

This set of minutes was approved at the March 5, 2007 Town Council meeting.

**DURHAM TOWN COUNCIL
MONDAY, FEBRUARY 19, 2007
DURHAM TOWN HALL – COUNCIL CHAMBERS
7:00 PM**

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

MEMBERS ABSENT: None

OTHERS PRESENT: Town Administrator Todd Selig, Deputy Police Chief Rene Kelley; Jim Campbell, Planner; Tom Johnson, Code Enforcement Officer; Mike Lynch, Director of Public Works

I. Call to Order

Chair Niman called the meeting to order at 7:02 PM.

II. Approval of Agenda

Councilor Van Asselt MOVED to approve The Agenda as submitted. Councilor Julian Smith SECONDED the motion, and it PASSED unanimously 9-0.

III. Special Announcements

None

IV. Approval of Minutes

January 22, 2007

Councilor Van Asselt MOVED to approve the January 22, 2007 Minutes as submitted. Councilor Julian Smith SECONDED the motion, and it PASSED 8-0-1, with Councilor Carroll abstaining because she was absent on that date.

V. Councilor and Town Administrator Roundtable

Councilor Needell noted that the Planning Board meeting scheduled for the previous Wednesday had been cancelled because of the snow storm, and had been rescheduled for February 21st. He summarized the Agenda for this meeting.

Administrator Selig provided the following updates.

- He said elections would be held on the second Tuesday in March, and noted that candidates running for elected positions were posted on the Town web site. He also said the Durham Business Association was sponsoring a Candidates' Forum that would be held on Monday Feb 26th, at 7 pm in the Council Chambers, and said it would be broadcast live on DCAT.
- He said the Mill Plaza Study committee's first meeting would be held on February 21st at 4 pm, and he encouraged residents who were interested in this concept to attend the meeting.
- He said the Economic Development Committee would hold its next meeting on February 22nd, and would be discussing the RFP for the Durham Business Park. He noted that abutters had been contacted to get their feedback.
- He said a public hearing on potential modifications to the Wiswall Bridge would be held on Feb 22nd, at 7 pm, and he encouraged interested members of the public to attend.
- He said he had executed a termination agreement with ORYA regarding the Jackson's Landing rink, effective April 1st.
- He said he was pleased to announce that the Joint committee of the Conservation Commission and the Parks and Recreation Committee regarding Jackson's Landing had submitted a grant proposal for \$20,000, and he thanked those volunteers who had contributed their efforts.
- He said the Annual Town Report had recently been mailed out to taxpayers, and also noted that it was on the Town website. He thanked Jennie Berry for her hard work on this project, and also said the report was dedicated to Marjorie Milne, who had been Durham's swan keeper until her death in 2006.
- He provided details on the Unanimous Consent Agenda items before the Council that evening. He noted one item was compensation for non-bargaining unit employees, and he noted that a 2% increase was proposed. He said a Council communication on this was available.

He said another item on the Agenda was the award of the 2007 road resurfacing program bid to Pike Industries for work on Durham Point Road. He explained that the bids received for 3 Durham roads, Durham Point Road, Gerrish Road, and Ambler Way exceeded by 25% what the Town had anticipated, so the Public Works Department had eliminated the work on Gerrish Road and Ambler Way. He also said the width of Durham Point Road had been scaled back somewhat. He apologized to residents on Gerrish Road and Ambler Way.

Chair Niman explained that regarding Unanimous Consent Agenda Item VII B, he had been empowered by the Council to undertake negotiations with Administrator Selig. He said the resulting draft three-year contract had been discussed by the Council at its last meeting, and the Council was generally pleased with it, so the plan was to sign it at the present meeting.

He explained three changes to the new contract as compared to the previous contract. He said part of Administrator Selig's compensation would be deferred, noting that the majority of town administrators had this provision, and that the Town wanted to stay competitive with the market. He said another change was that on an annual basis, the Council would discuss Administrator Selig's performance, and based on this, would determine the amount of raise he would receive. He said an additional change was that Administrator Selig would have to

give 3 months' notice, rather than the previous 4 month's notice, if he planned to leave his position.

Councilor Morong said the Integrated Waste Management Committee had focused on the Carbon Coalition effort at its most recent meeting. He noted that a referendum to see if voters supported efforts to reduce carbon emissions was on the March ballot, and he suggested that residents check the website concerning this.

VI. Public Comments (NLT 7:30 PM)

Neal Ferris, 24 Woodridge Road, said he was a candidate for Town Council, and said he was running in order to do what he could to help ensure that proposals for economic development were treated respectfully but also with some skepticism, with the burden of proof on those proposing the development. He said implementation of any proposal should be good for the whole community in the long run. He said he looked forward to the Candidates' Forum the following week.

Bill Hall, Durham, said that prior to the last time that Durham Point Road was repaved, he had very carefully asked that the road be shimmed before the road was paved. He said if this was not done in the current instance, the road work would be a waste of time.

Phyllis Heilbronner, Mill Pond Road, said she had been a resident of Durham for 52 years. She commended those residents involved with the carbon emissions issue, and noted that while the Town dealt with its tax system, it also needed, as a community and as individuals, to look at the long-term benefit/risk ratio of decisions that were made. She said when the Town looked at development issues, it also needed to consider trees taken down, and green areas that were lost and never replaced when development occurred. She said she hoped development didn't come at the cost of impacting the environment.

Annmarie Harris, 56 Oyster River Road, said she was a 37 year resident of Durham, a former member of the Town Council, and was currently an alternate member of the Planning Board. She said she appreciated that the Town Council was considering a way to potentially reduce the tax rate by expanding the tax base, and said she would like to call to the attention of citizens the fact that TIF was an important issue to consider. She said the Council had received a primer on TIF's, but said all taxpayers should be given sufficient information on this subject.

Ms. Harris also said that the Town should decide whether to pursue this approach collectively, as a referendum, as was done in communities that didn't have a council form of government. She said a formal presentation should be made on TIF's to the community before any decision was made.

Joyce Mills, Durham Point Road, said her road was in a horrible mess, and she said it would be a waste of money unless the roadwork that was planned was done right. She also said the Town needed to do something regarding the school funding issue, if it wanted to do something about taxes.

Scott Hovey, 41 Canney Road, said he was present to speak about taxes. He said Durham taxes were way above taxes in other nearby towns, and said in order for the Council to be effective in dealing with this situation, it couldn't hide behind a TIF smokescreen. He said that instead, it needed to get real with UNH, the School District, and spending. He said the Town spent too much, and said unless it addressed this, it would be too late for many residents.

Bill Hall made additional comments concerning road work on Durham Point Road, and said the Town needed some new engineering expertise in the highway department. He also said that regarding the school funding report that had been developed, he hadn't seen it yet, and said it should be on the Council's Agenda.

Public Works Director Mike Lynch provided details on the reclamation work scheduled for Durham Point Road, and said the work would take 3-4 months. He said the drainage and reclamation work would be done in-house, while the compaction and grading would be contracted out. He said this last part was the work referred to on the Unanimous Consent Agenda.

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

- A. RESOLUTION #2007-05** establishing the compensation for non-bargaining unit employees for Fiscal Year 2007
- B. RESOLUTION #2007-06** approving the employment agreement dated 2/19/07 between the Town of Durham and Town Administrator Selig I. Selig for a period of three years extending from 1/1/08 to 12/31/10, and authorizing Council Chair Niman to sign said agreement on behalf of the Town Council
- C. RESOLUTION #2007-07** establishing a Minimum Application Fee Schedule for the Zoning Board of Adjustment for the Town of Durham and adding those fees to the Town-wide Master Fee Schedule
- D.** Shall the Town Council award the 2007 road resurfacing program bid to Pike Industries of Portsmouth, NH in the amount of \$271,299 to perform work on a section of Durham Point Road from Pinecrest Drive to Longmarsh Road?
- E.** Shall the Town Council award the bid for and purchase of a new 35,000 G.V.W. dump truck from White Ford Truck Center of Bangor, ME in the amount of \$100,590?
- F.** Shall the Town Council approve abatements for water in the amount of \$160.21 and sewer in the amount of \$277.73, and authorize the Town Administrator to sign said abatements?

Councilor Van Asselt MOVED to approve Unanimous Consent Items A through F. Councilor Julian Smith SECONDED the motion, and it PASSED unanimously 9-0.

VIII. Presentation Item

None

IX. Unfinished Business

- A. **PUBLIC HEARING** to consider whether the Town of Durham will adopt the provisions of New Hampshire Revised Statutes Annotated (RSA) 162-k enabling municipalities to establish Tax Increment Finance (TIF) districts

Administrator Selig introduced Don Jutton, of Municipal Resources, Inc. He noted that a lot of interest had been expressed by members of the community in finding out more about TIFs, so Mr. Jutton would provide an additional overview and some specifics for residents.

Mr. Jutton provided details on his background. (See the January 22, 2007 Minutes for details of Mr. Jutton's previous presentation to the Council on TIF.)

Mr. Jutton stressed that having a TIF district did not freeze zoning. He also said it did not increase taxes in the district, did not create special fees, and did not change property rights. He said a TIF was merely a financing tool.

He said that as property values generally increased, any new taxes that were created and not needed to fund the plan went directly to the General Fund. He said the captured value needed to be reported every year. He also said that once the TIF plan was fulfilled, the TIF no longer existed.

Mr. Jutton said the current public hearing was just to determine whether TIF in general would be enabled. He also said that no detailed work had been done yet on a possible TIF district for Stone Quarry Drive.

Councilor Morong MOVED to open the public hearing. Councilor Carroll SECONDED the motion, and it PASSED unanimously 9-0.

Annmarie Harris, 56 Oyster River Road, asked that Mr. Jutton provide the pros and cons of TIF, particularly for Durham.

Mr. Jutton said a benefit of a TIF was that the Town would have the opportunity to target development where it wanted it to occur. He also said there weren't a lot of other economic development tools in New Hampshire. He said a con would be if the Town didn't want development in an area where a TIF district was proposed, and said this had more to do with the Town Council being in tune with the issues in the community before initiating a TIF district.

He said because of the school system structure, the Town would have the opportunity to shelter some of the added tax value until the bonds were serviced. He also noted that the land on Stone Quarry Drive was zoned for the type of development that was proposed, and said the question was whether the Town wanted to stimulate that development sooner.

Ms. Harris asked if the project being used as an example brought water and sewer under Route 4, wouldn't there be additional pressures to expand the district in the future, perhaps all the way to the Madbury town line.

Mr. Jutton said development could be controlled with the existing Zoning. He said if the Town wanted development to take place all the way to the Madbury town line, it could zone it this way, and if not, it wouldn't do this.

Ms. Harris asked if a TIF district were allowed for that proposal, what was to prevent the expansion of the district.

Mr. Jutton said the community, and the Town Council speaking for the community, could simply decide not to expand the district.

Councilor Peter Smith asked if there was something in the RSA that made it clear that the TIF approach applied to the Town Council form of government. He said as he read the statute, it didn't appear to cover towns like Durham.

There was discussion about this, and Mr. Jutton suggested that the Town's legal counsel be consulted concerning this.

Councilor Henry Smith asked if towns that had adopted the generic TIF concept had subsequently decided not to approve specific projects.

Mr. Jutton said yes, noting that the towns of Meredith and Littleton had done this. He said in the case of Meredith, the proposal was not approved at Town meeting, and said with Littleton, no formal development proposal had come forth.

Councilor Henry Smith asked if any towns had actually rescinded a TIF district, and Mr. Jutton said he was not aware of any towns where this had happened. Councilor Smith also noted that Mr. Jutton had said there were some communities that had discussed the TIF concept but had then rejected it. He asked for specifics on this, and Mr. Jutton said he would have to check on this.

Councilor Carroll asked if there was a way that the TIF enabling legislation could be removed down the road, if it was decided it wasn't working for the Town.

Mr. Jutton said he assumed it was, given that this was enabling legislation. He said if a town could vote to enable it, presumably it could vote to disable it as well.

Councilor Carroll noted that a Zoning Ordinance could be changed. She also asked whether a specific TIF district could be de-authorized.

Mr. Jutton said there was no sun-setting provision. But he said he presumed that this could happen.

Jim Jelmborg, Park Court, asked why TIF would be needed in Durham, when the Town Council already had the authority to offer infrastructure improvements to a developer. He said TIF seemed to short-circuit the process, and to transfer power to those in the district, leaving the Town with less oversight. He said he was all for development, but asked again whether TIF was really necessary in Durham.

Mr. Jutton said there was no transfer of power involved with TIF. He said the Council retained the authority, and explained that the advisory committee had no power under the Statute. He said the Council could vote to appropriate money and install water and sewer without a TIF, but said a TIF created a greater degree of accountability, with a written plan, finance plan, and public presentation of facts. He said it essentially formalized a structure around which a project could take place, but said it didn't create anything new.

Scott Hovey, 41 Canney Road, asked who determined when a TIF district was complete; who determined when the tax revenue was not needed; who determined who the administrator was, etc. He also asked who the property owner was who had been referred to, regarding Stone Quarry Drive. He said he had heard that Hampton and Newmarket had problems with the TIF districts they had created.

Mr. Jutton said a written plan that was adopted, when fulfilled, constituted completion, and the district went away. He said the Town Council determined this, and he also noted that the Council could amend the plan. He said as part of a TIF district, a finance plan was created, including the bonded indebtedness, and said anything beyond this went back to the General Fund. He said the district administrator was appointed by the Town Council, and said he recommended that this person be the Town Administrator, although noting that this was not required by the Statute.

It was noted that David Garvey was the primary owner involved on Stone Quarry Drive.

Councilor Needell said there was not a specific TIF district proposal before the Council, but asked if it was anticipated that a Stone Quarry Drive proposal would involve just the Garvey property or more than that.

Administrator Selig said it also included other properties, and he indicated these properties, which included the Jackson's Landing parcel the Town owned. He said the Town was looking to see if proceeds from the TIF district could be used to help finance improvements to Jackson's Landing.

Mr. Jutton said any of the work done so far concerning Stone Quarry Drive was intended to create an example of how a TIF district would work. He also said, in response to Councilor Henry Smith, that he was not aware of problems that Hampton had had with a TIF district, but said he would check on this.

In response to a question from Councilor Leach, Mr. Jutton said if the Town envisioned several different TIF districts, each district would need to be handled through an individual process. He also noted that amendments to a particular plan, for example, to extend water and sewer further, didn't require the same level of detail as the original plan.

Councilor Leach noted that each plan would have to go through the same approval process as a project would typically have to go through in Durham.

Neil Ferris, 24 Woodridge Road, said it was asserted that the Council could serve as the TIF advisory board, and said some had said that would be desirable. He said it had also been asserted that the advisory board must be comprised of landowners and abutters of the TIF district, and said some clarification was needed concerning this.

Mr. Jutton said the Council could not serve in that capacity, although stating that an individual Councilor who lived in a TIF district could do be on the advisory board. He said the Statute was very clear on this.

Mr. Ferris said his main concern was that it was not completely clear that the Council would have complete and ultimate authority if a TIF district was created.

There was discussion about this. Mr. Jutton said the only body with any authority was the Council, and he also noted there was no authority for eminent domain. He also said a TIF district was not a betterment district or a village district, and was simply a funding vehicle.

Councilor Needell noted that the Statute referred to eminent domain, and said the advisory board could indicate to the Council that eminent domain was needed to take a property.

Joyce Mills, Durham Point Road, received clarification that each TIF district was treated separately. She said the thing that worried her about TIF's was that development could happen that the Town didn't want.

Chair Niman said that the purpose of having a TIF administrator was to oversee that the work in the TIF district got done. He said the administrator didn't set any policy, and could not deviate from the plan approved by the Council.

Mr. Jutton said the Town Administrator would do the same thing he would do if there were no TIF district, - ensuring that what took place followed the written plan for the development and the financing plan.

Councilor Needell said TIF was a funding tool, and said the question was, was this something the Town wanted to take advantage of. He said another question was whether there something that couldn't be done without using a TIF.

Mr. Jutton said a TIF district also provided structure to an economic development deal, and memorialized this in a written contract.

Richard Kelley, 47 Stagecoach Road, said he couldn't see anything wrong with this enabling legislation. He said in hearing concerns about control of the district, he saw that the Council created the development plan, defined the infrastructure improvements, open space, environmental controls, and type of reuse that could occur, and also developed the finance plan, including bonding, etc.

He said the Council's oversight occurred through the district administrator, who dealt with the advisory board. He said that board was comprised of owners and abutters who were either elected or appointed by the Council. He said the Council delineated the powers and duties of this advisory board, and said he felt any issue of losing control was not valid, stating that if anything, the Town gained more control with this approach.

Mr. Kelley said a TIF district allowed funding of public infrastructure improvements without impacting taxpayers. He also said that regarding the issue of sprawl, this was controlled through the Zoning Ordinance, which was a good ordinance. He said he hoped the Council saw TIF districts as a good thing, and would vote in favor of the enabling legislation.

Steve Nadeau, 18 Emerson Road, noted the recent public hearing regarding possible rezoning of the Davis property, and the fact that there were no public comments for or against it. He said this was because the rezoning made so much sense. He said a TIF, although much more complicated, was nothing but a tool, and cost the Town nothing. He said the only thing that happened if it was approved was that it gave the Town more options to plan for the future.

He said if the Town did allow TIF districts, there would be many questions regarding a possible property it could be used for, and said there would be hearings where residents could question whether what was planned was the type of development they wanted. He also noted he had heard that the most land in the Town that could be financed this way was 3%.

Councilor Carroll said this was not in fact something that was free, and said the residents would pay for it. She also said that a TIF district would be funding public infrastructure improvements, and said the question was who this would benefit. She said this needed to be determined.

There was discussion about this with Mr. Jutton.

Councilor Carroll also said there was the question of whether the community wanted to pay for economic development.

Administrator Selig said the Town hadn't yet asked Mr. Jutton to do a more thorough analysis on the specifics of a TIF district, explaining that they were waiting to see if there was real interest in the TIF concept. He asked Mr. Jutton to speak about the developer guarantee.

Mr. Jutton said this guarantee prevented the community from having to dig into its own pocket to service the debt. He noted that with the Raymond TIF district, the town was in the final stages of working out the contract, and would not have to invest anything until the developer signed a written guarantee to cover the debt service.

Councilor Julian Smith said that RSA 162-K:5 actually said that no single TIF district could exceed 5% of the total acreage of a town, and no group of TIF districts could exceed a total of 10% of the acreage in a town. He also said the impetus to pay off TIF loans and shut down a district would come from the stipulation that one could only have 10% of the total acreage in TIF districts, for which a bond was outstanding. He said once a bond was paid off, a town could

move on to another TIF district, which could comprise up to 5% of the acreage of the town. He said this might either scare or reassure residents in terms of how this would work.

Arthur Grant, Mast Road, warned against buying a pig in a poke and said this was a complex piece of legislation, as noted in the Office of Energy and Planning booklet, and said most residents were not familiar with it. He said the saying “the devil is in the details” certainly applied to this. He said the enabling legislation would allow multiple TIF districts in a community, and he listed several places in Durham that were being considered. He asked whether the Council would be tempted to create these districts and more when a developer came up with a proposal.

Mr. Grant said he thought it would be far more productive and informative if the Council identified a single area in the community where a TIF district would be established, as a model, and said the existing technology park off Main Street seemed to be a good starting point. He said the Council should specify the boundaries of the district, and develop a comprehensive plan for it, and then do the enabling legislation, which would only apply to this district. He noted that the RSA spoke of this kind of approach. He said if the model resulted in success, the Council could move to establish a second TIF district where this was appropriate.

Mr. Grant said TIF districts were a radical departure from what Durham traditionally was used to. He said when people started quoting eminent domain, etc., residents would be wise to insist that the Council proceed slowly and carefully. He said the promised benefits of a TIF district would not materialize for several years, so there was no immediate gain to be achieved by using it without the full understanding and support of the community.

Bill Hall said Durham was not Raymond, and said the Town had issues with four agreements it had with UNH, and issues with the School district. He said if the Town worked on both of these, it would make more money than it would ever make with a TIF district. He said that in Massachusetts, they did what was intended with a TIF district with tax abatements, and said he had no problem with that approach. But he said a TIF involved outlaying the Town’s money, and floating a bond to do this, and said he didn’t see the Town being able to administer this, given other administration problems the Town had had. He noted that it took 8 years for the water issue to be resolved.

John Carroll, 54 Canney Road, said if the idea was to broaden the tax base, the Town should be talking about state tax incentives for investment, which were designed to encourage downtown development. He noted that this tool had been mentioned by Mr. Jutton. He said this approach would increase revenues, and could assist with redevelopment of Mill Plaza,. He said the discussion at the present meeting was about good growth vs. bad growth, and said TIF provided plenty of opportunity for bad growth, the kind that Durham didn’t want. He asked that candidates for the Town Council take a close look at this proposal.

Peter Ventura, 71 Edgewood Road, said he was on the Economic Development Committee, and said the committee had been looking at tools that could be used to increasing revenues. He said the purpose of TIF was to raise tax dollars. He noted that Stone Quarry Drive was already zoned and approved for the kind of development that was being discussed, and he provided

details on this. He said that in terms of the concern about possible bad growth, right now the Town didn't have any growth.

Beth Olshansky, Packers Falls Road, thanked Administrator Selig for making sure that the TIF presentation was aired. She noted the letter he had recently written stating his concerns about the budget, which included a number of avenues the Town could take to begin to resolve the budget challenges. She said economic development was only one of the things he had listed.

She said while the Economic Development Committee had been working on this concept, this was the first time many people were hearing about it. She said she understood that a TIF was simply a finance tool, but said it was important to think about it in concrete terms. She noted that it had been said that TIF districts didn't create sprawl, and said that technically, she agreed. But she said expansion of water and sewer had the potential to create sprawl, and TIF districts could fund them.

She said a concern regarding Stone Quarry Drive was that it would open up the whole corridor. She said although some people might think this would be a good thing, others would say there went the Town's gateway. Ms. Olshansky asked whether money had been put aside in the budget for water going out to 155A. She said this was one of the Town's gateways, and hadn't been developed because there was no water and sewer.

She said the Town needed to decide how it would make decisions on its fiscal challenges, and she noted that Durham had a history of caution regarding development. She said development of Stone Quarry Drive would bring in about \$100 per household per year, not including the services the Town might have to provide. She said there were also other factors to consider.

She said she agreed with Mr. Grant that it would be wise for the Council to seriously consider all options for a TIF district, and choose one that the community would feel most comfortable with. She said everyone would benefit from a TIF district in the downtown area, and said perhaps some of it could even go toward a new library.

Ms. Olshansky asked how many commercial developments were needed in Durham to address the tax situation. She said if it turned out that 10 sites were needed, the Town would lose much of what was cherished about Durham. She also said it was ironic that they were having this discussion now, as NH communities were thinking about their ecological footprint relative to global warming. She said the question was how Durham could meet the tax challenges, and think globally about meeting fiscal needs, while keeping the Town's ecology footprint as light as possible.

Chair Niman said that regarding the money in the budget for water on Route 155 A, nothing could happen until the interceptor problem out there was fixed.

Councilor Julian Smith said that Mr. Grant had advised the Council not to buy a pig in a poke. He said the Council was not being asked to buy a pig tonight, it was being asked to buy the poke. He said Mr. Grant had also suggested that the Council take advantage of the provision of considering a model TIF. He said there was some sense to that, and he noted that the Mill Plaza

Study committee would be having its first meeting on Wednesday. He invited residents to attend this meeting.

Chris Mueller, 6 Timberbrook Lane, said he was one of the founders of the Durham Taxpayers' Association. He asked whether the discussion was about doing TIF or not doing TIF, or about development vs. no development. He said he would like to see more discussion on what a TIF district could actually do for a community, and said he couldn't see a problem with the vehicle itself.

He also said that regarding an assertion that a TIF district created sprawl and bad growth, these words needed to be defined. He said good growth was commensurate with the Master Plan, the Zoning Ordinance, and the Town not imploding financially. He said citizens needed to be educated on these issues, for present and future generations.

Councilor Carroll said she understood that Mr. Mueller felt taxes were too high, and said she as a Councilor would like to know by how much he would like taxes to be reduced.

Mr. Mueller said it was also a question of where the tax dollars were spent.

There was further discussion on Councilor Carroll's question, and its relevance to the discussion on TIF districts.

Councilor Peter Smith said nothing could be more germane than Councilor Carroll's question, which asked what this process was all for.

Councilor Van Asselt said this was a discussion about TIF districts, not about what the Durham Taxpayers group was doing.

The Council stood in recess from 9:07-9:16 pm.

Dwight Baldwin, 6 Fairchild Drive, said he was speaking with the knowledge of what the Council had done to preserve open space. He said a lot of money had gone into conservation bonds, and said now there was discussion about how to perhaps generate funds for the Town for development that would perhaps be within close radius of downtown.

He said he agree with Administrator Selig, that if the Town was looking to preserve major pieces of land, it needed to generate the funds to do this. He said he felt the TIF concept should be looked at closely, and said he didn't know whether it would make sense on any particular piece of land. He said he thought it perhaps could be used for Mill Plaza, and said if it did make sense, and it was the Council's best judgment that it did, this should be seriously looked at.

Mr. Baldwin said he too was concerning about sprawl, but he said there was enough integrity on the Planning Board and the Town Council to set limits. He said he thought it was wrong to say that sprawl would occur because development pressure was so great. He said the Council and the Planning Board had come to an understanding of what they wanted to see in the Town's

regulations, and the Town should live by those regulations. He said he thought the Town could raise revenues while also controlling the development it didn't want.

Malcolm Sandberg, 15 Langley Road, noted that he was a former Councilor, including Council Chair, and said he was also a candidate for the Town Council in the upcoming elections. He said he was present to ask some questions. He asked why, if it was such a good tool, it wasn't happening everywhere.

He asked why the Statute required a special public hearing about the concept before there was a specific proposal, and why the Council was required to wait 15 days after the hearing to think about the idea before voting on it. He asked why, after 28 years, there were not a lot of TIF districts, noting there were 13 NH towns using them. He asked what the downside might be to this magic tool.

Mr. Sandberg said the question was whether it was the right tool for the job, why a developer would want to use one, and why a town would want to use one. He said from the Town's perspective, it seemed that the Council already had all the powers a TIF district had, and he provided details on this, and possible scenarios that could occur concerning development, whether the Town had a TIF district or not. He asked why, if the Council already had this authority, it would start farming out some of it, and let a corporate entity be involved.

He noted the Dover report on TIF's, and said it gave the impression that once a TIF district was set up, it was an entity that would continue forward, which might not readily be checked by elected officials. He said there was a strong impetus for developers to get the Town to front the money, but he said the Council needed to guard the interests of its citizens.

Mr. Sandberg asked what there was in TIF districts for the public. He said it sounded like a good idea, that a TIF district would spur development in order to broaden the tax base. But he said with some kinds of development, when the tax base was broadened, this resulted in collateral damage, involving more costs for such things as increased road capacity, etc., - things that would extend beyond the TIF district. He noted that the Council had debated the concept of impact fees, which related to this.

He said he thought it was within the reach of the Council to accomplish everything that could be done with a TIF. He said Keene and Peterborough had successful TIFs and had achieved what they wanted. He said the Town of Durham had to ask what it wanted, and said this question had been put to the community in revising the Master Plan and the Zoning Ordinance. He said the Town now had an Office Research Light Industry district, and said once this area started to develop, people might not like it. But he said once there was a TIF district out there, it might be difficult to change that.

Mr. Sandberg said it was difficult to know if TIF was an appropriate tool at the present time. He said in order to know whether it was appropriate, residents needed to see a detailed presentation of what the Town would want to do with it. He suggested that a fully detailed proposal should come before the community in order for residents to provide their comments on whether it was a tool that should be used by the community

Peter Stanhope, 37 Dover Road, said there seemed to be a distrust of the Town Council and future Councils. He said he was not speaking regarding any proposed districts, and just was speaking about whether the Council would grant itself the authority to create TIF districts. He said with the TIF mechanism, all kinds of things were possible. He noted that perhaps using Stone Quarry Drive as an example didn't make sense.

He said that regarding other towns and cities not choosing to use TIF districts, perhaps Durham especially needed to do this because developers were not choosing to come there. He said good growth didn't come to towns and cities with Durham's profile. He said the Town might never use a TIF district, but he said he hoped that it would grant itself the mechanism to use it if it wanted.

Mr. Stanhope said he suspected there was not a lot of further cutting still to be done of the Budget, and said he was concerned the Town could see a decline in the level of services and quality of life. He said he hoped the Council would grant the authority for TIF districts, and then would then use it carefully.

Bob Russell, 8 Croghan Lane, said he had looked on the web for information on TIF, and asked for clarification as to how the money raised in the district could be spent.

Mr. Jutton said money couldn't be raised in the district and then spent outside of it. He said if it wasn't spent in the district, it went into the General Fund, and said this could happen before the bond was paid off.

Councilor Needell said the developer did not see the tax benefit in the TIF district.

Mr. Russell said in other words, as the value of the property went up, the tax went up. He said that as of January, 2007, the Office of Energy and Planning showed that there were 10 TIF districts in New Hampshire. He said OEP said developers liked TIF districts, but he said he wondered if they were good for the public. He noted that developers were often from out of town, and if they put a development in, in an outer area of Town, this might decimate businesses in the inner part of Town.

He said the issue was the increasing tax rate and how to get it down, and said development was not necessarily the answer. He said until the Town stopped residential development, it would continue to lose, concerning taxes. He said all that was accomplished with economic development was trying to keep up with residential development.

Steve Nadeau said that Arthur Grant Circle was a piece of land the Town owned, and said a road and other infrastructure was put in there but nothing happened. He said the taxpayers footed the bill for this. He said the opponents of TIF seemed to want to continue with that kind of system. He said with a TIF district, a total plan was involved, and once the Council, with public input, decided to make a plan happen, there were some assurances, so the taxpayers were not left on the hook for something that never came to fruition.

He said in terms of discussion about sprawl and retail development, the zoning in the ORLI district would result in the same kind of development as the medical buildings in Somersworth. He said TIF was something that allowed the Town another option to plan for a positive future.

Bill Hall said UDAG funds were used to put the sewer in that Chair Niman had talked about, and he said these funds could be used to pay the Town's portion of fixing that line. He also said there were other things the Council needed to do besides TIF, in order to get at the things that were important.

Mr. Russell asked what the basis was for disapproving a TIF district.

Mr. Jutton said the TIF enabling legislation didn't entitle a developer to anything. He said if the Council wanted a district, there would be one, and if it didn't want one, it wouldn't have one.

Councilor Needell said it was the Council that had to create the district, not the developer, and said this was not to be a response to a request from a developer.

Mr. Russell said there could be petitions to develop TIF districts, and Mr. Jutton said there was no petition process. He stated again that a TIF district would occur only if the Council wanted it.

Malcolm McNeill, Colony Cove Road, noted he had submitted a letter to the Council regarding TIF, and explained that he had written these kinds of ordinances in other communities. He said this was enabling legislation that was proposed, and did not involve any particular activity, undermining of the Master Plan, creation of a bureaucracy, or financial risk to the community.

He said the Zoning in Durham permitted certain areas of Town to be developed, for tax benefit purposes, and he noted that the Master Plan also spoke about economic development. He said if there was a project that might be a beneficiary of TIF money, the project had to be consistent with all the regulations in the community. He said a project couldn't circumvent this process, and said if a worthy project came forward, which was consistent with the Zoning Ordinance and the Town's regulations, then the TIF district could be considered.

He said if a project was proposed for a TIF district, the developer would pay no less in taxes, and the community would assume no risk. He said the developer would have to do bonding, just as would be done for other infrastructure projects. He said a project for a TIF district would have to be bankable.

Mr. McNeill said that in terms of a downside, just as with a betterment district, he didn't think there was one. He said the lack of development in Durham affected all residents, and said the Economic Development Committee was trying to look at alternative ways to broaden the tax base, in the most economical way possible. He said TIF didn't automatically achieve this, because of the necessary regulatory controls. But he said it helped the process. He said no TIF district would be approved unless it was a fiscally positive project for the community. He encouraged the Council to consider adopting the enabling legislation.

Councilor Needell said the analogy had been made to enabling legislation for things like the Zoning ordinance and impact fees. He asked if typically, when TIF was enabled, there was a reason to parallel this with a specific project.

Mr. McNeill said no, noting that some people might not approve the specific project. He said this would be something to consider later, and he provided details on this.

Councilor Needell asked what the harm was in doing it the other way.

Mr. McNeill said it could turn out to be a referendum on a particular project. He also said having the enabling language increased the probability that people would come to Durham to want to use it.

Annmarie Harris said one of the problems she saw was that a TIF district could circumvent the Planning Board entirely, and would burden the Council and the Town Administrator with additional work.

Mr. Jutton said a TIF district had no bearing on the land use regulations, and was merely a financing tool. He said it didn't impact the underlying zoning, didn't establish any special taxes, and didn't abate any taxes.

Councilor Needell MOVED to continue the meeting past the 10:00 pm adjournment time. Councilor Julian Smith SECONDED the motion, and it PASSED unanimously 9-0.

There was discussion on how to proceed, concerning continuing the hearing, continuing with the rest of the meeting's agenda, deliberating on the issue that evening, etc..

Councilor Henry Smith said he thought the hearing should be left open and continued to March 5th.

Councilor Leach asked what the purpose would be of doing this, and Councilor Henry Smith said there might be other thoughts that should be expressed.

Councilor Peter Smith said he would not be voting on this matter some weeks later, after the elections. But he suggested the following, for purposes of future discussions

.
He referred to the Dover report, which clarified when it was a good idea to use a TIF district, and when it was not. He said the issues in the report needed to be explored further, and were worth discussing with the public.

He said there needed to be more discussion on the risk issue. He said the greater the degree of risk the Town took with its own money, the more people might arrive to seek to pursue development.

He said the Council and the Town needed help in analyzing the issue of the usefulness of TIF districts, looking through the lens of Durham's reality. He said this was a special town, in certain ways that implicated financing, and what would succeed and what would not.

He said there was also the policy issue of abstract adoption of a TIF, or doing so only in connection with a specific project. He noted the steps the Council took regarding adoption of an impact fee ordinance, and said that in that case, if a general ordinance was not adopted, the Town couldn't take the further step of creating an impact fee schedule.

He suggested that looking at RSA 162-K:9II in terms of legal requirements, it read that it was not simply a useful policy to discuss TIF in the abstract and in terms of an actual development together, but was a legal requirement. He said this suggested to him that those who enacted the statute had in mind the importance of what Councilor Needell had said, that it was convenient to enable doing a TIF district when a town was doing an actual proposal, and was important to do this so people could see what they were getting into. He said there might be case law that construed that this was not a legal requirement, and asked that this be looked into.

There was disagreement between Councilor Julian Smith and Councilor Peter Smith as to what the State statute actually was saying.

Councilor Needell MOVED to continue the public hearing to the March 5, 2007 meeting. Councilor Carroll SECONDED the motion.

Mr. Jutton noted that he would not be able to participate in the discussions until April.

The motion PASSED 5-4, with Councilor Julian Smith, Councilor Leach, Councilor Morong, and Chair Niman voting against it.

- B. PUBLIC HEARING AND ACTION ON ORDINANCE #2007-03** amending Chapter 153 "Vehicle & Traffic", Article IV "Metered Parking" Section 153-30 "Business permit Parking Areas" of the Durham Town Code by adding a 90-foot section of Strafford Avenue 580-feet from the intersection of Garrison Avenue

Councilor Morong MOVED to open the public hearing on ORDINANCE #2007-03 amending Chapter 153 "Vehicle & Traffic", Article IV "Metered Parking" Section 153-30 "Business permit Parking Areas" of the Durham Town Code by adding a 90-foot section of Strafford Avenue 580-feet from the intersection of Garrison Avenue. Councilor Leach SECONDED the motion, and it PASSED unanimously 9-0.

Administrator Selig explained that this Ordinance had passed on first reading at the last Councilor meeting. He said that Xemed, a business located on Strafford Ave, had requested additional parking, and said that after considering this, the Traffic Safety Committee had proposed this Ordinance. He also noted the issue had been raised at the previous Council meeting that an abutter had commented to the Planning Board some months back, when his project was being considered, that the Board seemed to be working hard to accommodate one property owner but not another.

Councilor Needell explained that Steven Kimball had commented to the Planning Board that it was holding him closely to the Ordinance, but had bent over backwards to accommodate another property owner. Councilor Needell said parking was a big issue for both of the lots, and he said

he was concerned that in enacting this Ordinance, it would further the perception that the Town was giving a benefit to a specific business.

Town Planner Jim Campbell said Mr. Kimball's project was a much larger project than what Xemed had proposed for the present. He said he didn't see anything contentious in the Ordinance, noting that if the Town were setting aside the parking exclusively for Xemed, that would be a valid argument.

Councilor Needell said he didn't think there was any doubt that the intent was that the parking was for Xemed's use. He said the question was, whether there was a shortage of spaces, whether more were needed, and if this was the best place to add them.

Councilor Leach asked what would happen if Mr. Kimball came forward asking for parking spaces.

Mr. Campbell said if he needed parking spaces, he also could buy permits and then try to get the spaces.

Administrator Selig said the amount of parking available might be expanded. He also said that Xemed was the kind of development the Master Plan and the Zoning Ordinance spoke about. He said he had looked at this Ordinance as being supportive of these things, while also benefiting Xemed.

Deputy Police Chief Rene Kelley said there was a need downtown for additional parking permits, stating that all of the permits were gone each year by 9 am on January 1st. In answer to Councilor Needell, he said it was first come, first serve, but he noted there was a limit to the number of permits a specific business could have.

There was discussion that those currently using the 4 spaces under consideration were commuting students.

Councilor Peter Smith said all Xemed was getting with this Ordinance was something equal to what anyone else willing to wait in line on January 1st could get.

Administrator Selig said that was correct, and said even with the permits, employees and guests of Xemed would still have to hunt for parking spaces.

Councilor Carroll said Xemed had said that once the new building was done, there would be enough parking on the site to accommodate employees.

Bill Hersman of Xemed said the renovation of his property was not yet underway, but was a goal. He said that with it, there would be more parking on site. He explained the current need for additional parking. He said he had chosen to locate in Durham because of the convenience factor, given the closeness of the site to UNH. He said parking would be a big step to help the company at present.

Steve Nadeau, 18 Emerson Road, asked who got the revenues for the parking meters in front of the New England Center. He also suggested that these meters could be extended, which would benefit the University, and also would bring some more revenue into the Town.

Administrator Selig said there was an agreement with the University that tied the use of the meters by the University on Strafford Ave., which was a Town roadway, to the Town's use of the Store 24 parking lot.

John Carroll, 54 Canney Road, said he seconded Administrator Selig's remarks, and said this was precisely the type of economic development the Town needed. He said anything the Town could do to protect this type of development in the business core, it should do.

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

Councilor Julian Smith MOVED to adopt ORDINANCE #2007-03 amending Chapter 153 "Vehicle & Traffic", Article IV "Metered Parking" Section 153-30 "Business permit Parking Areas" of the Durham Town Code by adding a 90-foot section of Strafford Avenue 580-feet from the intersection of Garrison Avenue. Councilor Henry Smith SECONDED the motion.

Councilor Needell asked if parking was addressed when the Xemed application went to the Planning Board's Technical Review Committee.

Mr. Campbell said he recalled that it was determined that Xemed had the amount of parking it needed.

Councilor Needell said when a business located in this district, there were very strict requirements to meet, including making sure there would be parking on site. He said that passing this Ordinance would be setting a precedent, although he thought the business itself was a wonderful thing for the Town.

Chair Niman said he would vote in favor of the Ordinance, and said it accomplished several goals. He said it seemed like a reasonable request, and said if Mr. Kimball brought forward a request, the Council would consider it. He said he thought that expanding spaces for businesses downtown was a good thing.

Councilor Morong noted that the Town had a bad history with parking meters, which often got stolen, and said the Town had lost money on this.

Councilor Carroll said she would vote in favor of the Ordinance. She also noted that Xemed was located adjacent to the campus, and said anything that could be done to encourage employees of Xemed not to drive to work would help the Town out.

Councilor Leach said she agreed with Councilor Needell's concerns, but said there were only 4 spaces involved, and this Ordinance just gave Xemed the right to hunt for parking spaces, so the Ordinance was ok with her.

The motion PASSED 8-1, with Councilor Needell voting against it.

X. New Business

- A. **FIRST READING ON ORDINANCE #2007-04** amending Chapter 38 “Building Construction”, Sections 38-8 and 38-28 of the Durham Town Code, and adding the fees of these sections into the Town-wide Master Fee Schedule

Councilor Van Asselt moved on first reading ORDINANCE #2007-04 amending Chapter 38 “Building Construction”, Sections 38-8 and 38-28 of the Durham Town Code, and adding the fees of these sections into the Town-wide Master Fee Schedule, and schedules a public hearing for March 19, 2007. Councilor Julian Smith SECONDED the motion.

Code Administrator/Enforcement Officer Tom Johnson said the codes had been tweaked so they coincided with neighboring towns, and said now was the time to roll these minor adjustments into the master fee schedule. He provided details on the fee increases, and noted among other things that a re-inspection fee had been established. He explained that if a developer was, in a sense, using him to supervise a project, this fee would be a penalty for doing this. He said it didn’t really apply to a homeowner situation, but rather to larger developers.

Councilor Morong asked if the re-inspection would be totally discretionary, and Mr. Johnson said yes. He said it would only be applied for those who didn’t run their jobs properly, and abused the system.

There was discussion of inspections fees for driveways. Administrator Selig explained that the Public Works Department had raised the idea of updating this several times, and he provided details on why the Department felt this was needed.

Councilor Leach asked how Mr. Johnson’s travel time compensation was determined.

Mr. Johnson provided details on this, and noted that he sometimes did Saturday and Sunday inspections. He said sometimes, someone else had to do this in his place, in which case, that person had to be compensated as well for travel.

The motion PASSED unanimously 9-0.

- B. **FIRST READING ON ORDINANCE #2007-05** amending Chapter 54 “Electrical Code”, Section 54-10 of the Durham Town Code, and adding the fees of this section into the Town-wide Master Fee Schedule

Councilor Van Asselt MOVED on first reading ORDINANCE #2007-05 amending Chapter 54 “Electrical Code”, Section 54-10 of the Durham Town Code, and adding the fees of this section into the Town-wide Master Fee Schedule, and schedules a public hearing for March 19, 2007. Councilor Needell SECONDED the motion, and it PASSED unanimously 9-0.

- C. **FIRST READING ON ORDINANCE #2007-06** amending Chapter 97 “Plumbing Code and Regulations”, Section 97-10 of the Durham Town Code, and adding the fees of this section into the Town-wide Master Fee Schedule

Councilor Van Asselt MOVED on first reading ORDINANCE #2007-06 amending Chapter 97 “Plumbing Code and Regulations”, Section 97-10 of the Durham Town Code, and adding the fees of this section into the Town-wide Master Fee Schedule, and schedules a public hearing for March 19, 2007. Councilor Morong SECONDED the motion, and it PASSED unanimously 9-0.

- D. Other business

XI. Nonpublic Session

Chair Niman noted that the Council had been scheduled to review Administrator Selig’s annual performance evaluations that evening, in nonpublic session.

Administrator Selig suggested that the Council do this instead at the next meeting.

It was agreed that this would be done in nonpublic session at 6:30 pm, before the regularly scheduled Council meeting on March 5th.

It was noted that there was nothing new to discuss concerning land matters.

XII. Adjourn (NLT 10:00 PM)

Councilor Morong MOVED to adjourn the meeting. Councilor Van Asselt SECONDED the motion, and it PASSED unanimously 9-0.

Adjournment at 11:02 pm

Victoria Parmele, Minutes taker