

**This set of minutes was approved at the Town Council meeting on November 5, 2007**

**DURHAM TOWN COUNCIL MEETING MINUTES  
TUESDAY, OCTOBER 1, 2007  
DURHAM TOWN HALL - COUNCIL CHAMBERS**

**MEMBERS PRESENT:** Chair Neil Niman; Councilor Jerry Needell; Councilor Mark Morong; Councilor Diana Carroll; Councilor Julian Smith; Councilor Cathy Leach; Councilor Henry Smith

**MEMBERS ABSENT:** Councilor Karl Van Asselt; Councilor Peter Stanhope

**OTHERS PRESENT:** Town Administrator Todd Selig, Mike Lynch, Director of Public Works; David Cedarholm, Town Engineer; Gail Jablonski, Business Manager; Robert Dix, Assessor

**I. Call to Order**

Chair Niman called the meeting to order at 7:01 PM.

**II. Approval of Agenda**

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

**III. Special Announcements**

No special announcements

**IV. Approval of Minutes**

No approval of Minutes

**V. Councilor and Town Administrator Roundtable**

Councilor Carroll noted that this was the last day of the Durham Farmers Market, and said there had still been a lot of wonderful produce available on this last day. She said the market would open again in June, for those who hadn't had the opportunity to get there this year. She also noted that the Portsmouth Farmers Market was still open, and also said Durham Market Place, an independently owned grocery store, supported local farmers by carrying various kinds of local produce in the store. She said this support help keep local agriculture viable.

**VI. Pubic Comments**

**Malin Clyde, 51 Mill Road**, said she was a member of the Land Protection Working Group, and had come to speak concerning the land use change tax issue. She said she appreciated that the letter concerning this issue from the Conservation Commission was on the Town website.

She said she would read from some letters that were in response to this letter, and that all expressed that the Town Council should continue to have 100% of the land use change tax money go to the conservation fund, and not to the General Fund.

The first letter Ms. Clyde read was from **Jack Farrell** who said that as a developer, he favored putting 100% of the land use change tax toward conservation. He said the Master Plan endorsed such a use of these funds. He also said the money involved would not be meaningful enough to have an impact on the tax rate, and said that cost cutting, fiscal restraint, new development and changes to the funding formula for the School District should be pursued instead.

He said these land use tax change funds, when leveraged with funds from outside sources, could make a serious contribution to conservation purchases without having to do new bonding. He said the Town of Durham as a whole was on the record of being in favor of keeping this money for conservation, and said he thought the Town should continue the practice.

The second letter Ms. Clyde read was from **Amanda Merrill** who said the present policy of use of 100% of the land use change tax for conservation purposed was specifically recommended in the 2000 Master Plan. She said she had recently been serving as the interim director of the State's Land Conservation and Heritage Investment Program, and was reminded of the importance of State and local collaboration for conservation purposes. She noted that local conservation funds were a required form of match for LCHIP money, and said this model had come to be followed by other State agencies.

Ms. Merrill also said she appreciated the importance of monitoring and management of conservation properties, and said the conservation fund was meant to provide for land stewardship and planning as well as land acquisition. She said she hoped the Town Council would continue to support the efforts of the Conservation Commission and the Land Protection Working Group by maintaining the present town policy regarding the allocation of these funds.

Ms. Clyde said she had also received letters of support for continuation of the current Town policy regarding the land use change tax funds from Debra Cardwell, Margery Wolfson, Holly Harris, Hans and Phyllis Heilbronner, Susie Loder, Hillary Scott, Filson and Shirley Glanz, and Diane Freedman.

**Dick Lord, Bennett Road**, said that as a member of the Lamprey River Advisory Committee, he had seen how local funds and matches had been able to preserve a lot of land in Town. He said land preservation opportunities often occurred on short notice, and some couldn't occur without a local match.

He also said the land use change tax funding was needed by the Conservation Commission's for managing and providing stewardship of about 20 properties in Town. He said to have to go to the Town Council to pay for each project would be a great burden. He said he was concerned that the Council was being penny-wise and pound-foolish, and said the impact of taking these funds away was huge, while the impact to the taxpayers would be less than half a percent of tax reduction for every \$100,000 of valuation.

Mr. Lord also noted that the land use change tax money was not predicable He said it would be extremely foolish to take this action, and said he hoped the Council would give great

consideration to the impact it would have on the Conservation Commission.

**Ed Valena, Bagdad Road**, quoted a reference in Administrator Selig's Friday Update about rural life in Durham in days past. He noted that this reference was preceded in the Update by information on the daily life of Durham these days; meeting schedules, reports, etc. He said it was fitting therefore, to end the Friday Update with the reminder of Durham's underlying inheritance, which was the unspoiled virgin land.

Mr. Valena spoke about plans in NY City for some 3 D re-creations of what the city had looked like before it was developed, which would be located at bus stops. He said the intent was to provide people with a virtual appreciation of what had come before. He noted that he appraised real estate, much of it rural land, and said he had seen towns lose heritage land, sometimes significant amounts of it to development because they were not as proactive as Durham had been concerning land protection.

He said he was proud of the actions taken in Durham to protect land, and said the Council should be tickled pink about this investment for future generations. He said he hoped this work could continue, with the echo of the 2003 bond vote in mind, and said if not, he would like to suggest that the Council put a line in the Budget to jazz up the bus stops.

**Robin Mower, Faculty Road**, said she would like to present a list of arguments as to why the Land Use Change Tax fund should remain 100% allocated to the Durham Conservation Commission. She said first that it was a question of principle. She said this was more than merely a source or revenue, noting that the State of New Hampshire had declared that it was "in the public interest to prevent the loss of open space due to property taxation at values incompatible with open space usage." She said it was only because of the intent of the State's current use laws to encourage the purchase and protection of open space that Durham had received these monies in the first place. She said she believed strongly that this intent should be honored.

Ms Mower said these funds also provided leverage, so that the Town could compete for Federal and State matching money. She noted that the Town was able to purchase last year's new conservation easements at an astonishingly lower cost because of this. She asked why a taxpayer who wanted more bang for the buck wouldn't jump at the chance to get double, or triple, the value of that dollar. She said a dollar in the Conservation Commission's hands showed quite a bit of that Yankee thrift.

Ms. Mower said that in terms of financial planning, it was unwise to budget based on the possibility of a windfall, and said the land use change tax was an unreliable source of income. She said including a received windfall in the operating budget would distort the financial picture of the Town.

Ms. Mower also said that conservation was not bound by Town lines. She said she had recently attended a workshop held for the benefit of Lee, Madbury, and Durham, and said the regional conservation planners there had presented maps and data that had stunned her. She said this information had demonstrated that the Seacoast area was extraordinarily rich in biodiversity. She noted that according to the New Hampshire Fish and Game Wildlife Action Plan, a statewide land conservation plan, 67% of Durham

alone qualified as the highest quality of natural habitats. She said she would like to think that the Town would support the protection of such valuable resources.

She noted that Peter Smith had recently told the Council about the number of NH towns that contributed 50 to 100% of LUCT funds to their conservation commissions. She said she would be ashamed to hold up her head as a resident of a university town that rejected the opportunity to contribute to a vision larger than itself, such as the stewardship of natural resources.

**Bill Hall, Smith Park Lane**, noted that the Council was being asked to approve a contract for the Spruce Hole aquifer. He said the Town had previously approved a contract for the water pipeline for \$1 million, and paid for half of this when it should have paid a third. He said the pipeline was made virtually unusable by NHDES, but Durham didn't see fit to question this.

Mr. Hall said he had previously stated that inter-basin transfers were illegal, and was then challenged to find proof of this. He said he had found this proof under RSA 483. He said he was bringing this up because the concept of development of the Spruce Hole aquifer included the fact that it would have to be recharged, which would amount to an inter-basin transfer from the Lamprey River, which was illegal. He said the Town should find out what the situation was before prospecting for water at Spruce Hole.

Mr. Hall also said he didn't like it that there were no other choices being made concerning the development of new water supplies, such as putting in a well near the pumping station off Wednesday Hill Road. He said such a well would be naturally recharged from the Lamprey River, just as the Lee Well was recharged by the Oyster River, and said he believed that this area would recharge very quickly

He said there were some questions that he didn't think Town staff had answered properly. He also said there was 20 feet of dead end pipe on Madbury Road, and there was no way to flush it out so the water that came out of the hydrant was awful. He provided additional details on water line issues he was displeased with.

**Nancy Lambert, Faculty Road**, said she supported what others had said about the land use change tax funds. She noted as Ms. Mower had that Durham had significant wildlife habitat, but said the Town also had agricultural soils that were worthy of being protected. She said the Town had a responsibility to protect these soils.

She said the Town had largely lived up to these responsibilities by passing the bond, protecting Wagon Hill, etc., and having 100% of the land use change tax funds going to conservation. She said she hoped that Durham would keep this tradition, stating that the Town had been one of the leaders in this area.

She also said that although the current fund amount seemed like a lot of money, land protection was expensive, and it wouldn't take many projects to use up this money. She said it couldn't really go that far because of land values in Durham.

**Larry Harris, 56 Oyster River Road**, said he supported what others had said. He noted

that the area he had grown up in, near San Francisco, had at one time been rural, but now had become strip malls and subdivisions. He also said he did annual bird counts at Christmas, and over time had seen more development in Durham, and with this the disappearance of open lands.

He noted that many of the Councilors had been at the Durham Day picnic, and said he thought that Durham was a town that for a long time had valued conservation and quality of life issues. He said that at a time when the Council seemed to be very anxious to have development in Town through TIF funding, etc., it would be a small balancing act to maintain funding of the conservation fund through the land use change tax, so Durham could continue to be able to take advantage of opportunities to maintain open space and the quality of life residents valued.

**Margaret Bogle, Crogan Lane**, said it was very important to keep the land use change tax money going to the Conservation Commission. She said the Commission didn't have other sources of funds, and said it was important to maintain the ability to leverage funds to conserve land and maintain stewardship of these lands.

**Judith Spang, 55 Wiswall Road**, asked those present to imagine a situation where there was a lovely piece of land across from their house that came up for subdivision. She said the Council Chambers would be filled with people trying to pressure the Town's boards to figure out how to prevent this.

She said this could be avoided by putting conservation easements on the land in Town that was the most important. She said that when this land came up for sale, the Town had a small window to acquire it. She said in many instances, it was cheaper to buy an easement than to spend time and effort to try to beat back a development that no one in the area wanted. She said the Town needed to be proactive in deciding on the important lands to protect.

Ms. Spang said she was on the board of the LCHIP program, and said that in this role, she had seen how much towns were able to accomplish by raising matching funds for this money. She said she had fought hard to make sure the LCHIP program was fully funded over the next 2 years, and said if the Town didn't have the ability to match these funds, it would be unable to take advantage of this program. She urged the Council to take the long view. She noted that the price of land was only going up, and said if the Town didn't have the funds when a piece of land appeared, it would be too late.

**Vicky Banyard, 5 Chesley Drive**, said she had grown up in New Jersey, and really loved the open spaces and quality of life in Durham. She said she would like to express her support for what others had said about supporting the work of the Conservation Commission by keeping the land use tax money in the conservation fund.

**Beth Olshansky, Packers Falls Road**, said she wished to acknowledge the hard work the Conservation Commission and the Land Protection Working Group had done, including their ability to secure outside funding. She said they had been able to do this because they had had the full support of the Town Council and the Town. She provided details on this.

She said the recent discussion about taking money away from the conservation fund had been a

slap in the face for these organizations. She said she wasn't sure how this had started, but said this was a community that valued the protection of its natural resources, so this seemed like a harsh statement. She said the Council should remember that 77.6% of Durham voters had not that long ago voted for the conservation bond. She said they knew that this would increase taxes, and noted that taxes weren't low at that time. She said this had shown what the citizens of Durham thought about conservation.

Ms. Olshansky said she hoped the Council would revisit this issue, and would find some balance in the community as the Town moved forward with economic development projects.

**David Hills, 135 Piscataqua Road**, said he was speaking as someone who had been a beneficiary of the funds set aside for conservation. He said he would like to echo what others had said, and noted that the leveraging of funds had been critical in order for the protection of Emery Farm to happen. He said he had a hard time believing that if these funds were not put in the conservation fund, this would make a huge difference to the Town's budget over time.

He said he had been impressed with those who worked on the conservation bond, and said it was wonderful that his farm and some other parcels of land in Town had been protected. He also said he thought it was a misunderstanding when people talk about conservation and development as being in opposition. He said he would like people to recognize that there was compatibility between development and conservation, and that both needed to occur.

## **VII. Unanimous Consent Agenda**

Item B was taken off the Unanimous Consent Agenda.

- A. Shall the Town Council, upon the recommendation of the Town Administrator, award an engineering services contract for the rehabilitation of the Dover Road Pump Station to Metcalf and Eddy Engineers of Manchester, NH for a sum not to exceed \$176,500 and authorize the Town Administrator to sign said contract?
- C. First Reading (Continued) on Ordinance #2007-09 amending Section 132-3, "Tax exemptions and Credits" of the Durham Town Code to increase the exemption amounts for the elderly in order to offer meaningful property tax relief to qualified elderly residents
- D. Shall the Town Council authorized the Town Administrator to sign a Notice of Grant Agreement relative to the Fogg property in which the Town agrees to designate the property as match for North American Wetlands Conservation funds awarded under a Grant Agreement between the US Fish and Wildlife Service and The Nature Conservancy, as recommended by the Conservation Commission and the Town Administrator?
- E. Shall the Town Council adopt a schedule of supplemental meeting dates for the purpose of deliberating on the proposed FY 2008 Operating Budgets, and schedule a public hearing for the proposed FY 2008 Operating Budgets, Capital Budget, and 2008-2017 Capital Improvement Plan for Monday, November 12, 2007?

***Councilor Needell MOVED to approve Unanimous Consent Agenda Items A, C, D, and E. Councilor Carroll SECONDED the motion, and it PASSED unanimously 7-0.***

- B. Shall the Town Council, upon the recommendation of the Town Administrator, award a Spruce Hole municipal engineering and hydro geological services contract to Underwood Engineers of Portsmouth, NH for a sum not to exceed \$64,000 and authorize the Town Administrator to sign said contract?

Councilor Julian Smith said he was not convinced the Town needed to go this route, and said this was all he had to say on this subject.

Councilor Carroll said she had been thinking about the Spruce Hole issue for some time. She said she believed that water conservation was needed before a new source of water like Spruce Hole was developed. She said conservation was the best way to get more water at the cheapest cost, and said this was true with all natural resources. She said saving water was like having new water. She said residents currently paid 1 cent for 2 gallons of water, and she said the rest of the world should be so lucky.

Councilor Carroll said if the Town needed more water, it needed to find ways to conserve what it had. She said pricing was the most effective way to make water conservation happen. She noted that she had been involved in education over the past 35 years, and said she had always believed that if people were given factual information, they would use it to make informed decisions to change their behavior if this was needed.

But she said her life experience had shown that people were quicker to respond to their wallets. She said she was in favor of the water conservation notes that residents got in the Friday Updates, but said she wondered how much water had actually been conserved as a result of this. She said that on the other hand, she wondered what would happen if people had to pay more for their water. She said she was advocating looking into the pricing of water, and make adjustments as necessary.

Councilor Carroll also said that the Zoning Ordinance currently did not encourage water conservation, and said this was a huge gap that needed to be paid attention to.

Councilor Henry Smith said this was a huge report that had been provided to the Council on Spruce Hole and said he therefore wondered why it was on the Unanimous Consent Agenda. He noted that he had spoken with Mr. Cedarholm about the report. He said he was not necessarily opposed to the proposed project, but questioned the funding numbers for the engineering, and what was in the contingency.

Administrator Selig explained that they wouldn't go over the \$64,000, and could identify other funding sources if necessary. He said the project would be stopped if additional funds needed to be found.

Councilor Morong said he was opposed to this project. He noted that on August 20<sup>th</sup>, UNH Assistant Vice President for Facilities Paul Chamberlin had spoken about the water needs of the Gables project, as well as the plans for the development of Spruce Hole. He said he didn't think the Town needed to spend money on this. He said until it could be shown that the Town had a greater need for water, for example as a result of privately developed student housing on Mast Road, he didn't see why the Town should

be spending money on this.

He noted that Administrator Selig had said the Town needed insurance concerning its water supply, but he said he felt this was expensive insurance that was proposed. Concerning Administrator Selig's comment that it would be more difficult to get permitting for a new water supply in the future, Councilor Morong said he didn't think the State would shut off the Town's water supply, given that the University of New Hampshire was in Durham.

He said he couldn't at all support funding for this project until the Town had a need for it. He said Councilor Carroll made a good point concerning water conservation, including the fact that the University was making a much greater effort than the Town in this regard. He said perhaps the Town should look at this.

Administrator Selig said that from the information he had seen, Spruce Hole was the next logical water source for the Town of Durham, and said if the Town wanted to see an expansion of taxable development, a new water source was needed. He said if the Town was going to cap development, and not encourage large housing developments, it could continue with the status quo.

He next spoke about present water demand in Town, and also about water conservation steps the Town was taking. He said all Town departments agreed on the importance of water conservation, and the need for appropriate management of the water system.

He said the problem in Durham was not the amount of water available on an ongoing basis, but during low flow periods. He noted that the Town was currently in a period of drought watch, and provided details on water conservation measures that were taken in Town during such periods. He explained that it was hard to put in place strict water conservation requirements when there was a finite period of time when a drought would occur. He noted that Mr. Hall had said that in high flow times, there was water going over the dam, which was lost to Durham.

He said it was important to equate future taxable development with the necessity of having an additional water supply. He said the most sustainable new supply would come from Spruce Hole, and also said the Town could get additional water if the 401 certificate for the Lamprey River was modified. He noted that to date, no progress had been made on easing this restriction.

Administrator Selig said 2/3 of the \$64,000 would be paid for by the University, and said the Town's portion, about \$21,000, would come from the UDAG fund, so there would be no tax impact. He said this was an economic development initiative, explaining that there was a lot of interest in possible new development at the west end of Town. He said one developer was looking at a project that would possibly add 1400 new beds, while another was looking at a project involving 400-500 new beds, and a third developer was looking at a 200-300 bed project.

He said a multi-part program was needed concerning the Town's water supply, and he stated again that if Durham wanted to see substantial growth, the Town would need to ensure that there was adequate water to support this growth. He recommended moving ahead with the Spruce Hole project.



Councilor Needell said the Council had, after a number of discussions, come around to the idea of studying and bringing on line the Spruce Hole aquifer. He said his own support for the project was based on another understanding than what he had just heard, that in order to support economic development, especially a substantial increasing in private student housing, developing this water source would be necessary or highly desirable. He said he didn't recall the need for Spruce Hole as being a central focus of discussions on economic development.

Administrator Selig said that until last year, there had not been interest by developers in developing those parts of the community. He said renewed interest now in economic development had made the development of Spruce Hole even more important than it had already been.

Councilor Needell said discussions held up to now on the development of Spruce Hole looked at it as a generic water source. But he said it was now being justified it for economic development purposes, which was a policy issue the Council hadn't discussed yet. He said it was important to discuss the entire impact of the development of the aquifer, and said if this development would encourage a policy he wasn't necessarily in favor of, he would want to revisit this.

He said the \$64,000 would be used for studies on the development of the well, but would not be actually authorizing the well, and said he didn't want to throw money into something the Town wouldn't be fully in support of. He said he didn't want to play engineer, and relied heavily on staff to make the technical decisions. He explained that there were some questions he had that bordered on policy and planning, such as the idea of an artificial recharge program.

Councilor Needell said he was not satisfied with the level of exchange and inclusion of the Council in this plan. He said he was not sure how to do that properly, but said there were some fundamental aspects of it that the Council needed to be informed on, and to understand better before authorizing them. He said he was uncomfortable with the amount of information contained in this piece of action.

Administrator Selig provided technical details on the Spruce Hole aquifer. Among other things, he said that it was a unique geological phenomenon in that the clay underneath the sand and gravel aquifer might be able to serve as a giant bathtub to store water taken from the Lamprey River during times of plentiful flow. He said the testing that would be done as part of the currently proposed project would determine how much water could be stored.

He said that potentially, it could hold about 50 million gallons, and noted that the amount stored at the Lamprey was just under 40 million. He said developing Spruce Hole could potentially create not only an ongoing source of well water, but would also provide a reserve other than the Lamprey to draw upon if needed.

Administrator Selig said Town staff involved in the technical aspects of this project could either make comments at the present meeting, or could be invited back to participate in an in-depth session on this subject. He said it was a topic that deserved a lot of discussion, and said he would be happy to have such a discussion.

Councilor Needell agreed that the topic deserved a lot of discussion, and said he was not sure what the appropriate time would be to have it.

Administrator Selig said his recommendation was to move ahead with this project in order to get a better sense of the aquifer before taking additional steps concerning it. He said the Lamprey River was a cherished resource, and said it was problematic to put all the Town's eggs in the Lamprey River basket, when there could be a water emergency. He said it made good sense in terms of good water resources planning to have an alternate source of water, and he said Spruce Hole was that alternate source.

There was discussion about the fact that in times of emergency, the Lamprey River could be drawn down further than what was permitted in the 401 permit.

Councilor Henry Smith said to develop this as a resource in case of extended drought was one thing, but said it concerned him to develop it in a way that encouraged things Councilors might not be in favor of. He said this was a concern of his regarding the current proposal.

Administrator Selig said this was an important policy issue for the Council. He provided details on the factors involved, and said he, the Public Works Department, and Mr. Metcalf had consistently recommended that the Town move ahead with this new source of water.

Councilor Morong said over the years he had been on the Council, the University had come forward almost every year with a new development, and there was always discussion that there was plenty of reserve water supply. He said now there wasn't, and now the Town water and sewer users were supposed to ante up for this.

He said he didn't have a problem with having to have a water restriction in times of drought, and said this might even teach people how to be better at conserving water. He spoke about the cost of actually putting in a well, at least \$3 million. and said he was very concerned about the expense to the Town's water and sewer users. He noted that there was also the potential for \$4-5 million in capital spending on the sewer system over the next 4-5 years.

He said he didn't support the currently proposed project, and didn't even want to put \$21,000 of UDAG money into it.

Councilor Needell said he was not prepared to vote on this project until the Council had more information and discussion on it.

***Councilor Needell MOVED to postpone action, indefinitely, on this Agenda item until we are ready to bring it back. Councilor Henry Smith SECONDED the motion.***

Councilor Leach said her question was whether the Council would ever be ready to bring it back and provide the information people needed without doing further study. She said the conversation that evening had convinced her that the study should be done.

Administrator Selig said the study would provide specific information on Spruce Hole's ability to produce water, but he said it would not address the threshold issue of where the Town was today concerning its water supplies, and at what point it could no longer hook up additional dwelling units to the system.

He said Mr. Metcalf would be providing the Town with an update on these issues around October 15<sup>th</sup>, and said with this in hand, the Town would be in a better position to evaluate the water supply situation. He suggested that the Council could postpone action on this item until Mr. Metcalf, Town staff from the Public Works Department, and representatives of the University were present to have a thorough discussion.

Councilor Henry Smith said that was an excellent recommendation.

Chair Niman asked Councilor Needell to identify some of the policy issues the Council would need to address as part of this.

Councilor Needell said the Council should discuss whether it would be looking to encourage economic development by approving this project, or would simply be doing this to increase the water supply. He said this distinction should be made very clear. He also said he would like to be better educated about some of the issues involved, such as artificial recharge, and the legality of doing this.

***The motion PASSED 5-2, with Chair Niman and Councilor Leach voting against it.***

## **VIII. Presentation Items**

### **A. Receive report of the Energy Steering Committee - Toby Ball, Chair**

Mr. Ball said the Energy Committee was in a good position to address the mission it had set, with the consent of the Council. He explained that this mission was to advise the Town Council on energy conservation measures the Town could implement to reduce its energy use and emissions that contributed to climate change.; and to recommend alternative and renewable sources of energy for the purpose of working toward local economic security and energy independence.

He said the Committee had three proposed objectives:

1. Reduce energy use and greenhouse gas emissions in Town building and Town facilities and the wider Durham community (homes, businesses)
2. Recommend appropriate alternative energy technologies to Town boards and staff for implementation
3. Make education and resources available to the public to assist the community in reducing energy use and Green House Gas (GHG) emissions

He said the Committee had also identified four areas of work to focus on, to start things off, and said individual subcommittees were proposed for each of them.

1. Transportation
2. Green building
3. Education
4. Conservation and alternative energy for town facilities

He said upon Council approval of this approach, the plan was to solicit involvement from members of the community for the different subcommittees. He said these subcommittees would report back to the Committee.

Mr. Ball said in addition to working on mission statements and objectives, the Committee had met and communicated with a number of New Hampshire and regional groups involved with energy issues. He said members of the Committee had attended a recent Carbon Coalition workshop, and were also communicating with such groups as the Oyster River Carbon Challenge, the Oyster River School District, Clean Air Cool Planet, the EPA Community Energy Challenge, etc., concerning energy issues.

He also said that a member of the Committee from UNH was on the University's energy task force. He provided further details on connections the Committee was making, noting that there were 12-24 such groups in the Seacoast area, and about 50 statewide. He said this was an exciting development for the State.

He said the Committee had submitted a grant to the New England Grassroots Environmental Fund in order to be able to hire an intern to do an energy inventory for the Town. He said this would be an important first step to determine opportunities to address energy use in Town, one that would not cost the Town any money.

Councilor Leach asked how the Committee saw its role in terms of advising the Town Council on energy issues.

Mr. Ball said the Committee's sense was that as an advisory group, it would come forward to the Council with proposals.

Councilor Needell said when the Committee was set up, it was clear that if money was to be spent, it would originate from the Council. He said there might be a Budget request put forward by the Committee at some point, but said this too would come through the Council. He said the Committee also might come forward with proposals on policy issues, such as a recommendation that a particular Town department take some action concerning an energy-related issue. He said it was appropriate that any action concerning this would come from the Council. He said the intent was not that the Council micromanage the work of the Committee, but that it would take action concerning policy issues.

Councilor Needell recommended that the Council not appoint the members of the four subcommittees, and instead let members of the public contact the Committee, which would oversee the membership and activities of these subcommittees.

Mr. Ball noted that the Committee had made the decision to create the goals for the subcommittees. He also said the Friday Update would provide more details on the subcommittees.

Chair Niman thanked the Energy Committee members for the contribution they were making concerning this important issue.

***Councilor Needell MOVED that the Town Council hereby endorses the proposed Mission Statement developed by the Energy Steering Committee and establishes the Energy Steering Committee as a standing committee of the Town to be renamed the "Durham Energy Committee". Councilor Morong SECONDED the motion.***

Councilor Leach summarized that the Energy Committee had now moved from being a steering committee that established these various subcommittees to a standing committee, called the Durham Energy Committee.

***The motion PASSED unanimously 7-0.***

The Council stood in recess from 8:32-8:44 pm

## **IX. Unfinished Business**

Discussion with members of the Durham Conservation Commission relative to the disposition of the Land Use Change Tax (LUCT) funds.

Cynthia Belowski, the Chair of the Conservation Commission, thanked the Council for inviting the Conservation Commission to participate in this discussion. She noted that Commission members Dwight Baldwin, Jim Hellen, Beryl Harper, new Planning Board liaison Steve Roberts, and Council Representative Julian Smith were present to participate in the discussion.

Ms. Belowski then read through the letter the Commission had sent to the Town Council in July concerning the proposed policy change regarding the land use change tax.

Councilor Leach noted the comment in the letter regarding the importance of the conservation fund for leveraging of other funds, and asked Administrator Selig for some perspective on this.

Administrator Selig said because of Durham's form of government, the Town Council could at any time vote to raise and appropriate new monies. He said the leveraging concept would be more relevant if the Town had a town meeting form of government, when there was less flexibility in terms of appropriating money. He said this was not to say that it was not helpful to have the conservation fund, and he noted that a benefit of it was that funds could theoretically be set aside and could accrue interest.

Councilor Leach asked what a stewardship fund would typically cover.

Ms. Belowski said that based on the revised Zoning Ordinance, stewardship funds would be set aside as part of new conservation subdivisions. She noted that land trusts used stewardship funds to pay for annual monitoring of land they oversaw. She said a stewardship fund also provided insurance in case some kind of legal action was taken concerning a piece of property.

Councilor Leach asked if a stewardship fund could support trail improvements and development, as well as other things that might increase recreational use of conservation lands. Ms. Belowski said yes.

Councilor Leach asked if the stewardship fund would come from the land use change tax fund, and Ms. Belowski said if the Conservation Commission was the easement holder for an easement that was part of a conservation subdivision, the homeowner association would have to give the Commission money for stewardship. She said that such a fund had not been set up yet.

There was discussion on the idea of development of a stewardship fund, and the fact that such a fund had not been established yet.

Mr. Hellen said a stewardship fund would also be used to support forest management, and monitoring of conservation properties.

There was discussion about the fact that the Commission was not currently doing this management and monitoring, and that this was one of the things that the Commission wanted to get started. Mr. Baldwin said the Commission was currently moving ahead with this.

Chair Niman said this was an issue for him. He noted that he hadn't taken a public stand on the proposal concerning the land use change tax, but said the reason he had voted to have a resolution drafted was that he was concerned that stewardship plans hadn't been developed for conservation properties.

He said he realized they cost money, and that the Town didn't have a lot of loose dollars. But he said the reality was that the Town needed to take better care of the conservation land in Town. He said his concern was that there had been an unwillingness on the Conservation Commission to dedicate some of the conservation fund monies to do this. He said he would be more comfortable with giving 100% of the land use change tax funds to the Commission if he was convinced that it would spend some of the money being good stewards of the land.

Mr. Baldwin said the Town did have the responsibility to maintain and conserve the land it had, for example, Jackson's Landing. He noted that some of the money for this project, if matching funds had come through, would have come from the conservation fund. He provided details on the management issues facing that property, including erosion problems that impacted Great Bay.

Chair Niman said when the Council controlled the money, it could take care of the erosion problems, etc., but he said when the money was in the Conservation Commission's account, the Council had to sit there and hope the Commission spent it.

Mr. Baldwin said this wasn't a matter of control, and said the two entities should work as a team. He said if the Council thought the Commission was dragging its feet, it should let it know. He noted that he thought there should be more communication between town boards in general. He also said perhaps another grant proposal should be written concerning the erosion problems at Jackson's Landing in order to try to save the Town some money.

Councilor Julian Smith noted that the previous year, the Town had purchased easements on a number of parcels, and said one of the reasons it did this was to protect scenic vistas that were part of the rural character of the Town. He asked whether, if someone owned agricultural land with a conservation easement on it, and the property was bought by someone who had no interest in agricultural uses, it would be appropriate for the Commission to see that the field was maintained, especially as farmers found it harder and harder to make a profit on this.

Ms. Belowski said the Commission hadn't discussed this, but she said it was an interesting question, and was something to consider.

Councilor Julian Smith asked whether conservation funds might be used to provide permanent care for the land south of College Brook, across from the Plaza, if it were given to the Town as part of the redevelopment of Mill Plaza.

He said there were other places around Town where the acquisition of more land for conservation would create more expenses. He said the argument that the Council should have the land use change tax funds in the General Budget struck him as questionable, because the Council in a given year might make certain choices, for example that a fire truck was more important than maintaining conservation land.

Councilor Needell said if a conservation easement was granted, and there was language in it that a vista was to be maintained, the easement holder could enforce this. He said it depended on the particular easement as to where the money would come for the maintenance.

Councilor Julian Smith said he agreed. He also noted that he had asked a similar question about the maintenance of agricultural land that was part of a conservation easement the Town had purchased the previous year. He said at that time he had been talking about legal language that could be used concerning this.

Councilor Henry Smith said the point made at the time was that there was no guarantee that the land would remain open, and said the funding aspect of this wasn't discussed. He also said it seemed that the Commission's conservation fund could be seriously drained by this kind of thing.

Councilor Leach said her understanding of a stewardship fund was that when there was a new conservation subdivision development, this fund would be funded by the homeowners' association. She suggested that part of the land use tax funds could be directed toward a larger stewardship fund.

Mr. Hellen said that once the Commission got its arms around the conservation properties it needed to maintain, a good source of funding for this monitoring and maintenance was the land use change tax fund.

Councilor Leach asked if the Commission would be agreeable to having a portion of the land use change tax moved into a stewardship fund.

Ms. Harper said the more flexibility the Commission had with this money, the better it would be used.

Councilor Needell distinguished between the stewardship funds to be established as part of conservation subdivisions, and the larger stewardship plan and funding for maintenance and monitoring of the Town's conservation easement properties. He said it might be reasonable to consider the cost of this larger stewardship plan, and to allocate funds for this, just as would be required of a developer.

Ms. Harper said this was the way things should be done, and said this would happen in the future.

There was discussion that the Town had made a payment of about \$25,000 to the Society for the Protection of NH Forests in regard to the Emery Farm conservation easement, which included funds for stewardship of the property.

There was discussion on the Fogg conservation easement, and the fact that the Commission had the responsibility for stewardship of the property. Administrator Selig noted that the Town had paid \$2,000 for baseline documentation of the property, which was the beginning of a stewardship program for it.

Councilor Morong said in its letter to the Council, the Conservation Commission had used the 2000 Master Plan as part of the justification for having 100% of the land use change tax money go to the conservation fund. But he said he thought the recommendations in the Master Plan were getting a bit long in the tooth. He noted that Councilor Carroll had questioned whether people involved with the Master Plan would have designated Stone Quarry drive as a place for commercial development.

He said that in the same vein, he questioned whether, if residents of Durham had known there was going to be a conservation bond, they would have voted for 100% of the land use change tax to go to the conservation fund. He said these things did change over time, and said he wasn't necessarily looking to the Master Plan for guidance on this issue.

Mr. Baldwin said one could also see that some of the bond money didn't have to be appropriated because the Commission had land use change tax money available. He noted that this money was used for the Merrick property and the Mill Pond property. He said the conservation fund was being used to complement the conservation bond, and said the Town boards should work together in using this money.

Councilor Morong said in 2000, people wanted to be sure there was money for conservation, but he said once the bond was in place, a lot of people might have thought that the land use change tax funding mechanism wasn't needed anymore.

Mr. Baldwin said that was a question as to how much money the Town should spend on the preservation of public land, which was a whole other issue.

Councilor Morong said it was an issue the Council had to grapple with. He also said he wouldn't disagree that the money so far had been spent wisely.

Ms. Harper said the conservation bond and the conservation fund were complementary, and said it was fiscally smart for the Town to have both of them available. She said Durham could get more bang for the buck with both of them, and said they provided flexibility in terms of decision making on funding.

Councilor Morong said he didn't see it as one or the other. But he said that right now, there was a sizable reserve in the conservation fund that was available for opportunities that might come up.

Ms. Belowski said she disagreed, given the cost of property in Durham. She also noted that the Merrick property had been a bargain sale, which one didn't see very often.



There was further discussion on this, and on the idea of using both funds for particular purposes.

Mr. Roberts said that in doing a search of the most recent Zoning Ordinance, he had come up with five pages of responsibilities the Conservation Commission had, concerning wetlands, shorelands, the conservation subdivision process, management of funds, etc. He said a significant amount of work was being required of the Commission as a result of these recent changes to the Ordinance.

Councilor Needell said there was a special relationship between the LUCT funds and the conservation of land, and said there really was justification in the RSA that tied the two together. He said the change that occurred when 100% of these funds was designated for the conservation fund was suggested by the Master Plan, and also made sense.

He also noted that a change the Council made after the conservation bond passed was to not put contingency funds into the conservation fund, as had sometimes been done in the past, because there was no direct connection of these funds to conservation. He said he thought that made sense. He noted that it wasn't known when the LUCT funds would come in, but said it made sense to put them in the conservation fund, in order to forestall having to put more tax dollars into the conservation fund.

Chair Niman agreed there was this special relationship between the LUCT funds and the conservation of land, but said he viewed conservation as more than buying easements and land. He said he was waiting for the Conservation Commission to take a larger role, or said perhaps the Town would have to hire someone, and said he could see LUCT money being used for this.

He said there were two possible projects coming up with potential conservation aspects, and said one of them was redevelopment of Mill Plaza. He said he didn't know if there would be enough tax revenue to fund every conservation desire people had. He also noted the Wiswall Bridge issue, and said he was concerned that some agency would impose something on the Town that would cost a lot of money. He said perhaps spending some conservation funds to do some of the work around the bridge might make sense.

Chair Niman also said he didn't believe the Army Corps of Engineers was ever going to dredge Mill Pond, and said at some point, it was the Town's responsibility to do something about it. He said he didn't think this could be postponed indefinitely. He said he had been waiting to hear from the Conservation Commission that it understood its role was about more than buying easements, and that it was willing to spend the money to be good stewards. He said otherwise, the Council would have to spend money on this.

Councilor Julian Smith suggested that perhaps the Conservation Commission could be of some help to the Town in dealing with NHDES about a sensible draw down of the Lamprey River, and modification of the 401 restriction. He said this could perhaps save the Town a lot of money.

Chair Niman said this would reduce the pressure some people were feeling about taking LUCT funds away from the conservation fund. He said the Town had these other expenses, and didn't have the money to pay for them.

Mr. Hellen asked what the purpose was of taking the percentage of the LUCT funds going to the conservation fund from 100% down to 0%. He said once this happened, the \$600,000 currently in the fund would be used up. He said this was a very important policy decision the Council was wrestling with. He said people in Town asked him why this was happening. He noted that many people like himself were on fixed incomes, but they said this shouldn't be done. He said if the reason was to reduce taxes, the impact would be rather minor.

Councilor Needell said he had no interest in reducing the percentage of the land use change tax going to the conservation fund.

Councilor Morong said he was interested in lowering taxes. He said he wished the Town could have more conservation land and lower taxes, but he said even small amounts of saving added up. He said he didn't understand the logic that there was a fluctuating amount of land use change tax money that came in, so it was hard to manage. He said the Council had to manage things with the fund balance during the budget season. He noted that he had been concerned in recent years that the Town had been depleting the fund balance, and said it was below what was recommended for towns of Durham's size.

He said he also got the clear message at the last election that people wanted to have their taxes lowered, and said he had been trying to do what he could concerning this. He said he had voted for the bond, and wished there could be money for everything people wanted. He said the Council had to be good stewards of the land, but also had to be good stewards of the financial status of the Town.

Chair Niman said that concerning the stewardship issue, if the Conservation Commission didn't take this on, the Council would have to do it. He said his preference would be to have the Commission do it. He also said the Town needed to solve the water problem, and said he would like the Commission to consider how the Town could be a better steward of its water resources, and to be more supportive of a management plan that allowed the Town to tap into its natural resources. He said he agreed that water conservation was important, but said Durham needed to be more proactive than this. He said he would like the Commission to work with the Council on this rather than say that water couldn't be taken from the Lamprey River.

Chair Niman also said he worried about where money would come from for the new Library. He said he hoped a new Library could be put in Mill Plaza, but said he had no idea where the money for a \$4 million library would come from other than the \$1 million the Library Board of Trustees said they could raise.

He said Durham also needed a new Town Hall and Fire Station, and said he didn't know where the money would come from to pay for these either. He said land use change tax funds wouldn't allow the Council to pay for all of this, but he agreed that every little bit helped. He said it didn't necessarily help enough to warrant saying that the LUCT money should be taken away from the conservation fund. But he said a library was as important as a scenic view.

Councilor Carroll said she was in favor of keeping 100% of the land use change tax funds in the conservation fund, to be used for a variety of programs. She also agreed that a new Library was needed, and noted Administrator Selig's recent comments concerning this.

She said that right now, she was bond shy. She said Durham had done a lot with bonding, but said in some ways, the Town was over bonded. She noted that a good part of the Budget went toward paying interest. She said this was one reason why she was in favor of the Conservation Commission having the land use change tax funds under its control. She said these funds would be available if something came up. She said that if she were a member of the Conservation Commission, she would be looking at quite a to-do list.

Councilor Carroll noted that there was a meeting at the library recently to honor Margery Milne, and the question was asked how Durham could honor her and her endowment to the Library. She said someone suggested that a group could perhaps be formed to make it possible to clean up Margery's beloved Mill Pond.

Councilor Henry Smith said he was in favor of a new Library, but said he didn't understand why \$4 million was needed for it. He also said that when the Council had last discussed the land use change tax, he was not in favor of making the change from 100% to 0% because it was a radical step. He said he thought that a compromise at best could be 50%, but said his preference was still to maintain it at 100%.

Regarding how the Conservation Commission should spend this money, he said he was not sure it should be spent to dredge Mill Pond, or to maintain open fields. He said it was very important for the LUCT funding to stay where it was, and for the Commission to step up to the plate to spend this money when it felt this was appropriate.

Councilor Leach said her sentiments concerning this issue were similar to Councilor Morong's and also to Chair Niman's comments on the library. She said it sounded like the Council and the Commission should have a workshop so people could decide what the plan was. She also said she was somewhat disappointed that the Conservation Commission hadn't come back with some kind of compromise between 0% and 100%.

Councilor Julian Smith said he would prefer that 100% of the LUCT funds be left in the hands of the Conservation Commission. He said that as a Library Trustee, he would do everything he could to conserve funds. He said he also didn't want to see a \$4 million library, and said if that meant it needed to be smaller, he would do his best to conserve funds, space and energy.

There was discussion that at the Council's agenda setting meeting, it was agreed that there wouldn't be a Resolution provided to the Council on this issue at this meeting, but that the Resolution had subsequently appeared in the packets. It was agreed that the Resolution would not be voted on tonight.

Ms. Harper said she had spent quite a bit of time on the numbers of the conservation fund, and said the amount of money in it was very erratic. She said it was true that \$646,000 had been collected over the last 6 years, but said that in the decade before that, a total of only \$134,000 was collected, which came to \$15,000 per year. She said the idea of using the fund for other projects was therefore iffy at best.

Councilor Morong said this had been an interesting discussion, and said some ideas had swayed him, such as the idea of setting aside money for a stewardship fund. He said he would like the

Conservation Commission's response on this. He also said he would feel more comfortable if there was a year's moratorium on bonding conservation projects.

Councilor Needell said Councilor Leach's suggestion that there should be a workshop was excellent. He also said he hoped that a motion changing the LUCT disposition would never come before the Council, stating that he was happy with the status quo.

He noted that the issue of control had come up, and said the Commission controlled the conservation fund, but the Council had complete control of the flow of money into that fund. He said the two boards had to work together. He said the message had been sent by some Councilors that they were not happy with the way the conservation fund money was being used, and said it was important to talk about this.

Chair Niman said he hoped there could be a workshop to talk about these issues further.

- B. Review and discuss with members of the Durham Conservation Commission revisions to the Policy for Acquiring Legal Interest in Conservation/Open Space Land as proposed by the Land Protection Working Group.

Chair Niman said this item would be put on the October 15<sup>th</sup> Council Agenda, and said if the Council didn't get to it, it would be addressed at the meeting on October 22<sup>nd</sup>. He said if that meeting didn't happen, Councilors would be asked to submit comments on the revisions.

There was discussion that it was unclear as to whether the Council was being asked to approve the first document, or the second one that included the Conservation Commission's comments.

***Councilor Julian Smith MOVED to suspend the 10:00 pm adjournment time, Councilor Henry Smith SECONDED the motion, and it PASSED unanimously 7-0.***

Chair Niman provided details on how things might proceed concerning the review of these revisions.

Councilor Henry Smith left the meeting at 10:03 pm.

- C Public Hearing and Action on Ordinance #2007-10 amending Chapter 4, "Administrative Code", Article IV, Section 4-18 of the Durham Town Code by adding the provisions for an Economic Development Committee

***Councilor Needell MOVED to open the public hearing on Ordinance #2007-10 amending Chapter 4, "Administrative Code", Article IV, Section 4-18 of the Durham Town Code by adding the provisions for an Economic Development Committee. Councilor Leach SECONDED the motion, and it PASSED unanimously 6-0.***

No members of the public spoke at the public hearing.

***Councilor Needell MOVED to close the public hearing. Councilor Leach SECONDED the motion, and it PASSED unanimously 6-0.***

***Councilor Leach MOVED to adopt Ordinance #2007-10 amending Chapter 4, “Administrative Code”, Article IV, Section 4-18 of the Durham Town Code by adding the provisions for an Economic Development Committee. Councilor Morong SECONDED the motion, and it PASSED unanimously 6-0.***

**X. New Business**

- A. Public Hearing on Resolution #2007-24** adopting the provisions of RSA 31:95-c to establish a Special Revenue Fund known as the Churchill Rink Fund to collect and expend funds for the purpose of operation, maintenance, and long-term expense of the Churchill Rink at Jackson’s Landing.

Administrator Selig noted that the Churchill Rink had previously been owned and operated by the Oyster River Youth Association, and that the previous year, after extensive discussion, the Town had taken ownership of the facility in a cooperative arrangement. He said this current action would establish a yearly revenue fund, which would allow the rink to operate as its own stand-alone business. He said the goal was that as a result of this current process, the rink would become a self sustaining entity.

***Councilor Leach MOVED to open the Public Hearing on Resolution #2007-24 adopting the provisions of RSA 31:95-c to establish a Special Revenue Fund known as the Churchill Rink Fund to collect and expend funds for the purpose of operation, maintenance, and long-term expense of the Churchill Rink at Jackson’s Landing. Councilor Needell SECONDED the motion, and it PASSED unanimously 6-0.***

No members of the public spoke at the public hearing.

Administrator Selig explained that action couldn’t be taken on this item until after 15 days of the hearing. He said given the meeting schedule, this hearing should be continued to the October 15<sup>th</sup> meeting, and if there were no further comments at that time, the hearing could be closed, and the Resolution could be acted on at a subsequent meeting.

Councilor Morong said that supposing the rink made money and there was a surplus, he would like to know what legislative body would vote to expend those funds.

Administrator Selig said it would be the Town Council.

Councilor Needell said presumably the intent of folding the money back into the rink was that there were a lot of expenses. He asked whether, if the rink should every become profitable, there was a way to bring this money back into the General Fund.

Administrator Selig said yes, and explained that the Council would have to vote to sunset the fund, and then create a new revenue fund with different spending priorities.

Councilor Carroll said she was really pleased this was happening, and said it was a very clear cut, finite process where money could be accumulated, and withdrawn if needed, without having to come back to the Council. She said it was good to have money set aside like this.

Administrator Selig said a budget would be built for this fund as part of the yearly Budget process. He said the Council would have to vote to appropriate money from the fund for specific purposes, such as operating costs and capital improvements.

Councilor Leach said she wanted to make sure people understood that the rink committee was not looking to build anything bigger, and was being frugal and community-minded. She handed out a pamphlet that showed the progress made so far by the committee.

Councilor Needell agreed that the rink committee couldn't spend the money without Council approval, and apologized for perhaps feeding the rumor mill.

***Councilor Julian Smith MOVED to continue the public hearing. Councilor Needell SECONDED the motion, and it PASSED unanimously 6-0.***

- B. First Reading on Ordinance #2007-11 amending Chapter 4 "Administrative Code", Article IV, Section 4-18 of the Durham Town Code by adding the provisions for a Board of Assessors

Councilor Needell said this issue had come up over the last several years, and noted that discomfort had been expressed by some Councilors about the present system, where it was the statutory responsibility of the Council to review tax abatement requests. He said he personally did not feel he could fairly evaluate these requests, and also said he felt the process was biased toward the Town Assessor's decision.

He said a reasonable option for addressing this situation was to create a separate Board of Assessors. He said such a board would meet in public sessions, so there would be no diminution in the public's right to have a fair hearing. He said he felt that having a Board of Assessors would improve the process tremendously.

Councilor Needell said the difficulty would be finding qualified people willing to do this work. He said this would be a significantly different committee in terms of qualifications, and he noted that in the proposal, the suggestion was that there be some requirement and qualifications for serving. He said the Town attorney had looked at this, and his opinion was that this was not required, while Town Assessor Rob Dix had said it was important that the members should be qualified. He said this was something the Council should discuss.

He said time would tell as to whether they could get members for this board, and said if not, the Council would take the job back. He said several things could happen now: to move the Ordinance on first reading; to hear ideas about it from Councilors; to remand it back to himself and Councilor Leach to do more work; or to simply vote to reject it. He said he would like to see if there was sufficient interest in moving this forward, and said if the Council was going to do this, he would like it to be in place for 2008.

Councilor Morong asked if Councilor Needell had any idea what the base of knowledge was that was needed for this work. He noted that the ZBA was a judiciary board and required a certain level of competence. He said they often were willing to take courses, and said perhaps that could happen as well with members of the Board of Assessors.

Councilor Needell said he agreed. He noted that the language on qualifications came out of the

State RSA, but was rather vague, so the Council would have to deal with how to judge this, with advice from Administrator Selig and Assessor Rob Dix. He provided details on this.

Councilor Julian Smith said he had no problem with moving this Ordinance on first reading. He said he was delighted to abdicate this responsibility, and was also delighted that the language in the RSA was vague. He said the Council didn't necessarily have the responsibility to make sure these people had demonstrated certain knowledge, and said it could take the word of Administrator Selig, Mr. Dix, etc. He suggested that the Council save the discussion on this until after the public hearing.

Councilor Leach said it was nice of Councilor Needell to say she had helped with this, but said she didn't really, other than talking to the town of Hanover. She said their board of assessors was advisory and didn't require these kinds of qualifications. She said that instead they depended upon the people on the board having common sense and being fair. She said if people were really uncomfortable with the qualifications section, it could be taken out.

She also said that although some people might feel that having a Board of Assessors was an extra layer of government that took things out of the public view, it was really the exact opposite. She said it gave residents a fairer process.

Chair Niman asked Councilors if they wanted to get rid of the qualifications aspect.

Councilor Morong said he was comfortable abdicating his role in reviewing tax abatement requests, but said his concern was being able to find people who were qualified to do this work. He said he would be interested to know how much courses would cost, and would like to see this information for the next meeting.

Administrator Selig said this information could be provided.

Councilor Carroll asked how having a Board of Assessors would impact the job of the Tax Assessor.

Administrator Selig said the process would require more time from Mr. Dix than less. He explained that currently, the process was fairly straightforward, and provided details on this. He said he envisioned that Mr. Dix would have to provide some orientation and training for Board members.

He said he had heard members of the Council say over some years that they wanted an independent board that was trained in this area, to look at weighing abatement requests and also to look at the schedule of revaluations, statistical updates, etc. He noted that the Board of Assessors would have certain duties, and would also need assistance with its work, including Minute-taking, so this would involve additional staff time.

Councilor Needell said if the Council didn't go in this direction, at least some Councilors would be asking for more time and involvement from the Town Assessor to work with them on tax abatement requests. He said it was therefore a given that more time would be required of the Assessor, but he said he hoped it would be spent with a new Board of Assessors.

Councilor Morong asked if the Board of Assessors would be able to have closed-door sessions, and Administrator Selig said there could be nonpublic sessions under narrow conditions, for example, if there were an abatement request based on hardship.

***Councilor Julian Smith MOVED on First Reading on Ordinance #2007-11 amending Chapter 4 “Administrative Code”, Article IV, Section 4-18 of the Durham Town Code by adding the provisions for a Board of Assessors, and schedules a Public Hearing for Monday, October 13, 2007. Councilor Needell SECONDED the motion, and it PASSED unanimously 6-0.***

- C. Receive progress report on the Wiswall Bridge project - Mike Lynch, Director of Public Works; David Cedarholm, Town Engineer

Administrator Selig explained that the bridge had washed out some months back in a flood, and that the Town had applied for FEMA assistance, and had received \$524,000. He said the Town could use this toward the cost of a new bridge. He noted that the previous cost of the bridge in the CIP had been \$900,000 based on the cost of making repairs, but said the price now ranged from \$1.7-2.3 million.

He explained that the Town also participated in the State Bridge Aid program, and said for whatever new bridge the Town decided it wanted, the first amount that would be paid for it would come from the FEMA funds, and 80% of the rest of it would be paid for by the State. He said the Town had a year and a half from now to spend the FEMA funds, or the funds had to be returned. He also said that some upfront money would need to be provided by the Town before getting reimbursement from the State.

Administrator Selig said some lessons had been learned from the Packers Falls Bridge project, and said two public sessions had been held on the bridge. He said the Public Works Department had gone through the design possibilities, and he noted that some Councilors who had watched this had seen that the cost was much higher than it had been a year ago. He said it was important for the Council to talk further on this.

Councilor Needell asked why the FEMA money was such a low amount.

Public Works Director Mike Lynch said this money was to replace the existing bridge and its dollar value before it was damaged by the floods. He said FEMA provided 75% of this value.

Councilor Needell asked whether, for \$750,000 the Town could have the bridge back the way it was, and Mr. Lynch said no.

Chair Niman said this was a lot more expensive than he had thought it would be. He said he was interested in asking the State to come up with the money for the bridge sooner if it wanted the project to be able to take advantage of the FEMA money. He said he was not interested in borrowing money in order to preserve the use of the FEMA money.

He also said he was looking for a simple bridge design that would hold up for a long period of time, and not spending a nickel more than the Town had to. He said he felt an obligation to the residents out there. He said before the project moved forward, he would like to see a list of



specifications in writing, and no changes without the approval of the Town Administrator, so that if there was another bridge fiasco, this would clearly be on his shoulders. He said right now, it seemed like there was a train that was picking up steam.

Councilor Morong agreed. He said he didn't want to strand people, and wanted a simple, cheap bridge, and didn't want to spend any more than the Council had to.

There was discussion with Mr. Cedarholm about the range of options for the design and building of the bridge. He said the cheaper option, and the one recommended, was a single span, with new full height abutments and no sidewalk, which would cost \$2.06 million.

Councilor Needell asked if Mr. Cedarholm believed there was no other feasible way to restore getting across the river for less than this, and Mr. Cedarholm said yes. He provided details on this.

Administrator Selig said that based on the experience with the Packers Falls Bridge, it was realized that there was a great deal of interest in bridges in Durham, and that the Town had high aesthetic standards concerning them. He said the process with the Wiswall Bridge had been kicked off with meetings with the neighborhood, and they had some specific visual elements in mind.

In answer to a question from Administrator Selig, Mr. Cedarholm said the \$2.06 million was for a basic concrete box, on top of concrete abutments. He said including a face with stone veneer would increase the cost somewhat, about \$100,000. He said if the contractors decided they needed to construct a work bridge, this could bring the cost up \$200,000-300,000 more, noting that he asked them to leave this cost out of the estimate. He said they might end up with a contractor who didn't need that. He said he wanted to present the cheapest options he could.

There was discussion that it cost \$3,500 a year to rent the Bailey bridge, and that it had to go back to the State in 2009. Councilor Julian Smith asked how long the Bailey bridge would last if the State was willing to give it to the Town.

Mr. Cedarholm said he thought the State gave the Town the bridge because they only thought it would last to around 2010.

Councilor Smith asked if it might be possible to roll some big culverts into the river, and let the water go through it, and Mr. Cedarholm said they would wind up washing down to the dam, and taking it out.

Mr. Lynch said an important piece of the situation was that if NHDOT was going to spend 80% of the money, it wanted a well-constructed, nice looking bridge that would meet all town requirements for a 100 year flood for the next 75-80 years. He said there wasn't an economy version of that.

In answer to Councilor Leach, Mr. Cedarholm said the most expensive option was \$2.39 million, and was for a two span bridge with a sidewalk. He said that design had its own issues, noting that there would be a pier in the middle of the bridge, and that trees could get stuck there. He said it had been recommended that they do away with the center pier.

Councilor Leach asked if there were guidelines in order for the State to provide the 80%.

Administrator Selig said the Wiswall Bridge was in the State's 2010 plan, and had to meet certain construction requirements. He said it was possible the bridge could be constructed in 2008, and it was also possible it wouldn't happen until 2009. He said if this happened, by the time the Town did bonding, this would fit nicely with the State providing the 80% in 2010. He said if the Town built the bridge in 2008, and issued debt in 2009, the Town would have to pay interest costs, and he said it wasn't clear if the State would reimburse Durham.

Chair Niman said he would like the construction done in 2009.

Councilor Needell said if the Town waited until the bridge money was available from the State, the Town would have to give back the FEMA money. But he said the State would still have to pay 80% of the total cost of the bridge, including the amount that the FEMA money wasn't able to cover. He said perhaps there was some room for negotiating with the State because of this.

There was further details discussion on this.

Chair Niman asked if the Town needed to worry about NHDES coming in and giving the Town permitting problems and requiring additional specifications that would drive up the costs. He asked if the Town could get a letter from NHDES that this wouldn't happen.

Mr. Cedarholm said a reason CLD Engineers was hired was that they had an environmental coordinator who worked with the various State agencies as part of the process. He said the consultant would be meeting with these agencies ahead of time to work these kinds of issue out up front.

Councilor Julian Smith noted that the bridge was not washed out, and that it was the roadway that was washed out. He spoke about the advantages of having a single span, but noted that trees coming down the river would cause problems with the Packers Falls Bridge. He said something that bothered him about the NHDOT requirements was that they wanted the deck of the bridge to be much higher above the water than the current bridge. He noted that the current bridge tended to back up water into the impoundment, which reduced the amount of water coming over the dam at one time.

He said although it caught trees and debris, it held back floodwater so it dispersed more slowly, and said this was probably one of the reasons that the dam didn't wash out. He said he hoped the Town would be careful in its dealings with NHDOT engineers to make sure they gave the Town a relatively low deck so they didn't have to raise the roadway.

Mr. Cedarholm said the shortcomings of the Packers Falls Bridge had been identified, and agreed it was likely that a tree would get caught there.

Councilor Leach noted that she had gone to a meeting on the Wiswall Bridge, and although a lot of comments came forward, there was no consensus on them. She asked what the process would be on communicating with the public on this issue. She said she was concerned about the cost at that meeting. She said most members of the Council weren't looking for a bridge that needed to

win an architecture award or that was overly expensive, and said Public Works should try to communicate this to them.

Mr. Cedarholm agreed it would be a good thing to communicate with them.

Councilor Needell said he was hearing that the major cost for this project was putting a structure across the river, and that what would drive the cost from \$2 million to \$2.5 were the design issues. He said one of the major design issues was the sidewalk, which would substantially increase the cost. He asked if there was a sense of how critical a sidewalk was to peoples' sense of well-being about the bridge.

Mr. Lynch said his sense was that it was very important, noting that it was one of the things that scored highest on the questionnaire, and was discussed as much as any other element of the bridge at the last meeting. He said the discussions had been driven by people who lived on Wiswall Road. He said this would be an element that NHDOT fleshed out, and he noted that the agency would only approve a standard sidewalk but would also approve no sidewalk.

Mr. Cedarholm said a sidewalk was not solely an aesthetic option, it was also a safety item. He said that unless the Town discouraged swimming in that area, there would be activity on that bridge, and someone would eventually get hit, without a sidewalk.

Chair Niman said when heard the word sidewalks, he heard railings, views from cars, etc. He said there was also the issue of whether railings could cause danger in terms of swimming off of the bridge. He said if they went down the path with sidewalks, he wanted the railing issue to be fleshed out. He provided details on this.

Councilor Julian Smith said a sidewalk didn't need to have railings separating it from the roadway.

There was further discussion on the issue of railings.

**XI. Extended Councilor and Town Administrator Roundtable (if required)**

**XII. Adjournment**

*Councilor Morong MOVED to adjourn the meeting. Councilor Leach SECONDED the motion, and it PASSED unanimously 6-0.*

Adjournment at 11:01 pm.

Victoria Parmele, Minute-taker