mower, Chair Carroll, and Councilor Smith voting against it.

Councilor Smith said Councilor Niman's motion to amend was mean-spirited, as was the fact that six people had voted for that amendment, including two people who had not been party to the decisions at the Council table and hadn't been attending Planning Board meetings. He said he would appreciate an explanation of why this change was suddenly so needed.

He asked if there was a fear that he would vote against the Capstone proposal, a project that he did not like but could not see his way to vote against. He said appointing Councilor Gooze would make it easy for him to sit at the table and not have to do anything.

He encouraged Councilors to vote against the amended motion, and said he would vote against it, not because he didn't think Councilor Gooze would be a good member of the Planning Board, but because he didn't see the point of making a change under the flag of having a fresh voice on the Board. He said he was rarely insulted by things that happened at the Council table, but was insulted now.

Chair Carroll said the 6-3 vote was not an easy one, but said the Council had spoken,

Councilor Mower said she would like to remind Councilors that the Town had just held an election, in which Councilor Smith was elected, by a reasonable representation of the Town, by people who knew him, and expected him to be their representative on the Planning Board as well as on the Council. She said she agreed that Councilor Gooze would be an excellent addition to the Planning Board, but said that was not the question in the air.

Chair Carroll said voting members and alternates had the ability to influence the discussion at a Planning Board meeting, and said the difference was in regard to voting. She noted that she had served as an alternate on the Planning Board, and had had a working relationship with the voting member.

Councilor Mower said the Planning Board required an extraordinary amount of work, and said there had been difficulty getting members of the Council to do that kind of work. She said Planning Board members didn't always do that kind of work. She said this could not be said about Councilor Smith, and said this wasn't just concerning the Capstone project.

Councilor Lawson said considering the fact that both alternate and regular members participated, why was it particularly important to be a voting member.

Councilor Gooze said there was more of a chance to bring what the Council's perspective to the Planning Board. He said Councilor Smith was a wonderful person, but said he was sometimes a contrarian, and said the feeling sometimes was that he voted because of

some aspect of how he felt. Councilor Gooze said he didn't think he would do that, and said he would vote in a way that was generally consistent with what the Council was looking for.

Councilor Smith said he understood what Councilor Gooze was saying. He said he appreciated it that some members of Council had been annoyed that he didn't always represent the Council, because sometimes he thought there were things that would be better for the Town, despite what some members of the Council believed.

He said he was the only member of the Planning Board to vote against recommending the change of use affecting MUDOR and ORLI to benefit Capstone. He said he had believed it was the wrong reason to make that change, and noted that he had suggested others that could be made. He said he had also voted almost alone on that change initially, when it came before the Council. He said because he had lived in Durham for a long time, and had developed property, he had a more pragmatic sense in some ways than most other members of the Council.

He said his words were a reaction to the motion from Councilor Niman, who when he came to the Planning Board, usually spoke to his own agenda. He said he didn't have an agenda on the Planning Board, and said he was capable of voting for things he didn't like because he couldn't see a good reason not to vote on them. He said he was contrary on many things, including the motion before the Council.

Councilor Smith said he wanted the voting position specifically because on a motion from Councilor Niman, it had been taken from him. He said he had been the voting member for several years, and said next year, it would be more appropriate for Councilor Gooze to be the voting member. He said he would probably be ready to step down from the Planning Board. He stated again that he was offended by the motion.

Councilor Mower asked if there were instances people knew of that had led them to believe that Councilor Smith had not represented the interests of the Town, or the Council.

Councilor Mower MOVED to table this motion.

Councilor Gooze said he did not want to offend Councilor Smith. He said he felt he could be a very efficient voting member because this was an important year, with a lot of Zoning issues coming before the Board. But said he would not do it if he offended Councilor Smith. He said he could accept the decision either way.

Councilor Mower said because this was an unusual proceeding, it might be reasonable to ask people why they thought a change was important.

Councilor Niman said he didn't think that was appropriate.

Councilor Cote said at least there was a healthy discussion that two people wanted to go

to Planning Board meetings.
Councilor Mower withdrew her motion.

The original motion as amended, to have Councilor Jay Gooze serve as the regular Planning Board member, and Councilor Julian Smith to serve as the alternate Planning Board member, PASSED 5-4, with Chair Carroll, Councilor Mower, Councilor Marple, and Councilor Smith voting against it.

Rental Housing Commission

Councilor Gooze MOVED to appoint Councilor Kitty Marple as the Council representative to the Rental Housing Commission for a term of one year, said term to expire March 2012. Councilor Niman SECONDED the motion, and it PASSED unanimously 9-0.

DCAT

Councilor Niman MOVED to appoint Councilor Peter Stanhope as the Council representative to the Durham Cable Access Television (DCAT) Governance Committee for a term of one year, said term to expire March 2012. Councilor Cote SECONDED the motion, and it PASSED unanimously 9-0.

Durham Energy Committee

Councilor Niman MOVED to appoint Councilor Robin Mower as the Council representative to the Durham Energy Committee for a term of one year, said term to expire March 2012. Councilor Smith SECONDED the motion, and it PASSED unanimously 9-0.

Integrated Waste Management Committee

Councilor Mower MOVED to appoint Councilor Kitty Marple as the Council representative to the Integrated Waste Management Committee for a term of one year, said term to expire March 2012. Councilor Gooze SECONDED the motion, and it PASSED unanimously 9-0.

C. Initial discussion regarding the development of Town Council goals for 2011/12

Chair Carroll noted that there various ways the Council had approached this process in the past. She said the decision to be made that evening was how to approach it this year.

Administrator Selig said one suggestion was for the Council to review the document, and then email suggestions to Jen Berry, who could compile them. He said they would then be brought back for the next meeting.

Councilor Cote said this approach had worked well last year.

Chair Carroll noted other areas the Council had been discussing, such as workforce housing, that it would be good to get on paper so they would be before the Council at the next meeting.

Councilor Mower said they were still talking about Council goals, but they were really talking about strategic priorities and tactics. She said this was something for Councilors to think about. She also said she was keenly aware that these became the marching orders for the Town Administrator and staff. She said to the extent that they wanted to prioritize and be sure some things moved forward, they might want to put some other things on the back burner.

Councilor Smith noted that the previous year, they didn't approve the Council goals until May, and said he hoped the process could be shortened this year.

Chair Carroll agreed, noting that she and Administrator Selig had discussed this. She said the goal was to approve them by the second meeting in April.

Councilor Mower noted that these goals from last year were developed to help carry through from goals established the previous year, with the thought that this wasn't just a years' work. She said to the extent that this was the case, she assumed they would keep the bulk of the goals, at least conceptually.

Chair Carroll said the Council said there would be a discussion on the goals at the next meeting.

D. Other business

Councilor Mower asked if there was any way, given the structure of the agenda, to schedule items involving Town staff earlier in the evening, so they didn't have to wait around, especially when their appearance was largely a formality.

There was discussion that there could perhaps be a new category for these kinds of agenda items.

XIV. Nonpublic Session (if required)

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

XVI. Adjourn (NLT 10:30 PM)

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

Adjournment at 11:05 pm

Victoria Parmele, Minute taker