

This set of minutes was approved at the April 9, 2007 Town Council meeting.

**DURHAM TOWN COUNCIL
MONDAY, MARCH 5, 2007
DURHAM TOWN HALL – COUNCIL CHAMBERS
6:30 PM**

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

MEMBERS ABSENT: Councilor Mark Morong

OTHERS PRESENT: Town Administrator Todd Selig, Town Planner, Jim Campbell

I. Call to Order

Chair Niman noted that the Council was meeting at 6:30 that evening because of a scheduled nonpublic meeting. He called the meeting to order at 6:34 PM.

II. Approval of Agenda

Councilor Needell MOVED to approve the Agenda as submitted. Councilor Van Asselt SECONDED the motion, and it PASSED unanimously 8-0.

III. Nonpublic Session

Personnel matters in accordance with RSA 91-A:3 II (a) and (c) relative to the annual evaluation for the Town Administrator.

Councilor Needell MOVED to go into nonpublic session regarding personnel matters in accordance with RSA 91-A:3 II (a) and (c) relative to the annual evaluation for the Town Administrator. Councilor Julian Smith SECONDED the motion, and it PASSED unanimously 8-0, by roll call vote:

<i>Chair Neil Niman</i>	<i>yes</i>	<i>Councilor Peter Smith</i>	<i>yes</i>
<i>Councilor Gerald Needell</i>	<i>yes</i>	<i>Councilor Karl Van Asselt</i>	<i>yes</i>
<i>Councilor Julian Smith</i>	<i>yes</i>	<i>Councilor Henry Smith</i>	<i>yes</i>
<i>Councilor Diana Carroll</i>	<i>yes</i>	<i>Councilor Catherine Leach</i>	<i>yes</i>

The Council entered into Nonpublic Session at 6:40 PM.

ANNUAL EVALUATION OF TOWN ADMINISTRATOR

Administrator Selig noted that a different format had been used for the evaluation this year, and said the instrument had identified some areas where improvement was needed, specifically

moving forward on particular issues facing the Town. He said it was sometimes a challenge to do this because there were various interests in play at any given time concerning these issues, which could hinder moving in a particular direction. He said it was sometimes challenging to remove some of these obstacles.

Councilor Peter Smith asked Administrator Selig for an example of a matter that could be analyzed in terms of this, including what the barriers were, and how Administrator Selig might have acted differently in order to remove the barrier.

There was discussion about this, and about the importance of putting something specific on the table for Councilors to look at.

Councilor Leach said she had been looking at this in terms of an overall concept, not a specific example of how Administrator Selig had handled a particular situation. She said she realized now that the delay in progress, and the barriers concerning particular issues, was also a reflection of the Council. She said the area where Administrator Selig had scored lowest was regarding initiative, risk taking, and strategic planning, but she said this might reflect the Council as well as Administrator Selig.

Councilor Needell noted that the evaluation concerning this, overall, had a high score, and that although the delay in progress on issues was a significant concern for two Councilors, it was not for the other six who did the evaluation. He also said he was curious as to what the expectation was in terms of removing barriers, and if this was a criticism of Administrator Selig's work.

Councilor Leach said part of the problem was the role the Council played, and that other groups in town played, which among other things tended to delay projects.

Councilor Peter Smith noted that he had urged for years that the Council itself also go through an evaluation process. He also noted that it had been said the previous year that Administrator Selig spent too much time addressing the public's concerns. He asked if this was perhaps the kind of thing the Council should talk about now.

Councilor Van Asselt said he was an advocate of a strong Town Administrator, and said he liked it when Administrator Selig brought a number of possible solutions for an issue to the Council, along with the possible consequences of each, and then recommended one of them. He said as an example of this that Administrator Selig had laid things out extremely well for the Craig Supply project, although he didn't agree with the recommendation itself. He said he couldn't encourage Administrator Selig strongly enough to play this kind of role.

Councilor Peter Smith asked who selected the topic to be addressed, and Councilor Van Asselt said the Council did.

Councilor Henry Smith said he agreed with Councilor Van Asselt, and said the Council could always say no concerning Administrator Selig's recommendation on an issue.

Councilor Needell said it was also appropriate for the Council to assert itself and say what it wanted on a given topic.

Councilor Leach said she would have liked Administrator Selig to lay things out to the Council this way for the recent conservation easement proposals, and she provided details on this.

Councilor Needell said for these particular issues, he felt the recommended direction to take should come from the Council, given the financial information provided by Administrator Selig, but the direction itself should not have come from Administrator Selig.

Councilor Peter Smith said everything done concerning these issues had been in the context that the public had already made a decision, with its vote, regarding the conservation land. He also noted that a non-government entity, the Land Protection Working Group, was involved in doing some of the research regarding the conservation lands.

Councilor Van Asselt said Durham citizens felt they should have an open door to Administrator Selig, which was a plus, but was also a big minus. He said Administrator Selig had to make the call as to how much time he spent with citizens and Council members. He also said the Council needed to support how Administrator Selig chose to handle this. He said when dealing with the public got in the way of how Administrator Selig used his time, this was a serious matter.

Councilor Julian Smith said he hoped the evaluation instrument never again had multiple choices. He also said it was too long, and was a waste of paper, and that he hoped the process could be finished sooner next year, perhaps after the Council completed the Budget process.

Chair Niman suggested that perhaps the process could start in January next year.

Administrator Selig indicated that the evaluation process started in January this year.

Administrator Selig asked how he should read Councilors' answers to the questions on advocacy, and inclusion of the public. He asked if the expectation of the Council concerning this was less than what he provided.

There was detailed discussion on the significant amount of email Administrator Selig received.

Councilor Leach asked if there was perhaps a way to deal with this email that wasn't as time consuming.

Councilor Needell asked if the amount of email Administrator Selig received was a problem for him, stating that if it was not, he wouldn't ask him to make a change concerning this.

Administrator Selig said he saw that responding to the public was a part of his job. He noted that he had put some measures in place to divert email away from him, and also said he responded to emails at a time that was convenient for him. He said the Council actually saw about a tenth of the emails that came through to him, and said he forwarded on representative samples of emails so the Council had a sense of what he was dealing with.

Councilor Needell said that rather than having Administrator Selig have to think about whether to forward certain emails to the Council, he didn't mind receiving all of them, so Administrator Selig didn't have to decide regarding this.

Administrator Selig explained that sending a brief email to Councilors frequently negated the need for Councilors to call him, actually providing a net time savings.

There was further discussion on the email issue.

Councilor Van Asselt said if in the Council's opinion, Administrator Selig was not prepared concerning particular issues because he was spending so much time communicating with the public concerning these issues, this was something the Council needed to talk about. He said this was a central issue, although stating that he was not saying that Administrator Selig wasn't prepared concerning various issues facing the Town.

Councilor Needell said if Administrator Selig needed support from the Council to push back on things that were taking his time, this support was being offered.

Administrator Selig said he did try to divert some of the email, but said this was still a small town, so it was important to maintain contact with the public, and was frequently demanded by the public.

Councilor Carroll said she thought this was something Administrator Selig had to deal with, noting that if things went too far the other way and people didn't have access to him, this would affect community spirit. She said she thought he was doing a good job concerning balancing this, and said he would find more ways to deal with the email situation.

Administrator Selig noted that one of the things that had happened the past year was that the Council had had several work sessions, which had required significant preparation on his part. He said these sessions had also resulted in study groups, and said he had spent a tremendous amount of time on them. He said if the Council was looking for him to be visionary, and come forward with specific proposals, it couldn't keep him engaged 100% on other things. There was discussion by the Council as to whether the conversation on the evaluation should be pursued further.

Councilor Henry Smith said he agreed that the electronic evaluation format should be discontinued.

Councilor Needell said he hadn't liked actually doing the evaluation with this format, but had liked the results obtained from it.

Administrator Selig noted that the results of the evaluation would be made available to the public as would the minutes from the discussions.

Councilor Henry Smith MOVED to go back into public session. Councilor Julian Smith SECONDED the motion, and it PASSED unanimously by roll call vote.

<i>Chair Neil Niman</i>	<i>yes</i>	<i>Councilor Peter Smith</i>	<i>yes</i>
<i>Councilor Gerald Needell</i>	<i>yes</i>	<i>Councilor Karl Van Asselt</i>	<i>yes</i>
<i>Councilor Julian Smith</i>	<i>yes</i>	<i>Councilor Henry Smith</i>	<i>yes</i>
<i>Councilor Diana Carroll</i>	<i>yes</i>	<i>Councilor Catherine Leach</i>	<i>yes</i>

The Council returned to public session at 7:08 PM.

Chair Niman called a recess from 7:08 to 7:18 PM.

IV. **Special Announcements**
No special announcements

V. **Approval of Minutes**

February 5, 2007

Councilor Van Asselt MOVED to approve the February 5, 2007 Minutes as submitted. Councilor Needell SECONDED the motion, and it PASSED 7-0-1, with Councilor Peter Smith abstaining because he was absent from the meeting.

February 5, 2007 (nonpublic session)

Councilor Julian Smith MOVED to approve the February 5, 2007 nonpublic session Minutes as submitted. Councilor Van Asselt SECONDED the motion, and it PASSED unanimously 7-0-1, with Councilor Peter Smith abstaining because of his lack of presence from this meeting.

VI. **Councilor and Town Administrator Roundtable**

Councilor Henry Smith said he had attended the most recent DCAT meeting, and said DCAT coordinator Craig Stevens would be ordering two new speakers so it would be easier for members of the public to hear what people were saying at meetings. He also noted that DCAT member Paul Gasowski had said there should be an educational channel for the Town.

Councilor Smith also made note of the fact that the recent Candidates Forum had been broadcast by DCAT, but had not been produced by DCAT. He also noted that resident Ed Valena had provided some photos of conservation easement lands in Town that would be used as background for announcements on DCAT.

Councilor Peter Smith said he wanted to make some comments in light of the fact that his term as a Councilor would end with the present Council meeting. He said he would like to review some of the things that had occurred since his tenure began. He said when he ran for office there were three major matters he was concerned with: the importance of finding a top flight town administrator; the development of a tradition of openness in government; and working through ways to deal with an endemic issue for Durham, the relationship between the Town and the University.

He said he was happy to say that concerning the first matter, Administrator Selig had proved to be a very strong choice, and said he couldn't emphasize enough that a town couldn't operate well without a first-rate town administrator. He said Durham had gone to the Town Council/town administrator form of government because the Town had become too complex to be run the other way. He said almost all of his tenure on the Council had coincided with Administrator Selig holding the Town Administrator position, and said he was pleased to see that Administrator Selig had agreed to serve the Town for another three years. He said he felt the Town was in very good hands.

Councilor Smith said he was pleased that this was a very different Council than it had been six years ago. He said that regarding an issue of particular interest to him, - having open meetings, he believed that over the course of the past six years, Durham had turned into a model community concerning this. He said the Town was perceived as an entity that did business in public, even to the shock of its own lawyer. He said that while it might be difficult at times to do things this way, the alternative was almost always worse. He said he was pleased that the Town Administrator saw things this way, and was very open with the public.

Councilor Smith said the relationship between the Town and the University remained a difficult issue, although noting that some progress had been made concerning this. He said that perhaps the biggest improvement was the willingness of the University to crack down on inappropriate student behavior, and he thanked the University for this. He said there were many more areas where greater progress between the Town and the University could be made, in particular, the idea of merging of the two police departments, which was a way to create better governance and also save a substantial amount of money.

Councilor Peter Smith said Durham was an unusual place, given the presence of the University, and he provided details on this. He said that moving forward, his main concern for the Town and the Council was that they maintain an approach to resolving problems that constituted, at minimum, a careful collection of facts, open discussion, and the times when the public was excluded from the discussion a rare exception.

He said Durham was not an easy town to administer, and said the problems it faced would always be difficult to solve. He noted that regarding issues related to taxation, it was important to realize that the Town was a victim of the State's taxation system. He said although New Hampshire taxed its citizens less heavily than any other state except for Alaska, the problem was how the taxation was done. He said these were real problems, and it was important to be realistic about them.

Councilor Smith said he hoped that in terms of governing in a very open way, Councilors always remembered that when they became members of the Town Council, they played a different role than when they were citizens of Durham. He said their point of view had to be broader as Councilors than as private citizens. He thanked the citizens of Durham for allowing him to serve on the Council.

Councilor Carroll noted that she had brought copies of the newsletter the *Lee Conservation News*, so Durham residents could know more about the various projects and programs going on in that town. She asked that residents receiving copies of the newsletter share them with other residents before recycling them.

Councilor Julian Smith said the Mill Plaza Study Committee had held its first meeting on February 21st. He said the committee's second meeting would be held on Wednesday, from 4-6 pm., and said citizens with ideas, questions and concerns could contact him (Vice Chair), Chair Dave Holland, or Secretary Ed Valena.

Councilor Van Asselt spoke about the work being done by the Housing taskforce, which had been formed after the Council's work session on housing in 2006. He said the taskforce had met 8-9 times with Durham landlords, and among other things had discussed the idea of

providing professional property management, and in return permitting student rental properties to have increased density

He noted that there had been some opposition from the landlords concerning this, but said a compromise had been reached that would allow the landlords to potentially increase the density of student apartments if they went before the technical review committee of the Planning Board. He explained that the goal of this approach was to get landlords more interested in reinvesting in their properties, which would keep student housing where students already tended to be housed, rather than having this housing occur in neighborhoods.

Councilor Van Asselt said this proposal would come to the Council eventually, and said the landlords were on board with it. He also noted that Code Administrator/Enforcement Officer Tom Johnson and the Fire Department had developed some protective recommendations in relation to the idea of allowing increased density.

Administrator Selig said the goal of this effort was to work with rental property owners to bring their properties into greater compliance; to increase the taxable value of student rental properties; and to increase safety for students and townspeople.

Councilor Peter Smith asked if the Town Assessor had provided information on the difference in valuation that would result if increased density were allowed.

Administrator Selig provided details on this, and noted that if rental property owners chose to take advantage of the option to have increased density, this would result in tax increases. There was further discussion on this.

Councilor Needell said the Planning Board would meet on March 14th. He said the meeting would include the continued public hearing on the Madbury Commons project, a public hearing on the Emery Farms application, and a public hearing on a site plan application for the 28 Madbury Road property owned by SAE fraternity.

Councilor Leach spoke about the matter of how candidates for Town positions were notified regarding election results. There was discussion about this.

Administrator Selig said Town Clerk Laurie Pitt had suggested that she could fax election results to candidates who were unable to attend the public announcement of the election results. He noted that she would not be able to do this for the School District positions.

VII. **Public Comments**

Ed Valena, Bagdad Road, spoke regarding the ongoing public discourse on the issue of whether residents engaged in real estate should be involved in Town government. He noted that he was a commercial real estate appraiser, and said some of his appraisals involved conservation land. He said the Town had a great slate of candidates for the Town Council, and said he hoped that candidates in the middle wouldn't get caught up as a result of polarization at both ends. He also said if residents were going to disqualify candidates based on how they made a living, all occupations should be scrutinized.

Hillary Scott, 20 Davis Ave., spoke about her appreciation for Administrator Selig's openness to input from the public, and his willingness to work with residents on issues. She also noted that she was the person who had noted the poor sound quality in the Council chambers, and she said she appreciated the efforts that had been made to make some improvements concerning this.

Ms. Scott also noted a motion made by the Planning Board at its recent February 21st meeting, to allow two lots to be considered as one lot. She said the issue was raised at that meeting that there had been no Pre-conceptual Review of the Madbury Road application, and that the density issue had not been resolved previously because of this. She said it was also noted at that meeting that the waiver requested by the applicant to not go through the 4 step site plan application process was never voted on by the Planning Board.

She said the motion approved by the Planning Board would set a precedent for future applications. She said Board member Arthur Grant had noted that all the attorneys involved with this application agreed there were in fact two lots, and that they were not contiguous lots. She said Mr. Grant had also said there was no provision in State law or the Zoning Ordinance for combining noncontiguous lots. She said Chair Kelley had said he supported the motion because it was site specific.

Ms. Scott said she questioned why this vote had not been postponed, and she urged the Council to review the Planning Board meeting, and ask whether the most careful interpretation of the Durham Zoning Ordinance had been applied to this situation.

Steve Nadeau, 18 Emerson Road, said he had been out of Town for the recent Candidates' Forum, and asked if it would be possible for the Town website to be more current regarding the DCAT schedule of Council and board meetings. He also said he often heard Durham spoken about as being a different kind of town, but said the Town had many of the same issues and processes as other towns. He said residents of Durham liked to hear polite discourse, and to see an atmosphere where people were encouraged to speak their minds where the spreading of false rumors was discouraged. Mr. Nadeau said if Durham could do this, it really would be a different kind of town, in a very positive way.

Beth Olshansky Packers Falls Road, thanked the three Councilors whose terms were ending, and said she realized there was a tremendous amount of work involved in serving on the Council. Ms. Olshansky also said that regarding what Ms. Scott had spoken about, she too was concerned about this situation. She encouraged Councilors to watch the Planning Board meeting, and said it looked like there had not been strong adherence to the Zoning Ordinance at that meeting. She said residents often thought that the Ordinance offered certain protections, and said she thought people would be alarmed to see how those protections could evaporate.

VIII. **Committee Appointment**

Shall the Town Council appoint Douglas Greene, 3 Durham Point Road, to fill the alternate member vacancy on the Planning Board?

Councilor Julian Smith MOVED to appoint Douglas Greene, 3 Durham Point Road, to fill the alternate member vacancy on the Planning Board, for a term ending April, 2009.
Councilor Leach SECONDED the motion.

Mr. Greene spoke before the Council. He said he had graduated from UNH in 1993, had then moved away from Durham and then moved back in 2000. He said he enjoyed Durham's environment, and looked forward to getting more involved as a volunteer in the Town, especially as a Planning Board member. He also noted that he had questions as to why taxes in Durham were so high.

Councilor Henry Smith said he commended Mr. Greene for wanting to be involved, and asked what had motivated him to serve on the Planning Board.

Mr. Greene said he did architectural design work, so had an interest in these kinds of issues. He said he was interested in engaging in discussions on how the Town would develop. He said he appreciated the conservation ethic in Durham, and said he would like to see a balance in terms of how the Town developed. In answer to Councilor Peter Smith, Mr. Greene provided additional details on how he made a living.

Councilor Needell asked Mr. Greene if he was interested in the real nitty-gritty of the Planning Board's work, and Mr. Greene said he didn't really know yet.

Administrator Selig noted that the NH Municipal Association offered planning seminars and workshops for planning board members, and asked Mr. Greene if he was comfortable with the idea of attending some of these.

Mr. Greene said he was.

Councilor Peter Smith noted that it was time-consuming to serve on the Planning Board, and said it was important that a person planning to serve on the Board attend regularly, and be prepared to do the work that was involved.

Councilor Carroll suggested that a way to see why taxes were so high in Durham was to go through the Budget document for 2007, and compare it to Town Budgets from previous years. She also said that the Planning Board was a quasi-judicial board, and said it was therefore important to try to take a neutral position, and to be open-minded.

The motion PASSED unanimously 8-0.

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

- A. **RESOLUTION #2007-08** recognizing outgoing elected officials for their dedication and service to the Town of Durham
- B. Shall the Town Council approve the Special Events Permit application to close certain sections of Town roads to conduct a 5k road race on Saturday, April 7, 2007, as requested by the Oyster River High School "Friends of Oyster River Track"?

Councilor Julian Smith MOVED to approve Unanimous Consent Agenda Items A and B. Councilor Leach SECONDED the motion, and it PASSED unanimously 8-0.

X. Presentation Items

A. Acknowledgement for contributions made by outgoing Town Council members

Chair Niman provided plaques to Councilor Peter Smith, Councilor Needell, and Councilor Van Asselt for their service to the Town as members of the Town Council.

B. Presentation from Chinburg Builders of Durham, NH concerning Request For Proposal (RFP) for Durham Business Park and discussion by Council of possible next steps

Administrator Selig explained that the Economic Development Council had put together an RFP for the potential sale and development of the Durham Business Park. He said there had been one response to the RFP, from Chinburg Builders. He noted that the abutters to the property would like to receive an abridged version of the company's proposal, and would like to be able to provide comments concerning this. He noted that the Economic Development Committee had voted to forward the proposal on to the Town Council.

There was detailed discussion on the next steps that could be taken. Administrator Selig then said representatives of Chinburg Builders would provide a general idea of the approach they wanted to take concerning the property.

Steve Schuster, Vice resident of Development for Chinburg Builders, said a major strength of their development team for this project was having Mike Sievert of MJS Engineering and architect Nick Isaak, both of whom lived in Durham. He said the team had a sincere interest in creating a successful project, and wanted to have a public/private partnership, to ensure public access aspects to the development. He spoke about other NH towns where the company had provided public amenities, including river walks, docks, walking trails, pedestrian bridges, etc.

Mr. Schuster said the approach with this project was to work with the land, and he noted the various setbacks involved. He said it had been determined that there was the potential for 5 separate buildings, which could take up between 50,000 and 150,000 sf. He said what would actually be built would be determined by what happened concerning a public/private partnership.

He reviewed the uses that would be possible on the property, and also provided details on a formula being used to determine the value of the property, based on a number of variables. He also noted that specific Design Guidelines had been developed for the Durham Business Park, and said Chinburg Builders was looking forward to articulating a project based on these guidelines.

There were questions and detailed discussion of what portion of the property was developable. Mr. Schuster said 6-7 acres of the property was developable.

Councilor Peter Smith noted that the property was currently owned by the Town, and said that theoretically, the setbacks and other limitations in terms of developing the site were therefore not necessarily applicable.

Engineer Mike Sievert demonstrated the usable area on the site, and noted that the data on this was based on a site plan done some time ago. He said this data had not been verified in the files, but said the team intended to do this as they moved forward with the project.

Mr. Schuster said this information had been used in the company's conception of what was usable, in order to be able to develop an idea of the property's development potential, and value. He said the information was considered to be a fairly accurate beginning point.

Councilor Van Asselt noted that Mr. Schuster had mentioned that there could possibly be 5 buildings comprising somewhere between 50,000-150,000 sf. He asked what the possible heights of these buildings were.

Mr. Schuster said there were view corridors and many other elements and variables that had to be considered, based on the Design Guidelines for the Business Park.

Councilor Van Asselt said there were the values of concern to Chinburg Builders and the values of concern to the Town, and said the challenge was to merge the two.

There was discussion about possible impacts of different uses of the property, and that these kinds of variables started to push what could be done with the site. Councilor Van Asselt said an important issue was that the Council has to determine what process was to be used to merge the two values.

Mr. Schuster provided details on how the purchase and sales price was being arrived at. He also said a question for Chinburg Builders was whether what the company might do with the property would meet the economic development needs of the community. He said it was understood that the land had been purchased by the Town some years back, and that the Town had invested in infrastructure improvements, but there had been little return on that to date. He said it was also understood that the Master Plan and the Zoning Ordinance had articulated that there needed to be some economic return to the Town from developing the property.

Councilor Needell said there were still a lot of unknowns concerning the process that should be followed, moving forward. He provided details on how he saw this, and asked when the Town would cut the apron strings on the property.

Mr. Schuster provided details on the company's perspective concerning this. He said the strings wouldn't be cut until the Planning Board was done with reviewing a proposal/site plan application concerning the property.

Councilor Needell asked if the purchase of the property from the Town was contingent upon Planning Board approval, and Mr. Schuster said yes.

Councilor Peter Smith asked if the intent was to develop the property and then sell it, or to develop it and then hold onto it and get a financial return. He also asked if perhaps the company didn't know the answer to this question yet.

Mr. Schuster said that typically, the company liked to have long-term ownership of its properties, but he said there were circumstances where the economics pointed to selling at least some of a property. He provided details on some possible approaches that could be taken in this instance.

Councilor Peter Smith described various economic models the company could follow, and also noted that the Town had to figure out what it wanted to get out of this relationship. He said the Town wanted tax money, and wanted to know what the minimum cost to the Town had to be to get that tax money. He said the Town also wanted to know what the usefulness of the property would be once its development was complete, in terms of services and residences that might be provided. He said the Town would also want to know what the aesthetics of the site would be then as compared to now.

Councilor Smith said the Town's interests were considerably broader than the company's interests. He also noted that he personally had a great interest in this property in terms of its aesthetic values, and said some projects could destroy the property.

He noted that the initial drawings showed 2 stories, but said the proposal indicated that there could be 4 stories. He said a fundamental issue was how the buildings would look from the water, and said he was very anxious to know how that would play out. He said for the Town to be able to make intelligent decisions, the company would have to be able to come up with several development scenarios, and jointly with the Town, would have to come up with what would be built there.

Mr. Schuster agreed there would have to be a partnership. He noted that the company would be better able to clearly articulate its vision for the property as potential users of the property came forward, and he provided details on this. He said the potential uses would be partly market driven, but he said this would be determined to a great degree by what the community wanted there, and how this was communicated. He said the first step in moving toward this was the review committee.

Councilor Leach asked if the company had done a market analysis concerning the property.

Mr. Schuster said nothing technical had been done yet, but he said there was one serious potential user of one of the 5 potential pods on the site, an elder care use.

Councilor Van Asselt asked if any thought had been given to the idea that if the Town retained some control of the property, this would allow greater flexibility concerning a development project. He also said he thought the Economic Development Committee felt that the Town's broader interests were protected by the process that the company was suggesting. He said the Committee felt that the one proposal that had been received was the one it wanted and involved a developer who was open-ended about what would be developed on the site. He also said that in terms of protecting the Town's broader interests, the company's approach allowed the Town to have maximum input as to what kind of development would occur on the site.

Mr. Schuster said Chinburg Builder would love to do this project, stating that this was a fabulous, important piece of land. He said the company did not feel the site should be totally built out, and said it was felt that a lot of issues could be addressed there. He also said the company knew Durham well, and had fought battles there before. He said the company had no

desire to battle in this instance, and would like this project to involve an invitation from the Town. He said he and Eric Chinburg wanted to put their energies toward figuring out how to get to the next step in the process, to create the best possible proposal.

Councilor Peter Smith noted that he was on record as saying that this property should not be developed, except for passive recreation. He said if this were a mill, like some of Chinburg Builders' other properties, the situation would be easier to deal with. He said in this instance, there was a piece of pristine land, and the plan was to put buildings on it.

Administrator Selig noted that there had been no discussion about the possibility of waiving setback and other provisions of the Zoning Ordinance in developing the property because the Town owned it. He also asked Mr. Schuster to speak about the potential recreation opportunities with this property.

Mr. Schuster said there was the opportunity to complement commercial development with recreation and civic uses, including such things as walking trails, access to the water, boat houses, river walks, public access parking, etc. He said there were many such opportunities with this property, and he noted that the company had typically included these kinds of uses in many of its other projects. He said there was clearly a lot of land on the property that could be set aside for these purposes.

Administrator Selig noted that the Council had approved a set of Design Guidelines for the Durham Business Park, and he said any purchase and sale agreement would be contingent upon these being followed. He said a Town design committee would work with the developer concerning this, and would be comprised of a representative of the Council, a representative of the Planning Board, Town Planner Jim Campbell, and himself.

Mr. Schuster noted that there would be no TIF involved with this property.

Chair Niman thanked Mr. Schuster for his presentation, and then asked the Council how it wished to proceed.

Councilor Leach asked for clarification as to what the Council would be charging Administrator Selig to do at this point.

Administrator Selig said the purchase and sales agreement would establish the terms upon which the property would be turned over to Chinburg Builders. He noted there had been discussion with the company about addressing development of the site pod by pod, one project at a time, and applying lessons learned from the first projects toward later projects.

He said another possibility was to move forward with multiple projects, and yet another was the idea of doing some public projects. He said there was also some flexibility concerning the purchase price, and noted that his own goal was to get at least \$500,000 in order to be able to reimburse sewer users.

Councilor Leach asked Administrator Selig if he was comfortable moving forward with the purchase and sale agreement.

Administrator Selig said he was, also noting that concerning issues regarding height, etc., it was not completely clear yet how to move forward. He said it would be helpful if the Council could provide some guidance concerning this.

Councilor Needell said whatever purchase and sale agreement was brought forward would be contingent upon success of a project application before the Planning Board. He said the agreement would be void if the Planning Board didn't approve the application. He said before this stage happened, it would have to be decided how much of the site would be included in the development plan. He said he therefore questioned whether it was realistic for the Council to take any action at the present meeting.

There was discussion between Administrator Selig and Councilor Needell as to what role the Council could play at present. Administrator Selig noted that the Council had previously weighed in regarding the Design Guidelines, and said these would provide some direction to the company. He also said some guidance from the Council especially concerning building height issues would be useful right now.

Councilor Peter Smith he was not comfortable with calling this a purchase and sale agreement at present, and said this could be addressed later. He also said the Council had never decided whether the Design Guidelines were guidelines or requirements. He said it needed to be defined what Chinburg Builders felt were the minimum things it wanted, economically speaking, and he said there also had to be some idea of what would please or displease residents. He said that speaking as a private citizen, 4 story buildings were out of the question.

Councilor Julian Smith said that architect Nick Isaak had done a great job in his renderings of the site, and also said he should be thanked for encouraging Chinburg Builders to submit what was the only proposal for the property that the Town had received.

Councilor Julian Smith MOVED that the Town Council hereby directs the Town Administrator to negotiate a Purchase and Sale (P & S) agreement with Chinburg Builders, Inc. and to bring the draft P & S back to the Town Council for their review on March 19, 2007. Councilor Van Asselt SECONDED the motion.

Councilor Carroll said the Council needed a road map concerning this process, and said careful navigation would be required. She said they knew the general direction they were going in, but said there were some decisions that needed to be made. She said there was a lot of flexibility in this process, which could be a strength, but could also be a weakness. She said she wasn't sure if the motion on the table provided a roadmap or not.

Councilor Julian Smith said a motion would get the Council a long way toward planning the design of the roadmap. He said the Council had to decide if it was going to move forward, and had to start the process that would cause Chinburg Builders to come before the Planning Board with a site plan application, where the various issues would be addressed.

Councilor Needell said he was okay with this as a starting point, but he asked what action was supposed to be taken on March 19th.

Administrator Selig explained that there was a 90 day limit for the RFP, and said the Council would therefore need to decide if it would award the project to Chinburg Builders. He also explained that he thought that having a public hearing as part of this process was important because there was a lot of interest by residents in this property. He provided details on how he saw the process as unfolding.

Councilor Needell suggested that a better strategy would be to allow the Council to have one round of discussing a draft proposal document before going to a public hearing. He said he thought this would provide the Council with a better sense of where the process was going.

Councilor Henry Smith said he agreed with this. He said he liked what he had heard from Chinburg Builders, especially concerning the idea of trails and other public access to the property. He said he saw a purchase and sales agreement as the beginning of a roadmap.

There was discussion with Mr. Schuster that his company was flexible in terms of working through all of the issues by April.

Councilor Peter Smith explained that he would vote no on the motion because this would be consistent with his previous position that this property should not be developed. He also said he would follow this matter closely because if the property was going to be developed, this had to be done with exceptional care.

The motion PASSED 7-1, with Councilor Peter Smith voting against it.

Chair Niman called a recess from 9:18 to 9:27 PM.

XI. Unfinished Business

PUBLIC HEARING (CONTINUED) 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

Wayne Burton, 105 Madbury Road, said he was very familiar with TIF districts, as someone involved in economic development north of Boston, on the North Shore. He said he had watched the debate on TIF districts at recent Council meetings, and said he had now come to speak because he felt they were an essential tool, which was used widely across the country to encourage uses that towns wanted to see. He said if the Town didn't have this tool in its toolkit, developers would go someplace else.

Mr. Burton said he was concerned about Durham's future, in terms of its demographics and affordability, and he noted that the Town was more diverse when he first moved to Town many years ago than it was now. He also noted that New Hampshire didn't have regional economic development initiatives, and said that economies of scale worked against individual towns. He said other areas of the country were starting to realize that regionalism was important because the world was too complicated now.

He said he thought the Council should give serious consideration to using TIF to do intelligent economic development in order to increase the tax base. He said he had seen it work in other

towns, and said it would work in Durham because people in Town would keep a close eye on the process.

Beth Olshansky, Packers Falls Road, said she would like to speak a bit more about the concept of TIF, and whether doing one project would open up further development of the district because water and sewer would be available. She also asked that there be a serious review of what the Table of Uses would actually allow currently in terms of development, before thinking about providing water and sewer to outlying areas. She provided details on what she had discovered from reading the Table of Uses.

Ms. Olshansky said she would prefer seeing TIF voted on in relation to a particular project, where all the facts and finances could be weighed. She said at such a time, it could be decided if TIF was a viable tool for that particular project.

Dwight Baldwin, 6 Fairchild Drive, said that given all of the input he had heard concerning TIF, he would like the Council to go on record as being in favor of the concept in order to increase economic development. He also suggested that the Council could hold in abeyance approval of the enabling provisions until a specific TIF related project came before the Council.

Ted McNitt, 101 Durham Point Road, said he agreed with Ms. Olshansky and Mr. Baldwin, and said it wouldn't take long to put the enabling provisions in place if a good project came along. He said that in the meantime, they should all learn more about the concept, but not make Durham a target for every developer wanting to make a fast buck.

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

Chair Niman noted that the Council would not be voting on the enabling legislation that evening because the Statute said there had to be a 15-day waiting period after the public hearing closed. He asked if the Council wanted Administrator Selig to draft a Resolution that would then be discussed by the Council at its first meeting in April, or if the Council didn't want to vote on enabling legislation until there was a specific proposal. He said a third option was for the Council to reject the entire idea of TIF districts.

Councilor Needell noted that the Council couldn't vote not to enact TIF districts at the present meeting. He also said he wouldn't want to set the date on which the Council would make its decision. He said he liked the idea presented by Mr. Baldwin, but said the Council would have to have a serious discussion when it was ready to go forward with the enabling legislation.

Councilor Leach asked what Administrator Selig thought were the advantages and disadvantages of enacting the enabling provisions when there was or was not a specific project.

Administrator Selig said to the Economic Development Committee, the Council's adoption of the enabling legislation would provide the green light that there was openness to doing TIF, and the committee would therefore move ahead with a specific TIF district proposal. He noted there were four possible areas for TIF districts: downtown at Mill Plaza; along Stone Quarry Drive; on Technology Drive; and Route 155A/Mast Road. He provided details on this.

He said if the Council was open to using TIF for a specific proposal, this would be an appropriate way to move ahead, and would involve no risk. He also noted that once the legislation itself was enabled as part of this, although people might like that specific project, they might not like subsequent projects that would also be enabled. But he said he felt members of the public would be put at ease if they saw a specific proposal, could look at the economics and the potential benefits, and would then be able to determine if TIF was a good tool.

Councilor Peter Smith said he agreed with this, but he noted that there had been some specific comments made concerning features of the Statute that potentially could create other governing bodies. He provided details on this, and said there was a very meaningful control issue involved when dealing with this statute.

He also said a question was whether the Town was authorized by the State to adopt those portions of the Statute it wanted, in order to accomplish what it wanted. He said if it could, one option was to only adopt certain provisions of the Statute. He said there might be greater public acceptance of that approach, which would eliminate what were perceived as some risks to the concept. He urged that this approach be explored, and said doing so might create more options, and opportunities for consensus.

Chair Niman asked for further clarification from Councilor Peter Smith.

Councilor Peter Smith said one of the points made at the public hearing was that in getting into development schemes, the further that various entities were empowered, the greater the risk was that there could be problems. He said it might therefore be that people would be happier with TIF if the enabling legislation made it clear that the full power would be kept with the Council. There was further discussion as to whether selective provisions of the Statute could be adopted.

Councilor Van Asselt said some people had said that TIF could work for some development projects but not others. He also said the Economic Development Committee had talked about TIF at length. He said he failed to see any danger to the Town, legally or financially, of having this legislation on the books, and said adopting it made a statement that the community was willing, under the right circumstances, to have a public/private partnership that did something about taxes. He said this was the position of the Economic Development Committee.

Councilor Van Asselt also said that if the Town was really planning to do development somewhere in Durham, TIF could help with this. But he said if Durham wasn't really going to do any development, talking about TIF was a waste of time. He said if broadening the tax base was needed, and if TIF helped the Town get there, it should be put on the books. He also said that if Administrator Selig meant what he had said in his recent letter concerning the tax rate and the need to increase the tax base, he felt the Council could express its agreement by saying the Town would have a financial tool to help do this.

Administrator Selig read from his letter, in the Annual Town Report. He said increasing the tax base had to be on the table, and had to be considered more than it had been in the past.

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

Councilor Peter Smith said Durham citizens had expressed a very understanding feeling, concerning whether TIF could actually work for the Town. He said this demonstrated that in order to get consensus and public support, instead of saying the TIF device itself was good, it was important to look for circumstances where people would say that using TIF sounded like a good idea. He said this was a possible way to make progress, and was simply good politics.

Chair Niman said he thought that some people had been saying they didn't want to use the device at all. But he said it made sense to him if the Council didn't have to adopt all the provisions of the Statute, and said it would be great if this issue was resolved.

Councilor Peter Smith said it would be good to sort out those provisions that were most objectionable, and to try to go with those things that were least objectionable, as a way to move forward and get something done.

Chair Niman noted that one reason for bringing the TIF concept forward had to do with possible redevelopment of Mill Plaza. He said he would like to be able to tell the Mill Plaza Study Committee what the rules were, and whether they could consider using TIF, or tax breaks as part of their formulation of goals for the Plaza.

Councilor Needell said he felt that two issues were being mixed together in this discussion. He said the RSA162-K:13 provision issue was in response to contradictory information thrown about regarding a transfer of power involved with TIF. He said this issue might impact how some people viewed the whole concept of TIF, and said it would be great if that language could be excluded from the Town's TIF enabling legislation. He said the information provided by the consultant concerning this was not clear, and said that reading the Statute, the ability to transfer power did exist.

Councilor Needell said that he thought the Economic Development Committee and the Mill Plaza Committee should absolutely be able to consider the idea of using TIF. He said if an exciting project came forward, it wouldn't take long to adopt this legislation. He said the really hard part with this concept was coming up with a specific development plan that the public would buy into. He said if there was such a plan the Town Council was willing to embrace, he didn't think the public would thwart the enabling provisions.

Administrator Selig said it was important for residents to know that the Town was in a financially solid position, and said he didn't want people to be driven by the idea that there was an emergency situation. But he said the concern was that the Town had choices to make concerning the increase in the tax rate. He provided details on the possible options to address this, including increasing the tax base.

He spoke about the possibility of developing Stone Quarry Drive, and said once water and sewer was there, the entire corridor could change. He said the danger was not so much whether a development project would be a success, but whether there could be unanticipated consequences. He also spoke about infrastructure issues for the Mast Road/155A area, and said if these were addressed, development in the ORLI district could come on line. He also noted that the Economic Development Committee had been asked if the Town would bring water out to the Spruce Wood property, and said if a goal was to help them come on line, it was only a matter of

time as to when the corridor there would change. He said the Town needed to talk about these consequences.

Administrator Selig said the most complex TIF district would be Mill Plaza, given the various infrastructure issues, and possible uses of the site. He said there was also the question of what entity should administrate a TIF district there, and he also said if the district were expanded to include other properties in the downtown area, various stakeholders might need to be involved in the process. He said there was not a financial crisis in Durham, but there was a crisis with the tax rate. He said this meant something different to different members of the community.

Councilor Julian Smith asked whether, if the Council decided to take no further action at present regarding TIF (also noting that he hoped it would not), they would have to start the hearing process over again at some later date.

There was some discussion on this.

Administrator Selig said he thought the Council should vote one way or another on this issue at the first meeting in April.

Councilor Julian Smith asked if the enabling legislation and a TIF district could be enacted on the same night, and Administrator Selig said yes. He provided details on this.

Councilor Needell said he didn't want there to be the expectation at the first meeting in April, the Council would be saying yes or no to TIF. He said a third option was to keep the idea of doing TIF open, and not to vote on enabling legislation until this was necessary.

There was further discussion on what the Council's options were.

Administrator Selig noted that Councilors Henry Smith and Julian Smith had gone to Raymond to discuss the TIF district that had recently been created there.

Councilor Henry Smith provided some details on this, and said he had gotten a positive impression that it was going well. He said he had asked what the downside was, and was told there was very minimal risk to the town.

Councilor Smith also suggested that there didn't necessarily have to be a TIF district for redevelopment in Durham's downtown area, and said tax incentives could also be used. He also said that regarding RSA 162-K:13, the wording said "may create." He noted that the language of RSA 162-K:14 was mandatory: "shall create."

Administrator Selig said there was discretion as to what authority could be given to the advisory committee.

Councilor Needell said that by restricting this discretion, some limits could be put on what future Councils could do. He said perhaps this language could be tightened.

***Councilor Peter Smith MOVED that action on this matter be postponed until April 2nd 2007.
Councilor Carroll SECONDED the motion.***

Councilor Julian Smith objected to the motion, but after some discussion withdrew his objection.

The motion PASSED unanimously 8-0.

XIII. New Business

- A. Discussion concerning the delegation of assessing powers to either a board of assessors or possibly requesting a change in state statute to allow for the designation of such powers in another manner

Councilor Peter Smith noted the previous comments he had made to the Council on this matter, and said he felt that action should be taken concerning this.

Councilor Needell noted that he had provided Councilors with information on what the town of Hanover did concerning this, and said it was a model that offered some suggestions. He said he had spoken about the issue with a member of the Hanover Board of Selectmen. But he said that given the lateness of the hour, he could wait to discuss the issue, and said additional information could be provided to Councilors in the meantime.

Councilor Peter Smith said Hanover's approach was a possible way for Durham to go. He said he felt the Durham Town Council should confine its work to being a policy-making board, and not an entity that acted like a court. He noted that the Council did play a judicial role concerning reviewing personnel matters, and also said it was a sound move for the Council to get out of being part of the conditional use process. He said there could be times when there might be dozens of judgments to make regarding assessment decisions, and said this wasn't a good role for the Council to be playing.

Councilor Needell suggested that further discussion on this issue could be delayed until May.

Councilor Van Asselt said the question needed to be asked who would benefit from changing the way this was presently handled.

- B. Other business
There was no other business.

XIV. Adjourn

Chair Niman thanked Councilor Peter Smith, Councilor Karl Van Asselt and Councilor Gerald Needell for the work they had done as members of the Town Council.

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

Adjournment at 10:42 PM.

Victoria Parmele, Minutes taker