

This set of minutes was approved at the September 26, 2011

**Durham Town Council
Monday August 15, 2011
Durham Town Hall - Council Chambers
7:00P.M.
MNUTES**

MEMBERS PRESENT: Council Chair Diana Carroll; Council Chair Pro Tem Jay Gooze; Councilor Julian Smith; Councilor Peter Stanhope; Councilor Robin Mower; Councilor Jim Lawson

MEMBERS ABSENT: Councilor Neil Niman; Councilor Bill Cote; Councilor Kitty Marple

OTHERS PRESENT: Administrator Todd Selig; Public Works Director Mike Lynch

I. Call to Order

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

II. Approval of Agenda

Councilor Smith MOVED to approve the Agenda. Councilor Mower SECONDED the motion, and it PASSED unanimously 6-0.

III. Special Announcements

IV. Approval of Minutes

July 11, 2011

Councilor Mower MOVED to approve the July 11, 2011 Minutes. Councilor Gooze SECONDED the motion.

Page 2, 4th from bottom, "...he didn't think the Board had vetted the draft very much up to this point in time..."

Page 4, 4th paragraph, From the NOAA CELCP Coastal and Estuarine Land Conservation Program

Page 5, 3rd full paragraph, She said she'd also attended a meeting of a citizen action coalition...."

Page 18, under New Business "Chair Carroll and said she wanted them to know...."

The motion to approve the July 11, 2011 Minutes, as amended, PASSED unanimously 6-0.

V. Councilor and Town Administrator Roundtable

Councilor Gooze said the Planning Board met on August 10th. He said they approved unanimously the site plan review application for the Grange project.

He said there was an acceptance consideration for an approximately 120 foot high wireless

tower at the LaRoche property on Bennett Road. He said a variance had been received, and said as part of that process, a number of pictures were taken from various perspectives, which included a balloon to represent where the tower would be. He said there would be a site walk on August 24th.

Administrator Selig asked if the height had changed, since the balloon test, and said the balloon had been hardly noticeable. Councilor Gooze said it depended on where one was looking from.

Councilor Gooze said there was an acceptance consideration for a site plan application for Great Bay Kennel, which would be replacing the existing canine day care building with a new building, providing an indoor and outdoor play area, and also providing a one bedroom caretaker apartment on the second floor. He said there would be a site walk on August 24th.

Councilor Mower said the Conservation Commission had heard a presentation from DPW Director Mike Lynch regarding a potential timber harvest on the Langmaid Farm and Horsehide Creek parcels on Durham Point Road near the Transfer station. She said there was discussion about the importance of following the stewardship plans for these parcels and setting objectives. She said there would be continuing discussion, and said the Stewardship committee would evaluate this.

She said there was discussion by the Commission about a wetlands permit application for a new dock on Durham Point Road, and said a site walk was being scheduled around the tide schedule.

Councilor Mower said she had noticed that the Portsmouth City Council allowed participation of councilors by conference call, and asked if this was something the Council might want to revisit.

Administrator Selig said this idea had been discussed in the past. He said the State law was changed many years ago to formally allow this because Durham had raised the issue. But he said the Council had opted not to allow it, because at the time they felt it was more appropriate for Councilors to be present at meetings. He said the feeling at the time was that if there was an occasion where someone wanted to request the ability to participate by conference call, the Council would decide the issue at the time.

Administrator Selig said some good news was that the State had provided the first installment check, for \$43,238, for the work on the Morgan Way intersection. He said it was for initial engineering services.

Administrator Selig noted that Minute-taker Victoria Parmele was out of the State, and would deal with the Minutes via DVDs.

Chair Carroll said there would be an architectural tour at UNH for residents of Durham. She said campus planner Doug Bencks would lead a guided walk of the original buildings of the core campus that were designed by Eric Huddleston, and would tell the stories behind them. She said the tour would be on Sunday, Sept 25th from 1:00-2:30 pm, and was being sponsored by the Durham Public Library. She noted that the Dairy Bar had offered free ice cream as part of this event.

Councilor Smith said he would like the Council and the DPW to see whether more people

would make use of the Transfer Station, and bring their trash and recycling there as an alternative to putting it out on the curb if the transfer station was open more days. He said perhaps the DPW could include a survey asking if residents would appreciate this. He said he realized this would involve more volunteers at the Swap Shop, but said he thought this could be worked out.

He asked the Council and Administrator Selig to consider some way to make the Transfer Station more of a destination. He suggested that perhaps Mr. Mitchell would consider leasing land from the Town and would provide a coffee shop there. He said he still had fond memories of the dump in Durham, when it was open 24 hours a day, 7 days a week.

Councilor Stanhope noted that overtime was paid for picking up cardboard recyclables from businesses. He said he had learned about a recycling company that paid to take cardboard away, and said it might be a time to consider this approach instead of paying the overtime hours to do this. He said the cost for this overtime was probably greater than any revenue the Town received for the cardboard.

Chair Carroll noted that DPW Director Mike Lynch was present, and said this idea was something to consider.

VI. Public Comments (*NLT 7:45 PM*)

Bill Hall, Smith Park Lane, read through documentation on the Lamprey River transmission main. He then said there was not a single piece of evidence that didn't conflict with the 401 certificate. He said taking 3% of the water in the Lamprey River wouldn't affect things a bit. He spoke further on this issue, and said it was an amazing situation.

Bruce Bragdon, Colony Cove Road, suggested that Minutes changes could be made before the meeting. There was discussion on the process that was currently followed and the reasons for this. Dr. Bragdon also suggested the idea of allowing members of the public to email the Council during meetings, especially for public hearings.

He said that regarding the issue of downtown recycling, it was volumes of cardboard, etc., that hurt the downtown businesses, noting that they had problems storing the potential recyclables. He said he realized there wasn't an easy answer for this.

Dr. Bragdon said that regarding the new stop sign at the intersection of Madbury Road and Main Street, and the new parking on the left at the beginning of Madbury Road, his informal poll of clients coming to his office was 27-1 against the stop sign. He said he thought the stop sign was a terrible idea, and would be dangerous. He said it was already a busy place, and said the stop sign gave people one more thing to worry about. He suggested that perhaps a yield sign could be put there instead.

Dr. Bragdon said there was a real problem now with visual pollution. He said there was a beautiful entrance to the Town, with flowers, but said there were now blinking lights, posts, etc., and said it looked terrible. He also said that on the three mile stretch of Durham Point Road that he drove, there were 22 signs, not including street signs. He said they were all public safety oriented, and said he realized many were there because of liability issues. He

noted the Main Street/Madbury Road stop sign again, and said from a visual standpoint, the Town had done a real disservice to residents, in trying to protect people from each other.

Councilor Mower said the results of the Master Plan update survey hadn't been brought out to the public yet, but she said one of the first questions was regarding attributes that would make Durham place residents would want to continue to live in. She said pedestrian and bicycle friendliness was ranked by 82% of respondents as very important or somewhat important. She said the Town was trying to make the downtown more bicycle and pedestrian friendly, as the Master Plan had urged over the past few decades.

She said the Town was going through some growing pains, but said she hoped the community would bear with the Traffic Safety Committee and Energy Committee, as they tried to figure out what they could do, before developing greater connectivity for the bike network, etc. She said there would probably be some tweaking, but said the visual pollution was thought to be important in the initial stages, in order to capture peoples' attention. She said it might not remain.

Dr. Bragdon said he heard what Councilor Mower was saying. He said no one would argue against the Town being bicycle and pedestrian friendly. He said there were two ways to do this, stating that one way was to legislate and put signs up for every possible contingency, or to get back to a community friendly, small town attitude where people looked out for each other. He said in a weird way, when there was so much signage, this decreased the feeling for people to want to talk to each other. He said he thought they would do a lot better if they functioned as a community, rather than through signage.

Councilor Gooze said what was there now was an experiment, to see how it worked especially as the students came back to Town. He said if it worked, a lot of the visual disturbance would go away, because there would then be curbing, etc. He said they wanted comments, and noted that what was there now was one way to do this.

Dr. Bragdon questioned when signage had ever been taken down once it went up. He said he wanted the public to be safe, but thought they were going in the wrong direction.

Councilor Stanhope said when he biked or jogged through that intersection, he didn't think it was safer now than it was before. He said his concern now was that as the traffic increased with students coming back to Town, cars would pile up to the top of Church Hill, and there would be an accident.

He said in terms of design standards for stop signs, there was supposed to be a clear and direct approach to the sign. He said this stop sign was approached on an angle, and said he questioned the qualifications of the engineering of the sign. He said he didn't think it provided any higher degree of safety for bicyclers or joggers.

Councilor Stanhope also said there was sign pollution at that intersection right now. He said people in the community talked about maintaining a small town community feel, but said it looked like Times Square. He said he understood peoples' efforts in trying out things, but said he hoped the decision would be reviewed in a timely fashion, and would be made before the student population returned.

Councilor Lawson said he wasn't a bicyclist, but as someone who walked and drove

downtown, he respectfully disagreed with Councilor Stanhope's observations. He said until the sign was put up, there was an environment devoid of sign pollution, and no traffic control. He said what was created in the community over the past 10 years was a stretch of road that statistics indicated was pedestrian unfriendly and dangerous, with no yield sign at the merge, and a racetrack downtown.

He said his first priority was pedestrian safety, for middle school students who didn't have bus transportation from the faculty neighborhood to the school. He said he was seeing that it was working, but said the situation would have to be watched very carefully as UNH students came back to Town, and it might have to be adjusted.

Councilor Lawson said before doing this, this intersection had been the most dangerous area in the community for pedestrians. He said he was willing to do this experiment, and to tweak it, as long as the pedestrian safety, particularly of students, was the priority.

Councilor Smith thanked Councilor Lawson for his words. He said the stop sign was something he had suggested to the Traffic Safety Committee, and said he kept it on the agenda for several meetings for good reason. He said this was not a friendly intersection, noting that people coming west along Main Street, many of them in a hurry, were whipping around that corner onto Madbury Road. He said those planning to get onto Pettee Brook Lane were racing to get in front of those turning left onto Madbury Road from Main Street.

Councilor Smith said he saw a lot of rudeness there, with people not stopping for pedestrians in the island trying to get to the Post Office, etc. He said many people in Durham were not friendly drivers, and said there had been accidents at that intersection. He noted that it was very hard for drivers to get out of the Post Office lot because of the speed of drivers coming around that corner, who were more interested in cars coming along on their left than the little old lady coming out of the Post Office lot. He said he hoped the stop sign would remain, and at least until they saw how it worked once the University was back in session.

Administrator Selig said Town staff was aware that people weren't used to having a stop sign at the intersection, so they had purposefully gone overboard to make it clear that something had changed. He said there had been neutral, negative, but also more and more positive feedback on the stop sign, including from people who had initially been very negative about the change.

He said some positive feedback had also been received about the additional parking. He said it was intended as a traffic calming strategy, to narrow the corridor from two lanes to one. He said they continued to review the design, and hoped it would be successful. He said it seemed to be going fairly well, and said the traffic backup from Church Hill hadn't been noted yet. He said they would be curious to see if it happened when the students came back. He said there was in fact sufficient sight distance, coming over the hill.

Councilor Mower said if it did back up there, it was likely to only be for short stretches of the day.

Administrator Selig said they were monitoring this carefully, and said a question was whether a stop sign was better than a yield sign. He said they were considering a variety of options.

Councilor Smith said there was visual pollution in the community, with far too many signs of all kinds, including yard sale signs, etc.

Chair Carroll said it sounded like residents had had many different experiences with the new traffic design. She said the consensus was that they would give this time, and would have another discussion in a few months. She also said it was unfortunate that stop signs and yield signs didn't do what they were supposed to, and said that made all of this much more difficult.

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

- A. Shall the Town Council, upon recommendation of the Administrator, approve a special event permit application submitted by the UNH Office of Public Programs and Events to close a portion of Main Street between Edgewood Road and Garrison Avenue on Tuesday, September 13, 2011 (Rain Date: Wednesday, September 14, 2011) from 10:00 AM to 8:00 PM for the annual University Day Picnic?
- B. Shall the Town Council, upon recommendation of the Administrator, accept receipt of a non-industrial Wastewater Discharge Permit application submitted by University of New Hampshire for the proposed Councilor Stanhope T. Paul College of Business and Economics located on Garrison Avenue and Rosemary Lane (Tax Map 2, Lots 13-1 through 13-7) and refer said application to the Water, Wastewater, and Stormwater Committee for detailed review and approval?
- C. Shall the Town Council, upon recommendation of the Administrator, authorize awarding a bid in the amount of \$117,067.15 to OSRAM Sylvania of Exeter, NH for the Light Emitting Diodes (LED) Retrofit Street Lighting Project which will replace Main Street lighting with energy efficient lighting?

Councilor Smith MOVED that:

- A. *The Durham Town Council does hereby approve, upon recommendation of the Administrator, a road closure request submitted by UNH University Events and Programs requesting that a portion of Main Street between Garrison Avenue and Edgewood Road be closed between the hours of 10:00AM and 8:00 PM on Tuesday, September 13, 2011 (Rain Date: Wednesday, September 14, 2011) for the annual University Day Picnic.*
- B. *The Durham Town Council does hereby, upon recommendation of the Administrator, accept receipt of a Non-Industrial Wastewater Discharge Permit application submitted by the University of New Hampshire for the proposed Peter T. Paul College of Business and Economics located on Garrison and Rosemary Lane (Tax Map 2, Lots 13-1 through 13-7) and refers said application to the Water, Wastewater, and Stormwater Committee for detailed review and approval.*
- C. *The Durham Town Council, upon recommendation from the Town Administrator, does hereby authorize awarding a bid in the amount of \$117,067.15 to OSRAM Sylvania of Exeter, NH for the LED Retrofit Street Lighting Project with the expenditure to be paid from capital fund account #07-1121-801-36-000.*

Councilor Mower SECONDED the motion, and it PASSED unanimously 6-0.

Councilor Mower noted concerning Item C, regarding lighting on Main Street, that through the reception of this grant, there would be a projected savings of 70.2 metric tons of CO₂, and an avoidance of \$239,000 in future energy and lamp costs.

Administrator Selig said the \$117,000 cost to retrofit the lighting was all being covered by grant funds, which the DPW had been successful in applying for.

Chair Carroll noted that this funding had come from the federal stimulus package. She said the Town had received money from seven stimulus grants, and Administrator Selig noted that this was the highest number for any municipality in the State.

Chair Carroll thanked the DPW for seeking this grant money, because the Town would now be further ahead in installing the latest technology to get the reduction in CO₂. She said this would also save the Town money because LED lighting used much less electricity than standard lighting. She suggested that the DPW should come back to the Council in the future to let everyone know how much money had been saved.

The Council stood in recess from 7:55 to 8:30 PM.

VIII. Committee Appointments

- A. Shall the Town Council appoint members to the newly-established Durham Agricultural Commission?

Councilor Gooze noted that on July 11, 2011, the Town Council adopted Resolution #2011-14 establishing a "Durham Agricultural Commission", consisting of 3-7 regular members and up to 5 alternate members as provided by state statutes to be appointed by the Town Council for terms of three years, such terms to be staggered. He said an item was then run in the weekly "Friday Updates" seeking applications for citizens interested in serving on this commission. He said ten applications were received.

He said the commission was given the following charge as prescribed by New Hampshire Revised Statutes Annotated (RSA) 674:44-f:

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.

Councilor Gooze MOVED that the Durham Town Council does hereby appoint John Carroll, Theresa Walker, and Vincent Dell'Ova as regular members to the Durham Agricultural Commission for three year terms, to expire on April 30, 2012. Councilor Lawson SECONDED the motion.

Theresa Walker, Bennett Road, thanked the Council for the vote to establish the Agricultural Commission. She said she and others were ready to hit the ground running with a host of endeavors. She noted that the commission would be open to ideas and suggestions from residents.

There was discussion about the fact that the appointments were staggered, and that those members with three year terms ending in 2012 would simply need to apply again.

John Carroll, 54 Canney Road, said he would be pleased to serve as a regular member of the commission. He noted that he'd studied the birth of town agricultural commissions in Massachusetts, and said there were about 138 in that state now. He said NH had about 30 agricultural commissions, with more coming next March. He said this was a wonderful opportunity for the Town, and said he was particularly interested in serving with Theresa because of the enormity of her experience with agricultural commissions in Rockingham County as well as other parts of the State. He said he looked forward to working with the other members as well.

There was discussion about the fact that Mr. Dell'Ova, who was not present, had participated in the preliminary meetings where the establishment of an agricultural commission was discussed.

The motion PASSED unanimously 6-0.

Councilor Gooze MOVED that the Durham Town Council does hereby appoint James Bubar and David Potter as regular members to the Durham Agricultural Commission for three-year terms to expire on April 30, 2013. Councilor Lawson SECONDED the motion.

James Bubar said he was looking forward to being involved on the commission. He said he knew only the consumption end of agriculture, and looked forward to learning quite a bit.

Councilor Mower asked Mr. Bubar to speak about a comment in his application regarding small agricultural producers relying on grants and aid packages. She asked if he was concerned that they might seek financial aid from the Town.

Mr. Bubar said if he was a business enterprise, he would be looking for grants and support from anywhere he could, so would expect that some producers would do so if they could. He said his basic premise was that if an enterprise required permanent support, it was a hobby, and should not be supported. He said it was a different thing to help a business get established. He noted that if there were regulations that put an extreme burden on a small business in terms of things like record keeping, it made some sense to give some regulatory relief.

Councilor Lawson said a reason he was pleased to see Mr. Bubar's interest in the commission was his business and financial background, and said he hoped it was something the commission would really try to leverage. He said it was dismaying to read about farms closing because they were not financially viable. He said he saw diversity in the members of the commission, including Mr. Bubar, and was enthusiastic about his interest in being on the commission.

Administrator Selig noted that Mr. Bubar had been very interested in budgetary issues in the Town, and said that interest would be helpful in bringing perspective to the commission. He said he was a terrific candidate.

The motion PASSED unanimously 6-0.

Councilor Gooze MOVED that the Durham Town Council does hereby appoint Bonnie McDermott and Albert LaRoche as regular members to the Durham Agricultural Commission for three-year terms to expire on April 30, 2014. Councilor Smith SECONDED the motion.

Chair Carroll noted that Ms. McDermott and Mr. LaRoche were not present.

Councilor Smith said he supported the nomination of Mr. LaRoche, who he said had cut the hay on his (Councilor Smith's) property before and after he purchased it. He said Mr. LaRoche was very knowledgeable about the hard work involved in farming.

Administrator Selig spoke in favor of Bonnie McDermott, who he noted was a long term resident of the Town with a lot of experience with solid waste management and recycling. He said agriculture was a topic of interest to her as well.

Chair Carroll noted that Ms. McDermott had spoken about agriculture before the Council, and said her willingness to serve was very much appreciated.

The motion PASSED unanimously 6-0.

Councilor Gooze MOVED that the Durham Town Council does hereby appoint Suzanne MacDonald as an alternate member to the Durham Agricultural Commission for a three-year term to expire on April 30, 2012. Councilor Stanhope SECONDED the motion.

Chair Carroll said she knew Ms. MacDonald, and said she was very involved with agricultural issues. She said she would be a wonderful asset to the commission.

The motion PASSED unanimously 6-0.

Councilor Gooze MOVED that the Durham Town Council does hereby appoint Karleen Dell'Ova as an alternate member to the Durham Agricultural Commission for a three-year term to expire on April 30, 2013. Councilor Mower SECONDED the motion.

Chair Carroll said she knew Ms. Dell-Ova, and knew she had a lot of interest in food and agricultural issues. She said it was wonderful that she and her husband had both stepped forward to serve on the commission.

The motion PASSED unanimously 6-0.

Councilor Gooze MOVED that the Durham Town Council does hereby appoint Ellen Karelitz as an alternate member to the Durham Agricultural Commission for a three-year term to expire on April 30, 2014. Councilor Mower SECONDED the motion.

Councilor Mower said Ms. Karelitz had been actively engaged in getting the Durham community garden project to take off, so had some practical and organizational skills that the commission could use.

The motion PASSED unanimously 6-0.

Mr. Dell'Ova spoke briefly before the Council. He said he and his wife had been very interested in the eat local and community gardening movement, and said serving on the commission seemed like a perfect opportunity to contribute to the community.

Chair Carroll summarized that the Agricultural Commission was a wonderful new asset for Durham.

- B. Shall the Town Council appoint David Potter, 281 Mast Road Extension, to the Durham Energy Committee?

Administrator Selig suggested that the appointment be tabled, since Mr. Potter had applied to the Agricultural Commission as his first choice and had just been appointed, and had applied to the Energy Committee as his second choice. He said he'd like to follow up to see if Mr. Potter was willing to serve on both committees, and also said this would give the Energy Committee the opportunity to discuss Mr. Potter's application.

Councilor Mower said it was possible that she would bring a Council Communication forward proposing to change the composition of the Energy Committee, in order to be able to take full advantage of the interest and varied skills available in the community.

IX. Presentation Items

- A. Annual report of the Cemetery Committee and Trustees of the Trust Fund – Craig Seymour, Chair, Cemetery; Bruce Bragdon and George Frick, Trustees

Administrator Selig said the Trustees were the unsung heroes in terms of Town boards and committees. He said they were very active in terms of managing and tracking various funds set up for the Town, many of them decades ago. He also said there were some Town structures that the Trustees assisted in managing.

Dr. Bragdon said the Trustees kept the historical record of the Town in term of what properties were left to the Town, and why. He noted that a copy of their investment policy had been provided, and said its primary purpose was to make sure that they never put principal in danger. He said a second purpose was to make sure any entity they invested with couldn't default, and noted that everything they invested in was backed my Ginnie Mae. He said this meant the returns would be very low.

He spoke about the spreadsheet that had been provided, and explained that when there was a request for expenditure, the way that a fund had been set up was followed.

Councilor Lawson noted that there was the option to do CD's and money market investment that the FDIC insured.

Dr. Bragdon said that was true, but said they were backed by Ginnie Mae, so that if there was a collapse, the Town was fully covered.

Councilor Lawson noted the current \$100,000 limitation, and asked if there was any merit to changing it so it was up to the limit of the insurance, which was greater than that.

Dr. Bragdon noted that it could in fact be raised to \$250,000, and said that was perfectly reasonable. He said the Trustees would just have to make sure that this change was permanent.

Councilor Lawson noted that some of the fund balances were very small, and asked if there was a point where it was worthwhile to simply retire it.

Dr. Bragdon said the State didn't allow that ability, even if there was a small amount of money in a fund. He said they couldn't even co-mingle the funds. But he said they tried to remind members of the public that donations to these funds were possible, and were gladly accepted. He said it went in as principal. But he noted that funds that the Town set up could be run down to zero.

Councilor Mower asked if there was potential for families to designate funds to assure maintenance of a specific grave.

Dr. Bragdon said right now, that money got put into the General fund. But he said people could give money to a specific graveyard.

Administrator Selig said there were 89 known ancient graveyards in Durham. He explained how the Trustees managed the funds for the one active cemetery in Town, which was the Durham Cemetery.

Dr. Bragdon explained that 99% of the cemeteries in Town were not active, but said some had potential for use.

Councilor Mower said that regarding the Milne trust fund, she imagined there were guidelines involved. She said land was bequeathed, but said there might not have been an endowment for the maintenance of the gardens or trails around the area. She said there had been some misuse of the property.

Dr. Bragdon said he recalled that it was to be a natural area, with wildflowers, but was not meant to be a garden. He said they'd have to check on vandalism, but said as a wild garden area, there might be good and bad years.

Councilor Mower said she was referring to use by disrespectful members of the community, noting that there had been fires and debris there.

Administrator Selig said in addition to the land itself, Ms. Milne had bequeathed \$25,000, the interest of which was for the perpetual care of the area. He said the monument placed on the property was paid for out of the \$25,000, and said what was left generated about \$331 in interest per year, which was used for maintenance.

Dr. Bragdon asked Councilor Mower to send him an email about her concerns about the property. He then spoke about funds that were allotted for various plantings downtown.

Councilor Mower noted that the Trustees managed the UDAG funds, following guidelines that had been set up.

The Council stood in recess from 8:42 to 8:48 PM.

B. Revolution Energy, LLC (energy efficiency systems projects) – Clay Mitchell and Jon Spencer

Administrator Selig said the Town Council had established a goal of sustainability, and as part of this had talked a lot about strategies to decrease the Town's carbon footprint, and to become more self sufficient as a community in terms of energy. He said they had looked for effective ways to leverage the installation of renewal energy on the municipal infrastructure, and said Revolution Energy was the one respondent to an RFQ that was put out concerning this.

He noted that the company had received a grant from the Green Launching Pad at UNH, and also said they had an office in Durham, in the new Matt Crape building. He noted that Clay Mitchell was a well known planner and attorney who had done cutting edge energy efficiency projects in Epping, etc. He said Mr. Mitchell would speak about the work done with Durham to date, and where this might go in the future.

Mr. Mitchell first noted that Revolution Energy had worked with Perry Bryant on his project west of campus, and had watched as he had struggled with the complexities associated with making investments in the different energy technologies involved with the project. He said it was frustrating to watch his frustration of trying to understand what energy technologies made sense, what the financial parameters were, how sometimes contradictory information was flowing about specific technologies, and how renewable and alternative energy was getting lumped in with the climate science debate.

He said the company's background was working with municipalities, and said in 2007-2008, they started assisting municipalities in managing their energy use. He said they soon realized that it boiled down to the money, and that there had to be a better way to do this.

Mr. Mitchell introduced the idea of financing municipal energy solutions through long term power purchase agreements, service and performance contracts. He also said the goal of net energy cost per building could be achieved through a combination of energy conservation and generating energy on site. He said the goal of generating energy was to do so cleanly and

domestically, noting that there were other emissions involved in burning fossil fuels besides CO₂.

He said the company focused on renewal energy systems, and said combining this with a performance contract idea, the concept of a power purchase agreement had emerged. He said with such an agreement, a generation system was put on a facility, along with a meter, and the host of the facility was then billed for the power that came out of it. He said if there was over generation, a 100% credit was received for the over generation produced. He explained that it was easy to design a renewal energy system, particularly an electrical system, with this in mind.

Mr. Mitchell said Revolution Energy had taken this elegant solution and put it on the map in terms of a challenging location, which was NH, where there weren't a lot of state incentives that some other states had. He also said a lot of NH facilities had smaller sites, so the cost per unit went up. But he said the company was doing it. He said they were leading by example, and said they thought that eventually, power purchase agreements and renewable energy systems would make sense in the State's energy portfolio. He said this had policy as well as economic implications.

He said the reason they were the only ones to respond to the RFQ was that the company was the only one in the State taking up that challenge in NH. He noted that MA and some other states had said they wanted renewable energy, and were willing to pay \$575 for every megawatt hour produced, while NH was willing to pay \$28.

Mr. Mitchell spoke about the Revolution Energy team, and said they did most of their work in house, which helped keep costs down. He said after the RFQ was awarded, the team looked at all of Durham's town-owned properties. He said working closely with the Energy Committee, they identified 6 locations, totaling 126 kilowatts, for solar electric photovoltaic (PV) generation. He said the reason they focused on PV for that for this part of the project was that there were a number of tax incentives out there. He explained that Revolution Energy, unlike the Town, could get these tax incentives if they purchased the PV system.

He also said the company got to take a 100% depreciation that year, which formed the basis of the cost to them, which they then were able to make the subject of the power purchase agreement. He said this allowed the company to bring the Town renewable energy at a grid parity price. He said if they could continue to leverage incentives, they could bring the rate down below the utility rate.

Mr. Mitchell said the ultimate goal of the project was that at the end of the purchase agreement, Revolution Energy would sell the system to the Town at fair market value, which he said the IRS required since there were so many tax incentives involved. He said the Town would know what the fair market value was. He noted that from that point on, the energy system would cost the Town nothing. He said there would be a small amount of maintenance cost, but noted that the solar panels were warranted for 25 years. He said that kind of savings was what the target of the project was.

He said the team was also looking at some renewable thermal projects for Durham, which made a lot of sense because they replaced oil and propane.

He said 126 kW over a year would put out about 160 megawatt hours of electricity.

Mr. Mitchell said the advantages of a power purchase agreement were:

- Stability - agreement to purchase electricity for a fixed period at a fixed price
- Reliability - no operation or maintenance expenses; and the Town only buys what is produced
- Expandability - can include other energy projects, once the contract is in place; systems can be designed with expansion in mind
- Affordability - minimal upfront cost. But there is flexibility in the agreement. Money upfront can mean lower power rates.
- Community - educational and outreach for citizens and schools. Mr. Mitchell provided details on the outreach work the company was doing, and said it was now the single largest owner of solar in the State. He said that gave them the experience and ability to do these projects.

He said they were looking at doing a 10 year escalated rate power purchase agreement with Durham, involving no down payment, trying to hit \$0.14/kilowatt, escalated at 2% annually. He said the combined arrays were projected to produce 157,000 kilowatt hours annually, and said this was projected to save \$20,000 during the contract, and \$560,000 over the lifetime of the systems. He also noted that this would prevent 120 tons of CO2 emissions annually.

Mr. Mitchell listed the six proposed locations for the PV systems:

Town Hall - 10 kW, ground

DPW office - 15 kW, roof

Transfer Station - 15 kW, ground

Police Station - 10 kW, car port

Hockey Rink - 25 kW, roof

Wastewater Treatment Plant - 50 kW, ground

Councilor Gooze asked about the potential for a solar array at the new Library.

Mr. Mitchell said his understanding was that there would be the capacity to accept a solar array there, and said the company would be ready to implement that there immediately. He explained that the contract would be structured to allow this to be added on.

Administrator Selig said if this process went as planned, they were hoping to have these six arrays installed by the end of the year.

Councilor Mower noted that there were some other innovative approaches that Revolution Energy had discussed with Mr. Bencks for the Library, and also said perhaps some new things would come along over the next few years.

Councilor Stanhope said all of these sites had existing improvements on them, and asked if there was any consideration of sites like Wagon Hill.

Mr. Mitchell said neighborhood net metering would have allowed something like that, but said with the existing State regulations, there had to be a load to hit. He also explained that if the Town Hall was moved, the 10 kW generated there could be transferred over to the Wastewater Treatment plant, as part of the agreement.

Councilor Stanhope noted the 2% escalator, and asked if the company had considered tying this to the rate of change in the grid cost.

Mr. Mitchell said the company had considered this, but said the bank didn't like it.

Councilor Stanhope said there were some projections that the changes in national energy policy would at some point overcome dependence on Middle East oil, which could drive down the cost of energy on the grid substantially.

Mr. Mitchell first said he welcomed that day. He said almost every purchase power agreement in the country was 20 years, but said Revolution Energy had the advantage of a 10 year window, because this was what the State allowed municipalities to sign.

He provided photos of where the solar arrays could go at the various Town sites.

Chair Carroll noted that putting the array on the car port for the Police Station would provide the extra advantage of protection of the police cars in winter.

Mr. Mitchell noted the location for the proposed arrays at the Transfer station, and explained that it would be in what was a capped landfill area. He said the arrays would be constructed in a way so that they wouldn't pierce the cap, and noted that a lot of capped landfill areas were being used in this way.

He noted the large roof of the ice rink, where a solar array could go. He said the roof was oriented perfectly to allow for this. He also showed where a solar array could go in the back corner of the Town Hall site. He said it was realized that the future of the property was uncertain, and said the array could be moved if necessary.

He said there were a couple of possible locations for an array at the Wastewater Treatment plant. He also noted that there was potential for generating solar heat for the facility, which could be used as part of the dewatering process at the plant. He said they were moving with some care on this, but said this could potentially produce a great deal of savings.

Mr. Mitchell said if this work was going to be done at the six sites, it would have to happen by the end of the year, because of the way the current incentives expired. He noted that this would be the first project the company would seek a rebate from the State on, because it wouldn't involve a lot of State grant funds and other sources. He said they would also seek private investors, who could leverage some of the depreciation investment opportunities.

He said the company would then finalize the system options to present to the Town. He said the Town's next step was to continue to work with the company and consider the contract options.

Councilor Mower asked what the time frame was for the next steps, and when the company would need a signed contract from Durham.

Mr. Mitchell said this would be needed by the end of September. He said there were ways to lock in the rebate, and not have to have all work completed by the end of the year. He provided details on this.

Councilor Mower asked when it was estimated the work would be completed

Mr. Mitchell said the company would do as much as it could, depending on the weather. He said if the carport was part of the project, it would be put in before the winter.

Councilor Stanhope asked how soon the Council could see a draft agreement, so it could work through the language and submit it to legal counsel, and not hold the process up.

Mr. Mitchell said this could happen within a week.

Councilor Lawson said in terms of the agreement, a question was whether there were any other risks the Town was expected to take, other than the commitment to power at a specific price, with the escalation.

Mr. Mitchell said the other risk the company would ask the Town to take was that if it closed a facility, it would allow the company to move the array to another location in Town. He also said the company insured the system, and would ask the Town to grant a license to put the equipment on the property, access it and remove it if necessary. He said there was no easement involved.

Councilor Lawson asked what the range of fair market value of the systems was 10 years out as a percentage of the purchase price, from an IRS perspective.

Mr. Mitchell said it was somewhere between 5 and 10% of the system's cost.

Councilor Lawson asked what the source was of the PV systems the company used.

Mr. Mitchell said the company had used Evergreen, which they were now mad at. He said they used Kyocera panels, and had been looking at Sun Tech. He said they tried to use US manufactured panels. He said they bought inverters from Selectria, from Massachusetts. He said if any PV panels failed, they were replaced, and not repaired.

Councilor Smith asked how the percentages for each site were arrived at, and Mr. Mitchell Clay said they were estimates, based on modeling system output.

Chair Carroll asked Administrator Selig and Councilor Mower how the Energy Committee would be involved with this project, and if other committees in Town would be looking at it.

Administrator Selig said the Energy Committee was involved at the outset, and had invited Revolution Energy to talk with the Town. He said a subgroup of members of the Energy Committee had been involved with discussions with Revolution Energy. He said they would need to touch base with the Historic District Commission because of the proposed installation at the Town Hall site.

Councilor Gooze said if there was a problem at the Town Hall site, there would be excess capacity available elsewhere, especially at the Wastewater Treatment plant.

Chair Carroll asked if the EDC would be involved with the project, and Councilor Lawson said he didn't think so.

Councilor Mower suggested that if the Town went forward with this project, there would be opportunity for the EDC and the Energy Committee to do some promotion for it, because it would be of interest to businesses and homeowners in the Seacoast region to see another town doing something with renewable energy.

Chair Carroll asked for further details on the time frame.

Administrator Selig said Revolution Energy had a variety of financial contractual models that could be used, and would provide a draft of a power purchase agreement for the sites. He also said there had been initial discussion with legal counsel about the project. He said his sense was that there would be a draft in the next week or two, the Town could act on it by the end of September if they were comfortable, and installation could be conducted by the end of the year. He also explained that depending on the length of the commitment, this would determine the buy in and approval needed from the Council.

Mr. Mitchell said with this project, the power purchase agreement rate would equate to about \$25,000 per year.

Administrator Selig said they were looking at this from a long term perspective, keeping the cost of purchasing energy constant or showing a slight decrease, and then owning the system within 10-15 years, when the Town would see a major decrease in cost. He said in the mean time, the Town would be reducing its reliance on outside energy sources, and reducing the its carbon footprint.

Councilor Gooze determined that the numbers that had been arrived at for the six sites were based on space constraints.

Mr. Mitchell said the biggest guess was the hockey rink roof, because they needed to get up there and measure what the shading would be.

Councilor Gooze asked if there was a provision to swap out more efficient panels during the agreement.

Mr. Mitchell said this could be done, but said they would be half way to the ownership at that point. He also said he didn't see that much gain in efficiency over the next several years. But he said his advice was to leave room on the facility to expand with these improvements in the future.

Councilor Mower suggested that that the power purchase agreement fact sheet from the National Renewable Energy Laboratories, with a checklist, would be useful for people to look at, and Mr. Mitchell agreed.

Councilor Lawson said he had read that PSNH had said there could be a surcharge for companies that used energy that wasn't generated by PSNH, because the company still had to have the capacity to deliver energy if the alternate source wasn't available. He asked if that would apply in this instance.

Mr. Mitchell said he believed this was in response to people going to third party providers. He noted that net metering from renewables was a separate issue, and said the amount of net metering allowed in the State was intentionally very low so as not to disrupt the revenues of the utilities. He said the amount of net metering allowed would be permitted to grow over time, which would allow the utilities to adjust to this.

Chair Carroll said they would look forward to seeing the draft agreement within a week or so.

Mr. Mitchell said it was an innovative project, and said the company appreciated working with the Town.

X. Unfinished Business

A. Public Hearing and Action on Ordinance #2011-04 amending Chapter 118 "Solid Waste", Sections 118-11 "Offensive Matter" and 118-18 "Penalty" of the Durham Town Code

Councilor Mower MOVED that the Durham Town Council does hereby opens the Public Hearing on Ordinance #2011-04 amending certain sections within Chapter 118 "Solid Waste" of the Durham Town Code. Councilor Smith SECONDED the motion, and it PASSED unanimously 6-0.

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

Councilor Smith MOVED to close the Public Hearing. Councilor Mower SECONDED the motion, and it PASSED unanimously 6-0.

Councilor Gooze said working with the Town attorney, they had worked out an ordinance change that allowed certain parts of the fine structure to be changed. He said they had also put in wording that discretion was allowed the Town Administrator to waive the fine for good cause. He said there was discussion with Mr. Johnson that the courtesy notification would be set up in such a way to allow tracking of what happened.

He said there would be some times when Mr. Johnson wouldn't respond within 24 hours, but said it was believed that what was proposed would get to the root of the problem. He said it was an issue of the quality of life in the community. He said as was the case with the disorderly house ordinance, the egregious properties would have to take notice of it. He said he was firmly in favor of this Ordinance.

Councilor Mower said it might remove some of the burden on the Code Enforcement Officer, who had other thing to focus on.

Councilor Gooze said Mr. Johnson had said he didn't want to have to keep being the property manager for properties.

Councilor Stanhope said Perry Bryant had asked him to read a letter into the public record. The letter said the key word was the person who had “control over the property”, and said he read this to be that when he signed a lease on a property, that was the person who had control of the property and would receive the fine. Mr. Bryant said he was unclear about trash or litter left on, or blown on to the property, and asked if when this happened, the Town could fine the person who had control of the property.

Mr. Bryant’s letter said that as an owner of several rental properties, he thought the Council should fine the persons responsible for the issue, and not the landlord or the person with control of the property. He said he was also unsure as to why the solid waste ordinance was being applied, since the Town didn’t pick up trash at rental properties.

Councilor Stanhope said the control of property, and fining someone for someone else’s actions was a point of legal contention. He said if the Town attempted to fine someone, there was the possibility that some legal costs would be incurred. He said there was often a property where it was evident there had been a social gathering within the past 24 hours, and he provided details on this.

He said almost every other property in that same neighborhood seemed to have trash on it as well, and said his concern was that in the past, the Town had enforced the ordinance uniformly, so any property would be subject to citation. He noted that the police department didn’t stop everyone who was over the speed limit, and instead sought out those people way over the limit.

Councilor Stanhope said the Council couldn’t guarantee future enforcement, and had to balance private property rights along with the police rights that went with the government’s authority. He said he thought they would be better served with a higher level of education, and said he believed the landlords would be willing to cooperate. He said fining people for the behavior of others, who might not even be the resident tenants, raised concerns about the language, and said he couldn’t support it as currently drafted.

Councilor Gooze said the police did use discretion about speeding drivers, and said the Code Enforcement Officer would do this as well. He said there were six to ten properties that would be considered egregious, where there was so much trash that it was obvious that they were the ones this ordinance would be for. He said unfortunately, in order to get at properties like this, such an ordinance was needed. He said it would be great if education was enough. He noted that there were landlords who turned over properties all the time, and didn’t have these problems.

Councilor Stanhope said the history had been that the existing ordinance hadn’t been enforced with discretion, or hadn’t been enforced at all, and he spoke in detail on this. He said they had made this a hunt out the student landlord ordinance.

Councilor Gooze said he disagreed.

Councilor Mower asked Administrator Selig whether he would consult with the Code Enforcement Officer about the manner in which he would enforce the Ordinance if it were to pass.

Administrator Selig said it had been discussed at some length. He said a challenge was that there was one person to administrate it, who had many other thing to do. He said most of the enforcement was complaint driven, and noted that the blanket notifications that had been done were at the request of the Rental Housing Commission, which had been trying to make a strong statement at the beginning of the semester. He said a benefit of the new program was the courtesy notification form, for someone who wasn't aware of the regulation. He said another benefit of the new format was a specific waiver provision, for good cause shown.

He said it was still an imperfect process, but noted that there was a significant challenge associated with tenants of rental properties in Durham. He said the Council wasn't singling out students, but said the preponderance of violations occurred at rental properties.

Councilor Mower said if there was significant trash downtown, those property owners should also be cited.

Administrator Selig said in the past, the Code Officer had addressed this. He said the nexus of this ordinance had originally been driven by the dumpster issue, when they were not maintained. He said Mr. Johnson had addressed problem dumpsters when they were brought to his attention, but had not actively gone out to inspect them.

Councilor Stanhope said the same dumpsters that brought about this action in the first place were still a problem. He asked if there was some way to add some definition of the amount of waste on a property, which would eliminate the issue of a piece of trash being blown onto a property. He said someone shouldn't be fined \$1000 for having three paper cups on his lawn.

Councilor Gooze said he had enough faith in the public that if that started to happen, people would come before the Council, and the situation would be changed.

Administrator Selig said trash issues were hard to define, but people knew trash when they saw it. He said it was problematic to create a standard about a certain number of pieces of trash. He also said if the Code Officer was citing people in a willy-nilly manner, that would come to his attention. He spoke about the courtesy notification that would be part of this process.

He said this was happening in the context of a Rental Housing Commission that had urged the Council to be aggressive and set the standard. He said there was tremendous agreement that the look of Durham this past year had far exceeded the cleanliness standards of the past because the Town had been firm. He also noted that there was a built in economic incentive for the Town to work with the property owner to get compliance, without having to go to court.

Councilor Lawson said if the application of the ordinance was unreasonable, the feedback loop would be for the Council to change the ordinance or the enforcement. He said he was confident that this wouldn't be an issue. He said he understood Mr. Bryant's concerns, but said the idea with this ordinance was to bring people up to the standard that landlords like Mr. Bryant had set.

Councilor Gooze said they might find that a \$150 fine wasn't enough, after the courtesy notice. He spoke further on this, and said this could be looked at.

Councilor Mower asked if in discussing this with legal counsel, there was discussion about the threshold at which enforcement should be considered.

There was discussion, and it was noted that a picture would need to be taken of a property where enforcement was done.

Councilor Smith first questioned the existing wording in the ordinance, under Offensive Matter. He also noted the wording in (d), under Penalty, "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...." He suggested that the wording "not having control of the property" should be removed, but Administrator Selig said the Town Attorney had said it needed to be there to make it crystal clear that the owner as well, having been notified, could be held responsible if reasonable steps weren't taken to address the problem.

Councilor Stanhope asked what a reasonable step was.

Councilor Mower said the concept of reasonable had some meaning in law.

Councilor Stanhope asked whether, if a landlord sent a letter to tenants that trash on the lawn should be cleaned, up, this was considered reasonable.

Administrator Selig said if the landlord showed he was taking steps to hold the tenant responsible, and there was activity to clean up the trash, that would be acceptable.

Councilor Stanhope said they would have to let a judge decide whether that was reasonable or not.

Councilor Smith said the ditch across from his property collected a lot of litter, and said he cleaned it out on a regular basis. He asked what happened if he didn't do this, and during heavy rains, the debris washed through a culvert under the road and onto his field, and Mr. Johnson saw that he hadn't picked the litter up.

Councilor Mower said she thought some Councilors were reaching, in terms of possible situations.

Chair Carroll noted that three Council member were absent.

Councilor Stanhope said if the Council chose to bring this to a vote right now, he wouldn't object to that.

Chair Carroll said if she thought that having one of the three Councilors present would change the vote, she would ask that the vote be put off, in order to give everyone an opportunity to vote.

Councilor Mower said there were many instances where individual Councilors were absent, and votes occurred.

Councilor Gooze MOVED that the Durham Town Council does hereby adopt as presented Ordinance #2011-04 amending certain sections within Chapter 118 "Solid Waste" of the Durham Town Code. Councilor Mower SECONDED the motion. Councilor Mower SECONDED the motion, and it PASSED 4-2, with Councilor Stanhope and Councilor Smith voting against it.

Councilor Mower noted the portion of the Council's discussion concerning the timing of putting out trash. She said during vacation time at UNH, trash sat out for days. She said it would be advisable for the Rental Housing Commission or the Town Administrator to notify the UNH office that dealt with off campus housing to send out notices to people living in the community.

- B. Public Hearing and Action on Ordinance #2011-05**, a Council-initiated ordinance, in accordance with Section 175-14 (B) of the Durham Zoning Ordinance, that would amend Article XII, Zone Requirements, Section 175-53 (A), the "Table of Uses", of the Durham Town Code, to allow single-family residences as a permitted use in the Professional Office District

Councilor Smith MOVED that the Durham Town Council does hereby, in accordance with Section 175-14 (B) of the Durham Zoning Ordinance, open the Public Hearing on Ordinance 2011-05, a Council-initiated Ordinance that would amend Article XII, Zone Requirements, Section 175-53 (A), the "Table of Uses", of the Durham Town Code, to allow Single-Family Residences as a Permitted Use in the Professional Office District. Councilor Mower SECONDED the motion.

Administrator Selig noted some letters received, after the start of the meeting and before it. He said one was from Carol Camp, who said she supported the change in the Ordinance to allow residential use in general, and particularly for the Sakowski property.

Councilor Smith said he wished she hadn't included reference the Sakowski property, stating that this proposed Zoning change applied to all properties in that district.

Administrator Selig noted an email from Robin Masia, Deer Meadow Road, which said she supported the Zoning change to allow residential use, and particularly for the Sakowski property.

It was noted that there were no members of the public in attendance.

Councilor Smith MOVED to close the Public Hearing, and Councilor Mower SECONDED the motion.

Councilor Smith said the public had spoken, and was in favor of this Zoning change.

The motion PASSED unanimously 6-0.

Councilor Smith MOVED that the Durham Town Council does hereby, in accordance with Section 175-14 (B) of the Durham Zoning Ordinance, adopt as presented Ordinance 2011-05, a Council-initiated Ordinance that would amend Article XII, Zone Requirements, Section 175-53 (A), the "Table of Uses", of the Durham Town Code, to allow Single-family Residences as a Permitted Use in the Professional Office District. Councilor Stanhope SECONDED the motion.

Councilor Smith said he was asking the Council to vote favorably on this, and send it on to the Planning Board for its review and recommendation. He noted that he'd included three pages from the 2000 Master Plan in Council packets, which identified and discussed what was then called the Professional multi-unit office district proposal, which became the Professional Office district. He said goal #2 for this district was to limit permitted uses to those listed at the end of the section, with an emphasis on office and business uses.

He said while other districts had actual lists of permitted uses, for some reason there was no such list in the Master Plan for this proposed district. He said nowhere in the Master Plan proposal for the district was there a recommendation to remove single-family residences as a permitted use. He said immediately to the south, and to the east was the Church Hill district, which specifically permitted single-family residences.

Councilor Smith said the Professional Office district was made up entirely of a portion of the RA district, which permitted single-family residences. He said the Council made a mistake in 2006 when it created the PO district, by not permitting single-family residences. He said the prohibition had not created a demand for professional office space, noting that there were three office properties when the district was created, and no new ones had been added. He said one of the professional offices was now vacant. He said he saw no harm in making this change.

Councilor Gooze said he was listening to all sides, but his inclination was to be against this. He said the purpose of the PO district was somewhat nebulous, in the sense that it was meant to be office professional use, when what they had allowed there was mixed use with student rentals above and the business below. He said there was the possibility that there would be more of those. He noted someone who wanted to put in light manufacturing in the Sakowski property, but this use was not allowed in the PO district.

Chair Carroll asked what light manufacturing was, and Councilor Gooze provided details on this. He said there were performance standards for this use, and said it would be a wonderful use for that zone. He said this was what he envisioned for that zone, and said if the proposed Zoning change passed, certain properties in Durham would find their highest and best use as rental properties, and the change envisioned in the Master Plan for this district wouldn't happen. He said he would like to see light manufacturing as a permitted use for this zone.

Councilor Smith said that was something that should be raised with the Planning Board.

Councilor Lawson said in the PO district, there was a property that was a single-family home that was sold to a company that specialized in student housing. He said presumably that was what it was being used for. He asked why, if this property was being sold, it was allowed to be used as a single-family home for student housing, and Councilor Smith said this use was grandfathered.

Councilor Lawson said he had been in sync with what Councilor Gooze was saying, and was concerned about the property being turned into another student rental. He said under conditional use, how the property would be managed could be considered, and noted that this was how multi-family properties were handled in this district. He said he'd be much more comfortable applying that standard to this district for single-family uses.

He said he was struggling with a sense of fairness, in that the owner of the Sakowski property wanted to use it in a specific way, when someone else nearby in the district had sold the property and was able to use it in that way. He stated again that he wished all of this fell under conditional use, as opposed to a permitted use. He said there was something in the application of the PO district that didn't seem fair.

Councilor Mower MOVED to extend the meeting beyond the 10:30 pm adjournment time. Councilor Smith SECONDED the motion, and it PASSED unanimously 6-0.

Councilor Lawson said that going forward, they needed to put more effort into what they wanted the Professional Office district to be.

Councilor Stanhope said they weren't talking about student housing or non student housing, and were talking about residential use. He said there was a natural evolution in neighborhoods, which was driven by the market. He said there had been ample opportunity since the PO district came into being, but said office use had been lost, not gained.

He said even though the Simplex decision spoke to hardship, it also talked clearly about the municipality not imposing a zoning restriction that was inconsistent with the primary use in the neighborhood, which he said was residential in all senses of the word. He said this proposal wasn't about more student housing, and was talking about the use as a single-family home. He said he couldn't see the logic of objecting to this, when residential use was permitted in the zone.

Councilor Mower said she had a fundamental problem with the Council trying to make a Table of Uses change to the Zoning Ordinance, when it was beyond the point at which the Master Plan should have been updated. She said they were in the midst of doing that, and said what they had to go by in the current Master Plan was that they were hopeful this area would transition to another set of uses.

She said changes had been occurring in the downtown, and also said there was indication that there might be some movement down Madbury Road. She said the primary uses, which were the sororities and fraternities might be immovable objects, and so the Town would have to work with the other properties in the district.

Councilor Mower said she would be much more comfortable, if they were going to do this at the Council level, that the Council recommend to the Planning Board that the single-family use be made a conditional use for this district. She said she would make a friendly amendment to the motion, if she thought it was something the Council still thought it was an appropriate thing for it to do.

Councilor Smith said the three unrelated rule did apply in this district, so there was that protection.

Councilor Gooze said he didn't think making it a conditional use would have any effect. He noted why it was useful in terms of multi-use properties, in terms of hours of operation, liquor sales, etc. He said he would proposed to the Planning Board that it allow light manufacturing in the PO district, noting that there were performance standards in place, which would allow the Technical Review committee to review some applications.

He said if this Zoning change passed, there would be very little incentive for the use of a property being used as a single-family residence to change. He said he wasn't against property owners, but said the Council needed to decide what it wanted this zone to be.

Councilor Mower said that wasn't necessarily the Town Council's job.

Councilor Smith said once the new Library opened, there would be an incentive for some families to buy some of those run down buildings. He noted that the suggestion had been made to extend the PO district to include Robbie Watson's Davis Court property, and he provided details on this. He said a reason why it was decided to not permit single-family residences was to encourage people to sell these kinds of properties, for professional offices, but said that hadn't happened. He said there was the possibility that there would be more families willing to move into the PO district.

Chair Carroll said if she thought that was a possibility, she would be cheering, but said it would take a pioneering family to live there, given the language and behavior issues in that area. She said it might be different if families moved into a large number of properties in that area.

Councilor Smith said he had been a pioneer who bought a house three blocks from the University of Florida campus for his family. He provided details on this. He said perhaps it was because he was a pioneer that he was now suggesting that they create the situation that would invite more pioneers.

Administrator Selig noted that the motion should say this Zoning change was referred to the Planning Board.

Councilor Gooze said the Planning Board would be the entity that would have to make this decision. He agree to send it on, assuming a lot of discussion was needed on this at that level. He said if it did go forward now, he would speak on it at the Planning Board level.

Chair Carroll noted comments that the Professional Office district hadn't turned out as people had wanted it to be. She questioned whether many people knew this district existed, which was within walking distance of downtown Durham. She said there wasn't someone in Durham working full time or part time on economic development, who could say that that the district existed, and who could work with a developer to make a development possible.

Councilor Stanhope said he disagreed, stating that there were some highly professional real estate brokers who knew of this district. He noted that there was office space downtown that

was vacant, and said it wasn't likely that converting these properties in the PO district to office space would be economically feasible. He said this wouldn't happen until the availability of office space elsewhere in Durham was exhausted, and the economics of office space overcame the economics of residential use.

Councilor Mower asked Councilor Stanhope what might happen to that zone once the Library was built, in terms of the attractiveness of businesses to locate there.

Councilor Stanhope said he didn't think there would be any change at all.

Councilor Lawson said Councilor Stanhope's points were insightful, and said it would be market factors, the economy, and other things that would change the uses in the district. He said they could make this Zoning change seem like a bigger decision than it actually was.

Administrator Selig cautioned using conditional use, noting that someone wanting to redevelop a property wanted to know what could be done by right, and didn't want to expend money in order to perhaps then be approved by the Planning Board. He said his recommendation had been to make single-family homes a permitted use or not, in this zone.

Councilor Gooze said he didn't know what would happen in this district, but said there were things the Town could do to encourage certain kinds of development there. He noted that a workforce housing overlay might be a possibility in that area. He said he could certainly vote to send this on to the Planning Board, without saying that he would be in favor of it at that level.

Councilor Mower said there might be members of the public who had now heard more about what this Zoning change was about, and who might speak before the Planning Board. She said it could be a part of the Master Plan update process.

Councilor Gooze said he would like to hear more than references to a specific property, and Councilor Smith agreed

Councilor Smith MOVED that the Durham Town Council does hereby, in accordance with Section 175-14 (B) of the Durham Zoning Ordinance, refer to the Planning Board as presented Ordinance 2011-05, a Council-initiated Ordinance that would amend Article XII, Zone Requirements, Section 175-53 (A), the "Table of Uses", of the Durham Town Code, to allow Single-family residences as a Permitted Use in the Professional Office District. Councilor Stanhope SECONDED the motion, and it PASSED unanimously 6-0.

XI. New Business

A. Discussion regarding methods to promote/market the Town of Durham

Chair Carroll said she had brought this agenda item forward after an employee in Young's restaurant had said there was someone who had seen the Chronicles program about Durham, and would like a map so they could get around Town and see the places they'd seen on the show.

She noted the Durham/UNH guide she'd found, and realized that it covered a lot about the University and the downtown, but was otherwise lacking. She said she thought it would be fun to do an inventory of what they had in order to promote Durham, and said the Council, the EDC, and other committees could perhaps work on this.

Councilor Smith noted that the HDC could conduct historic tours.

Councilor Mower said it might be a matter of coordinating and meshing information that already existed.

B. Other business

XII. Nonpublic Session (if required)

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

Councilor Gooze said he had recently learned there were some issues with Sigma Beta, which had received the RSA 79-E tax benefits from the Town.

Administrator Selig said Town staff would follow up concerning this.

Councilor Smith asked if it might be possible to invite people from outside of Durham to come to the Durham Day picnic. He said there should probably be a charge for this.

XIV. Adjourn (NLT 10:30 PM)

Councilor Gooze MOVED to adjourn the meeting. Councilor Mower SECONDED the motion, and it PASSED unanimously 6-0.

Adjournment at 10:53 pm

Victoria Parmele, Minutes taker