

This set of minutes was approved at the February 19, 2007 Town Council meeting.

**DURHAM TOWN COUNCIL
MONDAY, JANUARY 22, 2007
DURHAM TOWN HALL – COUNCIL CHAMBERS
7:00 PM**

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

MEMBERS ABSENT: Councilor Diana Carroll (participated by telephone conference call)

OTHERS PRESENT: Town Administrator Todd Selig; Town Planner Jim Campbell; Gail Jablonski, Business Manager; Michael Lynch, Director of Public Works; David Kurz, Police Chief

I. Call to Order

Chair Niman called the meeting to order at 7:04 PM.

II. Approval of Agenda

Councilor Van Asselt MOVED to approve the Agenda as submitted. Councilor Julian Smith SECONDED the motion.

Councilor Van Asselt asked if Agenda item XI B could be moved up to the Unanimous Consent Agenda. The Council agreed it would be called Item VII C.

Councilor Van Asselt MOVED to amend the Agenda by changing Item XI B to VII C. Councilor Morong SECONDED the motion, and it PASSED unanimously 8-0.

The agenda as amended PASSED unanimously 8-0.

III. Special Announcements

None

IV. Approval of Minutes

December 11, 2006

Councilor Needell MOVED to approve the December 11, 2006 Minutes as submitted. Councilor Julian Smith SECONDED the motion, and it PASSED unanimously, with Councilor Henry Smith abstaining because he was only present for part of the December 11, 2007 meeting.

December 18, 2006

Councilor Leach MOVED to approve the December 18, 2006 Minutes as submitted. Councilor Julian Smith SECONDED the motion, and it PASSED unanimously 8-0.

Councilor Carroll spoke to Council members through a speakerphone, and said she was glad to be able to participate in the meeting, although she was not present. She said she would like to be able to vote that evening, but said she would be willing to defer to the Council and let it have a discussion as to whether she should in fact be allowed to be a voting member that evening.

Administrator Selig explained for members of the public that Councilor Carroll was unable to be present at the meeting because of illness, and was speaking to the Council and himself via a speakerphone.

Councilor Julian Smith asked that the minutes reflect that Councilor Carroll had not voted on the first two Agenda items, and suggested that the Council could discuss the matter of her voting while not being present at the meeting under the Roundtable discussion.

Chair Niman agreed this discussion would take place at the beginning of the Roundtable discussion.

V. Councilor and Town Administrator Roundtable

Chair Niman asked how Councilors would like to approach the idea of allowing a Councilor member to vote when this person was not present at the meeting.

Councilor Peter Smith said there were both legal and policy issues, and he asked Administrator Selig to tell the Council whether there was a clear answer to the legal issue.

Administrator Selig said the opinion of the Council's Attorney was that a member could participate by speakerphone as long as it was a public meeting and the public could clearly hear the Councilor's comments. He said the policy issue was a broader one, and he provided details on this. He said it could be a problematic situation if more members than one were doing this, but said that the present situation was a far stretch from that.

Administrator Selig also noted that in 2002, a member of the Council had experienced some medical issues, and had participated in a Council meeting by speakerphone. He said at that time, the Council had allowed the Council member to participate in the discussion, but was uncomfortable with allowing the member to vote, and this did not happen.

Councilor Peter Smith said he was prepared to say that this would not be a problem as a legal matter as long as any vote the Council took was one that would carry the majority of the quorum present at the meeting without Councilor Carroll's vote destroying the majority.

But he said that there were some potential problems whose answers were not so easily determined, for example, if a number of Councilors were not present and wished to participate in the meeting in this way. He said he just didn't want the Council to create any precedents that hadn't been carefully thought out.

Administrator Selig said if the Council was voting in a quasi-judicial capacity, this might have implications on the appropriateness of a teleconference vote. But he said this present situation was uncharted territory, and noted that the Town had asked the NH Municipal Association to look into

these kinds of issues with the Legislative Right-to-Know committee. He said the critical thing was that this was a public meeting and said he didn't see a problem with doing this in this instance because there was no room for confusion.

Councilor Needell said he saw no problem with allowing an absent member to vote.

Councilor Van Asselt said he thought that if a Councilor was present at the meeting, he/she got to vote, and if not present, he/she should not get to vote.

Councilor Julian Smith said if a Councilor was not at the table, he/she should not be able to vote.

Councilor Henry Smith said it was excellent that Councilor Carroll was participating in the meeting, and noted that she had deferred to the Council on the matter of voting. He said he thought that she should not vote at the present time, but also said the Council should try to resolve this policy issue.

There was discussion that if there were two Council members (but no more) with medical issues who were unable to attend a Council meeting, they would be able to participate in the Council meeting, at least from a technical perspective.

Councilor Leach said she had no opinion on this matter.

Councilor Morong said he was not comfortable with that idea of voting by phone.

Chair Niman said he was not comfortable with this idea, but said he would like to talk about it in the future.

On a separate topic, Chair Niman said he had recently had a discussion on a tentative new contract with Administrator Selig. He said this would be passed on to Attorney McKittrick, would then come before the Council at its next meeting, and would be voted on by the Council at its 2nd meeting in February.

Councilor Leach asked how this process coincided with the evaluation process concerning Administrator Selig.

Administrator Selig said it would be better for the Council to discuss the evaluation when members had the contract in front of them.

There was discussion on the status of the evaluation surveys that had been sent to Councilors by e-mail concerning Administrator Selig, and it was noted that some Councilors had not even received them yet.

Councilor Morong said he would like to discuss the evaluation tool itself, and stated that he was not impressed with it.

In answer to a question from a Councilor, Administrator Selig explained that he had a 3-year contract with the Town, which ran through the 2007 calendar year. He provided details on this, and said that by March 1st, agreement needed to be reached on the new 3-year contract. He said in order to act within that time frame, he would devote time to this matter in February. He noted that the pay

level was already set, and said the annual evaluation would have no bearing on it. But he noted that in discussions being held on the contract, they were looking at changing the compensation to be in part based on the evaluation.

Administrator Selig stated that the filing period for those Durham residents wishing to run for elected Town positions was from January 24th to February 2nd. He said there were three 3-year positions for the Town Council, three 3-year positions for the Library Board of Trustees, and one 3-year Trustee of the Trust Fund position.

Administrator Selig noted that he had previously told the Council that he and Business Manager Gail Jablonski would be meeting with ORYA, to see if the Town could take on some of the organization's bookkeeping services. He said this meeting had occurred, and said it did not appear that the Business Office had sufficient staffing capacity to take that on, so the idea was not feasible.

Administrator Selig said the Town had received one response to the RFP for the development of the Durham Business Park of Durham BP, - from Chinburg Builders. He said the Economic Development Committee would be meeting on Wednesday to discuss this proposal.

Administrator Selig said that day, Chair Niman, Mr. Campbell and he had met with Municipal Resources, Inc. representatives and University representatives to discuss the idea of a possible business incubator program in Durham, from which technology spin-off companies could be developed on taxable properties in Town. He said it was a very positive discussion.

VI. Public Comments (*NLT 7:30 PM*)

Richard Laughton, 188 Wednesday Hill Rd, said that at a recent Council meeting, there was discussion regarding the retirement program for University police officers, and the possible idea of the police officers moving to the State retirement plan. He provided details on this. He said in this instance, the University police were only looking at the retirement package, and said this had nothing to do with any possible issues involving consolidation of the Durham and University police departments.

He explained how legislation would be needed to make the change in the retirement package for the UNH police officers, explaining that there were big differences between their existing package and the potential package, including a big difference in the death benefit. He also noted that if the University and Town police departments were to consolidate in the future, the University officers would get these retirement benefits because the Town of Durham Police Department already had them. He said campus police were negotiating with the University on this matter at present, and were trying to get state legislation passed.

Bill Hall, Durham, Durham, noted that at the Council's recent discussion regarding the fire inspector position, Chief O'Leary had provided a soft presentation. He provided details on this, and on how fire inspections had gone in Chief O'Leary's first year on the Fire Department.

Mr. Hall also provided details on how Code Administrator/Enforcement Officer Tom Johnson and Assessor Rob Dix could assist with fire inspections, and he provided additional details on the fire inspector role. He said the need for fire inspections was driven by the existence of the University, and said that while he didn't deny the need for an inspector, the Town shouldn't be paying for it. He

provided details on the quality of fire inspections done in Dover, Portsmouth, and at UNH. He also said he had a great deal of experience with inspection issues in Durham, and among other things, he noted two incidents that reflected poor inspections practices in the past.

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

Chair Niman noted that Item A was being pulled off the Unanimous Consent Agenda.

- B. Shall the Town Council approve the bio-solids (sludge) hauling and disposal agreement with Resource Management, Inc. as recommended by the Department of Public Works?

Councilor Carroll said she didn't want to pull this from the Agenda, but would like to make a comment about Item B.

Chair Niman said unfortunately the rules of procedure for Unanimous Consent Agenda Items said that these items could not be discussed unless they were taken off this Agenda. He suggested that perhaps Councilor Carroll could make her comments on this Item at the next Council meeting.

Councilor Carroll said that would be fine.

- C. **FIRST READING ON ORDINANCE #2007-02** amending Chapter 153 "Vehicle and Traffic" of the Town of Durham Code by reducing the current speed limit on Stagecoach Road from 35 MPH to 25 MPH.

Councilor Leach MOVED to approve Unanimous Consent Agenda Items B and C. Councilor Van Asselt SECONDED the motion, and it PASSED unanimously 8-0.

- A. Shall the Town Council ratify the Collective Bargaining Agreement between the Town of Durham and the Durham Police Officers Association (DPOA) by the New England Police Benevolent Association Local #21 for the period January 1, 2006 through December 31, 2008?

Councilor Needell MOVED to ratify the Collective Bargaining Agreement between the Town of Durham and the Durham Police Officers Association (DPOA) represented by the New England Police Benevolent Association Local #21 for the period January 1, 2006 through December 31, 2008, Councilor Morong SECONDED the motion.

Councilor Peter Smith said he had asked that Item VII A be pulled off from the Unanimous Consent Agenda, because it was a very significant item, and he asked that Administrator Selig inform the public about what was being done here, and why it was important.

Administrator Selig provide details on the proposed three-year agreement, including details on the negotiation process. He noted that the Durham Police Association had changed affiliation to a different bargaining unit, which had delayed negotiations for a time. He said negotiations resumed in early fall of 2006 and continued until several weeks ago, when a tentative agreement was reached.

He said he was pleased to report that the negotiations had been very cordial, and the tentative agreement was very positive for the Town and for the police officers. He said in general, the contract called for a one-time market adjustment 1.5% increase across the board, effective January 1, 2006, in order to address the pay of Durham police officers relative to officers in 20 comparable communities in the state, primarily in the Seacoast area. He said the goal was not to have the highest paid department but also not to have the lowest either, and to predicate the wage scale on the average they found from the survey.

Administrator Selig provided details on the fact that the wage scales for police officers would increase by 3% in 2006, which was consistent with the increase given to other bargaining units in Town. He said the increase would be 2% in 2007, and 2% in 2008, and said it was felt that this would keep the Town's officers competitive with respect to the local market. He noted that looking ahead, the Town was concerned about tax increases, and said 2% increases would give the Town time to work on economic development. Administrator Selig said he recommended that the Council ratify this agreement, stating that it was fair, and was very reflective of keeping the local budget being in check for taxpayers.

Councilor Peter Smith noted that Police Chief Kurz had said that 90% of the Police Department budget was for employee salaries, and he also said that 70% of local taxes went to pay for public employees. He said Administrator Selig had done an outstanding job, involving a great deal of skill, on these negotiations.

Councilor Peter Smith spoke directly to Durham police officers who were attending the Council meeting, and said it was regrettable that because of the nature of how this Town operated, and because of the need for a larger Police force, the Town couldn't give them considerably larger increases. He said he wanted them to know that the citizens of Durham had enormous pride in the Durham Police Department, and said a Town like Durham that was concerned about personal liberties was very lucky to have them.

Councilor Henry Smith said it was very important to note that the financial impact went down considerably for the last two years of the contract.

The motion PASSED unanimously 8-0.

VIII. Committee Appointments

Appoint two citizen representatives to the newly formed Mill Plaza Study Committee?

Administrator Selig said that 5 people had expressed interest in being representatives, but said the list was reduced to 4 because one of the applicants, Edward Garcia, did not live in Durham. He said it was up to the Council to choose who should be appointed.

Councilor Van Asselt said he would like to express his concerns about what was proposed, stating that the Council didn't have the time or level of preparation to make this decision, especially given that nine members would be trying to do this.

He said he would prefer that the applicants introduce themselves, and then have Administrator Selig and Chair Niman make the selections and recommend them to the Council.

Councilor Julian Smith said he had read the statements from the applicants and said they were all well qualified. He suggested that the decision should be based on longevity and proximity, and said he therefore thought the Council should appoint the person who had lived in Durham the longest, and the person who lived closest to Mill Plaza.

Councilor Peter Smith said it had only been in recent years that applicants for positions were invited to speak like this. He said these were important appointments, and said the Council had an obligation to hear from these folks. He also said he would be happy to postpone the decision in order to get additional input that might generate further discussion.

Councilor Needell said he didn't think the Council could delegate this decision-making at that point. He also said he had read the resumes, and said he was not particularly interested in the applicants' views on Mill Plaza, but was interested in people who were willing to work with the information at hand.

Chair Niman said he would prefer to have the Council make these decisions.

There was discussion on whether it was necessary for the Council to decide on this matter that evening.

Dave Howland, 5 Chesley Drive, said he lived two doors down from Mill Plaza, and that he taught English at UNH. He said he was excited that the Town wanted to take a serious look at the future of the Plaza, and said the task of having a conversation with residents about how it could evolve was an important one. Mr. Howland also said his doctoral work in the UNH Natural Resources Department on ecological sustainability. He said the Plaza was a prime piece of real estate, and was a prime people space, and said he would like to see the Plaza be a vibrant, welcoming town center.

Tom Newkirk, 40 Mill Pond Road, said he had lived in Durham for 20 years, and had walked Mill Plaza many times over those years. He said for the past several years, as a member of the Red Tower Neighborhood Association, he had been active in the Red Tower District, which adjoined part of the Plaza property. He said he had sensitivity to that end of the neighborhood, and said that certain encroachments there could be controversial. He said he felt there was much potential for developing a sense of community with possible redevelopment of Mill Plaza, and noted that he had seen the evolution of Durham Market Place as a social center over the past several years. He said he was a good listener, and would be happy to serve on the committee.

Deborah Hirsch Meyer, 19 Garden Lane, said she was interested in and excited about this project. She noted that she was active with the Friends of the Library. She said she was concerned about space issues facing the current Library, and said a new home for the Library would better meet its needs and the Town's needs.

She also said she was interested in the project as a resident of the adjacent neighborhood, which had no formal association but had talked about forming one. She said she had some sensitivity to the concerns of people living there, and was concerned about how the development would impact the neighborhood, not just the cars, but people, parking, etc.

Ms. Meyer explained that she had been a social worker for over 20 years, and had strong interpersonal skills and experience in group dynamics. She said she had no specific visions for Mill Plaza, and was more interested in the process of coming up with something. She described growing

up in a community in Bethesda, MD, which had been formed as a cooperative, and said the strong sense of community she had felt there was something that wasn't available to a lot of people anymore. She said she would like to work toward a greater sense of community in Durham.

It was noted that applicant Tom Bebbington was not present that evening.

Chair Niman thanked all of the applicants for applying, as well as attending and sharing their thoughts.

Councilor Julian Smith said as the Council representative to the Mill Plaza Study Committee, he felt that all candidates were qualified, but stated again that he thought the simple thing to do was to choose the two members of the committee based on length of residence and proximity of residence to Mill Plaza, which was why he was nominating Mr. Howland and Mr. Newkirk.

Councilor Peter Smith said he would also like to nominate Deborah Hirsch Meyer to be a member of the committee.

Administrator Selig said there was no reason why they couldn't expand the number of residents serving on the committee, stating that including all three would make the committee more useful.

Councilor Leach noted that other residents could be part of the process, whether they were members of the Committee or not.

Councilor Henry Smith noted that the Council had recently passed a Resolution stating that there would be 12 members of the Committee, and that appointing 3 resident members would affect this.

Administrator Selig suggested that the Council could amend that Resolution, and could then make the 3 appointments.

Councilor Peter Smith complemented Administrator Selig for this elegant solution. He said he was impressed by the background and capacities of all three applicants, and would support a motion to nominate all 3 of them to the Mill Plaza Study Committee.

***Councilor Van Asselt MOVED to expand the Mill Plaza Study Committee by one person.
Councilor Leach SECONDED the motion.***

Councilor Van Asselt said what Administrator Selig had said made sense. He said it was important to have the voices of the neighborhood on the committee, and said he agree all three candidates should have the chance to serve on it.

Councilor Needell said his only concern was that the committee was already large and unwieldy, and said having 13 members instead of 12 would make the situation even more complicated. He noted that the committee's task was to have a report ready by May. He also said there had been other recommendations to expand the committee and the response had been that the committee needed to be kept manageable. He said he felt making it larger wouldn't help, although he agreed with why it made sense for these three people to be on the committee.

The motion PASSED 6-2, with Councilor Needell and Councilor Morong voting against it.

Councilor Van Asselt MOVED to appoint Dave Howland, Tom Newkirk, and Deborah Hirsch Meyer to be citizen representatives to the newly formed Mill Plaza Study Committee. Councilor Leach SECONDED the motion, and it PASSED unanimously 8-0.

IX. Presentation Item

Discussion on the creation of Tax Increment Finance (TIF) districts – Municipal Resources, Inc. (MRI)

Administrator Selig provided a brief introduction, noting that the Economic Development Committee had been looking carefully at ways to expand the tax base, and said one of the ideas discussed over the last several months was TIF districts. He said Don Jutton, of Municipal Resources, Inc. had been hired to help evaluate whether TIF districts made sense for Durham, and also to look specifically at where the Town might move forward with such a district(s). He said Mr. Jutton was present to provide a slide presentation on this topic.

SLIDE PRESENTATION

Mr. Jutton explained that a TIF is a financing/investment tool to provide funding for public improvements that are intended to stimulate positive economic development activity that will not otherwise occur, in order to expand the municipal tax base. A TIF district does not change zoning requirements; it does not increase taxes within the District; it does not create special fees or assessments within the District; and it does not change property rights.

Types of Improvements that can be done with a TIF

- New or upgraded streets & sidewalks
- Traffic signals
- Sewer collection & disposal
- Public water supply
- Parking
- Landscaping & other public improvements

How Does a TIF work?

The tax revenue from the new “captured assessed value” can be used only for plan implementation in the district. Once the designated plan has been implemented and improvements are paid for, the district ceases to exist and all future tax revenues generated in the district go to the general revenues of the Town.

As a result, public improvements are made with no increased tax burden to existing property. In addition, desirable economic development is stimulated, and the tax base is expanded.

How is a TIF set up?

The Town Council must adopt RSA 162-K, which allows for the creation of TIF Districts. The Town Council designates a “district” and describes boundaries and relationship to the Master Plan, Zoning,

and/or other regulations, after holding a public hearing. The Town Council then adopts a detailed “development program” (RSA 162-K:6) that specifies the improvements, after holding a public hearing. Finally, the Town Council adopts a “tax increment financing plan” (RSA 162-K:9&10) that specifies the financing structure, after holding a public hearing.

The Council must designate a District Administrator who can be an existing or new officer, department or corporation (RSA 292). The Administrator’s duties are delineated by the Council to whom the Administrator reports. A report on the District must be included in the Annual Town Report.

The Town Council appoints an Advisory Board that must consist of residents or owners in or abutting the District. The Board advises the Council and District Administrator on planning, construction, implementation, maintenance and operation. In instances of disagreement between the Advisory Board and Administrator, the Council has final authority.

Basic Rules of a TIF

- Money raised in the district must be used to implement the plan & directly impact the district. Once established, there is a limit of 5 years to adjust the boundaries.
- Town Meeting determines how money is spent.
- Money must be spent in accordance with the official plan adopted by Town Meeting.
- No one TIF district can include more than 5% of a community’s assessed value, or more than 1.5% of a community’s land area.
- All TIF districts combined cannot exceed 3% of the community’s land area.

What Happens with the “Increment”

New Hampshire Examples:

City of Keene:

Keene wanted to establish a new industrial park. The park cost \$4 million to develop. A TIF District and District Plan dedicated the Tax increment to service debt for the cost of development. The City issued a \$4 million bond. 13 new businesses generated over \$20 million in new tax increment. Of that, \$11 million was added to the general fund.

Town of Peterborough:

Peterborough wanted more commercial development in the existing commercial core. Small infrastructure improvements would be needed, but no single project could generate funds to pay off a bond. The Greater Downtown TIF was created to act more as a savings account. Once sufficient new tax value has been created, then Town meeting will be asked to spend money from the TIF account or issue bonds with the payments coming from the account. A “sun setting” provision sets the date the District Plan will expire unless extended by Town Meeting.

Town of Raymond:

Raymond wanted commercial development to occur in the area near Exit 4 on Rt. 101. A wastewater collection, treatment and discharge system was needed to attract development. Raymond is an SB2 community, and the vote was 72% last fall in favor of the TIF District. Raymond expects this development will cost \$12 million with a \$962,000 annual district cost including Debt Service. Current value assessed at \$7.8 million. Future value projected to be \$100-\$150 million.

How could it work in Durham? Example: Proposed Stone Quarry TIF

Fund extension of public utilities to attract commercial development to the Route 4 and Route 108 interchange. Expanded tax base; Increased revenue; Employment opportunities.

He said would work in this way, Right now, property out there is worth about \$2.6 million, and generates \$65,000 in annual property taxes. If Town-created TIF district and bonded \$725,000 to run water and sewer out there, the development's projected value would be 16-17 million, which would generate additional taxes of about \$354,000 per year at full buildout.

He said district currently generated \$65,000, so would generate 419,000, The \$65,000 would be frozen, so the pre TIF Benefit would be the same. and the new increment would be \$354,000, of which \$55,000 would be used to service the bond for 20 years, which would create \$299,000 in new tax revenues. He said it was important to recognize that this would not happen instantaneously He provided further details on this. and noted there would need to be some assurance that the \$55,000 would be paid. He noted with the Raymond project, the developer had guaranteed and provided surety to guarantee the annual payment until property valuations in that district reached or exceeded the value needed to service the debt.

Needed Improvements:

Wastewater collection extension
Water main extension

Mr. Jutton said that regarding the idea of using the proceeds to pay off the bond as quickly as possible, some communities like Hooksett did this, but he said for others, sharing the tax benefits with residents as soon as possible was important.

Summary of Benefits

- Commercial development is encouraged in an appropriate area.
- Tax base is expanded and diversified.
- Public improvements are made without increased tax rates.
- General Fund revenues increase.

Chair Niman asked Councilors if they had questions.

Councilor Needell noted Durham's membership in the School District, and asked how a TIF would affect the apportionment formula. He also asked whether as the property assessment grew, before the debt service was paid, the cooperative school district taxed that. There was discussion about this with Mr. Jutton, and they both said it was their understanding that it did not.

Councilor Needell asked if the School district had a vote as to whether a TIF district was set up, and Mr. Jutton said no, noting the School District and the County Commissioners had to be consulted, but ultimately, it was the Town's decision.

Councilor Needell asked for an example of where a TIF district had failed.

Mr. Jutton said a TIF district had failed in Manchester, and he provided details on this. He also said there were some potential TIF district projects that didn't get approval at town meeting. But he noted that most of the TIF projects he had been associated with included a guarantee, so failure didn't impact the community, but instead impacted the developer.

Councilor Peter Smith said he assumed that the premise of a TIF was that without it, a developer either wouldn't move ahead with a project at all, or wouldn't move ahead for some time, etc., and that the theory was that a TIF meant things could go faster. He said in terms of failure, it needed to be defined what that meant. He said if the Town had great expectations of a type of development and it didn't happen, there might be a failure to the developer monetarily, but also failure to the Town, as indicated by other measures.

Councilor Smith said that regarding TIF districts, one issue had to do with how things could be moved faster to get development and revenue, and a second issue had to do with how to minimize the financial risk to a town if it didn't work. He said a third issue was minimizing risk, or knowing what the risk was, if the wrong things got developed from the perspective of the town, in terms of money brought in, the kinds of services brought in, and what happened several years down the road. He said more needed to be considered upfront than simply the initial tax financing aspects of this approach.

Mr. Jutton said a TIF district was not a land use tool, so that if an objectionable use were allowed there today, the district would not impact that. But he said it might give the Town some leverage with a developer, because if the Town didn't agree, the development couldn't move ahead. He provided some examples of this.

There was detailed discussion about this with Council members.

Mr. Jutton said that concerning the \$55,000 debt payment for the kind of development anticipated out at Stone Quarry Drive, he would be surprised if the developer wasn't easily convinced to provide the guarantee. He said existing infrastructure would be extended to the development so the situation was fairly simple, so the issuance of bonds could be timed to the developer's development scenario, and his payments could come due about the same time the taxes came online.

Councilor Van Asselt asked if in the five years that the adjustments to boundaries to the TIF district could be made, whether those boundaries had to be contiguous.

Mr. Jutton said yes, stating there had to be some rationale nexus for them.

There was discussion that perhaps separate TIF districts would be needed for Stone Quarry Drive and the Downtown. It was noted that several districts could be created, and the limitation was simply that only a percentage of the Town's assessed value and land area could be used for them.

Councilor Henry Smith asked what the downside of a TIF district was, if a developer assumed the guarantee.

Mr. Jutton said a Town needed to be sure that where the TIF district was being established was where it wanted to see growth, and said it was important not to create more problems than the tax base was able to solve. He said this was one of the reasons why Master Plan issues were addressed in establishing a TIF district. He said in Raymond, the Town wanted commercial retail development, while in Keene, the TIF district was designated for commercial/industrial development. He also said it was important not to establish a district where Town's infrastructure wouldn't support the growth.

Councilor Peter Smith asked if Mr. Jutton's work included making an assessment regarding Stone Quarry Drive, and whether a TIF district would be necessary in order for development to take place within a certain time frame.

Mr. Jutton said that wasn't the specific question he was asked, and also noted that other options could be looked at, such as CDBG grants, the State revolving loan fund, etc.

Councilor Peter Smith said he assumed that a fairly early threshold question was whether the Town wanted to encourage economic development in this area, and also whether this particular device was necessary in order for that to happen faster.

Mr. Jutton said he assumed the Council would ask him those questions, and he would have to answer them. He noted that there was a stable full of economic development tools for the Town to work with, and also said it was up to the Town to decide whether it wanted development.

Break 8:58 – 9:06

X. Unfinished Business

CONTINUED PUBLIC HEARING AND ACTION ON ORDINANCE #2006-07 amending the following sections of Chapter 175 "Zoning" of the Durham Town Code pertaining to timber harvesting/forestry:

1. Article II, Section 175-7 "Definitions"
2. Article XIII, Sections 175-60, 175-61, and 175-65 "Wetland Conservation Overlay District"
3. Article XIV, Sections 175-69, 175-71, 175-72, and 175-75.1 (A & C) "Shoreland Protection Overlay District"
4. Article XX, Sections 175-109 (L) "Performance Standards"
5. Article XII, Section 175-54 "Zone Requirements"

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

Duane Hyde, 47 Emerson Road, said he was present on behalf of the Conservation Commission, in response to the Council's request that the Commission review the proposed forestry related changes to the wetland and shoreland overlay districts. He said the Commission appreciated this opportunity, and noted they had held a special meeting the previous Thursday to do this review. He provided a memo on this to Council members.

Mr. Hyde said the Commission believes the Zoning Ordinance would be more user-friendly with the revised provisions, but said it saw no dramatic change in the intent of the provisions. He said the Commission recognized that there were a relatively small number of owners having enough land to practice viable commercial forestry, although noting it was important that they still be able to do so.

He said forest management was one way to prevent land from being converted to another use, and said the Commission definitely wanted to keep working forests working. He noted that Planning Board Chair Richard Kelley was at the meeting, and was a tremendous asset to the Commission, as was Rob Keefe, who has been active with the Planning Board and Zoning Rewrite Committee.

Mr. Hyde next outlined three suggested changes to the provisions.

1. He said the current proposed definition of forestry, although not inaccurate, didn't necessarily capture the entire sense of what constituted forestry. He said the Commission recommended a definition that was used by most of the conservation organizations in the State, when defining forestry in conservation easements.
2. He said the Commission recommended that the Performance Standards for Forestry in the Ordinance include a requirement that forest landowners sign and attest a form that summarized the Forestry provisions in the Ordinance and that they had reviewed the provisions, and that their forestry would be conducted in accordance with the Town's Ordinance.

Mr. Hyde said the Commission felt it was important that landowners know the provisions, and he said this was a relatively simple way to ensure better forest practices.

3. He said the Commission recommended that the "recommended" buffer provisions from "Good Forestry in the Granite State" be included as required buffers in the Zoning Ordinance's Performance Standards for Forestry. He outlined these recommendations.

Councilor Peter Smith asked what the Commission's conclusions were regarding the issue of whether the conditional use concept should be used for forestry, noting Rob Keefe's recent letter. He also asked what the Commission's conclusion was as to whether or not these were minor changes to the Ordinance that were being proposed.

Mr. Hyde said the Commission had discussed Mr. Keefe's idea, and had thought it had merits. But he said once the Commission had thought about it more, it decided it was not appropriate, because it would be too much of a process to put someone through. He also said that when they had thought about what the Ordinance actually said, and the fact that these performance standards were embedded in it, this became almost like conditional use.

Concerning Councilor Smith's second question, Mr. Hyde said the Commission had debated whether these changes would constitute significant changes and thus would need to be remanded to the Planning Board. He said the Commission had realized it was not its place to make that decision, but said Chair Kelley had said at the Conservation Commission meeting that he thought they were significant enough to send back the Planning Board for review. He said the Commission had then said it should err on the side of caution, and the changes should go back to the Planning Board.

Councilor Needell said he had also been at the meeting, and appreciated the thoughtfulness that had gone into these recommendations. He also noted that because he sat on the Planning Board as a Council representative, he had been involved in this issue over the past several months. He said he thought these recommendations were not at all unreasonable, and in fact improved and clarified the provisions in various aspects.

He said after the public hearing was closed, the question was whether to accept the Commission's well-intended changes, but he said it would be difficult that evening for the Council to decide on this. He said he felt the recommended changes should be remanded to the Planning Board, but he asked whether the Council would be remanding them with an endorsement or not.

Councilor Leach said her understanding was that the original provisions in the Ordinance were too restrictive, and she asked if these recommended changes would put it back to being more restrictive. She said she was looking for the forestry perspective on this, and asked if Don Quigley supported the recommendations.

Councilor Needell said public comments that night were welcome, but he said the public also needed a chance to digest this information from the Conservation Commission. He said this was why it would be important to go back to the Planning Board for a hearing for which there was plenty of notice, and then to bring this back to the Council for another hearing.

Mr. Hyde said the Conservation Commission's concern had been that the relevant provisions in the key documents that were referenced in the Ordinance should be included in the Ordinance.

Councilor Van Asselt said it wasn't clear whether these recommendations were minor or substantive changes.

Councilor Needell said he thought that just changing "should" to "shall" put the recommendations over the threshold, and said he therefore didn't think there was any choice regarding the matter of remanding the proposed changes back to the Planning Board. He said the Council should err on the side of conservatism, in keeping the public process open.

Councilor Peter Smith said there was consensus that the proposed changes should be remanded, on the basis that one had to be very cautious, in saying a proposed change to the Ordinance was minor. He said a problem which the third recommendation dealt with was that the earlier draft of the provisions talked about the publication "Good Forestry in the Granite State", but didn't really recognize that this wasn't written in the letter of the law, so referencing resulted in some ambiguity. He said that by itself could be argued was a substantive change, and said problems would be avoided by being cautious.

Don Quigley congratulated the Conservation Commission for the recommendations, noting they had put a lot of time into them, and said it was a good idea to send them back to the Planning Board. He also said that shifting from "should" to "shall" raised some important issues, one of which related to enforceability.

Mr. Quigley went through each of the three recommendations:

1. He said he agreed that the Conservation Commission had come up with a better definition for forestry, and said he supported it.
2. He said he liked the idea of providing more information with the intent to cut form, but said whether the signoff committed a landowner to knowing a body of knowledge was a tough one.
3. He said “Good Forestry in the Granite State” was never meant to be a body of law, and said there was no mechanism to enforce it. He provided details on this, and said the State didn’t have a mechanism to enforce it, but could enforce the current State language concerning setbacks. He said if the Town added another layer, it would have to monitor and enforce this, which would be a tough test. He said professionals and lay people could appreciate the setbacks regarding wetlands in the guidelines, but said it raised issues of defensibility to say thou “shall” follow the guideline.

There was detailed discussion with the Council about Mr. Quigley’s comments on the third recommendation made by the Conservation Commission.

Chair Niman said his intent was to be a good steward of the land, and he said if these practices were acknowledged to accomplish this, he personally didn’t have a problem mandating them in the Ordinance. But he said he recognized Mr. Quigley’s point that if the Town went beyond the State, it was the Town’s responsibility to enforce this.

Mr. Quigley noted that the buffers in the table from “Good Forestry” for 1st and 2nd order streams (100 ft) weren’t much different than those of the State, but he said the buffers for 3rd and 4th order streams were (300 ft and 600 ft respectively).

Bill Hall said the Ordinance was highly restrictive and out of step with reality. He provided details on this, and said what had been passed by the Council the previous year was not in the Master Plan, and still looked like it was illegal. He said he had been glad to see the Ordinance was headed in the right direction, but said this process now was ridiculous.

Chair Niman asked if a landowner simply had to attest to the fact that he had received the form and the information with it, or had received it and understood it.

Mr. Hyde said the question was how to inform people on good forestry practices, and said the intent of the recommendation was to get rid of ignorance on these practices.

Councilor Needell said that in the wetland overlay, the requirement that a licensed forester be involved in the development of a forest management plan was removed from the Ordinance, but it was retained for the shoreland overlay. He said the performance standards were the same for both, but landowners were being allowed to take responsibility for the plan in the wetland overlay, and said this second recommendation was intended to make sure there was no misunderstanding about what the expectations were.

Mr. Hyde said he wanted to clarify that the Ordinance as written included “all forestry activities shall be conducted in accordance with “Good Forestry in the Granite State”, and that it remained that way. But he said the provisions were now clarified. He explained that the Ordinance had previously been unclear in terms of what the “Good Forestry” document actually said, so language from it had

been included in the Ordinance. He also noted that the document itself recommended voluntary practices, so someone looking it and comparing it to the Zoning Ordinance could be confused.

Councilor Peter Smith provided details as to why he thought Attorney Mitchell's letter fit hand and glove with what the Conservation Commission had recommended. He also noted that the Town had adopted its own shoreland protection act at a time when the State didn't have one. He said there was a very conscious decision by the Commission the previous week that it was not reaching out to some never land, and that with respect to tree cutting as it related to streams, it wanted particular care to be shown, which was recommended by this publication. He said to the extent that this created a regulation that was not adopted in State law or in other towns, this was no different than what Durham had done 20 years ago, and said he felt this approach was quite moderate.

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

Chair Niman laid out the choices for Councilors at this point, and asked how they wished to proceed.

Councilor Henry Smith said a great deal of thought had gone into these recommendations, and said they looked substantial, and well done. He said he strongly preferred that they be remanded to the Planning Board, and that the Council encourage the Planning Board to adopt them.

Councilor Henry Smith MOVED to remand ORDINANCE #2006-07 back to the Planning Board along with the changes suggested by the Conservation Commission, with the Council's encouragement that the Planning Board integrate them into their vision of the Ordinance. Councilor Peter Smith SECONDED the motion.

Councilor Needell said he didn't disagree with the outcome that would come out of that, but said he would prefer that the motion not include the recommendation to the Planning Board, and said perhaps the motion should be separated into two motions.

Councilor Peter Smith suggested a friendly amendment, which resulted in the following:

Councilor Henry Smith MOVED to remand ORDINANCE #2006-07 back to the Planning Board along with the changes suggested by the Conservation Commission, with the Council's encouragement that the Planning Board carefully consider those recommendations. Councilor Peter Smith SECONDED the motion.

Councilor Peter Smith said Councilor Needell made the political point that just as the Council had given a good deal of respect to the Conservation Commission's work, so should the Council accord a respect to the Planning Board for its work. He said the wording of this motion also played to how the legislative system in Durham should work.

Councilor Leach said this revised wording didn't make sense to her, and said the wording "carefully consider" meant nothing.

Councilor Needell said the reason for inclusion of the reference to the document in the motion was that the Ordinance was being remanded to the Planning Board because of the document from the Conservation Commission. He said a discussion the Planning Board would have was whether the

Council was asking it to consider the recommendations, or was demanding that they be made. He said he thought the Council should convey one or the other, and said he would prefer the wording “carefully consider”.

Chair Niman said regarding the questions he had asked of Mr. Hyde, he would like the Planning Board to consider the ins and outs of them. He said he was sympathetic to the recommendations, but would like the Planning Board to consider whether they made sense or not.

Councilor Needell said he could conceive of the Planning Board saying that what they had put forth was sufficient and adequate. He said the Council could then adopt or not adopt it, and then could initiate a change if it wanted to.

The motion PASSED 7-0-1 with Councilor Van Asselt abstaining because he felt the process was flawed.

XI. New Business

- A. FIRST READING ON ORDINANCE #2007-01** amending the Zoning District map to incorporate Tax Map 5, Lot 1-8, into the Central Business District.

Administrator Selig spoke before the Council, and he provided details on what was proposed. He said the proposal, to put a parcel presently in the Church Hill District into the Central Business District, was consistent with the Master Plan and the most recent revision of the Zoning Ordinance. He said the same owner owned the properties next to Lot 1-8 that were in the Central Business District, and he said that together, they comprised the natural ending to this district. He said the Planning Board supported this change, and also said no members of the public had spoken against it.

Councilor Van Asselt MOVED on First Reading to approve #2007-01 amending the Zoning District map to incorporate Tax Map 5, Lot 1-8, into the Central Business District and schedules a public hearing for February 5, 2007. Councilor Julian Smith SECONDED the motion, and it, PASSED unanimously 8-0.

XI. Nonpublic Session (if required)

XIII. Adjourn (NLT 10:00 PM)

Councilor Morong MOVED to adjourn the meeting. Councilor Leach SECONDED the motion, and it PASSED unanimously 8-0.

Adjournment at 9:59 PM.

Victoria Parmele, Minutes taker