

This set of minutes was approved at the October 15, 2006 Town Council meeting.

**DURHAM TOWN COUNCIL
MONDAY, SEPTEMBER 11, 2006
DURHAM TOWN HALL – COUNCIL CHAMBERS
7:00 PM**

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

MEMBERS ABSENT: Councilor Mark Morong

OTHERS PRESENT: Business Manager Gail Jablonski; John Parry, Chair, Parks and Recreation Committee; Duane Hyde, Conservation Commission member and member of the Land Protection Working Group

I. Call to Order

Chair Niman called the meeting to order at 7:01 PM.

II. Approval of Agenda

Councilor Julian Smith MOVED to approve the Agenda as submitted. The motion was SECONDED by Councilor Needell, and unanimously PASSED 8-0.

III. Special Announcements

Chair Niman noted that Business Manager Gail Jablonski was attending the meeting in place of Town Administrator Selig.

Chair Niman spoke about the Durham Day celebration held the previous day, noting among other things that former Durham Business Manager Paul Beaudoin had been there to lend a hand. He said resident Nicole Moore had organized the event as she had the previous year, and said she had done a terrific job. He said there had been a great turnout, and thanked Councilors, Fire Department staff and residents for helping out in various ways.

Chair Niman noted that Primary Day would be held the following day, from 8 am to 7 pm in the Oyster River High School multi-purpose room.

It was also pointed out that University Day would be held the following day as well, and that this was a great opportunity for Durham residents and University students to get to know one another.

IV. Approval of Minutes

August 7, 2006

Councilor Carroll MOVED to approve the August 7, 2006 Minutes as submitted. The motion was SECONDED by Councilor Julian Smith.

Page 10, 1st line, “Councilor Needell asked if in an emergency, residents of other towns could access the swap shop.”

Page 13, bottom paragraph, should read “Chief Kurz said it was a shame that the matter of public urination had to be addressed before the Council.”

Councilors agreed these were non-substantive changes.

(Additional comments Councilor Needell and Councilor Carroll gave the Minute Taker to make before the meeting):

Page 8, second paragraph from bottom, “..The Committee assisted flood victims in..”

Page 15, bottom paragraph, should read “He said he was okay with this proposed...”

Page 21, 3rd paragraph, should say Dr. Bragdon)

The motion PASSED unanimously 8-0.

V. Reports of Councilors

Councilor Carroll said she had recently participated for the first time in the Household Hazardous waste pickup, and said her experience was that the process went smoothly and efficiently. She said the people involved were knowledgeable, and said she was looking forward to see the Public Works Department’s report on this. She also stressed that if residents had hazardous wastes that had not been picked up, it was very important that they hold onto them until the next pickup.

Councilor Needell updated the Council on applications before the Planning Board. He said a public hearing would be held that Wednesday for a site plan application to put in 21 multi-family units in the Residential B district. He said there was also a conditional use application for a proposed duplex in the MUDOR district, and a site plan review application involving a change of use from residential to commercial in the Central Business district.

Councilor Needell said the Planning Board would have a discussion on setting a date for a public hearing on the timber harvesting issue. He also said the Board’s quarterly planning meeting would be held on September 27th, 2006.

Councilor Carroll explained that some members of the forestry community had pointed out parts of the new Zoning Ordinance they felt needed to be changed, and had provided a lot of input to the Planning Board concerning this. She said the Planning Board had taken a good look at the recommendations, and had made some proposed changes. She said the Zoning Ordinance provisions concerning timber harvesting would be much better as a result of this process.

VI. Public Comments

Bill Hall, Smith Park Lane, spoke about the fire at Blackhawk development the previous Saturday in Durham, and noted that he had recommended a hydrant for this area in the past. He provided details on why this would be a good solution to providing a better water supply in this area in case of fire.

Mr. Hall spoke in detail about what he saw as a mischaracterization, and an incorrect approach by Administrator Selig concerning the Lamprey River water restriction issues. He said he hoped the Council would address this.

Mr. Hall also criticized the current situation regarding the Depot Road parking area.

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

Shall the Town Council reappoint Director of Planning and Community Development Jim Campbell as its representative to the Seacoast MPO Technical Advisory Committee for the period July 1, 2006 to June 30, 2007?

Councilor Needell MOVED to reappoint Director of Planning and Community Development Jim Campbell as its representative to the Seacoast MPO Technical Advisory Committee for the period July 1, 2006 to June 30, 2007. Councilor Julian Smith SECONDED the motion, and it PASSED unanimously 8-0.

VIII. Presentation Item

Receive annual report from the Parks and Recreation Committee – John Parry, Chair Niman

Mr. Parry spoke before the Council. He acknowledged the hard work done by members of the committee, including Council members, and described them as a talented, dedicated group. He also said Public Works Director Mike Lynch had been very helpful to the committee. He described the Parks and Recreation Committee's recent involvement in some joint committees, - specifically the trails committee and the Jackson's Landing committee, and said these were good team efforts.

Mr. Parry read through the vision statement of the Committee, and then listed three key long term goals.

Develop a more formal, sustainable Parks and Recreation program to better serve town residents. Mr. Parry said there was little in the way of formal recreation programming in Durham, and said this was an area that needed to be strengthened.

Increase recreational and leisure activity opportunities for all Durham residents. He said the committee felt there was a lack in the area of adult recreational programming, especially programming for seniors.

Provide better access to, and more recreational opportunities for Durham's water resources. He noted that Durham was blessed with water resources, but said these resources were under-utilized.

Mr. Parry said at this time of year, the Committee brainstormed about projects that would contribute to achieving these three long-term goals, and said this is how it had arrived at the 2006 Action Plan, in 2005. He then went through the activities listed in the Action Plan.

- Revise Master Plan chapter on Recreation, and use as basis for strategic plan. He said the committee felt a survey was critical to upgrading the recreation portion of the Master Plan, and was therefore waiting for the completion of the survey before working on the Master Plan.
- Town property improvements – Mr. Parry said the committee wanted to start working on higher priority items. He noted that a group of volunteers had started putting up signs on properties, and said this was an example of the kinds of things the committee wanted to do to improve properties.
- Pursue partnerships with other entities. He said the committee felt there was already a lot of recreation programming going on in Durham, through the School District, the Mill Pond Center, etc. He said the idea was to do more in the way of coordinating these activities. He provided some examples of cooperative efforts that had been undertaken this year, and said the committee wanted to continue searching out such partnerships.
- Conduct Public survey on recreational needs. Mr. Parry said that hopefully the survey, which was being worked on with a UNH professor, would be completed soon, and would then be distributed, either by mail, email, or on the web. He noted that the distribution method hadn't been decided on yet.
- Develop list of recreational opportunities. Mr. Parry said a recreational activity directory (RAD) was being developed, which would include both public and private offerings. He said the plan was to put this on the Town website, and to provide the opportunity there for people to do a keyword search of the various activities available. He noted that Chair Niman had designed this interface, and said it was hoped it would be launched this fall.

Councilor Carroll suggested that it would be a good idea to include UNH activities in this directory, and other Councilors agreed with this suggestion.

- Develop use policy for Parks and recreation properties, facilities, trails. Mr. Parry said there were a lot of questions out there on policies concerning hunting, biking, etc. on Town properties. He said there was currently a mishmash of policies, depending on which property one was looking at, and said the idea was to research them and develop a more uniform policy for all Town properties. He said a lot of work was needed on this, and said the research had gotten bogged down in the past.
- Research how recreational programs are developed in other communities. Mr. Parry said there were a lot of sophisticated programs out there, and noted that the committee had already heard from Dover and Newmarket regarding their respective programs.

- Grant proposals to fund work on trail improvements. Mr. Parry said a grant of about \$8,000 was received for trail work on Longmarsh Trail. He said a boardwalk would be constructed over a wet portion of the trail, and other portions of the trail would be improved. He noted a recent holdup on the project, but said there didn't appear to be any significant problems concerning this.
- Initiate discussions with Lee and Madbury to explore opportunities to share recreational resources – He said the committee was interested in sharing ideas and information with these towns, was also interested in cooperating with them in terms of recreational resources and efforts. He said the committee had started having more conversations, and sharing meeting Minutes with the towns, and said the hope was to expand this communication.
- Work with interested parties to build additional playing fields. Mr. Parry said a task group within the Parks and Recreation Committee was working on this, and was considering hosting a workshop, which would include recreational professionals, to develop a strategy with others on how to proceed. He said that recently, there had been more interest in looking more intensively at the Town's gravel quarry on Packers Falls Road as a potential site for a playing field. He provided some detail on this, and said possible assessment of the site was being considered.
- Work with interested parties to identify possible locations for a skateboard park. Mr. Parry provided some detail on this, and noted that the Master Plan had recommended that a skateboard park be built at Jackson's Landing.
- Develop an "adopt a trail" program. He said several members of the committee were interested in pursuing this, and said the idea was to develop a more formal program, and to have volunteers create and maintain trails. He said the committee was in the final stages of launching this effort.

Mr. Parry then provided details on some other recreation related developments in 2006.

- He said the Jackson's Landing Committee has been a real success, and provided some background on this committee's efforts. He said there were 17 core people on the committee, which was a joint effort of the Parks and Recreation Committee and the Conservation Commission. He noted that several members of the committee had formal training related to the committee's work.

He said a draft proposal had recently been completed by the group, which would be presented at a public meeting the next day. He said it was hoped that more comments would be received on the proposal, and said the Committee hoped to present it to the Council on September 25th.

- Mr. Parry said this year the Parks and Recreation Committee had made an effort to get members of the Oyster River Youth Association (ORYA) on the board of the Parks and Recreation Committee, noting the Committee hadn't been very involved with that organization in the past. He said that as a result of this effort, the communication between the two groups had greatly improved.
- Mr. Parry said the Parks and Recreation Committee had also started having meetings with the Mill Pond Center over the past year, concerning opportunities for more recreational programming. He noted that both the ORYA and Mill Pond Center had been having some financial difficulties, and said the Parks and Recreation Committee saw that a relationship with these two organizations offered some positive opportunities. He said such a relationship would

allow the Town to take some big steps forward in terms of expanding recreational programming in Durham, while at the same time helping to strengthen these two organizations.

Mr. Parry said the Parks and Recreation Committee had been having discussions on the various opportunities involved, and said it was currently developing a proposal, which would be presented to the Council at an upcoming meeting. He noted that the committee had not completed its discussions on this issue, and had not voted on the proposal under discussion. He said the committee hoped to reach a consensus on this matter within the next week.

He provided details on possible benefits of purchasing the Mill Pond Center, and possible benefits of collaborating with the ORYA.

Mr. Parry briefly outlined the proposed/draft Action Plan for 2007, and provided some detail on some of the action items in this plan. He noted that this plan was in draft form, and said the committee would like input on it from the Council and members of the public.

- Master Plan for Wagon Hill Park. He noted the previous effort concerning this was 10 years old, and said it was hoped this could be updated, using a model similar to what was used for the Jackson's Landing process. He said the idea was to go after grant funding for these kinds of things, which required matching funds from the Town.
- Recreational staff person. Mr. Parry said the committee would start looking at the process for creating a recreational staff position for the Town.
- He said the committee had identified several areas where it could utilize UNH undergraduate research assistance.

In answer to Councilor Henry Smith, Mr. Parry said the word "Tweens" in the 2007 Action Plan draft referred to young people between the ages of 10-13. He said there was a need to address the recreational needs of this age group, and said the committee wanted their input.

Councilor Leach noted that this was one of the areas where the committee could use help from UNH.

She also noted that while the public survey on recreational needs was long, it was important for residents to fill it out. She said this information would be of great use to the committee and Town staff in moving forward with recreational goals. She said the Parks and Recreation Committee was a very hard working group, and commended them for getting so much done.

Councilor Needell asked when the survey would be coming out, and Mr. Parry said that hopefully it would be out by late October, and the results would be available by the end of December.

IX. Unfinished Business

X. New Business

A. PRESENTATION AND PUBLIC HEARING: Proposal by the Land Protection Working Group (LPWG) and Durham Conservation Commission to:

1. Execute a purchase and sale agreement under which the Town of Durham would provide funds in the amount of up to \$695,000 toward the purchase of an approximately 86-acre conservation

easement on the Fogg property (Tax Map 14, Lot 7-2) located on the corner of Packers Falls Road and Mill Road and that the Town hold the conservation easement on the property;

2. Authorize the Town Administrator to sign the Conservation Easement on behalf of the Town of Durham; and
3. Authorize the Town Administrator to execute a grant agreement with the New Hampshire Department of Environmental Services for a grant in the amount of \$325,000 for the project.

Duane Hyde, the presenter, described the Fogg property in detail, and also provided details on the various open space tracts that it abutted. He said the property contained 104 acres and said the proposed conservation easement was for 86 of those acres. He said there were two existing houses on the 104-acre parcel, the original farm house located on the corner of Mill Pond Road and Packers Falls Road, and a residence located on Mill Road directly across from the entrance to Spruce Woods.

He said the Fogg brothers wished to exclude from the conservation easement the area around these two houses, and an additional area along Mill Pond Road that would allow for the subdivision of three additional house lots. He said these excluded areas had been situated to minimize the impacts of the views along Mill Road, by keeping the house lots in the wooded portion of the property and outside of the open field.

Mr. Hyde provided details on the work of the Land Protection Working Group after voters had approved the \$2.5 million bond. He noted that the vision of the Master Plan was heartily endorsed by those who had worked on it, and said the Fogg property had been mentioned numerous times in the Master Plan. He also said he had never before met with people of the Fogg brothers' age who were so committed to Conservation that they were willing to take this kind of action, and said this represented quite a commitment.

Mr. Hyde noted that the Council had had a non-public meeting on the project, and had also had a public meeting on it in January of 2006. He said it had been realized that as much outside money as possible should be brought to the table in order to leverage the Town's money, and said the obvious funding source for this was NHDES water funds.

Mr. Hyde went through the four criteria established in the Town's "Criteria to Evaluate Real Estate Interests for Conservation/Open Space":

Build upon, create, and connect large blocks and corridors of un-fragmented land. He said the easement would build upon an existing approximately 422 acre un-fragmented block of open space that was part of an even larger 690 acre area of open space and conservation land.

Scenic vistas - He said the open field on the property was one of the most prominent scenic vistas in the community, and was identified in the Master Plan. He said that under the easement, no further subdivision or building on the field could occur. He noted there was a provision in the agreement to allow a 25 ft. tall windmill on the property for aeration of ponds, and said there was also a provision that allowed the barn to be moved into the easement area. He noted that the Fogs had shown some interest in putting a farm stand there

Mr. Hyde also said there was a provision in the easement to allow the Fogg to encroach slightly into the conservation easement with a driveway that would serve one of the lots in the exclusion area. He explained that Troy Fogg planned to put a house on the back of this lot near the woods, and said there was an existing dirt path there at present.

Natural resources protection Mr. Hyde said there were many resource values on the property that the Town should protect. He said the wetland complex on the property was a remarkable ecosystem, providing details on this. He also said a portion of the Spruce Hole aquifer was located on the property, predominantly in the field area, and said the conservation easement would provide protection of a critical recharge area for the aquifer.

He said the Spruce Hole aquifer had been identified in the Master Plan as the next water resource the Town should be tapping into, and said for that reason alone, the Fogg property was worth protecting. He noted the project was considered by NHDES to be such a high priority that the agency had given it funding.

Mr. Hyde also said the property was an important farmland property, noting that the field area and part of the wooded area had been designated as prime farmland soils, which the Master Plan had said the Town should work to protect. He said the country was coming to realize that it shouldn't rely on industrialized farming, and should have more local options for agricultural production. He said protection of the farmland on the Fogg property should provide this option in the future.

Public Access – Mr. Hyde said the issue of public access had caused the most discussion on the Fogg project, and said this focus was undeserved. He said Land Protection Working Group had worked with the Fogg brothers on this issue, and said the family had no desire to prohibit access to the property, but rather wanted the right to control access. He said the family had agreed, after several Council discussions on the public access issue, to provide a permanent public access component on 22 acres of the easement property. He provided details on this.

Mr. Hyde also explained said it was not that public access would be prohibited on the remainder of the easement property, but that there would be controlled access. He explained that there were existing trails that lead back to the family house, and said the family was concerned that allowing complete public access would reduce privacy, and could result in vandalism issues. He said if things went well with the proposed easement, the brothers would perhaps allow trails for other portions of the property in the future.

Mr. Hyde provided details on the public access issues involving UNH properties. He said that Foss Farm was open to the public, and explained that UNH Woodlands department managed it. He said the University had some money available for trail signage, and was interested in letting people know more about the trails. He said the University was preparing a significant management plan for the West Foss Farm property, in part to show its commitment to maintaining open space. He also provided details on potential trails connections with the Carriage trail property.

Mr. Hyde next addressed the issue of tax stabilization in regard to the Fogg property. He said members of the LPWG had looked at the conservation bond vote in part as a way to provide tax stabilization, and provided details on why the average residential house didn't pay for itself in taxes.

He said the Fogg land could hold an additional 13 properties, not including the lots to be carved out of the property along the road as part of the proposed conservation easement. He provided financial data that indicated that it would take about 10 years for the conservation easement project to pay for itself, not including interest on the bond, and said that was a good return on a conservation bond.

Mr. Hyde provided details on the appraisal process, and also provided some details on the conditions of the easement, noting that it allowed the family to farm the property and to manage the forest for personal firewood use. He said the forest was in good condition, and said if the family planned on doing a commercial timber harvesting operation, it would have to do a forest management plan, prepared by a professional forester. He noted that the easement also included several provisions required by NHDES because of the water protection grant.

He said the family would retain the right to use the rustic camp on the property that overlooked the beaver flowage, also explaining that it couldn't be used as a permanent residence, and had to stay the same size.

He said the Town would be allowed to develop a municipal drinking water well, but would have to meet a set of specific requirements under the terms of the conservation easement.

In summary, Mr. Hyde said the project made sense for a lot of good reasons. He said he felt this was one of the best projects the Land Protection Working Group could bring forward, and said he hoped the Council would endorse it.

8:28-8:37 Break

Chair Niman said the Council would hold the public hearing on the Fogg project next, because members of the public were present. He said the Council would address the remainder of the Agenda items under **X. New Business** after this public hearing.

Councilor Julian Smith MOVED to open the public hearing on the Proposal by the Land Protection Working Group (LPWG) and Durham Conservation Commission to:

- 1. Execute a purchase and sale agreement under which the Town of Durham would provide funds in the amount of up to \$695,000 toward the purchase of an approximately 86-acre conservation easement on the Fogg property (Tax Map 14, Lot 7-2) located on the corner of Packers Falls Road and Mill Road and that the Town hold the conservation easement on the property;***
- 2. Authorize the Town Administrator to sign the Conservation Easement on behalf of the Town of Durham; and***
- 3. 3. Authorize the Town Administrator to execute a grant agreement with the New Hampshire Department of Environmental Services for a grant in the amount of \$325,000 for the project. The motion was SECONDED by Councilor Van Asselt, and PASSED unanimously 8-0.***

Don Brautigam, Packers Falls Road, said he had driven by this property for years, and said he saw this property as the gateway to the rural areas of Durham. He said he appreciated the property greatly, because of the scenic vista as well as the other aspects of the property that had been mentioned. He said he wholeheartedly supported the idea of the easement, and said he would hate to see 13 homes in the middle of the field on the property.

He noted that Beth Olshansky was unable to attend the public hearing, but said she also wanted to go on record as being in support of the project.

Margaret Bogle, Crogan Lane, said that saving farmland was extremely important, as was protecting a potential water supply. She said protecting the watershed was crucial, and said the Town was very lucky the Fogs had been interested in doing this. She thanked them, the LPWG, and Durham residents who had voted for the bond.

Dave Langley, 234 Longmarsh Road, said he agreed with what others had said about the values contained in the Fogg property, and said he too wanted to thank the Fogs for the great thing they were doing. He also said he believed that being a partner on this project was an appropriate use of the Town's money.

Annmarie Harris, Oyster River Road, said she had heard Mr. Hyde say that the average number of children per household was 1.25. But she said in Durham, there were households that included a lot of students, and she said noted the student population was about 8000, while the entire Town population was about 12,000. She said the payback should therefore be substantially less than 10 years. She said she supported this project, and wanted to thank the Fogs for what they were doing, and wanted to thank the LPWG for the great work it had done.

Megan Moore, Lee Road, said she felt very strongly that because of the water issue alone, the Fogg property was well worth preserving and conserving. She said she felt the Town was very lucky to have this property in Durham.

Dwight Baldwin, Fairchild Drive, said this was a very important piece of land, one that met the criteria that had been established. He said the criterion that seemed to cause the most problem was public access, but he said that public access shouldn't necessarily be guaranteed on protected properties. He said open space preservation was a worthy goal, and said he would like to see the Council vote in favor of this.

Jim Hellen, Fitts Farm Drive, said he was speaking as a citizen although he was also on the Conservation Commission. He said he had moved to Durham from out of state five years ago, and said the next year, he had gotten involved with the bond issue. He said he had seen Durham as a forward looking community, and said that in the last three years, the LPWG had done a lot of work that was now starting to come to fruition. He said the Council had a good opportunity to show vision and to make a mark on the history of Durham by protecting this valuable conservation land.

Robin Mueller, Faculty Road, said she had grown up in Durham, had moved away, and now had moved back. She said that when she looked at the field on Fogg farm, she always thought about the historical value of this land. She said it was important that the Town value connections to historical landmarks, farms, and places that were not necessarily marked by plaques. She said these places informed uniqueness to Durham that was very rare.

Troy Fogg said the history of this property was what it was all about, and he made note of the tremendous hard work done by Mr. Hyde and others concerning the project, which was also what it was all about. He said he and his brothers appreciated the sentiments expressed by others concerning the property.

Ms. Mueller returned to the podium and said this property had value not just for the people who lived near it. She said it provided easy access for viewing, and gave her and others a sense of the shape of Durham, so was a resource for everyone.

There were no additional speakers, but Councilor Julian Smith suggested the public hearing be kept open.

Councilor Julian Smith said Mr. Hyde had said that the easement would be attached to one of the five excluded properties. Mr. Hyde said there was nothing prohibiting the easement from being a lot unto itself. There was discussion about this, and about the fact that someone could own and manage the lot for agriculture without impacting the terms of the easement.

Councilor Julian Smith asked about pedestrian access onto the Fogg property from East Foss Farm, and whether if one started walking, he could get through to the Carriage Trail property.

Mr. Hyde said this could be done, providing details on this, and noted it was dry enough.

There was discussion about language in the agreement on the right of the landowners to move the camp on the property.

Councilor Leach asked for details on stewardship aspects of the easement, stating it was important to go over these things.

Mr. Hyde provided details on this. He noted that the LPWG had generally worked hard to have the Town be the easement holder on land protection projects, and had tried to partner with other organizations that were set up to do the monitoring of an easement. But he said that under the NHDES grant program, there was a requirement that the Town hold the easement.

He noted that his memo to the Council spoke about the idea of working with another partner organization that could assist the Town with the monitoring, and said the Rockingham Land Trust had shown some interest in this. He said if the project was approved, an account would be set up to make sure that funds were available to pay for the easement monitoring in perpetuity.

Councilor Peter Smith said it sounded like Mr. Hyde was saying that the Town would be the primary easement holder, but would engage an organization with expertise in monitoring to do the policing work for the Town.

There was detailed discussion about this. Mr. Hyde said he had made it clear to NHDES that engaging another organization to do the actual easement monitoring could take place. But he said any necessary enforcement action would be up to the Town, as the primary easement holder.

Councilor Peter Smith asked what additional costs there would be for the Town.

Mr. Hyde said that typically there would be an annual monitoring expense. He also noted that court actions were relatively rare, so funds for this were generally not needed.

There was detailed discussion about connectivity issues involving the site, given other land uses in the area.

Councilor Van Asselt discussed the scenic view issue, and what he saw as the relative lack of land without houses that would be able to be viewed. He asked if this was a fair statement.

Mr. Hyde said he didn't think so. He said the area that would be able to be viewed was the critical component of the property, as identified in the Master Plan, and said this area would be protected under the easement. He also noted that the wooded corridor was a scenic feature as well. He also said the lots that would be developed would be large lots, with a lot of woodland, and would not be blight on the neighborhood.

Councilor Van Asselt said he agreed that there still could be a scenic view, but he said one couldn't make the argument that there would be an unobstructed view of what was once the Fogg farm.

Mr. Hyde said when one talked about scenic vistas on this property, it was the view looking across the field.

Councilor Carroll said she had been concerned about the number and placement of houses when she had first seen them, but said that when she had done the site walk, Adam Fogg's house could hardly be seen, and did not obstruct the view. She agreed the impact of the view would depend on where the houses on the other lots were built.

There was additional detailed discussion about this issue.

Councilor Julian Smith said a future house on the knoll that looked like a barn could be quite attractive overlooking the field. But he said there was no stipulation that the view would not be obstructed by a buffer of evergreens, fences, etc., and also said there was also no stipulation that the land that was now hayed would remain in cultivation, rather than turned into woods.

He said the Master Plan, and people who supported the easement, liked the parcel because of the wonderful open area. He provided details on how the ecology of the field would change if the hay were not harvested, and said the view would be lost. He said he would be much happier if there were a stipulation concerning this.

He said he had known three generations of Fogg's, and said he knew they would keep the field hayed and cut. But he said he was thinking 100 years down the road. He said a handshake between himself and Troy would be enough, but he said it would be nice to know that when they were gone, there would be a written understanding that if the land were sold to someone else, that person would have to allow the fields to be hayed, and would have to keep the land as an open field in perpetuity.

Mr. Hyde said that type of provision was very difficult to place in an easement. He said it basically required someone to do something to their property that might not be financially feasible at some point in time. He provided details on this. He said the easement was structured so that the purpose clause included scenic views. He said if this were a problem in the future, they could go back to the easement baseline report, and could say that the purpose of the easement had been violated.

Councilor Julian Smith said there was nothing in the easement that required that the field be left open.

After further discussion, Mr. Hyde said the intent with the easement was that the fields would be left open. He said language to bolster this could be a good idea. He said he had talked with Adam Fogg about getting at this issue, and he said that bolstering the purpose clause would be something that the Fogg would agree with. There was discussion that clarified that the Fogg was willing to modify the language concerning this.

Councilor Leach asked for clarification about the issue that because of the aquifer, portions of the property were not buildable.

Mr. Hyde said the current Zoning for this area was very strict, so unless sewer and water were brought in, the land was unbuildable. He provided details on this, and noted that zoning ordinances changed, and were sometimes overturned. He said he didn't think the aquifer protection overlay ordinance had truly been tested by a savvy developer, in terms of its constitutionality.

It was clarified that thirteen houses could be located on the part of the property that was not in the aquifer protection overlay area.

Councilor Carroll noted that elderly housing was allowed in the rural districts in Town, which meant that for every single family unit that could be built on this property, 3 elderly housing units could be put in instead, so there could be 39 units instead of 13.

Councilor Julian Smith agreed that the Zoning Ordinance did allow elderly housing in rural areas of Durham, and said that in some ways, this would be the highest and best use of this land. He provided details on this, but said this was not what he wanted to see done.

Chair Niman received confirmation that there was no one present to speak on the NHDES grant for closure of the Durham Landfill. He said he wanted to be sure the Council addressed that item and some others before the end of the meeting.

Councilor Van Asselt asked whether, if the Town did nothing in terms of protecting the aquifer, the State would step in to protect it.

Mr. Hyde said the State was not in the business of protecting water supplies directly, other than those that involved large water withdrawals.

Councilor Van Asselt said in other words, the only way to protect the aquifer was with the existing aquifer overlay, and with additional protection through the conservation easement.

Mr. Hyde said the easement provided protection in perpetuity, while the Zoning Ordinance did not.

There was detailed discussion about this issue, and about the relative importance of the Spruce Hole aquifer as a future water supply.

Mr. Hyde said the aquifer would be the next water supply the Town would utilize, if capacity needs increased. He noted that this had been studied quite a bit.

Councilor Van Asselt said that regarding the public access question, he didn't think the time spent looking at this was unnecessary. He said he was happy to see that 22 acres of the Fogg property had been designated for public access. But he asked Mr. Hyde if he was comfortable that the public access issue had therefore been covered, and that people wanting to use that land would have that access.

Mr. Hyde said the access was there depending on what the desire was. He said people had unduly focused on public access, while other values had gotten short attention. He said the public access on the 22 acres was guaranteed, with the exception of times when an active forest management project was going on, when public access would be shut down temporarily.

He said access to the remainder of the property had to do with the relationship with the Fogg family. He said a conservation easement project was more than an exchange of rights; it was a long-term relationship. He said the annual monitoring visits provided an important opportunity for communication with the landowner. He said that at least for the near term, the Town had a great group of people to work with in the Foggs, and perhaps additional trails could be established that the public could use.

Councilor Van Asselt said he respectfully disagreed with the formula used regarding tax stabilization. He provided details on this, and said while he could support the other values of the Fogg property, the tax stabilization issue was the one he was having trouble with, given the housing market in Durham.

Mr. Hyde said they certainly could respectfully disagree. He noted that the Housing Finance formula number had come from a number developed specifically for Durham, during the Master Plan process, and provided details on this.

Councilor Van Asselt said he was not implying that Mr. Hyde didn't have evidence to support the tax stabilization issue. But he said the demographics in Durham were changing.

Mr. Hyde agreed that the conclusions on tax stabilization were based on a 2003 model, and that this hadn't been updated yet.

Councilor Van Asselt said he couldn't support buying a piece of land for tax stabilization reasons, and said the Council needed to be able to say it supported it for other reasons.

Councilor Julian Smith said he agreed with Councilor Van Asselt that the formula was a statistical projection. He noted the tax stabilization language in the bond, which he had voted against. He said he didn't think there should be a focus on halting harms, such as preventing developers from putting down houses where students might live, and thus keeping more children from coming into the school system. He said the reason he had harped on scenic access and public access was that he thought that conservation easements should provide for public use.

Mr. Hyde said that leading up to the conservation bond vote, there had been discussion that the goal was not to halt development and to keep children out. He said the goal was to protect and conserve the lands that were most important to the community, and to allow other locations in Town that were

perfectly appropriate to be developed. He said the areas being considered for protection contained important resources for the community.

Councilor Henry Smith said a number of his questions regarding the project had been answered. But he noted that the tax stabilization language was in the bond, but was not one of the criteria. He then asked Mr. Hyde which of the four criteria he felt were most clearly met with this project.

Mr. Hyde said the protection of natural resources was the criterion that was most clearly met. He said the aquifer was a public resource the community needed, and said the property also contained other natural resource benefits.

Councilor Needell said it was important to restate that a project must meet at least one of the four, and didn't have to meet all of them. He said different criteria came to the forefront for each of the projects, and said the Town could accept these projects for different reasons.

Councilor Van Asselt said another discussion that had to be undertaken was related to the fact that this was the fourth property being considered for protection. He said three properties had already been taken care of, and said if the Town moved forward with this project, it would be using up a good deal of the money that was still available. He said there were several other properties the LPWG was working on that might meet the criteria, and he asked at what point the Council said no to a piece of property, when it was known there were other properties out there. He said the Council needed to know where to draw the line.

Mr. Hyde said he would welcome the opportunity to meet with the Council to provide an update on other properties. He noted that Chair Niman had asked him some questions on this topic that day, and said it would be helpful for all Councilors to do this. He said he could say fairly confidently that this was the last of the projects that would be coming before the Council in the near future. He said no other projects were even close, although he realized one never knew about these things. He said the four projects, including this one, would bring the total expenditure to \$1.6 million, leaving \$860,000. He also said there was about \$700,000 in funds from the current use change tax.

Councilor Peter Smith said he would like to address Councilor Van Asselt's important concerns. He said that no one could read the mind of all the people who voted in favor of the bond, and said each Councilor would have to decide on this. He said that nowhere had it been said that if all the money were spent, there would be no further interest in spending money on land protection. He said the fact that they were where they were now was in no way inconsistent with what he thought the voters were thinking on this.

He said going through all possible properties for possible protection, and then sorting this out wasn't the way things worked. He said it had taken a few years to have these conversations with landowners of specific properties. He said if the Town had spent all the bond money quickly, he would be concerned, but he said he felt this process had been undertaken in an incredibly responsible way. He said his own vote would turn on whether this was an appropriate property to put under conservation easement, under the criteria that had been established. He said if it was, the Council should move ahead on it. He said when all the bond money had been spent, it would be a legitimate question to ask if the residents, and the Council, wanted to spend more money on land conservation.

Councilor Needell MOVED to extend the meeting past 10:00 pm. Councilor Julian Smith SECONDED the motion, and it PASSED unanimously 8-0.

Councilor Van Asselt said he agreed that the decision concerning this property could be made based on the criteria. But he said it was important to recognize the concern as to where the Fogg property fit in terms of meeting the criteria relative to other projects Mr. Hyde was working on. He said perhaps he was raising this concern because these projects had all come together in a short period of time.

Mr. Hyde said he understood what was being asked, and said he thought that talking about where things were headed with land protection projects in general, and asking questions about other properties, would be good idea. But he said he would be surprised if there were properties Councilors might be thinking of that the LPWG hadn't already thought of. He said the Fogg project was clearly a high priority project. He said there were a number of other properties that were important to the community, but said they were being addressed by other means.

Councilor Needell said he thought the Council had had this conversation before, perhaps in nonpublic session. He said it was important to prioritize projects in some way, but said he felt this had already been done, and the questions had been answered. He said the LPWG had spent a lot of time on this, and Mr. Hyde had provided the answer in various discussions that this was a high priority project, and that it was a no regrets decision concerning it. He said he personally didn't question that this project fit into the grand scheme. He said he agreed with Councilor Van Asselt's concerns in general, but said he didn't think there should be concerns about this parcel of land.

Chair Niman said Councilor Van Asselt's concern was important, and was one he himself had struggled with. He said he had been able to ask Mr. Hyde some questions about other properties that day, and had also asked if the Council spent all the money, people would say their property taxes were too high. He said this was a large responsibility, and said he took it very seriously as a member of the Council. He said he felt more comfortable, having asked Mr. Hyde these questions.

There was detailed discussion as to whether the Council should vote on the project that evening. Councilors Peter Smith, Needell, Niman, and Carroll said they were ready to vote.

Councilor Van Asselt said he was not sure he was ready to vote, stating that he was struggling with the project in terms of what priority it was.

Chair Niman suggested the Council could decide to go into non-public session to discuss the issue of the priority of the various projects.

Councilor Henry Smith asked for clarification of the process they were going through. He also noted there had been discussion about tweaking of the language in the agreement regarding the scenic view issue.

Councilor Peter Smith said a commitment had been made that evening that adding the language to accomplish this purpose would be agreeable to the landowners.

There was discussion about possible language that could be used.

Councilor Peter Smith spoke in detail about Mr. Hyde's fine credentials, and fine work as the Town Planner, and said he had had the privilege of working with him during that time. He said Mr. Hyde had done a lot of work on these projects, and was a competent, thorough, straightforward person. He said these things should be kept in mind when Mr. Hyde said he would be quite surprised if the projects had been done in the wrong order. Councilor Smith said he didn't think the facts warranted concern that there was some project around the corner that would be missed.

Councilor Leach said she was not ready to vote.

Councilor Julian Smith said he was ready to vote, but had a few questions.

Councilor Needell said he would be agreeable to having a non-public session if some Councilors thought this would be beneficial. He said he didn't deny the validity of the questions being asked, even though he thought these questions had been answered.

There was additional discussion on whether the Council should vote that evening.

Councilor Julian Smith noted the deadline for the grant, and said if the Council waited until September 25th to vote, this wouldn't allow much time to process the paperwork. He said that given the general mood of the Council, he felt the Fogg proposal would pass that evening.

Councilor Van Asselt said that was not a reason to vote, and said he personally didn't feel inclined to vote for that reason. He said the process given to the Council for this project was awful, and was contrary to what it had said it wanted, given the process for the previous three projects. He said there had been unanimous concern about this expressed by the Council. He said this was a legitimate concern about the process. He said he was inclined to support the project at this point, but did not feel any pressure that evening. He said part of his reservation about voting that evening was that Mr. Hyde had discussed a lot of new things that hadn't been brought up before.

Chair Niman said in developing the agenda for the meeting, he had suggested it would be a good idea to structure the process so the vote would not be taken that evening, so Councilors would feel they had the time to look over the documents, and think about the project carefully.

Councilor Needell said he was ready to vote, but was not insisting on it. He said he was confident that there wasn't a groundswell of information still to be gotten from the public, so he was not as concerned about the process as he had been three weeks ago.

Councilor Leach said she was concerned that the criticisms the Council had expressed about the previous process for the other three projects had not been addressed. She said another key thing holding her back was the question of how the project would be paid for, noting that Councilor Needell had expressed concern at the January meeting on how some of the proposed projects would be paid for. She also noted the legal issue, and said there were several questions that didn't have answers, and that Administrator Selig was not present to provide answers on them.

Councilor Julian Smith agreed that the process had seemed rushed, and said he shared the uneasiness expressed by others. He noted that he had encouraged Administrator Selig to get the Council the easement language as soon as possible.

Councilor Peter Smith said he felt strongly that the issue of where the money would come from was not a legitimate basis for delaying the vote. He said it was a different matter if one felt he/she didn't have enough information on the nature of the project. He said the funding mechanism wouldn't be decided that evening anyway. He also said the nature of this project was such that it didn't involve the legal difficulties that had existed for the other proposals, since the Town would own the conservation easement. He said the legal opinion therefore had no application to this project, but he noted that even if it did, the issue wouldn't be resolved that evening anyway.

Councilor Needell questioned Councilor Leach's statement that he had questioned how the project would be paid for, and she referred to the minutes of the January 23, 2006 Council meeting.

The Council took a break from 10:31-10:39 PM.

Chair Niman said he would like to close the public hearing, and place the vote on the Fogg project on the September 25th Council agenda.

Councilor Needell said if the Council was not going to vote on the project that evening, he didn't feel the public hearing should be closed. He said he had no problem with not voting that evening.

Councilor Henry Smith said he wouldn't insist on voting that evening, although he personally was ready to vote, having read through the information that had been provided.

There was further discussion on whether to close the public hearing, with Chair Niman noting he was simply trying to facilitate the process.

Councilor Carroll said she appreciated this, but said she thought the public should have the opportunity to comment further, so the public hearing should not be closed.

Councilor Van Asselt agreed with Councilor Carroll, stating it was important that the hearing be extended until the Council was comfortable voting, given the process they had all gone through.

Councilor Van Asselt MOVED to continue the public hearing on a request by the Land Protection Working Group (LPWG) and the Durham Conservation Commission relative to a conservation easement for the Fogg property to its meeting of September 25, 2006. The motion was SECONDED by Councilor Julian Smith, and PASSED unanimously 8-0.

- B. PUBLIC HEARING AND ACTION ON RESOLUTION #2006-18** authorizing the acceptance and expenditure of \$178,489.94 in unanticipated revenues from the New Hampshire Department of Environmental Services for a State Aid grant for closure of the Durham landfill.

Business Manager Gail Jablonski summarized the status of the landfill closure project, and the need for the Council to authorize the acceptance and expenditure of further grant funding for the project.

Councilor Henry Smith MOVED to open the public hearing on Resolution #2006-18 authorizing the acceptance and expenditure of grant funds from NHDES Landfill Closure Grant Number L-132 totaling \$178,489.94 for the purpose of the closing of the Durham Landfill. Councilor Needell SECONDED the motion, and it PASSED unanimously 8-0.

Councilor Peter Smith MOVED to close the public hearing. Councilor Van Asselt SECONDED the motion, and it PASSED unanimously 8-0.

Councilor Peter Smith MOVED to adopt Resolution #2006-18, as presented, authorizing the acceptance and expenditure of grant funds from NHDES totaling \$178, 489.94 for the purpose of the Durham Landfill Closure, and authorizing the Town Administrator to sign the annual “Application for Annual Installment of State Grant for Landfill Closures Under RSA 149-M” and any applicable grant award paperwork. The motion was SECONDED by Councilor Van Asselt, and PASSED unanimously 8-0.

- C. Discuss and finalize tentative agenda for the Town Council work session scheduled on September 18, 2006 regarding the Library

Councilor Carroll noted that there were only three potential sites for a new library, since the Mill Pond Center had been removed from consideration.

Councilor Van Asselt said he would like to see what the Library Trustees had done concerning raising money, which was a pretty relevant question. He said he wanted to be sure they had that information ready for the work session. He also said that while it was easy to start talking about dimensions, etc. of the library, there were bigger issues to talk about than that at this point, and he urged some discipline by the Chair concerning this at the work session.

Councilor Needell asked for clarification on what was being asked of the Trustees regarding funding.

Councilor Van Asselt said he was curious as to how the Trustees would be doing fundraising.

Councilor Peter Smith said he wouldn't be at that meeting, and said he hoped that in the discussion on fundraising, the facts would be laid on the table as to where the Trustees were on fundraising. He said his view remained that the bulk of funding for library should have been collected.

Councilor Julian Smith said the Trustee had an answer to that question.

Councilor Needell asked whether the question was where were the Trustees with fundraising, or where they were going with fundraising.

There was discussion that both questions should be asked.

Councilor Carroll said she would not be at the meeting. She said it would be good to see what had been done with money that had been given to the Library in the past. She also said she hadn't seen any information from the Trustees on projected operating costs for a new library in the future.

Councilor Peter Smith said that was an incredibly important matter to discuss. He noted that the annual budget of the library was a Town Council responsibility, according to the law. He also said the issues of size, staffing, etc. had to be realistically faced before any building was built. He said the notion that if a new library were built, operating expenses would be anything like what they

currently were was a fantasy. He said he didn't want the Town to build a library, and then have it be open only two days a week.

Councilor Carroll said whenever she had asked what was being done regarding fundraising, she was told that when the site was chosen, then the fundraising would begin. She said the chart provided by the Trustees didn't reflect that.

Councilor Peter Smith said the constant refrain of the Trustees had been that it would not be possible to raise the money until the site was selected, He said he had disagreed with this, but said it had come down to this now, if a site were selected soon.

Councilor Leach asked what materials the Council should have for the session that hadn't yet been provided. She also asked if the goal was that at the end of the work session, the Trustees and Council would agree on the site to move forward with, and if this was not the goal, where they all should try to be at the end of the session.

Chair Niman said his thoughts had been changing concerning this. He said his hope had been to reach consensus on the site, and on the funding, but said he wasn't sure that would be possible. He said each of the potential sites posed different challenges, and said he thought it would be good to reach consensus on the pluses and minuses of each of them.

He said if this could be accomplished, it would represent some progress. But he said there were still other issues to address, such as how big the building would be, whether the Town Hall would be included with it, the funding, and what the Town could afford in terms of a future operating budget. He said his sense was that as a result of the work session, the Trustees would have described their expectations, and the Council would have discussed its concerns, and out of that, there will be a meeting of the minds.

Councilor Peter Smith said concerning the materials that should be made available, he urged that the materials developed by a consultant some years ago be reviewed by Councilors before the meeting.

It was agreed that copies of this would be provided to Councilors prior to the meeting. Chair Niman also asked that tax maps of the potential sites and their surroundings be provided.

Councilor Leach noted the previously done rendering of a potential library building, and it was noted that this was no longer relevant.

Councilor Needell said the issues mentioned by Councilor Van Asselt loomed over the whole discussion, and said perhaps they should be addressed first. He also noted that if the combined library/Town Hall approach was preferred, that eliminated some options, so perhaps there should be agreement on this issue first.

There was discussion about this, and on how best to structure the work session. There was discussion that it perhaps made sense to discuss the Other Issues before the Site selection process.

Councilor Peter Smith said the heart of the discussion was these Other Issues (size of library, combined library/Town Hall, Operating budget, Funding). He said if money was no object, a library

could be built in various places in Town. But he said the money issue influenced all of the other issues.

It was agreed that the Agenda would be changed to reflect these comments.

D. Other business

XI. Council and Administrator Roundtable

It was agreed the Council should probably skip the Roundtable that evening.

Councilor Needell said it was important that Councilors should feel very comfortable speaking up and saying they needed more time before making a decision. He said he was glad the Council had respected that.

Councilor Julian Smith asked when the 401 restriction issue regarding the Lamprey River would be on a Council agenda.

Councilor Van Asselt said he had discussed this with Administrator Selig, and said his sense was that Administrator Selig knew what he was doing on this issue, so it was important to let him work it out. He said he would tell this to Bill Hall or anyone else who questioned this.

Councilor Van Asselt MOVED to adjourn the meeting. The motion was SECONDED by Councilor Peter Smith, and PASSED unanimously 8-0.

Adjournment at 11:10 pm

Victoria Parmele, Minute taker