

This set of minutes was approved at the August 15, 2011

**Durham Town Council
Monday July 25, 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 (arrived at 9:04 pm)

MEMBERS ABSENT: None

OTHERS PRESENT: Administrator Todd Selig; Business Manager Gail Jablonski

I. Call to Order

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

II. Approval of Agenda

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

III. Special Announcements - None

IV. Approval of Minutes

June 20, 2011

Page 4, 2nd paragraph, should read "... and said the projects would provide great educational opportunities for students..."

Page 5, 2nd paragraph, should read The Stormwater Center has partnered with.... The design and installation of over 15 innovative systems."

Page 13, 1st paragraph after Presentation Item, should read "... whether an agriculture organization for the Town should be more regulatory or less regulatory..."

Page 15, 1st paragraph, should read "...noted that he had grown up in Rochester, NY where there was a nearby farm, and his wife had grown up in White Plains, NY and visited relatives who lived on a farm. He said he now could spend time at the Randall and Tuckaway Farm in Lee, where his daughter lived."

Page 18, 2nd paragraph, should read "Councilor Gooze said Councilor Smith didn't have a child living on a farm."

Page 21, 3rd paragraph, should read "Administrator Selig said he had also received a call from DES that the 401 Certificate would remain in effect, but would refer to the instream flow regulations."

Councilor Mower MOVED to approve the June 20, 2011 Minutes as amended. Councilor Cote SECONDED the motion and it PASSED 7-0-1, with Councilor Niman abstaining because of his absence from the meeting.

V. Councilor and Town Administrator Roundtable

Councilor Gooze updated the Council on the applications that came before the Planning Board at its July 13th meeting. He said it was impressive how much work the Board did.

- Public Hearing and subsequent approval of an extension request on the approval of a Conditional Use Permit submitted by Ionian properties, to allow the applicants to start their project in 2012, as they had always intended.
- Public hearing on a proposed amendment to the Zoning Ordinance to include workforce housing provisions. Councilor Gooze said the Planning Board had passed this, and said this would now come to the Council. He said no members of the public spoke at the public hearing.
- Acceptance Consideration of an Amendment to a Previously Approved Site Plan application, concerning placing electric utilities underground as part of the development planned at the Crape property at 9 Madbury Road. Councilor Gooze said the Board had previously decided it wouldn't be prudent to put the electric utilities underground, but the Council had then asked for this. He said this could be done, but said he had stated at the meeting that in the future, the Planning Board and Council should communicate better when there was an RSA 79-E application.
- Acceptance Consideration of a Site Plan Review application to put a deck on the back of Scorpions. Councilor Gooze noted that there would be a site walk on Wednesday.
- Acceptance Consideration of a Site Plan Application for redevelopment of the Grange property. Councilor Gooze said there would be a site walk of the Grange property on Wednesday, as well as a public hearing.
- Acceptance Consideration of a subdivision application for the Beaudette property.
- Request for extension of conditions of approval for an approved subdivision for Jerry Gottsacker. Councilor Gooze said this was approved.
- Discussion on a Conservation Commission request on stormwater issues in relation to repaving versus resurfacing of parking lots.

Councilor Smith said on July 20th, the Planning Board held its quarterly planning meeting, and heard a presentation by consultant Roger Hawk on draft design guidelines for the commercial core. He said they also reviewed the existing Historic District overlay standards.

He said there was also a presentation at that meeting on the findings of a recent workforce housing charrette that was done for the Goss family property. He explained that the family was interested in developing a Master Plan for the parcel, which was located in Durham, Lee and Madbury, each of which had different regulations. He said there was discussion by the Planning Board about having a joint working session with the other towns to talk through how it might be possible to do this.

Councilor Smith said he had suggested the idea of rezoning the land involved in Durham from Rural to ORLI, or adopting a workforce housing overlay. He said he had discussed with the Planning Board the idea that he would bring this matter to the Council. He said the Board agreed that he do this.

Councilor Smith made note of the fact that there were still several private houses in the Professional Office (PO) district that were grandfathered as single-family residences. He said at a recent meeting, the ZBA denied a variance application to restore to single-family use a former single-family residence that had been converted to a real estate office. He said he had reviewed the minutes of this meeting, and had also looked at the number of properties in the PO district that were currently listed as professional offices.

He said these properties were Wentworth-Douglass, the Sakowski property, and Xmed, and said all three properties were being used as professional offices before the PO district was adopted in 2006. He said no new professional offices had been established since that time. He said the Sakowski building, at 39 Madbury Road, had fallen out of use as a professional office. He noted that one ZBA member had admitted it would be hard to rent the property commercially because it was surrounded by rental residential properties and not owner-occupied properties.

Councilor Smith said he would like to bring forward a Council Communication suggesting that the Council restore single-family residences as a permitted use or conditional use in the PO district. He said the ZBA had struggled with the idea of granting the variance, and eventually denied it. He noted that the owner could turn the property into a multiunit apartment house there, which was not what the Council wanted to see there.

He said he saw no harm in changing the Table of Uses, stating that it wouldn't discourage the development of professional offices, but would prevent the ZBA from having to struggle with this kind of situation. He asked if any Councilors had an objection to his bringing this back up as an agenda item.

Councilor Stanhope said he supported such an approach, and he noted that the *Simplex v. Newington* case had said people were entitled to the reasonable use of their property. He said this was a neighborhood that was predominantly residential, whether rental or otherwise, and said there were no professional offices there despite the establishment of the PO district. He said the Town had created the hardship, and Councilor Smith had proposed a fair and equitable way to address this, by allowing the use that was predominant in the neighborhood to continue.

Councilor Niman said he wasn't in favor of changing the Zoning Ordinance, and didn't want to make a political speech about it. He said he didn't understand why he had to listen to several minutes of why they should change the Zoning.

Councilor Stanhope said Councilor Smith had asked that there be an additional use allowed in the Professional Office Zone.

Councilor Niman said his understanding was that this would require a change to the Zoning Ordinance.

Chair Carroll said she believed the intent of what Councilor Smith had said was that this proposal would be coming forward as a Council Communication at the next meeting. She said they would leave it at that, and would have plenty of time to discuss it at that time.

Councilor Gooze said it definitely needed discussion.

Chair Carroll said it was an opportunity to discuss the PO zone, and said this was important because what had been intended for that zone had not happened.

Councilor Smith noted that the Council had changed the Table of Uses for the ORLI and MUDOR districts predominantly to accommodate Capstone by allowing single-family residences. He said he was asking for a small change here.

Chair Carroll said being on the Planning Board was a big responsibility, and she thanked Councilor Gooze and Councilor Smith for doing their work.

Councilor Mower said the Energy Committee had a presentation by PSNH about its NH Saves program, concerning weatherization issues and low energy lighting displays. She said residents might see such a display at the Town Hall and the Library. She said it was an informative and enlightening presentation, and said the Committee hoped there would be an encore presentation at the Library.

Councilor Mower said the Conservation Commission had opened discussions about the possibility of conserving some land along Route 155 abutting the Oyster River, which was owned by Amber Acres. She said there were approximately 39 acres, and said the funding source would be the federal Farm and Ranchlands program.

Councilor Cote said he and many others had attended the Fire Department's 100th anniversary parade and muster, where there were about 50 pieces of fire apparatus that came from far and near for the parade. He said it was a very enjoyable event, and he congratulated the Fire Department on a job well done.

Chair Carroll said she too had attended the parade, and said part of it was like a museum of vintage fire department equipment. She said the Fire Department did a wonderful job in putting the parade together.

Administrator Selig said it appeared that the Town was going to receive some money under the Safe Routes to School program, and he spoke briefly on this.

Concerning the Daylily court case, he said the Town had opted not to pursue a Supreme Court appeal, so the Superior Court decision would stand.

Administrator Selig said Bill Hersman of Xmed would be filing an application under RSA 79-E.

Chair Carroll said she'd attended a public hearing at UNH that day on the cancellation of the Woodside connector, and said she was there as an interested citizen, not as a Councilor. She said she had learned that UNH's transit program had been cut by approximately \$460,000 this year, and said they were expecting more cuts next year.

She said she had learned about small cuts here and there to the transit program, such as transportation during reading days and final exams when there were fewer students around. She said they were looking at places they could cut that wouldn't hurt the majority of people. She noted that they had to let one position go.

Councilor Carroll said she had been there to speak for the Madbury Road and Edgewood Road transit routes, which could serve a lot of Durham residents. She said that unfortunately not many residents were using the shuttle at this time. She said it ran about every 15 minutes, and there were several different routes, so people close to Town could easily get on and off, on campus, or near the downtown, and then get a ride back to their homes.

She said the Woodside route was the least traveled route, but said UNH transportation staff knew that if it had been allowed to run for another year, it would have picked up more ridership. She provided details on this. She said UNH staff were trying all kinds of measures to see what they could do so they didn't have to cancel it, but said it came down to the fact that it cost \$75,000 per year.

Councilor Mower asked if there was discussion about how cuts in transit services could potentially impact the number of cars brought to Town.

Chair Carroll said no. But she said she had learned that UNH students living within a mile of Town couldn't get a parking permit, and these students would then use spaces where there were parking meters. She said they had done this at C lot, and the concern was that they would do the same thing at H lot, which was the new visitor parking lot near the pool.

VI. Public Comments

Bill Hall, Smith Park Lane, said last week, he had checked with the water treatment plant, and learned that they were taking water from the Oyster River. He said at that time, there were 18 million gallons per day going down the Lamprey River, but said they were not able to access 3% of that water because of the 401 certificate. He said this meant that there had been some manganese, organic matter and chlorine issues at the treatment plant, and a resultant mixture that was pretty nasty and was being mixed with the good water from the Lee well.

He spoke about the history of the 12 inch pipe, and the 401 certificate. He said absolutely no requirement for an application of the 401 certificate had been met in any way. He provided details on this, and said if any of the requirements were not met, there was no 401 certificate. He also said this was not a withdrawal permit, and said there was a discharge permit for polluted water into surface water. He said if there was going to be a withdrawal permit it would not be a 401 permit. He said what was stated regarding the 401 was in direct dispute with RSA 483, which addressed the protection of drinking water. He said every single aspect of the 401 was illegal, and was fraud.

Paul Schlie, 16 Foss Farm Road, said the Town was scheduled to be hundreds of thousands over budget, even though it was known several months ago that this was likely to happen. He said the Town Council had proven its inability to manage the Town administration, and most likely should be substantially replaced. He appealed to Town citizens to get more involved, or else taxes were likely to skyrocket, and the burdens were likely to increase. He said the taxes were already the highest in the State.

He said the Town should have been diligently working over the past few years to reduce Town budgets and be more prudent with expenditures, and said just the opposite was done. He said they were now faced with a Budget shortfall, and should probably respond by

reducing staff and expenditures substantially, and not expanding them. He said he hoped that the taxpayers paid attention.

Mr. Schlie spoke about a proposed boondoggle of adding photo-voltaic electric services, which were known to not be economical. He said the company involved wasn't likely to be stable for more than a few years.

He also said reducing traffic downtown to a single lane for a two block radius, which essentially encompassed the downtown, would accomplish nothing but increase traffic and congestion when school began, in order to get a few parking spaces. He said ironically, this parking was needed because part of the Council had encouraged new student housing downtown. He said parking was not a problem downtown in the summer, and said it was a University-related problem. He said the Town should work with the University to resolve it, and said it wasn't the Town's obligation.

Mr. Schlie said George Maglaras, Chairman of the Strafford County Commissioners Office, had said at a recent Council meeting that he wanted to essentially create a business by prosecuting citizens. He said this wasn't something they should encourage for the Town.

Chair Carroll noted that Business Manager Gail Jablonksi would be providing the Council with a quarterly update, and she also explained that the Council couldn't just do budgeting during the Budget season. She said that this was her sixth year on the Council, and said she knew of Councilors who lost sleep during the Budget season. She said they took their work on the Budget seriously, and did the very best they could.

She said the Council waited in anticipation for people to give them ideas about the Budget, including possible savings they were willing to see made in Town. She said this was a very unusual year, and that the Town would have to make some large payments that were not of its making, and that were being passed on from above.

She said the Council knew that the cuts might come, and said it looked like they were on their way. She said all of the towns in the State would have to deal with this, and said the Council would need all the ideas it could get. She also said they all would need to find a way to stick together to see this through. She said she hoped they could do it.

Councilor Mower said she had been through two Budget cycles, and had been quite surprised to see how few people had stepped forward during the public hearing process to review the Budget and make comments on it. She said she agreed that there should be greater public engagement, but also advised that specificity, and respect for the Council was appropriate for the work they were trying to accomplish.

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

Item # VII. C. under the Unanimous Consent Agenda was removed for discussion.

- A. **Councilor Smith MOVED, upon recommendation of the Administrator, to reduce the appraisal of property owned by Day Lily RE, LLC for property located at 97-99 Madbury Road from \$1,099,000 to \$566,000 and grant a property tax abatement for 2010 in the amount of \$533,000 assessed valuation to Day Lily RE, LLC. Councilor Marple SECONDED the motion, and it PASSED unanimously 8-0.**
- B. **Councilor Smith MOVED, upon recommendation of the Administrator, to reduce the appraisal of property owned by Sigma Beta Alumni Association, Inc. located at 26 Madbury Road from \$1,204,900 to \$1,060,600 for tax years 2008 and 2009; grants a property tax abatement in the amount of \$144,300 of assessed valuation to Sigma Beta Alumni Association, Inc.; and authorizes the Administrator to sign a Settlement Agreement between Sigma Beta Alumni Association, Inc. and the Town of Durham relative to Docket Number 24678-08PT. Councilor Marple SECONDED the motion, and it PASSED unanimously 8-0.**
- C. **RESOLUTION #2011-15** adopting the provisions of NH Revised Statutes Annotated (RSA) 179:31 XI-a allowing a city or town to prohibit exterior signs or signs in view of any public way promoting the sale of liquor or beverages at reduced prices by an on-premises licensee
- Councilor Smith MOVED to approve RESOLUTION #2011-15 adopting the provisions of NH Revised Statutes Annotated (RSA) 179:31 XI-a allowing a city or town to prohibit exterior signs or signs in view of any public way promoting the sale of liquor or beverages at reduced prices by an on-premises licensee. Councilor Mower SECONDED the motion.**

Councilor Stanhope noted that paragraph 4 of the Resolution said: “.....to prohibit exterior signs or signs in view of a public way that contain a reference to "Happy Hour" or otherwise promote the sale of liquor or beverages at reduced prices.” He asked if that language prohibited flyers, and if they constituted signs that promoted the sale of liquor.

He also noted that paragraph 5 read: “Whereas, the Senate passed an amended version of SB 120 that allowed communities to opt out and prohibit outside "Happy Hour" billboard advertising but not inside "Happy Hour" billboard advertising facing outward”. He said if he read this correctly, it meant that an establishment could post signage on the interior of the windows, looking outward. He said he realized that another paragraph spoke to that situation.

Councilor Stanhope said his concern was that this was a feel-good ordinance. He said the reality was that the availability of happy hour wouldn't be a secret for long in this community, and said he didn't believe it would in any way change behavior. He noted that he had spoken in this way about changing speed limits in neighborhoods.

Councilor Mower asked what Councilor Stanhope's response was to some of the documentation in New Futures about the reasons to do this other than changing behavior. She said there could be the impression that Durham was an alcohol happy town, if there was signage in the windows that was visible to visitors and people walking by. She said this wasn't necessarily the impression the Town wanted to give. She said she understood the point that certain behavior was not likely to change by regulation. But as an analogy, she asked where they would be if there wasn't a speed limit of some sort with the real possibility of enforcement.

Councilor Stanhope said he respected their difference of opinion.

Councilor Gooze said he agreed with Councilor Mower that there were some times when the Council passed an ordinance in order to make a statement. He said he wanted to make the statement that it would not just condone extra drinking and the easy availability of drinking.

Councilor Cote said he hadn't seen this Resolution as an effort to change behavior, and said he thought the concern was that there would be a proliferation of signs in windows and sandwich boards outside. He said most happy hours were now advertised online. He said he was happy to have this Resolution, in order to keep down the amount of advertising that went on.

Councilor Smith said he agreed with Councilor Stanhope, and said he would opt out of opting out.

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

The Council stood in recess from 8:06 to 8:13 PM.

VIII. Committee Appointments

None

IX. Presentation Items

- A. **PRESENTATION AND PUBLIC HEARING** on a request by the Durham Conservation Commission for the Town of Durham to accept legal interest in approximately 64 acres of the Beaudette (2) property (Tax Map 15, Lot 6) in the form of conservation restrictions and to authorize the Administrator to sign an agreement and other related documents with The Nature Conservancy accepting conservation restrictions on behalf of the Town (Presented by Duane Hyde)

Councilor Smith MOVED to open the Public Hearing on a request by the Durham Conservation Commission for the Town of Durham to accept legal interest in approximately 64 acres of the Beaudette (2) property (Tax Map 15, Lot 6) in the form of conservation restrictions and to authorize the Administrator to sign an agreement and other related documents with The Nature Conservancy accepting conservation restrictions on behalf of the Town. Councilor Gooze SECONDED the motion.

Councilor Stanhope recused himself, explaining that his firm had done the appraisal for the property.

The motion PASSED unanimously 7-0.

Duane Hyde said he was present on behalf of Nature Conservancy and the Great Bay Resources Protection Partnership, to discuss the wonderful opportunity to conserve 64 acres of field and forest land. He said the Nature Conservancy had the property under contract, and was set to close soon. He noted that this transaction didn't include the farmhouse.

He explained that when the opportunity to conserve the property arose, funding was short, and he provided details on this. He said the Conservation Commission had been requested to provide \$45,000, and said the Commission had approved this unanimously after a public hearing on July 5th. He explained that the Town must hold the legal interest in the property, so Town Council approval was required now.

He said the Town's contribution would be less than 10% of the purchase price of \$490,000, based on the appraisal. He said the \$45,000 would come from the conservation fund, which was dedicated funds that resulted from land in Durham being taken out of current use. He said no general tax dollars would go toward this project. He provided details on what the Town's legal interest would be, and the conservation restrictions, which he said had been approved by legal counsel.

Mr. Hyde said the Beaudette parcel had long been a conservation priority for the Town, and he spoke in detail about this. He said the most recent attempts to conserve this property had started at the time when the Town conservation bond came up, and said conversations on the property had continued since that time.

He outlined the many reasons why the property should be conserved. He note the scenic views it provided and the fact that it was a rural gateway to the Town, as identified in the Master Plan. He said there was 2800 sf of frontage on Rout 108 as well as about 1400 feet of frontage on Bennett Road.

He said the property had some incredible habitat values, explaining that it was predominantly field, with some patches of forest and open wetland systems. He said the field itself was a mix of field and early successional shrub-type habitat, which provided exceptional habitat for turkeys, bobolinks, meadowlarks, woodcock, and three turtle species of concern (wood, blandings, and spotted turtles because of the combination of field and wetland habitat).

He also said Durham was a potential location for the federally-listed, endangered New England cottontail. He explained that NH Fish and Game had done habitat management on the Beaudette property across the road because there were known cottontail populations there. He said this property too was considered good habitat for the cottontail, and he noted that old field, grassland habitat was declining in the State.

Mr. Hyde explained that the land sat within a block of 160 acres of conserved land protected by UNH, The Town, and the Great Bay Resource Protection Partnership. He said the land contained some excellent water quality benefits, including 1100 sf of frontage on Beaudette Brook, a tributary to the Oyster River, as well as a backwater for the Lamprey River.

He said there would be public access to the property, and noted among other things that there were well-groomed cross country trails in that area. He also said the Conservation Commission saw this project as providing a public safety benefit, explaining that when there were floods, much of this property was under water. He explained that there was nothing in Town regulations to prevent the property from being developed, and said if it was in fact developed, there was the potential for 7 houses, which would put the residents there as well as local officials at risk.

Mr. Hyde said this was an excellent conservation opportunity. He said the Nature Conservancy would not be the long term owners, and was simply the acquisition agent on behalf of the Great Bay Resource Protection Partnership. He said the property would be transferred to NH Fish and Game, which also owned the other Beaudette tract and some other properties in the area. He said it was likely that it would transfer to the agency by the end of the year.

He said Rachel Stevens of NH Fish and Game was present to answer questions on future management issues. He said the agency didn't pay taxes on their property, but noted that this property was in current use. He said in 2010, \$710 had been due in taxes. He said when the house was subdivided it would have a 5 acre lot instead of the current 2 acre lot, so some additional acreage would be taxed at the full rate.

Mike Hoffman, Durham Point Road, said this project was a solid use of Conservation Commission money, and he emphasized that the 5 acres with the house would provide some additional tax revenue for the Town.

Malin Clyde, 51 Mill Road, said this was a great project, and said she was excited about the potential for cross country skiing as well as other public recreational benefits. She also said she was delighted about the wildlife aspects of the project, and about NH Fish and Game, which had the machinery and staff to provide management and stewardship of the property. She said the property was special because it was reverted farmland and was open, and said she was interested in hearing that NH Fish and Game was interested in managing it as grassland habitat.

Dwight Baldwin, 6 Fairchild Drive, said he strongly supported the acquisition of this property, and said it would add to the preserved lands in that area in a meaningful way. He stressed that the money for this didn't come out of the tax base, and came from the current use tax.

Ann Welsh, 3 Fairchild Drive, noted that she was acting Chair of the Conservation Commission, and said she was strongly in favor of this purchase.

Beth Olshansky, Packers Falls Road, noted the recent mystery tour piece about Durham on Chronicle. She said the Town had a lot of open space and valued it, and said watching this piece had made her feel proud of Durham, and the fact that it had protected its natural resources history.

She spoke about the fact that the Town had worked to protect its gateways, and said that was a reason to move forward with this project, which would build upon the Town's identity as a unique community. She said her neighbor, David Williams, had moved to Durham because he valued conservation land, despite the high taxes.

Ms. Olshansky said resident Tom Merrick had asked that she speak in support of this project on his behalf. She noted that he had given some of his own land for conservation purposes, and had gotten great satisfaction from doing this. She also said resident Dick Lord had asked her to state that he was in favor of this transaction.

Councilor Mower read a letter from Dennis Meadows, which spoke in favor of this project.

Chair Carroll noted that several other letters had come in, in support of what was proposed.

Administrator Selig said residents Kevin Gardner and Henry Smith had sent emails in support of what was proposed.

Rachel Stevens, Land Stewardship Coordinator for NH Fish and Game, explained that while there wasn't yet a management plan for the property, the State Wildlife Action plan had clearly identified the grassland and shrub land habitat found on the Beaudette property, as one of 19 key habitats in the State. She spoke about the fact that NH Fish and Game did its management planning on a more regional basis, in order to have as diverse a wildlife population as possible.

She said shrub land and grassland were priority habitats, and said the agency had been actively involved in trying to create such habitats, especially shrub land. She spoke about the need to actively create this habitat on the Beaudette property, which was a large area, and was in an early successional stage.

Ms. Stevens noted that she was a resident of Durham, and among other things saw this property as a gateway to Durham. She said she was on the State Wildlife Management Lands team, and as part of this was the manager for Great Bay. She explained that within the whole state, there were only two regions with a regional land manager. She said this exemplified the fact that NH Fish and Game recognized that this was an area of high conservation and biodiversity value.

There was discussion about how the various recreational demands on the property would be handled. Ms. Stevens said Fish and Game properties were managed as multiple use management areas, and said one of the agency's missions was to provide public access. She provided details on the stipulations involved in order to protect habitat.

Councilor Cote asked if mechanized recreation would be allowed.

Ms. Stevens said there were rules that said no wheeled vehicles were allowed. She said snowmobiles were allowed on frozen ground.

Councilor Mower said snowmobiling could be seen as incompatible with cross country skiing, noting that there was a network of trails in the area.

Ms. Stevens said she understood this, and suggested that Councilor Mower call the local NH Fish and Game office about this issue.

Councilor Smith said he hoped that now that there was an Agricultural Commission, NH Fish and Game would take advice from the commission in terms of maintaining some of the fields and mowing them every few year, although not necessarily haying and harvesting them. He said this land had been clear for hundreds of years, and was part of the history of Durham. He said it was important that it remain open for future agricultural pursuits, if the Town needed agricultural land.

Ms. Stevens said NH Fish and Game was open to hearing public comments on this. She said the agency's mission was concerned with wildlife and the connection of people to the outdoors. She said they could commit to part of what Councilor Smith had said. She said machinery would be used to keep the area open, and said it would be mowed every 1-3 years, but said she couldn't commit to keeping it open as a potentially agriculturally cropped area.

But she noted that there were some Fish and Game wildlife habitat improvement agreements that supported local agriculture, where there was a balance between farming and wildlife needs. She said Fish and Game was open to agricultural practices that were in balance with wildlife and recreational needs. She congratulated the Town for the work at Wagon Hill farm, and also said it was exciting that the Agricultural Commission was up and running.

Chair Carroll said it was very much appreciated that Ms. Stevens was present.

Councilor Marple said she really liked the conservation lands map. She said Durham had a lot to brag about concerning these lands, and she asked if this map could be published, in order to show that Durham was concerned about conservation.

Councilor Mower provided some details on the mapping that had been developed. She said it was terrific information, and said she echoed Councilor Marple's request.

Dea Brickner Wood, Great Bay Resource Protection Partnership, suggested that a link could be provided to the Great Bay Resource Protection Partnership website, <http://www.greatbaypartnership.org/>, where there was a whole section on maps, and where the various conservation properties could be seen in detail. She said public access points could be observed as part of this.

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

Chair Carroll said there was now the opportunity for the Council to discuss the proposal.

Councilor Gooze said he was in favor of what was proposed, and had no problems with it.

Councilor Cote asked about the cell tower that was proposed in this area, and Councilor Smith noted that it was located on the LaRoche property, which was the abutting property.

Chair Carroll asked if Councilors felt they were ready to vote that evening, noting that they could put this off for another meeting if people felt they needed more time.

Councilor Smith MOVED to accept legal interest in approximately 64 acres of the Beaudette (2) property (Tax Map 15, Lot 6) in the form of conservation restrictions and authorizes the Administrator to sign an agreement and other related documents with The Nature Conservancy accepting conservation restrictions on behalf of the Town. Councilor Mower SECONDED the motion, and it PASSED unanimously 7-0.

Chair Carroll said that thanks for this project went to many people, including Mr. Hyde and the Nature Conservancy, Dea Brickner Wood, the Conservation Commission, NH Fish and

Game, Malin Clyde and other members of the former Land Protection Working Group, and others.

Councilor Stanhope returned to the table.

B. Results of the Fire Department Charette and meetings with UNH on the possibility of using “C” Lot as a future site for the fire station - Corey Landry, Fire Chief

Councilor Gooze said he would like Administrator Selig to address the issue of the time frame for this project.

Administrator Selig said for the past few years, a goal of the Council had been to determine a definitive future site for the Fire Department, which serviced both the Town and UNH. He said the cost would be split fifty/fifty. He said the Town currently had a 10 year lease with the University for use of the Fire Department building on the campus. He said the Town’s Fire Department had been in that building for 22 years, and made the best of the building. But he said the existing site was slated for reuse as part of the University’s master plan. He said the plan was to close off College Road and make it more pedestrian friendly. He said if the University got grant funds to put a new research facility there, it would give the Town two years to find an alternate location. He said this was why the Town had been engaged in finding such a new location, in order to be able to meet such a timeline. He spoke about the other sites in Town that had been evaluated and considered, and said none had proven to be feasible.

Administrator Selig said Town staff absolutely recognized that they were in a difficult recessionary environment. He said it was also realized that the Library project was moving forward, and that it would be important to allow some space between these projects. He said what was being done now was long term planning, and said they were hopeful that within a reasonable period of time, the Town could move forward with a new Fire Department building. He said it was recognized that funding was difficult right now.

There was discussion that there were five years to go before the present lease was up.

Chief Landry introduced Lynn Rita, the architect for the project.

Ms. Rita spoke briefly about the fact that C lot had been chosen as the site to focus on, and she noted that locating the new Fire Department there would bring it closer to the center of Town, which was a good move in terms of the response time. She said one of the goals was to make the new building more of a community presence, and an icon for the Town, as compared to the present Fire Department building.

She noted that earlier in the study, there had been discussion about accessing onto Mill Road vs. Quad Way, and said it was determined that Mill Road was the best place for this. She said there would be 7 bays, which would provide enough room for the existing equipment, while also providing room for additional growth. She said given the nature of the lot and the configuration, the building would need to be a two story structure.

Ms. Rita said right now there were about 210 spaces in C lot, and said UNH had asked that as many of these stay as possible. She said parking spaces at the existing station would be counted toward the total. She also said UNH would access C lot from Quad way, and that they would have the ability to expand vertically if they chose. She said the idea of putting a parking garage on the site had been looked at, but said this was determined to not be necessary.

She said 5 of the 7 bays would face on Mill Road, and said on the back side of the building would be two additional bays, which would include one maintenance bay. She showed dedicated parking spaces for staff and visitors, and noted that there would be covered parking for the Chief and some other staff members. She said the existing footprint of the parking spaces had been expanded, and she provided details on this.

Councilor Lawson arrived at 9:04 pm.

Ms. Rita noted a lobby area that would be located facing on Mill Road, next to the bays, which would help establish a community presence. She described how an antique piece of fire equipment would be on display in this lobby. She said the lobby would have stairs that would go up to a second floor where the reception area and the administrative offices would be located.

Ms. Rita also described a proposed hose tower/ training tower, provided further details on the maintenance bay, and described other features of the building, including a training room/emergency operations center (EOC). She said the living quarters for personnel would be located in the center of the building, and she provided details on this. She also described the architecture of the building, and said they were trying to stay with architectural elements in the Town.

She said at this point, they were still at a very conceptual level. She reviewed the cost estimates at this point:

Building

Cost per square foot	\$189
Program size	\$29,100
Overhead, profit, bonds	\$399,661
Contingency (%)	\$294,927
Total	\$6,193,478

Site

Cost per square foot	\$40
Program size	\$29,100
Overhead, profit, bonds	\$86,577
Contingency (%)	\$62,529
Total	\$1,313,106

Total Construction Cost	\$7,506,584
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Councilor Smith said he assumed that the cost per square foot for the site referred to construction costs, and Ms. Rita said that was correct.

Councilor Gooze asked if the UNH parking that would be located on the site would be shared 50/50.

Ms. Rita said there were currently 210 spaces at C lot, and said the project would provide 148 spaces to the left of the building. She said in addition, there would be about 30 spaces associated with the building itself. She said the remainder of spaces would come from the existing Fire Department location.

Administrator Selig said in order for the Town to utilize C lot for the Fire Department, it would need to reconfigure C lot. He said part of that would include the building of the Fire Department, and part would include the reconfiguration of the parking on Quad Way. He said the entire cost for the project would be shared 50/50 with the University.

Chair Carroll said she didn't understand what benefit the Town would get from the University having 150 spaces, and Ms. Rita said the benefit was that Town wasn't paying for the property.

Administrator Selig said part of the agreement would be the Durham Fire Department's use of the site for a dollar, for a 99 year lease. There was discussion that the Town currently leased the Fire Department space from the University for \$160,000/year, which in not having to pay the University, would be invested in this new building.

There was discussion that the net additional cost to the Town for the debt service would be \$120,000 per year, over 30 years.

There was further discussion about the cost of leasing the site. Administrator Selig said the conceptual discussion with the University had indicated that it would cost a dollar, for 99 years, and the Town and the University would collaboratively adjust the site to meet both of their needs.

Councilor Smith said that made sense.

Councilor Gooze asked what it would cost for the rest of the project, beyond the construction costs.

Ms. Rita said there would be the professional fees, the furniture and equipment costs.

There was discussion that the square footage could be tightened up somewhat, to reduce the costs.

Councilor Mower asked about the bays that currently existed, as compared to what was proposed.

Ms. Rita said the current bays were limited in terms of depth, width and height, which meant that customization and additional cost could be required when the Town purchased new

equipment. She said the proposed bays would be a standard width, and deeper, so there could be double stacking. She also said this would mean that a longer ladder truck could be accommodated in the future.

Administrator Selig said they believed that locating the Fire Department on Mill Road would mean that signalization wouldn't be needed, as compared to locating it on Quad Way. He also said the Town would like to have control over the parcel for the duration they were there, and didn't want to be paying a rental amount annually. In addition, he explained that it was somewhat easier for the University to break off a parcel of its land that faced on Mill Road, which was closer to downtown, as compared to one that faced on Quad Way.

He said an important issue driving Town staff to identify a site was the fact that there were grant opportunities the Town could take advantage of if the site was known and they were ready to move forward with a project. He noted that this was made apparent a few years ago when there was stimulus funding.

Ms. Rita said given the University's ability to give the Town a 2 year eviction notice, and depending on what time of year the eviction notice was given, this could be a challenging situation in terms of construction of a new building. She said having the drawings in hand, it should take about 16 months to build, and said the drawings would take her office about 10 months, which totaled more than 2 years. She said she therefore recommended moving forward with the drawings as soon as possible.

Chair Carroll asked Ms. Rita to discuss energy use in the building.

Ms. Rita said one of her specialties was green building and sustainability of fire stations. She said her firm would enlist the services of a mechanical/electrical engineering firm that could provide an energy efficient building, and look for ways to provide alternative energy on site.

She also noted the massive amount of imperviousness on C lot, and said they would be looking for ways to collect rainwater and use it in the building. She said there had been discussion about doing a LEED building, without necessarily going through the paperwork and getting the plaque.

Chair Carroll noted that residents had talked a lot about LEED certification for Town buildings. She said she had learned recently that getting LEED certification was like an insurance policy.

Ms. Rita said that was the theory. She spoke about the LEED process, and said what typically happened was to have a LEED charrette, identify what credits were the most important to the town, and then focus attention and budget on those credits.

Councilor Mower said it might be a red herring to talk about LEED certification. She said there were other standards dealing with energy efficiency, and noted that the Energy Committee had addressed these in its checklist for the Planning Board. She said rather than emphasizing LEED, it was much more important to focus on energy efficiency.

On another issue, Councilor Mower said at the charrette for the Fire Department, there was brief discussion about the impact of site selection and location of the building relative to College Brook. She noted that there was interest on the part of some people to daylight College Brook as part of this project. She said there were challenges to the site in terms of topography, but said if Mill Plaza ever changes hands and could be developed, there would be the opportunity to take advantage of College Brook as part of a river walkway. She said they shouldn't preclude options for the future.

Councilor Smith asked if the culvert currently on the site would run under the new building.

Ms. Rita said it would run adjacent to the new building. She said she had been excited about the kinds of approaches to College Brook that Councilor Mower had described, but said the engineer she was working with had indicated that the challenge with College Brook was that it was significantly deeper down than anyone had realized. She said in order to daylight the brook, a chasm would have to be created. She said as much as they would like to do this, it would pose some challenges from a number of points of view.

Councilor Mower said some members of the Conservation Commission, with expertise in water resource protection thought there might be some expertise associated with architecture specifically that might shed some light on this.

Ms. Rita said she would be happy to investigate this further. She said water could be pumped up to create a man made tributary, and said a question was how much money the Town would want to spend on this.

Councilor Stanhope said the fact that the Town wouldn't have to incur in bonding and in the tax rate the cost of acquisition of the land was significant, especially for a critical site and a community center. But he said looking at the sharing of costs with the University, and historically low borrowing rates, he estimated that the impact on the tax rate would be approximately \$0.25 per thousand dollars of valuation. He said that was less than \$100 for the average house in Town. He said postponing this project had some significant risk in that the forecast was that interest rates would rise significantly during the decade.

He said even though they were looking at the cost of a new library, the Council should not postpone this project. He said the opportunity to borrow and save over a thirty year period was a very important consideration in terms of the growth of the Town.

Councilor Gooze spoke about the figures in the CIP for this project, and said he agreed with Councilor Stanhope.

Administrator Selig asked Ms. Rita to discuss property acquisition involved with this project.

Ms. Rita said what was proposed encroached on the abutting lot, heading away from Main Street, by about 25-30 ft, noting that it was currently overgrown shrubs and wasn't utilized. She said there would need to be discussion with the landowner about this.

Administrator Selig asked for some details on the ambulance service piece of this development.

Chief Landry said there would be a built in space/bay, so if some day the Fire Department ran the ambulance service, there would be room for it. But he said right now, his medic would take that bay.

Administrator Selig asked what would happen to McGregor Ambulance Service.

Chief Landry said McGregor wanted to be located on the west side of Town for response time purposes, because they were responsible for Lee and Madbury as well. He said he believed that their plan was to get a bigger building that would include education space, and said that wouldn't fit in the proposed building on C lot. He said there were no plans for McGregor to be a part of the new building.

Councilor Mower said McGregor provided an extremely valuable service to the Town. She asked where it left the Town if McGregor needed another space.

Administrator Selig said the space McGregor currently occupied was a part of the Town's facility, and it was sublet from the Town. He said if the Town got a 2 year notice from the University to vacate it, McGregor would need to find an alternate location. He said they had been doing long range planning and fundraising for their own facility.

Councilor Lawson said McGregor also had two lines of nonprofit business. He said one was the EMS service, and the other was EMS education. He said this was important for the Town because it helped subsidize many of the fixed costs the Town would otherwise incur for the transport service. He said McGregor really needed its own type of facility.

Administrator Selig told Councilors that there was nothing firm with the University on this project. He said there had been discussion with Doug Bencks and Paul Chamberlin, who had then started discussion at UNH about the reconfigured parking. He said if the Council was comfortable with this configuration and moving in this direction, more formal discussion would need to take place.

Councilor Gooze asked when the design process would start.

Administrator Selig said it would be after getting the green light from the University and after additional conversation on the long term lease arrangement.

Councilor Gooze said given the 2 year window that was possible, the Town would need to push the University to work these things out.

Administrator Selig said he expected to make significant strides by the end of the year.

Councilor Mower asked if the 148 spaces west of the station would all be committed to UNH use, and would not be available for the shopping public.

Administrator Selig said they probably wouldn't be available for the shopping public, and wouldn't be accessible from Mill Road anyway. He said he could see that some spaces would be used by members of the Fire Department.

Chief Landry said that was how they operated now, and said this was discussed.

Chair Carroll said this was a long term process, but said the presentation and discussion had been very helpful, and was one step in that process.

The Council stood in recess from 9:39 to 9:45 PM.

C. Quarterly Financial Report through 6/30/11; FY 2011 fiscal projections resulting from State of NH downshifting to local communities; 2011 tax rate projection and efforts underway to mitigate unanticipated cost increases – Gail Jablonski, Business Manager

Business Manager Gail Jablonski said that currently, the good news was that the Town was currently on target concerning the 2011 Budget. She said unfortunately, after the State Budget's downshifting of the retirement costs, the Town was looking at an additional \$80,000 in expenses that it hadn't anticipated.

She reviewed individual items in the 2011 Budget, and noted that the legal line was up a bit, and the DCAT line was also up a bit because of now providing meetings online. She said that concerning the MIS Budget, some new wiring had been needed at the police station because of new computers installed. She also said the direct assistance/welfare budget was totally expended. She said she was still receiving calls from residents needing assistance, and said she therefore anticipated that this budget line would go up.

She said the \$100,000 contingency money put aside as part of the 2011 Budget was being held in reserve for the Wiswall dam fish ladder engineering services.

Ms. Jablonski spoke further about the \$80,000 retirement cost to the Town. She said the NH Retirement System had not redone the rates yet, and was hoping that at its August 9th meeting, these would be reset. She said right now, the Town was paying both the Town share as well as the State share. As an example, she said that including both the Town and State share of retirement costs for the Police Department, the Town was paying 25% of this, which was almost double what the Town had been paying in before. She said the State would not be making up its share of this.

Ms. Jablonski said the Local Government Center was looking at the figures, and had said that perhaps the new State rates might come down to 19-20%, which was about a 5% difference. But she said this wouldn't be known until the NH Retirement System certified this. She said they had said that if the rates did come down, the Town would not be compensated for what it had paid in.

She said in order to cover this, there had been discussion with Department heads, and said a spending freeze had been put in place for all nonessential items. She said as already anticipated, the Police Department would hold off on hiring an additional police officer to fill Captain Sean Kelly's position. She said promotions had been done, but said the patrol officer position had not been filled.

She said the DPW would postpone the CIP project to evaluate the Main Street railroad bridge, which would save about \$34,000 that had been set aside in the operating budget. She also said

they were looking at the number of officers being put on duty on Thursdays-Saturday when UNH opened for the fall semester. She said currently this ran at full staff, and said the idea was to save on overtime costs.

Ms. Jablonski said the Fire Department was looking at its drop down scheduling, and at possibly not filling time slots when staff went on vacation or sick leave. She said this would have to be negotiated with the union.

She said they had gone out to bid for recyclables collection, had done some comparisons, and would be discussing these results with the DPW. She also said there had been discussion about the “pay as you throw” approach.

She said there was discussion that day about MIS costs. She noted that there were some computer problems, including her own and Administrator Selig’s computers.

Ms. Jablonski spoke about the abatement issue, and said what was recommended at this point was that the \$350,000 in abatements would come out of Town taxes. She said the other options were to save money in the Budget, or to take the money out of the fund balance, which was a little under \$1 million right now.

Councilor Gooze asked what the net was expected to be as a result of the \$100,000 to be received from Capstone for building permits.

Ms. Jablonski said she didn’t have that net number yet, and also noted that a lot of that expense would come next year. She said they would probably defer a lot of the revenue to 2012.

Administrator Selig said this was still being analyzed.

Councilor Marple said on behalf of the Rental Housing Commission, she was concerned about what kind of impact there would be as a result of reducing the Police Department staff on weekend shifts.

Chief Dave Kurz said it was difficult to predict, but said data had indicated the success of having high visibility on weekends. He provided details on this. He said the shifts had overlapped in order to be able to put more officers on the street at these times without having to hire more officers.

He said the 19th officer position had been very elusive, and he also noted that Sean Kelly’s retirement had been unexpected. He said not hiring the 19th officer made logical sense. He said he would advocate for the position next year, but said he understood the economic environment. He said they were trying to respond to this in an appropriate way but still respond to people who were asking for services.

Chief Kurz said there would be an impact from having 5 officers on the street instead of 6, but said in the fall, 4 more officers would still be added on the street on Thursdays through Saturday. He also noted that deputies as well as administrative help were employed to process arrests, in order to keep the officers on the street. He said this maximized the resources the department had.

He said if they dropped down to 7 officers at the maximum peak time, this would be significant, especially for the time between when UNH opened and Homecoming weekend. He said eliminating one officer at these times would cost \$9,000, and eliminating two officers would cost \$18,000.

Chief Kurz said the department would look at everything possible so they wouldn't have to use overtime, but said they all would need to be realistic. He said the Department would still be in a proactive mode, but not as much as it would be if they had more officers on the street.

Councilor Stanhope asked how the Durham Police Department coordinated with the University force. He said when he went downtown on a weekend night, while the Town's police department had a strong force there, the University police department seemed to be invisible.

Chief Kurz said there had been a history of being able to team up with them. But he said his understanding was that they would need to stay on campus this year, so those resources probably wouldn't be as available on a proactive basis. He noted that if something bad were to happen, they would be there.

Councilor Mower asked if the installation of mobile data terminals would have any impact on the scenario Chief Kurz had described.

Chief Kurz said no. He said what had made the difference was a very deliberate way of policing over the past several years.

Councilor Niman said human beings had gotten a lot more expensive, in terms of benefits and retirement costs, and asked if there was a way to create a presence in a less expensive way. He said his own solution would be to utilize other police officers on a contract basis on weekends, in order to create the illusion of a large police force, while saving money.

Chief Kurz said there had been discussions on this concerning collaborating with Hampton Beach, which had more pressure in the summer time in terms of policing, but less pressure in the winter. He noted that the Durham Police Department did training in the summer, and also said Durham policing as compared to policing in other towns was somewhat problematic.

He said the Police Department could scale back, and said the impact was likely to be felt later. He said they had already been doing things with less. He said the Department would do the best it could, but asked for the Council's support if people asked that it do more.

Councilor Niman said he wasn't asking Chief Kurz to cut back on the service, and was asking that it be done in a more cost effective way. He said they would either have to raise the tax rate, provide fewer resources, or try to work with non Durham officers and help them learn the Durham way, in order to take advantage of lower costs. He urged Chief Kurz to think in terms of doing things differently.

Chief Kurz said the point was taken.

Councilor Mower said her understanding was that there was a difference in approach between the Durham and UNH police departments. She asked if it would therefore be appropriate to accept some external police assistance, with guidelines.

Chief Kurz said yes.

Councilor Mower asked whether, if Durham got to the point where it needed additional help on a proactive basis, UNH could be approached mid stream, and urged to join in that effort.

Chief Kurz said if anything happened that required the two departments to work together, they would do so. But he said he didn't see proactive assistance from UNH happening because they were under significant stress financially right now. He also said UNH could argue that it was giving the Town \$200,000 to do precisely what it was doing.

In answer to a question from Councilor Mower, Ms. Jablonski said the snow removal budget was 70% expended, which was on track.

Administrator Selig said the snow season remaining to be covered with the 2011 snow budget left would be in late November and December.

Councilor Stanhope said in terms of the DPW he was often struck that long-term employees, compensated at the highest level on the scale, were downtown watering plants. He asked if this work could be contracted out to private landscaping services, and also asked if snow removal could be contracted out. He said other municipalities had looked at this, and had contracted out work for a wide variety of services. He asked if doing this meant the quality of work would decline.

Ms. Jablonski said these options could be looked at. She said contractors currently weren't brought in for snow plowing, but were brought in to help with snow removal. She said at this point, snow plowing was done in house because there were the trucks and the personnel.

Councilor Gooze asked if perhaps DPW personnel could be reduced as a result of this.

Councilor Stanhope said the idea was not to lay people off, but to reduce staff as a result of retirement incentives. He said clearly, the benefits package as compared to private sector benefit packages should have a significant impact on the cost.

Chair Carroll said if the snow plowing were to be contracted out, there was then the question of what would be done with the plows. She said if they were sold, the Town wouldn't have the security of being able to do snow plowing itself, as needed. She also said if the Town changed its mind about contracting out the work, it would then have to go out and buy new equipment. She said most municipalities had found that once they sold their equipment, they couldn't afford to purchase it again. She said this was a consideration, heading into the Budget season.

Councilor Cote said it came down to what the cost for service was, whatever the service was. He said perhaps departments needed to look at the services they provided in these lean times, and it would then be decided what services they would not provide anymore. He noted that

there were many cities and towns that were now prioritizing what roads would be plowed, and said perhaps these kinds of things needed to be done in order to not have to do layoffs.

Chair Carroll said she believed that NHDOT was in the process of prioritizing what roads would be plowed at night when it snowed.

Councilor Niman asked at what point he would be able to object to Administrator Selig's plan for dealing with the financial shortfall.

Administrator Selig he wanted feedback on this.

Councilor Niman said he could see raising the tax rate by \$80,000 to cover retirement costs, which would have to be paid ad infinitum. But he said he would prefer to pay the \$250,000 abatement cost, which was a one time expense, by taking money out of the fund balance, rather than doing this by increasing the tax rate.

He said this would otherwise inflate the tax rate, and said he didn't think this was fiscally responsible. He said it gave the Town Administrator a built-in cushion, and said he would instead prefer to challenge Town departments to change the way they managed their departments, in order to do so in a more cost effective way. He said otherwise, Town staff would be let off the hook.

Administrator Selig said the other side of this was that the Council had a policy of not utilizing the fund balance. He said they should have a conversation about that, and said he had been keeping that in mind, in trying to work through this issue. He also said the abatement cost continued to be a redistribution of the tax burden, and said it was therefore fair to pass it through in terms of what needed to be raised.

Councilor Niman said policies were enacted under a certain set of conditions. He said if the circumstances changed radically, only a fool would stick to the policy that didn't make sense in a world that had changed. He said the world had changed, and said now wasn't the time to apply the policy regarding the fund balance. He noted that he had voted in favor of that policy, but he challenged Administrator Selig to come up with a plan to rebuild the fund balance to an appropriate level, after utilizing it.

Chair Carroll thanked Ms. Jablonski for her hard work, and said it probably would continue.

X. Unfinished Business

- A. PUBLIC HEARING AND ACTION ON RESOLUTION #2011-16** authorizing the acceptance and expenditure of grant funds totaling \$6,681.00 from the New Hampshire Division of Historical Resources to assist in funding the cost of the process to list the Smith Chapel on the National Register of Historic Places

Councilor Smith MOVED to open the Public Hearing on Resolution #2011-16 authorizing the acceptance and expenditure of grant funds totaling \$6,681.00 from the New Hampshire Division of Historical Resources to assist in funding the cost of the process to list the Smith Chapel on the National Register of Historic Places. Councilor Mower SECONDED the motion, and it PASSED unanimously 9-0.

There were no members who wished to speak for or against the application.

Administrator Selig noted that Historic District Commission/Heritage Commission Chair Leslie Schwartz's letter had spoken in favor of this Resolution.

Chair Carroll said resident Beth Olshansky had been present to speak in favor of this, but had left the meeting because the hour was late.

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

Councilor Stanhope said the Historic District Commission hoped that the Council would accept these funds. He noted that there was nothing in placing Smith Chapel on the National Register that prevented the Town from doing anything, including selling the property or tearing it down at a future date. He said HDC members had worked very hard in pursuing grants, and said approving this would provide even more avenues for possible funding.

Councilor Smith MOVED to approve Resolution #2011-16 authorizing the acceptance and expenditure of grant funds totaling \$6,681.00 from the New Hampshire Division of Historical Resources to assist in funding the cost of the process to list the Smith Chapel on the National Register of Historic Places. Councilor Mower SECONDED the motion, and it PASSED 9-0.

- B. PUBLIC HEARING AND ACTION 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 for DWI patrols, special enforcement patrols, and to install Mobile Data Terminals in each marked police vehicle

Councilor Gooze MOVED to open the Public Hearing 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 for DWI patrols, special enforcement patrols, and to install Mobile Data Terminals in each marked police vehicle. Councilor Marple SECONDED the motion, and it PASSED unanimously 9-0.

There were no members of the public who wished to speak.

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

Councilor Gooze MOVED to adopt 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 for DWI patrols, special enforcement patrols, and to install Mobile Data Terminals in each marked police vehicle. Councilor Mower SECONDED the motion, and it PASSED unanimously 9-0.

Administrator Selig complimented the Police Department for actively pursuing the grant funding, and explained that the Town had been selective in the grants that it applied for. He noted that the Department had decided not to go after grant funding for a motor cycle.

Councilor Cote asked if part of the money could be put toward stop sign patrols, and there was discussion.

Councilor Stanhope asked if the patrols for DWI and speed enforcement could be conducted downtown on Friday nights.

Chief Kurz said they would be, but said they would expire on September 15th. He emphasized that there would be patrols, and not checkpoints. He said checkpoints were too labor intensive.

C. FIRST READING ON ORDINANCE #2011-04 amending Chapter 118 “Solid Waste”, Sections 118-11 “Offensive Matter” and 118-18 “Penalty” of the Durham Town Code

Councilor Gooze said in talking with the code enforcement officer Tom Johnson, he had learned that he was tired of being a property manager, and having to constantly call property owners about complaints concerning rubbish, etc., on nearby properties. He said this was why this Ordinance was pursued.

He said in discussion about the proposed Ordinance, it was decided that there needed to be clarification about what “offensive material” was, and about what the fines would be. He said there was also discussion that there would need to be some leeway, when someone was put upon by something that was out of his control.

Councilor Gooze said Attorney Laura Specter had made some changes to the Ordinance, and said he thought it did what they wanted it to do. He said he believed Councilor Stanhope still had some problems with it, which was whether landlords should be held responsible if their tenants refused to pick up materials.

He said another concern was concerning the fines. He said Attorney Specter had clarified that each episode would be treated individually. He also said there was language in the Ordinance that said the Town Administrator could waive a fine for good cause shown.

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

Councilor Gooze said the Council could always make further changes to the Town Code in the future if needed. He said he was comfortable about what was proposed, and said he believed the code enforcement officer really needed this.

He reviewed the changes that had been proposed since the last time this was before the Council, including the wording in Article V, 118.18 (d):

“Any owner of property not having control of the property (i.e., a landlord) who is notified of a violation on the property and who does not take reasonable steps to immediately correct the violation shall be guilty of violating this ordinance and shall be subject to fines as set forth above.”

He said if there was a situation where a landlord had a tenant who refused to comply with the

Ordinance, his own feeling was that the landlord would either have to do something with the lease, work with the tenants, or hire a disposal company.

Chair Carroll noted that Dean of students Ann Lawing was on the Rental Housing Commission, and was very willing to go out and meet with students. She said there were additional resources besides the code enforcement officer and the Town Administrator to deal with this issue, on private property, if they were asked for help.

Councilor Gooze said as proposed now, there would be a courtesy notification, and the next step would be the violation.

Councilor Cote asked what happened if there was a courtesy notification on a Friday concerning a problem, this was cleaned up, and there was then a problem on Saturday. He asked if that would be treated as a separate situation.

There was discussion. Councilor Gooze said he thought that kind of situation could be handled, and said there would need to be some discretion involved.

Councilor Smith spoke about the fact that sometimes, there was material placed on properties that was more than simply litter.

Councilor Gooze said some of these things would need to be spelled out more.

Councilor Stanhope said the proposed fines for offenses concerned him. He said the statutory limit was \$1,000, but said as the Ordinance read, the Town would be attempting to fine someone \$1,450. He said the wording there was troublesome.

He also said they lived in a college town, and to a certain extent there would be some litter. He said a question was what would be a reasonable time of day when a property owner would have been expected to police his property and address rubbish, etc., issues. He said if they were going to pass a law, it needed to be uniformly enforced. He said there needed to be some guidelines in terms of what was considered acceptable behavior, and when.

Councilor Stanhope questioned the wording “for good cause shown”, and also said he had serious reservations about holding a third party responsible for someone else’s behavior. He said if there was a landlord who didn’t cooperate, he didn’t have a problem recognizing this with some language. But he said he questioned the legality of holding a landlord responsible for a neglectful tenant.

Councilor Mower asked how some of this could be enforced, if the code enforcement officer didn’t work on Friday night and the weekend.

Councilor Gooze said he had had numerous conversations with the code enforcement officer, who said he needed this ordinance.

Chair Carroll said there would be a lot of leeway, but landlords and tenants would at least clean up a property by Sunday afternoon. She also said it was tricky when dealing with human behavior, and said it would require that landlords and Town staff exercise some good

judgment. She said the hope was that those who were creating all of this litter would show better judgment.

Councilor Stanhope said he hoped a more formal appeal process would be spelled out in the ordinance.

Administrator Selig said the Town didn't have the ability to force someone to pay a fine, and would have to go to court on this. He said by and large, when someone was cited for an offense, there was compliance. He said it was costly to take someone to court.

Councilor Stanhope noted that he had spoken before about litter around dumpsters downtown. He said there was a large rat population downtown, and said policing the dumpsters was an area to pay special attention to.

Councilor Lawson said he appreciated Councilor Stanhope's view on the proposed ordinance. But he said he viewed keeping rental property clean as a cost of doing business. He said he wasn't concerned about that being attributed to an unexpected third party cost. He also said that he was concerned about the leeway of trash being allowed to remain uncollected from Friday to Sunday. He said this was a time when younger kids in the neighborhoods were most exposed to this trash.

Councilor Smith asked Councilor Lawson if he was proposing a part time code officer for weekends.

Councilor Lawson said he didn't know if there should be a code officer, or perhaps a police officer who did this when things weren't as busy.

Councilor Smith asked on what basis Mr. Johnson would respond. He described possible scenarios.

Councilor Gooze said these things were mostly complaint driven. He said Mr. Johnson had a certain amount of time available, and would prioritize.

Councilor Gooze MOVED on first reading Ordinance #2011-04 amending Chapter 118 "Solid Waste", Sections 118-11 "Offensive Matter" and 118-18 "Penalty" of the Durham Town Code, and schedules the public hearing for Monday, August 15, 2011. Councilor Mower SECONDED the motion, and it PASSED unanimously 9-0.

XI. New Business

XII. Nonpublic Session (if required)

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

XIV. Adjourn (NLT 10:30 PM)

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

Adjournment at 10:52 pm

Victoria Parmele, Minutes taker