

**This set of minutes was approved at the TC meeting on September 10, 2007**

**DURHAM TOWN COUNCIL  
MONDAY, AUGUST 6, 2007  
DURHAM TOWN HALL – COUNCIL CHAMBERS  
7:00 PM**

**MEMBERS PRESENT:** Chair Neil Niman; Councilor Gerald Needell; Councilor Mark Morong; Councilor Karl Van Asselt; Councilor Julian Smith; Councilor Diana Carroll (arrived at 7:03 PM); Councilor Henry Smith (arrived at 7:36 PM); Councilor Cathy Leach; Councilor Peter Stanhope

**MEMBERS ABSENT:** None

**OTHERS PRESENT:** Town Administrator Todd Selig; Business Manager Gail Jablonski; Assessor Robb Dix

**I. Call to Order**

**II. Approval of Agenda**

*Councilor Stanhope MOVED to approve the Agenda as submitted. Councilor Needell SECONDED the motion, and it PASSED unanimously 7-0.*

**III. Special Announcements**

**IV. Approval of Minutes**

June 25, 2007 (work session)

*Councilor Julian Smith MOVED to approve the June 25, 2007 Minutes as submitted. Councilor Leach SECONDED the motion, and it PASSED unanimously 7-0.*

July 2, 2007

*Councilor Morong MOVED to approve the July 2, 2007 Minutes as submitted. Councilor Stanhope SECONDED the motion, and it PASSED unanimously 70.*

**V. Councilor and Town Administrator Roundtable**

Councilor Stanhope noted three construction projects currently going on in Town, and said the Public Works Department deserved kudos for one of them, the rebuilding of the sidewalks on Pettee Brook Lane with minimal interruption. But he questioned the project involving the laying down of cobblestone crosswalks, and asked whether these would be

durable.

Administrator Selig explained that real brick cobblestone was being used this time because it supposedly could deal with the wear and tear. He noted that the paint on the artificial cobblestones that were previously used had worn off.

Councilor Stanhope also provided details on problems with the road work being done on Mad bury Road, including the dust, problems with traffic flow, and the behavior of the construction crew. He said the responsibility for this lay with the Council because it had approved the contract. He said he wasn't sure how the contractor had been selected, but said he would think the Town would do better than this in the future.

Administrator Selig said the contracting firm had provided the low bid, but also said the firm's references had checked out. He said the company had done a good job on the ground, but its customer service skills were poor. He said he would contact the Police Department to expedite the traffic flow, but noted that the project was almost done. He said this situation had been frustrating for everyone involved, and said the contracting firm was perhaps not suited to work in Durham.

Councilor Van Asselt said he had 3 items to discuss with the Council. He said that he first wanted to put on the table the idea of developing a housing authority for Durham, and he provided a handout concerning this. He noted that there had been some discussion on this idea over the past few years, and also said the Council had recently had a presentation on affordable housing. He said if there was interest on the Council concerning this, he would bring it back for discussion at a later time. He also noted that he attended a recent Mill Plaza stakeholders session meeting and had presented this idea there, and people there said it seemed to be worth doing.

He said if the University was interested, a housing authority could play a significant role in terms of getting University housing on University land, and he provided details on this.

He reviewed the mechanics of setting up a housing authority, and then discussed the advantages of having one in Durham. He said it was a local agency:

- that can address the concept of affordable housing.
- that assumes a leadership role in addressing housing needs and opportunities, and brings those to the Town Council
- that has access to federal funds, tax credit funds, and private equity funds to support affordable housing in Durham.
- that can help provide additional focus in proposed developments to help ensure that the needs and priorities of Durham residents are included in such developments.
- that can play a major role in economic development, including the Mill Plaza, to broaden the tax base in Durham and help address the property tax issue(s).

Councilor Van Asselt stressed that a housing authority was not a vehicle to deal with student housing; it was a vehicle for addressing other kinds of housing, including affordable housing.

Councilor Van Asselt next spoke about the guidance provided by individual Council members at the Council's Budget Work session, and he questioned whether the Minutes from that meeting were clear as to what this guidance was to Administrator Selig at that meeting.

He also noted that those same Minutes reflected discussion about matching funds available for work on the Wiswall Bridge. He asked Administrator Selig if it was clear where things stood concerning State and federal funds, and concerning the impacts of different designs on the Durham taxpayers in terms of the use of local funds.

Administrator Selig said he saw that workshop as something that had provided him with guidance, and said he and Business Manager Gail Jablonski thought they had walked away with the task of showing the Council what a Budget would look like if it was limited to a 2% increase in wages and other employee costs. He said this was the first threshold, which came to about \$230,000, and said the second threshold was then to look at the additional 15% of the Budget, about \$50-60,000, and what could be done with it.

He said he would also show a list of a la cart items, which would be prioritized, so the Council could choose the things it wanted to keep and wanted to leave out of the Budget. He said this approach was the basis for the general guidance he had given to the department heads, and he said the Council might or might not be happy with the results of this.

Administrator Selig also said his understanding from the Council discussion on the Wiswall Bridge at the Budget Work session was that it wanted the work on the bridge to be done as economically as possible, and that a number of options concerning this should be presented to the Council. He noted that there was already a fairly broad consensus in Town that the look that was wanted for the bridge was a black railing, curving down gradually into the ground, like the railing now at the Packers Falls Bridge.

Councilor Van Asselt said that Administrator Selig had recently sent the Council a very good summary on the Town's water and wastewater issues. He said the third issue he wanted to speak about was water issues. He said there still seemed to be questions as to whether the Town had enough water, whether the restriction on the Lamprey River should be reduced, and how this would impact the water situation.

Administrator Selig provided a detailed description on the water resources available to the Town. He said water had become a valuable resource, and said Durham was lucky because it had several water sources. He said there was the Lee well, which provided a finite amount of water each day, and said a percentage of this water was reserved for the Town of Lee, and another percentage was dedicated for the area of town where Goss was located.

He said the second primary source of water was the pumping station on the Oyster River, which was owned and operated by the University. He said this system had the capacity to provide a great amount of water, assuming there were sufficient surface water flows. He

said the third water source was the reservoir on the Lamprey River, which was owned by the Town and connected to the UNH water plant by a jointly owned pipeline.

Administrator Selig said that during times of plentiful flow, Durham drew primarily from surface waters, and during low flows/drought periods which often coincided with the return of students to UNH, it drew heavily off of the Lee well.

He said when the Town moved ahead with hard piping water from the Lamprey River to the water plant, this fell under the 401 water quality program the State had begun to implement. He said this had resulted because the Oyster River was crossed by a pipe, and said it limited the Town's ability to draw on the Lamprey River during times of low flow. He provided details on this. He also said there were restrictions in terms of how much water could be draw down at one time, and he also said the Town couldn't draw down below six inches from the lip of the dam unless a water emergency was declared.

Administrator Selig said the discussion that had been taking place was somewhat artificial, in that even if a water emergency was declared, there was still a great deal of water remaining at the reservoir, but he said the Town was beholden to the State regulations. He provided details on the reasoning behind the restrictions. He said the Town had been trying to make the system more efficient, but as result lost some ability to draw down water as needed from the Lamprey. He said that none of these restrictions were based on hard science, and instead were based on historical water usage, given the rate of growth, and on everyone's desire at that time to be sensitive to the environment. He noted that the Lamprey River was a Federal wild and protected recreation river.

Administrator Selig said the Town had struggled for the last 4-5 years to answer the question of what the point was when there wasn't enough water for more development. He said there was no hard and fast answer to this question, but said the Town had been moving forward with a number of things to try to assess this.

He said the Town had applied to the State to alleviate some of the restrictions on the Lamprey, but he said the internal consensus of Town staff was that before pursuing this, there were a number of things the Town would be well served to address:

- Putting in place a more formalized way to declare a water emergency, through an ordinance. He said there was the sense that a mandatory process was needed.
- Looking at ways to encourage water users to embrace conservation efforts, which could free up a lot of capacity
- Leak detection methods. He said it had been many years since a leak detection audit had been done. He said the new agreement with the University required this, and said this was now taking place. He said Town staff didn't believe much water was being lost, but he said various entities had asked the Town to look into this and leak prevention methods.

Administrator Selig said a lot of the projections in the 2000 Metcalf and Eddy water management report, and in the 2004 update of that report hadn't come to pass. He said new facilities at UNH were more efficient concerning water use, so it appeared that water

demand on campus was actually decreasing with additional construction.

He noted that the Town was moving ahead with development of the Spruce Hole aquifer, which was owned 50/50 by the Town and the University. He said there was money in the 2007 Budget to begin the process of doing engineering and permitting. He said there would be a two year process involved in getting the aquifer on line, should the Town choose to move forward with this

He explained that the Town was moving ahead on several fronts concerning water supplies, something that was being driven primarily by the fact that there was currently a lot of interest in economic development in Durham. He said there were a lot of water and wastewater questions out there, and said the Town was moving ahead to spend money to get answers to them.

He stressed the importance of having the best possible information on the Town's water resources, and said as part of this, Metcalf and Eddy had recently been asked to update the 2000 and 2004 report, to create comprehensive document that really tried to get at when the town could no longer hook up another tap. He said that hopefully by Oct 15<sup>th</sup>, the Town would be better able to answer that question.

Councilors agreed this was a complex but important topic to look at.

Administrator Selig said approximately \$17,000 would be spent to get answers to the various questions, and said the University had been asked to share some of the cost of this. He noted that when the water agreement with the University had been negotiated, the Spruce Hole aquifer was specifically excluded. He said that the formula for sharing the costs of a jointly conducted project would be reassessed as part of the water audit being conducted.

Councilor Carroll suggested that Councilors should look at how energy costs had gone up for the Town Hall building and other Town-owned buildings in recent years, and said this could be fodder for discussion when the 2008 Budget was considered.

Councilor Carroll said she had recently attended an open house at Young's Restaurant to celebrate the renovation work that had recently been done there. She said she wanted to bring it to the Council's attention that Kenny Young had noted that Administrator Selig had provided some invaluable recommendations concerning the project, and also said that thanks to Code Enforcement Officer Tom Johnson, the air conditioner had been put in properly.

Councilor Carroll said the Town of Lee would be holding a Farm Day on August 19<sup>th</sup>, where people could visit 12 different farms in Lee. She noted that Durham had 9 working farms, and said it would be great if Durham could have its own Farm day in the future, or perhaps could do something in conjunction with Lee.

Councilor Julian Smith said the Conservation Commission had had a productive joint

meeting with the Planning Board the previous week, and appeared to be moving toward a workable process concerning conservation subdivisions applications. He said the Commission wished to thank Administrator Selig for arranging for a minutes taker for its meetings, which would go a long way toward making the work of the Commission easier and more accessible in terms of the record that would be available.

Councilor Smith said the Mill Plaza Study Committee continued with its work, and had recently had a detailed meeting on its work plan. He said the Committee's next regular meeting would be held on August 22<sup>nd</sup> from 4:30-6:30 pm.

## **VI. Public Comments**

**Chris Mueller, 6 Timber Brook Lane**, said the land use change tax was one of many revenue sources for the Town. He discussed the fact that the amount of the land use change tax that had been allocated to the conservation fund had gradually gone up to 100%. He then spoke in detail about the need for the Council to consider not continuing with this allocation, and said as much flexibility as possible was needed when looking at the Budget. He said this wasn't a conservation versus development issue, it was a practicality issue, and he said the question was whether it was practical for Durham to continue with the current policy concerning the land use change tax allocation.

**Roger Spidell, 7 Nobel K. Petersen Drive**, apologized for stating at the June 4<sup>th</sup> Council meeting that the Council had oversight over the School budget. He noted that a Budget Committee had had this oversight at one time, but said this was disbanded when the Town went to a Town Council form of government.

Mr. Spidell said the current School Budget process astounded him, in that the same people who built the budget also oversaw the entire process. He said what was needed was a Budget oversight committee, so the School budget could be gone through line by line, and cuts could be made where necessary. He said that in the year 2000, Durham's cost per student, per year was close to the State average, but by 2006, this cost had gone from approximately \$6,900 up to \$13,000, while the State average cost had gone up from \$6,357 to \$9,710.

Mr. Spidell said tax relief should be elevated to holy grail status in Durham. He noted the May 28, 2007 Newsweek magazine article on America's best high schools. He said Montgomery County Maryland, where he had taught for 20 years, had 5 of the top 100 schools, and did this with a football program, and while spending \$13,000 per pupil. He said the School board in that county faced the scrutiny of the County Council, and he provided some details on this. He noted that New Hampshire didn't have a single school on this list.

Administrator Selig provided details on the fact that a warrant article approved by a School Board meeting would be needed in order to create a Budget oversight committee. He also noted that the School meeting would still vote on the ultimate Budget that was developed by the Budget Committee. He provide details on how this process would work.

Chair Niman said therefore the first step would be to ask the School Board to put a warrant article on the ballot, and if it declined to do so, a petition would be needed to put a warrant on the ballot. He said he would be happy to sign such a petition.

**Bill Hall, Smith Park Lane**, noted that the previous year he had said the Town wouldn't be able to rent the parking spaces at the Depot Road parking lot for \$1,000, and had suggested that this price should be reduced. He said the Town was now doing what he had suggested, and said the cost to the taxpayers as a result of this delay was about \$70,000.

Mr. Hall also noted the recent presentation by Fire Chief O'Leary regarding the need for a Division Chief for fire prevention and safety. He said the Town didn't need 4 people to supervise 4 captains running 4 shifts, and said he hoped this situation could be turned around.

Mr. Hall also discussed the water issue. He said nothing the Town did with a pipe on the Oyster River had anything to do with the Lamprey River, and he said the Town should fight this in court. He also said that it was a 401 water quality restriction, and said there needed to be a water quality problem for the State to have the authority to put such a restriction in place.

He also stated that when the flow to the Lamprey went below 30 million gallons a day, the State forced the opening of the dam. He said if the dam didn't have to open, the water would go over the dam all the time, and there wouldn't be any issue regarding how far the level dropped behind the dam. He said this issue had gone on for a long time, and said the Town couldn't figure out what to do with it.

He noted that the Metcalf report said to get rid of the restriction on the Lamprey River, and also said the Oyster River should be dredged. He said if the Town challenged the State, it would fold, stating that it would not go to court and lose this one. He also said the Town was likely to get stuck if it didn't challenge the restriction before the in-stream flow rules came into effect in Durham.

**Robin Mower, Faculty Road**, said she was glad to hear that the TIF district was only to include Stone Quarry drive, and wouldn't reach the Madbury town line. She then asked that the Council address the following questions before holding the public hearing:

She asked what would remain as the increased benefit to taxpayers while the cost of water and sewer was being paid, and asked if it would be negative during construction. She asked what the basis was for these figures. She also asked what the benefits would be to the taxpayers when the bond was paid off, and whose numbers these were.

Ms. Mower asked for the assumption behind the statement that \$6 million in incremental assessed value would be added to tax base. She said other assumptions made in the document were abstract and unsupported, including the public benefits, and she provided details on this.

She explained that the way the TIF report had been written was difficult for the average resident of Durham to understand, and she requested that it be revised to make it more user-friendly, providing details on how this might be accomplished.

She said she was under the impression that any incremental revenues captured from the TIF would be excluded from the school funding formula. She said the report didn't reflect this, and said she found this issue to be confusing.

She said this might be a project that Durham needed, but she asked that the report be revised once more to reflect the questions she had just raised; to make clear to the public the sources and reasoning behind the proposed impacts; the specific reasons why the Council believed this proposal would entice new business to Durham, and how the taxpayers would benefit at different stages of the project.

**Bill Hall** provided details on the disadvantages to the proposed Canney Road infrastructure loop, and said that instead there should be a loop from Beards Landing. He said the digging was easier there and the length of the loop would be shorter, and said there would still be the same impact in terms of water pressure.

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

- A. Shall the Town Council award an audit proposal for years 2007-2011 to the accounting firm of Plodzik and Sanderson as recommended by the Town Administrator and Business Manager?
- B. Shall the Town Council accept a non-industrial wastewater discharge permit application submitted by Vanasse Hangen Brustlin, Inc. on behalf of the University of New Hampshire for newly constructed dormitories at the Southeast Resident Community and refer said application to the Durham Water, Wastewater, and Solid Waste Committee for detailed review and development of recommendations?
- C. Shall the Town Council approve a non-industrial wastewater discharge permit application submitted by American Engineering Consultants on behalf of Stonemark Management Company for a proposed development at 99 Madbury Road as recommended by the Durham Water, Wastewater, and Solid Waste Committee
- D. **RESOLUTION #2007-21** accepting the provisions of RSA 202-A:4-c, authorizing indefinitely, until specific rescission of such authority, the Public Library Trustees to apply for, accept, and expend, without further action by the Town, unanticipated money from a state, federal or other governmental unit or a private source which becomes available during the fiscal year as recommended by the Town Administrator

Item C was taken off of the Unanimous Consent Agenda.

**Councilor Julian Smith MOVED to approve Unanimous Consent Agenda Items A, B and D. Councilor Stanhope SECONDED the motion, and it PASSED unanimously 9-0.**

Regarding Item C, Councilor Leach said she had noted some uncertainties in the



recommendations concerning the permit application, and she discussed this in some detail.

Administrator Selig said he had attended the Water, Wastewater and Solid Waste Committee meetings where this matter was discussed. He said this part of Town had experienced low water pressure, and he said at present it was still considered to be an unexplainable phenomenon. He provided details on this. He noted that the water audit the Town was undergoing would look at this issue, and also said the recommendations in the report from Underwood Engineers would be implemented regardless of whether the Stonemark development existed.

Councilor Needell noted that the issue of water pressure came up during the application process for this development, and one of the conditions of approval was receiving the permit. He asked if in approving this permit, the Town was accepting that the water system there was what it was, and that it was the Town's responsibility to fix the problems if they occurred.

Administrator Selig said yes, but said Town staff didn't feel this development would adversely affect the water system. He said the Town had known about the low water pressure in this area for many years, and would look further into the causes of it. He said the Public Works Department would be responsible if there were problems, and also said the Department felt the improvements to the system needed to be made regardless of whether the development moved forward, so the Town would incur some costs either way.

Administrator Selig said with the increasing interest in economic development in Town, addressing water and sewer issues in Town was a higher priority than it had been in the past.

Councilor Henry Smith said that if the Town had to assume the cost for this, it could be significant, and he said he would think the Council should delay approving this.

Administrator Selig noted that there would be adequate fire protection regardless of what else happened because there would be a pump station on-site. But he said the Public Works Department had had detailed discussion about this issue, and felt comfortable approving the permit.

Councilor Needell said with the approval process for this development, there were assurances that the fire suppression would not be an issue, and if necessary would be accommodated independently. He also said he hadn't meant to imply a few minutes back that he was opposed to this application, but simply wanted to say that a piece of the fiscal impact had been left out in the Council Communication.

***Councilor Needell MOVED to approve Unanimous Consent Agenda Item C.  
Councilor Stanhope SECONDED the motion.***

Councilor Leach said she felt better about the idea of approving this, knowing that these recommendations would be implemented no matter what happened that evening, and that there would be a pumping station on site for fire suppression.

Councilor Henry Smith said he was concerned about the risk to the Town, in approving this application.

Councilor Morong said this risk would exist regardless of whether or not the application was approved.

***The motion PASSED 8-1, with Councilor Henry Smith voting against it.***

## **VIII. Presentation Item**

### Annual Report of the Durham Planning Board – William McGowan, Chair

Mr. McGowan said the Planning Board had reviewed two major site plan applications,, three major subdivision applications, three conditional use applications, and two boundary line adjustments so far this year. He said there had been numerous public hearings associated with these applications.

He said because of the various projects being reviewed this year, the Board wouldn't get to the Master Plan addendum until the fall/winter. He also said there were several Zoning Rewrite items that had been carried over as Unfinished business that needed to be addressed, as well as several other possible Zoning changes that now needed to be looked at. He said the Zoning Rewrite planned to start meeting again, as of the following Wednesday, to resolve some of these items.

Councilor Van Asselt said he was curious as to how the prioritization of the Zoning Rewrite list was done.

Mr. McGowan said the list was developed by Jim Campbell, but said it was just a draft. He said Board members would decide at a Zoning Rewrite meeting on August 16<sup>th</sup> which items could be addressed fairly quickly. He noted that the Board had met with the Conservation Commission the previous week, and some things that needed to be looked at had come out of this.

Councilor Van Asselt said he hoped the Planning Board would think about some of the issues the Town Council had been talking about concerning the expansion of the tax base and how to get things to move faster, in determining what the Zoning Rewrite Committee should be focusing on.

Mr. McGowan thanked Councilor Van Asselt for the feedback, and noted that the Planning Board was trying to work with other Town boards to tackle key issues together.

Councilor Needell noted that the Zoning Rewrite meetings were public meetings, so

anyone could attend them. He also said the Zoning Rewrite Committee's role was simply to speed up the process of being able to look at possible changes to the Ordinance.

Councilor Julian Smith noted that Richard Ozenich was listed as the Planning Board representative to the Conservation Commission, but was stepping away from that position. He received confirmation that the position hadn't been filled yet.

Councilor Carroll noted the sentence in Mr. McGowan's letter to the Council which said "The Planning Board continues to change its perceived image from one of obstruction to cooperation with developers, while still ensuring adherence to the Zoning Ordinance...." She asked Mr. McGowan so talk about what he meant by this

Mr. McGowan said this spoke to the idea of using the conceptual consultation and design review processes to encourage dialogue ahead of time with developers, before a formal application process. He said this process should include input from the public.

**The Council stood in recess from 8:33 – 8:45 PM.**

## **IX. Unfinished Business**

- A. Shall the Town Council review and discuss the final Development Program and Financing Plan for the Stone Quarry Drive Tax Increment Finance (TIF) district and schedule a public hearing for Monday, August 20, 2007?

Administrator Selig said the Economic Development Committee had made a few additional changes to the draft TIF district plan. which were contained in the most recent draft. He noted that the plan said the TIF district would only extend to the Stone Quarry Drive area, and loop up Canney Road for the purpose of running a water line, and also included the Jackson's Landing area and some properties leading out to the Durham Business Park. He said the idea was to have a walking/biking trail in that location.

He said the goal was to determine if the Council was comfortable moving this document on to public hearing, and if not, to get some direction on additional information that was still needed. He said Don Jutton would be there for the public hearing.

Councilor Needell asked whether, if and when this document went on to public hearing, it would be treated as it would be if there were an ordinance change proposed, so that if the document were subsequently changed, the public hearing process would have to be repeated.

Administrator Selig said if is anything more than minor substantive changes were made to the plan, there should be additional hearings to make sure everyone was comfortable with it.

Councilor Needell said he would endorse such a policy.

There was discussion that the public hearing process could also be continued in order to accommodate this kind of situation.

Councilor Needell said it would be good to know that there wouldn't be changes to the document after the public hearing closed.

Administrator Selig said the State statute on TIFs didn't speak to this issue specifically, but he said being inclusive was important.

Councilor Van Asselt said there was a logic to what had been included now in the TIF district, including the inclusion of Jackson's Landing and a few properties leading out to the Business Park. He said the \$1.2 million in the document included Stone Quarry Drive and the loop up Canney Road (\$750,000 and \$50,000.), and he noted that the loop up Canney Road was discussed in the Master Plan. He also said the EDC had agreed to change the number of people on the TIF Advisory Committee from 7 to 5.

Councilor Van Asselt noted to members of the public that if the plan moved forward to public hearing and was then adopted by the Council, the whole TIF district effort was still subject to Administrator Selig, on the Council's behalf, negotiating the agreements with the developer, which would then come back to the Council for approval.

He said once Phase I was completed, if the Town continued to take captured funds and move ahead with something else in the district, it could use the increment to pay off a bond, or could take the increment and pay for the Jackson's Landing improvements, in Phase II. He said the intent of Phase II was to provide that option. He said he wasn't sure the language on page 4, second paragraph, was very good concerning this.

Administrator Selig said he wasn't at the recent EDC meeting where these things were discussed, but said his understanding was that when sufficient increment was raised to exceed the debt service on the bond for Phase I improvements, or when the Town finally paid off the debt on Phase I, it could use the increment for Phase II. He said the Council would have the flexibility to utilize the additional increment if and when it became available.

Councilor Needell said the language on page 4 allowed the Council the authority to bond, but didn't require this. He also said he hadn't envisioned doing bonding for this more limited scale of work that would be involved with Phase II, and asked if the Council was happy with this idea.

Administrator Selig noted that the Council could bond work that was done at Jackson's Landing whether or not there was a TIF district involved. But he said the issue was whether the increment could be used to help pay for this. He said the fact that it was would allow the Town to continue the TIF beyond Phase I if it wanted to.

Councilor Van Asselt said the wording on page 4 left the option in there, but he said the Town could also save money and pay cash if it was not interested in bonding.

Councilor Morong said it wouldn't hurt to improve the exhibits in the plan. He also said that concerning questions as to whose figures were included in the report, Don Jutton was an advocate for the Town, and was not an advocate for the developer.

Administrator Selig said the challenge concerning the numbers was determining the true development potential of Stone Quarry drive. He said Mr. Jutton had spoken with the developer, and was continuing to work with the numbers in the report. He noted that the Town would require a surety from the developer that if the tax increment wasn't generated, it could call in the bond to cover the difference in cost.

Councilor Morong said he had the sense that Mr. Jutton had a good idea what prices were in the State, and said he thought the figures that had been provided were useful.

There was detailed discussion about the figures provided by Underwood Engineering concerning water and sewer infrastructure improvements.

Councilor Van Asselt said the public needed to understand that the Town wouldn't move ahead unless there was a surety bond, which provided 100% assurance that if the developer did nothing with Stone Quarry Drive, the Town would be protected.

Councilor Morong said the developer would need to know that the Town had approved the TIF in order to move ahead with the bank to get the surety.

Councilor Stanhope said concerning projected benefits, he was not sure he was comfortable with the forecast of bringing \$22 million to the tax base in 7 years. He said this meant there would have to be 25,000 sf of new office space each year, which was inconsistent, regionally. He said he didn't know if it was appropriated or necessary to provide these kinds of forecasts.

He also said he hoped there would be language added regarding the idea of concentrating development as much as possible and preserving as much open space as possible within the boundaries of the TIF district, noting previous discussion on the issue of the Town's gateways. But said he would prefer not to require a specific amount of open space.

There was discussion on the language in the plan concerning open space.

Chair Niman noted that the developer had talked about merging some of the lots on Stone Quarry Drive to preserve some open space. But he said the ability to do this was limited because this was already an approved subdivision. He also noted that there was a large portion of undeveloped land on the property. He said he thought the nature of the land and the Zoning Ordinance would go a long way toward ensuring that there would be sufficient open space there.

Councilor Needell recommended that the language on open space could be deleted.

Councilor Julian Smith said he was puzzled as to what the phrase "significant open space

set aside” actually meant.

Chair Niman said he would see if this section could be eliminated, or at least changed dramatically.

Councilor Stanhope said the plan talked about a 10 or 20 year bond, and said he would prefer a 10 year bond, which would accelerate the retirement of the debt, and would return dollars to the tax base in a timely matter. He said with the projected buildout, he didn't see there would be a problem with this, and asked why there were two options.

Chair Niman said this was because the development agreement hadn't been negotiated yet. He said the negotiations would resolve that issue.

Councilor Morong said this would also depend on how the Council wanted to use the money, so would be a decision the Council would make.

Chair Niman said that at the current tax rate, \$6.2 million of value would generate enough incremental tax revenue to service the bond. He said after that occurred, the Council could decide what it wanted to do with the incremental tax value. He noted that the EDC had asked the developer what his plan was and how long it would take, and had been told that he hoped to create \$6 million in value in two years. He said the developer had to service the entire bond, so had a big incentive to build the first \$6 million in value.

Councilor Stanhope said that was about 20% of what the developer would need to build out over time. He also said the 40% inflator that the plan included as a contingency for construction costs seemed unrealistic.

Councilor Van Asselt noted that the EDC had asked that the engineering cost and the contingency cost be broken out.

Administrator Selig said Underwood Engineering had built in the 40% inflator because they had only done preliminary engineering. He explained that until the full project engineering was done, it wasn't possible to get a more detailed estimate than this. He said it wasn't felt it was appropriate to do a detailed engineering design, which would benefit the developer, prior to approving the TIF district.

There was further detailed discussion on this issue.

Councilor Needell asked if these numbers would be further refined and validated prior to negotiating with the developer.

Administrator Selig said the numbers would become more defined as the process moved forward. He said the development agreement would need to include language that if the ultimate construction cost exceeded the top cost estimated by the engineering firm, the developer would have to cover the difference.

Councilor Julian Smith suggested replacement language on page 6, Section 9, “The planned development program would not require the relocation or displacement of any persons.....”

Councilor Carroll asked that the Council and others be able to see the numbers for the proposed TIF district on one sheet of paper, and be able to see them in such a way that they would provide some understanding of how the numbers fit together. She also said that because there were various possible scenarios, it would be good to see some of these laid out clearly.

She said it would be a great service to the public if this were done, and also said the scenarios would allow the Council to choose what the best road map was for the project. She said she didn’t think they had gotten that far yet, and said there was a lot more to do before the Council had such a plan.

Councilor Henry Smith provided some examples of the need for increased clarity in the plan.

There was discussion by Council members who were on the EDC that some of the changes made at the recent EDC meeting had not been incorporated into the most recent draft.

Councilor Van Asselt said he thought it was possible to answer the questions Councilor Carroll had asked. But he said it would be important to note that if one didn’t take the time to understand this document, the two simplified pieces of paper wouldn’t tell the whole story. He said the numbers could be presented more clearly, including in graphical form, and also said some scenarios could be developed to show what the options were. He also said an executive summary would be helpful to present the big picture on the numbers, and said this would be useful at the public hearing.

There was further detailed discussion about construction costs, and the timing of bonding.

Town Tax Assessor Rob Dix noted an error in Exhibit A concerning the cost of water piping to Canney Road should be \$160,000 and not \$60,000. He also said page 5 of the document spoke about \$10.4 million of taxable assessment, but he said some of the lots that were listed weren’t taxable entities.

There discussion about the development potential for the TIF district as a whole, and about the need for some graphics to show this as compared to the value of Stone Quarry Drive.

There was also further discussion about how realistic the projections were.

Councilor Needell said he wanted to be clear as to whether at this point, the TIF district was proposed to stimulate the development of Stone Quarry Drive, and that this was the only developer who would be signing the TIF agreement. He said the bottom line was

that when the proposal came back to the Council, it had to be guaranteed 100%, whether by one developer or more.

Chair Niman noted that the owner of the property across from the Stone Quarry Drive property was the same developer. He said the only other potential property to be developed was the Jacques property, which already had water and sewer. He said that regarding the section of the document on project benefits, there were potential economic benefits to looping the water, but he said another rationale for looping Canney Road was that the existing water users would benefit from this in various ways, yet would not be assessed for the changes to the system.

Councilor Needell asked if the issue of another route for the water, in the Beard's Creek area, was ever addressed. He asked if the reason for keeping Canney Road as the route for the water line was that it had previously been proposed that sidewalks could be put there.

Administrator Selig said extending the line along Canney Road was in the Master Plan. He said he didn't know if the engineer evaluated Beards Creek option, but it wasn't something they suggested.

Administrator Selig said the total cost for Phase I now exceeded \$1 million, and said that previously it was to cost \$750,000. He noted that the Town could issue debt for a specific project under \$1 million, but that a Town referendum was required for a project of \$1 million or greater. He suggested that it might be good idea to break Phase I down further, into the Stone Quarry Drive Phase and the Canney Road phase, to stay under the \$1 million amount.

Councilor Van Asselt said he felt this should be broken out, because they were talking about two projects totaling \$1.2 million.

Councilor Needell said if it made sense to do this, it should be done, but he said he didn't feel this should be done artificially in order to avoid a referendum.

There was additional discussion on this issue.

Administrator Selig said Canney Road had been included because he was looking for ways to find a benefit from the TIF district for the Town, and not just a benefit for Stone Quarry Drive. He said he had always considered them to be separate projects, and said he was surprised to see the two projects put together, with the \$1.2 million figure.

Councilor Henry Smith asked why a lot with mostly non-developable land had been included in the TIF district, and Chair Niman said the goal was to capture as much incremental value as possible, so the more properties that could be included that potentially could be developed, the more incremental taxes the Town could have, the faster the bond could be paid off, and the sooner the Town could get tax relief.



Councilor Morong said he thought it would be less expensive and less disruptive to do both projects at the same time.

Chair Niman said they also got to capture the incremental taxes, plus they got the developer to guarantee that he would pay the borrowing costs to do the project.

In answer to Chair Niman, Administrator Selig said he would make every effort to get the document cleaned up and put on the Town website. But he said he didn't know what the schedules were of the people who had been working on this. There was discussion on this, and on whether the document would be ready for a public hearing at the next Council meeting.

Councilor Needell said his concern was that even with the best efforts, the Council would be inviting substantial changes to the document if it brought it to public hearing before all Council members thought it was ready.

Chair Niman said if the document couldn't be edited in time, he wasn't sure it made sense to have the public hearing.

There was further discussion on this.

Councilor Leach recommended that the Council should see the document at the August 20<sup>th</sup> meeting, and could then get it ready for the next Council meeting.

***Councilor Julian Smith MOVED to extend the meeting beyond 10:00 pm. Councilor Henry Smith SECONDED the motion, and it PASSED unanimously 9-0.***

Councilor Henry Smith said he agreed with Councilor Leach.

Councilor Van Asselt said he disagreed. He said the numbers could be made available, and the public hearing could be scheduled.

Councilor Carroll said so much had come up that evening on this draft, and said she agreed with Councilor Leach. She also said it would be unfair to the public if the hearing was advertised and the document was not ready so the hearing was then continued. She noted that she and Councilor Needell had gone through the lengthy process with the forestry related revisions to the Zoning Ordinance, and said she would therefore like to see this document done the right way, and then go to public hearing.

Councilor Stanhope said he would like the public hearing to go forward at the August 20<sup>th</sup> meeting.

Councilor Needell said he would like to see a revised document before scheduling the public hearing.

Councilor Morong said he was disappointed that the document was not in a more useful

form, and said he would like to wait until this could be changed.

Chair Niman and the remaining Councilors agreed with Councilor Morong.

Councilor Van Asselt suggested that there could be a special Council meeting with Don Jutton and Jim Campbell to discuss the revised document, so the Council could reach an understanding before going on to the public hearing.

It was agreed that there would be further discussion on the document at the August 20<sup>th</sup> meeting.

**B. FIRST READING ON ORDINANCE #2007-08** revising the definition for “Home Occupation” contained in Chapter 175 “Zoning”, Section 175-7 of the Durham Town Code

Chair Niman noted that he had originally brought forward this proposed this revised definition. He said it had then been sent on to the Planning Board, which had suggested some minor changes to it, and then sent it back to the Council.

There was discussion about the issue of the definition of “premises”, which had come up at the July ZBA meeting. Chair Niman said a definition had been developed that potentially cleared this issue up, but he noted that it was not part of the proposed revision to the home occupation definition.

Councilor Needell asked where the definition of “premises” provided in the Council Communication had come from, and there was detailed discussion about this definition. He said the definition here was a plural use of buildings, and said he wanted to be clear on whether this would be problematic.

Councilor Morong said he would think the word “grounds” would include other buildings.

Chair Niman said the definition that had been included in the Council Communication looked similar to the definition found in dictionary.com. He said his feeling was that if there was a piece of land, with one or more buildings and someone lived somewhere on this land, in a building or a tent, that was all he cared about.

Councilor Needell said the definition of premises began with fact that there was a building with surrounding grounds, not that there was a lot that happened to have a building on it.

Councilor Morong said he liked this definition that had been provided. He said it seemed clear, and went along with what he thought “premises” was, and how he thought the Zoning Ordinance should define it.

There was detailed discussion on the language in section 175-7 A. 1. e, and whether it should remain in the proposed definition. Councilor Needell said the Planning Board had recommended that this language be tweaked a bit, and he also said a motion that was made to remove this language was defeated. He said he thought the current wording was fine, and said he didn't think the Board would have a problem with it.

There was further discussion about whether section 175-7 A. 1. e should be left in, and the consensus of the Council was that this language should be removed.

There was also further discussion on possible changes to wording for the definition of "premises", and Chair Niman said he would see what wording he could come up with for this, and the Council could respond to this.

C. Discussion relative to the disposition of the Land Use Change Tax (LUCT) funds

Administrator Selig said discussion at the Council Budget work session earlier in the summer considered whether 100% of the land use tax should continue to go to the conservation fund, or whether perhaps a lesser percentage should be dedicated to the fund. He said the Council discussion included the idea of reducing the contribution from 100% down to 0% . He said input from the Conservation Commission was sought, and the Commission provided a letter outlining their rationale that 100% of the penalty tax should continue to go to the conservation fund.

He said he felt it was not appropriate to eliminate funds going to the conservation fund, but he recommended going back to the 50% level. He noted that if the Council wanted to make a change regarding this policy, a Resolution concerning this would be brought forward at a subsequent meeting.

Councilor Henry Smith noted that the idea of going to 100% was in the 2000 Master Plan.

Councilor Morong said that when the updated Master Plan had been developed in 2000, the conservation bond didn't yet exist. He also said he had read the minutes of the meeting where the Council had voted to have 100%, instead of 50% of the land use change taxes go to the conservation fund. He said he thought that some of the members of the Council at that time might not have voted that way if the conservation bond had existed.

In response to a question from Councilor Julian Smith, Tax Assessor Robb Dix said there weren't currently many properties that would have to pay the land use change tax. He provided details on this, and told Councilor Smith that the tax for the change of use of the Sophie Lane property came to about \$100,000. He said about \$40,000 would come from a property near the Lee border.

Administrator Selig said the amount of land in current use was limited, and also said it

was unlikely that much additional land would be going into current use. He provided details on this, and said that if the approximately 6100 acres of land in current use in Durham came out of current use, this would amount to about \$17 million in land use change taxes.

Councilor Morong noted there had been discussion about the possibility that the McNeill property might come out of current use.

Councilor Stanhope said the land use change tax was a deferred payment of property taxes. He said that in allowing the taxpayers to bond for conservation land, this was asking the property tax payers to pay twice, if they also had to pay a land use change tax. He said he would be in favor of having 100% of the land use tax going to the General Fund for one year, and then revisiting this in 2008.

Councilor Needell said the taxpayers had told the Council to do the conservation bonding, so this was not a Council initiated action. He said he thought the letter from Conservation Commission Chair Cynthia Belowski had raised some good points, and he also noted that the Minutes from the Budget Workshop said the Commission would be invited to a Council meeting regarding this issue. He said there were significant policy issues involved with changing the way the funds were allocated, so discussion was needed. He said it would be a good idea to follow up with the Conservation Commission and have a discussion with them.

Councilor Van Asselt said he had read what the Conservation Commission had written, and said he wasn't interested in debating its positions, including concerning what the Master Plan said. He said the Master Plan didn't tell him that his taxes would double. He handed out a green sheet, and said his proposal was to use funds from the conservation fund to pay the interest on the conservation bond. He said this approach would mean the taxpayers wouldn't have to pay this, but he said it wouldn't take away from conservation efforts.

Councilor Leach said she thought this was a good alternative

Councilor Henry Smith said if the Council was going to propose this, the Conservation Commission should be present to discuss it. He said that kind of dialogue would be very helpful.

Councilor Julian Smith said he had been at the meeting the previous year when the Commission reacted to the request that the conservation fund be used to pay the interest on the conservation bond. He said the decision at that time was that the Commission would agree to do this only once.

He said the Council was able to take future land use tax funds and put them into the General Fund, but said he would prefer to ask the Commission to continue to pay the interest on the bond out of their funds, and let it go at that. He noted that the Council was under no obligation to spend the remainder of the bond amount, He said the Council

controlled this, and said this could be a negotiating point with the Conservation Commission.

Councilor Smith noted that if a wonderful parcel involving a conservation easement or purchase came forward, he would hope the Council would use the remaining bond amount.

Councilor Leach said what Councilor Van Asselt proposed was a middle ground. She said it didn't ask the Commission to take out money that it already had in the fund, but helped the taxpayers, and went right toward the bond. She also said this approach didn't de-prioritize conservation.

Councilor Stanhope said a question was what happened if there was no land use change money in a particular year. He said in that case, the Town would have to pay the interest on the bond, which protected the conservation fund. He said that would seem to be fairer to the Conservation Commission as well as the taxpayer.

Councilor Needell said he thought this approach was completely wrong, and said he couldn't support it. He said what it did was hold the Conservation Commission responsible for issuing the bond. But he said these bonds were issued at the request of the taxpayers and the Council. He said the reasoning behind the land use change tax money going to the Conservation Commission was sound, and had nothing to do with the bond issue.

Councilor Morong said he understood this, but said that in 2001, when the Council decided to go to 100%, the Town was a lot more flush than it was now. He noted that the Council had spent some of the conservation bond money, and he also said the Commission's conservation fund wasn't low. He said it was the Council's prerogative to change the 2001 decision. He also said he liked Councilor Van Asselt's suggestion, in that it helped the Council out, and also helped conservation efforts.

Administrator Selig said he disagreed with both Councilor Van Asselt and Councilor Needell. He said that in 1973, the Current Use program was established, at a time when there were high taxes that some people with large tracts of land weren't able to pay. He said the program benefited these taxpayers, but also benefited the communities their properties were in, because open space land was cheaper to service than productive land.

He said when some properties paid current use taxes, this shifted some of the tax burden to properties that weren't in the current use program. But he said the tradeoff with this was that a landowner getting the benefit of current use taxes would have to pay a penalty if the land were taken out of current use.

Administrator Selig said he would like some of the money for the land use change tax to come back to the General Fund. He noted that he was frustrated that funds were needed for things other than conservation, - for a new library, better utilization of Town properties, etc. He noted some possible future ways to increase the tax base, but said that

given the Town's current revenues, it was reasonable that some of the land use change tax money should go to the library, to recreation, etc. He said that currently, there was \$600,000 in the conservation fund, and \$900,000 left in the conservation bond, and said he therefore thought there was a substantial resource available for conservation. He said that same resource wasn't available for some of these other areas, and said he therefore thought it was reasonable that 50% of the land use change taxes should go back to the General Fund. He said he agreed that this should be re-assessed annually.

Councilor Leach asked why Administrator Selig had recommended a 50/50 split on the use of land use change tax funds, noting that the Council Communication seemed to indicate that more than 50% should go to the General Fund.

Administrator Selig explained that that he would have been comfortable with not having the conservation bond, and keeping 100% of land use tax funds in the conservation fund. He said now there was substantial money in that fund, and there was also a significant amount of conservation land in Town, much more so than in other towns. He said he thought 50/50 was a fair balance, and provided further details on this.

Councilor Carroll asked if the money from the conservation fund could go toward conservation easements, and she was told it could. She said she would like to know then asked how the Commission felt about using some of the conservation funds for that purpose. She said the \$900,000 of bond money left was only on paper, and didn't actually exist.

She said having a bond and interest caused inflexibility in the Town Budget, while the conservation fund represented real money. She said this meant that if a perfect piece of property appeared, the conservation fund conceivably could be used to pay for some of it, so the Town would need to bond less.

Administrator Selig said he would be open to a Council-sponsored initiative to sunset the authority to bond the remaining \$900,000, in which case there would only be the conservation fund to purchase conservation land. He noted that there could be some substantial land use change taxes coming forward, and said he would like to see a discussion where conservation projects were weighed against other community projects that had merit, in terms of how available funds were spent.

Councilor Niman said the Council needed to decide how it wanted to proceed, and then would ask Councilors which way they wanted to go.

Councilor Van Asselt said he appreciated Administrator Selig's comments regarding the library, etc. but said they remained future needs, while the interest on the bond was happening now. He also noted to Councilor Julian Smith that he was only recommending that future land use change tax money go toward the interest on the bond. He said he agreed with Councilor Carroll that it was real money if it went to the Conservation Commission, but he said he paid real money for his property taxes. He said his proposal addressed both needs.

**Councilors then went around the table and indicated where they stood on this issue.**

Councilor Morong - 100% should go to General Fund

Councilor Needell - 100% should go to the Conservation fund, or there should be discussion with the Conservation Commission

Councilor Stanhope - 100% should go to the General Fund

Councilor Leach - 100% should go to the General Fund

Councilor Henry Smith - 100% should go to the Conservation fund, or there should be discussion first with the Conservation Commission before making a change

Councilor Van Asselt- 100% should go to the General Fund

Councilor Carroll - 100% should go to the Conservation fund, and regardless of what happens, the Council should have a discussion with the Conservation Commission.

It was agreed that a motion was needed for this, to provide clear direction.

***Councilor Leach MOVED that the Council direct the Town Administrator to craft a Resolution that moves 100% of the land use change tax to the General Fund.***

***Councilor Stanhope SECONDED the motion.***

Administrator Selig said he strongly supported a 50/50 split of these funds, and said he felt this would be a better solution

Councilor Henry Smith said this was a radical approach to take, and was simply too much.

Chair Niman asked if there was interest on the Council in moving to the middle, and having a 50/50 split.

***Councilor Needell MOVED to amend the previous motion, to craft a Resolution that moves 50% of the land use change tax to the General Fund, as suggested by the Town Administrator. Councilor Henry Smith SECONDED the motion.***

Councilor Van Asselt said he didn't understand Administrator's logic for wanting a 50/50 approach.

Administrator Selig said there was merit to preserving open space land, as well as stabilizing taxes. He said it was a valid purpose to use funds from properties that had been in a conservation status to continue to promote land conservation, but he said it was also a valid purpose to use some of these revenues to cover other costs of the town. He said preservation of land wasn't an inexpensive task, and also said the acreage in current use wasn't limitless. He said it was fair to set some of these funds aside for conservation purposes.

Councilor Van Asselt said that was a valid argument, but he said the Council was looking at 2008 and 2009 Budgets, and said the Town was at a point where the tax issue was greater than the conservation issue. He also said there were resources currently available

for conservation. He said he still felt the 100% approach made sense.

Administrator Selig said he had made it very clear in 2003 what the impact of the conservation bond would be, and said people should have known what they were getting into. But he said that didn't mean that continuing to devote a percentage of the land use change tax to conservation wasn't a good policy.

Councilor Stanhope said he was opposed to this amendment for a couple of reasons. He said most conservation acquisitions involved partnerships with conservation organizations, and said a lot of the money from these organizations was focused on Durham and surrounding areas. He also said Durham had as much or more land set aside for conservation than other southern NH towns. He said that did not mean that the Town shouldn't continue to pursue conservation of land, but he said right now, the Town needed to bring property taxes under control. He said taking this approach wouldn't harm conservation efforts, and said it could be revisited on an annual basis.

**Councilor** Needell said his motion represented a compromise. He said providing 50% of the land use tax for conservation land was a better proposal than providing 0%.

***The motion FAILED 3-6 with Councilor Needell, Councilor Carroll and Councilor Henry Smith voting in favor of it.***

Councilor Needell asked if a public hearing was needed for this Resolution, and Administrator Selig said he would determine this.

Councilor Needell said he would like to invite comments from the Conservation Commission.

There was discussion that Councilor Van Asselt's idea still on the table as well.

***The original motion PASSED 5-4, with Councilor Needell, Councilor Carroll, Councilor Julian Smith and Councilor Henry Smith voting against it.***

## **X. New Business**

- A. **FIRST READING ON ORDINANCE #2007-09** amending Section 132-3, Chapter 132 "Tax Exemptions and Credits: of the Durham Town Code to increase exemption amounts for the elderly over a three-year period in order to offer meaningful property tax relief to qualified elderly residents

The Council agreed to address this Agenda item as one of the first items at the August 20<sup>th</sup> meeting.

- B. Other business

None



**XI. Adjournment**

***Councilor Leach MOVED to adjourn the meeting. Councilor Julian Smith SECONDED the motion, and it PASSED unanimously 9-0.***

Adjournment at 11:19 pm

Victoria Parmele, Minutes taker