

D-R-A-F-T

**Durham Town Council
Monday October 3, 2011
Durham Town Hall - Council Chambers
7:00P.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 Jim Lawson; Councilor Kitty Marple

MEMBERS ABSENT: None

OTHERS PRESENT: Town Administrator Todd Selig; DPW Director Mike Lynch; Town Engineer Dave Cedarholm; Police Chief Dave Kurz; Town Planner Jim Campbell

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 9-0.

III. Special Announcements - None

IV. Approval of Minutes - None

V. Councilor and Town Administrator Roundtable

Councilor Gooze reviewed the agenda for the upcoming Planning Board meeting. He said the Board would consider accepting an application for an elderly housing facility on Mill Road. He also said a continued public hearing on an application for the Great Bay Kennels had been postponed.

He said there would be acceptance consideration of an application to amend a previously approved site plan review application, as well as acceptance consideration of an application to amend a previously approved conditional use permit application for the Ionian Properties project on Pettee Brook Lane.

Councilor Gooze said there would be a discussion on proposed zoning amendments for the downtown commercial core. He also said there was a request for the Board to discuss the idea of putting a long, narrow piece of land in the Rural district near Beech Hill Road

immediately north of Route 155A in the ORLI district. He noted that this area was zoned Office Research before being included in the Rural district.

Councilor Mower said the Energy Committee had received a response from NHDOT Assistant Commissioner David Brillhart to the Committee's letter of support for the bike lane on Newmarket Road. She said the letter explained that there were two phases proposed, and she provided details on this.

Councilor Mower spoke about the land clearing being done by Capstone next to the Town cemetery as part of development of the site, noting that some members of the community, including herself, might be distressed about this. She said she'd been assured by Code Officer Tom Johnson that in a year or so there would be landscaping to make the appearance of the area more palatable. She asked if there could be a note in the Friday Updates on this, after discussion with the Cemetery Committee and/or Planning Board and Planner.

She also noted that there seemed to be many more cars parked in the Pettee Brook Parking lot than people attending the Monday Farmers Market, and said she didn't see meters in use. She said this was a policy issue for the Council to possibly take up.

Councilor Mower asked about the report by Applied Economic Research that had been commissioned by the Great Bay Coalition communities concerning economic impacts of wastewater treatment upgrades for these communities. She asked that Administrator Selig update the Council on this and also share this report with them.

Councilor Mower asked if work was planned on the island at the Tedeschi lot that separated ingoing and outgoing traffic lanes, in order to address the drainage problem between the lot and Pettee Brook. She said she'd seen an enormous puddle there a few days ago.

Councilor Cote said Mr. Cedarholm was aware of it.

Councilor Mower said her understanding was that at the meeting with the UNH Stormwater Center concerning a proposed bio-retention system for that site, it was of great concern to Mr. Cedarholm that this drainage issue would be addressed.

Councilor Stanhope said that in regard to the tree thinning being done out by the Capstone property, there was a plan to include fencing and landscaping there. He said it was understood that during construction there would be a period of time when things looked as they did now. But he said the long term plan was to have something that the Cemetery Committee was satisfied with, and he provided details on this.

Councilor Mower noted had she had simply thought it was important that residents were informed about these plans.

Administrator Selig noted that the tree removal was requested by the Cemetery Committee because of the fear that trees would fall and crush some of the grave sites.

Councilor Smith said he had talked with Cemetery Committee member Craig Seymour about this, and he said the Committee was quite content with what had been done. Councilor Smith said once Capstone had taken every other tree in that area down, the wind was going to come across the area uninterrupted, making it dangerous to leave the skinny tall pine trees out there standing. He said it looked awful now, but said he was sure it would look much better when the new plantings came in.

Administrator Selig updated the Council and members of the public on several items. He noted that the State Board of Tax and Land Appeals had heard the Varsity Durham tax assessment appeal. He said Assessor Rice had done a good job on this, and said they were waiting for the decision.

He said the Town's auditing firm would provide the annual audit report for 2010 to the Council in November.

He noted a comment made during the public comments section of the previous meeting that the number of Town employees had increased over time. But he said in 2011 the Town actually had fewer employees than it had 10 years ago. He said in 2001 there were 85.6 employees, and now because of budget constraints - there were 82.3 employees. He said they had been working hard to look at where personnel were allocated, and said where employees were added or subtracted varied from year to year, as needs changed.

Administrator Selig said it was expected that the closing on the Grange parcel would take place later in the week. He said feedback had been received from the owner of Mill Plaza regarding the proposed plans for the pedestrian walkway, which was currently closed for safety reasons. He noted that the Planning Board had requested this closure. He said an overt goal with this project was to enhance the walkway in part to support the businesses at the Plaza. He said this would be a tremendous improvement in support of that goal over the long term.

Concerning the traffic island at the Tedeschi lot, Administrator Selig said the focus there had been on the traffic flow in and out of the lot. He said perhaps DPW director Mike Lynch could comment on the drainage issue.

Mr. Lynch explained that the most economical way to address the drainage issues there was with next year's paving of the parking lot. He said this approach would raise the elevation of the lot where the puddle currently was, and said the area would be regraded so that water would flow to the catch basin in the corner.

Councilor Mower said, in other words, this was a two phased project for the Tedeschi lot.

Administrator Selig said that regarding the report from Applied Economic Research, he had asked for a copy of it, and said he'd distribute it when he received it. He said as reported by Fosters Daily Democrat, the report indicated that there would be a significant negative economic impact as a result of the wastewater treatment plant upgrades that would be required.

He referred to the fact that Durham, for reasons previously stated, hadn't signed onto the memorandum of agreement with the Great Bay Coalition communities. He said this had now created some tension between Durham and the other five communities in the Coalition, and said at the last meeting, Durham representatives were asked to leave because Durham wasn't contributing to the funding for the Coalition. He said Mr. Cedarholm left the meeting.

Administrator Selig also explained that Durham was in the process of having a direct conversation with the EPA about the issue of meeting federal nitrogen discharge standards at the Town's wastewater treatment plant. He said the Town would also continue to communicate with the other 5 communities, but said the Town was no longer considered to be a member of the Great Bay Coalition.

Chair Carroll said the Oyster River School District Sustainability Committee was sponsoring a visit from the Big Green Bus, which was a demonstration project whereby the bus was powered completely by waste vegetable oil. She said the bus would be at Emery Farm and Durham Marketplace on October 15th, as part of touring various locations in New Hampshire.

Chair Carroll said there was recently a nice column with photos on Durham and UNH in the Boston Globe's fall travel section. She said she thought a reason the article was there was because of the program there had been about Durham on Channel 5. She said she hoped these things led to more people coming to Durham to enjoy the Town and to take advantage of its local businesses.

Chair Carroll also noted a quarterly publication: "Economic Action for Dover." She said it indicated that the first economic development priority for Dover was retention of the businesses they had, and said this had relevance for Durham, which had seen businesses come and go. She said it was important that the Town retain the businesses it had, and build on that. She also said the Dover publication indicated that for the last 4 years, Dover had been reducing the amount of bonding it did, as well as building up and relying more on capital reserve accounts.

Administrator Selig said the DPW was moving forward with installing a speed table and raised crosswalk on Madbury Road at Maple Street, noting the importance of doing this because of the school children walking in this area. He noted that speed counts done there had indicated that the vehicle speeds were consistently excessive and problematic. He said that since the installation of the speed table on Emerson Road, there had been a lot of requests from residents to install one on Madbury Road, and said he was hopeful that this project would be successful.

Administrator Selig said there would also be a speed table installed on Bagdad Road between Strout and Noble K Peterson Drive. He said the DPW had looked at doing a raised crosswalk there as well, but decided not to do it because it would have created an issue regarding plowing of the road. He provided details on this, and said the crosswalk and speed table would be kept separate.

He said there had also been discussion on the idea of installing two speed tables and a raised crosswalk on Coe Drive, but said there was no official word on this yet. He noted that the

Town had been poised to do all of this together, for efficiency purposes, but it had been determined that this wouldn't work.

VI. Public Comments (NLT 7:45 PM)

Ted McNitt, Durham Point Road, said last week he looked at the corrections for three separate documents dealing with the Lamprey River. He said without them, he couldn't make any sense of things whatsoever. He said he'd asked himself what the important issues were, and said he would share his thoughts on this with the Council.

He said it was the responsibility of Town to provide good safe drinking water to citizens, and this was on a par with police, fire and many other services the Town spent money on. He also said for whatever reason, DES appeared to be applying specific controls to Durham, UNH and the Lamprey River.

He said the State legislature had given towns the authority to withdraw drinking water from any river that flowed through the town. He said Durham had a much increased need for water because of the growth of the University, and the number of students living off campus in Town. He said these were people who used a lot of water.

Mr. McNitt said the Town didn't have a problem with taking water from the Lamprey except at times of low flow, when there were a number of restrictions and conditions. He provided details on this. He said if the Town drew water, even at times of low flow, there was virtually no measurable impact on purity, depth of water, or on plant and animal life. He said a lot of studies had been done, and no one had ever proved anything.

He said most of the river area beyond the dam was backed up water impounded by the Newmarket dam, and said the Town's use was not enough to change the level of the water below the dam. He also said the Town's substitute water supply, the Oyster River, particularly at times of low rainfall, was inadequate and difficult to process and purify.

Mr. McNitt said as a citizen who wasn't on the water system, his recommendation was to follow what was done in 2010. He said the water quality from the Oyster River was so badly contaminated that the water plant didn't have any choice but to fulfill the requirements from the Lamprey. He said they should continue to draw most of their water from the Lamprey and Lee well as needed. He said if they had to go to substantial drawdown during low flow times, they should advise DES that they were doing this, but not ask permission for this. He said DES was working to control the flow for all the rivers in the State, and said they would like to use the Lamprey as their test case. He said any regulations that specifically applied to the Lamprey should be avoided like the plague, but he said in the interest of health and the environment, they should fully cooperate with DES on statewide efforts, and assume that they would come out with something that was completely usable by the Town.

Bill Hall, Smith Park Lane, said the very expensive 10 year study that came out in 2009 didn't have the peer support that it should have. He noted comments on the report from Emery and Garrett that among other things said there was a distinct lack of reference or guidance in the report that served to protect existing and future water supply needs that drew

from the Lamprey River. He said the report, which didn't even mention protecting public water supplies, became the basis for restricting the water.

Mr. Hall noted supporting material for the 401 certificate, which he said he had particular contempt for. He read from it, noting among other things a passage that said there was a need for further study to establish whether the biological integrity standard for fish was met, and to understand the reasons for any detrimental differences from actually occurring conditions

Mr. Hall said that was his own position, and he said it should also be the position of Town staff. He said the document provided now didn't even begin to say why there were restrictions, and said it included no executive summary of the problem they had and were trying to correct. He said he maintained that there was no problem.

Paul Schlie, Foss Farm Road, said anyone who took some time and researched the 10 year history of the 401 restriction with respect to the Lamprey River would conclude that there was no logical basis for the restrictions being imposed upon Durham. He said it was clear that they were intentionally done and had nothing to do with biological integrity or water quality, and instead were done because of the interest by some people in eliminating Durham's impoundment.

He said the idea for the restriction existed only in a letter from a federal agency that clearly said the restrictions should be added so that the impoundment could be encouraged to be removed. He said this meant that restrictions should be placed on Durham so that the hard pipe project that had just been constructed, in order to provide water passage between the Lamprey River and the processing plant to alleviate problems during low flow, could be made unusable.

Mr. Schlie said this had been blatant and egregious, and was a violation of the Town's responsibility. He said he hadn't been paying attention at that time, and wasn't a Town water user. But he said it was never too late to right a wrong. He said Councilors should research the subject, come to an educated opinion, and recommend an appropriate Town action based on that.

He said the actual use of water by the Town had an insignificant effect on the water level, and also said the ability of the State to regulate upstream flows in order to mitigate flow issues in Durham was easily achievable.

Mr. Schlie also said although the stated objective for eliminating impoundments was to restore the natural biological flows to the rivers, which he noted existed prior to the existence of man, they were actually trying to get something greater than nature's flow by guaranteeing that the minimum flow was greater than nature's minimum flow.

He said the Town should make a request to State legislators, who he believed were more receptive to granting such relief, that the Town should be exempt from any restrictions in its use of water up to the capacity of the water treatment plant. He said if the Town had requirements beyond that amount, it could notify DES.

Concerning the proposed workforce housing ordinance, Mr. Schlie said while the objective was noble, the reality was that it was naïve. He recommended that the Council not do anything that would impact costs directly or indirectly to taxpayers. He said ultimately, workforce housing, if it increased population density at a greater than equitable marginal cost to the Town's tax base, was not a positive thing for the Town. He said ultimately, all of these properties would be occupied by students because they dominated the lower cost housing market in Durham.

Concerning the issue of the number of Town personnel, he said it was clear to him that there were a lot more people with higher level and middle level positions that didn't exist a dozen years ago. He provided details on this, and said some of them should be candidate for removal.

- VII. Unanimous Consent Agenda** (*Requires unanimous approval. Individual items may be removed by any councilor for separate discussion and vote*) **FIRST READING ON ORDINANCE #2011-07** amending Chapter 153 "Vehicles and Traffic", Section 153-49 "Schedule XVII: parking prohibited certain hours and Section 153-46 "Schedule XIV: Parking prohibited at all times" of the Durham Town Code by prohibiting parking at anytime on a section of Woodman Road

Councilor Smith MOVED that the Durham Town Council does hereby MOVE on first reading as presented, Ordinance #2011-07 amending Chapter 153 "Vehicles and Traffic", Section 153-49 "Schedule XVII: parking prohibited certain hours", and Section 153-46 "Schedule XIV: Parking prohibited at all times" of the Durham Town Code by prohibiting parking at any time on a section of Woodman Road, and schedule a Public Hearing for Monday, October 17, 2011.

Councilor Mower said she had asked that this item be pulled off of the Unanimous Consent Agenda because a change she believed needed to be made.

Chair Carroll said this item would be pulled off the Unanimous Consent Agenda.

Councilor Mower SECONDED the motion.

After brief discussion, it was agreed that the change Councilor Mower had suggested didn't need to be made.

The motion PASSED unanimously 9-0.

VIII. Committee Appointments – None

IX. Presentation Items

- A. Annual report of the Conservation Commission – James Houle

Chair Carroll noted that Mr. Houle had recently stepped down as Chair of the Conservation Commission.

Mr. Houle said he was proud to have represented the Conservation Commission, but said it had involved a lot of hard work. He thanked John Parry for agreeing to take over as Chair, and then reviewed the Conservation Commission's accomplishments in 2011.

- Protection of drinking water resources, including from a land conservation perspective. He noted the potential Spruce Wood efforts, and also the Beaudette conservation project that was moved forward, which the Commission had contributed about \$50,000 to.
- Update of the stormwater management provisions of the site plan review regulations.
- Work on the aquifer protection overlay, and a potential source water protection overlay. Mr. Houle said they were trying to make the regulations easier for a developer to follow, as well as more protective of resources.
- Review of wetland applications, as well as infringements into the wetlands and shoreland overlays.
- Review of sections of the Zoning Ordinance having to do with the calculation of usable area.
- Participation with Charlie Moreno and the DPW concerning forestry on Town owned lands. Execution of stewardship plans for the Doe Farm, Horsehide Creek, and Langmaid Farm, with some profits resulting from the timber harvest. Mr. Houle said it was important to recognize that Town-owned land provided benefits of this kind as well.
- Participation in the Master Plan update process, including providing possible questions for the survey.

Mr. Houle next outlined the Commission's goals for 2012:

- Continue to advocate for protection of the Town's drinking water sources.
- Endorsement of the conservation of undeveloped land determined to contain other natural and long term value to the community
- Review of wetland applications
- Address recommendations of stewardship plans developed for Wagon Hill Farm, Longmarsh Preserve, the Doe Farm and the Weeks property.
- Conduct additional assessments of the Town's properties and protected lands.
- Land stewardship subcommittee will continue to pursue internet accessibility for town owned lands, etc.; fulfill conservation easement monitoring responsibilities, coordinate with the Parks and Recreation Committee, enhance the Commission's portion of the Town website, and support public education and outreach in the community.

Mr. Houle said he was looking forward to another year of hard work on the Commission.

There was discussion on the location of the Weeks property.

Councilor Gooze spoke about the difficulty he had had, working through the possible transfer of LUCT funds. He said he would like to see the protection of the Town's water supply as the number one priority of the Conservation Commission. He said the Conservation Commission should give a lot of thought before coming forward with a land conservation project that didn't meet that requirement. He said it was one of the main reasons he voted the way he did.

Councilor Mower said she had the strong impression that this was the number one priority of Conservation Commission members as well.

Mr. Houle said it was the top priority. But he said they could only work with the properties that became available.

Councilor Gooze said the Commission could build up the land use change tax funds so they would be available when such a property became available.

Councilor Mower said it was noted at the public hearing the previous week that having money in the LUCT fund helped to build relationships with landowners, so the Commission was ready when a piece of land did become available.

Administrator Selig said since the conservation subdivision provisions had been added to the Zoning Ordinance, this had placed a significant burden on the Conservation Commission in terms of reviewing plans. He said the Commission was very active, and did important work for the Town. He thanked Mr. Houle for doing a terrific job as Chair, including the work he had done as part of the team that did the bio-retention basin at the Tedeschi lot. He noted said this installation employed state of the art stormwater management technology.

Mr. Houle said he was happy to work with the Town on these things. He noted that there was expertise on the Commission, but said they could always use more in order to meet the increasing demands on the Commission.

B. Update on the status of the Lamprey River Water Management Plan and the 401 Water Quality Certificate - Dave Cedarholm, Town Engineer and Attorney George Dana Bisbee of Divine, Millimet, & Branch law firm

Town Engineer Dave Cedarholm noted that engineer Mike Metcalf was present, and said he had provided a sense of continuity for the Town on these issues over the past several years. Mr. Cedarholm said the 401 certificate was one piece of the puzzle, and said what he would discuss now was mostly the water management plan that was part of the instream flow regulations process.

He said these regulations and the plan incorporated everything that was in the 401 certificate, and also updated and improved upon it. He said the water management plan was a huge improvement over the 401 certificate. He said the Town had successfully negotiated a drawdown of 18 inches compared to the previous 6 inches, and he also said NHDES had recently said it would consider a 24 inch draw down if the Town implemented a wetlands monitoring program.

Mr. Cedarholm said what they negotiated was from a half inch per day drawdown to an inch per day, and said more recently they convinced DES that this could be averaged over a 5 or 7 day period. He said the Town had also been allowed to improve the limit. He said right now the limitation started at 45 cfs, and said with the water management plan, at 18 cfs the Town would have to either completely limit withdrawal, or limit it to storage in the reservoir. He noted that this was a sticking point with him, and was one of the remaining issues.

He said the water management plan incorporated allowances that would allow them to more easily operate the water treatment plant and the dam. He also said the stages of water conservation had been honed during the process of working on the plan, and he provided details on this.

He said the plan also allowed them to work in the improvements being made to the Wiswall dam, and also to figure out how from an operational perspective how they could do a draw down more easily, as well as determine a reasonable way to receive relief pulses of water from Pawtuckaway Lake or Mendum's Pond during periods of drought.

Mr. Cedarholm described the process of working with DES on the water management plan. He said there were two issues still to be resolved. He said one was that DES was saying it didn't have the authority to nullify or rescind the 401 certificate. He said the second issue was concerning the 45 cfs limit, and he spoke in great detail on this.

He said right now, DES was suggesting that they would modify the 401 certificate so that it would still exist, but would essentially refer to the water management plan.

Mr. Cedarholm explained that it was much easier to do the measurements and monitoring now, because of the work being done on the Wiswall dam. He provided details on this. He said a test run was done, and said it had convinced DES that this would work.

Administrator Selig noted that the previous inability to monitor the flow of the river had sometimes been a reason for having to stop taking water from the Lamprey during certain conditions.

Councilor Mower asked if there had been discussion at the meeting with DES about making a statement in the document that the 401 certificate was no longer valid, and not just referencing it.

Mr. Cedarholm said if they went down the path described, there would be a lot of discussion on what the 401 certificate would say.

Councilor Mower said she understood that DES didn't have the authority to remove the 401 certificate, but she said instead of just referencing the water management plan in the certificate, she'd like to know if there was also the possibility that there would be a statement about the irrelevance of the certificate.

Councilor Stanhope asked Mr. Cedarholm if he had ever put a measure on the economic burden to the town of complying with all of these regulations. He said that clearly, they presented a cost to the Town.

Mr. Cedarholm said the estimated cost impact of the instream flow program and water management plan was in the hundreds of thousands of dollars. He noted that the cost of the Spruce Hole well was included in the calculation.

Councilor Stanhope said in order for the Council to develop a final position on any of this, it needed to understand the economic consequences to the Town over the long-term.

Mr. Cedarholm said this was one of the biggest reasons for incorporation of modifications into the Wiswall dam, so that they could remotely monitor the water level, etc. He said this was a more cost effective approach than how things had been done up until now. He said when he put the costs together the total represented Durham's commitment to the various improvements that had been done over the years in order to do the right thing for the Lamprey River, including the hard pipe.

Councilor Smith said he got the impression from the letter to Wayne Ives that many of DES' requirements and expectations were unrealistic. He asked whether given these, there was any confidence that DES would become more realistic.

Mr. Cedarholm said this was what they had been trying to get DES to put down on paper, and he provided details on this. He noted as an example a conversation that day relative to the 18 cfs issue. He said DES proposed an adaptive management plan over two years to see if 18 cfs would work.

He said he'd responded that he wasn't sure a test run was a good idea, and also said he wasn't sure how to put that kind of thing down on paper, noting that there didn't appear to be a lot of flexibility in the plan right now. He said the next draft of the plan, which was due out soon, would indicate if some flexibility had been put in.

He noted that it had dropped below 18 cfs for a few days this year and last year. He said it would be awkward to modify operations for a few days and then go back to where they were, or switch over to the Oyster River and then back to the Lamprey. He said it wouldn't be until they did a test run that they could say whether 18 cfs was going to be a problem.

Councilor Stanhope said if the 401 certificate and the instream flow water management plan didn't exist, and the Town acted responsibly anyway, this would result in hundreds of thousands of dollars in savings for the Town.

Mr. Cedarholm said if the Town hadn't spent a million dollars on the hard pipe project, it wouldn't be using the Lamprey River. He noted that the old system wasn't well engineered and hadn't work that well, and said between 1970 and 2001, it was only used a handful of times. He said it wasn't a good idea to just dump water into the Oyster River. He said if the Town hadn't done that project, they would still be wondering what to do with the Lamprey River. But he said the project was done, which had triggered the 401 certificate.

In answer to a question from Councilor Lawson, Mr. Cedarholm said with the instream flow rules, right down to 18 cfs the Town could take all of its water out of the instream flow, and the dam wouldn't be touched. He said when 18 cfs was reached, water could only be taken from storage. But he said there was still 18 cfs flowing in the river, so DPW would need to release 18 cfs in some way and draw the reservoir down.

Councilor Lawson said in other words, it would be managed so outflow matched inflow, and so that what the Town took out had to come from the impoundment.

Mr. Cedarholm said the DPW needed to show that they dropped the water level in the reservoir equal to the amount that had been pumped at the pump station.

Councilor Lawson summarized that this was the difficult management task, which could occur quite a bit during the summer based on the graphs.

Administrator Selig said Town staff had many times evaluated the potential likelihood of success in challenging the 401 certificate, and determined that this would be likely be unsuccessful. He also said the instream flow regulations were the law now. He noted that Durham had raised concerns about entering the Oyster River into the Rivers Protection Program because of the Town's past challenges concerning the Lamprey River and that program.

He said as part of that conversation in the NH House Resource and Recreation Committee, which Rep. Judith Spang sat on, the idea had been raised of exempting Durham, just as the Pennachuck Water system was exempted. He said that committee didn't have an interest in this, but said the Town was successful at adding "public water system" as a protective attribute.

Administrator Selig said Durham wouldn't have a say as to whether it liked the instream flow regulations, and whether or not it wanted to adhere to them. But he said they'd been trying to influence the decision making so that they were treated as favorably as possible. He said this would protect the characteristics of the natural environment and the water system.

Councilor Gooze said if Durham was the only Town with an active 401 certificate program, why was the State so intransigent about not getting rid of it.

Councilor Marple said at the federal level, they didn't want to cancel it.

Councilor Mower said while the Council clearly needed to focus on the ability to provide clean water for the Town, it was important not to forget that there were environmental issues involved.

Administrator Selig said the Town did consider itself to be the stewards of the water system and the natural environment, and said they were trying to strike a balance.

Councilor Mower said it was very hard for those who weren't scientists to evaluate the technical information about the flow. She said it could be frustrating for people when it seemed that there was a very reasonable need for the water supply.

Administrator Selig said there were other entities involved in this issue as well, and he listed many of them.

Attorney Dana Bisbee, of the Devine and Millimet law firm said this wasn't an easy area of the law, and said the federal government was not very accessible concerning it. But he said NHDES was working hard to deal with the Town's concerns.

He said there was the State issue of the instream flow regulations, as well as the water quality standards at the State level that had been in place for over thirty years. He also explained the creation of the 401 certificate, noting that it was a federal permit, and that there were conditions associated with it. He said they were trying to see what could be done about this.

Attorney Bisbee said he'd been urged to do what he could to help the Town with this. He said if the 401 certificate was to be rescinded, the federal government would have to decide that this was an option. But he said aside from the 401 certificate conditions, there was the instream flow program. He said the Lamprey River was one of two rivers chosen as the pilot for this program, and said it had been a very difficult process over the last 10 years, but was also a learning experience for everyone.

He said it sounded like a lot of progress had been made on the water management plan, and that it could work for the various parties involved. He said the Town needed to decide what to do with the water management plan, and then on top of that there were the water quality standards, which were the underpinning of the State Water Quality Program.

He said some of the standards were very specific and some were very broad. He said these standards could not be violated, and drove the 401 process. He noted that they stood alone as a separate program at DES. He said if a water withdrawal violated the biological integrity of the water body, DES could take action to enforce the water quality standards. He said the 401 certificate set the conditions at the federal level, the in stream flow program had led to the water management plan, and the water quality standards underlay the other two.

Attorney Bisbee said it sounded like the water management plan conditions were far preferable to the 401 conditions, and said a question was therefore how to get from one set of conditions to the other. He said that under any scenario, DES would change to the new set of requirements. But he said the question was whether the change would take place within the 401 certification or separate from it.

He said he thought DES was open to different approaches. He said at the meeting with DES that day, the scenario had been brought up of writing the same letter that could be ended in two different ways. He said one could say that the 401 certificate was hereby rescinded and was replaced with the water management plan. He said it seemed that this would be the one that the Council would prefer, and said he and Town staff were trying to persuade DES that this was the way to go.

He said another way to write the letter would be to say that there was a great water management plan, and that the conditions of the 401 certificate would simply be replaced with the conditions for the water management plan.

Attorney Bisbee said a problem was the issue of whether the federal government had ever rescinded a 401 certificate. He said DES didn't know what authority the federal government

had to do this, and he provided details on this. He said they knew that EPA would want to know what enforceable requirements concerning water quality standards there would be in place if the 401 certificate was rescinded.

He said right now, DES was very open and was trying to be creative, but had expressed doubt that the federal government could be persuaded. He said a question for the Council was how far to push this process, and what the right approach to take was. He noted that they had been advised that appealing the 401 issuance would be tough to overcome from a legal perspective.

Councilor Marple confirmed that the Lamprey River instream flow pilot was a test case.

Attorney Bisbee said after the water management plan was in place, there would be a two year period when it would be tested. He said DES would then report back to the Legislature, which would then decide what to do about it.

Councilor Stanhope said it seemed like a real challenge to get EPA to rescind the 401 certificate. He asked if the water management plan language would be an amendment to the original certificate, and also asked if there was any history in terms of similar certificates being amended.

Attorney Bisbee said DES had said the certificate couldn't be rescinded, but had said all of the conditions in it could be removed, and replaced with another set of conditions that hadn't yet been finalized. He said if that was the case, the only difference was that the conditions would be in the 401 certificate. He said the conditions would be the same, whether it was a separate water management plan, or a 401 certificate that incorporated the water management plan.

Councilor Gooze asked what harm there was in trying both approaches. He said if they went with the first statement and the federal government said no, the question was what the harm was of the Town coming back with the second statement.

Attorney Bisbee said there was no harm in doing that, and said this was what Town staff had done. He said the request had been very direct and forceful. He said they spent an hour and a half that day with DES, and he spent time speaking with an attorney from the Attorney General's Office. He said they were trying to come up with creative solutions as well.

He said it was a steep climb to expect that the federal government would rescind the 401 certificate without anything clear to replace it. He said it was still being pushed by the Town and DES. But he said the alternative was to get rid of the conditions, and said they would be gone either way.

Councilor Gooze spoke about the amount of resources the Town would need to spend on approach #1 as compared to approach #2.

Councilor Lawson said even if the Town fought this, it was still likely to wind up with the same water management plan rather than working within the framework of the 401. So there would be a risk, but with no gain.

Councilor Gooze said it sounded like the only downside of having it in the 401 certificate was if the water management plan went away.

Administrator Selig said that was his understanding and he spoke further on this topic.

Attorney Bisbee said the water quality standards would still be there, and DES could still enforce a situation where water was being taken out of the river in a way that violated the surface water quality standards.

Administrator Selig said at this point, unless the Council advised him otherwise, he planned to continue on as Attorney Bisbee had described. He said there would be a request with the first letter to eliminate the 401 certificate, and simply follow the instream flow process and conditions.

He said if this was not successful, Town staff would ask that DES insert appropriate language that incorporated the instream flow conditions into the 401 certificate. He said either way, the Town would be substantially better off than it was under the terms of the original 401 certificate. He said they had done well by the water users, as part of this lengthy, expensive process.

Councilor Gooze said if this process continued over the next few years, a new group of Councilors would have to be educated concerning it. He said hopefully it would resolve itself by that time.

Administrator Selig said part of the message that Attorney Bisbee and Mr. Cedarholm gave to DES was that if this issue wasn't resolved to the Town's satisfaction, they would be invited to Durham to explain to residents why this hadn't happened.

Councilor Smith noted that Attorney Bisbee had worked for DES for some time. He asked what the name Department of Environmental Services meant.

Attorney Bisbee said he hadn't been around when the agency was created. But he said from the standpoint of what the agency did, the name didn't really have significance. He said the programs were what they were.

Chair Carroll thanked Mr. Cedarholm for all his work on this issue, and also thanked Attorney Bisbee and Mr. Metcalf for their work on behalf of the Town.

The Council stood in recess from 9:02 to 9:12 pm.

- C. Update regarding Durham police activity and calls for service during the opening weeks of the academic year – David Kurz, Police Chief

Police Chief Dave Kurz said it wasn't a surprise that activity went up at this time of year, when there were people who hadn't been away from home before. He said there were also the kids who came to Town from other communities, and said the department tried to create a safe environment for them as well as for members of community.

But he said things had been busier this year than they had been in the past. He spoke about the plan in place for a number of years, where extra officers were used to provide high visibility so there was the option to interact with kids, and be proactive concerning noise issues. He said this year, a special challenge was that Administrator Selig had asked the department to manage overtime, and curtail the amount of overtime that was in place. He said he'd explained that it would be problematic if there wasn't the illusion of a lot of police officers.

Chief Kurz said because of the pressures from the State of passing costs onto the Town, and the need to therefore save some money from Durham's Budget, he'd been providing Administrator Selig with weekly updates. He said the department was finding that calls for service, which was defined as anyone asking the department to do something about a problem, were up 24% over the last 6 weeks.

He said arrests were also up, even though there were fewer officers out there. He noted a vacancy in the patrol shift, which was a 6 pm to 4 am shift Wednesday through Saturday, and said this reduction was not insignificant. He said one could argue that if there were more police, they could detect more activity and make more arrests. But he said that wasn't the goal of the department, which had always been to create a safe environment.

Chief Kurz said some of the statistics were disconcerting, noting that felony level assaults were up almost 200%, and were sometimes resulting in people being in the hospital. He said simple assaults were up 12%. He said larceny assaults were up 44%, and said narcotics arrests were up 48%. He said these latter arrests were often made as part of other arrests being made, and sometimes involved ecstasy and cocaine.

He said driving under the influence arrests were up 52%, which was unusual for Durham because a lot of the people who drank chose to walk and not drive. He said a lot of the people they were arresting were coming in from other towns. He noted that a drunk driver had crashed into a police cruiser the past weekend, and would be prosecuted for damaging Town property.

Chief Kurz provided details on increased percentages for drunkenness and disorderly conduct, and said a concern was that two recent incidents involved the display of hand guns. He said one was at a fraternity house, and one was downtown about the time of the bar closings. He provided details on this, and said while the gun wasn't found, there were witnesses, and said the arrest was made for criminal threatening. He noted that a lot of places in Town now had cameras, and said footage of the Store 24 lot, where the incident occurred, was being reviewed.

Councilor Smith asked what the victims of these incidents were victims of, and Chief Kurz said they were victims of criminal threatening. Councilor Smith noted that no one was

beaten or hurt in these incidents. He asked if the violent assaults that had occurred were by UNH students upon other students.

Chief Kurz said there was a mixture, and said some involved non UNH students as the perpetrator and some also involved non UNH students as the victims.

There was discussion about whether similar kinds of incidents that were being reported by the UNH Campus police. Councilor Mower asked Chief Kurz if could get data on this, and he said yes. He said their activity was also up.

Chair Carroll noted that there was an article on UNH incidents in the most recent issue of The New Hampshire.

Councilor Mower asked Chief Kurz if he'd be meeting with the UNH Campus police on the situation, and Chief Kurz said this was already being done, and included Administrator Selig and Mark Rubinstein of UNH. He said there was discussion on possible strategies, including what they could perhaps do preemptively.

Councilor Mower asked if UNH was stepping up its communication with students, apart from the terrific work that Ann Lawing did.

Chief Kurz said the University was very proactive. He noted that the list of arrests made by the Durham Police Department was public information, and was sent to the University, which then determined which of the people on the list were students. He said that list was then published, and said the dean of the college a particular student was enrolled in would then meet with that student. He said the recidivism rate as a result of this process was essentially zero.

He said the Durham Police Department sent a letter to the parents of anyone under the age of 21 who was arrested. He also noted that the Department was hearing that students being arrested were concerned about the University-related consequences to them of having an arrest on their record. He pointed out that as always, a lot of the arrests being made were of young people who were not even students at the University.

There was discussion that the data provided to the Council on Mondays was cumulative data of all arrests in the Town.

Councilor Stanhope asked if the fact that both police forces had a somewhat diminished presence because of budget cuts had contributed to a situation that was more conducive to more violent acts, etc.

Chief Kurz said the social scientist in him thought that what was happening seemed to be more about a stubbornness and a sense of entitlement on the part of those causing the problems, including some people who were resorting to violence.

Chair Carroll thanked Chief Kurz for his report, and said hopefully it would rain a lot over the next few weeks.

X. Unfinished Business

- A. **PUBLIC HEARING AND ACTION ON ORDINANCE #2011-06** amending Chapter 175 “Zoning”, Article XIX “Conservation Subdivisions” of the Durham Town Code by adding a new Section 175-107-II Titled “Workforce Housing Option”

Councilor Smith MOVED to open the Public Hearing on Ordinance #2011-06 amending Chapter 175 “Zoning”, Article XIX “Conservation Subdivisions” of the Durham Town Code by adding a new Section 175-107-II Titled “Workforce Housing Option. Councilor Gooze SECONDED the motion, and it PASSED unanimously 9-0.

Beth Olshansky, Packers Falls Road, said she’d read through the proposed ordinance, and said there seemed to be a fair amount of thought that had gone into it. But she said she had some questions and comments about it.

Chair Carroll noted that consultant Jack Mettee was present, along with Town planner Jim Campbell to answer questions concerning the proposed ordinance.

Ms. Olshansky noted the language in the State workforce housing law about “reasonable and realistic opportunities...” for workforce housing, and asked how one determined how much workforce housing was enough. She said the language on this in the Statute seemed vague.

Councilor Gooze said his understanding was that if the criterion of using 50% of usable area was met and presented a way to do this, which was allowing more density than a developer would normally have, this was considered to be sufficient.

Mr. Mettee said with this law, the terms Ms. Olshansky referred to were not defined so it was up to every community to determine what they thought “reasonable and realistic opportunities” were. He said there had to be some provision in the land use code that addressed provisions in the law that allowed workforce housing to be built, and that defined what level of cost there would be for workforce housing for the particular community.

He said every regional planning commission had to do a regional housing needs assessment, and as part of this allocated the number of units each town was responsible for over a 5 year period. He said based on the most recent assessment, the number of units for Durham was 300, so this was another way to gauge how much workforce housing was considered to be enough.

Councilor Gooze said one might say there were a number of units in Durham that would sell for that level. But he said there had to be Zoning provisions that caused them to be done under workforce housing. He said the purpose of this Ordinance was to do it in an area that would provide those provisions. He said this could be done another way, but said it was felt that what was proposed now would provide an opportunity. But he said he’d like to look at other ways to do this later on, perhaps in the downtown area.

Ms. Olshansky summarized that it seemed like the approach for Durham was a combination of the goal of 300 units over the next five years, plus Durham having to provide opportunities for workforce housing in at least 50% of its area.

Mr. Mettee noted that for owner-occupied housing units, the number was 50%, but said for rental units, it was different. He provided details on this.

Ms. Olshansky noted that a goal of the workforce housing committee had been to look at what other college towns were doing concerning providing workforce housing.

Mr. Mettee said the first question that came to his mind when he began working with Durham was how to ensure that students didn't become the workforce housing people. He said research of towns with large universities in other states indicated the approach that in order for a student to get into the workforce housing pool, they had to meet a certain income level.

He said the income certification was income tax records, and said if students couldn't prove they were independent from their parents and met a certain income level, they wouldn't qualify for workforce housing. He said the planning departments he'd spoken with in these towns said there hadn't been a problem of students getting into the workforce housing.

Ms. Olshansky said this answered a long time dilemma they had had in Durham. She asked if college towns elsewhere looked at existing housing stock, or were focused on new development.

Mr. Mettee said a lot of the University towns and cities were doing a combination of construction. He said re-using larger homes was typical of a lot of these communities.

Councilor Smith said there weren't any provisions yet that would allow this.

Councilor Gooze said the committee had looked at the best way to get an ordinance in place that would meet the criteria the State was looking for, with the idea that there were a lot of other ways that this could be done, but would take a lot of time to accomplish right now. He said it was the committee's decision to work through these other ways over time.

Mr. Mettee noted that the Grange project included three workforce housing units.

Ms. Olshansky said the covenants were designed to last for 30 years, and asked how the committee came up with this amount of time.

Councilor Gooze said the committee had discussed this, and said that amount of time seemed to be appropriate.

Mr. Mettee said part of the rationale was that people in workforce housing would tend to turn the property over. He noted that each time that happened, there was a new covenant, and the 30 year clock would start over again. He noted that the town of Amherst had workforce

housing, but limited this by square footage, and not a covenant over a period of time. He said they were therefore having to continually build new workforce housing in order to keep pace.

Ms. Olshansky said this was a dangerous cycle to get into. She said if someone did stay there for 30 years, he basically earned the right to turn a property into fair market housing. She said they should talk about whether they wanted that.

She said Durham had a unique set of issues, tax wise as well as in terms of housing stock. She also noted the problems Chief Kurz had just spoken about, as well as the long term goal of getting students out of the neighborhoods. She said she'd like to see Durham balance new construction with using existing housing stock, and said this might result in an interesting convergence as a result of a depressed housing market, and houses where students lived and so were probably run down.

She said putting workforce housing in these kinds of houses would bring more value to them as well as surrounding properties, and would result in fewer students living in these houses. She also noted the low interest rates right now, and said there were therefore opportunities, if the Town could figure out a mechanism for creating that kind of incentive.

Concerning the 50% rule, Ms. Olshansky said she was present when it was discussed, and said she had heard someone speak about the value of having workforce housing closer to Town. She said that idea fit with the long term vision for Durham. She said she was therefore unhappy to see the Rural zone, which was supposed to be less dense, included in terms of getting the density bonus for having workforce housing.

She noted that the summary on the workforce housing law didn't refer to residential zones, and instead referred to zones that permitted residential uses. She said the proposed ordinance for Durham listed just the residential zones, but said one could justifiably also consider the Professional Office zone, Church Hill zone and the Coe's Corner zone for workforce housing.

Councilor Gooze said including workforce housing in these other zones would be looked at, even though what was before the Council now didn't mention it.

Ms. Olshansky noted that the statement said "shall allow workforce housing to be located in", and not "to be developed in". She asked if they agreed that as a community they would like to turn some student housing into workforce housing. She noted that once the Capstone project was built, students moving out of neighborhoods would create more opportunities concerning existing houses. She said there might be some incentive to do something with them concerning workforce housing. She said the language didn't say there needed to be new construction.

Ms. Olshansky asked whether the Town could say it was willing to re-use any formerly student housing or any low cost home in any district for workforce housing, instead of increasing density in outlying areas. She said she hoped the Council would discuss its goals concerning workforce housing and how this fit with other goals for the Town, and not just meeting the State regulations.

Mr. Campbell noted that any future zoning couldn't be taken into consideration now. He said the way the Table of Uses was set up, the residential zones were the RA, RB, RC and Rural zones. He said technically, the other zones weren't residential zones. He said whether or not they would fit what the State statute said was unclear. He said there were a number of zones where residential uses were not allowed.

Councilor Mower said there was the question of how Durham's term "residential zone" matched up with the RSA, which did not say residential zone. She also said there were residences in the Church Hill district and the Central Business district, and said a strong case could be made that they would meet the test of being zoned to permit residential uses. She said the Council needed to consider the risk it wanted to take in terms of testing this.

Ms. Olshansky spoke about possible incentives for a property owner to turn a rental property into workforce housing, similar to how RSA 79:E worked. She noted that State legislators were at the Council meeting and the fact that providing workforce housing was a policy that had been mandated by the State. She asked what legislation there was, or could be, to allow Durham to take advantage of the opportunity to use housing it already had, and in a green way, to provide workforce housing.

She summarized that there needed to be something on the books concerning this to address the needs of developers. She encouraged the Council to think about slightly amending the proposed ordinance, by taking out the Rural zone and adding in some other zones that had houses or apartments in them. She said she hoped there would be some kind of serious discussion about taking advantage of existing student housing in the neighborhoods and bringing up the values of these properties as well as houses there that weren't rentals.

Ms. Olshansky said she'd spoken with resident Peter Smith earlier at the meeting, and he asked her to encourage the Council to think deeply about the complications involved with the workforce housing issue.

Ellen Karelitz, 113 Madbury Road, said Ms. Olshansky had done a thorough job of laying out the issues involved. She encouraged the Council to seriously consider looking at using existing housing stock as much as possible to meet the workforce housing requirements. She noted that there was an abandoned house on one side of her own house, and a student rental on the other, and said she would like to have neighbors who had a real investment in the community

She said since she'd moved there, she'd heard the sentiment that people wanted Durham to be more of a community. She said reclaiming some of these houses and providing more dignified options for them was a way to value community and improve the Town's quality of life. She said she'd appreciate it if the Council could do what it could provide some incentives for people who would like to reclaim some of these houses.

Chuck Goss noted that he owned a property that was located in Durham, Lee and Madbury. He explained that he'd contacted the Workforce Housing Coalition two months ago because he was trying to save his family farm. He said a charrette was held to get various minds

thinking about how to do this, and said they came up with a plan that included integrating 15 workforce housing units into a project.

He said the portion of the property in Durham was located in the Rural zone, and said while this property wasn't the reason for the proposed Workforce housing ordinance, it would be a potential project that reflected it.

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

There was discussion about whether there was time that evening for the Council to deliberate and vote on the proposed Ordinance.

Councilor Gooze MOVED to adopt as presented Ordinance #2011-06 amending Chapter 175 "Zoning", Article XIX "Conservation Subdivisions" of the Durham Town Code by adding a new Section 175-107-II Titled "Workforce Housing Option. Councilor Niman SECONDED the motion.

Councilor Gooze said Ms. Olshansky had made some good points. But he said the Town already had conservation subdivision in the Rural zone, so a workforce housing project wouldn't mean doing anything different there as a result of passing this Ordinance. He said he agreed that other things should be done to promote workforce housing, but said the workforce housing committee thought that what was proposed now was a way to provide the opportunity for workforce housing while the Town thought about other possible opportunities for providing it. He said he believed the Ordinance should be passed, although stating that this didn't necessarily need to be decided on now.

Councilor Lawson agreed that some good points had been made. He said he'd determined that of 1900 single family residences in Town, 500 of them qualified as workforce housing based on their market value. He said this meant Durham already had workforce housing, in places like the Faculty neighborhood and locations on Madbury Road. He said the question he had for Councilor Gooze and Mr. Campbell was why they therefore needed to consider something like this.

He said it came back to the fact that at the State level, the criteria for compliance with the workforce housing statute weren't provided. He said the RSA was so vague that it couldn't be determined if they complied with it. He said he supported this ordinance because in the absence of something more definitive, the Town was at risk of having workforce housing defined for it. But he said he agreed with everything that had been said this evening, and said he believed that there were already 500 opportunities to build workforce housing in Durham.

Councilor Gooze noted that as time went by and the economy improved, these properties might not meet the workforce housing criteria.

Chair Carroll asked how many municipalities were in compliance with the workforce housing RSA, noting that the Council was feeling some pressure and fear right now to pass something. She said she hated to act on the basis of these things.

Mr. Mettee said some towns had decided to ignore the requirement, while others had moved forward with some changes to the regulations and to provide what they felt was a reasonable opportunity for workforce housing. He said most of these towns were in southern New Hampshire, and were potentially most vulnerable to challenge. He said there were about 50 communities in the state with a workforce housing law on the books.

State Representative Janet Wall said, as of the past spring, one community had voted for it, but many more were exactly where Durham was now. She said a big issue seemed to be the whole question of what the definition of workforce housing was. She said the reason that the State legislation had been made so vague was because one size didn't fit all. She said how to comply was a big concern of many people in the state, and said the Town was lucky to have Mr. Mettee working with them on this issue.

Councilor Mower asked if it was correct to assume that those towns that were most vulnerable to challenge were the faster growing towns, and Mr. Mettee said yes. Councilor Mower said she didn't have the sense that there was the risk in Durham of developers knocking at the door. She said the Council should weigh the consequences of making a decision more quickly now against taking a little more time to work out some of these other issues.

Councilor Gooze noted again that the Town already had conservation subdivision for the Rural Zone, so wouldn't be changing anything. He asked if she thought there would be a lot more people who would want to do conservation subdivision because of this ordinance.

Councilor Mower said no, but said if they were depending on future Councils or Planning Boards to fix this, she was concerned about that. She also said she was concerned that they had emphasized using conservation subdivision as opposed to the other opportunities that it had been acknowledged it would be good to address. She said they were now rushing to get something through, yet there were many meetings by the workforce housing committee to discuss these things. She stressed that she wasn't undervaluing the amount of effort that had gone into this process.

Councilor Smith asked Mr. Campbell if there were a lot of developers beating down the door with conservation subdivision applications.

Mr. Campbell said one had just gone through the design review process, and said one other application had been approved since 2004.

Councilor Smith said that the new application on Mill Road would be a particularly good one for workforce housing. He then asked what was to stop a developer of rental workforce housing who wanted to do this from coming to Durham now and buying a piece of land in ORLI where, without subdividing it, he could put in 50-100 units on a parcel. He noted Capstone as an example of this kind of development.

Mr. Campbell said it depended on how much money a developer wanted to make. He noted that they lost money on workforce housing units, which was why they tried to make up for

this with market rate units, which was why the workforce housing committee had included density bonuses.

Councilor Smith said the Professional Office district and the MUDOR district weren't included as districts where there could be workforce housing, but ORLI was included. He also said the Rural district was included, but the RC district wasn't.

Mr. Campbell said they had to pick a district that allowed multi-units, which was why they included the ORLI district. He also said that with the RC district, the price of land would be such that it wouldn't make sense to do workforce housing there. There was discussion on this with Councilor Smith.

Councilor Niman said he thought they were missing the point. He said under the current zoning, it wasn't economically viable for a developer to do workforce housing, but he could then go to court and say he needed increased density in order to do this, and suggested an amount of density he wanted. He said what the Town was worried about was that the judge could then make the decision about the density. He said a judge could potentially make it economically attractive to do workforce housing.

Chair Carroll asked if the judge would say a committee had met many times to work toward a solution for the workforce housing issue.

Councilor Gooze said the judge would look at this if this ordinance passed.

Councilor Stanhope asked if what was proposed was the best that the committee could come up with, after all of the meetings, in order to protect the interests of Durham.

Councilor Gooze said yes, given the time frame and fear factor, yes.

Councilor Mower suggested that one of the stipulations in the Ordinance should include, in addition to the wording on meeting Energy Star standards, the following: "... or the current Durham Chapter 38 Energy Code requirements, whichever provided better energy performance compliance."

Councilor Mower also asked Councilor Niman if he perceived an imminent threat, and would therefore be happy to see this particular version of an ordinance passed.

Councilor Niman said that wasn't his position. He said he wasn't wracked with fear on this issue, and said his view was that the Committee had done its work, and the Council should pass the ordinance on good faith. He said the Town could then say it had done its duty concerning complying with the RSA, and said he didn't think anything would come of it.

Councilor Smith said he didn't think the Town would necessarily be seen as acting in good faith. He said he thought a developer could go to court and say the ordinance didn't provide a reasonable and realistic opportunity to develop workforce housing. He said if a developer had a piece of land in the Rural zone and wanted to put up a duplex, he would need 150,000 sf of minimum building area for each unit.

Mr. Mettee said a developer might go to court and say this ordinance wasn't good enough. But he said the RSA was so vague that with the density bonus that was proposed in the ordinance, he believed it would meet the test of reasonable and realistic because the opportunity to build workforce housing had been provided. He noted that developer Eric Chinburg had looked at the ordinance and said it was a good start.

Councilor Stanhope asked if the ordinance had been looked at by legal counsel to see if it satisfied the RSA.

Mr. Campbell said he had sent it to the Town attorney but had not heard back from him on it.

There was discussion about therefore tabling the motion on adoption of the Ordinance.

Councilor Mower MOVED to amend the Ordinance, Section G, General Requirements,, subsection 4 B, to read "incorporate the equivalent of the Energy Star rating in all building design, or the current Chapter 38 of the Code of the Town of Durham energy code requirements, whichever provides better energy efficiency." Councilor Stanhope SECONDED the motion, and it PASSED unanimously 9-0.

Councilor Stanhope called the question.

The motion PASSED 5-4, with Councilor Mower, Chair Carroll, Councilor Cote and Councilor Smith voting against it.

Councilor Mower said given the fact that there were State reps at the meeting, she'd like to note that the phrase "reasonable and realistic" didn't address the real constraints in a Town like Durham, where there was limited land available, and a large number of non-owner occupied buildings. She said there would be other towns that experienced this, as well as towns in the Seacoast and Lakes Region where some zones were likely to be excluded from consideration for workforce housing.

Councilor Smith MOVED to suspend the 10:30 adjournment time. Councilor Mower SECONDED and PASSED 7-2, with Councilor Stanhope and Councilor Cote voting against it.

- B. **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 to approve Ordinance #2011-05, a Council-initiated ordinance, in accordance with Section 175-14 (B) of the Durham Zoning Ordinance, which 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 and Councilor Gooze SECONDED the motion.

Councilor Smith said the Council had already heard from him on this proposed Zoning Ordinance change.

Chair Carroll also noted that the Council had had a lengthy discussion on it at the previous meeting.

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

The Council stood in recess from 10:34 to 10:38 pm.

XI. New Business

Discussion with Durham's legislative delegation on various issues of interest to the Town

Chair Carroll introduced State Senator Amanda Merrill, and State Reps Janet Wall and Tim Horrigan.

Senator Amanda Merrill noted that she was the State Senator for District 21. She said the workforce housing legislation that passed in 2008 was worked on for years, and said people who developed the language for it would probably describe it as flexible, rather than vague. She also noted that the term "reasonable" was used a lot in State legislation.

She said things were getting busy again in Concord, and noted that a number of bills were retained from last year, for various reasons. She said the Committees were dealing with these bills now, and some would come back in January. She said the Municipal Affairs Committee was looking at a bill that took away the requirement to have fences around cemeteries, and she provided details on this. She noted that she hadn't voted to recommend passage of this bill. She said this same Committee covered a variety of other topics.

Senator Merrill said she also sat on the Energy and Natural Resources Committee, and said a bill retained from last year would consolidate some of the environmental permitting involved with development projects. She said this could be a win-win for applicants for projects as well as for DES, and noted that this idea had been discussed for years.

She said there were also study Committees meeting right now, and said some of them stemmed from legislation that had recently passed. She noted one that was looking at the availability of services for paroled prisoners, and said it came out of the big corrections reform billed that had passed in recent years.

She also noted some study Committees that had come out of the Budget bills, including one that looked at the establishment of defined contribution plans, versus the defined benefit plan the State now had. She said this related to the retirement issues that had been so important during the past session. She said another study Committee was looking at some other retirement related topics, and she provided details on this. She said all of the study Committees needed to submit reports by November 1st.

Senator Merrill noted the elimination of State assistance to municipal employers in terms of their contributions to the retirement system. She said a provision of House Bill 2 was a

mandate that the State distribute \$3.5 million to municipalities and school districts. She noted the formula used to determine the amount for each entity, and said for Durham, the figure was a little over \$14,000 for the Town, and \$29,000 for the School District. She said the checks were supposed to have been mailed out by September, and said she could check on this if needed.

She said another issue hanging out there was the governor's vetoes. She said most of the votes on them weren't complete yet, and said the House might vote on the remaining ones next week. She said the Senate had upheld some vetoes, one of which would have repealed the Regional Greenhouse Gas Initiative (RGGI).

She said another veto that was upheld was concerning a bill that would have required a picture ID for voting purposes, and she noted that a lot of town clerks had had problems with this bill. She said this was a hot topic, and would come back this year, in the form of another proposal.

She said the vetoes that were overridden included those concerning bills that would take away the local option to require fire sprinklers in one and two unit residential dwellings. She said there was grandfathering in these bills. She said one bill focused on whether there could be ordinance language concerning sprinklers, and the other focused on whether installation of sprinklers could be made a condition of approval for a project. She said she had voted to sustain the governor's veto because she thought this should remain a local option.

Councilor Gooze asked if the grandfathering was concerning specific projects, or was concerning an ordinance a municipality already had in place.

Senator Merrill said she'd have to check on this.

Councilor Mower asked if there had been other bills where the local control issue was involved.

Administrator Selig noted the bill concerning billboard advertising, and said Senator Merrill was very supportive of the Town's position on this.

Senator Merrill said it had been a mixed record this year in terms of peoples' views on local control.

She noted a bill that had passed which would allow car dealerships to do car registrations, and said there was supposed to be a pilot project on this. But she said nothing had happened with this yet.

Administrator Selig said the software had been ordered, but nothing else had happened yet.

Concerning new bills for 2012, Senator Merrill said about 800 bills had been proposed. She said the Senate's filing period went from October 10th -21st, for Councilors wishing to submit a bill for consideration.

Councilor Gooze determined that if a bill was proposed at the next Council meeting on October 17th, there would still be time to get that bill to the Senate in time for the deadline. Senator Merrill noted that the bill would go to the Office of Legislative Services first.

Senator Merrill next reviewed bills likely to be submitted on the Senate side that might be of interest to the Council. She said one was regarding school building aid. She noted that there had been a moratorium, but said there was interest in looking at the whole issue of how school building aid was distributed.

She noted that the Dover Youth group had approached her about not allowing bars to sponsor drinking games. She said she'd be getting more information from them soon, and would be back in touch with the Council on this to see what they thought.

Senator Merrill said she might propose an amendment to legislation she was involved with 18 years ago when she was a member of the NH House. She said there was some interest in changing the provisions of the RSA that had set up the process for the State and the towns to do energy performance contracts, in order to allow for more flexibility in terms of the required payback time frame for energy efficiency improvements.

She said it was early in the process to know what would actually end up being submitted as legislation. She said she'd be happy to talk with Councilors about proposals for possible legislation, including any concerning workforce housing. She noted that there had been a bill last year that passed the House but not the Senate, which would have repealed the entire workforce housing RSA. She said there would need to be discussion as to whether this would be a good year to amend this law, assuming that the Town didn't want the whole thing to go away. But she said she'd be happy to discuss this with Councilors.

Councilor Gooze noted that he'd distributed a possible bill to Councilors concerning licensing of rental dwelling units. He said he'd worked on this with Cordell Johnson of the Local Government Center. He asked that Councilors look at it, discuss it at the next meeting, and hopefully pass a Resolution concerning it that would go to the Senate. He said it had to do with college towns.

There was discussion that this possible bill proposed to amend an existing RSA, and was essentially enabling legislation to allow registration and inspection of rental units. It was determined that the Town Attorney had reviewed it.

Senator Merrill said the <http://gencourt.state.nh.us> website was a good source of information on what was going on with the Legislature. She also said people could call her any time.

There was discussion that the Senate calendar wasn't as user-friendly as the House calendar.

Councilors thanked Senator Merrill for her service, with Councilor Gooze noting that it had been a difficult year.

Representative Janet Wall said they were all very lucky to have Senator Merrill representing them. She first noted that redistricting was currently underway, and said it was something for people to keep an eye on.

She said there were a lot of bills in study Committees right now. She explained that the social bills were pushed off last year in order to deal with the economy and jobs. She said she sat on the Judiciary Committee, and said in the next session, they would be dealing with abortion, gay marriage, and other social bills that were put on the back burner last year. She said they were getting into all of this right now.

Rep. Wall said she and Senator Merrill both served on the Ethics Committee, and had dealt with the Right to Know law. She said they would continue to work on it this year, and noted that the impetus for this a few years back had come from Durham. She said she firmly believed in the transparency of government, and said they would work to strike a balance in terms of what was the best approach for the State.

She said there would be more gambling bills this year. She said State reps would want to know how they could help the Council in terms of the impacts of the State budget on local town budgets. She noted what had happened with UNH and Channel 11.

Rep. Wall said as a State rep she also served at the County level. She said she'd been in charge of the oversight committee for the Riverside Rest Home for several years, and said she could see what was happening there. She said residents, who were the neediest people in the State, got the best care possible despite strict budgetary constraints. She said she was proud of the people who worked there, who paid 20% of their health insurance costs and didn't get raises, but were happy to have jobs. She said right now they were all holding tight but said at some point things would have to change.

She said retirement issues had been and would be big issues in Concord and that the State reps would need to know how this was impacting the towns. She said the Local Government Center situation had been a nightmare, even for those who paid health insurance privately. She said there was a process in place to sort this all out.

Rep. Wall noted a bill that had passed which made it a crime to steal stones from stone walls.

She said in terms of bills that had been carried over from the last session, she was working on the issue of medical malpractice screening panels. She said some people still wanted to get rid of them, and said this had been a complex issue for the State.

Rep. Wall said she was also working on the issue of administration of the court system, noting that there had been a major reorganization of this system. She said at least they were protected at the District court level right now, and she thanked Administrator Selig for his work concerning the consolidation of the Durham district court with Dover's district court.

Councilor Gooze spoke about the funding for the judiciary system that had been slashed, and noted in particular that probate cases were way behind.

Rep Wall said some judges had been willing to shift out of their districts as needed, which had been helpful. She said one of the biggest problems had been the lack of sufficient clerical support. She acknowledged there had been problems with the probate court, which was also taking on more responsibilities. She said they were working to the best of their ability, given the financial constraints they were under.

She said it was disconcerting to hear that some legislators wanted to get rid of marital masters, and said the alternative would be to put these cases in Superior court, where they became criminal cases. She said legislators had worked so hard to allow family court to deal with children and family issues, and now they were being told that this wasn't affordable anymore. But she said she and others were working hard to make this whole thing more manageable.

Chair Carroll thanked Rep. Wall for her many years of service.

State Rep. Tim Horrigan first noted that he was on the Petition of Redress Committee, which had no actual bills. He said they instead received petitions from residents who were dissatisfied with the court system. But, he said, unfortunately, the Committee was actually making things more difficult for the court system. He noted that some complainants before this committee thought that the courts were getting rich off of them, which he said certainly wasn't supported by the Budget.

He said if the bill to not require cemetery fences passed, he advised the Cemetery Committee to still go ahead and build the 8 foot fence next to Capstone. He spoke about the fact that a number of mature pine trees had been cut down in that area, which was a matter of some concern. He noted that his father had recently been buried at the cemetery.

Rep. Horrigan said he was one of few Democrats whose bills had passed this year. He said one had to do with daylight savings time, and one had to do with labeling margarine in restaurants. He provided details on this.

He said this year he was working on a bill to change the timing of special elections, so that they would take place less than eighteen weeks after a house seat became vacant, which was the current timing. He said eighteen weeks was too long.

Rep. Horrigan said he would also try to address the issue of when the gallery in the State House could be closed. He noted that the gallery was closed last year when some amendments to the Budget were being considered. He said the theory was that people could watch the house session on video so didn't actually need to be in the room but said this hadn't worked very well.

He also noted that the Republican leadership liked to talk about the founding fathers but said streaming video didn't exist in their time. He said they should have concluded instead that there shouldn't even be streaming video.

He said an issue he would attack next session was reforming the tax system, especially the property tax system. He said a big part of the workforce housing problem was that the

average member of the workforce couldn't afford the average home and said the overemphasis on the local property tax was a big reason for this. He said the current Republican leadership was resistant to doing something on this, but he noted that they did pass a big tax on hospitals during the last session.

Rep. Horrigan said he would also work to preserve the marriage equality bills. He said all couples should have the same rights that heterosexuals took for granted. He said Democrats were being criticized for not compromising on this issue but said he thought they got it right when the bills were passed in 2009.

He said he would also focus on electoral rights. He said there had been, and would be, a lot of attacks on voting rights, some of which were focused on student voting. He said preventing students from voting was a bad idea. He also said he would try to fight back against another bill that would require a photo I.D. for voting.

Rep. Horrigan also spoke about the weapons bills that had passed this year. He said SB 88 was vetoed by the governor, but both the House and Senate had then overridden the veto. He said there could be dangerous consequences from this, even in a community as peaceful as Durham. He noted the weapons incident Chief Kurz had mentioned, and said with the new law, the defendant might be able to claim that he was acting in self-defense, and the new law would make this case more difficult to prosecute.

He said it had been a difficult year for Democrats and said the Republican majority was much more aggressive than in the past. He said there used to be a much higher degree of bipartisanship than there was now. Rep. Horrigan said he was honored to serve Durham, Lee, and Madbury.

Chair Carroll and other Councilors thanked the delegation for staying so late, and for all the work they did in Concord.

Rep. Janet Wall said it was nice to know that the Council was interested in what the delegation was doing and said they were interested in what the Council was doing.

Councilor Gooze said if Councilors had any questions about the proposed legislation he'd provided, they should contact Administrator Selig.

XII. Nonpublic Session (if required)

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

XIV. Adjourn (NLT 10:30 PM)

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

Adjournment at 11:15 pm

Victoria Parmele, Minutes taker