

This set of minutes was approved at the September 25, 2006 Town Council meeting.

**DURHAM TOWN COUNCIL
MONDAY, AUGUST 21, 2006
DURHAM TOWN HALL – COUNCIL CHAMBERS
7:00 PM**

MEMBERS PRESENT: Chair Niman Councilor Morong; Councilor Peter Smith; Councilor Needell; Councilor Van Asselt; Councilor Carroll; Councilor Julian Smith; Councilor Catherine Leach; Councilor Henry Smith

MEMBERS ABSENT: None

OTHERS PRESENT: Town Administrator Todd Selig; Public Works Director Mike Lynch, Town Engineer David Cedarholm, Deputy Police Chief Rene Kelley, Thomas Merrick, DCAT Chair; Jay Gooze, Chair, Zoning Board of Adjustment

I. Call to Order

II. Approval of Agenda

Councilor Van Asselt MOVED to approve the Agenda as submitted. The motion was SECONDED by Councilor Carroll and PASSED unanimously 8-0.

Councilor Peter Smith MOVED to amend Agenda by amending XII, striking the words if required, and to note that he would be requesting a non-public session at that time pursuant to 91:A:3 II(c). The motion was SECONDED by Councilor Needell.

Councilor Smith provided general details on the purpose of the non-public session.

The motion PASSED unanimously 9-0.

Councilor Morong MOVED to swap Items XI and XII. The motion was SECONDED by Councilor Peter Smith.

There was discussion about whether these Agenda items should in fact be swapped.

The motion FAILED 4-5, with Councilor Julian Smith, Councilor Henry Smith, Councilor Needell, Councilor Leach and Councilor Niman voting against it.

Councilor Leach said she was uncomfortable with Agenda Item X on the three land conservation matters because of the large amount of complicated information the Council had gotten on them so late in the process. She said she felt she didn't know enough about the properties, and

therefore about her ability to make a responsible decision on them. She asked what the goal was for these three Agenda items that evening.

Councilor Peter Smith said for two of these items, the hearings would remain open, and could be continued at the next regular meeting. He said Item X. C., on the Emery Farm property, needed to be decided on at the present Council meeting. He said if the Council was unable to do so, a special Council meeting would need to be scheduled for a few days in advance of September 6th, which was the deadline for receiving grant monies for the project.

Councilor Needell said he thought the Council could go ahead as suggested on the Agenda, and also said that no Councilor should feel compelled to vote on something if he/she felt uninformed concerning it.

Chair Niman said the Council would proceed, and see how things went.

The original motion, as amended, to approve the Agenda PASSED unanimously 9-0.

III. Special Announcements

Chair Niman noted that Durham Day would be held on September 10th from 1-4 pm at Wagon Hill Farm.

Councilor Henry Smith said there was a barbecue on Tuesday on August 22nd on Jenkins Court.

IV. Approval of Minutes

July 24, 2006 (work session)

Councilor Needell MOVED to approve the July 24, 2006 Budget Work Session Minutes as submitted. Councilor Peter Smith SECONDED the motion, and it PASSED unanimously 9-0.

V. Reports of Councilors

Councilor Leach said that at the Parks and Recreation Committee's monthly meeting, discussion had centered on coming up with a proposal for the Town Council on possible ways to assist the ORYA and Mill Pond Center, in order to continue with recreational offerings in Town.

Councilor Needell said that at the Planning Board meeting on Wednesday, the Board would be discussing with the ZBA the spirit and intent of the Shoreland Ordinance provisions. He also said there would be continued deliberation on a personal wireless facility installation on Williamson Hall, a conditional use hearing regarding a proposed duplex in the MUDOR zone, and discussion on whether the Planning Board would like the Town to enter into a Memorandum of Understanding with NHDOT regarding access management. He said if this went forward, it would improve the Town's ability to partake in discussion and planning of access issues on state highways.

VI. Public Comments

Bill Hall, Smith Park Lane, said he had watched the last few meetings, where comments were made on the 401 water quality restrictions on taking water from the Lamprey River. He said Administrator Selig's comments on best practices being used were incorrect. He also noted that Councilor Peter Smith had said NHDES had the authority to put the restriction on the Town. Mr. Hall said NHDES had some authority, and had to follow procedures, including providing the Town with certain information. He said the agency apparently hadn't provided such information in 2001 when the Public Works Department had accepted the restriction. He also said NHDES hadn't responded to the letters that were sent to it

Mr. Hall provided details on what he claimed were incorrect procedures followed in the past concerning the restrictions, and incorrect procedures expected in the future concerning acceptance of the easing of the restrictions. He also said the wetlands permit for the Oyster River had nothing to do with the restrictions. He also said the water restriction was virtually of no consequence to the people on the Lamprey. He provided history on this, and said it was a Town staff problem from beginning to end. He said millions of dollars had been put into equipment and piping for providing water for the Town.

Chair Niman asked Administrator Selig if he wished to respond.

Administrator Selig said he had no desire to respond to Mr. Hall. He said Mr. Hall was entitled to his perspective, but said this didn't necessarily mean that it was accurate.

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

It was agreed to remove both Items from the Unanimous Consent Agenda, for discussion.

- A. Shall the Town Council approve the special event permit application submitted by the UNH Presidential Events and Programs department requesting that a portion of Main Street be closed to conduct the annual University Day Picnic on Tuesday, September 12, 2006, with a rain date of Wednesday, September 13, 2006?

Councilor Peter Smith noted that September 12th was also Primary Day, and said it was important that there be no inconvenience for voters on that day.

Administrator Selig said that appropriate signage was being provided in order to deal with this.

Councilor Smith asked that the Public Works Department take appropriate steps to make sure there was in fact no inconvenience to the voters.

Councilor Leach MOVED that the Town Council approve the special event permit application submitted by the UNH Presidential Events and Programs department requesting that a portion of Main Street be closed to conduct the annual University Day Picnic on Tuesday, September 12, 2006, with a rain date of Wednesday, September 13, 2006. Councilor Julian Smith SECONDED the motion, and it PASSED 8-1, with Councilor Van Asselt voting against it.

- B. Shall the Town Council approve a non-industrial sewer connection application submitted by the University of New Hampshire for Gables buildings D and E as recommended by the Water, Wastewater and Solid Waste Committee?

Councilor Needell noted there were conditions to the approval. He said he wanted this to be reflected in the motion, and also asked if this would be sufficient

Councilor Peter Smith suggested that the condition be incorporated into the motion.

Councilor Needell MOVED that the Durham Town Council hereby approves the University of New Hampshire's application for the Gables Buildings D and E non-industrial wastewater discharge permit for connection to the Pettee Brook Interceptor as recommended by the Water/Wastewater Committee, subject to the following conditions being met by the University of NH by November 30, 2006:

- 1) The University will locate missing manholes, identify potential UNH roof drains connections to the collection system;***
- 2) Develop a scope of work for continuation of the interceptor investigation and develop a plan to immediately reduce obvious I/I problems;***
- 3) By August 30, 2007, the University will need to eliminate all UNH roof drain connections to the collection system identified above; raise and/or seal manhole rims shown to potentially receive surface water; and develop and implement a plan for I/I removal corrective measures.***

-and the following tasks to be completed before August 30, 2007:

- 1) Eliminate all UNH roof drain connections to the collection system identified above;***
- 2) Raise and/or seal manhole rims shown to potentially receive surface water;***
- 3) Develop and implement a plan for I/I removal corrective measures.***

The motion was SECONDED by Councilor Peter Smith.

Councilor Morong noted that there was no documentation that indicated that if the repairs and improvements to the collection system were all made, this would be sufficient to take care of the new projects during periods of heavy rains.

He also noted the Council had had discussion about other potential development in that area. He asked whether if this presently proposed work was done, the interceptor was now at capacity and there was no potential for the town to develop in the Mast Road area.

Administrator Selig said the vast majority of the potential development in that area would not come through the Pettee Brook interceptor, but instead would go to the College Brook

interceptor. He said the problems with the College Brook interceptor required a good bit more analysis by the Town and the University.

He said the Pettee Brook interceptor had been shown to be able to handle the volume of water unless there was very wet weather. He said these measures, collaboratively between the Town and the University, were intended to eliminate infiltration of stormwater or groundwater into the system, so that even during wet conditions they wouldn't be over capacity.

Administrator Selig said there were some developments of a smaller scale that could impact the Pettee Brook interceptor, and there was discussion about this. It was noted that there was a potential elderly housing project involving 72 units, and there was discussion about which interceptor it would be tied into.

Town Engineer David Cedarholm said this project would tie into the Pettee Brook interceptor, but said he had not received data on this project yet.

Chair Niman asked whether if the Gables hookup were approved, it was likely that the Town would have to turn aside the other potential development.

Mr. Cedarholm provided details on why he thought there was sufficient capacity in the system for this, among other things saying that as part of addressing the I/I problems, there would likely be more capacity in the system. He also noted the significant rainfalls in July, and said there had been no spillover during them.

The motion PASSED unanimously 9-0.

VIII. Presentation Items

A. Annual Report From the DCAT Governance Committee

Tom Merrick, Chair of DCAT, provided details on the Committee.

- There are currently two openings on the Committee.
- Over 55 meetings have been shown on DCAT since the beginning of the year, including an offsite meeting of the IWMAC, and special coverage of the candidates' forum, with a special camera angle included. The Right to Know workshop and Parks and Recreation meetings were also recorded.
- A hand held video camera and other equipment have been purchased. Powerpoint presentations are now directly connected to the control room so they can be seen more clearly on TV.
- A selection of programs for public domain and neighboring public access channels have been chosen; there have also been six locally shot videos that have aired on DCAT.
- 24 school board meetings were aired, with arts, sports, and other special interest subject matter; 3 of the 4 schools have been featured, and the goal is to have all 4 schools featured.
- There has been discussion on ORSD policies for electronic communications. Mr. Merrick provided details on this, and the process for looking at these.
- The Committee continues to look at the issue of community-based video – how to utilize the school studio in productive ways so community members can take advantage of the facility.

- The Committee is looking at how to make programming on DCAT easier to find.
- Brian Christiansen of COMCAST met with Committee members, who were looking for opportunities for technical review of the existing contract. The next contract will be negotiated in 2012.
- Paul Gasowski, ORCSD representative To DCAT, is now on Lee Cable TV committee. It will be interesting to see what they come up with.
- There is a proposal to make videos of all of the meetings, - not for broadcast, but as an introduction to the work of the Town.
- A voice-over is being considered for the community bulletin board.
- Mr. Merrick thanked all those who support DCAT.

Councilor Peter Smith asked if Mr. Merrick knew how many hours of unrepeated programming were typically done, and if the station was getting anywhere near filling the requirement in order to be eligible for a second channel. Mr. Merrick said he didn't know the answer to this.

Councilor Carroll said she wanted to emphasize the fact that DCAT served as a good liaison between the Town of Durham and the University. She said DCAT did a great service in listing some of the University's events, for example, the Art Gallery. She said anything that could be done to help support this effort would be very helpful to the community.

Mr. Merrick noted that DCAT's policies and work were not authorized by statute, and said the Committee was finding its way.

Administrator Selig asked if there had been an outpouring of community members wanting to do community video. He also asked how residents should approach DCAT if they were interested in doing programming.

Mr. Merrick said anyone interested should either come to the DCAT Committee meetings, or should contact Mr. Gasowski. He noted that an offer to hold classes on doing local videos had been sent out a few years back, but said there hadn't been much response. He said this had been an uphill fight, and said it was hoped that when the High School studio was enabled for community use, this would be something that would encourage development of programming by members of the community.

Councilor Henry Smith asked who approved community programming, and Mr. Merrick said he believed the Committee did this, along with Mr. Stevens. He also provided details on the fact that the Committee was not a production organization, and was involved with administrative matters.

B. Annual Report From the Zoning Board of Adjustment

Dr. Jay Gooze, Chair of the ZBA, updated the Council on the ZBA and its work over the past year. He said there were currently 5 regular members, and 3 alternates. He said there was one alternate position open, and asked residents interested in filling the position to contact the Town.

He said the ZBA tried to carefully balance the needs of the Town and landowners. He also noted that his goal in joining the ZBA was to help make the Board's decisions on applications more

precise. He noted that he done a significant amount of work on ZBA and Court decisions in the State.

Dr. Gooze provided details on the fact that because of Court rulings in the past few years, variances were now easier to get than they had previously been. He explained that the hardship criterion was now easier for landowners to meet when applying for variance.

He said that because of these changes, the public interest and spirit of the Ordinance criteria were now much more important for the Board to consider. He spoke about the shoreland provisions of the Zoning Ordinance, and said the ZBA was having some difficulty in interpreting the spirit and intent of the Ordinance concerning this. He said the shoreland buffer preamble was pretty vague, in speaking about beautification of the shoreland, and said the Board was therefore asking for the Town Council, and the Planning Board, if it desired, to tighten up the Ordinance for the ZBA. He provided some detail on this.

Councilor Peter Smith said he was trying to understand what the ZBA was trying to get at, in saying the Ordinance needed to be tightened up. He asked if the goal was to enable the ZBA to make a decision more quickly, or was something else.

Dr. Gooze said the ZBA had no agenda in pointing this issue out. He said the Courts in the last few years seemed to be looking for something more specific in decisions concerning the spirit and intent of the Ordinance criterion.

He noted the issue of incremental property development, and how this added up over time. He said perhaps there could be some kind of definition concerning this, if the Town Council and the Planning Board thought this was important. He said he had no preference concerning this, and said the ZBA simply upheld what was in the Ordinance. He said he was looking at it from the perspective of saving the Town money, if the Ordinance could be upheld better in Court.

Dr. Gooze said he would be speaking to the Planning Board about this same matter on Wednesday. He said the issue was simply being moved forward for discussion, and noted that there might be no recommended changes as a result of his speaking to the Council and the Planning Board.

Councilor Henry Smith thanked Dr. Gooze for coming, and said he was doing a good job as Chair of the ZBA. He noted that the ZBA, unlike other Town boards and committees, had to make decisions at all its meetings, so had to be very careful regarding this.

Administrator Selig asked Dr. Gooze if he thought some of the administrative decision cases being appealed to the ZBA were frivolous.

Chair Gooze said he thought Mr. Johnson was doing a superb job, although noting that some people thought he was too zealous, and that the ZBA didn't always agree with him either. He also said that actions of previous code officers came back to the Board occasionally.

IX. Unfinished Business

A. Public Hearing and Action on Ordinance #2006-05 amending the Durham Town Code by creating a new chapter, Chapter 46, entitled “Disorderly Actions”.

Administrator Selig reviewed the situation leading to the proposed Ordinance, and said this Ordinance would allow the Durham Police Department to take appropriate action. He said the actions of the person arrest would be considered only a violation, and would not have a tremendous life impact on the individual. But he said the enforcement would support the Council’s directive that the downtown was not a playground for inappropriate behavior.

He noted the Council had passed the Ordinance on first reading at the previous meeting. He said Councilors had recommended minor changes to the Ordinance, which had been incorporated.

Councilor Leach MOVED to open the public hearing on the. Councilor Julian Smith SECONDED the motion, and it PASSED unanimously 9-0.

Len Disesa, 31 Edgewood Road, spoke in favor of the Ordinance, and urged its passage.

Councilor Henry Smith MOVED to close the public hearing. The motion was SECONDED by Councilor Leach, and it PASSED unanimously 9-0.

Councilor Needell MOVED to adopt Ordinance #2006-05, creating a new Chapter in the Durham Town Code, Chapter 46, entitled “Disorderly Actions”. Councilor Henry Smith SECONDED the motion.

Councilor Needell MOVED to amend the motion, to reflect Draft #2, dated August 15, 2006 Councilor Julian Smith SECONDED the motion.

Administrator Selig noted that that the changes were non-substantive.

The motion PASSED unanimously 9-0.

Councilor Peter Smith said he had one remaining problem with this, the last part of the section amended starting with the words, “or in any private place”. He said the concern about these words was that they could open up all kinds of examples that were not intended. He said “private place” and “public place” wasn’t defined in the Ordinance. He said his sense was that by just having the language “public place, the Town would capture the cases it wanted, without capturing cases it didn’t want.

Deputy Police Chief Rene Kelley said the problem was that the activity occurring was sometimes happening on private places that could be observed by the public. He said he understood the concern about other private property being considered, but said they were trying to solve a problem primarily in the downtown district late at night, involving young inebriated persons.

Councilor Peter Smith asked if the problem he had raised could be adequately solved by the exercise of police arrest discretion. He said the Ordinance was troubling unless this was the case.

Deputy Chief Kelley said yes, the problem could be solved adequately by exercising discretion concerning arrests. He said the point was well taken, and said there had been discussion about this by the Police Department. He said the Department would do the right thing, and said that he and the Chief were committed to not abusing this.

Councilor Needell asked if a person was subject to arrest when there was a violation, and Officer Kelley said yes.

Councilor Julian Smith asked if the wording “or in public view” would help. He said he too had trouble with the wording “private places”.

Administrator Selig recommended not voting on the Ordinance that evening if a change to it was proposed, so the change could be considered carefully.

There was further discussion on what the wording under 46-1 should be.

Councilor Julian Smith MOVED to amend the sentence on page 2 to read “It is a violation for any person to urinate or defecate in any public place or in public view”. The motion FAILED for lack of a SECOND.

The original motion to adopt Ordinance #2006-5 PASSED 8-1, with Councilor Julian Smith voting against it.

B. Public Hearing and Action on Ordinance #2006-06 amending Chapter 175 “Zoning”, Article XII, Section 175-53 “table of Land Use” of the Durham Town Code.

Administrator Selig said the Council had received a petition signed by 50 or more residents, asking that the Ordinance be amended. He noted that there was representation from the Planning Board to provide an explanation on this. He also said the Planning Board had voted 4-3 to approve this measure, and also said members of the public were present to provide input.

Councilor Julian Smith MOVED to open the public hearing on Ordinance #2006-06 amending Chapter 175 “Zoning”, Article XII, Section 175-53 “table of Land Use” of the Durham Town Code. Councilor Carroll SECONDED the motion, and it PASSED 7-0.
(Councilor Henry Smith and Councilor Leach were not present for the vote)

Councilor Leach and Councilor Henry Smith returned to the meeting after the vote.

Planning Board Chair Richard Kelley noted this issue had come up during the design review process for a proposed development in the Professional Office District in May. He said a number of residents of the neighborhood had come to that meeting. He said the developer was proposing mixed use, with residential up, commercial down, and said a convenience store was possible for the commercial space on the first floor. He said this had alarmed some people, and also noted there were some members of the Board who didn’t see this as a possibility.

He said the Board had a hearing on the proposed amendment to make it conditional use. He provided details on this, and said the Board had decided 4-3 to support the Ordinance change.

Arthur Grant said he was speaking as a member of the public, not as a member of the Planning Board. He said the citizen petition required thoughtful consideration. He said it addressed one of several inconsistencies in the new Ordinance. He read the purpose of the Professional Office District, and said he had been surprised to find that the Table of Uses in the new Ordinance authorized mixed use, including retail stores and multiunit housing in the Professional Office district. He said the Master Plan made it very clear that neither retail activities nor additional multiunit residences should be permitted in the PO district. But he said the Table of Uses currently considered them permitted uses, which limited the oversight of the Planning Board.

He said two possible solutions had been suggested, to revise the Table of Uses by deleting retail and multiunit housing from this district, or a less drastic and possibly more constructive approach, changing these uses to conditional uses. He said the latter approach would allow the Planning Board oversight in a new zone that would be an important transition between the long time residential areas there and downtown commercial activities. He said it would allow residents to inform the Board about their concerns about future development, and would give the Board the necessary tools to do this oversight. He said the petition was a fair and wise proposal, and said he recommended its adoption.

Dr. Jay Gooze asked those members of the audience who were in support of the petition to stand, rather than having everyone speak. The following residents stood in support of the Ordinance change:

Donna Brown, 34 Edgewood Road
Greg Betz 11 Edgewood Road
Ken Fuld, 8 Meadow Road
Judy Chandler, 17 Meadow Road
Ed Valena, 9 Bagdad Road
Adrienne Burley, 29 Edgewood
Erica Mantz 31 Edgewood Road
Len Disesa, 31 Edgewood Road
Matt Davis 2 Maple Ave.
Peter Marple. 82 Madbury Road
Bruce Campbell., 7 Rocky Lane
Arthur Dimambro, 49 Madbury Road

Dr. Gooze noted that Dr. Dimambro's property had been re-zoned into the Professional Office district, but was never notified about this. He said in the future, it would behoove the Town to inform residents whose properties were being re-zoned.

Chair Niman thanked those residents who had come to support the Ordinance change.. He asked if any other members of the public would like to speak on this.

Planning Board Chair Richard Kelley said he felt obligated to speak for the other Board members who had voted against this Zoning Ordinance change. He said it was not that they didn't recognize the problem in the Ordinance, but was that they felt there was a different and better solution to the problem He said regardless of the decision that evening, the Board had some work to do, to rectify the problem.

Councilor Needell noted that Mr. Grant had said that both retail and multi-unit housing were problematic, but said his own reading of the Master Plan was that multi-unit housing was to be allowed in this district.

Mr. Grant said the Master Plan said it was recognized that multi-unit housing in the area was well developed, but said it should not be added to, because it would diminish the character of what the new zone was supposed to be.

Councilor Peter Smith said he assumed the alternative Mr. Kelley was referring to would change what could be done as a matter of right in the Professional Office district. But he said the solution proposed here was his concern. He said the conditional use device had changed rather dramatically over the past few years, first with the Town Council's removal from the process, and second, with the recognition that there were certain features of the conditional use process standards that were very likely to be illegal. He provided details on this.

He said the language that was considered to be problematic had been removed from the Ordinance, and said what was left was criteria that had some objectiveness to them. He said he wondered whether what was left of the conditional use process was working. He also said to some extent he was hearing that adopting conditional use in this instance would be an interim device.

Dr. Gooze noted that retail office with parking in this zone was conditional use, but putting an apartment above this was a permitted use, and said people didn't think this made sense. He also said the Master Plan supported having multi-units with resident managers, but he said that as a permitted use, this couldn't be required. He said the conditional use process was perfect for addressing this, depending on the size of the property.

He noted there had been contention about the conditional use process, - what it meant, and when it should be used. But he said the citizens were hoping this could be passed, because it would protect them to a certain degree.

Councilor Peter Smith asked what in the conditional use mechanism would create any assurance that the Planning Board had the right, under the current criteria, to deny a current use application unless there was a resident manager.

Dr. Gooze read from the Ordinance regarding “..further conditions.....may be placed on the permit by the Planning Board....”

Councilor Peter Smith said in other words, Dr. Gooze felt “further conditions” was sufficiently broad to include a whole series of additional criteria in addition to the others in the Ordinance regarding the current use process.

Dr. Gooze said he did.

Administrator Selig noted that Mr. Kelley had said Planning Board members who voted against supporting this Ordinance change had considered another approach.

Mr. Kelley explained that no formal amendment concerning this had been proposed but said some ideas had been floated by the Board. He said the Board thought it needed to define convenience store, and also said this use needed to appear in the Table of Uses.

In answer to question from Councilor Henry Smith, Mr. Kelley said the Board needed to be flexible about the Professional Office district, and needed to include elements of retail as well as elements of rental housing.

Erica Mantz, 31 Edgewood Road, asked that residents of the area be given the proposed ordinance change as protection, at least for the time being. She said she and her family were very pro University, but said the neighborhood was being encroached on from many sides. She asked for the Council's support on this proposed change.

Councilor Julian Smith MOVED to close the public hearing. Councilor Needell SECONDED the motion, and it PASSED unanimously 9-0.

Councilor Julian Smith MOVED that the Durham Town Council adopts Ordinance #2006-06 amending Chapter 175 "Zoning", Article XII, Section 175-53 "table of Land Use" of the Durham Town Code. Councilor Van Asselt SECONDED the motion.

Councilor Needell said as a caution that the comments made by Dr. Gooze about the latitude the Planning Board would have if this were adopted was his interpretation. He said this was not clear, and said the conditional use process put the decision about an application in the hands of the particular Planning Board in place at a particular time, and said there were no guarantees.

He said as Mr. Kelley had indicated, the Planning Board had discussed whether an alternative approach would be to take some uses out, for this district, so there would be no question. He said this was why the Planning Board decision had been split. He said it boiled down to a discussion on the conditional use process in general, and noted it was a problem for him during Board's discussion.

Councilor Needell said he had read the Master Plan carefully regarding what it said should happen in this Professional Office district. He said there wasn't any question that retail was not intended for this district. He said it was not clear how the permitted use got there, and said in reading the Master Plan, he would be very comfortable with retail not being a permitted use.

But he said the argument had been made that this was a transition zone, so it was reasonable to say there should be some latitude as to what should be allowed there, and that the conditional use process might be a way to address this. He said this was what had convinced him that conditional use was appropriate, for this particular use.

But he said the burden was on the Planning Board, or the Town Council regarding the definitions of mixed use, and retail, as being too broad, especially for this kind of district. He encouraged the Council to send a message that this should be pursued. But he said he also recommended passage of the Ordinance.

Councilor Leach said her concern was what the neighborhood would have to be able to prove as part of the conditional use process for a proposed development, as compared to what a developer would have to prove.

Councilor Needell said he didn't have the answer for this, and said it was an open-ended process. He said he had cautioned the petitioners that this wouldn't necessarily get them what they wanted, noting it would depend on the application, the planning board at the time, and the response to the public hearing.

Councilor Leach said she was troubled about the vague wording of the petition itself. She said it didn't point out the convenience store aspect of this matter, which had been discussed at the Planning Board meeting. She also said she struggled with whether passage of this Ordinance would be the most useful thing for the neighborhood.

Councilor Henry Smith said he thought this would help in the interim. He admitted there were some unanswered questions, and said this matter should send a message back to the Planning Board to raise the larger question as to whether retail should be allowed in this district. He also said a convenience store was clearly retail, and said it seemed that in the long term, retail shouldn't be permitted in the Professional Office district. He said he liked what Mr. Grant had said, that this would give the Planning Board more tools for responsible oversight, and said he was in favor of the proposed change.

Councilor Leach noted that the Table of Uses said that in the Professional Office district, retail stores were not permitted, but mixed uses with retail were permitted, and if this Ordinance change passed, would be condition use. She said this was a discrepancy, and asked if it was one that was hard for the Board to deal with.

Councilor Carroll said she would support the motion. She said the Town really had to decide where it wanted to put retail, and said if it wanted a vibrant downtown, it might want to consider what would happen if it started putting retail in other areas of Town. She said this had to be looked at very carefully, and also said the definition of convenience store should be developed in the future.

Chair Niman said he agreed with Councilor Needell, and would vote in favor of the motion. He also noted that there were concerned citizens in the audience, and pointed out that the Council a few months back had created a housing taskforce, which was now working on trying to figure out how to better protect neighborhoods from the incursion of student rentals. He said it would be good if some citizens from pocket neighborhoods participated in the taskforce, so it could craft some solutions. He said it was not clear that the problems could be solved with the Zoning Ordinance.

Councilor Peter Smith said what this all demonstrated was that it was easy to approve a Table of Uses, but when a development came forward, a proposed use was thought about in a different way. He said he had grown to dislike the conditional use process more and more when he was on the Planning Board. He said inevitably when something was decided on by this process, a series of factors that were vague were considered, which were subject to evidence. He said whoever had the deepest pockets had the greatest chance of prevailing in such a situation, and said this

troubled him. He also said weighing against this were a series of unique circumstances in the Town, including the reality of the University.

He said he would with some reluctance support this citizen petition, because he felt there was need for an interim solution. But he said he realized this could come back and bite the same people who were supporting it.

Councilor Julian Smith said he supported this motion without reservation and was ready to vote.

The motion PASSED 9-0.

Chair Niman said a letter had been received from the Town's legal counsel that related to the land conservation Agenda items, and it was agreed a lengthy break should be taken so Councilors would have the chance to read the letter.

Break from 9:29 to 9:43 pm.

X. New Business

There was discussion on how to proceed concerning the 3 presentations and public hearings under this Agenda item.

Councilor Peter Smith recommended they first address X.C. regarding Emery Farms, because otherwise the opportunity would be gone. He said he believed the matter was fairly easily resolvable, but said if it were not resolvable that evening, another meeting would have to be scheduled since the deadline was a few days before September 6th. He said the other two Agenda items could be rescheduled if necessary.

It was agreed that Item X. C. regarding Emery Farm would be taken up first.

Councilor Morong said his family owned property that abutted the Emery Farm property, and said he would therefore recuse himself. He left the table at 9:49 PM.

Malin Ely Clyde of the Land Protection Working Group said she would first provide a short background on land conservation efforts in Durham over the last few years. She said it was unusual to have so many projects come together at the same time, and said it was a serendipitous situation. She noted that no money had been bonded yet for land conservation, and said this was an important moment.

She read the language of the March 2003 Conservation Bond measure approved by 77% of voters in Durham. She also read the language of RSA 36:A relating to the powers of Conservation Commissions, allowing them to be in the business of land conservation, and also read the lead-in to the Town of Durham policy for acquiring legal interest in conservation open space, approved in 2004.

She reviewed the 3 properties, and said all three were specifically identified as important properties for the Town. She said all three represented a strategic vision for land conservation

outlined in the Master Plan, and allowed a proactive approach to land conservation with landowners. She said this had driven the work of the Land Protection Working Group. She said these projects were complex and took a long time to put together. She also said they were expensive, given where they were located in New Hampshire, and required the collaboration of a number of partners in order to come up with sufficient money for them.

She said the Land Protection Working Group was the lead entity in the beginning, but because of the attractiveness of the properties, was able to bring in other organizations. She said all of these projects had been discussed with the Council in nonpublic session, and said the Working Group had tried to update the Council on all of them in the last few years.

She said each deal was structured differently, and needed to be considered individually.

C. PRESENTATION AND PUBLIC HEARING: Request by the Durham Conservation Commission and Land Protection Working Group for the Town of Durham to authorize the Administrator to create appropriate documents to:

1. Provide funds in the amount of up to \$425,000 towards an approximately 48.12-acre Conservation Easement on the Emery Farm property (Tax Map 11, Lot 4) and to accept an executory interest in the Conservation Easement;
2. Accept an executory interest in the approximately 11-acre Woodlot Conservation Easement (Map 11, Lot 22); and
3. Provide funds in the amount of approximately \$23,710 for transaction costs for both the Emery Farm and the Woodlot properties. Presenter: Dea Brickner-Wood

Dea Brickner-Wood next spoke about the Emery Farm project. She said the Forest Society had partnered with the Working Group regarding the property. She said the Emery Farm property contained 48.12 acres, and excluded the 2.32 acre farmstead area. She said it also excluded a 3.44 acre tract off of Watson Road that would hopefully allow a house in the future for the person operating the farm. She said the Emery Farm property would remain in private ownership, and the conservation easement would be held by the Forest Society. She said the USDA and the Town of Durham would hold executory interest in the conservation easement.

Ms. Brickner-Wood said the second piece of the project was an approximately 11-acre woodlot located on the north side of Watson Road. She said this property would be restricted to one house lot. She said this parcel would also remain in private ownership, and said the conservation easement on it would be held by the Forest Society.

Ms. Brickner-Wood explained that the Forest Society had applied for a USDA Farm and Ranchland Grant for the 48.12 property, and had received this. She said in the past year, the Nature Conservancy and the Forest Society had secured additional grant monies from this program, which had lessened the money the Town needed to contribute for the project. She said the grant money would pay for 50% of the purchase. She said the Forest Society would hold the conservation easement, and said the Town and the USDA would be executory interest holders.

She provided detail on the financing:

Appraised value: \$970,000.

The landowner has agreed to sell the easement for \$910,000

The grant will provide 50% of the appraised value 485,000.

The Town is providing \$425,000 toward the purchase of the conservation easement for the conservation easement on the Emery farm property.

Ms. Brickner-Wood said the landowner would be donating a separate conservation easement for the woodlot. She said this acreage would be restricted to one house lot, and said the easement would be held by the Forest Society, with the Town holding executory interest. She said public access would be allowed, and said there would be a parking area.

She said to cover the transaction costs for both easements, the Town was being asked to provide \$23,710, and said the total cost to the Town for both projects was therefore \$448,710.

Ms. Brickner-Wood next reviewed the 4 criteria used to consider whether the Emery Farm properties as a whole were worthy of consideration.

She said the easements would protect a critical natural resource, noting the project had rated very high because of its high quality farmland soils. She said that 60% of the soils on the property were considered significant farmland soils. She noted that the property had been managed as farmland for 11 generations by the Hills family, and said these operations had been open to the public during some of this time. She said this represented a real commitment on the part of the family.

She said the property also contained an important viewshed, stating that Emery Farm was part of a wonderful corridor in Durham, with well over 500 acres of un-fragmented woodland and farmland that had been identified in the Master Plan. She said a significant amount of this land was already protected, providing details on this, and said there were other properties in this area they were hopeful about protecting.

Ms. Brickner-Wood said the Working Group had tried to find appropriate public access with a working farm, and said they had struck a balance concerning this. She said all the wooded area on the 48 acres would be open and available for non-motorized public access, and said a parking lot would help access this area. She also said the easement for the 11-acre woodlot would also be open for public access. She said the easement for the farm would allow controlled public access near the fields.

She provided details on the conservation easements themselves, noting the farm easement included criteria from USDA, which were strict. She provided details on this, and noted again that the farm stand area had been taken out of the easement. She then went through the reserved rights for the landowner in detail.

Ms. Brickner-Wood said the separate woodlot easement did not include USDA, and explained that the Forest Society would have to make sure that the easement was upheld in perpetuity. She provided details on this, and on how the easement would be enforced. She said the Town as an executory interest holder had the ability to step in at any time if it felt the easement holder wasn't doing its job. She said it had all the rights of the easement holder, but less of the expense up front for the stewardship aspects of the property.

She said the woodlot easement had the same restrictions as for the farm, and said the only difference was that there was a reserved right for the landowner to withdraw one house lot, to be approved by the easement holder at a future date.

She provided details on the certified appraisers of the property, and noted their work was reviewed at the federal level. He said this provided security, in term of the cost figure being provided to the Town.

Ms. Brickner-Wood concluded that the Council was being asked to do several things.

1. Provide funds in the amount of up to \$425,000 towards an approximately 48.12-acre Conservation Easement on the Emery Farm property (Tax Map 11, Lot 4) and to accept an executory interest in the Conservation Easement;
2. Accept an executory interest in the approximately 11-acre Woodlot Conservation Easement (Map 11, Lot 22); and
3. Provide funds in the amount of approximately \$23,710 for transaction costs for both the Emery Farm and the Woodlot properties.

Councilor Peter Smith noted that the Forest Society played a role in the contract that would become effective if the Town and federal government provided a certain amount of money, and the development rights were permanently extinguished. He said as he understood the arrangement, the Town in giving this money was agreeing that there needed to be an enforcer, to make sure extinguishment of the development rights was not violated, and the Town was agreeing to give that policing power to the Forest Society. He asked why the Group was recommending that this initial line of power was being given to the Forest Society, and not the town.

Ms. Brickner-Wood said it had been realized from the outset that this would happen concerning protection of properties because of the staffing required. She said it was seen that where these relationships could be established, it would be in the Town's best interest. She provided details on the qualifications of the Forest Society, including its professional stewardship staff, and said the Forest Society owned a parcel near Emery Farm.

Councilor Peter Smith noted the Town's executory interest in the properties, and asked what the Town would have the authority to do if the Forest Society reneged in its enforcement role.

Ms. Brickner-Wood said the Town would be able to step into the same shoes the Forest Society had worn in terms of monitoring and enforcement of the easement.

Councilor Peter Smith asked if this power would include the power to file as a party in court to enforce the maintenance of the extinguished development on the property, and Ms. Brickner-Wood said yes.

Councilor Peter Smith said the Forest Society was doing this because of its experience and expertise, and asked if with its other stewardship properties, this involved a model similar to the present one the Town was considering...

Ms. Bricker-Wood said yes, and described a project concerning a large property to be protected in Nottingham, where a similar arrangement would exist.

Councilor Smith asked if there were any instances where it had turned out that this model was legally challenged as an inappropriate expenditure of town money.

Ms. Brickner-Wood said she had checked with the Forest Society on this, and said there were no instances whatsoever.

Councilor Henry Smith noted the USDA was also an executory interest holder, and Ms. Brickner-Wood explained that this provided extra security to enforce the easement.

Councilor Leach noted it had been said that the Town wasn't set up to handle monitoring and enforcement, and said perhaps the Town could play an informal role concerning this.

Theresa Walker provided details on how this would work, and said Durham community members could ask to join with the Forest Society in its monitoring work.

Councilor Julian Smith asked if it had been stated it was in the financial interest of the Town to acquire this easement.

There was discussion about this, and Ms. Brickner-Wood said this easement "would pay for itself" in 6.5 years if kept out of development that would put more children in the school system, etc.

Chair Niman asked if the highest and best alternative use for the property was 6 large house lots, and if this was the basis for the \$970,000 appraisal price.

Ms. Bricker-Wood said the conservation easement price was based on the fair market value of the property minus the value if it weren't developed. She noted the farmland soils indicated that it was also highly developable.

There was discussion about the fact that under current zoning, there could be 6 houses on the property.

Ed Valena, a member of the Land Protection Working Group, provided details on how the development scenarios were developed by the group.

Councilor Julian Smith asked why the highest and best use of this parcel was only 6 house lots, and Ms. Brickner-Wood provided details on this, also noting that the appraisal had undergone federal review.

Councilor Needell asked what option the Town had, as an executory interest holder, if it didn't like what the Forest Society was doing in its monitoring and enforcement efforts. He asked if the Town could step in concerning this.

There was discussion about this, and it was clarified that the Town would have legal standing to step in and say something was wrong. Ms. Brickner-Wood noted the specific sections in the easement document that addressed these things.

Councilor Leach asked the members of the Working Group to speak about the importance of the farmland soils.

Ms. Brickner-Wood said the Working Group had worked with the Natural Resource Conservation Service on soils mapping for the property. She provided details on the high quality soils on the property, noting that among other soils, there were those that were considered “unique”, which could grow specialty crops.

Councilor Leach noted that it had been said that not all of the 48 acres would be available to the public.

Ms. Brickner-Wood said that with a farm, it was important to be practical regarding access, and therefore to allow the farmer to control public access.

Councilor Leach asked if the Town wanted more trails out there, how much control it would have regarding this. It was explained that the Hills owned the property and had the say on this.

Councilor Leach said her concern was that public access and trails was important, and said she couldn't see where this was. There was discussion about this, and about who would build the parking lot.

Ms. Wood noted there were existing trails. She said everything in the wooded area of the farm would be available to the public, and said everything under cultivation would be controlled access.

Councilor Needell said it was important to remember that the landowner was graciously allowing the public onto their property. He said it was important to think about this, in terms of what the expectation was regarding the easement.

Ms. Brickner-Wood said much of the land protection in Durham in the past had involved fee ownership, which allowed for public access and trail development. She said there hadn't been many conservation easements. She noted that there were trails planned for other properties in Durham.

Mr. Valena pointed out that Wagon Hill was right across the road, if one wanted to walk in this area.

Councilor Van Asselt asked how much the landowners would pay in taxes, and was told it would be what they were paying now, at a current use rate.

Administrator Selig said the tax impact of the easement would be minimal, given this.

Councilor Van Asselt said the negotiated purchase price was \$910,000 and asked what the word “negotiated” meant in this context. He said since the Council was being asked to spend \$500,000 on the negotiated deal, he was curious as to how this amount had come about.

Ms. Wood said the appraisal process had been carried out, and the landowners had then generously offered to take less than the appraised price of \$970,000. She said in agreeing to a price of \$910,000, the landowners would be making a charitable contribution of \$60,000, which was wonderful.

Councilor Van Asselt asked what the landowners got in return.

Ms. Brickner-Wood said they got a tax deduction over a certain period of time as a result of the charitable contribution.

Chair Niman asked for more details on how the grant funds were obtained, and Ms. Brickner-Wood and Mrs. Walker provided details on this.

Councilor Van Asselt asked how spending the \$500,000 on this property met the first stated reason for the bond issue, stabilization of taxes in Durham.

Ms. Brickner-Wood said it came back to the cost of conservation vs. the cost of development. She said tax dollars were saved in terms of public expenditures for schools, etc. She said a formula determined this, and provided details.

Councilor Van Asselt said regardless of the property, the question should be asked as to whether it made sense that the land should be conserved, or could in a different way add to the tax base, and be part of the community. He said this was the real policy choice the Council had to make, with limited resources.

Ms. Brickner-Wood said the Master Plan was the foundation, in terms of the vision for the Town. She said there were other appropriate places for commercial development in Durham, and said these had been identified.

Councilor Van Asselt said finding the balance in terms of conservation and development was the difficult task. He said this was a general question that needed to be asked for each property being considered.

Ms. Brickner-Wood said the funding would be lost if action wasn't taken by September 6th. She said they had just found out about this deadline, and said the Group would appreciate the Council's consideration concerning this.

Councilor Julian Smith said another purpose of the bond was to protect the rural character of the Town. He said this Town was a lot less rural than it was when he came to Town. He asked if the Emery Farm land was in imminent danger of being turned into house lots.

Ms. Bricker-Wood said yes. She said the Town was fortunate to have an 11 generation family farm in Durham, and said hopefully this could continue.

Councilor Morong returned to the table at 10:57 PM, then left the meet at 11:00 PM.

Dwight Baldwin, Chair of the Conservation Commission, said he hadn't had the chance to endorse these projects with a letter, but said the Conservation Commission had unanimously voted to endorse these land protection projects. He said it would be a shame to pass up the opportunity to protect these lands. He said it wasn't often that the Council had the opportunity to make decisions that affected the Town forever, in terms of maintaining a vision of what they wanted Durham to be.

Chair Niman asked how Mr. Baldwin, as Chair of the Conservation Commission, had been involved with these projects, and Mr. Baldwin provided details on this. Mr. Baldwin also said that it would be a good idea to announce the opportunity to walk lands being considered for protection, before making a presentation on them before the Council.

Councilor Peter Smith asked if it was correct that as it had gotten the various proposals, the Conservation Commission had examined the various conditions of the proposals, and had debated these before making the decisions as to whether to give its approval concerning the proposals.

Mr. Baldwin said it was correct, and said the Conservation Commission had given a lot of consideration to each proposal before giving its approval.

At 11:02 PM, *Councilor Needell MOVED to extend the meeting time. Councilor Carroll SECONDED the motion, and it PASSED unanimously 9-0.*

Councilor Julian Smith MOVED to open the public hearing regarding a request by the Durham Conservation Commission and the Land Protection Working Group for the Town of Durham to:

- 1) Provide funds in the amount of up to \$425,000 towards an approximately 48.12-acre Conservation Easement on the Emery Farm property (Tax Map 11, Lot 4) and to accept an executory interest in the Conservation Easement;*
- 2) Accept an executory interest in the approximately 11-acre Woodlot Conservation Easement (Map 11, Lot 22); and*
- 3) Provide funds in the amount of approximately \$23,710 for transaction costs for both the Emery Farm and the Woodlot properties.*

Councilor Peter Smith SECONDED the motion, and it PASSED unanimously 9-0.

Margaret Bogle, 3 Croghan Lane, said she thought it was extremely important to have this chance to get the conservation easement. She said farmland was being used up at a very fast rate, noted they Durham was far away from farmland areas in other parts of the country. She said that given the uncertainty of the fuel situation, the Town should take full advantage of this opportunity. She thanked the Land Protection Group for its efforts.

Richard Kelley, Chairman of the Planning Board, said he was having trouble locating the lots contemplated, and said if he was having trouble, others might be having trouble as well. The lots were demonstrated on the map by Ms. Brickner-Wood, and there was discussion about this.

In answer to a question from Mr. Kelley, Administrator Selig said if the Town utilized the land use change money in the conservation fund, there would be no impact from the expenditure. He said if it were bonded, there would be a tax impact. He said for the entire \$2.5 million bond, there would be a 31cent tax impact over the life of the bond.

Mr. Kelley said given that there was only until Sept 6th, and that if action were not taken by then this money would be lost, he recommended acting on this and taking advantage of that funding.

Bruce Campbell, 7 Rocky Lane, said he was new to Durham. He said the Town had voted for the bond, and the Master Plan said this was a key piece of land. He said this opportunity had come together beautifully, and said he would be happy to pay the 31 cent increase in taxes.

Richard Kelley said perhaps the Town would be getting an even better deal than had been stated. He said a developer would probably think that multi-unit elderly housing would be appropriate for the Emery Farm property, and he said this would be a big money maker.

Councilor Needell MOVED to close the public hearing. Councilor Leach SECONDED the motion, and it PASSED unanimously 9-0.

Chair Niman asked how the Council wished to proceed.

Councilor Peter Smith suggested that they plan on postponing Agenda Items X. A. and X. B., given the late hour. He said he believed the Council should try to decide the following things that evening:

He said that as a matter of policy, the Council needed to decide if it believed it was appropriate to be spending the amount of money specified for the purpose of this easement for Emery Farm. He said he was sympathetic that site walks should be fit into the process in the future, but said he believed that enough was known now or would be known shortly to allow an appropriate decision on policy, with respect to this project.

He said if the policy decision was in the affirmative, the question should be asked as to whether there was any obstacle to the implementation of it. He said only one obstacle had been put forth in some form, and said he believed there was a clear way around this that evening.

Councilor Leach said she thought there was a lot more to talk about, and said she thought the decision concerning the project should be put off.

Councilor Julian Smith said he thought Council members should walk the Emery Farm property first before making a decision. He also said he had a problem with the fact that this had started as a possible expenditure of bond money, but there was now talk about spending other money, with the potential of a \$3 million expenditure over the ensuing months. He said more discussion on this was needed at a special meeting.

There was discussion about holding a special meeting, and it was noted that at such a meeting, there could be presentations on the other properties as well.

Administrator Selig said one shortcoming of the land preservation policy was that there wasn't the equivalent of a first reading on these projects before they got to the public hearing stage. He said he would be bringing forward some suggestions to look at that policy. He said given the fact that there wasn't a first reading, and that they were operating under serious time constraints for this project and also for the other two properties, he said it would be helpful to have the landowners on the other two parcels tonight, and to open the hearing so citizens at the meeting could speak. He said it was appropriate to schedule another work session to work through these other topics.

He said it was not simply a matter of the Council approving these projects. He said the funding details and paperwork needed to be completed in a timely manner as well. He suggested using the library work session scheduled for August 28th to work through these projects.

He said with the exception of walking the Emery Farm parcel, he wasn't sure what information the Council would want that couldn't be provided at the present meeting. He noted for those people watching at home, that a legal question had been raised as to whether the \$2.5 million bond could be used on properties where the Town didn't own the property outright, or hold the easement itself

He said a possible way around this would be to use the land conservation fund monies, and said another possibility would be for the Council to issue a bond on its own, as long as the project was less than a million dollars. He said this would be free and clear from the concerns raised by the Town attorney. He noted that he and the Council had received a legal opinion concerning this at 5:30 that evening, and hadn't had a chance to digest this information yet.

He said it would be useful to hear about the other two projects at the present meeting, so members of the public could choose whether to attend a future hearing on them.

Chair Niman asked if Councilors were agreeable to meeting on August 28th to address these matters. He noted that a work session concerning the library issue had been previously scheduled for that date.

Councilor Julian Smith said he would not object as a Council member or as a Library Trustee.

Councilor Peter Smith asked if holding the meeting on August 28th would allow enough time concerning the Emery Farm project. He said he wasn't against doing this, but said it was important to determine there was enough time.

It was decided that a Council meeting on August 28th would tentatively be scheduled to talk about the conservation land projects, unless it was determined that this time frame wouldn't work, in which case an earlier meeting date would have to be set.

Councilor Leach said she was feeling very uncomfortable about the process, and asked if any of this information could have been heard earlier than that day, so this crunch could have been avoided.

Administrator Selig said he hadn't been involved in putting this process together. He said there were some hardworking volunteers, who had tried to keep the Council apprised of these various projects. He explained that the Working Group had been apprised fairly recently that there was a September 6th deadline, and said they had expedited the process when they had learned this. He provided details on what was involved.

Councilor Leach said the Land Protection Working Group was a great group. She said she was not blaming anyone, but said this wasn't the way the Council should make decisions, with this amount of money involved. She said she wasn't all that sympathetic to the dates being thrown out.

Ms. Brickner-Wood said in a perfect scenario, there would have been more time for review of the projects. She said in part, this present scenario reflected the world of conservation projects. She said they did sometimes come together quickly, like any real estate deal. She said the Working Group apologized for this, but said it was the nature of the beast.

Councilor Needell said his perspective was that he was comfortable with the information the Council had received on this project. He said his one concern was the legal matter, and said if this could be resolved, he was ready to move ahead on this. He said the Council sometimes had to meet when necessary, and said he was available to meet any time he could, to move something like this forward.

Chair Niman said that out of respect for the people at home, he thought it would be better if the other presentations were heard the following Monday, on the 28th. He said he would like townspeople to be supportive of what was going on.

Ms. Walker said she had learned a lot that evening in terms of how to present information before the Council. She said they might be able to address some of the issues of concern in their presentations, if the meeting were held the following week.

Mr. Valena noted that he was a Library Trustee, and said the Board had been working very hard to get a packet together for the planned work session. He said he just wanted to make sure that this work session wasn't pushed off, but said the Council had something on the table that it had to deal with.

Councilor Julian Smith asked if they could open the hearings and then continue them, as a show of good faith.

Councilor Carroll said she was sorry they had closed the hearing on Emery Farms.

Administrator Selig suggested that the Council reopen this hearing, and then continue it to the following Monday.

Councilor Julian Smith MOVED to reconsider the motion to close the public hearing on the Emery Farm property. Councilor Peter Smith SECONDED the motion, and it PASSED 7-0-1, with Councilor Leach abstaining because she said it was not clear why this was being done.

Councilor Julian Smith MOVED to close the public hearing on the Emery Farms property. Councilor Peter Smith SECONDED the motion, and it FAILED 0-8.

Councilor Peter Smith MOVED to continue the public hearing on the Emery Farm property to Monday, August 28th, 2006. Councilor Needell SECONDED the motion, and it PASSED 8-0.

Councilor Peter Smith MOVED to open the public hearing on the proposal by the Land Protection Working Group and Durham Conservation Commission requesting that the Town of Durham contribute \$200,000 to The Nature Conservancy and authorizing the Town Administrator to execute an agreement with The Nature Conservancy for the protection of 140 acres of the Beaudette property, located off of Bennett Road (Tax Map 15, Lot 1), and that the Town retain a legal interest in the property by placing a conservation easement on the land at the time of transfer to NH Fish & Game. Councilor Julian Smith SECONDED the motion, and it PASSED 8-0.

Councilor Needell asked if there was any chance that the Council could meet before Monday, August 28th. It was determined that the next meeting would be held on Monday unless Administrator Selig said it should be held sooner.

Administrator Selig said some potential days and times for site walks would be set up, and Councilors could work with this.

Councilor Peter Smith MOVED to continue the public hearing on the Beaudette property until Monday, August 28th, 2006. Councilor Julian Smith SECONDED the motion, and PASSED 7-0-1 with Councilor Van Asselt abstaining because he would be out of Town on August 28th.

Councilor Peter Smith MOVED to open the public hearing on the proposal by the Land Protection Working Group and the Conservation Commission and for the Town of Durham requesting that the Town of Durham expend \$300,000 to put towards the purchase of two conservation easements by The Nature Conservancy totaling approximately 85 acres owned by the Langley Family located on Langley Road and Longmarsh Road (Tax Map 12, Lot 13-1; Map 12, Lot 28; Map 16, Lot 25-4) and authorizing the Town Administrator to execute a Purchase and Sale Agreement for these conservation easements. The Town of Durham will hold a third party right of enforcement on both easements. Councilor Carroll SECONDED the motion, and it PASSED 8-0.

Councilor Peter Smith MOVED to continue the public hearing on the Langley property until Monday, August 28th, 2006. Councilor Julian Smith SECONDED the motion and it PASSED 7-0-1, with Councilor Van Asselt abstaining because he would be out of town on August 28th.

- D. Discuss and finalize tentative agenda for the Town Council work session scheduled on August 28th, 2006 regarding the Library.

Postponed until the Library work session was rescheduled

E. Other Business

XI. Council and Administrator Roundtable

It was decided the Council would skip the Roundtable discussion that evening.

Councilor Van Asselt left the meeting at 11:43 PM.

XII. Nonpublic Session

Councilor Henry Smith left the room at 11:44 PM and returned during the Nonpublic Session.

Councilor Peter Smith MOVED to go into nonpublic session under RSA 91:A:3 II(c). Councilor Leach SECONDED the motion, and it PASSED unanimously, 6-0, by a roll call vote as follows:

<i>Chair Niman</i>	<i>yes</i>
<i>Councilor Peter Smith</i>	<i>yes</i>
<i>Councilor Needell</i>	<i>yes</i>
<i>Councilor Carroll</i>	<i>yes</i>
<i>Councilor Julian Smith</i>	<i>yes</i>
<i>Councilor Leach</i>	<i>yes</i>

The Council entered Nonpublic Session at 11:45 PM.

The Council returned to Public Session at 12:08 PM on Tuesday, August 22, 2006.

Councilor Julian Smith MOVED to seal the Minutes of the nonpublic session. Councilor Diana Carroll SECONDED the motion, and it PASSED 6-0.

XIII. Adjourn (NLT 10:00 PM)

Councilor Peter Smith MOVED to adjourn the meeting. Councilor Julian Smith SECONDED the motion, and it PASSED unanimously 6-0.

Adjournment at 12:09 PM, Tuesday, August 22, 2006.

Victoria Parmele, Minutes taker