

**D-R-A-F-T**

**DURHAM TOWN COUNCIL  
MONDAY, AUGUST 20, 2007  
DURHAM TOWN HALL – COUNCIL CHAMBERS  
7:00 PM**

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

**MEMBERS ABSENT:** Councilor Mark Morong

**OTHERS PRESENT:** Town Administrator Todd Selig; Gail Jablonski, Business Manager; Tom Johnson, Zoning and Code Enforcement Officer; Robb Dix, Assessor

**I. Call to Order**

Chair Niman called the meeting to order at 7:03 PM.

**II. Approval of Agenda**

***Councilor Stanhope MOVED to approve the Agenda as submitted. Councilor Leach SECONDED the motion.***

Chair Niman said there was a recent vacancy on the Library Board of Trustees. He said the Trustees had unanimously recommended a person for this position, and said Councilor Julian Smith wanted to add an item to the agenda so the Council could discuss this.

Councilor Julian Smith provided details on this, explaining that Renee Capicchioni Vannata had been nominated to fill the unexpired term of Ed Valena. He said Ms. Vannata had attended a number of meetings, and had done some good work for the Board of Trustees.

Chair Niman explained that the meeting of the funding formula subcommittee had been cancelled, which related to Agenda Item X A. It was agreed that the Council would still have a discussion under that Agenda Item, and would move this up on the Agenda, before the first reading on the elderly tax exemption. He also asked that the Council Roundtable be done later at the meeting, after New Business

There was further discussion on the need to amend the Agenda.

***Councilor Julian Smith MOVED to amend the Agenda to put the Roundtable discussion following Agenda Item X, New Business; to move Agenda Item X New Business in front of IX***

***Unfinished Business, and to have the Library Board of Trustees appointment after the Unanimous Consent Agenda. Councilor Leach SECONDED the motion, and it PASSED unanimously 8-0.***

Councilor Van Asselt said he would like to have a nonpublic session at the end of the meeting, and Council members agreed this would be done.

***The motion to amend the Agenda PASSED 8-0.***

***The Agenda as amended PASSED 8-0.***

### **III. Special Announcements**

No special announcements

### **IV. Approval of Minutes**

July 16, 2007

***Councilor Van Asselt MOVED to approve the July 16, 2007 Minutes as presented. Councilor Julian Smith SECONDED the motion.***

Page 4,” 3<sup>rd</sup> paragraph from bottom, should read “...to repaint the former Davis properties.”

***The motion PASSED unanimously 8-0.***

### **V. Councilor and Town Administrator Roundtable**

Moved to after Agenda Item X, New Business

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

**John Kraus, 7 Cutts Road, said** he had noticed that at the June 25<sup>th</sup> meeting, there had been discussion on the “pay as you throw” program, and he urged the Council to throw this idea out. He then provided a picture of a Town garbage truck he had noticed in Town, which he said appeared to be leaking some kind of fluid because there was an oil slick on Frost Drive.

He said the Town couldn’t seem to maintain its equipment, and he put a bottle of brake fluid on the table, then stated that it was time to put the brakes on spending, when there were these kinds of infrastructure problems. He said the roads in town were deteriorating, and said that since the vehicles were capable of oiling the Town’s roads, it seemed that the Town would be oiling its own roads in the future.

Chair Niman noted that the “pay as you throw” issue was not a priority of the Council .

**Roger Spidell, Nobel K. Petersen Drive**, said *Fosters Daily Democrat* had made note of the issues he was raising concerning the School Board, and said he would continue with these efforts. He then laid out a challenge to have a public debate on the School Budget, in order to get the issues out in the open.

**William Hall, Durham**, said Administrator Selig had been asked whether the Town had enough water, but said he didn't come close to answering it although he discussed 28 different topics. He noted that a water audit was done some years back by a grandiose company, which was useless. He said a company he had recommended to the Town had later found the water problems immediately, and said this resulted in not having to pay the University \$90,000 anymore.

He then provided details on the water supply situation in Durham. He said that 98% of the time, the Town could get by with the water from the Oyster River, which was 16 square miles of watershed. He said that when there was a drought a few years back, if this watershed had 20-25 had square miles and a decent reservoir, there would have been enough water. He said the makeup water during times of lower flow came from the Lamprey, which had 160 square miles of watershed. He said as far as Durham was concerned, there was therefore no shortage of water, and the Town shouldn't be spending time thinking about this. He said the situation was just that simple.

Mr. Hall also said he took exception to the comments Administrator Selig had made about the evaporation from the transfer pipe. He said the transfer was about 98% efficient, and he provided details on this. He also spoke in detail about the water restriction on the Lamprey River, and said the water users needed better representation.

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

Chair Niman said he had pulled both items A and B off of the Unanimous Consent Agenda, so they could be discussed.

- A. Shall the Town Council approve 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 as recommended by the Durham Water, Wastewater, and Solid Waste Committee?

Chair Niman said he would like to ask UNH Facilities Assistant Vice President Paul Chamberlin some questions. He said he wasn't going to say the University couldn't have the permit, but said he was concerned about the future. He determined from Mr. Chamberlin that Building C had already been started, and then said it was difficult to evaluate University projects relative to Town projects when the permit approval occurred after construction had started.

He said he hoped they could discuss what the policy would be in the future, in terms of capacity, noting that the Town was trying to expand its tax base. He said he had hoped they would be told

Building C hadn't been started yet, so they could have this discussion first. He said there were a lot of reports in the works, and said hopefully there could be that discussion with the University. He said he would hate to see the Council in the awkward position of having to deny the University a permit in the future.

Mr. Chamberlin said the original application was filed in 2006, and he also noted that the permitting process was being streamlined. But he said the more important thing was that there had been a sustained effort between the University and Town staff to address wastewater and water issues. He provided details on improvements to the storm water system, and also said there was a water audit underway as well as preliminary design work on the Spruce Hole aquifer.

There was discussion about the number of beds in the different buildings, and it was determined that there would be a net increase of 516 beds, which included subtracting the beds from the former Forest Park apartments and some of the mini-dorms.

Councilor Needell said he had some concern about the questions to Mr. Chamberlin from Chair Niman, and asked if this was intended to be a message from the Council.

Chair Niman said the questions were simply his own.

Councilor Needell said it had sounded like they were from the Council, and said he didn't recall that the Council had had a discussion on this issue that had suggested there was a problem here.

Chair Niman said his question regarding the status of Building C was informational. He also said a goal of the Council was to broaden the tax base with economic development, and said he personally was concerned that there might be limited natural resources to accomplish this. He said he had wanted to express this concern to Mr. Chamberlin.

Councilor Needell said he didn't think the Council was having those kinds of conversations that were needed in order to send that kind of comment to the University.

There was further discussion on this, and Chair Niman stated again that these had been strictly his own personal views.

Administrator Selig said he had had a number of discussions on these issues with the University. He also noted that there had been clear communication from the Council to the University a few years back that it would like the University to increase the number of on campus beds. He said these beds in Buildings A, B and C were a direct result of those conversations, but he said the Town was also trying to balance this with the ability to have sufficient water and wastewater to handle new development.

Councilor Needell said that was entirely appropriate, noting that Administrator Selig had the authority of the Council to act on behalf of the Town, and to make representations to the University. But he said Councilors as individuals did not have this authority.

***Councilor Julian Smith MOVED to approve the 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 as recommended by the Durham Water, Wastewater, and Solid Waste Committee. Councilor Leach SECONDED the motion, and it PASSED unanimously 8-0.***

**B. CONTINUED 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 said he had pulled this off the Unanimous Consent Agenda because he realized he had made an error in the draft Ordinance change, concerning the definition of the word “premises“. He noted that he had previously said he thought this definition should be part of the proposed ordinance change concerning home occupation. He said Mr. Johnson had been working on a definition for “premises“. He said Mr. Johnson had noted that the ZBA had recently dealt with a case that was related to this issue. He said an issue he and Mr. Johnson had talked about whether a home occupation had to take place in the primary structure or could take place in a secondary structure on a property.

Chair Niman said when he originally drafted a definition for virtual home occupation, he used wording that this use would have to take place in the primary structure. He said when he rewrote the proposed Ordinance change to instead involve revision of the definitions of primary and secondary home occupations, he realized he had added wording on primary or accessory structure for the first class home occupation definition, but not for second class home occupation definition. He said an amendment was therefore needed so there would be consistency.

He said when the Council had talked about adding an item e to the definition of first class and second class home occupation, the rationale was to keep the number of people on the property the same, without reference to whether they were living there or working there, He said the intent was to limit the number, but not the location on the premises.

Councilor Needell said the proposed amendment was fine. But he asked Mr. Johnson how the second sentence in the proposed definition of “premises” would be applied.

Mr. Johnson provided details on this. He said the definition helped clarify that the idea of premises had to be taken within the context of the Zoning Ordinance, so he could interpret it properly. He said the ideas was also to be able to give a property owner guidance so that if there were multiple buildings on a property and multiple uses, the context of premises was specifically for that individual building where the property owner wanted to have a particular use.

Councilor Needell asked if a home occupation had to take place in the building where the property owner resided.

Mr. Johnson said that currently, the Ordinance allowed an accessory dwelling unit in an

accessory structure on a lot, but he said the Ordinance had never addressed whether a home occupation had to be in the principal dwelling unit, or instead could be in an accessory structure on the lot. He said this definition cleared that up. He said Chair Niman's proposed amendment allowed an accessory home occupation in an accessory structure in all zones.

Councilor Needell asked whether if a property owner lived in the primary structure on a property, there could still be a home occupation located in an accessory structure on that same property.

Mr. Johnson said yes, if this proposed amendment passed. He said this would meet the definition of premises.

Councilor Needell said this definition therefore broadened the idea of premises to include those other buildings.

Mr. Johnson said it clarified things for him in having to interpret and enforce the Zoning Ordinance.

Councilor Julian Smith said he had no problem with the change Chair Niman had suggested to 2 c. He asked Mr. Johnson if there was any structure in Durham that was not either a primary or accessory structure on a residential lot.

Mr. Johnson said there could be a property with multiple dwelling units, so there would be multiple primary structures. He said in that situation, one would have to figure out what accessory structures went with which principle structures.

Councilor Smith said the reason he asked this was that as 2 c was now written, there was a difference without a distinction. He also noted that in the definition of premises, the last line should use the word "when there are multiple buildings.." or "if there are multiple buildings...."

***Councilor Stanhope MOVED on First Reading ORDINANCE #2007-08 revising the definition for "Home Occupation" contained in Chapter 175 "Zoning", Section 175-7 of the Durham Town Code , with the addition of "(primary or secondary accessory structure)" at the end of the first sentence under Section 175-7 A 2 c. Councilor Julian Smith SECONDED the motion, and it PASSED unanimously 8-0.***

## **VII.5 Library Board of Trustees Committee Appointment**

Ms. Vannata said she wanted to be on the Library Board of Trustees because there were great opportunities for change ahead, and she wanted to be a part of this. She said she worked at the University, and visited the Durham Library frequently. She said the library could use upgrading, and said there were a lot of opportunities to make this happen.

***Councilor Henry Smith MOVED to appoint Renee Capicchioni Vannata as an alternate member of the Library Board of Trustees, with a term to expire in April of 2008. Councilor Julian Smith SECONDED the motion.***

Councilor Julian Smith said the Library Board of Trustees had unanimously nominated Ms. Vannata to this position.

***The motion PASSED unanimously 8-0.***

## **VIII. Presentation Item**

### **A. Quarterly Financial Report – Gail Jablonski, Business Manager**

Ms. Jablonski said things were right on target with revenues and expenses, and she provided the following highlights:

- The semi-annual tax bills went out in early July, and as of July 31<sup>st</sup>, 94% of the taxes had been collected. She said there only a few complaints here and there.
- The debt service and fund transfer seemed a bit low, but said that would be taken care of by the end of the year.
- All the spaces at the Depot Road parking lot have been sold.
- The Town hasn't had to draw any funds from the \$1,000,000 Letter of Credit authorized in May. Ms. Jablonski said they should be able to make it through October-November, and said if they got the tax bills out on time, they should be all set.

Councilor Henry Smith noted that under Water Fund revenues and expenses, it said that \$95,500 was expected to be transferred in from the fund balance. He asked for clarification concerning this.

Ms. Jablonski said this was done in anticipation of having to keep the water rates at a certain level, and she said this was similar to what was done with the tax rate.

Councilor Carroll noted that 2 gallons of water costs a penny in Durham.

Councilor Needell said the debt service was way under, which the Council had been told was expected. He said he had noticed that administrative costs in for the Public Works Department were a bit over, and was told this related to benefits such as health insurance.

Councilor Carroll asked if there were parts of the budget where the Town was particularly vulnerable in terms of energy costs, and Ms. Jablonski said not that she could see. She said she hadn't looked at this to a large degree, but said she thought the Public Works Department was pretty good at containing costs as well as they could.

Administrator Selig noted that they were spending a lot of time on the transitioning of the dispatch center to the County.

Ms. Jablonski provided details on this. She said transition costs were involved in the short-term. She said that hopefully there would be an update for the Council on this project in September.

B. Annual Report of the Zoning Board of Adjustment – Jay Gooze, Chair

Mr. Gooze said he would not speak on any issues currently before the ZBA involving the Town. He said it had been an interesting year, and said the Board had worked hard to be precise concerning the variance criteria used in its decisions. He noted that the ZBA was still looking for guidance in terms of interpretation of the spirit and intent of the Ordinance concerning the shoreland and other provisions in the Zoning Ordinance. He said some of them were not that specific. He said the Town was stricter than the State with some of these provisions.

Councilor Van Asselt asked whether Mr. Gooze felt the ZBA had the kind of administrative support and counsel that it needed.

Mr. Gooze said yes. He noted that some ZBAs had an attorney present at meetings, but he said he didn't think this was necessary, with the way the Durham ZBA worked.

Councilor Van Asselt noted that the list of Zoning Ordinance problems seemed to be getting longer, and said he was curious as to what role the ZBA could play, along with the Planning Board and the Town Council in addressing these problems, other than interpreting the Ordinance the best it could.

Mr. Gooze said that shoreland, wetland and occupancy issues gave the ZBA the most trouble. He said there was also the issue of trying to get at problem properties. He provided details on how the ZBA had to deal with situations involving problem properties. He said the ZBA would love to see some kind of inspection program for these kinds of properties, and said this would solve a lot of their problems with dealing with these properties.

Councilor Henry Smith said it was hard to inspect properties if one didn't know where they were, or if no one complained about them. There was discussion about this.

Councilor Stanhope asked if it might help if a certificate of compliance had to be issued before a property transfer occurred.

Mr. Gooze said he couldn't say, but said he would love to be on a committee to look at this.

Councilor Needell noted that a few months back, there was discussion about whether the ZBA looked at and considered Planning Board regulations in making its decisions, or only looked at the Zoning Ordinance. He asked if it was a correct statement that the ZBA only looked at the Zoning Ordinance in its deliberations.

Mr. Gooze said the purpose of the ZBA was to look only at interpretation of the Zoning Ordinance, and he said anything that was discretionary, concerning the regulations of the other boards did not apply.

Councilor Needell asked Mr. Gooze if he saw some conflicts between the Ordinance and the regulations that should be addressed. He noted that there had been discussion by the Planning Board about this, and he asked if Mr. Gooze if he saw some problems with the way things were

structured.

Mr. Gooze said there was some overlap sometimes between the two boards, but he said part of this stemmed from the fact that the applicant chose which board he wanted to go to first. But he said the ZBA tried to stay away from Planning Board decisions if it could, although he said that not everyone agreed with this. He noted that the State's land use conferences provided the opportunity to ask questions about the role of the ZBA vs. the role of the Planning Board.

Councilor Stanhope said there were times when the life safety code and the Zoning Ordinance didn't totally concur, and he asked Mr. Gooze how the ZBA dealt with this, in terms of the ultimate authority.

Mr. Gooze said his personal feeling concerning this was that he served on the ZBA as a representative of the Town, whose job it was to uphold the Zoning Ordinance. But he said if he was convinced that there was a life safety issue, he would defer to the life safety code.

Councilor Henry Smith asked what Mr. Gooze meant by the wording in his prepared statement "...whether the correct Town officials have counseled owners concerning the Zoning Ordinance." He said when he was on the ZBA, he had felt property owners were able to get the information they needed, but he said at some point, there had been discussion about the Town being more aggressive in counseling applicants.

Mr. Gooze said this sentence meant that the Code Enforcement Officer was the person to give an applicant advice concerning a Zoning issue, not a Fire Department officer, etc.

#### C. Annual Report of the Parks and Recreation Committee – John Parry, Chair

Mr. Parry reviewed the Committee's accomplishments in 2007:

- The committee worked with UNH faculty and staff to conduct a public survey on recreation needs in Durham. The survey results have been compiled and analysis is near completion. This work will provide background for future projects and a parks and recreation strategic plan.
- The Trails Task Group placed a kiosk and other signs on Longmarsh Trail. The Group also developed and adopted a trail proposal where volunteers will be recruited and trained to help maintain Durham's trail system. The Parks and Recreation Committee agreed to administer this.
- Three grant applications were submitted to fund work proposed in the Jackson's Landing Master Plan. The applications to DES and NH Estuaries were not successful, but the Parks and Recreation Committee is waiting for final approval for a Land and Water Conservation Fund grant for 20,000 to construct a universal access trail at the site.

Mr. Parry provided further details about the work of the Committee in 2007, including partnerships with other local committees and organizations, sponsorship of events, and an update of the Committee's web page. He also said the Committee had begun development of a standard use policy for parks and recreation properties, facilities and trails. He thanked Public Works Director Mike Lynch and his staff for their support of the work of the Parks and

## Recreation Committee.

Administrator Selig explained that it had turned out that the Jackson's Landing site would require some archeological analysis, which had impacted the timing of the grant for this site.

Councilor Van Asselt said the committee had some impressive ideas, but he noted that Durham had chosen to spend a very small percentage of its budget on recreation and parks. He said he didn't have the answer to this, but he said if the ideas Mr. Parry had identified were ones that the Parks and Recreation Committee thought were important, these things would have to be sorted out.

Mr. Parry said the Committee felt that with more staff support, it could do more than it was doing right now. But he said the Committee was currently spread pretty thin.

Councilor Henry Smith noted that the Committee could apply for grants, and said there was also tremendous volunteer support.

Mr. Parry said grant opportunities were fewer now than they had been. He thanked the Council for their support.

## **X.A.** Discussion with Durham representatives to the joint ORCSD and tri-town School Funding Formula subcommittee

Administrator Selig provided details on the fact that the Lee and Madbury representatives to the tri-town School Funding Formula subcommittee had so far not expressed much interest in pursuing the work of looking at the funding formula. He said the Durham representatives to this committee were looking to the Council for some guidance on how to proceed, in light of this.

Councilor Needell asked if might make sense to focus on the apportionment of State funding, instead of the balance of ADM vs. present valuation.

Chair Niman said there were a variety of different funding formulas out there, and said perhaps one that was easier for people to understand could be offered as an alternative to the present situation.

Councilor Stanhope said when it selected the representatives to the subcommittee, the Council consensus was that it wanted to see this topic aired now. He said the fact that the other two communities had chosen not to do so put the Town of Durham in a difficult position. He said he was willing to have the Town communicate that if these towns were not willing to move forward, then the Town of Durham would do so. He said if the Town was going to have a confrontation on this, the sooner the better.

Councilor Van Asselt said Councilor Stanhope made the right point, but he said consensus was needed first from the Council before sending that message. But he said he personally had no reservation about doing this.

Councilor Leach she said was at the second meeting of the subcommittee, where the representatives from Lee and Madbury spoke pretty clearly that this was not an issue they were that interested in. She said she didn't see how that would change. She said if the School Board didn't want to move forward with this issue, and if it was a Council goal, then the Council needed to think of a different way to proceed.

Councilor Needell said trying to find some common ground of topics that could be discussed was a worthwhile thing to do. He said there were different ways to do funding formulas, and said all of these should be open for discussion. He said apart from this was the state funding piece. But he said if discussion on these things wasn't going to happen, he agreed that the Council had to decide if this was an issue worth going forward with. He noted that they would eventually need to put something out for people to vote on.

Chair Niman said Durham was trying to say that this was still an issue that was important to it, and that it would like all of the towns to participate in doing something about it. He said the question now was whether, if Lee and Madbury said on September 11<sup>th</sup> that they were not interested in this, Durham would say to them that Durham was still prepared to get more people involved and move forward concerning this issue.

Subcommittee representative Malcolm McNeill said some context was needed regarding the recent meeting that occurred. He said he had presumed that his task at the meeting was to look at the funding formula and to work collaboratively, based on the facts as of 2007. He said there was clearly a cooperative atmosphere at the meeting concerning the issues of recreation and the budget. But he said that when they discussed the funding formula, the first comment from the Madbury representative was that he didn't wish to speak about the subject at all. He said the representative from Lee said he would participate on the subcommittee if the decision making was divided evenly between the Towns. Mr. McNeill said he had said they should vote along the lines of the existing funding formula, which was not well received.

Mr. McNeill said he had asked that the numbers that were utilized in the 2003 be updated, and said that after significant discussion, there had been reluctant agreement to consider that request. He provided further details on the meeting. He said it was suggested that there should be a facilitator for subsequent meetings. He said he and Mr. Bubar didn't want to be involved in an academic exercise, and said a fundamental decision needed to be made as to how hard to push this issue. He said a question was what the Council would do if a collaborative effort wouldn't work.

James Bubar said it was pretty clear at the meeting that there were two sides and no middle. He said he didn't think this was going to come together

Chair Niman asked what the Council wished to say at the September 11<sup>th</sup> meeting.

Councilor Needell said given the present circumstances, it needed to be determined whether the subcommittee had a future.

There was further discussion on the purpose of the subcommittee at this point, and the

importance of the Council moving this issue forward and resolving it, if the subcommittee was disbanded. It was agreed that updated information was needed in order to have productive discussion on substantive issues if the Council did move forward with this.

Councilor Needell said he felt that it should be stated that the Council would bring forward what it thought should be the solution. He said the door should still be open as the Council did this. He said he didn't want the Council to make threats, but said he thought it should express disappointment in the unwillingness of the other two towns to enter into the discussion.

Chair Niman said if Lee and Madbury said they were not interested, Durham would form its own committee on this issue, but would leave the door open.

Councilor Carroll asked whether, since Lee and Madbury had said they didn't want to cooperate, this implied that they thought the current system was fair.

There was discussion on this, and Mr. Bubar said what was clear to him was that they had staked out the fairness issue based on property valuation.

Chair Niman said he had been on the previous tri-town committee, and said he could relate to what Mr. McNeill and Mr. Bubar had experienced. But he noted that this committee had concluded that the current funding formula was not fair, and as a compromise, it came up with the idea of taking State aid off the top. But he said when it came time to discuss this in front of the School Board, he was invited, but then was unable to speak. He said the School Board had not been receptive concerning discussing the fairness of the funding formula, or the idea of changing the formula.

Councilor Leach said that at the general meeting before the subcommittee had recently met, Lee and Madbury said they didn't want to look at the funding formula, and said they felt it had been looked at enough. She said she hadn't personally spent enough time on this issue to know if the formula was fair, and if changes were needed. But she said she believed the Council could go forward and say it wanted to look at whether the formula was fair.

Councilor Stanhope said he didn't think anyone wanted to threaten Lee and Madbury, but he said they should understand that everything was on the table for consideration. He said he had no agenda to dissolve the district and withdraw from it, and said these approaches were not likely to be economically viable. But he said the Council had the responsibility to look at every option.

Councilor Needell said he was very much in favor of charging the subcommittee to look at the funding formula, but he said looking at solutions to Durham's tax burden was too big a charge. He said he disagreed with Councilor Stanhope, and was not interested in putting everything on the table, such as dissolving the School District.

Chair Niman said the idea of leaving the School District was a poison pill, but he said it would be good to do the calculations to see if this was financially feasible. He said having this information would be useful to have in order to develop different options.

Councilor Leach said she thought the Council should say it was going to form a subcommittee, and didn't need to talk further about the issues right now.

Administrator Selig said it might be useful to get in touch with the people who had put together the information from the 2003 report to see if they were interested in doing an update. Chair Niman said the Council should make a formal request to the School District office asking them to do an update, so there would be numbers that everyone could work with.

It was agreed that some members of the Council would attend the September 11<sup>th</sup> meeting, and based on that, a subcommittee would perhaps be formed. There was discussion about who would be on the subcommittee.

Councilor Van Asselt said he was comfortable with having Chair Niman, Councilor Needell, and Councilor Stanhope serve as Council representatives on this subcommittee. All of these Councilors said they would be willing to serve on the subcommittee.

The Council stood in recess from 9:14 – 9:26 PM.

## **IX. Unfinished Business**

**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

Councilor Carroll said she and Councilor Van Asselt had been working on this idea independently, and when they found this out, had started working together on providing meaningful tax relief, by changing the criteria, and changing the assessment values. She said Durham's figures were really out of date compared to other towns, and she provided details on what was proposed to address this.

Councilor Van Asselt said he there was no way to know exactly what the program would cost, but he said he and Councilor Carroll thought it would be prudent to offer a meaningful program but to also be careful concerning impacts on the tax rate. He said they had therefore recommended that this be put in place over a three year period. He said the memo to Councilors provided the financial numbers on this, but he said the real question was regarding the social policy that was involved here.

He said there could be significant financial implications if the number of residents qualifying for tax relief doubled. He also noted that if the Town reduced some residents' taxes, other residents would have to pay for this. He said keeping elderly people in their homes was a laudable goal, but he also said this might not be the best policy for a variety of reasons.

He said there was relatively little ability for those people to go some place else, so it became a complicated issue, with the bigger question as to what kind of community it was that could

support this kind of social policy. He said that in an ideal world, this would be a great policy. He said one could argue either side and nobody would be wrong, He provided further details on this.

Councilor Stanhope said he understood philosophically what Councilor Van Asselt and Councilor Carroll were trying to do, and said he felt that the income and asset levels they had established were fair. But he said he had trouble with the age aspect. He said a lot of his practice involves situations where there was a divorce, where he saw single mothers with a couple of kids. He said what was proposed here would transfer the tax burden onto them.

He said he would be willing to say the tax exemption would apply to anyone who met the income and asset criteria. He said he didn't think that would open the floodgates, and said he didn't think it was fair to discriminate against other age groups. He said he had always been troubled by the elderly exemption, and said that instead, there should be a needs exemption.

There was discussion about this.

Councilor Henry Smith said the elderly exemption came out of the State RSA.

Councilor Needell noted that New Hampshire had chosen to pay for expenses through property taxes, and he said in some ways the elderly tax exemption RSA was an attempt to say the property tax system had some major flaws. He said he didn't have a problem with using the exemption, given those flaws.

Administrator Selig said he had concerns about the age 65-74 category. He said when the Statute was written, it had been largely anticipated that people retired at that point, but he said a lot of people were working much longer, and life spans were increasing.

Chair Niman said he thought this was good social policy, and said he was very supportive of it, if Durham had the revenue stream to pay for it. But he said he couldn't support it if it meant the Town was going to lower Councilor Julian Smith's taxes and raise Councilor Leach's taxes.

Councilor Needell said this was a situation where there was clearly no idea what this would cost. But he said if the Council was going to adopt a social policy and it would cost money, it should take care of the revenue side independently.

Councilor Leach said the fundamental question was what the Town could afford to do, keeping in mind the tax rate, and said she didn't know how the Council could get at this. She said the information that had been presented showed that the elderly benefits were pretty low in Durham compare to other towns. But she said she had concerns about raising the exemption from \$20,000 to \$30,000. .

Administrator Selig provided details on the fact that in the past, the elderly exemption was developed based on social service needs. He said this issue had not been approached in the past in terms of what the Town could afford, because there was no idea what the overall cost would be. He said at the minimum now, the Council should update the income and asset data.

Councilor Henry Smith said Councilor Carroll and Councilor Van Asselt had done a great job on this, and he suggested that a caveat would be to move forward with it, but to review the program in 2009 and 2010. He also noted that even if the program were adopted, Durham would be behind Exeter and Lee.

Councilor Leach noted that she had gone online, and the numbers for Exeter and Lee seemed really high compared to many other NH towns.

Administrator Selig said Lee and Exeter were very progressive concerning this policy.

Councilor Carroll said having a diversity of ages was good for Durham, and she this program was part of encouraging that.

There was further discussion on how to proceed. There was detailed discussion about the income and asset levels in the recommendations.

Councilor Stanhope said he wouldn't want to go out further than 2008. He also said he had concerns about the exemption amounts, and about the 65-74 age group.

Councilor Van Asselt said this change was a big jump on the income level, explaining that people now collecting social security in the \$20,000 range as their sole income would be eligible for this exemption. He also noted that there were currently 13 people who qualified for the elderly exemption, and he asked Tax Assessor Robb Dix to explain what this meant in terms of the social policy involved if these 13 people received the exemption.

Mr. Dix provided details that there were currently few people applying for the exemption. In answer to Councilor Van Asselt's question, he said there would be a tax burden shift, resulting in real relief for the elderly person, with residents to whom the tax burden was shifted having to pay a little piece of the pie.

***Councilor Julian Smith MOVED to suspend the 10:00 adjournment time. Councilor Henry Smith SECONDED the motion, and it PASSED unanimously 8-0.***

Chair Niman asked Councilors to state their opinions on this issue.

Councilor Julian Smith asked why they should pick the elderly for this, when there were others who were in some ways more desperate, with the same income. He also spoke about the failure to find another way to get the Legislature to find a way to fund the things that needed to be funded publicly. He thanked Councilor Carroll and Councilor Van Asselt for thinking about him, but said he would prefer that nothing be done concerning the elderly exemption.

Councilor Leach said she would like to see something done to help the elderly while being mindful of the overall tax burden, but said she was not comfortable with the exemption amount. She also said the change should only be done for one year to see what happened.

Councilor Henry Smith said an increasing number of elderly people in Durham were having a hard time staying in their homes, so what was proposed would probably be a good social policy. He said there was always some risk with social policies, but he said this policy could be re-evaluated, depending on how many people applied. He noted that Durham would still be behind Lee and Madbury after three years.

Councilor Van Asselt said he said wondered in reading the numbers if perhaps increasing the exemption would not run the risk of a large increase in cost. He provided details on this, and suggested that this would be more likely to help the very low income people in Durham.

Councilor Carroll said she liked the program that had been developed. She said there were exemptions for people with disabilities and for veterans that had nothing to do with income. She said the elderly exemption had been talked about for as long as she had lived in Durham, and she said the Town needed to do more for elderly people in Durham, who lived on the margin. She said she felt comfortable with the numbers that had been developed. She said she didn't feel the program would cost a lot of money, and said it would do some good.

Chair Niman said he didn't see anything wrong with tying strings to expenditures, and said this was precisely why he would like to change the apportionment formula. He said perhaps they should go after the very low income people with the exemption, and said he would be willing to do this for 2008.

Councilor Needell said he agreed with this, but for different reason, and he provided details on this. He said he felt the exemptions needed to be updated, and said he felt the program should be reviewed every year.

Councilor Stanhope said he agreed that the Council should be attentive to the most needy. He said he could support the income/asset at the base level, but said the exemption was a critical component. He provided details on this.

After further discussion, it was agreed that Councilor Van Asselt and Councilor Carroll would come back with a couple of different sets of figures, and the Council would then discuss this issue further.

## **V. Councilor and Town Administrator Roundtable**

Councilor Leach suggested that the Council should revisit what the Roundtable was for. She said she had been a bit troubled that at the last Council meeting, the roundtable discussion had lasted about 35 minutes. She suggested that moving it to the end of the meeting might work better, including shortening it.

Councilor Needell said there was a reason that the Council had decided to have it early in the meeting, and to have a free form discussion, but he said there was supposed to be a cutoff at 7:30. He said if it went beyond that, the roundtable discussion should be moved to the end of the meeting.

There was detailed discussion about how to approach this. Chair Niman concluded that the Council would try to cut off the roundtable discussion at 7:30, and would also include wording on each Agenda that an extension of the roundtable discussion would occur later on at the meeting, if necessary.

Councilor Van Asselt spoke about the fact that resident Arthur Grant had recently written a letter to Citizens' Exchange that had made a correlation between current Department of Public Works projects and indebtedness. He said it was a good letter, but said there were reasons for the projects he had brought up. He also noted that he had looked at those 5 projects, and only \$603,000 of the cost for them was bonded. He said the bonded projects were a very small portion of the situation the Town currently found itself in.

Councilor Stanhope noted the University's request for a water permit that evening. He requested that Administrator Selig could let Council members know what topics had been addressed with the University in negotiation sessions, and to lay out for the Council what actions would be taken after those discussions.

Councilor Stanhope also said that some time ago, he had received an email indicating that ORYA was considering occupying a space at Mill Pond Center. He said he had raised the concern that this would mean a change of use in an historic residential structure. He provided details on this, and said he hoped the Town would not fund this project unless there was enforcement of the appropriate Town codes.

Councilor Julian Smith said the Conservation Commission was looking forward to discussing the re-allocation of the land use change tax with the Council. He said the Commission also wondered when the policy on acquisition of conservation land that had been revised recently by Administrator Selig would be coming back to the Council for discussion.

There was discussion about this, and it was agreed that both issues would be discussed together with the Conservation Commission.

Administrator Selig noted that a third issue involving the Conservation Commission was moving forward with the conservation easement on the Fogg property. He noted that there were some issues concerning the grant money available for the acquisition, and said the Council would discuss this with the Conservation Commission as well.

Chair Niman said there were some timing issues with the Stone Quarry TIF district. He said the developer originally wanted to do the water and sewer in the fall so he could build in the spring. He said if the Council didn't vote to approve the TIF district until November, the agreement with the developer would still have to be done, and he said this might cause problems with the developer's schedule. He asked what the Council wanted to do in terms of moving this process forward.

Administrator Selig said another potential challenge here was that if the total bond amount for the TIF district was over \$1 million, this would require a referendum vote of the Town. He said there were some meeting dates available to have a designated Council session on the TIF district

document, which would then allow the scheduling of the public hearing in September.

Councilor Needell stated that a meeting dedicated to discussing the TIF district document before the public hearing was a good idea, and would be time well spent. Other Councilors agreed, and it was decided that the Council would hold a special meeting on September 4<sup>th</sup> to finalize the document.

**X. New Business**

**B. Other business**

**XI. Nonpublic Session (if required)**

*Councilor Van Asselt MOVED to go into nonpublic session in accordance with RSA 91-A:II(c) relative to personnel matters. The motion was SECONDED by Councilor Needell and PASSED on a roll call vote of 7-1 as follows:*

<i>Chair Neil Niman</i>	<i>yes</i>	<i>Councilor Gerald Needell</i>	<i>yes</i>
<i>Councilor Diana Carroll</i>	<i>yes</i>	<i>Councilor Karl Van Asselt</i>	<i>yes</i>
<i>Councilor Henry Smith</i>	<i>no</i>	<i>Councilor Julian Smith</i>	<i>yes</i>
<i>Councilor Cathy Leach</i>	<i>yes</i>	<i>Councilor Peter Stanhope</i>	<i>yes</i>

The Council entered into Nonpublic Session at 10:46 PM.

The Council returned to public session at 11:03 PM.

*Councilor Julian Smith MOVED to seal the nonpublic session Minutes. Councilor Needell SECONDED the motion, and it PASSED unanimously 8-0.*

**XII. Adjournment**

*Councilor Leach MOVED to adjourn the meeting. The motion was SECONDED by Councilor Needell, and PASSED unanimously 8-0.*

The meeting ADJOURNED at 11:05 PM.

Victoria Parmele, Minutes taker