

**This set of minutes was approved at the July 11, 2011 Town Council meeting**

**Durham Town Council  
Monday June 6, 2011  
Durham Town Hall - Council Chambers  
7:00 P.M.  
MINUTES**

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

**MEMBERS ABSENT:** None

**OTHERS PRESENT:** Administrator Todd Selig; Town Engineer Dave Cedarholm; Public  
Works Director Mike Lynch

**I. Call to Order**

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

**II. Approval of Agenda**

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

Chair Carroll said she would like to add an item under Special Announcements concerning Walter Peterson.

*Councilor Smith MOVED to amend the Agenda to recognize Walter Peterson. Councilor Mower SECONDED the motion, and it PASSED unanimously 9-0.*

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

**III. Special Announcements**

Chair Carroll noted that the flag was at half mast in honor of Walter Peterson, and said the Town joined the rest of New Hampshire in mourning his passing. She noted among other things that he had attended UNH, had served as governor from 1969-73, and at one time had been the interim President of UNH. She said his service to the State had been extraordinary, and said they were all grateful for his service. She said he would be remembered by many people.

**IV. Approval of Minutes**

April 25, 2011

***Councilor Smith MOVED to approve the April 25, 2011 Minutes. Councilor Mower SECONDED the motion.***

Page 12, 8<sup>th</sup> paragraph, should read “Councilor Mower said if there was an event, 50 parking spaces might suffice since several attendees might share a single car.”

Page 18, 2<sup>nd</sup> paragraph under Item #7 should say “Councilors agreed that the previous 3 goals would stay in the 2011-2012 Goals as they were.”

Page 19, 2<sup>nd</sup> paragraph under Item #9 should say “...in communication and sustainable in financial matters.”

Page 25, 7<sup>th</sup> paragraph, should read “...until the Statute came along...”

***The motion as amended, PASSED 8-0-1, with Councilor Cote abstaining because of his absence from the meeting.***

May 2, 2011

***Councilor Mower MOVED to approve the May 2, 2011 Minutes. Councilor Smith SECONDED the motion.***

**Page 7, first paragraph, should read “...and .....Brookside Commons.”**

Page 13, 6<sup>th</sup> paragraph from bottom, should read “...it wouldn’t disturb other tenants.” Page 22, strike “as amended” in the motion on that page

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

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

Administrator Selig provided updates on numerous items and issues. He said the Elgin street sweeper had malfunctioned, and would cost \$4,000 to repair. He explained that as with other DPW equipment, the sweeper was on a replacement schedule in order to optimize the life span of the equipment. He noted that it had originally been scheduled for replacement in 2011, but this had been bumped out to 2012 in the Budget.

Councilor Mower asked whether in the absence of the street sweeper, it might be appropriate to ask large property owners to sweep broken glass in front of their properties. She noted the problems this could cause for cyclists, etc.

Administrator Selig said the sweeper would be out of commission for about 1 ½ weeks and that he hoped property owners would take care of items in the right of way.

Administrator Selig noted that the contractor for the roof work on the Smith Chapel had defaulted, after having received approximately \$14,000 for supplies. He explained that for projects under \$50,000, a performance bond wasn’t typically required. He also said reference checking had been done in this instance. He said the Town had sent the Police Department to talk with the contractor, and he assured them that the check to reimburse the Town would be received soon. He said the Town would believe this when it saw the check.

He said in the mean time, as the Unanimous Consent Agenda reflected, the Town was moving forward to get the work on Smith Chapel done.

Administrator Selig said the work on the Dover Road pumping station was taking longer for a variety of reasons. He provided some details on this, and said it had been a frustrating project.

Administrator Selig updated the Council on the Capstone project, first noting that Rivers Edge Apartments had filed an appeal of the Planning Board's approval of the project. He said the Superior Court had granted a hearing, which would be held on June 16<sup>th</sup>, and said the Town had granted Capstone and the Woodard family intervener status with regard to the appeal. He said the Town would spend as little money as possible defending the Planning Board decision, and said the hope of the interveners was that they would be able to show that the appeal was without merit. He said this would be the Town's position as well.

Administrator Selig said the new UNH Business School construction would be moving forward in the near future. In regard to the issue of why UNH wouldn't pay for the repaving of Garrison Ave., he said it was a Town road, and was on the paving schedule for this year or next year. He said the DPW had pushed it off until the work in that area was done.

Councilor Mower asked Administrator Selig to address concerns that had been expressed about the infrastructure underneath Garrison Ave.

Administrator Selig said the DPW had reviewed this issue, and believed that the infrastructure was acceptable and there was no need to upgrade it at this point.

Administrator Selig spoke about the idea of a possible land swap involving the Town Hall site and the Bilotta property next to the site for the new library. He said before going down that road any further, he wanted to ensure that the 57 Madbury Road property would be a viable site for a new Town Hall. He said the DPW had done a preliminary analysis of this, working with the company that was doing the design-build for the new library. He said 5 iterations were done, and it was determined that it would be viable to put the Town Hall there with minimal incursion into the setbacks. He said if there was further movement on this concept, further design work would be done, and cost estimates would be developed. But he said there was no commitment at all to do this project at this point.

Administrator Selig spoke about the twelve signs that had recently been developed to indicate to students that there were families living in Durham's neighborhoods. He said Ann Lawing of UNH had said the University could perhaps pay half of the cost for these signs.

Councilor Stanhope asked how the signs would be affixed, and there was discussion.

Administrator Selig said that Norway Plains Associates would be doing an assessment in regard to the Jackson's Landing boat ramp issue. He said a core group of people that had been involved with this issue would be meeting with the company.

Councilor Gooze said perhaps when they got this issue figured out an update could be provided to the Council.

Administrator Selig said an intern would be mapping the last three years of police calls to rental properties, and said it should be interesting to see this information. Councilor Mower asked if fire department calls could be included, and Administrator Selig said he would ask about this.

Administrator Selig noted that there had recently been an accident on the Wiswall bridge involving a pedestrian and motorist. He said he would be meeting with a family member related to the individual who was struck, and would also be meeting with others who were interested in talking about safety on the bridge.

Councilor Cote said he had gone by the area not long after the accident, and talked to a lot of people there. He noted the narrowing of the bridge as a result of recent construction. He said he had spent an hour watching traffic go by, and said the speeds were sometimes excessive. He said the Traffic Safety Committee would be addressing this issue at its next meeting, and said approaches like dual stop signs, yield signs, etc, would be looked at.

Councilor Gooze asked if perhaps a speed table on each side of the bridge and in the middle might be a way to mitigate the speeding problem.

Councilor Stanhope noted that the vehicle involved in the accident was a Prius, which was sometimes hard to hear because of the electric engine that functioned at lower speeds. He said there had been a significant number of pedestrian accidents involving this car, and said as a result there was talk about retrofitting them so they would make some kind of audible sound.

Councilor Gooze noted that this would be an issue if there were speed tables, because the car would be going slower.

Administrator Selig said he wasn't sure if there had been speeding going on when the accident occurred, but said there were many young people on the bridge that day. He said until the facts were known, they shouldn't jump to conclusions.

Councilor Cote complimented some young people who had helped him carry trash out of the area that day.

Administrator Selig said he would provide information in the Friday Update on the Town's plan for addressing the potential for East Nile Virus and Eastern Equine Encephalitis. He said the Town might do perimeter spraying in the late fall if needed, but noted that it hadn't been an issue over the past few years.

Administrator Selig said he had signed a year's renewal of the agreement between the Town and UNH regarding the Store 24 and Strafford Ave. parking spaces. He noted that the Town leased the Strafford Ave parking spaces to UNH, and UNH leased the Store 24 spaces to the Town.

Administrator Selig said the proposed Beaudette conservation project held tremendous promise for the Town. He provided details on what was proposed, and said the Town had been asked to contribute \$45,000 toward the project. He said an appraisal estimated that the value of the property was \$490,000. He said if the project was approved, the Town would have executory interest in the property, and would step in if the easement wasn't adequately policed.

Councilor Smith said the Conservation Commission had scheduled a site walk on June 9, 2011 for this project and that he hoped other members of the Council beside, Councilor Mower and himself would attend.

Administrator Selig noted that Captain Sean Kelly would be retiring soon, and said he had asked the Police Department to hold the position open for the time being.

He said Town staff were monitoring the State Budget process, and were not yet sure how things would shake out. He said he would update the Council when he knew more. He said given the various tax abatements that had been granted in Durham, there should be a conversation about the fact that the projected tax rate had been exceeded. He said a question would be whether they were comfortable raising taxes to offset that, or instead would curtail some spending to meet the tax rate target.

Administrator Selig said on Wednesday, the Planning Board would have a conceptual consultation with developer Peter Murphy regarding the Grange property. He said Mr. Murphy had also filed for a variance request to address the fact that there would be some residential use of the rear portion of the first floor. He said the second variance request was concerning the percentage of glass required for the face of the Grange building that faced on Main Street.

Administrator Selig said the Planning Board would also be doing a conceptual consultation concerning the idea of subdividing the Durham Business Park property into 5 lots. He noted that Eric Chinburg had proposed this concept.

He said a large student housing company had been in touch with some student rental property owners in Durham about possibly acquiring their properties. He also noted that there were a number of long term landlords in Town who were potentially interested in selling their properties.

In regard to the Master Plan survey, Administrator Selig said the deadline for filing was Friday. He said there had been about 450 responses, and said when more information on the results were available, they would be brought forward.

He said Town Planner Jim Campbell was in the process of discussing draft workforce housing Zoning amendments with the Planning Board. He also noted that the Workforce Housing Coalition of the Greater Seacoast Area was looking at a potential project on the Goss family's property at Beech Hill.

He said on Wednesday, consultant Roger Hawk would be meeting with the Historic District Commission regarding design guidelines being developed.

Administrator Selig said the Strafford Regional Planning Commission was moving forward with the Route 108 scenic byways application process. He said if the portions of the road in Durham were designated as a scenic byway, this didn't mean there would be restrictions on land uses, but he said the Town would want to monitor this.

He said some good progress had been made regarding modeling of 2-way traffic and other possible traffic patterns for the downtown core, and he provided details on this.

Administrator Selig said Sora Holdings would be coming to Durham on June 14th to meet with various parties about a possible project, which potentially could include a hotel, conference center, senior housing, etc.

He thanked Recreation Director Sandy Devins, the Parks and Recreation Department and others for putting together a great Memorial Day celebration.

Chair Carroll summarized that there was certainly a lot happening in Durham these days.

Councilor Smith said he hoped there would be an extended roundtable discussion later on at the meeting.

## **VI. Public Comments**

**Bill Hall, Smith Park Lane**, spoke in detail about the issue of upgrading the Town's water lines. He also spoke about the recent meeting with NHDES he had attended regarding water use issues, and said the whole thing was a fiasco. In regard to the nitrogen issue, Mr. Hall noted some nitrogen problems caused by Moore field in the past, and said the Town needed a qualified engineer to deal with this issue.

**Rachel Rouillard**, said she was present as the director of the Piscataqua Region Estuaries Partnership at UNH, which was a field based, non regulatory organization whose mandate was to monitor and protect the health of Great Bay. She first noted the Memorandum of Agreement (MOA) that the six communities were considering entering into with NHDES.

She said her organization had a stake in this issue as well, and said this was to ensure that the 42 towns in the watershed could find solutions to the problem, rather than looking at things piecemeal. She said in mid-April, the organization had started talking to the EPA and various other stakeholders, and noted that the Partnership's concern was that right now there wasn't a holistic approach to finding solutions.

She said in May, the organization secured New Hampshire Charitable Fund to put together a process to involve a third party facilitator, who could help bring the communities and the EPA together to find solutions that didn't just include suing each other. She said invitations were sent out to all of the parties to participate in this process.

Ms. Rouillard said the Memorandum of Agreement (MOA) that the Council would be considering that evening was a great tool for communities to use, but said the concern was that the EPA was pretty dissatisfied with it. She said the EPA was willing to come to the table as part of a process that would develop an understanding among all 42 communities, and said the Partnership's concern was that if the first MOA was signed, the EPA would back away from the table. She said the best way to keep costs down was to keep the EPA involved in the dialogue. She said the Partnership's assessment phase had begun, and said it was likely that there would be a series of meetings over the course of the summer and early fall.

**Judith Spang, Wiswall Road**, said Ms. Rouillard had covered the nitrogen issue well so she wouldn't speak on it right now. On another issue, she said a lot of Durham residents who lived near the Wiswall Bridge had pleaded to make it a safer swimming area. She said it was probably too late to put in a sidewalk, which was needed, but said the Town was putting itself at tremendous legal risk with the situation that was there now.

She implored the Town to work with Mr. Cedarholm to see what could be done to make the area safer. She said it was clearly a swimming area, and she asked the Town to try to come to grips with that fact, and to make it the safest area that it could be. She said many of her neighbors felt the same way.

**Davyanne Dippold, President of the Seacoast Growers Association**, said the first Durham Farmers Market of the season had been held that day, and said it had been a great day, with a good turnout. She said there would be 14-15 different vendors at the market this year, and provided details on the various products they would provide.

Chair Carroll thanked Ms. Dippold and the farmers for providing the Town with such wonderful local products.

Administrator Selig noted that at the Council table were some local flowers and bread from the market.

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

- A. **Councilor Smith MOVED that the Durham Town Council does hereby, upon recommendation of the Administrator reduce the appraisal of property owned by Alpha Gamma Rho, located at 6 Strafford Avenue, from \$1,210,700 to \$975,000 for Tax Years 2008, 2009, and 2010; grant a property tax abatement in the amount of \$235,700 of assessed valuation to Alpha Gamma Rho; and authorize the Administrator to sign a Settlement Agreement between Alpha Gamma Rho and the Town of Durham relative to Docket Numbers 24135-08PT and 25024-09PT. The motion was SECONDED by Councilor Gooze and PASSED unanimously 9-0.**
- B. **Councilor Smith MOVED that the Durham Town Council does hereby, upon recommendation of the Administrator, reduce the appraisal of property owned by Gamma Mu Alumni Association and located at 5 Strafford Avenue from \$1,302,800 to \$925,500 for Tax Years 2008, 2009, and 2010; grant a property tax abatement in the amount of \$377,800 of assessed valuation to Gamma Mu Alumni Association; and authorize the**

*Administrator to sign a Settlement Agreement between Gamma Mu Alumni Association and the Town of Durham relative to Docket Numbers 24678-08PT and 25025-09PT. The motion was SECONDED by Councilor Gooze and PASSED unanimously 9-0.*

- C. *Councilor Smith MOVED that the Durham Town Council does hereby, upon recommendation of the Administrator, reduce the appraisal of property owned by Robert C. & Michelle Fitzhenry, located at 53 Mill Road, from \$441,900 to \$366,500 for Tax Year 2010 and grants a property tax abatement in the amount of \$75,400 of assessed valuation to Robert C. & Michelle Fitzhenry. The motion was SECONDED by Councilor Gooze and PASSED unanimously 9-0.*
- D. *Councilor Smith MOVED that the Durham Town Council, upon recommendation of the Administrator, does hereby award the construction contract for the Depot Road Culvert Repair Project to Ted Berry Company, Inc. for the amount of \$99,454.02 and authorizes the Town Administrator to sign said contract with the monies coming from Account #07-0841-804-36-000. The motion was SECONDED by Councilor Gooze and PASSED unanimously 9-0.*
- E. *Councilor Smith MOVED that the Durham Town Council, upon recommendation of the Administrator, does hereby ADOPT Resolution #2011-11 as presented and its accompanying document titled "Town of Durham Public Benefit Determinations relative to RSA 79-E 'COMMUNITY REVITALIZATION TAX RELIEF INCENTIVE': Additional Criteria" as presented implementing enhanced guidelines for use by the Council in weighing applications under New Hampshire Revised Statutes Annotated (RSA) 79-E "Community Revitalization Tax Relief Incentive" enabling municipalities to provide for short-term property assessment tax relief. The motion was SECONDED by Councilor Gooze and PASSED unanimously 9-0.*
- F. *Councilor Smith MOVED that the Durham Town Council does hereby APPROVE the attached draft Findings of Fact and Conditions of Approval dated May 23, 2011 as presented relative to the application for the Community Revitalization Tax Relief Incentive Program pursuant to RSA 79-E submitted by Bosen & Springer, PLLC, on behalf of Matthew Crape, a member of 9 Madbury Road, LLC, for property located at 9-11 Madbury Road. The motion was SECONDED by Councilor Gooze and PASSED unanimously 9-0.*
- G. *Councilor Smith MOVED that the Durham Town Council does hereby, upon recommendation of the Town Administrator, approve the corrected spring 2011 water and sewer warrant totaling \$544,083.16 and commits the bills for charges to the Tax Collector for collection. The Durham Town Council further authorizes the Town Administrator to sign said warrant. The motion was SECONDED by Councilor Gooze and PASSED unanimously 9-0.*
- H. *Councilor Smith MOVED that the Durham Town Council with approval from the Town Administrator hereby waives the requirements of the Purchasing Policy and authorizes the Public Works Department to hire Art Glass of America to repair all the Stained Glass Windows and Frames at the Smith Chapel for a cost not to exceed \$25,000, with funding to come from the 2011 Capital Project Account #07-1138-801-36-000. The motion was SECONDED by Councilor Gooze and PASSED unanimously 9-0.*



- I. ***Councilor Smith MOVED that the Durham Town Council, in accordance with Section 7 of the Town of Durham Purchasing Policy and upon recommendation of the Administrator, does hereby waive the standardized purchasing process and award a contract to American Steeple & Tower Co. Inc., of Salem, MA in the amount of \$23,500.00 for replacement of the Smith Chapel slate roof with funding to come from the 2011 Capital Budget Account 07-1138-801-36-000. The motion was SECONDED by Councilor Gooze and PASSED unanimously 9-0.***
- J. ***Councilor Smith MOVED that the Durham Town Council, upon recommendation of the Administrator and the Durham Water, Wastewater, and Solid Waste Committee, does hereby approve the application for a non-industrial wastewater discharge permit submitted by Appledore Engineering, a Division of Tighe & Bond, on behalf of Capstone Development, Corp. for the parcel referred to as Tax Map 9, Lot 10-3 located on Technology Drive. The motion was SECONDED by Councilor Gooze and PASSED unanimously 9-0.***
- K. ***The Durham Town Council, upon recommendation of the Administrator, does hereby dedicate and accept the public right-of-way known as Technology Drive and authorizes the Administrator to sign a deed to this effect to be recorded at the Strafford County Registry of Deeds once all punch list items are completed. The motion was SECONDED by Councilor Gooze and PASSED unanimously 9-0.***

The Council stood in recess from 8:12 - 8:22 pm.

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

None

#### **IX. Presentation Items**

- A. ***Strafford County Commissioners' proposed 2011/12 Budget – Peter Schmidt, Chairman, Strafford County Delegation, and George Maglaras, Chairman, Strafford County Board of Commissioners***

Chair Carroll said many Durham residents looked at the county portion of their tax bill, and didn't know what it paid for. She said the 2011 County Budget had passed, and said it ushered in a very different future for county programs. She said they would learn now what would be different under this Budget, and whether this would have an effect on municipalities like Durham. She said they were fortunate to have Rep. Peter Schmidt and Commissioner George Maglaras present. She also noted that Strafford County Administrator Raymond Bower was in the audience, along with Rep Judith Spang and Rep Tim Horrigan.

State Representative Peter Schmidt said he represented Dover wards I and II and was also Chair of the Strafford County delegation. He explained that all State reps wore second hats as members of their county delegation, which was sometimes called the county convention. He said he was very pleased to get this invitation from the Town Council, and to have Chair of the County Commissioners George Maglaras there, who he said had a tremendous amount of experience and grasp of the issues confronting county government.

Rep. Schmidt said the function of the county delegation was to review, and ultimately adopt the County budget that the commissioners had worked out and proposed. He said the members had individual line item authority, and said there was an 18 to 18 split right now. He said there were 6-7 subcommittees that dealt with various aspects of the Budget, and said the County Chair appointed members of the delegation to these subcommittees. He noted that he attended all subcommittee meetings in order to fully inform himself of what the subcommittees were dealing with.

Chair Carroll thanked Mr. Schmidt and Commissioner Maglaras for being there, and said this session was long overdue.

Commissioner George Maglaras said the county raised about \$26 million in local property taxes, and spent about \$52 million. He said about 56% of the costs were attributed to Medicaid long term facility care and in home care for those who were sick and chronically ill.

He explained that NH was a partner with the federal government in a 50-50 program to provide these services, and said the State relied on the counties to pay most of this. He noted that right now county government was paying about 90% of the non-federal share. He said there were 385 elderly people in the county receiving nursing home care, and said about 225 people were being supported at home.

Commissioner Maglaras said many years ago, the 50-50 formula was split 50-50 with the State, but said over the past 8-10 years, the State had transferred more and more of the costs to the counties. He said with that came budget pressures, and said Strafford County had needed to raise the county tax in order to meet this challenge. He noted that Durham paid about 8% of the total county taxes.

He said the County had needed to expand ways of raising revenue where it could, and said it relied heavily on revenue from the county jail. He said criminal justice matters made up 26% of the County budget, and noted that there was a two tiered corrections system. He said someone sentenced to jail for a year or less was housed in jail in the county he lived in, and said the counties relied heavily on property taxes to support jails.

Commissioner Maglaras said a few years back, an alternative sentencing program had been developed for Strafford County, after seeing the growth of the prison population to approximately 600 individuals. He said the County had taken the lead on this in NH, and said the program was recognized nationally. He said this program included the first adult drug court in the state, the first mental health court, and said both were designed to divert people from jail. He said as a result there was a significant savings to taxpayers, while still delivering the same justice, only sooner.

He said prior to this, the bail system that was used had been discriminatory against the poor, and also costly, because if those charged with a crime didn't have bail money, they sat in jail for months and thus spent more time in jail than they otherwise would have. He said the alternative programs that had been developed had been successful in dealing with peoples' problems and he provided details on this.

He noted that 70% of the people in the county who were jailed had a drug problem, and said if there was a way for them to keep their jobs and pay restitution, this saved money. He note that for every person who committed a crime based on chemical abuse, 100 crimes, usually property crimes, were committed before the person was caught. He said this brought up the issue of the overall cost to society. He said Strafford County had an enlightened judiciary and county attorney who were doing a great job with these programs. He said the programs were keeping the costs down for property tax payers and society in general.

Chair Carroll asked Commissioner Maglaras to discuss some of the other programs funded by the County, such as Cooperative Extension and the Soil Conservation District.

Commissioner Maglaras noted that tax caps had been passed in Rochester and Dover. He said his office was asked not to bring in a budget that exceeded those caps, and was told that if it didn't stay with the cap, Dover and Rochester would have to absorb the costs, which would involve layoffs, etc. He said the County had met the caps, but at the time, was funding Cooperative Extension and 12 other social service organizations.

He said the County was not required by statute to fund these organizations, and explained that most had continued to be funded by the County over the years as result of policies from the past concerning welfare. He explained how the federal stimulus funds had been used over the past few years to continue to fund them, and noted that there was a contract that once this funding went away, the County would no longer be able to fund them.

Commissioner Maglaras said he had asked the various agencies to reform how they did business, and to consolidate including creating some economies of scale between counties, but said most of his requests were unheeded. He said he had asked them to reform again in 2010, when more stimulus money was received to fund the programs, but this again went unheeded.

He said this year, the County ran out of stimulus money, and said there would need to be a huge tax increase if the County were to continue to fund these programs. He said 12 agencies were therefore eliminated in the County budget and only the Cooperative Extension was kept. He said the County Delegation then came in and felt it was necessary to cut another \$750,000, and said with that cut, the funding for Cooperative Extension was cut, and another 15 county employees were laid off. He noted that 50 employees had previously been laid off, and said in total, about 15% of the County workforce had been laid off.

Commissioner Maglaras said the County was now only paying for those programs that it was statutorily required to fund, which primarily included Medicaid and criminal justice services. He said they were funding no outside agencies at any level.

He said he had indicated to University officials that he was deeply disturbed that the cuts had to be made, and said he had provided some suggestions for consolidating Cooperative Extension, 4-H, etc.

He noted that the County's domestic violence program had been eliminated, and that Strafford County had previously been at the forefront in applying for grants to address domestic violence issues, although it had not been statutorily required to do this.

Commissioner Maglaras spoke further about the changes to the county judicial system. He said there were only two district courts now, unlike in years past when each town had its own court. But he spoke again about the fact that they needed to take the next step, and change the way crimes were prosecuted. He said under the old way of doing business, the county attorney only prosecuted felonies, and it was up to the local communities to prosecute misdemeanors and other violations.

He said he wanted to change this system, and take the \$1 million that the towns were currently spending on prosecution, put that under the arm of the county attorney, put professional lawyers in the court rooms, and create an arms length transaction between the person arresting someone and the person prosecuting that person. He said this was done in 95% of the country but not in NH because of 19<sup>th</sup> century thinking. He noted among other things that it was very difficult for police officers to act as part time prosecutors, and keep up with the ever greater amount of paperwork that State courts were churning out.

Commissioner Maglaras said the new model would prove beneficial to the judicial system. He said it would mean the county attorney could be involved in early case resolution; the County would be able to fund domestic violence prosecution; and they could continue to access grants on a regional basis. He said this would reduce the costs to everyone.

Commissioner Maglaras said regionalization of services could be controversial, but noted the regional dispatch center that Durham was a part of, which would save the Town about \$3 million over 10 years. He said there were other opportunities to provide better services and save taxpayers a lot of money, using regional approaches.

He said he was very proud of the changes to the county judicial system that Strafford County had already made, and said these changes and others that were planned would save the taxpayers millions and millions of dollars over the long run.

Councilor Gooze asked whether if the \$750,000 wasn't cut, the County would still meet the tax cap, and Commissioner Maglaras said yes. Councilor Gooze said the decision to continue under the cap made some people feel like they were all under a cap that they didn't put in, and he asked for the rationale for this.

Commissioner Maglaras said there were also calls from smaller towns to hold the line on spending. He noted that there had been some years when there was a 15-20% increase in the county tax because of Medicaid transfers, and said the majority of towns had asked the county to hold the line on spending.

Administrator Selig noted that Durham had done this.

Commissioner Maglaras said there had been requests by the Department of Health and Human Services to consolidate some services. He said he had been pushing for a single point of entry for residents to get social services, where case managers could guide people through what was now a disjointed delivery system. He said most of the social service agencies agreed in theory that this would be a good idea. He noted that medical and financial records could be handled by a single point of entry, and said a delivery system could be tailored better to meet an individual's particular needs.

He said it was important for the counties to be involved in these kinds of reforms, which he said he had been discussing with the Department of Health and Human Services for over a decade. He said with the financial pressures being put on the Legislature, they were getting closer to moving toward the model he had described.

Councilor Gooze said he wasn't implying that anyone would accept a 15% increase, but said there might have been a time when the County budget might have gone a few percentage points over the cap.

He also said he wasn't sure that the approach to prosecution that Commissioner Maglaras had described would be the best approach for Durham, which was somewhat unique in the county because of the presence of the University.

Commissioner Maglaras said the County was devising a model where a town would pay for the crime it had. He said some models had been run in terms of attorney costs, for each town in the region, and said the new model would save money. He said with it, the County would enter into a contract with Durham, and said whatever crime was committed there would go through the circuit court. He said the amount the Town would pay for this would reflect the actual crimes that occurred, and said none of this would be included in the County budget.

He said the police belonged on the street, and not in a court room, and said this approach was also better for the victims of crimes. He said arraignment would be done by video, which would avoid having to transport those being charged back and forth.

Chair Carroll said this presentation had been very illuminating.

Commissioner Maglaras said he and others would be moving forward to demand reforms, and he suggested that there perhaps could be a workshop to discuss all of this further.

Administrator Selig said the people from the County had been great partners with Durham over the past several years.

Rep. Schmidt said he was wholly supportive of the reform efforts that Commissioner Maglaras had described to the County judicial system, stating that there were real cost savings involved, and that they involved a much better form of justice.

The Council stood in recess from 9:16-9:27 pm.

- B. Receive update from the Town Engineer relative to the understanding of the nutrient pollution in the Great Bay Estuary and Southeast Watershed with regard to how it impacts the municipal wastewater treatment facilities (WWTFs) within the watershed, and provide feedback to the Administrator relative to a draft Memorandum of Agreement between the Great Bay Municipal Coalition and New Hampshire Department of Environmental Services or potential similar arrangements that might be reached to protect Durham's various interests in ensuring the long-term viability and health of the Great Bay Estuary as well as ensuring that Durham's limited financial resources are prudently deployed.

Chair Carroll said the Council had been asked to provide feedback to Administrator Selig relative to the draft MOA between the Great Bay Municipal Coalition and NHDES. She said Council feedback could also include other potential arrangements that might be reached to protect Durham's various interests in ensuring the long-term viability and health of the Great Bay Estuary as well as ensuring that Durham's limited financial resources were prudently deployed.

Mr. Cedarholm said this was the most complicated issue he had brought forward to the Council. He said he would highlight some parts of the MOA, and said the main point of it was that Durham, Exeter, Newmarket, Portsmouth, Rochester and Dover were asking for a 6 month time out in order to fill in some data gaps that NHDES acknowledged existed. He said the plan was that over the next six months, the group would collect more data, and create a better model in order to get a better understanding of nitrogen, and dissolved oxygen, and how these factors interacted with Great Bay and the eelgrass there.

He said the nutrient criteria being used now was developed from a conglomeration of criteria. He said it was known that eelgrass was declining, there were algae blooms, there was oxygen depletion, etc, and said a question was how to show that these things were related, and to what degree, and whether if the wastewater treatment plants were upgraded to the limit of technology, this would even make a difference. He said based on experience from other estuaries, it was unlikely that it would.

Mr. Cedarholm noted that Durham had been a leader in making the appropriate upgrades to its wastewater treatment plant, and was now treating down to 8 mg/liter. He said he had encouraged the other communities to do the same thing for the last 3 years, given that the new EPA NPDES permit requirements were coming. He said it was important that the communities were now committed to doing that, and also said everyone realized that they would need to get down to 3 mg/liter within 10-15 years. He said any upgrades would need to consider that further upgrades would be needed in the future.

He explained that the MOA was a document that had gone back and forth between the coalition and NHDES over a number of weeks, and said the agency was very involved in developing it. He said the agency agreed with what was in the document now.

He reviewed the document in detail and noted the following key points:

- DES and the Coalition agree that there is uncertainty about the extent to which nitrogen is a causative factor relative to other factors in the listed assessment zones, and further agree that a dynamic, calibrated hydrodynamic and water quality model could reduce the uncertainty.
- DES and the Coalition agree that a weigh the evidence approach is an appropriate method to evaluate impairments related to eelgrass loss, there is uncertainty in the lines of evidence for nutrient enrichment/eutrophication as causative factors, and additional analyses would reduce the uncertainty about how such factors influence macroalgae proliferation, transparency and epiphyte growth in the Great Bay estuary.
- DES and the Coalition agree that given the uncertainties and the potential financial burden of treatment plant upgrades to the Coalition municipalities, an adaptive management approach to water quality improvement is required to reduce impairments to aquatic life use in the Great Bay Estuary.

Mr. Cedarholm reviewed the items laid out in the MOA that were mutually agreed to by both DES and the Coalition, and said they really established a collaborative relationship. He said it was very important that this was the baseline, and said it didn't mean that the facilitated discussion that Ms. Rouillard had spoken about couldn't move forward.

He said it was not surprising that EPA was not fond of the current MOA, and said this opened the door for more discussion. He said EPA was satisfied enough with their data that they had issued the draft permit. But he said the extremely low (0.3 mg/liter nitrogen) nutrient criteria set for Great Bay, which was just above background ocean nitrogen (0.25 mg/liter) had tied EPA's hands so that they couldn't issue anything but a limit of technology permit for Exeter. He said if the uncertainties of the nutrient criteria couldn't be addressed, everyone else most likely would be issued such a permit.

Mr. Cedarholm reviewed in detail those items agreed to by the Coalition. He said a key aspect of this was that the water quality model that was developed for the Squamscott River in Exeter would be used to propose site-specific nitrogen criteria for that river, as well as wasteload allocations/NPDES permit limits for the Exeter wastewater treatment plant for nitrogen, phosphorus, and BOD (Biochemical Oxygen Demand). He said it would be important that these criteria later be developed for the other rivers feeding into Great Bay.

Mr. Cedarholm said under the MOA, the Coalition would enter into a process jointly with DES, under the auspices of the Southeast Watershed Alliance (SWA) and/or the Piscataqua Region Estuary Partnership (PREP). He said it was important to keep this Coalition if they wanted to address the problem on a watershed basis. He said right now, the EPA was pointing the finger at the regulated communities that had stormwater discharge permits. He noted that there was a terrifying MS4 permit coming along soon, most likely before December. He provided further details on the items the Coalition agreed to in the MOA.

He then reviewed the items that DES agreed to in the MOA. He said a critical item was that DES agreed to work with PREP or SWA, with the full cooperation of the Coalition, to conduct nitrogen studies. He said if Durham stayed in the SWA and signed the MOA as part of the Coalition, this would support the efforts of the SWA.

Mr. Cedarholm said in the MOA, DES also agreed to commit to supporting a delay in the EPA's issuance of final NPDES permits for Coalition wastewater treatment facilities until applicable modeling had been completed and considered by EPA. He said the MOA would give everyone six months to focus on clarifying what was going on in the tributaries of Great Bay, and how the problems there impacted Great Bay, and principally the eelgrass.

He said the big question was what the best use of money would be to solve the Great Bay nitrogen problem. He said Coalition members wanted to know that if money was spent to upgrade wastewater treatment plants, it would make a difference. He provided details on the costs involved, and said in Durham as in the other towns, it would be only the sewer users who would have to pay for this. He said they would be taking on a disproportionate share of the responsibility for the nitrogen problem.

Mr. Cedarholm noted that EPA was pointing a finger at the six communities because they were the regulated ones since they had wastewater treatment plants. He said if these plants were upgraded to meet a limit of 8 mg/liter, this would take care of more than  $\frac{3}{4}$  of the nitrogen problem that the plants were causing, which would be a huge leap forward. He said endorsing this MOA gave Durham some credit, because the Town had already met this limit.

He said if Durham said now that it would upgrade to 3 mg/liter, it would get no credit. He said the MOA allowed a facilitated discussion to happen and didn't draw a line in the sand. He said it created a baseline for more discussion, and allowed 6 months for the collection of the data that was needed in order to develop a model that should have been done long time ago.

Administrator Selig thanked Mr. Cedarholm, stating that he had been a great representative of the Town on this issue. He said it was important for the Council to be familiar with the issues involved here, and also said it was important to note that Durham was already a leader, in voluntarily upgrading the wastewater treatment plant, and also in upgrading its land use regulations. He said the Town wanted to be a good steward of the Great Bay estuary, and also wanted to use scarce financial resources prudently.

He said he had given the MOA a lot of thought, and said right now he was not sure what the best course of action was. He noted that this was a very complicated issue, involving various interests. He said the parties were acting in ways that preserved their interest, and said Durham was the one community that was already at 8 mg/liter, so had nothing to gain from being a part of the MOA.

Administrator Selig said he had a number of concerns about the MOA, and said the first was that it wasn't known for certain what the cost behind it was. He said the Portsmouth city manager had said it would probably cost \$300,000 for the study, and said each town would fund a sixth of that. But he said Mr. Cedarholm had heard it would cost \$500,000 for the Squamscott River portion, and that there would be additional costs beyond that.

He said he also questioned whether it was appropriate for only the regulated communities to shoulder the costs, and said he agreed that this was a watershed issue. He said Durham had no



money budgeted to pay for the study, and noted that while Portsmouth was open to being the financial broker so Durham could pay its share of the study next January, this would be an awkward situation.

Administrator Selig noted that the Great Bay Partnership had secured funding for a facilitator, and said he thought this approach offered tremendous potential. He said he thought it would be worth Durham's while to participate in that process, and perhaps develop a new MOA that would have others on board. He said he was concerned about signing up to do all this work with the currently proposed MOA, with no guarantee that the EPA would listen.

He said Exeter was under the gun from the EPA, and had discussed the MOA but hadn't yet adopted it. He said if Exeter hadn't done this, he was hesitant to have Durham adopt it. He stated again that this was a watershed issue, and said the issue was what the most effective way was to engage all the communities that were involved.

He said his worry from an economic perspective was that if the regulated communities upgraded their plants, this would make it more challenging for development to occur in urbanized areas. He said this would push development further out, where there were less protections, and resulting unintended consequences.

Administrator Selig said he thought that a facilitated approach would allow people to take a step back and take a more comprehensive approach to solving the problem. He noted a letter from the town of Newington that opposed the MOA. He said Newington was willing to go down to 3 mg/liter for its wastewater treatment plant, but said most of its land use was not residential and instead was malls, which involved a sea of pavement and a lot of stormwater runoff. He said this was a great example of how complex this issue was.

He said he was concerned about the Town adopting the MOA without knowing whether the EPA would honor it or not, and said he would want to see something firm on this. He also said there were wider implications for Durham than simply the Great Bay estuary, and said one of them was that Durham had achieved reductions in nitrogen at the wastewater plant by sacrificing overall plant capacity. He provided details on how this could impact the Town's ability to accept new development.

Administrator Selig noted that Ms. Rouillard had said a collaborative approach was the answer right now rather than a piecemeal approach, and said that was what Durham had advocated from the start. He spoke about the Town's efforts to get DES and the other towns to the point where they were willing to talk, and also noted that EPA had not yet been a collaborative player. He said he hoped a facilitator could bring everyone to the table.

He said because there was so much money on the table, the other towns were very likely to litigate the NPDES permit. He said Durham could be an active player to encourage an approach that didn't involve litigation, so that money spent could go toward education and new land use regulations rather than toward litigation.

It was noted that it was Durham that had pushed the 8 mg/liter limit in this MOA, and that it had acted as a broker with the other towns and NHDES.

Administrator Selig cautioned the Council about accepting the MOA that evening, and instead recommended holding off and in the mean time asking some questions.

Chair Carroll said both Mr. Cedarholm and Administrator Selig had provided comprehensive presentations on this issue.

Councilor Marple asked how they all could move forward to solve the real problem, which was non-point sources.

Mr. Cedarholm noted that this was why the Southeast Watershed Alliance had been formed, but said there wasn't a simple answer in terms of what to do. He said they needed to take a hard look at the stormwater provisions in the towns' site plan and subdivision regulations, and also needed to address the issue of septic systems, the need for using best management practices in agriculture, etc.

Councilor Cote said Ms. Rouillard's organization was willing to bring the point source and nonpoint pollution players to the table, and said there was no sense focusing on the Great Bay nitrogen issue without looking at both. He said he was very much in favor of a facilitated effort to get non-regulated sources to come to the table, and to realize they collectively shared the responsibility for solving the problem.

Mr. Cedarholm said it was a huge challenge to get them all involved. He said all of the 44 communities were invited to join the SWA, and while 29 had joined, not all of them were coming to meetings. And he said the other 15 communities were watching from a distance. He said only a small percentage of the communities even seemed to acknowledge that they were a part of the problem.

Councilor Gooze asked if the 3 mg/liter was set in stone, or if the EPA might be willing to allow the towns to work toward it over time. He said perhaps they could go for the 8 mg/liter, and also work with a group to get at the nonpoint sources. He said if they weren't getting anywhere in a few years, they could then be required to meet the 3 mg/liter

Mr. Cedarholm said the 0.3 mg/liter nutrient criteria was established by DES. He said the EPA relied on the State to establish this, and said now that it was so low, EPA didn't have a choice.

Councilor Gooze asked again whether the number was changeable.

Mr. Cedarholm said DES would have to retract its nutrient criteria and modify it first. He said that was what the language in the MOA allowed for. He said site specific nitrogen criteria would address the fact that they couldn't treat the tributaries like the Bay, because they were very different hydrodynamic environments.

Councilor Lawson said he had read the 2010 draft NHDES report on nitrogen. He said focusing on the Oyster River, even if there was a treatment plan that delivered a 0 nitrogen load, because of the nonpoint sources, the river wouldn't meet the 0.3 mg/liter requirement for eelgrass. He said at the 3 mg/liter level, this required a 60% reduction in nonpoint sources to meet the threshold. He asked if there was any watershed that had been able to achieve this.

Mr. Cedarholm said no, and said this was one of the unrealistic aspects of the 0.3 mg/liter criteria.

Councilor Lawson said it looked like the model being used by DES for nonpoint sources seemed somewhat simplistic, and asked if that was the case. He also asked if what the Coalition was proposing was to develop a more sophisticated model.

Mr. Cedarholm said the model the Coalition would develop would be much more sophisticated in regard to point sources and what was happening in Great Bay. He said the DES model for nonpoint sources used land use to estimate nitrogen runoff coming off the land and down the rivers, and he described its limitations.

Administrator Selig noted that the model didn't take into account how the water in the impoundments contributed to the lack of clarity and to algal blooms in Great Bay. He said they might need to consider whether these impoundments were needed or if they were better off without them.

There was discussion about DES' concerns about Hydroqual's assessment. Mr. Cedarholm said something that came out of the meeting where this was discussed was that DES acknowledged the uncertainties in the 2010 document.

Councilor Mower noted that she had stated more than once at the Council table that they should be focusing on nonpoint as well. But her understanding was that a focus only on that would not be as worthwhile as focusing on both point and nonpoint sources.

***Councilor Mower MOVED to extend the meeting beyond the 10:30 adjournment time. Councilor Smith SECONDED the motion, and it PASSED 6-3, with Councilor Cote, Councilor Niman, and Councilor Stanhope voting against it.***

Administrator Selig said he was not comfortable right now signing the MOA, so would not do so unless he was told by the Council to sign it.

Councilor Mower suggested that there should be a motion concerning this.

***Councilor Mower MOVED to direct the Town Administrator to abstain from signing the MOA right now. Councilor Smith SECONDED the motion.***

Councilor Niman asked what the purpose was of having a motion on this, and Councilor Mower said she thought it would be good to have this on the public record.

Councilor Marple asked Ms. Rouillard when her organization's meetings would begin.

Ms. Rouillard said the meetings most likely would happen this summer. She said her understanding was that DES would move forward with modeling for the Squamscott River to get river specific data, regardless of whether the MOA was approved.

Councilor Stanhope asked whether, if the Council now instructed Administrator Selig to abstaining from signing the MOA, it might subsequently have to make another motion instructing him to sign it.

There was discussion. Councilor Niman said he was concerned that a vote now would cause people to interpret this as something about the Council supporting or not supporting moving forward with the MOA. He said he shared some of the Town Administrator's reservations, and was confident that he would navigate a good course for the Town.

Councilor Mower asked Councilor Niman if he thought Administrator Selig could sign the MOA without the consent of the Council.

Councilor Niman said he was comfortable following the lead of Administrator Selig on this issue.

Administrator Selig said he thought he had the authority to sign without the Council, but said this was an important issue, and it was important to discuss it as group. He said he didn't know for sure what the right answer was. He described some possible scenarios, but said it was worth giving this issue more time and focus.

Councilor Cote noted that the Agenda asked that the Council provide feedback to Administrator Selig, and not necessarily provide a vote up or down.

Councilor Smith said a vote would be feedback.

Chair Carroll said she would be happy at this point if people could provide their feedback to Administrator Selig, perhaps in a narrative form, without having a vote.

Councilor Gooze said he didn't think a vote was needed either. He said this was an issue where anything they did could be wrong, and he spoke in some detail on this. He said they needed to work through an alliance of towns to address the problems, and said while it was important to protect Great Bay, it was also important to protect Durham.

Councilor Mower said she would withdraw her motion, but said she felt strongly that she would like to hear from Administrator Selig in the future if things changed, and if his signature was required at that time.

Administrator Selig said that was his intention.

Chair Carroll summarized that the Council agreed with Administrator Selig that he should not sign the MOA now, and would like him to come back and keep them informed. She said Councilors needed to keep themselves informed on this issue as well.

Administrator Selig said it was very healthy that the Council had heard his perspective as well as Mr. Cedarholm's perspective that evening.

Chair Carroll thanked Mr. Cedarholm for his presentation, and also thanked Ms. Rouillard for being at the meeting, and for the work she was doing to preserve Great Bay. She said keeping that ecosystem intact and healthy was important, and also noted that there were economic and recreational benefits for Durham residents from the bay.

**X. Unfinished Business**

None

**XI. New Business**

Other business

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

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

Councilor Gooze updated the Council on the applications heard and decided on by the Planning Board at its May 25<sup>th</sup> Planning Board meeting. He noted among other things that a condition of approval for the Gsottschneider Conditional Use Permit application was that only if it turned out it was needed, there would be night-time security on Thursdays-Saturdays.

Councilor Smith said five years ago he had voted against 2 of 3 proposed conservation easements because there was no guarantee that the land would be kept in agriculture, no guarantee that scenic view sheds would be protected, and because there would be very limited, and in some cases nonexistent, public access. He said the only conservation easement he had voted for at the time was the straight purchase of a Beaudette parcel, which was turned over by the Nature Conservancy to NH Fish and Game.

He said what was proposed now was conservation of another Beaudette property that until recently was open agriculture land. He said if NH Fish and Game came to possess it, they were more likely to not maintain it for agricultural purposes, and instead were likely to want to maintain it for hunters.

Councilor Smith said he would like the Council to think about insisting that the people putting together the proposal consider some strong guarantees that the land would be restored to agricultural productivity. He said an immediate abutter, the La Roche family, would be in a good position to put the land into production and keep it that way. He said he wanted to give the Council a heads up on this issue so it wouldn't be a surprise later.

Administrator Selig said he had mentioned Councilor Smith's concern to Duane Hyde and Dea Brickner-Wood, and said their initial response was that they couldn't guarantee what Councilor Smith was asking for. He noted that there was no provision in the draft document to ensure this. He suggested that the Conservation Commission should talk this through with NH Fish and Game.

Councilor Mower asked for more details, and there was further discussion.

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

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

Adjournment at 10:48 pm.

Victoria Parmele, Minutes taker