

D-R-A-F-T

MONDAY, JUNE 21, 2004
DURHAM TOWN HALL -- COUNCIL CHAMBERS
TOWN COUNCIL MINUTES
7:00 PM

MEMBERS PRESENT: Arthur Grant (served as Chair); John Kraus; Neil Niman;
Annmarie Harris; Gerald Needell; Karl Van Asselt; Peter Smith;
Mark Morong

MEMBERS ABSENT: Chair Malcolm Sandberg

OTHERS PRESENT: Todd Selig, Town Administrator; Paul Beaudoin, Business
Manager; Bob Levesque, Town Engineer; Mike Lynch, Public
Works Director

I. Call to Order

Chair Grant said he would be serving as Chair of the meeting, and noted the Council had a busy agenda, so would be addressing the agenda items as quickly as possible.

II. Approval of Agenda

Councilor Needell MOVED to approve the Agenda as submitted. The motion was SECONDED by Councilor Kraus, and PASSED unanimously.

III. Special Announcements

Chair Grant noted that there would be one public hearing that evening, concerning the land conservation easement at the Mill Pond Center. He asked members of the audience who had come to speak concerning other agenda items to please do so during the Public Comments section of the meeting.

IV. Approval of Minutes

June 7th, 2004

Page 56 Dr. Sobel (spelling)

Councilor Van Asselt MOVED to approve the minutes. The motion was SECONDED by Councilor Kraus, and PASSED unanimously.

V. Report of Administrator

Administrator Selig spoke about the planned 4th of July celebration, noting that although the fireworks would begin at about 9:15 pm, there would also be a variety of activities for children, starting at 5:30 pm.

Administrator Selig said he had made an inquiry to NHLoGIN concerning the electronic data issue, to see how other towns addressed it. He said there would be a presentation on this topic at a Council meeting in July.

Administrator Selig also said he was working on the revised draft of the Town Council's Goal Statement.

VI. Reports and Comments of Councilors

Councilor Kraus suggested that citizens watching the meeting pay close attention to the Council's ongoing budget discussions, stressing that this was the time to get appropriate information to the Council so that it could deliberate on the Budget with the benefit of citizen input.

Chair Grant explained that the Town Administrator and staff were preparing the draft budget, and said the Council would be taking up the CIP in October and the Budget in November.

Councilor Morong said the Rental Housing Commission was working on drafts of the disorderly house ordinance and assembly permits ordinance, and said the public was welcome to provide input at the next meeting of the Commission to be held on Thursday, July 8, 2004 at 4:00 PM in the Council chambers.

Administrator Selig introduced George Bald, the new Director of the Pease Development Authority, noting that Mr. Bald had met with Town staff immediately prior to the Council meeting.

Mr. Bald noted that he had held the Executive Director position six years ago. He said he had a good working relationship with Administrator Selig, saw Pease as a plus for the whole area, in partnership with local communities, and said he hoped this relationship could be helpful to Durham.

Chair Grant thanked Mr. Bald for coming to the meeting, and said he looked forward to working with him.

VII. Public Comments

Kenneth Andersen, Chairman of the Parks and Recreation Committee, said the committee had unanimously recommended the playground reconstruction at Woodridge Park, stating it would be an asset to the community, and would be used by children and their parents.

Richard Dewing, 7 Willey Road, spoke about an idea he had had for several years about constructing a post and beam building as a possible replacement to Wagon Hill farm. He said that Julian Smith had asked him to speak about this idea to the Council, and he also said that to go any further, he would need the approval of the Council that it was in fact a good idea. He passed around materials on the kind of structure he had in mind, and reminded Council members that throughout the history of New England, neighbors had often built things together. He said that in the modern age, there always seemed to be all kinds of reasons why something like this couldn't be undertaken. He spoke about local places where the timber for the building could be obtained, and said there were many ways to make something like this

work – for the construction of a library. He said the work could be done by a mix of 18-20 professional people and volunteers, and said he would be willing to give a year of his life for this project.

Chair Grant thanked Mr. Dewing, and said the Council would consider his idea at a subsequent Council meeting.

William Hall, Smith Park Lane, spoke about the water supply issue, and the recently completed Metcalf and Eddy study. He said the water supply issue and how it had been handled by the Town and the University was a mess, and provided detailed examples of this.

Dudley Dudley, 25 Woodman Road, said Durham was a wonderful Town, with special places like Packers Falls, but said it made her very sad to drive over the bridge now. She said there must be enough brains and enough good will around the table to see that the right thing was done, and that a change more appropriate to that setting could be made.

VIII. Unanimous Consent Agenda

- A. Shall the Town Council approve the Special Event Permit request by the Durham MainStreet Program to close a portion of Main Street from Town and Campus to the Campus Convenience Store between the hours of 7:00 am and 4:00 PM on Saturday, August 21, 2004 for the Young Artist Showcase event?
- B. Shall the Town Council approve the purchase of new playground equipment for the Woodridge Field recreational area as recommended by the Parks and Recreation Committee and the Public Works Department?

Councilor Harris asked that Item B be removed from the Unanimous Consent Agenda.

Councilor Morong MOVED to approve Item A, the Special Event Permit request by the Durham MainStreet Program to close a portion of Main Street from Town and Campus to the Campus Convenience Store between the hours of 7:00 am and 4:00 PM on Saturday, August 21, 2004, for the Young Artist Showcase event. The motion was SECONDED by Councilor Kraus, and PASSED unanimously.

Councilor Needell MOVED that the Durham Town Council, upon recommendation by the Town Administrator, hereby waives the competitive bid process and awards the contract for purchasing new playground equipment to Pettinelli & Associates of Burlington, Vermont and authorizes the Town Administrator to sign the contract for the sum of \$50,435 with the expenditures to be paid from the Capital Fund account #07-4400-2002-999-04. The motion was SECONDED by Councilor Niman.

Councilor Harris said she continued to have some concerns about the project, and questioned how many young children ages 5-12 would use this playground, noting that the playground would be opening in September when children were in school. She asked if a survey had been done to determine this, and also said the number of slides seemed large compared to the number of slides down at the skating rink. She stated that it was important to ask whether this

project should be ahead of other things that need to be funded, such as the library and the bridge.

Administrator Selig suggested that members of the Parks and Recreation Committee could provide their rationale concerning the number of children who would use the playground, and the number of slides needed at the proposed playground relative to the number of slides at the skating rink.

Mr. Andersen said they had an email list of over 100 parents of preschool kids. He also noted that there were six slides at Jackson's Landing, and said the Woodridge Park playground was also suitable for children under five.

Councilor Smith asked what facilities at the park would be suitable for children under 5, and Mr. Andersen said there was no equipment that would not be suitable, with parental supervision.

Councilor Smith noted the sandbox at Jackson's Landing, which was unsuitable for younger kids ages 1-3, and asked if a similar type of sandbox would be placed at Woodridge Park. Mr. Andersen said that same type of sandbox would not be used at Woodridge Park.

The motion PASSED unanimously.

IX. Committee Appointments

- A. Shall the Town Council appoint George Lamb, 12 Nobel K. Peterson Drive, as a regular member to the Parks and Recreation Committee for a three-year term?

Mr. Lamb spoke before the Council, noting that he had moved to Durham the previous fall, after spending most of his professional life in Colorado.

Councilor Kraus MOVED that the Town Council appoint George Lamb, 12 Nobel K. Peterson Drive, as a regular member to the Parks and Recreation Committee for a three-year term. The motion was SECONDED by Councilor Smith, and PASSED unanimously.

- B. Shall the Town Council appoint Karen Bishop, 135 Packers Falls Road, as an alternate member to the Planning Board for a three-year term?

Councilor Kraus MOVED that the Town Council appoint Karen Bishop, 135 Packers Falls Road, as an alternate member to the Planning Board for a three-year term. The motion was SECONDED by Councilor Harris, and PASSED unanimously.

- C. Shall the Town Council appoint Jerry Needell as the Council Representative to the Durham Cable Access Channel (DCAT) Governance Committee?

Councilor Harris MOVED that the Town Council appoint Jerry Needell as the Council Representative to the Durham Cable Access Channel (DCAT) Governance Committee. The motion was SECONDED by Councilor Smith, and PASSED unanimously.

X. Presentation Items

A. Presentation by Durham Public Library Board of Trustees

Douglas Wheeler, Chairman of the Durham Library Board of Trustees, said that on June 1st, the Trustees had voted unanimously to choose the Town Hall site as the preferred location for the new library, after exhausting the alternatives - 23 different sites over 4-5 years. He said it was the best location from a geographical and economic perspective, and also noted that most of the other sites were either not available, or if available, were too expensive. Mr. Wheeler then introduced Luci Gardner to speak in more detail about the Board's decision, noting that other members of the Board were also present.

Mrs. Gardner said the Town was currently paying \$51,000 annually for rental of the current space, and was the only town in the State that did not have its own property for a permanent library. She asked the Council to hold a public hearing on the possible use of the Town Hall site for the library. She described in general terms the plan for the proposed library, and said the Board needed Council and community input concerning these plans and others that could be incorporated into the library plan.

Mrs. Gardner said the Board had a fund of \$360,000, most of which would be available for the new building, and stood ready to do capital fundraising for the project. She said a permanent library was needed now, and although noting the longstanding idea to acquire Smitty's and the money to acquire it, which would be wonderful as part of the Town center concept, she pointed out that this acquisition had been pending for over 4 years. She ended her comments with a quote from RSA 202:A-1, which recognized the importance of the public library as a valuable supplement the public education system, which deserved adequate financial support from government at all levels.

Chair Grant asked if Council members had any questions for Mrs. Gardner.

Councilor Harris said she was curious to know the perspectives of the Board of Trustees regarding the fact that the site would be most suitable if it included the entire site, including Smitty's, and how that related to the cost to the Town, given that that the property really wasn't free. She also said she had at one time thought that the Trustees were going to come forward with the best site no matter what the cost, and then were going to figure it out from there. She said she was worried about people not having a way to get to the library from any neighborhood in Town except by crossing Route 108.

Mrs. Gardner said the Trustees had decided over the course of time that this was the best site, because it was the best place to carry out the Master Plan concept of a Town center. She noted that the Town Hall was already there, as was the Courthouse and the Historic Society. She also said the site was beautiful, with excellent access from Schoolhouse Lane and from Route 4. She said the Board didn't see other sites in Durham that would be available and from which a large number of people could walk to the library. She said people would have to drive to this site, as well as most of the other sites that were looked at.

She said that economics was one of the Board's concerns, noting that the Board had shepherded the money it was given by UNH, had added to it, and had not used it for the running of the library. She said the Town property should be used for a Town use, and the

library was such a use. She said it didn't make sense to take another piece of land off the tax roll and buy it, and also noted that the library had used the garage at the Town site for book sales and storage, for the past few years. She also spoke of how the entire site could be used as a Town center if Smitty's was acquired.

Councilor Needell said there had been ongoing discussion about this site for some time. He said the only way to break the gridlock was to have a public hearing on the Board of Trustee's recommendations, air the ideas, and then make a decision. He recommended that a public hearing should be held on the request of the Library Board of Trustees.

Administrator Selig asked how soon this hearing should be held. There was discussion between the Council and the Board on this.

Mrs. Gardner said the Board would prefer that a special meeting be held for the public hearing, and Chair Grant said they would take that under consideration.

Councilor Van Asselt asked if there was a hearing, would there be discussion as to whether the Town should even have a library, and if so, where it should be built and how much the Town wanted to spend. He said he realized that questions could be asked at the public hearing, but asked how the hearing should be structured.

Administrator Selig said the motion on the table was very specific, and if a broader discussion was desired, they should talk about this at the present meeting.

There was discussion about the conceptual drawing of the design for the library, and the possibility of making it available at the public hearing.

Councilor Smith said that if all questions and judgments were suspended as to how the library would be paid for, etc., and the only issue to be considered was whether it should be built at the Town Hall site, the discussion would be artificial. He said it was hard to imagine that comments at the hearing would not be wide ranging. He said it was of substantial importance for the Council to inform the Board of various questions that would have to be addressed in order to have a fruitful discussion, and said he had some in mind to recommend to the Board.

Councilor Morong said he was in favor of holding a special meeting in mid July so there was time to prepare for the hearing. He also said he agreed with Councilor Smith that there would be a lot of input of various kinds, and said it made more sense to talk more broadly about the library project at the hearing.

Chair Grant noted that no date had been included in the motion. He said this item could be put on the agenda for the next Council meeting, a series of questions could be developed to forward to the Trustees, and the hearing could be scheduled at that time.

Councilor Smith said that was fine, but said he would like the Trustees to be present at that discussion.

Mr. Wheeler said his only concern was the meeting date, noting that mid July might not be the optimum time to get turnout. There was additional discussion about an appropriate date for the hearing.

Chair Grant and Councilor Smith agreed that the turnout in either July or August might not be as large as was desired.

Councilor Needell explained his reasoning for making a motion that focused on this site. He said that every time the issue came up, there were people saying the library should be somewhere else, and those people would most likely be present at the public hearing. He also said there were people who thought this site should not be used for a library, regardless of whether or not the Town should ever have a library. He said he would therefore like to see a decision on this site for Town use or not, and whether it should be used by the Town or not.

Councilor Smith said that the way Councilor Needell had put this issue was so abstract, that it was not likely that the Town would make progress on it. He said they could have that discussion and the library issue might never come up. He said the focus needed to be on the issue of the library, with the understanding that this involved a series of other questions. He said he didn't think it was responsible for the Council to engage in that discussion and make decisions on that without making every effort to how that related to what should be done with Smitty's property.

Councilor Smith also said he didn't think it was responsible for the Council to engage in that discussion unless it was prepared to solicit input from the public and the Board regarding whether the library project was one which should also be used to create some substantial public space which the town also desperately needed.

He also said he didn't think they could make much progress on the discussion unless they spoke about the issue of money. He said he was very pleased to hear about private funding available, which would be of fundamental importance for the success of the project. But he said more detail was needed on this, and also said there had to be an open discussion on what the Town was prepared to do in terms of spending operating funds on a public library. He said the project represented a significant financial expenditure, of the kind the Town had never made before.

There was additional discussion about the process needed to develop the content of the public hearing, as well as the preferred meeting date.

Councilor Morong said he had no problem with scheduling the meeting in September, but said he was interested in moving the issue along as quickly as possible, because it had been in limbo for far too long.

Councilor Needell MOVED that the Council schedule a special meeting which would be a public hearing on the request presented this evening by the Library Board of Trustees, such meeting to be held at a subsequent date to be determined in consultation with the Chairman of the Council and the Chairman of the Library Board of Trustees. The motion was SECONDED by Councilor Morong.

Councilor Needell stressed that if the decision was that there would be no Town funding, the Town needed to know that, and if the Town site was inappropriate for the library, the Town needed to know that.

Councilor Smith said that before settling on the date on the hearing and sending out notices, sufficient information concerning the kinds of questions that would be raised at the hearing should be put together for the public.

Chair Grant asked Administrator Selig to put some thought into how this could be done, and also asked the Library Board to participate in this effort.

The motion PASSED unanimously.

Chair Grant declared a 5-minute recess at 8:10 PM.

The meeting reconvened at 8:15 PM.

Chair Grant explained for those watching the meeting that Chair Sandberg was out of state, and had tried to get back in time for the meeting but was unable to do so.

A. Presentation by Michael Metcalf, PE, Dufresne-Henry, Inc. regarding the Town of Durham's current and future water supply needs

Administrator Selig introduced Mr. Metcalf, who then showed a series of slides that presented information from his report. He described the following:

- Supply Capacity – normal, critical and potential
- System demand – existing, maximum, and future
- Capacity and demand comparisons

Councilor Harris noted that the UNH student, faculty and staff commuters, which boosted the UNH number by approximately 15,000-20,000 people per day. She also noted the Whittemore Center water demand had not been included in the report. There was discussion about this with Mr. Metcalf. He said that in the context of this report, that kind of detail had not been provided.

Councilor Smith asked how much more work would be needed to develop more sophisticated water demand figures. Mr. Metcalf provided detail on what would be required, and that he didn't know the exact amount of time this would take.

Administrator Selig noted the year end figures for the amount of water drawn by the Town and the University, and suggested that those numbers indicated the amount of water used by each entity. There was discussion about this, and Mr. Metcalf said he would be glad to look into the breakdown of water demand further.

Councilor Smith questioned the comment by Mr. Metcalf that the UNH student population housed on campus had not changed. Mr. Metcalf said that was the information he had been given.

Councilor Harris said the Town had information from the University on the influx of students, faculty, and staff every day into Durham. Mr. Metcalf said that information could be used to delve more deeply into analyzing water demand.

Councilor Kraus asked if the irrigation system for watering flower beds was un-metered, and Mr. Metcalf said he believed it was. Councilor Kraus asked if the water from fire hydrants was un-metered, and Mr. Metcalf said anything coming out of a hydrant, unless there was a meter on it, was un-metered. Councilor Harris asked about the UNH football field, and was informed that it too was un-metered.

Councilor Van Asselt asked about projected increases in water demand from 1999-2010, noting a 90% project increase for UNH and 25% for the Town. Mr. Metcalf referred to the UNH Master Plan, noting that water demand estimates were provided for many facilities, and noted that more demand was projected for residence halls than for classrooms.

Councilor Needell asked if in the previous data presented only residence halls were considered. There was discussion about this.

Councilor Smith asked which Master Plan Mr. Metcalf was referring to. Mr. Metcalf said the utility Master Plan was from 1998. There was discussion as to whether the utility plan had been updated yet, and Mr. Metcalf said he did not believe it had been updated. Mr. Metcalf then discussed the comparison that had been done of supply capacity and demand, and said that the time had already come when during low flow periods, the demand of the system exceeded the supply capacity of the Town and the UNH Water system. He said his calculations indicated that it would be increasingly difficult for the existing supply sources to meet both average and maximum day demand, as that demand increased. He noted however that the estimates of future demand based on building construction at UNH might be overly conservative, so should be checked over time.

Mr. Metcalf outlined the recommendations concerning increasing water supply capacity contained within his report:

- Move ahead as soon as possible with the development of a Spruce Hole aquifer groundwater supply, which would not be limited to instream flow rules or reserves for other purposes. He said this improvement alone would eliminate supply deficits through 2005, and possibly longer.
- Bedrock Supply Source. Mr. Metcalf said he believed that a bedrock analysis had never been done for the Town, and suggested that bedrock well of sufficient capacity would help the overall water supply situation.
- Regional interconnection with neighboring communities. Mr. Metcalf said such a connection could be a source of supply in times of need or emergency.
- Increase in water storage capacity. Mr. Metcalf said that storage of raw water vs. treated water storage was cheaper and more flexible, and said the Oyster River was an ideal place to increase capacity, since it was right next to the treatment plant. He said

borings should be conducted in winter to see what the depth of the sediment was there, and if the Town would need to do any excavation.

Councilor Smith said the Town didn't have the slightest idea how much water this held. Mr. Metcalf said nobody seemed to know this and provided detail. Councilor Kraus asked how high the dam could be raised. Mr. Metcalf said it could be raised 2-3 feet more, and said even that would flood a significant amount of territory, and would create significant impacts on surrounding College Woods area. He said there were a lot of implications of raising a dam, and that it would be preferable to go down deeper instead.

Mr. Metcalf also discussed possible increase of the utilization of the Wiswall Dam impoundment. He recommended having discussions with NHDES concerning this. He also said the report recommended investigating the option of constructing an open reservoir of 30-40 MG volume on land owned by the University. He said a final storage option was using the Spruce Hole aquifer as a storage facility.

- Management of Water Resources. Mr. Metcalf said that a primary recommendation of the report was seasonal use of the supplies to relieve stress on the surface water supplies during the low flow period of year. He explained that this would entail low usage of the Lee Well during the late fall, winter and spring months when the flow of surface supplies was greater, with heavier use of the well during the typical low flow periods in the summer and early fall.

Administrator Selig said in discussions with University concerning the water agreement, they were working hard on this issue so they could utilize Best management practices in terms of where water was drawn at different times of year.

Chair Grant suggested it would be very wise use of the Town's resources to see that the appropriate University people saw this presentation, and suggested that the audience should be wider than water management people.

Councilor Needell asked if Spruce Hole had seasonal characteristics, and Mr. Metcalf said the supply was no where near as seasonal as surface water supplies.

- Demand Side management. Mr. Metcalf also provide recommendations concerning this, including possible implementation of a two tier conservation program; accounting of unaccounted water; elimination of leaks, and limitations on new connections. He also spoke about use of a possible water allocation ordinance, and said if it was developed, it would be important to include all interested parties in the process. He noted that the Town/UNH aspect of this process was a complicating factor, but said an important part of the process would be to establish a water supply goal that both entities wanted to be able to supply under all circumstances. He provided details of what this might involve.

Councilor Smith asked about constraints on the maximum capacity of the treatment plant. Mr. Metcalf said the constraint now had to do with the limitations of the sedimentation basin.

Chair Grant said there would be further discussion and deliberation on the recommendations of the report in the future, and encouraged Administrator Selig to arrange a presentation on it for the University.

C. Presentation of the 2003 Town Audit Report by Plodzick and Sanderson

Gregg Colby of the accounting firm Plodzick and Sanderson went through the various financial statements in the Audit Report. He said he was pleased to report that no material weaknesses in the Town's accounting system and records were identified.

Councilor Kraus noted the sum of \$31,587 for parking, and \$49,725 for the Public Library were listed as Special Revenue Funds, and asked what this meant. Mr. Colby provided details on this. Councilor Kraus said the amount for the Library may have been covered by donations, but said there would not be such a donation related to the parking figure.

Councilor Smith asked if Mr. Colby had seen page 4 of Mr. Beaudoin's memo, concerning GASB 34 rules dealing with fixed assets, infrastructure accounting and other reporting requirements. He asked Mr. Colby whether this opinion was stating a uniform opinion concerning bond operations. Mr. Colby responded in detail to this question.

Councilor Smith asked Mr. Colby if he was advising the Town that non-compliance was a no risk situation. Mr. Colby said he would never say that, but provided perspective that it was unlikely that there would be adverse ramifications of non-compliance.

In answer to a question from Councilor Needell concerning non-compliance, Mr. Colby explained that the cost of documenting the historical value of fixed assets was weighed against the benefits of doing so. He said there did not appear to be the likelihood of a lower bond rating by not complying.

Mr. Colby thanked Mr. Beaudoin and other Town staff for their help in facilitating the audit process.

Chair Grant noted that Plodzick & Sanderson had expressed that appreciation in dollars, and had rebated the audit fees, and thanked Mr. Colby.

XI. Unfinished Business

- A. Public Hearing regarding the expenditure of Town conservation funds for a conservation easement on the Mill Pond Center property located at 50 Newmarket Road, as recommended by the Conservation Commission and Land Protection Working Group.

Councilor Smith MOVED to open the public hearing on the proposal by the Land Protection Working Group and the Conservation Commission to expend Town Conservation funds for a conservation easement on the Mill Pond Center property, Tax Map 6, Lot #9-8, located at 50 Newmarket Road. The motion was SECONDED by Councilor Kraus, and PASSED unanimously.

Administrator Selig introduced Conservation Commission member Duane Hyde to speak about the proposed conservation easement.

Mr. Hyde explained that the Land Protection Working Group (LPWG) had worked with the Rockingham Land Trust (RLT) on a conservation easement project that would include approximately 9 acres of the most scenic and environmentally important portions of the Mill Pond Center property. He said the both the RLT and the Mill Pond Center were bargaining in good faith, and boards of both organizations had approved the project, although there was no purchase and sales agreement. He said explained that the Town of Durham was being asked to contribute \$70,000, 50% of the cost of the easement, while the RLT would pay the other 50%.

Mr. Hyde listed the various Conservation/Open Space criteria satisfied by the project: protection of natural resources; enhancement of public access; and maintenance of prominent scenic vistas. He said the only criterion not satisfied was the “build upon, create, and connect large blocks and corridors of un-fragmented land”. He noted that the 9 acre conservation easement did not completely protect the entire viewshed in that area, but said there was a landowner who owned almost half of the remaining field constituting the vista who had expressed interest in discussing a conservation easement on that property.

Mr. Hyde listed the conditions of the easement, and said that Rockingham Land Trust would be the holder of the conservation easement, and therefore would have lead responsibility for monitoring and enforcing the easement. He said the Town of Durham would hold an executory interest and third party right of enforcement in the easement, which essentially granted the right for the Town to enforce the terms of the easement if the RLT failed to do so. He provided other details of what this executory interest entailed.

Councilor Smith asked what the acreage of the parcel was, and Mr. Hyde said it was about 10 acres.

Councilor Morong asked if by funding this effort with the Town’s conservation funds, it would mean the purchase of the conservation easement wouldn’t raise the tax rate this year because the Town wouldn’t be dipping into the 2.5 million conservation bond. Mr. Hyde said that was correct.

Councilor Harris asked where one of the proposed sites for the new Library was located on the Mill Pond property, relative to this property, and there was discussion about this.

Malin Clyde, a member of the Land Protection Working Group, said that in an informal poll that described the idea of protecting this vista, people resoundingly felt an attachment to this site and its view. She said she was happy to see this easement as a potential first step on the way to other great land protection projects in the future.

Chair Grant asked if anyone wished to speak against the proposal. There was no response.

Councilor Smith MOVED to close the public hearing on the proposal by the Land Protection Working Group and the Conservation Commission to expend Town Conservation funds for a conservation easement on the Mill Pond Center property, Tax Map 6, Lot #9-8, located at 50 Newmarket Road. The motion was SECONDED by Councilor Kraus, and PASSED unanimously.

Councilor Needell MOVED that the Durham Town Council hereby authorizes the Town Administrator to enter into the proposed Conservation Easement with the Mill Pond Center, as presented, on behalf of the Town of Durham. The motion was SECONDED by Councilor Kraus.

Administrator Selig acknowledged the hard work of the Land Protection Working Group and the Conservation Commission on this project, as well as other land conservation projects in the Town.

The motion PASSED unanimously.

- B. Shall the Town Council approve property tax abatements for 2003 as recommended by the Town Assessor and Town Administrator?

Councilor Kraus MOVED that the Durham Town Council hereby approve the 2003 property tax abatements 1-34, and 36-81, referred to in the attached in the 2003 property tax abatement recommendations spreadsheet, totaling \$27,343.06, and hereby authorizes the Town Administrator to sign those respective applications on its behalf. The motion was SECONDED by Councilor Niman.

Councilor Kraus explained that this motion provided for approval for all the abatements other than the one for the Council Chair.

Chair Grant asked if he wished to treat that abatement separately, and Councilor Kraus said he did not.

Councilor Needell asked if there would be the opportunity to address #35 as a separate motion that evening. There was discussion on this, and it was agreed that this could be done.

Councilor Smith said his position was unchanged since the discussion on this issue at a previous Council meeting, notwithstanding a recent communication from Town Counsel. He said he intended to abstain from voting, pursuant to the Town Charter, and would state why.

Councilor Morong asked why Councilor Kraus didn't think it was appropriate to vote on Chair Sandberg's abatement request.

Councilor Kraus said as he had stated at the June 7th meeting, he had serious concerns about a perceived conflict of interest for Council members voting on abatements for other Councilors, particularly the Chair. He said there were other options, noting that Chair Sandberg could carry his appeal forward to the Board of Land and Tax Appeals or to Superior Court.

The motion PASSED with 8-0-1, with Councilor Smith abstaining because he did not believe there was an adequate basis for the Council to vote on the motion, because he didn't believe the Council had anywhere close to the appropriate information needed in

order to make an intelligent vote, and because he also thought there were alternative means to deal with this issue, which he had alluded to at a previous meeting.

Councilor Needell MOVED that the Council grant abatement #35. The motion was SECONDED by Councilor Morong.

Councilor Smith said he wished to recuse himself because he felt his personal relationship with Councilor Sandberg to be beyond the point of a general relationship that he would have with other people in Town. He therefore did not believe he could view this application appropriately in an unbiased manner.

Councilor Kraus said he would also recuse himself on similar grounds.

Councilor Needell said he was sensitive to these comments, but said he felt this abatement request was no different than the others. He said he was quite confident that Town staff treated this request as they did the others, and said there was no reason to penalize Chair Sandberg for being a Councilor.

Councilor Morong said he too wanted to send a message to the Town Administrator and Assessor that he trusted their fairness on this issue. He said he would have no problem voting against something regarding the Chair. He said that if he felt the application was not fair, then he would vote against it.

Councilor Niman said his preference would be for this motion not to come forward, but said that since it had come forward, he would vote against it. He said he wanted to affirm his confidence in the Town Administrator and Assessor, but said he was not sure this was the way to do it. He noted that when he got his tax bill, he hadn't felt it was proper to question it, as a member of the Council. He said he was concerned that the Chair was pursuing this, and was even more concerned when the Town Administrator was one of the people who sat in on the abatement hearing.

Councilor Niman said he was concerned about the appearance of the Chair questioning the judgment of the Town Assessor, and was especially concerned that the item was on the Unanimous Consent Agenda. He said that every person he talked to was concerned about how this appeared. He said he was concerned that if the Council approved the abatement, it would appear it had done so for the wrong reason.

He said that for the integrity of the Town's tax system, the Council should not do this, especially during a challenging period when many peoples' taxes had gone up, and when there was great resentment over this.

Councilor Needell said if he thought for a moment that by voting for this, this was in any way reducing the Town's ethical standards, he would not vote for this. He said he simply did not see the ethical conflict, and said his standards were not any lower than anyone else's standards.

Administrator Selig said residents had the right to file an abatement, and Councilors should have the right to have the same consideration. He said Town staff had offered all citizens the

opportunity to have the Town Administrator sit in on their request, and said Chair Sandberg had been treated the same as anyone else. He provided details on this. Administrator Selig said he had a problem with asking Councilors serving their community to relinquish this right.

Administrator Selig said that when Chair Sandberg came to the hearing, he expressed how uncomfortable he felt in that setting, and said he hoped he would not receive special treatment. Administrator Selig said he told Chair Sandberg that he would not receive special consideration, and subsequently did not give him special consideration, only agreeing to part of the abatement request.

Chair Grant said the Council had acted with respect to 80% of the abatement recommendations based upon the recommendations of the Town Administrator and the Assessor. He did not see any need to delve further into the information relating to this applicant.

Councilor Morong said he wanted to remind members of the public that there were alternatives for pursuing abatement requests. He also noted that one could find potential improprieties in practically any issue that Councilors voted on.

Chair Grant said he assumed that the Administrator and Assessor were available to counsel people who wished to move on to the land board or the Superior Court with their appeals.

Administrator Selig said that was correct, but noted the process would be one where the person was going against the Town of Durham. He also said it was possible that Chair Sandberg would appeal part of the decision on his abatement request.

Councilor Harris asked if there was an easement, or could be an easement from property #35 to the water, which would make it waterfront property. Administrator Selig said there was not currently an easement, but there could be one in the future.

Councilor Van Asselt asked if the earlier vote, which did not include abatement request #35, by itself would still allow Chair Sandberg to take his abatement request to the next level.

Administrator Selig said his interpretation would be that this would be tantamount to a denial, and, Chair Sandberg would then have the opportunity to proceed to the Board of Tax and Land Appeal or to Superior Court. But he said the Town entered this appeal process with an advantage, and said he believed it was unfair to treat anyone who filed an abatement application differently, because it made it that much harder to prove their point at the next level. He said if they felt locally that an abatement was warranted on any aspect of the abatement request, this should be granted so the person was not forced to go to the next level.

Chair Grant noted it was five minutes past 10:00 PM

Councilor Needell MOVED to delete the 10:00 PM adjournment time. The motion was SECONDED by Councilor Moron, and PASSED unanimously.

Councilor Van Asselt said he had voted in the affirmative on the first abatement request motion, but said that he would vote no on the second abatement request motion. He said that for the reasons expressed by Councilor Niman, he would prefer to let Chair Sandberg take his abatement request to the next level.

The motion PASSED 3-2, with Councilors Niman and Van Asselt voting against it.

Chair Grant noted that as Chair, he could have voted to create a tie or break a tie, and had chosen not to create a tie.

- C. Shall the Town Council ask the Parks and Recreation Committee to explore the feasibility of regulating the use of Wagon Hill Farm and make recommendations with respect to implementing a non-resident user fee system for the property?

Councilor Needell MOVED that the Town Council hereby requests that the Parks and Recreation Committee research the idea of implementing a non-resident user fee system for Wagon Hill farm and present its recommendations to the Town Council. The motion was SECONDED by Councilor Niman.

Councilor Needell said this request followed a suggestion in the Master Plan, and noted it had been discussed several weeks ago that the idea should be turned over to the Parks and Recreation Committee for evaluation. He said there were a lot of issues at hand, and these needed to be explored.

There was discussion on the suggested motion and how it differed from the one that Councilor Needell was bringing forward. Councilor Needell said that the motion included two separate items, and the part about the feasibility of regulating was too broad a topic to include.

Councilor Smith said the issue of monies accepted from the federal government, and the circumstances under which the Town could do this project and not have to return that money, should be researched.

The motion PASSED unanimously.

- D. Shall the Town Council endorse the recommendations by the Packers Falls Bridge Committee regarding options for the Packers Falls Bridge?

Councilor Smith MOVED that this item be postponed because of the late hour. CHECK WORDING ON AUDIOTAPE COULD NOT HEAR

Chair Grant asked if there would be any problem with postponing this item.

Administrator Selig said he would like to know if the Council preferred Option 1 in an ideal world, assuming the engineering firm could fund a substantial amount of the rehabilitation of the bridge. He said he would also like to get a sense from the Council how serious it was about pursuing the matter of compelling Hoyle to compensate the Town. He said a brief indication would be helpful, noting he had sent a strong letter to the Hoyle Tanner asking that

they cover all the costs of the modification. He said whether the firm would agree to cover all the costs remained to be seen, but certainly it was the Town's perspective administratively that they should cover a significant portion of these. He said it was preferable that the firm worked collaboratively with the Town on this, rather than forcing it to consider litigation.

Chair Grant noted that he had heard no disagreement from any Council members regarding Administrator Selig's letter to Hoyle Tanner.

Councilor Smith said he was sympathetic to Administrator Selig's need for clarification from the Council on how to proceed on this matter. He noted he fully supported his letter to Hoyle Tanner, but said he simply wanted to postpone the discussion because the late hour.

Councilor Morong said he had no problem with letting Administrator Selig know what the Council would want in an ideal world.

Councilor Harris said an opinion could be expressed without a great deal of discussion, and said at least a consensus would be useful for Administrator Selig.

Councilor Van Asselt said he would have no problem doing that, but would want a formal motion, and was prepared to do that that evening.

The motion FAILED 3-5, with Councilors Kraus, Smith and Niman voting for the motion.

Councilor Smith noted an email that contained an alternative to Option 1, and Administrator Selig said this email was one of many received from members of the public, on both sides of the issue. He said it was forwarded to all members of the Council.

Councilor Morong MOVED to instruct the Town Administrator to proceed with negotiations with Hoyle Tanner Associates with regard to Option 1, with the assumption that the costs of such project would be totally borne by the engineering firm. The motion was SECONDED by Councilor Harris.

Councilor Kraus said he just wanted the public to be clear on the fact that Option 1 would cost of \$132,475, and what the motion said was that the contractor would pay this. He said there had been a number of options floating around, and he had a great deal of concern about what the Town itself would have to pay.

Councilor Morong said this was what he would like the Council to pursue that evening, and said there would be plenty of time at other meetings to pursue other aspects of this issue.

Councilor Needell said he supported the motion, but said he would like to make it clear to the Town Administrator that the key thing point was the cost to the Town. He said he would love to see this work done, but was seriously concerned about the expenditure of Town funds to do this. He said a separate discussion was needed to address the use of Town funds.

Councilor Smith said he intended to vote in favor of this, and said he believed his vote in favor of the motion meant he fully supported Administrator Selig's letter. He said there was a huge responsibility that belonged to the engineering firm, and said he did not take the

passage of this motion to mean that the Council would be precluded from making subsequent decisions as to exactly how it wanted the bridge to look.

Administrator Selig said the reason the issue of Hoyle Tanner funding the rehabilitation was stated so strongly was because of the desire to give the firm every opportunity to work cooperatively with the Town, and only after exhausting other possibilities, to pursue litigation.

Councilor Van Asselt asked if this motion authorized litigation in addition to negotiations, and it was clarified that it did not.

The motion PASSED 7-0-1, with Councilor Niman abstaining because he said did not understand the motion.

- E. Shall the Town Council schedule appointments to the Economic Development Committee, to include members of the citizenry and the Town Planner

Administrator Selig provided background on this item, and said he had tried to provide some direction for the Council in terms of what the Committee could look like, as well as in terms of 3 charges for the Committee, rather than the 2 which had previously been agreed on. He said he had tried to suggest a framework in which the committee would be the worker bees to work through the different charges, and would then present the results of their efforts to the Council for approval.

He said the first charge for the Committee concerned development of a marketing plan for the Durham Business Park, and to seek a buyer for the property. He said this would be followed by a presentation to the Council for final approval, before marketing occurred.

He said the second charge was to review the 1994 Design Guidelines for the Business Park. He said it was important to have a clear sense on this as to what the Council was expecting, when it sought to market the Business Park. He said the third charge of the Committee would be to establish development guidelines for the area around Technology Drive, for presentation and approval by the Council.

Administrator Selig said the proposed makeup of the Committee would be 4 citizens, 2 Councilors, and the Director of Planning and Community Development.

Councilor Niman said he hoped the Council would approve these recommendations.

Councilor Van Asselt MOVED to amend the Proposed Charge for the Economic Development Committee, to include a fourth charge - looking at the commercial/retail potential for the Town Hall site on the corner of Route 108.. The motion was SECONDED by Councilor Niman.

Councilor Van Asselt said the availability of this corner should be considered as part of the Committee's consideration of commercial development in Durham.

Councilor Needell said he had no problem with this, but asked if this was the appropriate time frame, given the fact that the Town was moving ahead with public hearings on the library within the next few months, which related to this fourth charge.

Administrator Selig said he thought it was too late to consider this fourth charge that evening, noting it had huge implications to the discussion on the library. He said he thought the Committee would be in a position of coming back and recommending that the highest and best use for this site was as a taxable property, and that the Town Center and library should be relocated to another location. But he said this was not the only factor that needed to be considered, noting other important values of the town site. He said he was concerned with what charging the Committee with this would do to the timetable for the discussion on the library.

Councilor Van Asselt said he did not feel considering these things together would confuse things, and said he saw no reason not to ask the Committee to consider the town hall site as part of its charge.

Councilor Niman said he agreed completely with Councilor Van Asselt. He said Administrator Selig's summary concerning the corner was similar to his own feelings about it. But he said the value of having the Committee do this was to get a better feel of the revenue potential from developing this corner. He said some people might argue about preserving the historic value of the corner, but said perhaps an economic analysis could determine what the cost of this preservation, and what the value was of doing this.

He said he was concerned that disassociating the economic development issue from the library discussion didn't get focus directly enough on the costs involved. He said he would like to see a library in Town, but would also like to identify a revenue stream for this, and noted that commercial development at this corner might be able to help pay for this project. He said the two issues were therefore integral, because this was perhaps the best corner in Durham to generate additional tax revenues. He said he would be in favor of dedicating a portion of those revenues toward the support of the public library.

Councilor Morong said he supported this motion, because it would give a more balanced sense of this property when they addressed the library issue.

Councilor Needell asked if whether discussion should ensue about the library the Council would have to stop that discussion in order to wait for the economic development study. He said he would love to see the Committee do this work, but was looking for assurance that the Council could handle both discussions.

Councilor Van Asselt said it was important that the issues be discussed in an integral manner. He noted that he would want to speak about elderly housing as part of this discussion.

Chair Grant noted that the enthusiasm of Councilors on the Committee would help drive when they would get the answers concerning charge #4.

The motion to amend the proposed charge PASSED unanimously.

Councilor Smith said he would vote against the motion because he disagreed with one and one-half of the four items (Item #1 and _ of Item #2).

Councilor Kraus MOVED to approve the charge for the Economic Development Committee, as amended. The motion was SECONDED by Councilor Van Asselt and PASSED 7-1 with Councilor Smith voting against.

The motion PASSED 7-1, with Councilor Smith voting against.

Councilor Niman MOVED to reestablish the Economic Development Committee to consist of not more than four (4) citizen members, two (2) Council members and the Director of Planning and Community Development. The motion was SECONDED by Councilor Morong and PASSED unanimously.

XII. Adjournment

Councilor Kraus MOVED to adjourn the meeting. The motion was SECONDED by Councilor Smith and PASSED unanimously.

The meeting ADJOURNED at 10:45 PM.

Victoria Parmele, Minute Taker