

**This set of minutes was approved at the August 15, 2011 Town Council meeting**

**Durham Town Council  
Monday July 11, 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 Kitty Marple; Councilor Jim Lawson

**MEMBERS ABSENT:** Councilor Bill Cote

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

**I. Call to Order**

Chair Carroll called the meeting to order at 7:04 pm.

**II. Approval of Agenda**

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

**III. Special Announcements**

**IV. Approval of Minutes - June 6, 2011**

Page 5, 3<sup>rd</sup> paragraph, should read "...Captain Sean Kelly would be retiring..."

"Page 6, bottom paragraph, should say "...NH Charitable Fund...."

Page 15, 3<sup>rd</sup> paragraph from bottom, should read "...nitrogen, phosphorus, and BOD (Biochemical Oxygen Demand)."

Page 16, 4<sup>th</sup> paragraph, remove wording in the sentence after "...it would get no credit."

*Councilor Mower MOVED to approve the June 6, 2011 Minutes as amended. Councilor Marple SECONDED the motion, and it PASSED unanimously 8-0.*

Councilor Stanhope said the Historic District Commission (HDC) had recently learned that it had been awarded the first grant it had applied for concerning Smith Chapel. He said they should be hearing about the second grant that had been applied for soon.

Councilor Stanhope also noted that the HDC had approved the final plan for the Grange property.

Chair Carroll congratulated the HDC for applying for and now getting one of the grants concerning Smith Chapel.

Councilor Stanhope said HDC members were seeking any and all funds possible to do the

work on Smith Chapel, in order to save Town tax dollars.

Administrator Selig said that as part of the acceptance and expenditure of those funds, the Council would hold a public hearing.

Councilor Gooze said the Planning Board had met on June 22<sup>nd</sup>, and there was a good presentation on some traffic modeling that had been done concerning possible changing the existing traffic flow downtown. He said there would be some implementation over the summer of some of the ideas that had been developed for Main Street and Madbury Road, in order to see how things worked.

Councilor Gooze said the Planning Board was supposed to hear a presentation on design guidelines at that meeting, but this had been rescheduled.

He said the Planning Board had discussed the draft workforce housing amendments to the Zoning Ordinance, and would have a public hearing on this on Wednesday to see if it wanted to go forward with the provisions. He explained for members of the public that the draft had been developed by a Town subcommittee, in order to bring Durham into compliance with State law regarding workforce housing. He said the document was available upon request.

Councilor Mower noted that there was the question about whether making these changes to the Zoning Ordinance would also involve significant alteration of the conservation subdivision provisions of the Zoning Ordinance.

Councilor Gooze said there were some alterations in order to do the density bonus provisions.

Chair Carroll asked about possibly extending the Public Hearing beyond the July 13<sup>th</sup> Planning Board meeting if needed.

Councilor Gooze said the Planning Board was just getting the draft in front of people at this point in order to see what they thought about it. He said he didn't expect that the Board would vote on it at one sitting. He also said he didn't think the Board had vetted the draft very much up to this point.

Councilor Mower said it was difficult for those not following the issues to know what they were, and said people didn't necessarily think of conservation subdivision when they thought about workforce housing.

There was discussion about whether the Council had really discussed the draft ordinance yet. Councilor Gooze said the draft would come to the Council after it went to the Planning Board.

Councilor Niman said now that there was a State budget, the question was whether they knew how much money Durham would lose, and how that would impact the tax rate. He also noted the impacts on the 2011 Budget from tax abatements, and asked if the Council was going to discuss these things.

Administrator Selig said they had estimated that the additional expense the Town would incur

as a result of the loss of the State contribution to retirement costs was about \$160,000 for the second half of the calendar year, and said it would be twice as much as that next year.

He noted that there were several court challenges to the reforms to the State retirement system, and said it was unclear what the impact of this would be. He also noted that the Legislature had assured NH communities that the changes wouldn't have a fiscal impact, but said it was unclear what the offset would be. He said the Local Government Center didn't believe there would be an offset in the near term.

Administrator Selig spoke about the abatement requests and explained that \$125,000 had been budgeted for this for 2011, but he said there had now been a total of \$295,000 in abatements. He said the \$170,000 difference would need to be made up, and said this would be discussed at the July 25<sup>th</sup> Council meeting.

He said the Council would need to consider what steps the Town might take, including how to manage the shortfall this year and how to build the Budget for 2012. He said the 2012 Budget would be discussed for the first time at the Council's meeting on August 1<sup>st</sup>. He noted that the Town had already curtailed the hiring of a 19<sup>th</sup> police officer, and said aggressive steps would need to be taken in order to deal with the \$170,000 shortfall.

Councilor Gooze pointed out that for this year, there was a catch-up in terms of tax abatements granted between 2009 and 2010.

Administrator Selig provided details on the fact that the \$100,000 in contingency funds was being held in reserve for a number of projects, including funding needed as part of the Wiswall dam repairs.

Councilor Marple said the Rental Housing Commission met on June 2<sup>nd</sup>, and said they were in the process of deliberating over documentation on the concepts of registering landlords and doing inspections. She noted that Hanover had a program to register landlords, and said the RHC was looking to see how something like this might benefit Durham.

Councilor Mower noted that Durham and Hanover shared the same attorney, so these documents had already been reviewed from a legal perspective. Asked whether the documents had been discussed yet with officials in Hanover, she said it was probably a good next step.

Councilor Lawson said the Economic Development Committee didn't meet in June, and would meet in July, when the focus was expected to be on Tax Increment Finance (TIF) districts. He noted that EDC Chair Tom Elliot's wife had recently given birth to Bearnard David Elliot.

Councilor Smith said he liked going to the transfer station, but said something that annoyed him was that a sign there said vehicles must check in with the attendant. He said perhaps it should instead say that all visitors or drivers must check in. He also said a sign said all customers must have a valid permit, but said he thought what was meant was that all vehicles must have a valid permit. In addition, Councilor Smith said he was really tired of hearing citizens referred to as customers in Town documents.

Councilor Mower said the Energy Committee had recently learned that the Strafford Regional

Planning Commission could help it with a variety of projects, including the Energy chapter of the Master Plan, which had been a challenge. She also said that she, Administrator Selig, Chair Carroll, and another member of the Energy Committee had recently met with Revolution Energy, which was in the process of evaluating Town properties in terms of possible energy saving approaches.

She said things were moving forward, and said Revolution Energy would speak at the August 1<sup>st</sup> Council meeting. She said the work they were doing with the Town should save money on energy in the short-term, should save on usage of fossil fuels, and should also leave the Town with much lower energy costs in the future

Councilor Mower noted that the Conservation Commission's recommendation to the Council concerning the Beaudette parcel was on the Unanimous Consent agenda.

She said she'd recently heard that Spruce Forest did not get the funding that had been hoped for from the NOAA CELCP Coastal and Estuarine Land Conservation Program. She noted that the federal funding that had been approved for this program was only \$10 million, compared to \$25 million that President Obama had requested. She read out loud an email from Greg Caporossi of the Trust for Public Land that indicated among other things that another grant proposal for the project had been submitted for 2012.

Councilor Mower noted that Peoples United Bank, located on Main Street next to Ballards, had recently redone its parking lot. She said this was not a mere resurfacing that had been done, and said the work involved grading down to an erodible level. She said this project had been completed without triggering a review, using the new stormwater provisions in the site plan regulations, and said it had been an incredible missed opportunity to do something about nonpoint source runoff into Pettee Brook.

She said a question was how to establish a mechanism so a project like this was known about, and the property owner knew the requirements, so the Town could engage him/her in doing some proactive improvements. She said this project qualified as redevelopment under the regulations, and said it provided the Town with an opportunity to improve stormwater management downtown, as compared to a development project, which would increase the amount of pavement.

Councilor Mower such an approach would indicate to the EPA that the Town was taking a proactive role concerning nonpoint pollution. She asked if the Council should encourage the Town Administrator to work with the Planning Department to make sure this kind of project was identified.

Councilor Gooze said it would seem that a business owner would inquire about whether a permit was needed for something like this. He said he wasn't sure what could be done, unless something was sent out to every business owner.

Administrator Selig said he was away when the repaving had occurred, and hadn't talked with the Code Officer about it yet. He said he would determine if there was anything that the Town should be doing retroactively.

Councilor Mower said it was also an issue of how to address this kind of situation going

forward.

Chair Carroll noted that the Council was very interested in the nonpoint source pollution issue, and said this situation was an example of an issue that was hard to get at sometimes. She also said these kinds of projects added up in terms of nonpoint source pollution impacts.

Councilor Mower said she had recently participated in two regional organization meetings on nonpoint source pollution issues, which would be ongoing. She said one was with the Nitrogen Sources Collaborative Advisory Board, which was an outgrowth of the UNH research on this issue. She said the purpose of the group was to bring stakeholders across the region into the research that was being done, and noted that Mr. Cedarholm was also involved with this organization.

She said she'd also attended a meeting of a citizen action coalition, coordinated by the Piscataqua Regional Estuaries Partnership, whose goal was to raise awareness of behaviors of homeowners that impacted the watershed, such as their use of fertilizers. She said she wasn't representing the Council on these committees, and said there were representatives from a variety of towns and organizations. She said the goal was for the representatives to bring information back to their communities.

Councilor Mower noted that the stormwater bio-retention research project at the Store 24 parking area would begin on Wednesday. She said she believed that the trees would be removed, and that an 80 ft strip would be put in. She said the emphasis of the project was on nutrient removal in that area, through plants and a variety of materials.

Chair Carroll said the idea was that pollution coming along with the stormwater through that parking lot would be treated by this bio-retention area.

Councilor Mower said EPA Region I staff had attended meetings with Mr. Lynch and Mr. Cedarholm at the UNH Stormwater Center a few weeks ago. She said they were very interested in this research, and said they were looking to see if it could have benefits around the country, including around Chesapeake Bay and Long Island Sound.

Councilor Gooze said he had three Town/gown issues to make note of, which had to do with the way the University dealt with Durham. He first said that he didn't see that pervious pavement had been used for the UNH parking lot that had recently been redone to the left of the swimming pool.

He also noted the UNH incubator that had been started at Pease, and said it would have been a wonderful thing from an economic standpoint if it had been brought to Durham instead. In addition, he noted emails received about the constant lawnmower sound coming from the UNH wind tunnel, and said he hoped something would be done about it. He said here were three issues involving UNH where he didn't think the Town wasn't getting the good end of the stick. He noted that there had been one discussion with Mark Huddleston, but said he didn't think there had been anything since then. He said perhaps the Town needed to have more ongoing discussion with the University, and with someone who could really do something.

Concerning another noise issue, Councilor Mower asked Administrator Selig to look for a

response from the UNH dining services manager regarding the May 5<sup>th</sup> Quad event, which had created quite a bit of noise. She said measuring sound was something that UNH might not be doing Ms. Rita in a way that reflected what residents actually did hear.

Administrator Selig said the DPW had gone out to bid for solid waste collection and recycling services, in order to see if the private sector could be more cost effective in doing this work. He said DPW was reviewing the bids, and should have the results soon.

He said he'd met that day with Peter Murphy and his bankers regarding the Grange project, and said it was anticipated that Mr. Murphy would hear from them one way or the other over the next two days. He said he and Mr. Murphy continued to work on the draft Purchase and Sale agreement.

In answer to a question from Councilor Mower, Administrator Selig said the proposal on the table was an outright sale to Mr. Murphy. He said it appeared that the 5 year loan approach was the preferred approach, vs. putting cash down on the sale. He said there had been discussion on how to structure the deal so the bank was comfortable, and the Town had as much protection as possible.

Administrator Selig told Councilors that the deposit from the original contractor for the work on the Smith Chapel roof had been returned to the Town, so no money was lost. He also noted that the second company that was hired was \$6,000 cheaper than the first company, so the Town would actually save some money on the project.

He noted that the July 8<sup>th</sup> Friday Updates had outlined Phase II of the traffic enhancements that were scheduled to move forward this week. He said Councilor Smith, Councilor Lawson, and Councilor Mower were at the most recent Traffic Safety Committee meeting where these enhancements were discussed. He said this would be a pilot program, and said if people were comfortable with them, an ordinance regarding the changes would be brought forward for the Council to consider.

Councilor Mower said many people were wondering what was happening with the two way traffic plan. She also said it was worth noting that another option was a single lane, one way loop, which provided opportunities for bike lanes and traffic calming that a two way traffic design would not provide. She noted that neither approach had been chosen yet.

Administrator Selig said that regarding the Capstone project, the Superior Court had ruled in favor of Capstone. He spoke briefly on this, and said it didn't appear that Rivers Edge Apartments would appeal the decision. He said Capstone was moving forward with full mobilization of the project at this point.

He said that concerning a separate court case, there had been a decision regarding the Day Lily case, which had formerly been the Stonemark case, and said the case was in regard to a stub of land on Fairchild Drive. He said the Court had ruled that the stub was in fact accepted as part of a public roadway, and that therefore although the Town had transferred ownership, there was an underlying public easement, so the stub remained a Class VI road. He said if the Town appealed this court decision to the Supreme Court it would be done this

week. He said Attorney Walter Mitchell had done an initial evaluation as to whether the Town would prevail with this appeal, given the clear decision made in Superior Court. He said if the Council wanted to discuss this, it could do so, and he recommended doing this under nonpublic session.

Chair Carroll noted concerning Unanimous Consent Agenda Item VII E, the abatement request by the Seacoast Repertory Theatre that she had talked about with the Town Assessor and Administrator Selig. She said she had also talked with an affiliate of Seacoast Rep, trying to understand what had gone wrong here in terms of back taxes owed.

She said Seacoast Rep had asked that the item be removed from the Unanimous Consent Agenda so they could make their case. She said it was past July 1<sup>st</sup>, and it was time to deal with the abatements. She said upon the recommendation of the Assessor and Administrator Selig, she would move forward with this item on the Agenda, knowing full well that Seacoast Rep could appeal the decision. She said when Seacoast Rep had more time to uncover what really had happened, and if paperwork was missing, that would be the time for the Council to sit down and talk with them.

Councilor Carroll said the new managing director of Seacoast Rep was in Concord today, following up on this issue to see what needed to be done. She said they were working in good faith, and would bring back information to the Town. She said the Council's decision that evening was theirs to make, and said Seacoast Rep would likely appeal it, which would give them the opportunity to go on to the next level. She said she had pursued this because she'd been befuddled as to what had happened.

## **V. Public Comments**

**Bill Hall, Smith Park Lane**, noted that at the last Council meeting, it had been announced that Durham would stay under the authority of the 401 certificate regarding withdrawing water from the Lamprey River. He noted that he'd come before the Council many times on this issue, and he said no part of the 401 certificate was legitimate, and virtually every aspect of it was defective. He passed out copies of research he'd done, which he said proved this. He reviewed this information in detail.

**Karl Van Asselt, Fairchild Drive**, asked the Council to think about working on the issue of broadening the tax base beyond single family homeowners, said it would make a good topic for a Council agenda. He said the Council should make the time at meetings to look for solutions, and said he suspected that this would involve making some Zoning changes, doing some partnerships with developers, and maybe doing TIF districts.

He said something had to be done with the land they had, including the Route 108 land to Dover, the West end, Route 155, Spruce Woods, other land in the ORLI district, and maybe even Mill Plaza again. He said unless the Council wanted to talk about that, it couldn't address the tax base issues.

He said there was nothing easy about making Zoning changes, but said someone needed to

talk about this, because areas where development could occur had been limited to a few pieces of land in Town. He said there were ways to make development happen beyond the single family home. He said if the Council was willing to look for ways to expand the tax base and put this on the agenda, he might be proven wrong, and they would find that 95% of people in Town didn't think taxes were too high. But he said he didn't believe that was the case. He said there were a lot of elderly people, as well as younger families who couldn't afford to live here, and were not buying homes.

Mr. Van Asselt said something needed to be done about the re-assessment problem. He said an important staff change had been made, and said the high amount of abatements confirmed that. But he said there continued to be something wrong with a lot of other assessments. He said he didn't know if this could be put on a faster track, but said something needed to be done. He said a lot of homeowners were asking if they had to wait a few years, when some felt their assessment was wrong. He urged the Council to work with Administrator Selig to try to find ways to make it a faster process than it had been so far.

**Cathy Leach, Fairchild Drive**, spoke about the fact that the proposed agreement concerning the Beaudette property, including the recommendation that the Town contribute \$45,000 to it, was on the Unanimous Consent Agenda. She said the site walk of the property had been rescheduled and it was the same night as the public hearing was held at the Conservation Commission meeting. She also said it wasn't their usual meeting time. She said she was a bit concerned about the timing of this, and said she was glad there was a public hearing coming up for it.

She also said she didn't know if it was the usual practice for the Town Administrator to sign the agreement before the public hearing in front of the Town Council. In addition, she said that in the past, when certain Zoning Ordinance amendment proposals and other things dealing with development had come before the Council, there had been outcries about not doing this in the summer when fewer residents were around. She said doing everything on July 5<sup>th</sup> was difficult, and asked that those involved be careful to avoid the perception that this project was being pushed through without proper notification of the public.

Administrator Selig said that regarding the Beaudette parcel, he hadn't signed anything, and would not do so until the Council took up the matter. There was discussion that the wording in the Agenda was confusing in regard to this. Administrator Selig said the intent with the agenda item this evening was to schedule the Public Hearing on the question of whether Administrator Selig should sign the agreement.

Ms. Leach said that regarding Unanimous Consent Agenda Item VII C, on the formation of an Agricultural Commission, the June 20<sup>th</sup> Council Minutes weren't available, and the packet for that meeting wasn't available online, so her comments didn't reflect this information. She noted the 2008 Minutes where this issue was discussed, and said she hoped that some of the items brought up at that time were also vetted this time.

She read from those 2008 Minutes, and said some of the concern then was that while residents were ready to help the current farmers and the working farms, an agricultural commission might be another layer of government that could prevent development, or at least make a



developer go through more steps in trying to do something that could help with the tax base.

Ms. Leach said she hoped that all of these issues were vetted, and also said she hoped that a careful cost benefit analysis was done. She said some of the things noted in Resolution #2011-14 could cost money, and said a question was whether this would cause further impacts on taxpayers.

On another issue, Ms. Leach said her only concern about the proposed traffic enhancements was that it sounded like there would be bike lanes on both sides of Madbury Road, and that the Town was getting rid of parking spaces on only one side of the street. She said he worried about car doors opening as bikes rode by, and questioned the safety of this. She also questioned whether minimizing the roadway that cars could go on would be safe.

She said in the B Dennis Report, the changes recommended for traffic flow were predicated upon revitalization of the downtown area, and said she didn't see that this had happened yet. She said she hoped that in the future, the Town and the Council could work on some of the bigger ideas that were part of the B Dennis Report, such as supporting existing businesses and encouraging new businesses, which were things that would help with the tax base, and maybe would be of more impact to the broader community.

Councilor Gooze noted that the Agricultural Commission that was proposed was advisory only, and also said it wouldn't spend any Town money unless it came to the Council and asked for it. He noted that Council meetings could be watched on DCAT. He also said the issues Ms. Leach had raised had been vetted in considering creating the committee.

**Paul Schlie, 16 Foss Farm Road,** said in general, government existed for the benefit of the citizens, and should feel obliged to the taxpayers. He said he sensed that over the past several years, they were all good at figuring out how to spend money, but gave very little regard to the actual source of funds. He said it required intelligence and planning in order to balance aspirations with capabilities.

He said it was stated 9 months ago at a Council meeting that NH was likely to see a revenue reduction, yet budgets continued to increase. He said now there was talk of tax increases, and said this wasn't a surprise. He said the Council and Administrator Selig had turned a blind eye to this, and now there was a revenue shortfall, and they were still talking about new things they wanted to spend money on. He said they needed to get their act together, and figure out how to run the Town responsibly.

## **VII. Unanimous Consent Agenda**

Councilor Stanhope recused himself concerning for Item VII A.

Councilor Smith suggested that the Council vote on VII A separately.

***A. Councilor Smith MOVED that the Durham Town Council, upon recommendation of the***

*Administrator, schedules a Public Hearing for Monday, July 25, 2011 on a request by the Durham Conservation Commission for the Town of Durham to accept legal interest in approximately 66 acres of the Beaudette(2) property (Tax Map 15, Lot 6) in the form of conservation restrictions and authorizes the Town Administrator to sign an agreement and other related documents with The Nature Conservancy accepting conservation restrictions. Councilor Mower SECONDED the motion, and it PASSED 7-0.*

*Councilor Smith MOVED to approve Unanimous Consent Agenda Items B through I:*

*B. The Durham Town Council does hereby schedule a Public Hearing for Monday, July 25, 2011 on Resolution #2011-13 authorizing the acceptance of grant funds from the New Hampshire Department of Safety totaling \$41,600 and authorizing the expenditure of said funds to be used for DWI patrols, speed enforcement patrols, and "to install Mobile Data Terminals in each marked Police vehicle.*

*C. The Durham Town Council does hereby adopt Resolution #2011-14 establishing a "Durham Agricultural Commission" in accordance with the provisions of RSA 673:4-b and establishing a charge for the Commission in accordance with RSA 674:44-fas follows:*

*The Durham Agricultural Commission shall consist of three (3) to seven (7) regular members and up to five (5) alternate members as provided by state statutes. These members shall be appointed by the Town Council for terms of three (3) years, such terms to be staggered. One member may be a Town Council representative appointed by the Council for a one (1) year term, and one member may be a Planning Board representative designated by the Planning Board for a one (1) year term.*

*The Durham Agricultural Commission shall have advisory and review authority and other duties as follows:*

- 1. Survey and inventory all agricultural resources.*
- 2. Conduct activities to recognize, promote, enhance, and encourage agriculture, agricultural resources, and agricultural-based economic opportunities.*
- 3. Assist the planning board, as requested, in the development and review of those sections of the master plan which address agricultural resources.*
- 4. Advise, upon request, local agencies and other local boards in their review of requests on matters affecting or potentially affecting agricultural resources.*
- 5. Coordinate activities with appropriate service organizations and nonprofit groups.*
- 6. Publicize and report its activities.*
- 7. Hire consultants and contractors as needed in accordance with the Town of Durham purchasing policies.*
- 8. Receive gifts of money to assist in carrying out its purpose.*
- 9. Hold meetings and hearings necessary to carry out its duties*

*D. The Durham Town Council does hereby, upon recommendation of the Administrator, approve the construction engineering phase contract Amendment No. 2 for the Dover Road Pump Station Rehabilitation Project to AECOM USA, Inc. of Manchester, NH for the estimated sum of \$100,000 and authorizes the Town Administrator to sign said contract with*

*the monies coming from Account #077014-310-36-000.*

- E. *The Durham Town Council does hereby, upon recommendation of the Administrator, deny the 2010 property tax abatement application for property owned by 50 Newmarket Road, Inc. for property located at 50 Newmarket Road.*
- F. *The Durham Town Council does hereby, upon recommendation of the Administrator, deny the 2010 property tax abatement application for property owned by NH Beta Housing, LLC for property located at 28.Madbury Road.*
- G. *The Durham Town Council does hereby, upon recommendation of the Administrator, deny the 2010 property tax abatement application for property owned by River's Edge Apartments, LLC for property located at 277 Main Street.*
- H. *The Durham Town Council does hereby, upon recommendation of the Administrator, reduce the appraisal of property owned by Peter Murphy for property located at 22 Rosemary Lane from \$1,472,500 to \$1,260,900 and grants a property tax abatement for 2010 in the amount of \$211,600 assessed valuation to Peter Murphy?*
- I. *The Durham Town Council does hereby, upon recommendation of the Administrator, reduce the appraisal of property owned by Rose Lawn Properties, LLC for property located at 17Madbury Road from \$2,940,900 to \$2,563,800 for tax years 2008, 2009, and 2010; grants a property tax abatement in the amount of \$377,100 of assessed valuation to Rose Lawn Properties, LLC; and authorizes the Administrator to sign a Settlement Agreement between Rose Lawn Properties, LLC and the Town of Durham relative to Docket Number 24671-08PT.*

*Councilor Mower SECONDED the motion, and it PASSED unanimously 8-0.*

### **VIII. Committee Appointments**

- A. Shall the town Council appoint Karen Mullaney, 8 Davis Ave, as a neighborhood representative to the Durham Rental Housing Commission ?

*Councilor Mower MOVED to appoint Karen Mullaney, 8 Davis Ave, as a neighborhood representative to the Durham Rental Housing Commission. Councilor Marple SECONDED the motion.*

Councilor Mower said Ms. Mullaney had participated in RHC meeting for the last few years, and had also come before the Council to speak on behalf of the neighborhoods. She said she thought she would be an excellent representative to the RHC.

Councilor Gooze said he seconded what Councilor Mower had said.

*The motion PASSED unanimously 8-0.*

Chair Carroll thanked Ms. Mullaney for stepping forward to serve, and for attending so many RHC meetings over the past few years.

- B. Shall the town Council appoint Brandon Anderson, 323 Forest Park, to the Strafford Regional

## Planning Commission and the MPO Policy Committee?

Mr. Anderson spoke before the Council, and said he moved to Durham with his wife a year ago. He said he initially became interested in planning through a Masters of Public Administration program, when he took a course in the urban built environment. He said he found this fascinating, and said he was interested in using the skills he had learned to improve the region.

Councilor Marple said she appreciated the fact that Mr. Anderson was stepping forward to volunteer.

Councilor Gooze thanked Mr. Anderson for volunteering to serve. He noted that there was some discussion at the Planning Board meeting that Mr. Anderson had listed more than one committee he might like to serve on. He said the question was raised as to whether serving on the SRPC made sense when Mr. Anderson didn't have experience with the area yet, and that he should perhaps serve on either the Integrated Waste Management Advisory Committee or the Recreation Committee until he learned more about the region. He asked Mr. Anderson how he would feel about doing this.

Mr. Anderson said he would be interested in serving in any capacity, but said he would be more interested in serving on the SRPC because he liked looking at the big picture of the whole region. He also noted that he worked near the SRPC office. He said if the Council wasn't comfortable with his serving on it, he would be interested in serving on the Integrated Waste Management Advisory Committee.

Councilor Mower said she was mindful of the experience that previous representatives to the SRPC had, and said Councilor Gooze made a good point, in terms of Mr. Anderson getting a greater sense of what Durham might need by first serving on a local board.

Councilor Stanhope said he had held this position, and said he didn't think there were special qualifications necessary for serving. He said it was an eclectic bunch on the Commission, and said he saw no reason, looking at Mr. Anderson background, why he couldn't represent Durham. He said the Town had always been under-represented on the Commission, and said he would support the appointment of Mr. Anderson to this position.

Councilor Gooze said he hadn't brought this up to say he wasn't going to vote to appoint Mr. Anderson, and had just wanted the Council to discuss the issue. He said Councilor Stanhope had made a good point, and said he personally didn't know what this position entailed.

Councilor Marple said she agreed with Councilor Stanhope. She said she didn't think working on the IWMAC would be a good fit for Mr. Anderson. She said he did have some education in planning, and seemed more than ready to go.

***Councilor Stanhope MOVED to appoint Brandon Anderson, 323 Forest Park, to the Strafford Regional Planning Commission and the MPO Policy Committee. Councilor Mower SECONDED the motion.***

Councilor Smith said at the Planning Board meeting, he had recommended that the Board not

nominate Mr. Anderson because he was new to the community. He said he appreciated that he had come forward, and that there was difficulty in attracting applicants to time-consuming committees and commissions. He said Mr. Anderson was to be congratulated for coming forward.

He said he was uncomfortable saying that he could not vote to appoint Mr. Anderson, although noting that he would likely be appointed by the Council. He said the SRPC was an organization where broad knowledge of the various communities in the region was significant. He said Mr. Anderson would learn quite a bit in being on the Commission, and said he was sure he would do his homework.

***The motion PASSED 6-2, with Councilor Mower and Councilor Smith voting against it.***

Chair Carroll noted that Wayne Burton was another Durham representative on the SRPC, and said Town staff would put Mr. Anderson in touch with him. She said he was a very good teacher.

The Council stood in recess from 8:33 – 8:43 PM.

## **IX. Presentation Items**

### **A. Update on results of the supplementary concrete investigation of the Oyster River Dam at Mill Pond – Dave Cedarholm, Town Engineer**

Mr. Cedarholm summarized the previous evaluation done on the concrete in the Oyster River dam in 2009, the results of which were presented to the Council in June of 2010.

- The right abutment is extremely deteriorated and needs complete replacement;
- A few voids in the concrete were identified near the top of the spillway;
- Strength testing of concrete cores revealed 50% lower than expected tensile strength;
- Petrographic analysis revealed extensive micro-cracking; and
- Alkali Silica Reaction (ASR) and issues related to freeze/thaw were suspected to be the primary cause of micro-cracking and ongoing concrete expansion.

Mr. Cedarholm explained that these results had raised questions about the viability of performing long-term repairs on the spillway due to the potential for ASR and freeze/thaw to cause continued expansion of the dam's concrete. He said that in June of 2010, it was recommended that supplementary tests be conducted to determine to what extent ASR was still occurring.

He said a key question was whether if a repair similar to the one done in the 1970's was done, where the bad concrete was chipped away and new concrete was added, a good bond could be expected between the existing concrete and new concrete. He said the work was to be focused on the spillway, since the previous investigation had already determined that the gate structure was deteriorated beyond repair, and would require complete replacement in the not-too-distant future.

Mr. Cedarholm explained that with the first investigation, 14 cores had been taken from various locations, but with this investigation, 10 cores were extracted from the dam's concrete spillway. He said the test results suggested that ASR was not continuing to a significant degree, and that the potential for ASR to cause continued concrete expansion of the spillway concrete was limited.

But he said there were other mechanisms at work, such as freeze and thaw, and mineralization of other compounds, which compromised the long-term serviceability of the spillway. He explained that because of the extensive micro-cracking observed throughout the existing concrete, and the other factors contributing to concrete expansion, there was still potential for the concrete to continue to expand, although at a slower rate than if ASR was ongoing. He provided further details on the degradation of the spillway, and said a combination of factors compromised successfully bonding between new and old concrete, which therefore made it difficult to rely upon such a bond for long-term structural strength.

Mr. Cedarholm summarized that based on the results of this and previous studies, the spillway was likely to maintain sufficient structural integrity for possibly the next 10 to 20 years. He said it would be prudent to develop a plan in the near future to address the effects of ongoing gradual degradation of the spillway, and also explained that the non-structure surface degradation would require attention sooner than 5 to 10 years. He stressed that future structural repairs would have better chances of success if they were designed to not depend on a structural bond between old and new concrete.

He spoke about the temporary erosion stabilization that had been done of the right soil embankment and retaining wall. He explained that the State's concern had been that if erosion started there, it would propagate upstream, wash out the entire yard, and the entire river would wind up flowing around the dam rather than over it.

He said some research had indicated that the State considered the soil embankment to be part of the dam, and he noted that Andrea Bodo and Steve Burns were the owners of the right soil embankment. He said the Town owned the concrete part of the dam, and said it was decided that the Town and Ms. Bodo and Mr. Burns would split the cost of addressing the erosion issue.

Councilor Gooze said he had previously watched the debate about whether to remove or repair the Oyster River dam, and noted that a question was why spend money on repair of the dam when it might be taken down eventually. He said even though the cost was only \$50,000-100,000 compared to the cost of taking the dam down, it was still money.

He said replacement of the gate structure and the right abutment was likely to be a \$300,000 job, and supporting the spillway would cost about \$200,000. He said this came to \$500,000 for repair of the dam.

Councilor Gooze said removal of the dam would cost at least \$500,000, plus the cost of restoration work.

There was discussion as to whether the Council would want to take a vote at some point about which way it wanted to proceed.

Administrator Selig said Mr. Cedarholm was suggesting that no substantial repairs be done for a 5 year period, that the next 2-3 years be spent designing and permitting the repairs, and that 2 additional years be spent finding funding. He said the idea was also to have some UNH students do any analysis in the near future of the hydropower idea, as well as further research on the dam removal idea.

Mr. Cedarholm said a big reason that dam removal had been considered was because there had been federal funding to possibly pay for the whole thing. He said he wasn't sure that this funding was still available.

Councilor Gooze determined that there would be no expense involved in having UNH students do the research that was described. He said he was therefore ok with what was proposed.

Mr. Cedarholm said if UNH went forward with this, he would need to be involved with the research efforts.

Chair Carroll suggested that there should be a contract so people would know what the students would be responsible for doing.

Councilor Mower said Mr. Cedarholm's guidance of the research would be very important, and asked him how much of his time would be caught up in this work.

Mr. Cedarholm said there had already been some fantastic studies done, which would help in terms of the dam removal research project. He also said the work done by Stevens Associates and Dr. Gress would be a great jumping off point for some design options.

Councilor Niman said a lot of time had been spent over the last several months discussing the potential upgrade of the wastewater treatment plant. He asked if dam removal would have any impact on this issue, and asked if the Town could potentially save money if it turned the Oyster River back into a free flowing river.

Mr. Cedarholm said there was no doubt that it would help with the dissolved oxygen issue, and he provided details on this. He noted that part of the study that was proposed as part of the Memorandum of Agreement in regard to Great Bay was to identify the degree to which wastewater treatment plants were responsible for low dissolved oxygen in the bay. He said there were certainly low dissolved oxygen in the Oyster River dam impoundment, and said this and other freshwater impoundments were contributing to the dissolved oxygen problem.

Councilor Niman asked if UNH students would look at this issue.

Mr. Cedarholm said they would in fact study what the dissolved oxygen problem was, and whether dam removal would help resolve it. He said he thought it would, also noting that over time the area would become a salt marsh, which had low dissolved oxygen at low tide. He said he thought it would be a benefit to the river to not have this stagnant pond.

Councilor Niman noted several letters received from Fred Short, who studied eel grass. He asked if Mr. Short had done studies on the potential impact of removal of the dam on eel grass.

Mr. Cedarholm said he didn't think there had been a study on this. He said Dr. Steve Jones had done some work on dissolved oxygen in tributaries, and the impact of wastewater treatment plants on dissolved oxygen. He said the conclusion had been that there wasn't enough data to say the treatment plants were causing the decrease in dissolved oxygen.

Councilor Mower said this was an interesting question, and said there might need to be someone other than engineering students to look at the chemical makeup of the water.

Mr. Cedarholm said there might be some data collection done for the dam removed in Greenland. He said the impairment said to be directly related to impacts on eel grass was nitrogen, which was also thought to cause algae blooms, clouding of water and low dissolved oxygen. He said this occurred in stagnant ponds. He also spoke about the impacts of phosphorus.

Chair Carroll asked for further details on the research the students would do.

Mr. Cedarholm said one group might focus on the hydropower issue, and the other group might look at structure issues.

Councilor Mower said there might be possible funding opportunities in regard to research on the hydropower issue.

Councilor Niman said the Town had been down the road before on the hydropower issue.

Mr. Cedarholm said there had been speculation about the numbers, and said he would like to see what they could actually come up with.

Councilor Niman said a cost benefit analysis could perhaps show that this was a good idea. But he said there were potentially more important things to the Town.

Mr. Cedarholm said he proceeded in the direction that people encouraged him to proceed in, and didn't have his own agenda. He said no one was coming to him asking for dam removal, but there were a lot of people who were interested in his other recommendations.

Councilor Lawson said the work done by UNH seniors could be valuable in terms of educating the community and the Council. But he said what was required in order for the Town and the Council to set policy was way beyond the students' expertise and the time they could contribute. He said his fear was that it would be a year down the road and the Council wouldn't have the information needed to help them set policy.

Mr. Cedarholm said there was no hurry, stating that the gate structure wouldn't fall down inside of 5-10 years. He said they were far from what things looked like in the 1970's, and said there was time to seek funding. He said perhaps an historic preservation group could assist with this.



Councilor Mower asked if NHDES was okay with the recommendations.

Mr. Cedarholm said the erosion stabilization work had bought the Town 5 years. There was further discussion about how much time would be needed in order to come up with a policy. Mr. Cedarholm said when they saw the results of the students' research, the dam would be 99 years old. He said hopefully when it turns 100, the Council would have made a decision about what to do.

Chair Carroll said Mr. Cedarholm's presentation had answered a lot of questions that have been around for more than a year.

Administrator Selig said as part of discussion on the 2012 Budget, the Council would discuss whether funding should be set aside to do the professional engineering work for the dam repairs.

**B. Update on Wiswall Dam Fish ladder project – Dave Cedarholm, Town Engineer**

Mr. Cedarholm reviewed the history of efforts to include some kind of fish passage as part of the Wiswall Dam. He said the Town had received a \$1 million grant to do the fish ladder, which was to be incorporated into the left abutment of the dam, which needed to be completely replaced. He said the spillway of the dam had been deemed to be in good shape.

He explained that the original Wiswall Dam engineering contract with Stephens Associates for \$52,000 was approved in February 2006 and covered the dam engineering study. He said the previous amendments totaling \$94,956 were approved in 2007 and 2009 respectively, and covered additional hydraulic analyses, engineering the preliminary and final design plans and preparing and submitting the wetland permit and dam reconstruction permit for the Wiswall Dam repairs and fish ladder design.

Mr. Cedarholm said that in the last 18 months since Amendment 2 was approved, it was necessary for Stephens Associates to perform numerous unanticipated services that were not included in their original engineering scope of work. He said this additional work included multiple design revisions to consider various historic mitigation options, assistance with bidding, and performing unanticipated analyses and calculations required by the NHDES, in order to gain final approval of the dam reconstruction permit and wetlands permit. He said Stephens Associates' Amendment 3 adds \$30,000, which was paid using the Town's contingency fund.

He said the wetland permit was received 10 days ago, and said the project was now moving forward, and things were going quite well. He noted that Nobis Engineering did the stormwater prevention plan. He explained that the bids for the project had come in much higher than had been hoped. He said it was best if the design engineer also did the construction administration and observation, but said the Town couldn't afford this.

Mr. Cedarholm said the solution had been to hire George Rief, who had enormous experience in this area, including with fish ladders. He said Mr. Rief was hired part time at a low rate, with no benefits. He said as a result of this, the Town should be able to get through the project at a cost of \$30,000 rather than \$110,000. He and Administrator Selig provided details on the costs involved, and the fact that contingency funds were being used to offset those costs.

Mr. Cedarholm said significant contingencies had been incorporated into some items in the project, and said the actual costs wouldn't be known until the end of the project. He said that hopefully, the DPW wouldn't need to tap into the contingency fund, but said right now they just didn't know. He said it was a complicated project.

Chair Carroll thanked Mr. Cedarholm for his presentation, and also thanked DPW Director Mike Lynch for being present.

## **X. New Business**

Chair Carroll noted that people had stepped forward to discuss taxes, and said she wanted them to know that the Town was in fact trying to expand the tax base. She spoke about the fact that the owners of What a Crock had closed their store for July because of a lack of business and were now selling at the Durham farmers market, where the customers were. She said with a lack of students in Town, some businesses felt the impacts more than others. She said this situation was a reminder that if the residents of Durham wanted these businesses and wanted to expand the tax base, they needed to support them, or else they wouldn't be in Town to contribute to the tax base.

Administrator Selig said that regarding the Day Lily case, he would be discussing it with the Town Attorney.

Councilor Mower asked for a recap of the situation, and the advantage to the Town of going ahead with an appeal.

Administrator Selig said he could provide an overview of the case in public session. He said the Stonemark development project had proposed accessing developable land for the project through the stub of land. He said Stonemark had challenged the Town's sale of stub to the Fairchild Drive Association. He said the Town had held that the stub was not a part of a dedicated roadway, and was just Town-owned land that it could convey. He said Stonemark had said that it was a right of way with a public easement across it.

Councilor Gooze provided details on the Stonemark project and how it related to the stub issue. He explained that the stub was considered a Class VI road, which wasn't to be built off of in the Town of Durham. But he said it could be used to get to a property that could be developed.

He suggested that the Council should go into nonpublic session, and there was discussion.

Councilor Niman said he wasn't sure they should go into nonpublic session, when Administrator Selig didn't know whether the Town should appeal the decision yet.

Administrator Selig said he needed to communicate further with the Attorney before he could recommend something.

Councilor Gooze said he and Councilor Mower wanted to get the gist of the problem out for members of the public, and agreed more information from the Attorney was needed.

Administrator Selig noted that the deadline for the appeal of the court decision was the end of that week.

Councilor Mower asked if there were questions or topics that were appropriate to discuss in nonpublic session, in order to get feedback from the Council.

Administrator Selig said no. He said he would suggest an appeal if the Attorney felt that the probability was high that the Town would prevail, but said if he learned that the probability was not high, he would not suggest an appeal. But he said he wasn't at that point yet.

Councilor Gooze noted that the Attorney had not always recommended things that were appropriate. He asked if the Council usually weighed in with this kind of situation.

Administrator Selig said if the Council wanted to talk about pursuing an appeal because it felt strongly about transferring the parcel, regardless of the likelihood of prevailing that was one thing. He said otherwise, he would have further objective conversation about the correct course of action.

After further discussion, Councilor Gooze said he was ok with not going into nonpublic session.

Councilor Mower asked for some history on the deeding of the property.

Administrator Selig said there was a lengthy process leading up to it. He said he thought there was a sense that it wasn't in the interest of the Town to utilize the stub as a roadway in the future, and there was an interest on the part of the Fairchild Drive association in acquiring it so they would have confidence that there wouldn't be a new development accessed off of Fairchild Drive. He said there was a meeting of the mind that it made sense to transfer the property.

Chair Carroll said it sounded like the consensus was not to go into nonpublic session, and that the explanation that Administrator Selig had given on this topic was sufficient right now.

Administrator Selig said Fairchild Drive Association members had engaged the services of separate legal counsel to represent their interests for some time, alongside the Town. He said it was similar to the recent situation with Capstone. He said at some point, the Association no longer funded the attorney to represent them, and the Town had carried forward on its own.

## **XI. Adjourn**

***Councilor Mower MOVED to adjourn the meeting. Councilor Gooze SECONDED the motion, and it PASSED unanimously 8-0.***

Adjournment at 9:59 pm

Victoria Parmele, Minutes taker