

D-R-A-F-T

DURHAM TOWN COUNCIL
MONDAY, AUGUST 28, 2006
DURHAM TOWN HALL – COUNCIL CHAMBERS
7:00 PM

MEMBERS PRESENT: Chair Neil Niman; Councilor Diana Carroll; Councilor Peter Smith; Councilor Mark Morong; Councilor Gerald Needell; Councilor Julian Smith; Councilor Catherine Leach; Councilor Henry Smith

MEMBERS ABSENT: Councilor Karl Van Asselt

OTHERS PRESENT: Town Administrator Todd Selig

I. Call to Order

Council Chair Neil Niman called the meeting to order at 7:03 PM.

After some discussion, it was agreed that there would be hearings on all three of the land protection projects before the Council, before deliberating on the Emery Farm project.

There was discussion as whether to have the library work session on September 18th.

Councilor Peter Smith said that date was not good for him, and noted that he had sent a memo regarding his opposition concerning this.

Councilor Leach said that not all Councilors could be present all of the time, and also noted that Councilor Van Asselt wanted to be at that evening's meeting, but was unable to be present.

Councilor Needell asked what the options were if the meeting was not held on the 18th.

Administrator Selig provided details on this, and said the 18th was the remaining Monday when the Council was free. But he said the Council could consider meeting on another date than Monday. There was additional discussion as to how to handle this.

Councilor Carroll noted that the way the Council had handled this in the past was to have Administrator Selig provide the Council with some alternative dates, in order to try to see if it was possible to have all Council members available for a meeting.

Chair Niman said this would be talked about further at the agenda setting meeting the following day.

II. Unfinished Business

- A. PRESENTATION AND PUBLIC HEARING:** Request by the Durham Conservation Commission and Land Protection Working Group for the Town of Durham to contribute \$200,000 to The Nature

Conservancy and to execute an agreement with The Nature Conservancy for the protection of 140 acres of the Beaudette property (Tax Map 15, Lot 1) **Presenter: Malin Ely Clyde**

Ms. Clyde said the Beaudette property was located near the intersection of Route 108 and Bennett Road, and explained that it was the woodlot across from the Beaudette Farmland. She said the property had been identified as an important conservation priority in the 2000 Master Plan. She provided details on how the Land Protection Working Group had worked with the Beaudette family over the past several years concerning the possible project, and said the family had agreed to sell the property to the Nature Conservancy, as part of the Great Bay Resource Protection Partnership. She noted that the Nature Conservancy often acted as the transactional entity in a land protection project, and explained that subsequent to the purchase, the property would be transferred to New Hampshire Fish and Game for long-term ownership and management of the parcel. She said there would be public access, and said that as part of this, hunting and fishing would be permitted.

Ms. Clyde said the agreement was structured so that Durham would retain a legal interest in the property through a simple conservation restriction that went on the deed of the property at the time of transfer to New Hampshire Fish and Game. She provided some detail on this. She also explained that the project also included a five-year right of first refusal on the highly visible farm field property, which meant that if the Beaudette family put up the farmland for sale, the Nature Conservancy would have the opportunity to match that offer. She said this was certainly a future possibility for conservation of that farmland.

She said the Beaudettes had signed a purchase and sale agreement with The Nature Conservancy for a purchase price of \$970,000 based on a certified appraisal, and that the Conservancy was asking the Town to contribute \$200,000 towards the total purchase price. She noted that this would constitute a 79% match with outside funds. She said the closing date for the project was September 15th.

Ms. Clyde said the project met all four of the Town's land conservation criteria:

1. She said the property met the criterion of building upon large blocks of un-fragmented lands, stating that the total acreage of land it connected to was over 600 acres. She said it was directly contiguous to lands owned by the University of New Hampshire and other entities, and said this included a large chunk of forest that was un-fragmented by roads. She also noted it was near properties to the south that had been protected, such as the Doe Farm, the Powers property, etc.
2. Ms. Clyde said the property met the criterion of protection of natural resources. She said the property was primarily wooded, but also had two streams and was on the border of two watersheds. She noted that there was a wet meadow associated with the streams, and also said there was an Appalachian Oak forest on the property, explaining that this was one of the top habitat types in the State for conservation of some rare species.
3. She said the criterion of public access was met with the project because the opportunity to hunt and fish would be maintained in perpetuity.
4. Regarding the criterion of maintaining prominent scenic vistas, Ms. Clyde said there was a substantial stretch of scenic vista along Bennett Road that would be protected. She also said the right of first refusal on the Beaudette's farmland property would allow for the possibility that the view on the south side of Bennett Road would be protected in the future.

Ms. Clyde said the property was appraised by the Stanhope Group at \$970,000 based on an 8-lot subdivision development on the property. She said the right of first refusal was provided by the Beaudette family, also noting that it was common for developers to have to pay for this, but that the family had included this provision at no additional cost.

She explained that the collaboration with the Great Bay Partnership on this project was important because the Durham Master Plan as well as the Partnership had identified the Beaudette property as important.

She explained that Durham's \$200,000 contribution to the total project cost was critical, since the Great Bay Resource Protection Partnership required additional non-Federal (local) matching funds when using its Federal grant funds. Ms. Clyde said the Great Bay Partnership had already helped to protect 1,600 acres of land in Durham, with very little contribution from the Town, and said Durham was lucky to be within the Partnership's boundary. She said the organization had asked the Town for \$200,000 to bridge a financial gap in the project because of increasing land values, and said it was a nice role for the Town to be able to play.

She said in terms of long-term stewardship, New Hampshire Fish and Game would assure that the property was managed in perpetuity. She noted it managed other properties in Durham, such as Adams Point, which had wonderful public recreation opportunities. She said the arrangement benefited Durham and others because the public access would be available forever, but meant the Town was not responsible for any of the stewardship costs.

Ms. Clyde said the Land Protection Working Group was recommending that the Town retain a legal interest through the conservation restriction placed on the deed, and said the Town would be the primary holder of that legal interest. She said it was believed that this would satisfy the concerns expressed in the Town Attorney's memo. She said the deed restriction would be part of the agreement, and she provided details on this.

Councilor Needell asked who enforced the conservation restrictions, and Ms. Clyde said it was the Conservation Commission. She said New Hampshire Fish and Game was the landowner, but said in terms of these restrictions, the Town would be the first line of enforcement.

Councilor Julian Smith noted there was limited parking in this area, and asked if any off-road parking might be provided by New Hampshire Fish and Game for hikers, birdwatchers, fishermen, hunters, etc. He said he imagined this would become a popular hunting site and that off-road parking would prevent aggravation to neighbors.

Ms. Clyde said this was certainly allowed, but said this was part of New Hampshire Fish and Game's decision-making. In answer to Councilor Henry Smith, she said the properties to the north of the Beaudette woodland property that had already been protected totaled 684 acres. She said if everything in green on the map the Council had been provided with was included, this totaled over 1,200 acres of conservation land.

Councilor Peter Smith said that in terms of the relationship between New Hampshire Fish and Game and the Town, he would like to know what the language agreement was that imposed on New Hampshire Fish and Game the legal obligation to maintain the terms of the agreement.

Councilor Smith asked if there should be a sentence that specifically imposed on the grantee the requirement to uphold the property in its natural state, and to protect species, but also to see that the activities that were prohibited were in fact prohibited. He said that originally, the role of the Town was to contribute \$200,000, but now Durham would play an additional role.

He asked if the intent of the agreement was that the Town had the first line of responsibility for enforcement, ensuring that prohibited activities were prohibited, or if instead New Hampshire Fish and Game, with fee ownership, would have the initial responsibility concerning this.

Ms. Clyde said as the landowner and acceptor of public monies, New Hampshire Fish and Game was agreeing that certain activities would be prohibited, and she said if the agency failed concerning this, the Town of Durham would step in and be the enforcer.

Councilor Peter Smith said he thought an explicit statement should be added that it was the Town that had that first line authority to say enforcement wasn't taking place, if for some reason the new landowner didn't take care of the property.

Ms. Clyde noted that this issue was not as time sensitive, but said it seemed very reasonable to work on this concern.

Councilor Julian Smith said the procedure the Town had established for evaluating and deciding on conservation properties allowed the opportunity for the Council to ask that Administrator Selig make sure that Councilor Peter Smith's concerns were addressed.

Councilor Needell asked whether, if the Council approved this agreement, the matter of the transfer of the Beaudette property to New Hampshire Fish and Game would have to come before the Council.

Administrator Selig said that just the funding aspect of the project would come back to the Council.

Councilor Leach asked if having the Conservation Commission be the enforcing agent had been done with any other properties. There was discussion about this, and it was noted that the Doe Farm, the Merrick Farm, and others were examples of this kind of arrangement.

There was discussion that the right of first refusal lasted for five years, or during Mr. Beaudette's lifetime, and that it was a very generous offer to the Town.

Chair Niman noted other large parcels in the vicinity of the Beaudette property that if protected would allow for the expansion of the contiguous acreage of protected lands in Durham. He asked if the Great Bay Resource Protection Partnership was looking at some of these parcels.

Ms. Clyde said that both the Partnership and the Land Protection Working Group had approached these landowners.

Chair Niman asked if the Partnership members would be willing to commit significant dollars toward these other properties if they became available. There was further discussion about this.

Councilor Needell MOVED to continue the public hearing on the request by the Durham Conservation Commission and Land Protection Working Group for the Town of Durham to contribute \$200,000 to The Nature Conservancy and to execute an agreement with The Nature Conservancy for the protection of 140 acres of the Beaudette property. Henry Smith SECONDED the motion, and it PASSED unanimously 7-0-1, with Councilor Julian Smith abstaining because he said he believed the public hearing was already open.

Richard Lord, Bennett Road, voiced his support for all three properties that were being considered for protection, particularly the Beaudette property, and noted that he lived on Bennett Road. He said this project was probably the best deal for the Town, but said he encouraged the Council to support all three projects.

Rachel Stevens, 99 Dame Road, said she would like to offer her support for all three projects. She said she was a staff member for New Hampshire Fish and Game, and she noted that the Seacoast area was one of two areas in the State that the agency had specifically hired staff for, the other area being the Connecticut Lakes. She explained that this was because stewardship of these areas was important to the State as a whole.

Beth Olshansky, Packers Falls Road, voiced her support for protection of the Beaudette property. She said the Land Protection Working Group had done a really good job of finding important parcels, making sure they met all the criteria, and leveraging the transactions to make sure the cost to the Town was minimal at the same time it was getting a wonderful piece of property.

Kate Montgomery, 61 Bennett Road, said she agreed this was an amazing opportunity, and said she supported all three projects.

Heide Ely, 177 Durham Point Road, said she supported the Beaudette project enormously, and she encouraged people in the audience to let the Council know their preference concerning the project, by raising their hands in favor of it.

Councilor Julian Smith counted at least two dozen people in the audience who had raised their hands in favor of the project.

Don Brautigam, 122 Packers Falls Road, pointed out that the Town had passed the bond issue for this kind of project. He said this was a great opportunity to fulfill what the voters had wanted when they voted for the bonding.

Meg Moore said she was proud Durham had passed the bond issue, and said she hoped the Council would support this effort.

Councilor Julian Smith MOVED to close the public hearing. Councilor Leach SECONDED the motion, and it PASSED unanimously 8-0.

Councilor Needell asked if the NOAA?? funding was secure, and was told it was.

- B. PRESENTATION AND PUBLIC HEARING:** Request by the Durham Conservation Commission and Land Protection Working Group for the Town of Durham to 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. **Presenter: Dea Brickner-Wood**

Ms. Brickner-Wood said this project was a long time coming, getting all the pieces together and finding funding for it, and said she was pleased to bring it before the Council. She noted that a site walk had been conducted of the property.

She described the Langley project, involving a 53-acre farm parcel on Great Bay, a 1-acre vacant island, a smaller island, and a 30-acre woodlot. She explained that there were two conservation easements, the first of which was for the farm, which would be held by the Nature Conservancy. She said the second easement, for the woodlot, would be held by the Society for the Protection of New Hampshire Forests.

She said the total purchase price for both easements was \$1,847,500 and said the Town had been asked to provide \$300,000 toward this. She said the partner in this case was the Great Bay Resource Protection Partnership, which would use federal dollars to leverage the rest of the cost for the easements. She said the Town would hold a third party right of enforcement, an executory interest position, giving it the right to monitor the easement, and to notify the easement holder if there were violations. She said if the easement holders failed to provide enforcement if there were violations, the Town had the authority to step in to provide enforcement.

Ms. Brickner-Wood noted that the Master Plan had consistently listed this as an important area for the community. She then provided details on how the project related to the Town's criteria for evaluating potential lands to be protected.

In terms of the criterion of connecting large blocks and corridors of un-fragmented lands, she said the Langley property was a promising piece of property in the Crommett Creek area. She said the woodlot connected to over 1000 acres of protected land in that area, and said the farm shared the shores of Great Bay, where there were some other significant conservation holdings.

Ms. Brickner-Wood said that concerning the scenic vista criterion, the farm property was located on the shores of Little Bay, and said from Langley Road offered a spectacular view. She provided details on this. She also said the scenic vistas of the woodlot should be noted, stating that as part of the view on Longmarsh Road, it contributed to the rural character of that road.

She said the natural resources on the Langley property that were worthy of protection including over 37 acres of soils classified as Statewide or Locally important on the Langley Farm. She noted that the Langley family had operated the farm since the 1700s, and in one form or another had conducted agricultural activities on the property during that a time.

She also said there were over 2,200 ft. of frontage on the shoreland, and explained that the shoreline provided significant habitat for migratory waterfowl, providing some detail on this. She noted that the farm area would contain a 300 ft. buffer in order to provide ground nesting habitat for black

ducks and other species. She said there was remarkable diversity of habitats along the shoreland, for birds, harbor seals and other species.

She said the woodlot contained uplands and a mosaic of wetlands as part of the Crommett Creek watershed, and like the farmland property, supported a variety of important wildlife habitats.

Ms. Brickner-Wood said it was a real balancing act to provide public access on farm properties. She said there was a good balance of a lot of access at one of the sites, and controlled access at the other site. She said the woodlot was in a perfect location to promote public access, and said the Town would be creating a trail on the property in the vicinity of the Longmarsh Trail. She said the woodland would also be open to hunting and other non-motorized access.

She said there would be controlled access to the farmland property, in order to protect the farm as well as wildlife values. She noted that the Langleys had a pullout area for viewing the buffalo on the property, and that the Langley Farm conducted guided educational tours for school children.

Ms. Brickner-Wood said the easement for the farmland property was similar in structure to the Emery Farms easement, and provided details on this.. She also explained that an approximately 3-acre area that included the house, garage, driveway and other improvements would not be subject to the conservation easement. Ms. Brickner-Wood then provided details on the provisions of the conservation easement proposed for the Langley's woodlot, and also provided financial details on the entire transaction.

Councilor Julian Smith provided clarification that the Langley farmhouse would be excluded from the conservation easement. He then referred to the criterion in the Town's land protection policy regarding enhancement of public access, and said that public access would not be enhanced by the conservation easement as currently written. He said he realized the Langleys had given tours of the property, but said if the property were sold to someone else, the new owner might not wish to do this. He also said that if the buffalo operation ended, it would be nice to have some assurance that there would be some public access.

Councilor Smith also noted the criterion regarding maintenance of scenic vistas. He said he agreed the pasture currently provided a view, but said the easement didn't do anything to maintain this view. He said the owners of the property could allow trees to grow, or could plant a buffer along Langley Road that would shut off the view that was treasured.

He said that in terms of the connectivity criterion, the purchase of the easement on the farm would not build upon or create such a connection. He agreed there was connection to parcels across the water, but said there was no land connection. He also noted that there were people who would not have a view of the property from the water.

Councilor Smith said although the land would be protected forever as part of this proposed agreement, many of the resources to be protected were already protected by shoreland setbacks, etc. He said this was a wonderful easement, except for the caveats that there was as not much attention to the four criteria as he thought there should be.

Ms. Brickner-Wood said regarding the issue of having a larger block of protected land, that in conservation work, there were properties called anchor parcels, which were worthy of protection on

their own although they didn't directly connect to other parcels of land. She explained that having protection of these properties in place might allow for the development of larger contiguous blocks of protected land later on.

She said zoning was great, but was meant to be dynamic and respond to different issues in a community. She said the Langley parcels were chosen as worthy of protection regardless of what the zoning was at a particular time. She said that currently, the properties had protection under the Zoning Ordinance, but said it wasn't known what the future held.

Ms. Brickner-Wood said that in terms of the viewshed issue, if one was looking at the property from the water, the view was remarkable. She also noted that the Nature Conservancy easement didn't require mowing, and focused on protecting the resources on the property. In addition, she also said it was important to note that although it was not guaranteed that this would continue in the future, the property had contained a viewshed for many generations, and most likely this would continue.

She said that in terms of the issue of allowing public access, with farm properties, tremendous care had to be taken concerning requirements placed on landowners. She said there were economic issues, liability issues, and said that land protection entities had to work in partnership with landowners regarding this. She also explained that the farm and woodlot were seen as connected, because that was how the farm had always been operated.

Chair Niman asked if it would be possible to put something in the agreement that said if farming on the property ceased, public access would then be permitted.

Ms. Brickner-Wood said she had not seen terminations clauses in conservation easements, noting that this would involve buying a whole other right, and she said it was not clear how this would be valued, in present day value.

Councilor Needell noted that the wording in the agreement did not prohibit the owner from granting access.

Councilor Carroll said she had used the Langley farm as a viewing area for guests, before there was even discussion of public access in regard to the conservation easement. She thanked the Langley family, and noted that it was a wonderful place to take kids. She said that providing public access in Durham was great, and she noted that the Town and the University provided a lot of land for the public to use. But she said that although the various entities could bend over backwards to make sure that public access was available to protected properties, the public was not necessarily lining up to take advantage of it. She stated that public access shouldn't be a determining factor in certain instances, such as this one.

Councilor Needell noted, as a point of clarification, that the Zoning Ordinance would still apply to the Langley property.

There was discussion as to whether the existing dock on the farmland property could be enlarged if New Hampshire Department of Environmental Services approved it. Ms. Brickner-Wood said she would clarify this.

Councilor Henry Smith asked if it would be possible to have public access to the buffer area, or at least guided access. There was discussion about this.

Ms. Brickner-Wood said that if the public access policy was made too complicated, it was difficult explaining this to the public.

Councilor Peter Smith said his understanding was that this project and the Emery Farm project were different than the Beaudette project in that there was an entity other than the Town that had the primary enforcement requirement, and was also not the owner of the property. He asked who had the primary enforcement requirement, and why that entity had been put in to play that role for this project.

Ms. Brickner-Wood said that for the woodlot property, it was felt that it would be prudent for the Forest Society to hold the easement, because of other properties they held in the area. She said the LPWG saw this as an opportunity to have an entity with a good stewardship background to do the frontline monitoring. She said the Town was in a secondary position, and had the right to monitor the easement and enforce the provisions if it felt it needed to.

Councilor Peter Smith said under this arrangement, if the Forest Society did what it was supposed to be doing, the Town was saved the money of having to hire staff, but the Town could step in with the full authority if needed. He asked what the compelling reason was for doing this.

Ms. Brickner-Wood said the Town would be faced with taking charge of some other conservation easements, so wanted to save its limited resources for them. She also said that in this instance, there was a willing partner. She explained that the reason the Nature Conservancy had gotten involved with the farm property was its interest in protection of waterfowl, etc. She noted that that the organization's stewardship staff based at its Newmarket office would be available to work on this.

John Carroll, 54 Canney Road, noted the importance of the right of first refusal on the Beaudette farmland property, and spoke about the good soils on all three properties, and about the importance of local agriculture and local food production to Durham, now and in the future. He noted increasing energy costs, as well as the increasing interest in locally produced foods, and said that putting houses on any of these three properties would destroyed the options for local food production in the coming years. He said this would be very detrimental to the Town.

Joe Moore, 138 Lee Road, thanked everyone for their hard work. He said he realized that not everyone had a view of the Langley farmland property from the water. But he said there were significant wildlife resources along the shoreland there. He spoke about the old boat he had used to fish off shore of the property over many years, and said it was a delightful place to spend the evening. He said that with or without trees, it was a treasure to see the property from the water. Mr. Moore suggested that perhaps there could be historic tours of Great Bay that included this property, and said he totally endorsed this project as well as the other two projects.

Dwight Baldwin, Fairchild Drive, noted concerning the criteria for evaluating potential properties to be protected, that the policy said a property should meet at least one of those criteria. He said that each of the three projects before the Council met at least three criteria, and said they didn't have to meet all four of them. Mr. Baldwin said he was strongly in support of protection of this land.

Beth Olshansky, Packers Falls Road, read a letter into the record from resident Hillary Scott who was in favor of approval of all three projects. Ms. Scott stated that all of these land parcels had been referenced in the Master Plan that should be targeted for conservation. She urged the Council to support the vote of the public concerning land protection, and to support the Master Plan, in order to ensure that these properties were forever protected.

Ms. Olshansky also noted a letter from resident Susie Loder, and said she wondered how the Council would deal with these letters.

Administrator Selig noted that the letter from Ms. Loder had been received that day, and was in support of the three projects.

Ms. Olshansky said that perhaps there were other emails that had been received as well. She said she supported the conservation easement on the Langley property, stating that it was a beautiful piece of land, and hopefully would serve as an anchor for additional land protection in that area. She noted that the Land Protection Working Group had leveraged the project so it wouldn't cost as much to the Town as it possibly could have.

Councilor Henry Smith MOVED to close the public hearing on the Langley property. Councilor Julian Smith SECONDED the motion, and it PASSED unanimously 8-0.

C. Continued 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.

Councilor Morong recused himself, noting again that his family owned property near the Emery Farm property, and left the Council table.

A letter from Sid Pilgrim, former New Hampshire State Soil Scientist, and University of New Hampshire Adjunct Professor of Soil Science, was read into the public record. Mr. Pilgrim stated that of the total easement acreage of 48.12 acres, 60% of it, or 30.3 acres, qualified as important farmland soils. He said 20.8 acres of the 30.3 acres qualified as prime, or the very best soils for agricultural use. He said the soils on the remaining 9.5 acres were somewhat less in quality, but with good management practices, could fit well into a farm operation.

Councilor Julian Smith counted 15 members of the audience who were in favor of the Emery Farm conservation easement.

Councilor Carroll MOVED to close the public hearing. Councilor Julian Smith SECONDED the motion, and it PASSED unanimously 7-0.

The Chair called for a break at 9:01 PM. The meeting resumed at 9:13 PM.

Deliberation on Emery Farm

Chair Niman reminded the public that Councilor Morong had recused himself because his family owns property abutting the Emery Farm.

Councilor Peter Smith said there were two matters to be resolved for each project, the first being the policy issue regarding taking the actions that had been recommended, and the second being exactly how each of the projects would be funded. He said it made the most sense, for each project, to first discuss the policy issue, because it would be unnecessary to discuss the funding issue if the answer to the policy issues was no.

There was general agreement by the Council that the policy issue for each project would be discussed and decided on first by the Council.

Councilor Peter Smith said that as a Council representative to the Conservation Commission, he had closely followed the work of the Land Protection Working Group. He said he had rarely if ever seen more good, difficult, and thorough work done by a group of volunteers, and said they deserved the enormous thanks of the Town for the work they had done.

He said he strongly supported the Emery Farm project, and said this was an obvious place for the Town to start taking new, major land preservation actions. He noted that he had grown up, and now lived, less than a mile from the farm, and had been on that land many times. He said the agreement forms were fine.

Councilor Needell thanked the LPWG for their efforts, and said he supported this project enthusiastically, without reservation.

Chair Niman said when the Wagon Hill farm had been purchased by the Town, he had supported this. But he noted the difficulty of being a farmer in this day and age, said he wondered if in the future, land protection agreements could be structured in a way that ensured there would be farming in perpetuity on the properties that were protected.

Councilor Carroll thanked the Hills family for stepping forward and wanting to conserve the Emery Farm property in the public interest, noting that the family had preserved the property already, over 11 generations. She thanked the LPWG for their efforts concerning the property, but said it was remarkable what the family itself had done in terms of its land protection efforts.

She said Emery Farm met all the land protection criteria, noting among other things that the farmland and its soils were exceptional, and that the property was part of the gateway to Durham. She said she fully supported the project.

Councilor Henry Smith noted that he had walked the land twice in the last week. He said he echoed what others had said, and added that there were excellent fruits and vegetables grown on the property that one could enjoy. He said he had no reservations about approving this project.

Councilor Leach said she supported the project, but had some limited reservations concerning it.

Councilor Julian Smith said he supported the project as well, although he had some reservations that were similar to those of Chair Niman. He noted that Ms. Ely Clyde used the word “lucky” in her presentation concerning the property. He said that indeed Durham was a lucky town. He provided details on the land boom that took place in Durham in the early 1700’s after the Town Charter was granted in 1732, and said the Town had been lucky that so much of the land had remained open since that time. He also noted the land protection efforts that took place in Durham in the 1970’s during the oil refinery scare.

Councilor Needell MOVED that the Durham Town Council hereby approves a request by the Durham Conservation Commission and the Land Protection Working Group and Authorizes the Town Administrator to execute the appropriate documents 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 22-3) 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 22-2); and***
- 3. Provide funds in the amount of approximately \$23,710 for transaction costs for both the Emery Farm and the Woodlot properties.***

The motion was SECONDED by Councilor Julian Smith.

In answer to a question from Councilor Leach regarding the tax impact of protecting this property, Administrator Selig said this had not been broken down per property, but said based on the projections from the previous year, there would be a \$0.31 per thousand impact on the tax rate if the entire bond amount were approved. He said this would show up in 2007.

The motion PASSED unanimously 7-0.

Councilor Morong returned to the Table at 9:29 PM.

Deliberation on the Beaudette property

Councilor Julian Smith said he was ready to vote in favor of this project without reservation—and without a speech.

Councilor Leach said she was ready to vote in favor of the project as well.

Councilor Henry Smith said there was no good reason not to support this project, and said he fully supported it.

Councilor Carroll said she supported the project, and she thanked the Beaudette family for their steadfast involvement in this effort over the past few years.

Chair Niman said he fully supported this project, but said he worried about the money it would cost to protect surrounding properties.

Councilor Morong said he supported this as a project that reflected the wishes of the citizens of Durham who had voted to appropriate \$2.5 million for land conservation. He said this project was a very good use of some of that money.

Councilor Needell said he supported the project.

Councilor Peter Smith said he supported the project.

Councilor Morong MOVED to approve the contribution of \$200,000 to the Nature Conservancy and Authorizes the Town Administrator to enter into 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 restriction on the land at the time of transfer to NEW HAMPSHIRE Fish and Game. The motion was SECONDED by Councilor Henry Smith, and PASSED unanimously 8-0.

Deliberation on Langley property

Councilor Carroll said she fully supported this project, and she thanked the Langley family for stepping forward and preserving so much land in the public interest. She said the criteria that the project met were very substantial, including the existence of prime farmland. She noted that there were subdivisions on some prime farmland in Durham already. Councilor Carroll said that to the west of this property, there was not that much land that was protected, and said protecting this property might provide some impetus for other land protection in the area. She said it was wonderful to have a buffalo farm in Durham, as an education area for students.

Councilor Henry Smith said he had had the most questions about this project, and said he wished there could be more public access to it. But he said he understood the reasons why there was not more public access. He said he wished that the farm parcel was connected to other conserved parcels, and said he hoped that this would happen in the future. He thanked the Langley family for making the property available, and said he supported the project.

Councilor Leach said she was not in support of this project for some of the reasons that had been stated. She said she had been on the site walk, and said that although it was a beautiful property, without public access, she and others would never see that view again. She said she appreciated the family's willingness to do the conservation easement, but said she didn't think this project met enough of the criteria.

Councilor Julian Smith said he agreed with Councilor Leach, but said he could see himself more willing to support an amended agreement. He said there was a provision in the Town's land protection policy that allowed this, and spoke about this in some detail. He said the reference to being an anchor project was persuasive, and he provided details on this. He said he would like to see if the LPWG could consider some of the reservations to the project that had been expressed by some Councilors.

Councilor Peter Smith said the cost for all three of the land protection projects was \$3.8 million, and said of this, the Town would have to pay \$940,000. He said this ratio had exceeded the fondest expectations of the LPWG, and he said that needed to be considered. He said this was a property that he had known his whole life, and he said there was the necessity to put aside what residents personally would gain, and to instead consider what the Town would gain. He noted that the Town was not

purchasing the land, and said he thought the project represented a sound policy decision. He provided details on this.

Councilor Smith said he thought it would be possible to view the farm for a long time to come, also noting that it didn't really cost much to view it from the water. He said the shoreland was Durham's greatest resource, and said this project was not even a close call. He said he would like it even more if he could camp on the island, but said he understood the difference between an easement and a purchase. He said he was very much in favor of approving the project.

Councilor Needell said he was happy to endorse the efforts of the Land Protection Working Group. He said the group had done much of the hard work on this, and said he was not going to quibble about which properties were brought forward. He said public access was just one of the components, and said that even if with some properties there was no public access, they would still be worth preserving for other reasons. He said he understood why there should be limited public access to the property.

Councilor Morong said this was the hardest project for him to decide on. He said it would be nice to have public access, and said the decision concerning the project would be a lot more difficult if so much money hadn't been leveraged for it. He said the views from the water made the property very desirable, because it still had a rural feel to it. He said weighing everything, he supported this project.

Chair Niman said he was troubled by some of the same things troubling Councilor Morong. He said a good case had been made for the reasons this property was worth preserving. But he noted the wording in the conservation ballot the voters had voted on regarding tax stabilization, and said he didn't think purchasing a conservation easement on this property would help stabilize taxes.

He said that public access wasn't the issue for him, but rather how many of the people who voted for the bond though the conservation purchases themselves would contribute toward stabilizing taxes. He said there was a cost to the Town beyond \$300,000, in terms of what else could be done with this land. He said he understood the importance of farmland soils and family farms, but said they also had to think about the tax base of the Town, and what could be done to promote growth of the tax base, or at least stabilization of taxes.

Chair Niman said 12 additional houses on this land, in this location, would generate a lot of tax revenue for the Town. He said he wasn't looking forward to further encroachment on the shoreland, but said such development could help to stabilize taxes. He said he felt this particular project would de-stabilize rather than stabilize taxes in the future. He said he was torn on this project, noting that he didn't see this dilemma with the Emery Farm and Beaudette properties.

Councilor Peter Smith said when the warrant article was put together, there was the necessity of putting in a basis for it. He said there was little doubt that the overwhelming factor that drove the success of the warrant article was the goal of protecting the rural character of the Town. He said there had also been a presentation during that time which demonstrated how over time, these projects would pay for themselves, also noting that he realized the jury was still out on this.

He said he thought the Town took a stand in 1974 concerning the proposed oil refinery, and had consequently given up the opportunity to have a wonderful tax arrangement in that instance. He noted that the Town would have been in tax heaven if the vote had gone the other way. He said the passage of the warrant article 3 years ago occurred because of an uprising of citizens who said they wanted this. He

said the response was overwhelming, and was an affirmation of what the Town's citizens had said in 1974.

He said the Langley properties were part of Durham's greatest historical resources, noting that on Durham Day, he took people on boat rides that went past the farmland property. He said this property was worth protecting, and said that assuming there were not the tax benefits, there were still other benefits. He said he hoped Chair Niman would vote in the affirmative.

Councilor Julian Smith said he found it interesting that the warrant article referred to tax stabilization, but there was no mention of this in the policy guidelines. He said his interpretation of the language on how many criteria should be met was that this didn't say that meeting one criterion was sufficient. He noted that he was one of the voters who voted against the bond issue, not because he didn't want to spend the money to protect land, but because the way in which the bond was worded reflected wishful thinking. He said he was willing to be hopeful, and said he wished the Council would consider more closely some of the other considerations, in addition to the criteria in Section 7. He referred to Section 8 A, which requires weighing the protection of nearby land.

He said he was glad that development rights were being bought back from some property owners in Durham, and said although 77% of the voters in Durham voted for the warrant article, the Council was not required to spend that money. He said he would be willing to spend \$300,000 or more on a slightly more generous conservation easement on the Langley property.

Councilor Needell said he totally disagreed with Councilor Julian Smith's interpretation of "shall meet at least one of these criteria." He said that to him, that meant that meeting one was sufficient, even though meeting more would be nice. He said he felt the LPWG had worked very hard to adhere to the guidelines, and said he saw nothing to suggest otherwise. He said the bond issue was separate from the guidelines.

Councilor Needell also said the farmland aspect of this project was especially important, and said the goal in this case was not just to protect open space. He said he felt this should weigh into the equation, and said he hoped it was enough to tip the balance.

Councilor Carroll said she would love to see this be a unanimous vote, and said this would speak well for the Town. But she said she recognized that people had to vote their conscience. She said that regarding public access, placing this requirement on the Langleys would be a terrible imposition on the family, when it had stepped up to the plate to conserve their land. She said they would be financially responsible if someone were hurt on their property. She also noted that if this property were developed for housing, there wouldn't be any public access either.

She agreed that it was important to protect this property, whether people ever got to see it or not, noting that people contributing to organizations often protected land they never got to see, and did this because they felt the particular land needed to be protected. She said that even if she personally didn't get to walk the property, she still felt there was something worth protecting. She also noted again that it was wonderful that there was the viewing area for the buffalo.

Councilor Carroll said it looked like about 40% of the farm land on the property was prime farmland soils, which was the highest designation in the State of New Hampshire for soils. She also said a good

portion of the property was farmland of local importance. She said she believed that the highest and best use of this land was food production.

She spoke about the fact that most people these days had no connection to where their food was produced, and she said it came from rich agricultural soils like these. Councilor Carroll said if they lived in Iowa or California, this kind of land, which had economic value, would be protected. She said humans got into trouble when they thwarted Mother Nature, noting residents of New Orleans were currently paying the price for this because of the destructions of significant wetlands acreage.

Councilor Carroll said that sometimes the Council led, and sometimes it followed. She said the residents had said they wanted conservation land, and expected the Council to do the job. She suggested that the Council follow the lead of the residents on this.

Councilor Morong said that Chair Niman had come up with some very inventive ways to bring more economic development to Durham. He said he had supported most of these ideas, but was having a hard time with this one. He said over the years he had seen the Town become less and diverse, and said he thought the Town had more than enough unaffordable housing, and in fact needed more affordable housing.

He also said that regarding the guidelines, he thought it was the Council that had approved these guidelines, so if anyone was to blame if they were not correct, it was the Council.

Councilor Julian Smith said the guidelines did not require the LPWG to follow them. He said it was the Conservation Commission that had to follow them, as did the Council.

Councilor Henry Smith said when he had campaigned for election to the Town Council, preservation of land was an important issue for him. He said he was not sure if this project would stabilize taxes, but said he didn't think it would destabilize them. He quoted from the Master Plan regarding the Town's agricultural heritage, and noted that Langley Farm was listed there.

He also spoke about the findings of the New Hampshire Comparative Risk Project, which prioritized the various environmental risks facing New Hampshire residents. He said five of the top ten issues concerned loss and degradation of open space, forest lands, shorelines and aquatic habitats. He said he felt things needed to be balanced, and said he felt things had been out of balance for a long time. He said that even with his reservations about this property, protection of the shoreland was of critical importance to him.

Chair Niman said he agreed with Councilor Needell that what tipped the balance was that it was farmland. He said if the Town did more to ensure this property would remain farmland in perpetuity, that would be one thing. But he said that if 10 years from now the property became wooded forest land with a wealthy landowner on it, his fear was it would never be farmed again. He said if so, he would prefer 12 houses rather than one rich resident with a lot of forest.

But he noted that if the Council didn't support this project, he might preclude the farmland from being protected for future use. He said perhaps this was the most compelling reason for supporting it.

Councilor Leach said she resented being told she was voting out of her own personal interest. She spoke about emails she had been sent saying that she should vote no on this project, and said people

were concerned about their taxes. She said a lot of people had recommended that she vote no on all three of the projects, and said she was not doing that.

But she said balance was needed in Town, and said she was not sure that conserving this land was the way to achieve that. She loved the LPWG, and said what had been presented was thorough. But she said that didn't mean the Council had to automatically approve the projects. She noted that was why she hadn't been ready to approve the projects previously, because she didn't have the information she needed to make a decision.

She stated again that this was not a personal decision, but was one she was making based on the interests of the citizens.

Councilor Julian Smith noted people donate funds to preserve land, and said that was their right, but he said the Council had the duty to husband the public funds. He said when he ran for the Council, he said he would oppose developments that would disrupt stable neighborhoods, or ruin scenic views. He said he had also promised to encourage smaller dwellings on larger lots, with more open common land for preservation and recreation.

He said he appreciated the liability issue for a working farm, and said he hoped when Langley farm was no longer in intense agricultural use, there would be public access to trails down to the water, etc. He said if that didn't happen, there would still be some wonderful areas along the shoreline in Durham where residents could go. He said he would still vote against this project.

Councilor Peter Smith MOVED to 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 deeds. Councilor Henry Smith SECONDED the motion.

Administrator Selig said in 2002-2003, when there had been discussion about land preservation with the warrant article, he had been skeptical of this approach, noting that he had realized there were a lot of people who struggled to pay their taxes. His said another concern he had had was having a broad mandate from the public, which didn't get to the specifics of particular proposals so that an accurate judgment could be made about a particular parcel in question.

He said he had voted against the bond issue for those two reasons. But he said that having said that, 77% of the Town had voted in favor of the bond issue, which he took to be a mandate. He said it was widely broadcast that this would have a significant tax impact on the town, and said people therefore understood this when they voted.

He said when particular land protection projects came forward, he tried to put himself in the mind of the Durham voters, and said he believed that all three of these projects fell well with the parameters of what the voters wanted.

Administrator Selig said that regarding public access, he agreed it would be wonderful to own the Langley property outright, but he said that to do that, the Town would have to spend a lot more money,

and would not want to do that. He said he was happy that the Town would be spending only \$300,000 to get a parcel worth over \$1 million.

He said in this case, if the property were to be developed, high-end homes would be build there, which would generate more taxes than they would cost the town. But he said the Council needed to weigh the tax impact against other issues in play, the natural value of open space, farming, ecological resources, and the significant viewsapes, especially from the water.

He said the Oyster River was where the Town of Durham began, and said although he didn't get out to enjoy the view, he knew it was there. He said the Town had given the Council broad direction, but he said the direction was clear that it was largely in favor of preserving open space lands with the \$2.5 million bond amount. He said one way the Council could assess whether it was appropriate to protect a particular property was to look at the Master Plan. He said the Langley property was in the Master Plan, so the judgment could be made that protecting it was consistent with the broad direction the citizens had provided.

Administrator Selig said his hope had been that the Town would proceed slowly with these purchases. He said the reality was that they were proceeding faster, but he noted again that these particular projects were consistent with the broad mandate. He spoke briefly about funding issues that would need to be discussed, noting he would recommend that bonding be done.

Councilor Morong asked if the Town would get a better deal if the three projects were bonded together.

Administrator Selig said yes, and said other projects that had been accumulating over the past few years could be added to the bonded amount.

Councilor Julian Smith said that the cost to the Town for the Beaudette and Emery projects would be less than what was in the conservation fund, so the Town didn't have to bond these projects. He said they could still pursue the Langley project along the lines recommended in the policy guidelines, weighing the possibility of getting other properties.

Administrator Selig said that was true, but said any agreement was contingent on the landowners agreeing to it. He also said the deadline on the Langley project was Oct 3rd.

The motion PASSED 5-3, with Chair Niman, Councilor Julian Smith, and Councilor Leach voting against it.

Administrator Selig said he had been trying to work through the issue of whether the wording in the warrant article could be applied to the projects before the Council. He explained that the Town attorney and bond counsel felt the three projects did not qualify as being included in the wording of the article because they were not property interests the Town would be obtaining, but rather a legal interest.

He said he had requested a second opinion on this, but did not have the opinion back yet. He noted that the Town operated under a Town Charter form of government, so could issue debt on its own for projects under \$1 million. He said he was therefore recommending that the Council approve debt for each of the three projects approved by the Council that evening, and said language would be crafted for each of them. He said these would be brought forward to the Council for approval on September 25th. He

said he had received feedback from Town counsel and the bond attorney that this approach would be lawful.

He explained that this debt could not be charged against the \$2.5 million conservation bond amount, but said it could be tracked against the bond. He said when that amount had been reached, he recommended ceasing land conservation purchases, and determining whether the voters wanted to authorize more funds for land conservation.

Administrator Selig noted that the Town's present bonding capacity could be impacted by the fact that an additional \$2.5 million in bonding had been authorized by the voters, even though the Council had no intention to bond that amount. He said when the \$2.5 million amount was reached with this alternative bonding, the Council could possibly ask the voters to rescind the authority to expend the original \$2.5 million. He said there were other options as well.

He said there was about \$750,000 in the conservation fund, which could be expended on these projects. He also said the Town could vote to appropriate new monies, although saying he didn't recommend that.

He said the approach he was recommending made sense because the bond market was favorable at present, and said the Town was therefore better served by issuing debt than by using cash on hand.

Chair Niman asked if the Fogg property on the September 11th Agenda, which would cost about \$700,000, could be included with the bond as well if the Council approved it.

Administrator Selig said this could in fact be done.

There was further discussion on the bonding issue by Town Administrator and the Council.

Councilor Needell asked how this would be handled procedurally by the Council, including what happened if the Council voted no on the bonding.

Administrator Selig provided details on this, and said the Council would have to have a public hearing to authorize the various projects, regardless of the bonding approach. He said there was some controversy about the interpretation by the Town Attorney and bond counsel, and said a second opinion was being sought. He said the optimal approach was to craft the argument in a different way, so that the bond counsel could support it, but said in the mean time, he was coming forward with an alternative bonding approach. He said he wasn't looking for a specific action from the Council that evening, and simply wanted to update Councilors on where things stood. He provided additional details on this.

Councilor Peter Smith said he hoped it was understood what the Council had done that evening. He said the issue of which mechanism the Council would use for funding the projects required further consideration. But he said the costs were known, and said he hoped the issue of moving ahead with these projects had been resolved

He said he could not disagree more with the legal opinion of the bond attorney and Town counsel, and he provided details on this. But he said he didn't have any problem using instead the Council's ability to bond, and using the guidelines provided by the voters. He said as part of any Council bonding of the projects, he would object to seeking to change the terms of the agreements so that the Town would be

the primary rather than the secondary enforcer. But he said if those changes were not made, he was fine with the approach recommended by Administrator Selig, although he felt it was not necessary.

Administrator Selig said he anticipated bringing forward a request to issue debt to cover the three projects, and said the exact form would depend on legal advice received in the next few weeks. He provided details on why he didn't think it would be necessary to tap into the land conservation funds.

Chair Niman said he didn't want people to think that because he had voted against the project, he would vote against the funding mechanism. He said he fully intended to support whatever mechanism Administrator Selig recommended. He said he fully assumed that the public hearing would be on the funding of the projects, not on their merit.

Councilor Needell noted that the Council would still be having the same public hearing if this legal issue hadn't come up.

Councilor Carroll said there were two votes taken of residents in the audience, one during the Beaudette public hearing and the other during the Langley public hearing. She said it should be noted that these votes in favor of each project represented 100% of Durham residents in the audience when the votes were taken.

Councilor Leach asked if the process of reviewing and deliberating on these projects, including the opportunity for site walks, could be improved in the future. She said she felt they all had learned about how this process could be improved.

III. Adjourn

Councilor Julian Smith MOVED to adjourn the meeting. Councilor Carroll SECONDED the motion, and it PASSED unanimously 8-0.

11:01 pm adjournment

Victoria Parmele, Minutes taker