

**This set of minutes was approved at the November 19, 2012 Town Council meeting**

**Durham Town Council MINUTES  
Monday, October 1, 2012  
Durham Town Hall, Council Chambers  
7:00 PM**

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

**MEMBERS ABSENT:** None

**OTHERS PRESENT:** Town Administrator Todd Selig; Business Manager Gail Jablonski; Public Works Director Mike Lynch; Parks & Recreation Director Stefanie Frazee

**I. Call to Order**

Chair Gooze called the meeting to order at 7:01 pm.

**II. Approval of Agenda**

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

Councilor Lawson noted that he planned to take Item C off of the Unanimous Consent Agenda. He asked that there be a significant discussion on it under New Business.

*The motion PASSED unanimously 9-0.*

**III. Special Announcements**

No special announcements

**IV. Approval of Minutes**

No Minutes

**V. Roundtable**

Councilor Mower said there would be a site walk of the Sprucewood Forest property on October 3<sup>rd</sup>, in advance of the Conservation Commission meeting that evening, when the project would be discussed. She noted that the Conservation Commission's page on the Town website contained details on the project.

Councilor Carroll said today had been the last day for the Durham Farmers' Market. She thanked the local farmers who had been there that day despite the weather, to provide good food for everyone. She also noted that there would be winter farmers markets in the area that people to go to.

Councilor Lawson thanked the Police Department for allowing him to ride with them on a weekend evening in September. He said this was the third time he had done this, and said while he always hoped to see positive change downtown, he continued to be disappointed. He said it was a very busy evening, and said all of the department's resources, including overtime officers, were tied up. He said he continued to be impressed by the professionalism of the Durham Police Department, and their approach to law enforcement.

Councilor Lawson noted that EDC members Doug Clark and Tom Elliott were moving on from the Economic Development Committee. He thanked them for their contributions to the committee, and noted that Mr. Elliott was the architect behind making the EDC a catalyst for thoughtful economic development in Durham that was consistent with the Town's values and land policies. He said Mr. Elliott was a great advocate for the right type of change in Durham. Councilor Lawson said he reviewed the numerous accomplishments of the EDC over the past few years with Mr. Elliott as Chair.

Councilor Stanhope said the Historic District Commission would meet on Thursday. He noted that there was now a public comment section at HDC meetings. He said there would be continued discussion at the meeting on signage for the Orion properties on Main Street. He also said there would be an application before the HDC for replacement windows for the Rundlett property on Newmarket Road

Concerning a question from Councilor Mower at the last meeting, he said the HDC was a strong advocate of energy efficiency, but he also noted that properties in the Historic District were exempt from the residential energy code.

Councilor Mower asked for an explanation of a statement made by Peter Michaud. She said she thought it was only buildings with a certain designation in the Historic District that were exempt from the energy code

Councilor Stanhope said there was a map of the properties in the Historic District, and said those that were not considered contributing structures to the district were blacked out. He noted that the Grange had been a contributing building, but because it was moved as part of the redevelopment of the property, this status was lost.

He said the HDC would also review the Xemed property in regard to its architectural, historical or cultural character at the upcoming HDC meeting.

Councilor Smith said at the Planning Board meeting the following Wednesday, there would be a public hearing on a proposed eight lot conservation subdivision on Mill Road. He noted that there was an issue as to whether it was actually a conservation subdivision.

He said there would be a public hearing on the Peak site plan and conditional use applications. He also said the public hearing on the draft architectural design regulations would be continued at that meeting.

Councilor Smith said there would be acceptance consideration of a conditional use permit application by Great Bay Kennel. He also said there would be a public hearing on a proposed Zoning amendment to allow chickens in all districts.

Chair Gooze noted that there were three properties for sale in the vicinity of Edgewood and Strafford Ave, which would make good homes for families.

Councilor Cote noted the email received from Code Officer Tom Johnson, which contained deplorable pictures of a residence on Garden Lane. He said this reflected the need for an inspection program.

Administrator Selig said the draft ordinance on this was moving forward, noting that a marked up version had just been received from Roger Hawk. He said this draft would be circulated to the Rental Housing Commission and the Town Council, and said it was hoped that deliberations on the document would start soon.

Administrator Selig introduced new Parks and Recreation Director Stefanie Frazee to the Council and Durham residents.

Ms. Frazee spoke briefly before the Council, noting among other things that she grew up in Durham, and that it seemed fitting that she had come back to serve the Town. She said she was looking forward to continuing existing parks and recreation programs, and also creating some new ones.

At the request of Councilor Carroll, Administrator provided some details on [former President] Bill Clinton's planned visit to Durham on Wednesday, and possible impacts on the Town. He said not as much impact was expected as had been the case when President [Obama] recently came to Durham, noting that the preparations for a former president were much less than for a sitting president.

Councilor Carroll asked if there was a way that residents could get up to date information the day of the event, and Administrator Selig said typically this information wasn't released, for security reasons. He said there hadn't been issues with other events like this in the past, and he also noted that the Town would be reimbursed for any expenses related to the event.

Administrator Selig said the revised Capstone easement document had been received that afternoon, and was forwarded to Capstone attorney Peter Loughlin, who would confirm whether it was acceptable.

## **VII. Unanimous Consent Agenda**

- A. Shall the Town Council schedule a public hearing for Monday, October 15, 2012 on a resolution amending Resolution #2012-11 to: 1) Change the \$745,000 funding

designation within the 2012 Capital Fund Budget to come from short-term borrowing rather than the Undesignated (Unassigned) Fund Balance; and 2) Authorizing the short-term borrowing of said \$745,000 for up to one year to purchase the People's United Bank building located at 8 Newmarket Road for use as the future Town Hall?

- B. Shall the Town Council, upon recommendation of auditors Plodzick & Sanderson and the Administrator, adopt the Town's revised General Fund Fund Balance Policy?
- C. Shall the Town Council endorse a letter of support for the Strafford Regional Planning Commission to apply for local source water protection grants through the NHDES Drinking Water Source Protection Program and for the preparation and submittal of associated application materials to develop a River Management Plan for the Oyster River?

Councilor Smith asked that Item VII A be taken off the Unanimous Consent Agenda.

***Councilor Smith MOVED to approve Unanimous Consent Agenda Item B. Councilor Lawson SECONDED the motion, and it PASSED unanimously 8-0.***

Councilor Mower had left the room briefly, so did not vote on the motion.

***Chair Gooze MOVED to approve Unanimous Consent Agenda A. Councilor Cote SECONDED the motion.***

Councilor Smith noted that he had voted consistently against purchasing the Peoples United Bank building. He said while he would like to hear what the public had to say about it, he couldn't vote in favor of this motion.

***The motion PASSED unanimously 8-1, with Councilor Smith voting against it.***

Unanimous Consent Agenda item "C" was not voted on.

Councilors agreed to keep going with the Agenda, and hear Public Comments after 7:45 pm, as stated on the Agenda.

## **VIII. Committee Appointments**

Shall the Town Council appoint Raymond Rodon, 18 Ross Road, and Renee Capicchioni Vannata, 5 Wood Road, to the Economic Development Committee?

***Councilor Carroll MOVED to appoint Raymond Rodon, 18 Ross Road, to the Economic Development Committee. Councilor Marple SECONDED the motion.***

Chair Gooze noted the previous discussion with Mr. Rodon about which board or committee would be the best fit for him, and said Mr. Rodon had decided to serve on the EDC. He said he thought Mr. Rodon would make an excellent member of that committee.

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

***Councilor Howland MOVED to appoint Renee Capicchioni Vannata, 5 Wood Road, to the Economic Development Committee. Councilor Smith SECONDED the motion.***

Ms. Vannata said she was excited about the idea of serving on the EDC, and said she cared deeply about the Town and preserving its heritage, while allowing it to grow in the ways where it could grow. She spoke about the importance of economic growth that kept tax dollars in Town.

She noted that she and Administrator Selig were in the process of organizing a “Cash Mob” in Durham involving local retail businesses for December 8th. She spoke briefly on what this was. She said it was a spontaneous event where people spent an amount of money at a particular place. She said they decided to include all of the retail businesses downtown. She said it was almost completely driven by social media, and was almost completely citizen based. She noted some sponsors of the event, including Douglas Real Estate and the Idea Greenhouse.

Councilor Carroll said she liked seeing different kinds of strategies to get people to buy local. She also said Ms. Vannata was a great exponent of social media.

Ms. Vannata said a cash mob took the idea of the farmers market and applied it to retail businesses. She also said when businesses outside of a town saw this kind of activity, it made them want to be part of the town, so this wasn’t simply a one time thing.

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

## **IX. Presentation Items**

### **A. Receive annual report of the Planning Board - Peter Wolfe, Chair**

Mr. Wolfe reviewed the following items and applications the Planning Board had worked on over the past year.

#### Amendments to the Zoning Ordinance

- Rezoned two parcels from the Professional Office District to the Rural District
- Removed eldercare facility as a conditional use in the Rural District, making it a prohibited use.
- Amended the category of uses table to permit light manufacturing anywhere In Retail/Commercial zones

#### Site Plan Approvals

- Grange Site plan
- Great Bay Kennel site Plan
- 9 Madbury Road LLC- for signage

#### Subdivision Approvals

- Langley/Hamel on 234 Longmarsh Road
- Grant Development LLC on W. Arthur Grant Circle

#### Public Hearings

- Town of Durham for the Public Library
- UNH for the new police station
- Fairpoint Communications for cutting on a scenic road
- Consideration of revocation of a previously approved subdivision on Durham Point Road
- Eight lot conservation subdivision on Mill Road
- Proposed zoning ordinance amendments associated with the commercial core strategic plan
- Proposed amendments to the Site Plan Regulations to include Architectural Design Regulations
- Review of Roger Hawk's Architectural Design Guidelines

#### Major Projects

- Conceptual work on developing master plan - developing process
- Worked with consultant to write the commercial core chapter of the master plan
- Worked with consultant on a strategy to implement the recommendations of the B. Dennis report, which led to the development of proposed changes to the commercial core zoning ordinance

Councilor Mower asked Mr. Wolfe if the Planning Board had discussed the idea of visiting projects that had been approved.

Mr. Wolfe noted that Councilor Smith had requested that the Planning Board visit the Capstone development, and said he agreed that this might be useful.

Councilor Mower suggested that this could be done concerning other projects as well. She referenced a planning journal that spoke about the benefit of a planning board doing a debriefing on a project that had been built, in order to see what had worked and what the board could have done better.

Mr. Wolfe said he didn't have a problem with having that kind of discussion, and said Councilor Smith's request might lead to more such requests.

Councilor Smith said things had changed at the Capstone site since the Planning Board was last there. He said before the project opened, he was told by a Capstone vice president that the community and the Planning Board would be invited there for a tour, but he said this hadn't happened. He said as the Board prepared to discuss the Peak development applications, it should do a conscientious tour of Capstone as well as a tour of the 9-11 Madbury Road property. He noted that these kinds of tours had been done by the Planning Board a few years ago.

Mr. Wolfe agreed that this should be discussed by the Planning Board.

Chair Gooze said when he was on the Planning Board, there was discussion that it was important for the Board to have architectural renderings of a project in the final plans that were provided to them.

Mr. Wolfe said he had asked that same question. He said the Board was in the process of drafting language on this for the site plan regulations.

Administrator Selig suggested that a bus trip could be organized to visit a variety of projects the Board had approved.

Councilor Mower recommended that the Planning Board visit not just projects that were approved over the past year, but also projects approved a few years before, in order to see how well they had stood up.

Administrator Selig asked how the architectural design regulation draft was progressing.

Mr. Wolfe said the public hearing phase should end the following week. He provided details on the process from there.

Councilor Carroll noted that some of the Council's goals spanned several years. She asked how these goals fit with the work of the Planning Board.

Administrator Selig said the Planning Board played a central role in regard to these goals, with the update of the Master Plan; the development of architectural design regulations; the review of proposed student housing developments; and much more.

*Note: The presentation items continued after Public Comments.*

## **VI. Public Comments**

**Ute Luxem, 23 Ross Road**, said she was present to speak about the proposed Route 108 bikeway, which she said had been waiting for since 1997. She said right now, it was dangerous to ride a bike on Route 108, and she provided details on this. She said if the Town wanted to provide more alternative transportation options and provide better access to areas of the Town further down Route 108 for recreational purposes, it was very appropriate to put a bike lane in. She asked that the Council take any possible steps to get this done.

**Judith Spang, Wiswall Road**, said she was present as one of Durham's State Representatives. She noted that for 16 years, she had been on the Legislature's Resources Recreation and Development Committee, so knew what the Town was dealing with in regard to the allocation of water resources. She spoke about the various roles she had played concerning water issues as a State Rep, and also spoke about her involvement in the development of the instream flow process, an issue she noted would be part of the discussion that evening on Durham's water resources.

Rep. Spang said not every community had the advantage Durham had of being able to store surface water flows underground during periods of high flows. She said Durham was in a position to be on the cutting edge in balancing between its groundwater and surface water resources, with this valuable storage opportunity at Spruce Hole.

She thanked Town Engineer Dave Cedarholm, and said the Town should be very proud of him in the way he represented the Town, and in the wisdom he applied to his conception of how the Town should balance the use of its various water resources. She recommended his advice as being the ideal approach the Town should take, based on her own experience.

She suggested that members of the public should be given a better idea about what would be discussed at meetings, so they would be able make appropriate comments. She referred to Councilor Howland's presentation in regard to this.

Rep. Spang said the approach of Town staff regarding the instream flow rules had been magnificent. She said they hadn't just taken what the State had to say, but had worked with the State to make sure that these rules, which were an experimental rule making process, were being scientifically applied to Durham. She said Mr. Cedarholm's technical work had taken the rulemaking process to a more refined level.

**Bill Hall, Smith Park Lane**, said the Town had unnecessarily stopped taking water from the Lamprey River on July 12<sup>th</sup>, and said they could have gone another month before changing over to the Oyster River, if they had conducted dam management activities.

He provided Councilors with a copy of a letter to DES administrator Paul Currier from Vernon Lang. He said the 401 certificate was designed to make the impoundment, the dam and access to Lamprey River water valueless. He said \$5 million had been spent on accessing that river, and said the understanding now was that more money would have to be spent.

Mr. Hall said one couldn't possibly measure the effect on the Lamprey of the Town taking water from it. He also spoke about the 18 tons of chemicals that were needed to treat Oyster River water before it was used by residents, and said this was unfortunate.

**Martha Fuller Clark**, said she was a resident of Portsmouth, and was running for the State Senate. She said she had reviewed the Council's long-term goals, and noted those that addressed economic sustainability as well as other aspects of sustainability. She reviewed these goals in some details.

She said she was supportive of items under the Unanimous Consent Agenda, in particular the item concerning expanding the capacity on Route 108 for bikes. Concerning the presentation planned for that evening on the Town's water resources, Ms. Fuller Clark noted that when she previously served on the Senate, she chaired a commission that dealt with water issues across the State.



She said she would be happy to offer assistance and resources to the Town on these issues if she was elected, and also said she would work on a continual basis to create positive relationships between the communities she represented and the State.

**Ann Lane, Durham, 43 Stagecoach Road**, said she was thrilled when she heard there would be a DOT presentation on bike lanes. She said she lived south of the Town Hall, and said her family built a house anticipating that the bike lanes would go in on Route 108. She said this road was not safe, and said she hoped the Council would use its influence to make sure this project was done.

**Wayne Burton, 106 Madbury Road**, said the Route 108 bike project was a priority of the Strafford Regional Planning Commission. He noted that he was a commissioner on SRPC, and said it was very important that Durham quickly find a replacement on the commission for Councilor Cote, who had to step down.

He said at the most recent SRPC quarterly planning meeting, about 60 people who believed that their personal sovereignty exceeded that of the cities, towns and the Commission took over the meeting. He said they were making it very difficult for the commission to do its work, and said it was very important that those who believed that regional planning was important were represented at the table.

Mr. Burton said this situation didn't bode well for the future of regional planning, noting that the people involved opposed any action by SRPC, including scenic byways, etc. He said he believed there were some Free Staters involved, and said while they had a right to their political principles, people needed to take notice of what was going on.

He said only 11 commissioners had been at the recent meeting, and said he would try to get to more meetings, which tended to take place during the day. He said it was important for the Council to watch this situation. He spoke about legislation that had been filed that would require 100% approval by the towns in a region before any action could be taken by a regional planning commission.

Mr. Burton said the Route 108 project had been on the books for a long time, and was a priority.

**Janet Wall, Madbury**, a local state representative, said she had been a commissioner on SRPC for many years, and said she wasn't surprised to see the bike project come back. She said she agreed with everything Mr. Burton had said, and said she was willing to offer whatever help was needed with this project along the way.

**Brent Bell, Mill Pond Road**, said he supported the bike project. He said he had done a cross country bike trip that included Newmarket Road in the late 1980's, and said it was one of the sketchiest parts of the trip.

**Mike Hoffman, 300 Durham Point Road**, said he was in favor of the bike project. He spoke about problems with the white line on Route 108, which caused drivers to come too close to bike riders if the bikes had to be on the left side of the white line. He said

when he was on the Energy Committee, he rode it one time, and said he wouldn't do it again. He said there had been accidents, and said it was just a matter of time before something really bad happened.

He said it was unfortunate that people couldn't ride their bikes to town on Route 108. He also noted that this road was a link to one of the region's biggest hospitals, and that there were sometimes major flooding issues on it. He explained how the road currently channeled stormwater and prevented it from entering the floodplain. He said people tended to forget this until there were major flooding events. He spoke about how this impacted some residents' access to emergency services, yet they were paying for these services through their taxes.

**Steve Pesci, UNH Planning Office**, said he was present to express UNH's support to Durham and Newmarket for the bike project. He noted how long the project had been planned, and also noted that the University had told its students and faculty not to bike on Route 108. He suggested as an interim step that DOT place at either end of the corridor signage alerting drivers to the new State law to move 3 feet over.

He said the University and the Town had worked together to tell the MPO (Metropolitan Planning Organization) and DOT that this was a project of the highest priority. He said a lot had changed in this road corridor in 14 years, so that the project had gotten much more complex, and in some way had become a reconstruction project.

Mr. Pesci said Newmarket Road was UNH's largest bus route, carrying 291,000 passengers this year. He noted that there was currently no infrastructure in place for people standing along the road waiting for the bus. He suggested looking for opportunities to provide bus pullouts, which would be a great enhancement. He said if there was anything the University could do to assist with this project, they were glad to help out.

**Brian Goetz, 4 Hamel Drive**, said he was a member of the Energy Committee and was an avid biker. He said he supported the Route 108 bike project, noting that he currently would not ride on that road. He said he had gotten familiar with the project at the DOT website, and suggested that traffic calming needed to be a big part of the project. He also suggested that improvement were needed at the intersection of Route 108 and Durham Point Road, for drivers heading south who wanted to turn onto Durham Point Road.

**Mark D'Ambrosi, transportation planner for Strafford Regional Planning Commission**, spoke in support of the Route 108 bike project. He said there was a very large traffic volume on that road (17,000 cars per day), and said the road was relatively narrow and in place was falling apart.

He said he applauded DOT for getting back on top of the project and coming to Durham to speak about it. He said it had become much more than a bike shoulder project, and he noted the flooding issues that were involved. He said the SPRC Technical Advisory Committee and the MPO had voted this as the top project in the region in the most recent NHDOT TenYear Plan.

Mr. D'Ambrosi also said he was there on behalf of SRPC planner Kyle Pimental to clarify the issue of instream flow levels in regard to the Oyster River Management plan. He said all rivers that were designated and protected under the State's River Management and Protection program would eventually have instream flow levels established, but said that issue was completely separate from the Oyster River Management plan. He said the information for the instream flow study for the Oyster River would probably be provided by the nomination process that had already taken place. He said the Oyster River Management plan would be a part of the Durham Master Plan, and would be a set of goals and steps to achieve them. He said it would be implemented by the community and was not mandatory. He also said it would fit nicely with the watershed management plan the Town was working on, as part of its work with the EPA.

Administrator Selig noted that the Town was opting to do a watershed plan for the Oyster River watershed, as the right thing to do, but was not required to do this.

**David Glista, 28 Ross Road**, said he had lived in Durham since 1988 and had commuted up and down this road to and from work about 1500 times. He said it was very dangerous. He said he had been to a number of hearings on the bike path over the years, and said he didn't want to wait another 14 years before it was done. He said his kids had missed an opportunity to enjoy the road. He asked the Council to get this done.

## **IX. Presentation Items (Continued)**

### **B. Update on NHDOT Project #13080, Route 108 bike lane/ shoulder widening -NHDOT Project Manager Ronald Grandmaison**

Administrator Selig said the Town had reached out to get an update on the status of the project, and said he was glad that Mr. Grandmaison had agreed to provide the update.

Mr. Grandmaison said he would be the contact person for the project. He said he had been reluctant to speak before the Council until the schedule was known, and said he could now say that the latest the project would be advertised was in 2014, for work to be done in 2014.

He described what was involved with the project, and said he would make sure it got done. He said the center portion of the project had about 22 impacted parcels, and said there an additional 70 impacted properties on the outside portions. He said the first portion of the project, north of Stagecoach Road to Durham Point Road, was portion A, and would be done in 2014. He said during this time, the design for the other two sections would continue.

He described the right-of-way acquisition process in some detail, and said the plans had been provided to DOT. He said they would concentrate mostly on the center portion of the project, and said Mr. Lynch had offered to assist with speaking with landowners. He said it was nice to hear the votes of confidence that this project needed to get done.

He said the price for the project had gone up considerably in recent years because this had become a reconstruction project. He noted that details on the project were available at the NHDOT website, including this presentation.

He thanked DPW Director Mike Lynch for the information he had provided on the Hamel Brook Bridge project. He spoke in some detail on this, and noted that the funding for that project was separate from the project he was discussing now. He said hopefully some grant funds could be found for the bridge project.

Chair Gooze confirmed that A and B portions of the Route 108 project had been approved, with the exception of the Hamel Bridge project, and that right now, the bridge project would include an overlay for the road and guard rail improvements. He said if a grant was obtained, a complete replacement of the bridge would be done.

Councilor Smith asked if a problem was that Hamel Bridge wasn't wide enough to allow bike improvements and roadway improvements.

Mr. Grandmaison said the problem was that there was damage to it that was caused by the comingling of the Oyster River and the Lamprey River. He said this also happened further down on some of the flat areas.

He spoke about coordination with the Town that would be needed, including a sidewalk maintenance agreement and a municipal work zone agreement.

Mr. Grandmaison noted that DOT would be putting in bus stops as part of the project. He said a meeting had been set up with Wildcat Transit to review the areas currently proposed for the bus stops on the plans, to see if they made sense.

He said the majority of the drainage infrastructure would be upsized, and said some of this would involve box culverts. He spoke about negotiations underway concerning reducing turtle mortality with the culvert designs.

Mr. Grandmaison said the plan was to complete portion A of the project in 2014, in one season. He said portion B would be advertised in the fall of 2014 and said after getting approvals, work would start in 2015 and would be completed in one season. He said DOT would coordinate with the Town to accelerate certain portions of the project if it was felt that some were more important than others.

He said DOT would provide a public information forum at some point, since the project had been around for such a long time.

Councilor Cote noted the flooding that had occurred on Route 108 many times, and asked if any studies had been done on creating a floodplain on the east side of the Lamprey River, to allow this to happen naturally.

Mr. Grandmaison spoke about some existing restrictions on the properties in that area that would be involved if a floodplain were to be created. He also said creating a floodplain would be outside the scope of the original Route 108 project, which was a

transportation enhancement project. He said the road profile would be raised a little in the area in question, but said a full blown study on the flooding issue hadn't been done.

Chair Gooze noted that this would be an ongoing issue, and said there would be more questions asked in the future.

Administrator Selig spoke about the importance of the Hamel Brook problem, which resulted in traffic being redirected onto Durham Point Road when flooding occurred. He said the Town was counting on DOT to help on Route 108.

Mr. Grandmaison said DOT would do whatever it could. He said right now it was a funding issue, and said the grant would be applied for. He said DOT would coordinate with the Town during the application process, so that the three applications could strengthen each other's positions.

Administrator Selig said a lot of time was spent on the design work for the Route 108 project, and said he wanted to compliment DOT for working with the Town on this, and being considerate of Historic District issues. He said there had also been right-of-way issues, funding constraints, staffing changes at DOT, numerous flooding incidents, and then renewed funding issues.

He said the DPW Director was committed to working with DOT and residents on right-of-way issues, to express to them the importance of the project to the overall community.

Administrator Selig noted that DOT Commissioner Chris Clement had stopped in today to see that everything was in order for the meeting.

Chair Gooze asked whether perhaps State Legislators who were at the meeting could put something forward regarding the Hamel Brook project.

Mr. Grandmaison said he would look into that, and would do outreach to secure funding for that project.

The Council stood in recess from 8:52 to 9:03 pm.

C. Presentation and discussion regarding water supply overview and priorities - Councilor Dave Howland

Councilor Howland gave a detailed presentation, which he noted was based on a number of information sources:

- DES Protected Instream Flow Report
- Draft DES Lamprey River Management Plan Draft
- Public comments on Protected Instream Flow Study (PISF) and Management plan Drafts
- DES responses to public comments
- Town & UNH/DES reports, correspondence, and meeting minutes
- Supply analysis by Jim Lawson

- Town staff (Special thanks to Dave Cedarholm)
- Analysis in Excel of USGS flow data
- Colleagues in environmental engineering, environmental policy, environmental law, stream ecology at UNH and other universities
- Members of Lamprey River Water Management Advisory Committee

He discussed slides he had provided that detailed the current demand for water in Durham, as well as the different sources of water supply for the Town, and what times of the year these water supplies came into play. He spoke in some detail about the water supply problem that sometimes occurred in the summer. He then reviewed the proposed recharge project involving water from the Lamprey River and the Spruce Well.

Councilor Howland next discussed what he called some unresolved problems, as the Town was moving forward concerning the Spruce Hole project. He first noted the 401 Water Quality Certificate and the impending Protected Instream Flow rules, which he said were acting to force the Town's public water system off of the Lamprey River in the season when it was needed the most.

He next spoke about what he called neglected resiliency in the Town's water system. He said with or without the Spruce Hole aquifer, a substantive drought conservation program as well as reasonable summertime access to Lamprey River flow would add essential resiliency to the Town's water system. He said the Town should not ignore these options, and instead should pursue them.

Councilor Howland discussed the State's Protected Instream Flow Study and proposed management plan for the Lamprey River, stating that it was fundamentally flawed and unfair, and said Durham knew this. He said the Town should reassert its objections to it in order to keep its legal options open if the plan as drafted became policy.

He said the Town could have a resilient water system, and he described a strategy that reflected this resiliency, involving taking water from the Lamprey River, the Oyster River and the Lee well under specific conditions. He provided details on this strategy, using slides #26-30.

Councilor Howland said with or without Spruce Hole, if the Town had a substantive drought conservation program as well as reasonable summertime access to the Lamprey River, together they would add essential water system resiliency. He used slides #33 and 34 to show that reducing water use in Town would increase the resiliency, and used slides #35-38 to explain how obtaining a small increase in access to the Lamprey River could be used to accomplish this. He used slide #39 to show the numbers that would be involved if both of these options were pursued.

Councilor Howland noted that State statute said "Each protected instream flow shall be established and enforced to maintain water for instream public uses and to protect outstanding characteristics, including....community significance, agricultural, public water supply, and the resources for which the river or segment is designated."

He then stated that the UNH/Durham Water System arguments concerning the 401 certificate said the Protected Instream Flow study did not consider the Town's protected status; did not assess the Town's water supply needs; and assumed a pre-colonial river without dams. He said the study left out the beavers too.

Councilor Howland said the Protected Instream Flow study's model, which demonstrated the effects on the flora and fauna under different flow conditions, left out flows below 16 cfs, around the limit set by DES for the Town's withdrawals. He said the habitat rating curves were silent on the Town's impact below this limit.

He noted that DES's response to comments on the Protected Instream Flow study was that "Other than the management conditions defined in the 401WQC, there is no relationship between water withdrawals (by UNH/Durham or any other water user) and a protected instream flow."

Councilor Howland ended his presentation with the following recommendations:

- He said the Town should not establish its water plans on an unfair and unresolved DES Lamprey River policy regime.
- He said the Town should establish realistic and enforceable drought conservation measures.
- He said whether or not Spruce Hole was tapped now, the Town should reassert its rights to reasonable access to late summer/fall Lamprey River flow
- He said the Town must retain emergency drought declaration authority, and should not cede that authority to DES.

Councilor Lawson said he had looked at a lot of data on the Town's water resources. He said he concurred that concerning the Town's water supplies, there was a need for greater redundancy, resiliency, and independence. He said he agreed that there was no single silver bullet to achieve this, and that there would need to be a combination of things, given the changing regulations around instream flow, etc.

But he said if the Spruce Hole project wasn't done now, the question was when it would be done, looking at this from a financial perspective. He said if construction prices went up 15%, which was realistic, and bond rates went up 2%, this mean the project would cost an additional \$100,000. He said if the funding formula with UNH changed, the price would go up by about \$500,000.

Councilor Lawson said that concerning water conservation, the greatest gains often came from addressing outdoor water use, which was already incorporated into the \$1.2 million galls figure. He said with UNH's focus now on sustainability, the water usage issue shifted over to Durham residents. He said half of the water users would be in apartments and half would be in homes, and said those in apartments wouldn't be big outdoor water users. He said there would be very little gain in water conservation on the indoor side.

He said Durham wasn't a community with a lot of pools and irrigation systems, and was a place where there were people who already practiced sustainability. He said there could be a 20% decrease in water use, but said to do this, residents would have to do a lot.

Councilor Lawson summarized that there were more areas of agreement than disagreement with what Councilor Howland had presented.

Councilor Smith noted that the upcoming Emery and Garrett presentation would not contain a water conservation plan, and said perhaps they could tell the Council why no one had come up with one.

Administrator Selig said the Town had a comprehensive, cutting edge water conservation plan.

Chair Gooze thanked Councilor Howland for the presentation, and said there was a lot in it for people to think about.

Administrator Selig said the plan this evening was to provide a lot of good information, with the opportunity to follow up on this later, and to deal with the budget side of things in December when the 2013 Budget was discussed.

- D. Presentation and discussion regarding the Spruce Hole Municipal Well and Artificial Recharge project -Town Engineer David Cedarholm and James Emery and John Brooks of Emery & Garrett Groundwater, Inc.

Town Engineer Dave Cedarholm outlined the presentations the Council would hear, including explanations of the geology of the Spruce Hole site, the preliminary engineering that lead to the option 1 recommendation, and a summary of the project and why the DPW recommended moving forward with it.

He noted that the Town had to have a water conservation plan approved by the State in order to get the large groundwater withdrawal permit approved. He said the DPW had just gotten the draft back with some minor comments, and said the final document would go to DES soon for final approval.

Dr. John Brooks of Emery & Garrett said quite a bit had been accomplished since they had last been before the Council.

He said the Spruce Hole well and artificial recharge would be used to:

- meet future water supply growth demands
- Meet peak summer/ fall water demands
- Potentially reduce annual surface water treatment costs
- provide a redundant water supply source to help mitigate the potential loss of an existing water supply source( s); and/or catastrophic failure of the surface Water Treatment Plant

He said a new groundwater supply well had been developed within the Spruce Hole Aquifer that was capable of yielding up to 1.04 mgd or up to 63 million gallons per year. He said preliminary approval was received from NHDES in April of 2012 for this Large



Groundwater Withdrawal. He said the permit was expected to be received from DES in early 2013, pending responses to DES' final comments.

Dr. Brooks said the permit was received from DES in January of 2012 to allow artificial recharge of the aquifer at a rate of up to 1,000 gpm (1.44 mgd). He said a pilot testing had been successfully conducted as a preliminary full scale test of using artificial recharge in the Spruce Hole aquifer.

He said artificial recharge would be used to further enhance/ increase the yield capacity of the Spruce Hole Aquifer and/ or mitigate potential adverse impacts caused by groundwater withdrawals.

Dr. Brooks spoke in detail on the Spruce Hole aquifer's hydrogeologic setting, using maps, etc.

He then discussed the results of the 8-day pumping testing that was done. He said the production well DGD PW2 was capable of yielding 1.04 mgd for up to 60 consecutive days; 172,800 gpd (120 gpm) year round; or up to 63 million gallons per year.

Dr. Brooks noted that water removed from storage during the pumping test resulted in a temporary one foot drawdown of the water table in the aquifer; and said artificial recharge could be used to increase the natural recharge to the aquifer and, therefore, enhance/ increase the year round sustainable yield (groundwater withdrawals) of the aquifer.

He said preliminary approval for withdrawals from Production Well DGD PW2 was received from NHDES August 2012

Dr. Brooks discussed the process of obtaining a permit for artificial recharge, and then reviewed details on the recharge itself. Among other things, he described the testing that was done to simulate water quality changes that would occur during the flow of artificial recharge water from the basin created to the well screen. He said this was performed over a six month period.

He said source water from the Lamprey River was taken from the pipeline within the water treatment plant, and pumped through two 10-foot-16-inch- foot long, 16 inch diameter columns. He said sediments in these columns were obtained from the Spruce Hole Aquifer.

Dr. Brooks provided details on water quality parameters that were measured and assessed, and said based on the results of the testing, NHDES had issued a Groundwater Discharge Permit for adding up to 1,000 gpm of Artificial Recharge into the Spruce Hole Aquifer.

He provided further details on the pilot testing that was done concerning artificial recharge, and on its results.

He said the pilot testing had demonstrated that Spruce Hole aquifer levels could be successfully raised using artificial recharge. He also said the aquifer deposits adequately treated the surface water that was injected into the aquifer, such that groundwater quality was not impaired. He said artificial recharge could be used to enhance groundwater withdrawals from the Spruce Hole aquifer, and could be used to mitigate potential impacts to local water resources, if needed.

He said final steps to be completed would be to obtain the Final Groundwater withdrawal permit from DES. He said a long-term Groundwater and Stream Flow Monitoring Plan would have to be designed and conducted. He said the Town would also need to prepare and submit responses to NHDES comments. He said there would be long-term groundwater monitoring of selected wells per NHDES permit requirements, and noted that groundwater levels had been continuously monitored since February of 2012.

Dr. Brooks said there would be long-term streamflow monitoring plan for Chesley Brook. He said a meeting was held with NHDES and Fish and Game in September to discuss a monitoring plan to protect the natural habitats and fish, including the American Brook Lamprey in Chesley Brook. He said initial components considered were water quality changes of Chesley Brook; fish surveys; streamflow monitoring; groundwater monitoring; and wetland habitat monitoring.

He said data collected by the Volunteer River Assessment Program since 2001 showed that the water quality of Chesley Brook varied significantly throughout the year, and could not be used to distinguish surface water from groundwater. He said the data also showed that the water quality of Chesley Brook was not significantly different than Lamprey River water quality.

Dr. Brooks said the water quality data showed that surface water quality was not a useful criterion for evaluating potential groundwater impacts to Chesley Brook, so significant monitoring of surface water quality would not be a necessary component of the long-term monitoring plan.

He also said NH Fish and Game had determined that fish surveys of the American Brook Lamprey would not be required. He said monitoring would be limited to monitoring of the streamflow within Chesley Brook, and said this would be the main criterion for protecting Chesley Brook habitats and endangered species. He also said there would be monitoring of groundwater levels at one additional well, and monitoring of wetlands, if suitable wetland monitoring plots could be established.

Engineer Mike Metcalf next described in detail the infrastructure options.

***Councilor Smith MOVED to extend the meeting beyond 10:30 pm. Councilor Lawson SECONDED the motion, and it PASSED unanimously 9-0.***

Mr. Metcalf said the total cost so far was for the preliminary design and engineering, the construction of the well, the installation of the monitoring wells, and more. He noted that

an ARRA loan with 50% forgiveness of principal and interest had covered \$220,500 of the \$685,000 in costs so far, so the actual cost so far was \$462,000.

Mr. Emery said they had received all final NHDES permits for utilizing artificial recharge at the aquifer. He said the Town had set the stage for getting a permit in an appropriate way, which diminished the risk of putting surface water into the ground and causing contamination.

He also said they were essentially at the 98% completion point in obtaining the final Large Groundwater Withdrawal Permit. He said it was evident that groundwater withdrawals at this site would not have any adverse impacts on the Spruce Hole Bog.

Mr. Emery also said it was also evident that artificial recharge could be used to increase the overall yield of the Spruce Hole Aquifer, and could help mitigate any potential adverse impacts to local water resources, including Chesley Brook. He listed the reasons to develop the Spruce Hole well and do the artificial recharge project now rather than later:

- The new production well will provide the UNH/ Durham Water System with a much needed water source that can provide water resiliency and security during: peak demands (Aug-Oct), severe drought periods, operational or equipment failure, environmental disasters involving other water sources.
- The well site and the majority of the aquifer are on properties owned controlled by the Town of Durham.
- The groundwater recharge area surrounding Production Well DWP PW2 is mostly undeveloped and provides a high level of protection to the quality of groundwater resources.
- 90% of the infrastructure already exists, including the pump station on the Lamprey River and 6,500 feet of 16-12-inch raw water main leading to within 2,000 of the proposed recharge area and 8,000 feet of 12 inch raw water main leading to the UNH treatment plant.
- Would reduce treatment costs at the Water Treatment Plant.
- Interest rates for construction of water supply infrastructure are at an all-time low.
- Provides an excellent balance between the Town's and UNH's dependence on surface water and groundwater sources.
- Provides a long long-term public water supply source that requires no treatment (except chlorination) that will ultimately be protected in the future by State regulations.

Chair Gooze asked how comfortable they were that the results of monitoring Chesley Brook wouldn't be adverse, and would not affect what could be done with the project.

Mr. Emery said a meeting with NH Fish and Game indicated that in term of data that needed to be provided, it came down to whether water levels could be maintained. He said there was a lot of data on this already. He said recharge would allow them to manage water levels, so that if it got to the point where water levels in Chesley Brook decreased, there would be the artificial recharge to balance that and keep the water level up.

Councilor Howland said a critical point was what happened if monitoring showed a problem. He asked what happened if there was a water level problem in the summer, and recharge couldn't be done.

Mr. Emery said that was why they did the pilot testing to figure out how to balance these things. He said the State would not allow the Town to use the water if there was evidence that Chesley Brook was impacted. He said that was also why monitoring would be done. Councilor Howland noted that the kettle bog was in the zone of contribution for the well, and asked if there was concern about this.

Mr. Emery said the bog was completely blocked off, noting that it was perched about 13ft above the water table.

Administrator Selig asked Mr. Emery how he saw the Town balancing the 4 water sources from an operational perspective over the course of the year, if the Spruce Hole well came online.

Mr. Emery said he would leave the answer to this up to DPW staff, but he said the permit was set up to allow a limited amount of pumping, and said he thought it would be used during periods of peak demand. He said it would be a cheaper alternative at that time, noting that turbidity, requiring chemicals, would not be an issue as it was with the Oyster River.

Councilor Mower said there was very little seepage, and said presumably they could pump water in in April and May, and pull it out in August.

She confirmed that the permit was conditional upon use of artificial recharge, and that the Town couldn't use the well at this point without that at this time.

Mr. Emery said the groundwater withdrawal permit would stand alone under those limited conditions. But he said they could fight to separate that out. He said there was a lot of flexibility in the system proposed, including taking water from the Lamprey River when there were peak flow during storms, rather than allowing that stormwater to do damage. He said once the artificial recharge program was started, they might later find that they could double the capacity of the well by tweaking the water that was added to the system.

Councilor Carroll asked when Councilors would be able to see the water conservation plan.

Mr. Metcalf said it would be available within the month, so Councilors would have it in time for the Budget discussions.

Councilor Carroll noted that the water quality of the Spruce Hole well water was excellent. She asked who was going to get to use it, and was told that it would be mixed in with water from other sources.

Mr. Cedarholm said facilities at the west end of Town used mostly water from the Lee well. He said the water treatment plant provided water more to the center of Town, and said Spruce Hole water would be a part of that.

Councilor Carroll asked if it was correct that water users would pay for this project, and Mr. Cedarholm said that was the plan. Councilor Carroll noted that some people weren't clear on this. He said the plan was not to use the General Fund.

Councilor Mower said in some of the testing, an impact was noted of a rise in water levels of one foot extending out to Packers Falls Road. She said some of that area had impermeable soils, and asked what would happen to peoples' yards there.

Mr. Emery provided details on why this was not a concern.

Councilor Carroll said she was very impressed with the engineering for this project. But she said experience told them that when problems occurred, it was often human elements that were involved, and not the engineering. She said when she looked at this project, she got nervous about problems that could come up, resulting in ruining the water in the Spruce Hole well.

She said if there was a problem involving a spill of some kind near the Lamprey River, and at the same time water from the river was recharging the well, it might not be until the next day that this was discovered because everything was done by machines.

Mr. Emery said if there was a problem like this, it would be seen quickly at the water treatment plant. He also noted that the Town took water out of the Lamprey River every day.

Councilor Carroll said residents at least needed some reassurance concerning this issue.

Mr. Cedarholm said they were working with a team of researchers from UNH, and would be installing a bank of water quality instruments at the Wiswall dam to continually measure water quality along 10 different parameters. He said the hope was to put that data online, and said perhaps the Town would want to fund that.

Chair Gooze said all of the Town's water supplies could potentially be contaminated.

Councilor Cote said the tributaries of the Oyster River were in much more danger of being contaminated, noting that they crossed under roadways in several places.

Mr. Metcalf said there were fail safe measures in place for that kind of occurrence. He said the pumps would be shut off if the water quality monitoring instruments indicated there was a problem.

Councilor Mower asked that a PDF copy of the presentation be provided online.

She said the hydrogeologic and engineering studies didn't encompass a full range of concerns from an ecological perspective. She asked if there was anything they had come across that made them think it would be good to look at artificial recharge from that perspective.

Mr. Emery said ecological habitats were a part of this process, and said the Town couldn't get a permit to take water out of the ground if it was shown that these habitats would be impacted. He noted that NHDES had one of the most rigorous permitting procedures there was.

Councilor Mower said the Chesley Brook example indicated that there was a review of the potential impacts.

Mr. Emery said the conversations with DES had been boiled down to a manageable list of things still to be addressed. He said they could probably get the permit by January or February.

Chair Gooze thanked the presenters, and said they had been tremendously informative.

**X. Unfinished Business**

**XI. New Business**

Chair Gooze suggested that the discussion on Unanimous Consent Agenda item C be put on the Agenda for the next meeting.

**XII. Nonpublic Session -None**

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

**XIV. Adjourn**

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

Adjournment at 11:00.

Victoria Parmele, Minutes taker