

This set of minutes was approved at the Town Council meeting on January 28, 2008

**DURHAM TOWN COUNCIL
MONDAY, DECEMBER 17, 2007
DURHAM TOWN HALL – COUNCIL CHAMBERS
7:00 PM**

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

MEMBERS ABSENT: None

OTHERS PRESENT: Town Administrator Todd Selig, Gail Jablonski, Business Manager; Mike Lynch, Director of Public Works; Jim Campbell, Planner

I. Call to Order

Chair Niman called the meeting to order at 7:00 PM.

II. Approval of Agenda

Councilor Van Asselt MOVED to approve the Agenda. Councilor Carroll SECONDED the motion.

Chair Niman noted that Administrator Selig would discuss some of the content of a letter from Attorney Pollock before the Council went into Nonpublic session at the end of the meeting. There was discussion as to whether it was urgent to have this discussion that evening.

Councilor Needell MOVED to amend the agenda to remove the 10:00 adjournment time. Councilor Julian Smith SECONDED the motion.

Councilor Henry Smith MOVED to amend the proposed amendment, so that the adjournment time will be 10:30 pm. Councilor Peter Stanhope SECONDED the motion, and it PASSED 5-4, with Chair Niman, Councilor Leach, Councilor Julian Smith, and Councilor Needell voting against it.

The motion to amend the agenda so as to remove the 10:00 adjournment time PASSED unanimously 9-0.

The original motion to approve the Agenda, as amended, PASSED unanimously 9-0.

III. Special Announcements

Administrator Selig noted that it had been 20 years since the Town of Durham's final Board of Selectmen meeting, and the first Town Council meeting. He said resident Shirley Thompson was present to make a few comments about that period of time.

Ms. Thompson said her tenure on the Board of Selectmen had been an absolutely wonderful learning experience. She said the Selectmen form of government was a good one, but said the Town had adopted a Town Council government 20 years ago because the Town was growing.

She said the quality of life in Durham was wonderful because of the dedicated employees who worked for the Town. She said they were the best in the State. She said the Fire Department was outstanding, providing details on this as well as on the hard work that the Public Works Department and Police Department did for citizens. She said they should never forget how special each and every one of them was.

Chair Niman said it was also citizens like Shirley Thompson who made Durham a special place.

Ms. Thompson spoke about her work as an elected official and volunteer over many years, including her recent work as a volunteer in the school system. She said she wished the School could get more volunteers of her age involved.

Councilor Carroll said she was so very glad that Shirley Thompson lived in Durham, stating that she was a local treasure. She said she didn't know of anyone who spoke more enthusiastically about Durham, and said she brought out and championed the good in people.

IV. Approval of Minutes

November 19, 2007

Page 8, 2nd paragraph from bottom should say "Elise Sullivan"

Also on page 8, 1st full paragraph, should read "...would be paid for by the towns of Durham and Madbury..."

Page 21, the motion toward the bottom of the page should be "...PASSED 7-1, with Councilor Peter Stanhope voting in the negative."

Councilor Julian Smith MOVED to adopt the November 19, 2007 Minutes as amended. Councilor Van Asselt SECONDED the motion, and it PASSED unanimously 9-0.

V. Councilor and Town Administrator Roundtable

Councilor Leach said the playing fields committee had asked her to get clarification from the Town Council as to whether she had been attending committee meetings as an official Town representative, or on her own. She noted that the Council had appointed her in this capacity at the July 2nd meeting,

Council members agreed that the Council had in fact appointed Councilor Leach to this

committee.

Councilor Needell passed out copies of the Granite State Fair Tax Resolution pamphlet, and said he would like the Council to think about what was in it and whether they wished to place it on the warrant to be adopted in March. He said he would like the Council to discuss this matter, so the Warrant could perhaps be modified in time for the January 14th Council meeting, when the Council could make a decision on whether to adopt it.

Chair Niman said that some Councilors hadn't had time to prepare for this. It was agreed that the Warrant item on the Unanimous Consent Agenda would be taken off so the Council could discuss this issue at that time.

Councilor Carroll said the Energy Steering Committee had met on November 5th, and said the majority of discussion was on the concept of green building. She noted that buildings in the USA used more energy than the transportation sector. She said this was why the committee was working with the Planning Board to find ways to encourage and possibly suggest Zoning provisions for new buildings and retrofitted buildings in Durham.

Councilor Leach said there was a proposal from a local resident to the Parks and Recreation Committee to develop a skateboard park at Woodridge. She said the next step was to talk with skateboarders about what they would want there. She said the elements of the skateboard park would be donated, and also said the skateboarders might do some fundraising. She said a meeting was set for January 15th, and asked residents who wished to be involved to contact her, Mike Hoffman, or Mike Lynch.

Chair Niman noted that there would be a free holiday skating party at Jackson's Landing.

Administrator Selig noted that Councilor Stanhope had asked about the cost of skating at Jackson's Landing for residents vs. nonresidents.

Councilor Leach said conversations in the spring concerning this had determined that things would stay the way they were for the first year, and then this issue would be discussed again. She said that perhaps next year, season passes for Durham residents would be lower than they would be for nonresidents. She also noted that most rinks in the area didn't have different costs for residents vs. nonresidents.

Councilor Julian Smith said the Conservation Commission had met the previous week. He said the Commission would like to thank the Council for its support of The Roselawn project. He said there had been a public hearing at the Commission's meeting the previous week, and the Commission had then voted to support the project, and to pay for this out of the land use change tax fund.

He also said the Conservation Commission had had a special meeting to discuss the recommendations it would be presenting at its workshop with the Council in January/February on the land use change tax revenues. He said they were also looking forward to a productive meeting that would clarify the expectations of the Commission concerning the overview of conservation easements and Town owned properties. He provided some details concerning this.

Chair Niman said this workshop would take place in February.

Councilor Morong noted that a special meeting in Madbury had approved unanimously the portion of the Roselawn conservation easement land that existed in that Town.

Administrator Selig said resident Diane Gorman had donated to the Town a framed article on Durham that had been published in the Travel Section of the Boston Globe.

He also said noted that although the Town had continued to work hard to get the Army Corps of Engineers to Durham to dredge Mill Pond, he had learned through Congresswoman Carol Shea Porter's office that this was not going to happen. He said the Corp's mission had changed, so this kind of project did not fit with its priorities. He said the Town would have to come up with an alternative plan of action.

Councilor Henry Smith asked where the framed article would be displayed, and Administrator Selig said no decision on this had been made yet.

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

George (Curly) Frick, Edgewood Road, said he was present to volunteer for the Cemetery Committee and the Trustee of Trust Funds. He said that he was on the Planning Board when Shirley Thompson's father was on that same Board. He noted that he had helped to save a cemetery in Town some years back.

Roger Spidell, 7 Noble K. Peterson Drive, told the Council that he had spoken at the School Board meeting the previous Wednesday. He said the local School Budget needed to be looked at closely, and compared to other school budgets. He provided numbers that indicated that the cost of education per student was much higher in Durham than it was in many other schools in the State and in the country. He said it cost approximately \$16,900 per student in Durham, and said of this amount, only 40% went to instruction, and about 60% went to other things.

He also provided details on the fact that although the number of students at the High School had decreased, the number of teachers had increased significantly, while the number of graduates who went on to college remained the same. He said this situation screamed out for a School Budget committee. He also said the taxpayers wanted a report on this issue.

Bill Hall, Smith Park Lane, provided details on the reasons that Durham had changed from a Board of Selectmen form of government to a Town Council form of government 20 years ago. He said at the time, it had become clear that the Selectmen couldn't govern the Town.

Mr. Hall also noted that he had recently called the head of the State Department of Revenue [sic] about the 401 certificate concerning the Lamprey River, and said the assistant there couldn't believe that NHDES hadn't responded to the Town's letters on this issue. He said there was a great deal of backpedaling going on at NHDES, and said a lawyer was needed to cut through this. He said he didn't think Town staff was capable of being effective on this issue.

Dave Howland, 5 Chesley Drive, said he wanted to update the Council briefly on the work of the Mill Plaza Committee. He said the three design teams had now joined together to work on a third and final design scheme for the redevelopment of Mill Plaza. He also said the Committee hoped to wrap up its work in the first 2-3 months of 2008. He noted two reports that had been developed so far, an analysis done by RKG Associates on the tax potential for the property, and an ecological study of College Brook.

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

- A. Shall the Town Council approve and sign the Warrant for the March 11 2008 Town Election?
- B. **RESOLUTION #2007-29** authorizing the acceptance and expenditure of grant funds in the amount of \$1,850 from the New England Grassroots Environmental Fund for conducting an energy inventory of the Town of Durham and authorizing the Town Administrator to sign and execute the grant agreements on behalf of the Town of Durham
- C. **RESOLUTION #2007-30** requesting the Trustees of the Trust Funds to transfer twenty thousand dollars (\$20,000) from the Community Development Expendable Trust Fund to be used for funding of various economic development initiatives in 2007 in accordance with the 2007 approved Operating Budget
- D. **RESOLUTION #2007-31** authorizing the Town Administrator to apply for a United States Department of Agriculture, Natural Resources Conservation Services, Wetlands Reserve Program grant for improvements to Jackson's Landing and sign said grant with accompanying documents

Chair Niman said Item A would be taken off the Unanimous Consent Agenda for discussion

Councilor Van Asselt MOVED to pass Unanimous Consent Agenda Items B, C and D. Councilor Leach SECONDED the motion, and it PASSED unanimously 9-0.

Chair Niman said the question was whether Councilors wanted to consider the Fair Tax issue, or wanted to go with the warrant as it was.

Councilor Needell noted that a slight change to the wording would be needed, and he then read through the Statement. He said the proposal was to put it on the warrant so Durham citizens could vote on it.

Administrator Selig said the coalition involved with this initiative was actively asking Towns to put this statement on their warrant, in order to send a message to State representatives and Senators. He said this revolved around the Pledge to not approve any new kinds of taxes in the State. He noted that with Durham's representative form of government, the Town Council could vote on this itself, to send the same message, but he said it was up to the Council whether it wanted to instead have the citizens vote on it.

Chair Niman asked Councilors to indicate where they stood on this issue.

Councilor Julian Smith said he was willing to agree to put it on the warrant.

Councilor Leach said she was indifferent on this issue.

Councilor Henry Smith said he agreed with Councilor Julian Smith that it could be put on the warrant.

Councilor Van Asselt said it should be put on the warrant.

Councilor Carroll said she liked the idea of having this on the warrant, because Durham citizens should weigh in on this issue.

Chair Niman said the statement would send a stronger message if the people voted on it. He said he personally would vote for this, so could see putting it on the Warrant.

Councilor Morong said he would vote for this, but would like to see it on the warrant, stating that he didn't presume to speak for people concerning this issue.

Councilor Needell said he would like to see it on the warrant.

Councilor Stanhope said he didn't care either way.

Chair Niman asked if the Warrant could therefore be re-drafted to include this, so that the Council could then see it at the meeting on January 14th.

Administrator Selig said this could be arranged, and said it would appear on the Unanimous Consent Agenda at that meeting.

VIII. Committee Appointments

- A. Shall the Town Council consider the requests of Ruth Davis and Robbi Woodburn to be moved from alternate members on the Zoning Board of Adjustment to fill a regular member vacancy on the Board?

Councilor Henry Smith said Ms. Davis had been on the ZBA for almost two years, and was a solid member of that Board. He noted that Robbi Woodburn had been a regular member of the ZBA for a number of years, and then had gone off it. He said in fairness, Ms. Davis, who was now the alternate on the Board with the most seniority, should be appointed as a regular member. He noted that both were good members, and would serve the Town well.

Councilor Stanhope said he had the opportunity to read the Minutes for the ZBA. He said although Ms. Davis had recently been on the Board as an alternate longer than Ms. Woodburn had been, he felt Ms. Woodburn was a more qualified candidate. He said this should be looked at purely from the perspective of experience, and said he would therefore vote for Ms. Woodburn.

Councilor Needell said both candidates were well qualified, but said Ms. Davis had served the Town well and had earned her position. He said he therefore saw no reason not to appoint her.

Councilor Morong noted that Ms. Woodburn had been active on Town committees and was also involved in the Town through her work on development projects, when she hadn't been on the ZBA over the past 4 years.

Councilor Julian Smith MOVED that Robbi Woodburn be moved from an alternate member on the Zoning Board of Adjustment to fill a regular member vacancy on the Board. Councilor Stanhope SECONDED the motion.

Councilor Julian Smith said he had watched Ms. Woodburn at various meetings, and noted that she was on one of the local design teams for the redevelopment of Mill Plaza. He said she had argued persuasively on a number of issues, and had challenged a number of points because of her work on the Master Plan Committee. He said she had a lot of institutional memory concerning Durham, and said it was for these reasons that he would support her.

There was discussion on when there would be other vacancies on the ZBA that would need to be filled.

Administrator Selig said that both women were eager to serve, but said there would be no hard feelings regardless of which of them was chosen right now.

Chair Niman said he had the utmost respect for Ms. Woodburn, and also said he had known Ms. Davis for 10 years. He said she had been doing a good job on the ZBA, and said he would be voting against the motion, but not against Ms. Woodburn.

Councilor Needell said he had no reason not to vote for Ms. Woodburn, stating that he thought she would be an excellent ZBA member. He said he would therefore not be voting no on this motion.

Administrator Selig noted that Ms. Woodburn's background was as a landscape architect, and that Ms. Davis was a soil scientist.

Councilor Henry Smith said they were both good candidates. He said his preference was that Ms. Davis be appointed, but said this didn't mean he was against Ms. Woodburn.

Councilor Morong said if they voted to appoint Ms. Woodburn, Ms. Davis would still be on the ZBA as an alternate, and would still be contributing to the ZBA.

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

Chair Niman said he looked forward to seeing Ms. Davis move up to a regular position on the ZBA in the future.

Councilor Stanhope noted that alternates contributed with frequency to ZBA meetings, so this was almost a moot point.

- B. Shall the Town Council consider the requests of Matthew Fitch, George Frick, and Shelley Mitchell to fill a vacancy on the Trustees of the Trust Funds until the March 11, 2008 Town

election in accordance with Section 5.15(C) of the Durham Town Charter?

Tom Bebbington, 15 Cowell Drive, said he was interested in filling the vacant position. He said he had spoken with Trustee Bruce Bragdon, and had determined that the position lined up with his own experience. He said this was something he would like to do in order to serve the Town.

Councilor Morong asked Mr. Bebbington if he had taken a look at any of the other vacancies on Town boards and committees, including the Town Council.

Mr. Bebbington said he was trying to balance doing volunteer work with his work and family life. He said he was willing to consider suggestions on other positions, but was not interested in serving on the Council.

Shelley Mitchell, 5 Denbow Road, said she was interested in the position, and provided details on the various other volunteer positions she had held in Town.

Councilor Julian Smith asked how long Ms. Mitchell had lived in Durham, and she said she had lived there for 9 years.

Administrator Selig explained that the Trustees of the Trust Fund managed all the Town's trusts, and explained that these trusts came to the Town in a variety of ways. He said in addition to this role, the Trustees also had control over the cemeteries in Town, some of which were given to the Town in trust, and some of which were not. He said if no one took claim of an un-trusted cemetery, the Trustees could address ways to manage them.

Mathew Fitch, 291 Durham Point Road, said he was relatively new to the community. He said he had recently seen the vacancy, and thought it would be an excellent way to begin to do something for the Town. He said his background was in banking and finance.

Chair Niman said he was conflicted about how to proceed.

Councilor Morong said he didn't want to discourage any of the volunteers, but said he was partial to Mr. Frick, who he had known for many years, and was qualified for this position. But he said he thought the other candidates should consider other positions that were open.

Councilor Morong MOVED to appoint George Frick to fill a vacancy on the Trustees of the Trust Funds until the March 11, 2008 Town election in accordance with Section 5.15(C) of the Durham Town Charter. Councilor Julian Smith SECONDED the motion.

Councilor Van Asselt said he was fine with this nomination, but said there were two new volunteers here, also noting that Ms. Mitchell had already done a lot of volunteer work for the Town. He asked Administrator Selig to work with them to consider other current vacancies on Town boards and committees.

Councilor Henry Smith said he felt that Ms. Mitchell should have this position.

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

IX. Presentation Item

Transfer of density/development rights (TDR) – Jim Campbell, Planner

Mr. Campbell provided a slide presentation on this issue, and why it was being presented now.

Chair Niman said he wanted to get a sense of the Council as to how it would like to proceed concerning the possible use of this concept.

Councilor Needell said given the fact that the Master Plan had spoken about this technique, addressing it at some point was warranted. He said having Town committees look at it was a good idea, but said he personally was not demanding that this be implemented.

Councilor Julian Smith agreed with this.

Councilor Stanhope said he was of the same frame of mind. He said he thought the committees should look at this approach and determine if they would like to have it available as a tool to use. He noted that Durham had often been a leader in approaching things from different perspectives. He said he thought the EDC and the Conservation Commission should look into it further to see if it was a tool the Town would want to have.

Councilor Carroll said this concept was in fact in the Master Plan, but she said there were a lot of things in the Master Plan that the Town hadn't gotten to. She said she was not opposed to doing this, but she said the real reason they were all looking at this was because of the TIF district, the desire to keep the fields on the Stone Quarry Drive property open as a viewscape and not developed, and in exchange perhaps allowing the developer to develop more density in the back of the property. She noted that the Zoning Ordinance currently didn't allow this kind of thing, and said the question was whether there had to be a TDR in order for this to happen.

Mr. Campbell agreed that the Stone Quarry development had brought this issue up. He said it might be found that a TDR wasn't the way to go, but he said the concept was in the Master Plan, which said the Town did want to pursue this approach.

Councilor Van Asselt said he wanted to work on this concept so it applied to everyone in Durham, and said he had no interest in talking about it if it only would apply to the TIF district.

Councilor Morong asked if there was perhaps a shorter means to the desired end, such as the variance process.

Mr. Campbell said that was a possible way to go, and also suggested that the development agreement could state that a variance wasn't needed to achieve this goal of not developing the front portion of the site and getting more density in the back.

Chair Niman said he didn't think this could be done, and Mr. Campbell said if it couldn't be

done this way, a variance would in fact be needed.

There was discussion on how the appropriate Town committees could work with this concept, and how it might be implemented.

Chair Niman said his hope would be that there might be some kind of model TDR ordinance that could be worked with. He then provided some details on how the Planning Board might be able to use a Durham TDR ordinance when applications came along.

Councilor Leach asked whether such an ordinance would actually be utilized.

Mr. Campbell said he thought it would be, especially as land became scarcer in Durham.

Councilor Julian Smith asked if it was correct that parcels involved in a TDR situation didn't have to be contiguous or owned by the same person.

Chair Niman said the Ordinance could be written any way the Town wanted.

Councilor Julian Smith said he had asked this question because he wanted to discuss it further, later in the meeting.

Councilor Henry Smith asked if there was any preference concerning using contiguous or noncontiguous, with TDR.

Mr. Campbell said there would be more opportunities to use TDR if the parcels involved didn't have to be contiguous.

Councilor Needell said hopefully the first question to be asked of the committee that would look into this concept was whether it would be used, where it would be used, and how it would be used. He said a question was whether it would actually be useful in Durham, and said he thought the EDC was a good committee to make the case as to whether it would be or not.

He also said he was getting the sense that the Council wasn't sure how much of a priority it wanted to make this, and whether it was something the Council would like the EDC to look at as an interesting exercise, but not with any sense of urgency. He said the questions concerning it had come up as part of the TIF district discussions. He said that there was some urgency to deal with the issues with the Stone Quarry Drive property, but said he didn't think addressing this issue needed to be connected to the larger TDR issue.

Councilor Van Asselt said the TDR issue could be dealt with as part of the Stone Quarry Drive project, although it didn't have to be dealt with. He said there had never been a Council decision to do anything other than approve the TIF district out on Route 108.

Councilor Morong said he wanted to see the TIF district move along, but said he didn't want to push through a half baked TDR ordinance. He said they could probably wait in terms of implementing it for the TIF district as well as Town wide.

Councilor Henry Smith said he agreed with Councilor Needell and Councilor Stanhope. He said TDR was a really good approach but said he felt the EDC and the Conservation Commission could develop some recommendation concerning this. He said there was no an urgency to doing this.

Councilor Carroll said the concept was definitely worth looking into, but said in looking at in some detail, she could see some of the problems that might be involved with using it, She provided some details on this, and there was discussion on this with Councilor Morong.

Councilor Morong said that as conservation funds became harder to find, and it became harder to fund conservation easements, this might be a tool the Town could use in the future.

Administrator Selig said the example Mr. Campbell had given concerning a situation involving a transfer of development rights involved an additional 10-12 units. He said a receiving district might not want that kind of density increase, and said a TDR proposal in Durham might therefore be more modest, where perhaps an additional 2 units might be allowed for a developer. He said that additional 2 units still might make the difference in terms of a project being viable.

Chair Niman said it appeared that the Council agreed that the committees should be convened to look at this issue, but there was no urgency on this, and no commitment from the Council that this concept had to be implemented. He said if the committees determined that it was in fact a good idea, they should bring something back to the Council on it.

The Council stood in recess from 8:48 to 8:58 PM.

X. Unfinished Business

- A. **RESOLUTION #2007-32** approving and adopting the FY 2008 General Operating Budgets, the Capital Fund Budget, and the 2008-2017 Capital Improvement Plan, as amended

Administrator Selig said this Resolution formally approved the Budget and CIP documents. He noted that the CIP had been amended based on previous discussion by the Council. He noted that everything in the CIP for fiscal year 2008 was included in the Capital Budget, and said everything in the Operating Budget was what the an initially presented to the Council.

Councilor Julian Smith MOVED to approve RESOLUTION #2007-32 approving and adopting the FY 2008 General Operating Budgets, the Capital Fund Budget, and the 2008-2017 Capital Improvement Plan, as amended. Councilor Henry Smith SECONDED the motion.

Councilor Stanhope said he appreciated what Councilor Van Asselt had brought forward concerning the Budget a few weeks back, and said he thought it was a reasonable way to approach the Budget without burdening the population of the community. He said a yes vote on this motion was a vote for higher taxes for the people of Durham.

Councilor Needell said he appreciated what Councilor Stanhope was feeling, but said by voting no, the Council could continue to discuss the Budget and CIP, and could have further

meetings on this. He said if the Council didn't eventually vote yes on something, the Budget and CIP as presented by Administrator Selig would pass. He also noted that voting no on this Resolution would mean that CIP would revert to the one that was presented by Administrator Selig, and not the one that contained the amendments the Council had made to it.

Administrator Selig noted that the proposal would increase the Town's portion of the local tax rate by 2% in 2008.

Councilor Henry Smith said Administrator Selig and Ms. Jablonski had worked very hard to make this a reasonable and fair budget increase. He said the tax increase was far less than last year, and said he was going to vote in favor of the motion.

Councilor Leach said she echoed what Councilor Stanhope had said, and said this was not because she didn't feel that Administrator Selig and Ms. Jablonski had worked hard. She said she thought what had been brought forward by Councilor Van Asselt on November 26th was extremely reasonable, wouldn't mean that services would be cut, and was something that residents wouldn't notice, in terms of services.

She said she had almost been in shock that it was not given more consideration. She said the Council had denied residents the opportunity for a 0% tax increase, and said she was not proud to be a Councilor when five Councilors had said right away that they didn't want to consider Councilor Van Asselt's proposal.

Councilor Julian Smith asked Councilor Van Asselt to remind the Council how he had proposed to avoid raising the tax rate.

Councilor Van Asselt said his suggestion had been to reduce the budget by about \$235,000, and said he had suggested taking all it from the fund balance, with no change to the Budget as presented. He said a second option was various combinations of taking some money from the fund balance, and some from the Operating Budget.

Councilor Julian Smith noted that he had voted on the prevailing side. He said one of the reasons he couldn't vote for Councilor Van Asselt's suggestions, especially the fund balance option, was that if they took from the fund balance this year, eventually they would have to hold the line. He said the Council had had a lengthy discussion some time back on how much the fund balance could be drawn down, and how much it should be built up. He said taking money from the fund balance postponed the inevitable moment when this couldn't be done anymore.

Councilor Van Asselt said he was disappointed that this had been another year where they had a Budget that included no significant revenue from the Town's biggest employer. He said he blamed State representatives for this, who didn't help Durham concerning this.

He said this was another year where the Budget had increased, this time by \$325,000, when there was little change in services. He said there was no substantive debate about services or reorganizing personnel, which was where the costs were. He said a 0% increase was a good and an achievable goal, and said it could have been achieved.

He said with Option B 3, with some reduction in the Budget, the fund balance would only have gone down \$1500, and said he didn't see that this was fiscally irresponsible. He said the only other plan he had seen on the table was Administrator Selig's, and said the fact that he had worked hard on this budget was not a good enough reason to support it.

He said the fact that Durham had become an unaffordable place to live was an important issue. He said there were people living in Durham who were on fixed incomes, had young families, and who worked for a living. He said he thought the situation would get worse instead of better. He said the 0% increase in the tax rate would have made a statement, including to the School Board.

Councilor Morong said he trusted Administrator Selig and the Town departments, when they said there wasn't a lot of fat to cut from the Budget. He said if they were not cutting fat, they were cutting lean, and would have to pay for it down the road. He said if money was taken out of the fund balance, this was taking money out of savings, and if the money was taken out of the road program, the roads would depreciate, which was a false kind of savings.

He said he agreed with Councilor Van Asselt that the Town needed to continue working on fair agreements with the University, the funding formula and a fair State tax system. But he said the Council's job came down to providing the services that were promised for the people. He said he felt this Budget did this, and said he would support it pretty much as presented. He said he was glad some changes had been made to the CIP.

Councilor Carroll said she agreed with what Councilor Morong had said.

Chair Niman said he had liked Councilor Van Asselt's proposal, and said it would have kept the fund balance roughly the same it was the year before, without wreaking havoc on Town services. He said he was aware of the longer term projections concerning the fund balance, but he said these projections were based on a 1% increase in the tax base, an expensive new Town hall, renovations to the Police Station and a new Library. He said he would like to think there were creative ways to get these new facilities in a way that wouldn't significantly impact the fund balance and place the Town in fiscal jeopardy.

He said he would prefer to use fund balance to get to a 0% tax increase, and to deal with the large expenditures down the road that didn't involve personnel decisions. He noted that this was the fifth Budget he would be voting no on, and said it was the only way he had to express the fact that taxes were too high.

Councilor Needell said the concern he had expressed was that the Council might not vote on the different pieces in the appropriate order. He said he agreed that there hadn't been a very substantive discussion on the Budget, and noted that he had asked whether the Council wanted to reconsider its vote so there could be more discussion.

He said he was disappointed that this discussion had not occurred. He said he had been surprised that the motion to cut off further debate had been made by Councilor Stanhope. He said given the option of voting that night, he had done so, but said he had tried to reach out to the rest of the Council that he didn't like the way this was being done, and that the issues hadn't been discussed.

Chair Niman said in years past, he had suggested cuts to the Budget, and had experienced a negative reaction to this. He said he didn't want to go down that road this year if there were 5 Council members who were not against it. He said he had therefore appreciated the motion by Councilor Stanhope, which meant he didn't have to have that painful, awkward discussion again.

Councilor Henry Smith said there were no monsters at this table, and no points of view that were foolish. He said Councilor Van Asselt's proposal was a thoughtful one, and noted that this point of view had been presented months earlier.

He said he had thought about this proposal, and had decided it was not a good idea. He pointed out that the tax rate increase was down to 2%, as a result of taking about \$100,000 out of the fund balance. He said if they took more than this, he was afraid this would set a precedent for taking more out of it. He said he thought cutting the CIP was a good thing. He said this was a reasonable Budget, and one he could support.

Councilor Julian Smith noted that Chair Niman had said five or six times that five Councilors were happy with the Budget. He said he personally wasn't happy with it, but would vote for it because he could see no reasonable alternative.

There was brief discussion that the proposed changes to the CIP were to remove the \$36,000 for an emergency exit for the Police Station, and to push out to the years 2009, 2010, and 2011 the Spruce Hole project.

Councilor Needell asked if there was any reason to perhaps separate the CIP from the items in the Operating Budget, in case the Operating Budget failed.

Administrator Selig provided details on why it would be hard to do this, stating that because of the way these documents had been presented, the 2008 CIP Items were included in the 2008 Capital Fund budget.

There was discussion on this, on possibly voting on the two separately, and on what advantage there would be in doing so.

Administrator Selig said there was no certainty to anything that he had projected out into the future, and he provided some details on this. But he said based on what he knew now, what he had projected was what he believed to be realistic. He said the Budget he had proposed was realistic, and could withstand the test of time, moving forward.

He said a 2% increase in the tax rate was less than the rate of inflation, and was less of an increase than they were seeing in various fixed components of the Budget. He also said he felt what he had proposed made a strong statement that the Council was very serious concerning the present high taxes. He noted that the Council had been doing some real goal setting concerning addressing high taxes, through development of new revenue sources. He said he believed that over a longer period of time, they would seem some real inroads concerning this.

Councilor Morong said most of the Town taxes went toward negotiated employee contracts, noting increases in these costs of 2-3% a year. He said most Council members had voted for these contracts.

Councilor Van Asselt asked if projected revenues from the proposed \$5 motor vehicle registration fee would be part of this Budget.

Administrator Selig said right now this was considered to be projected revenue in the Budget, but he said if the Council didn't approve this, fund balance would be used to cover the resulting shortfall.

The motion PASSED 5-4, with Chair Niman, Councilor Van Asselt, Councilor Leach, and Councilor Stanhope voting against it.

B. Discussion relative to transfer of density and development rights

This matter was discussed earlier.

XI. New Business

A. **PUBLIC HEARING ON RESOLUTION #2007-33** establishing a Municipal and Transportation Improvement Capital Reserve Fund with funds collected through motor vehicle registrations

Councilor Henry Smith MOVED to open the public hearing on Resolution #2007-33 establishing a Municipal and Transportation Improvement Capital Reserve Fund with funds collected through motor vehicle registrations. Councilor Carroll SECONDED the motion, and it PASSED unanimously 9-0.

No members of the public spoke.

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

Administrator Selig said this would come back to the Council for action on January 14th.

B. **PUBLIC HEARING AND ACTION ON RESOLUTION #2007-34** authorizing the acceptance and expenditure of \$20,000 in unanticipated revenues from the Estate of Rhoda A. Hogan as presented to the Durham Police and Fire Departments

Councilor Stanhope MOVED to open the public hearing on RESOLUTION #2007-34 authorizing the acceptance and expenditure of \$20,000 in unanticipated revenues from the Estate of Rhoda A. Hogan as presented to the Durham Police and Fire Departments. Councilor Julian Smith SECONDED the motion, and it PASSED unanimously 9-0.

No members of the public spoke.

Councilor Julian Smith MOVED to close the public hearing. Councilor Cathy Leach

SECONDED the motion, and it PASSED unanimously 9-0.

Councilor Julian Smith MOVED to approve Resolution #2007-34 authorizing the acceptance and expenditure of \$20,000 in unanticipated revenues from the Estate of Rhoda A. Hogan as presented to the Durham Police and Fire Departments. Councilor Henry Smith SECONDED the motion, and it PASSED unanimously 9-0.

Chair Niman said he would personally thank the Estate for this gift to the Town of Durham.

- C. Discussion and possible action on a resolution approving an Intermunicipal Agreement between the Towns of Durham and Lee regarding the provision of assessing services

Administrator Selig said he was not quite ready for the Council to take action on this. He said several drafts of the Agreement had been circulated, and they were close to completing it.

Councilor Morong said he could see the upside and downside of such an agreement. He said if Durham's assessor was currently not properly challenged, he felt that maybe the Town needed to look at that. He also noted that with agreements with other entities, the situation sometimes wasn't too happy down the road. He said he would like to see a readily available escape clause in case Durham wasn't happy with this agreement.

Administrator Selig said there was a 60 day termination/escape clause, as well as a provision for a joint board that would discuss possible problems that came up. He also said if this agreement was not able to move forward, he would look at whether to retain the Assessor job as a full time position.

He said the reason why an inter-municipal agreement was needed in order to share the position was that the Selectmen wanted to be sure that if they used Durham's Assessor, he would act completely impartially when he was in Lee. He said right now, Mr. Dix was an employee of Durham, and noted that the benefit structure in Lee was not the same as it was in Durham. He said in an effort to stand by Mr. Dix, who provided good services to Durham, he was trying to find a way to loan him out, and yet keep him as a full time employee in Durham. He explained the challenge of finding and keeping qualified assessors these days.

He said it would be possible to find a contract assessor for this position, but said the downside of this was that when it came time to do reevaluations of properties, a Town had to pay a lot of money upfront for these services. He said in 2002 and 2003, this cost came to about \$160,000 and said the Town had avoided this cost by hiring a full time employee, knowing that this would cost a little more over the long term, but less in the short term.

He said what the Town gained in the long term was the kind of experience and expertise Durham residents wanted. He said this proposal found a happy medium, and he provided further details on this, and on what was ahead for the Assessing department. He said the scenario that was proposed should work well for a number of reasons, including the fact that it would bring in about \$40,000 from the Town of Lee.

There was discussion between Councilor Morong and Administrator Selig about how this arrangement would work when the Assessor had to do the town-wide revaluation of

properties over the next few years.

Councilor Stanhope said this brought up a number of questions. He said with this arrangement, Durham's Assessor would be taking on the additional responsibility for a town that had effectively the same land area as Durham, and about 50% of the dwelling units. He noted that there was some significant commercial development in Lee, and Mr. Dix would also have to take this on.

He also noted that Durham would be going through the revaluation process over the next few years. He said either Mr. Dix hadn't been working full time in Durham although he had been paid full time, or this agreement was going to break down quickly.

He noted that he had been deeply concerned when Mr. Dix could not justify his rationale behind his abatement recommendations. He said he was concerned about the liability to Durham if Mr. Dix failed to meet the expectations of Lee. He said he realized there was an easy out of this contract, but said he did not think this was the most efficient way to proceed. He provided further details on this perspective.

Administrator Selig said the challenge was that the process in place prior to 2001 was not as effective as Councilor Stanhope had stated. He said this was part of the reason a full time person with Mr. Dix's qualifications was brought in. He said at the same time, Statewide, there was a great deal of additional focus on the standards behind the assessing process, making it more difficult to find assessors who met those standards. He said the rate of pay for assessors had consequently gone up exponentially.

He provided further details on how he had proceeded in this area, to find greater efficiency in the Assessing Department, and said it was frustrating, when he took the initiative to find areas for improvement, to have this used as an example of poor management. He spoke about Mr. Dix's expertise and good work record, and noted that he had readily agreed to this new arrangement. He said the Lee Selectmen had interviewed Mr. Dix and were comfortable with him. He stated again his view that there was room for greater efficiency, as they moved forward with this position, and said he hoped the Council agreed with him.

Chair Niman asked Councilor Stanhope if he had any specific comments about the proposed agreement.

Councilor Stanhope said the Council's role was sometimes to criticize, but said this did not mean that he thought Administrator Selig was not acting in the best interest of Durham. He also said the numbers on the percentages of land area, and the number of residential units in Lee seemed to understate the level of service the Town would be providing to Lee.

Councilor Needell said he appreciated that this was being brought forward, noting it was an administrative action that the Council had to be brought into. He said he thought the Council should encourage innovative proposals like this.

C. Other business

There was not other business.

XII. Nonpublic Session

Administrator Selig provided background on the situation the Town currently faced concerning the Stonemark project. He said there had been various iterations of the project over the years. He provided great detail on the legal issues involved with projects that were proposed for this site.

He said the most recent application, a multiunit development project for the site, was approved by the Planning Board, but the abutters subsequently appealed this decision before the ZBA. He said the ZBA agreed with two of four issues raised by the abutters, and reversed the PB decision on these points. He said the ZBA decision had now been appealed to Superior Court by Stonemark.

He said Attorney Bernie Waugh had been hired to represent the ZBA, noting that Mitchell and Bates already represented the Planning Board on that particular application, so there would be a conflict of interest for the Town with regard to the ZBA appeal if also represented the ZBA.

Administrator Selig said the owner of property, in frustration, had been contemplating bringing a suit against various officials of the Town who had been involved with applications regarding the property over many years. He said the suit would claim a bad faith effort on the part of these Town officials.

He said developer Jack Farrell had suggested that rather than facing this, the Town might be interested in talking with the owner about preserving this piece of land for conservation purposes, as an equitable resolution to this matter. He said he and Chair Niman had briefly discussed the matter, and thought it made sense to have the owner make a formal proposal concerning this.

He said the subsequent letter from Attorney Pollock outlined the history of the applications from the applicant's point of view, and asserted there might be a number of bad faith dealings on the part of the Town and its officials. But he said the letter also said that the Town might wish to purchase the 12 acres for a discounted price, \$975,000.

He said he and Chair thought it made sense for the Council to discuss this proposal, and to do so in nonpublic session, because the letter forwarded to the Council was sufficient to represent threatened litigation against the Town. He said there was no requirement to have a discussion on this in nonpublic session, but said he thought it made sense to do so. He said if the Town was interested in conserving the property as a conservation acquisition, the Council would need to talk about potential negotiations, and the price it would be willing to pay for the property.

Administrator Selig suggested that the Council focus on whether or not there was merit in acquiring the parcel for conservation purposes, and if so, to try to arrive at a fair price. He said this was a challenging scenario, in that many of the individuals who were referred or alluded to in the letter were currently members of the Town Council, or had been over the life of the application, or were either on the Conservation Commission, the Planning Board,

were members of the neighborhood, or were on the Council when the decision was made to transfer the stub of land that was involved with this situation. He said that because of this, he thought it made sense to discuss this matter under nonpublic session.

Councilor Julian Smith MOVED to go into nonpublic session according to RSA 91 A 3 II e, and under RSA 91 A 3 d. Councilor Needell SECONDED the motion, and it PASSED 9-0 on a roll call vote.

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|---|-------------------|--|-------------------|
| <i>Chair Neil Niman</i> | <i>yes</i> | <i>Councilor Mark Morong</i> | <i>yes</i> |
| <i>Councilor Karl Van Asselt</i> | <i>yes</i> | <i>Councilor Jerry Needell</i> | <i>yes</i> |
| <i>Councilor Diana Carroll</i> | <i>yes</i> | <i>Councilor Julian Smith</i> | <i>yes</i> |
| <i>Councilor Henry Smith</i> | <i>yes</i> | <i>Councilor Peter Stanhope</i> | <i>yes</i> |
| <i>Councilor Cathy Leach</i> | <i>yes</i> | | |

The Council entered Nonpublic Session at 10:03 PM.

The Council returned to public session at 10:32 PM.

Councilor Morong MOVED to seal the Nonpublic session Minutes. Councilor Henry Smith SECONDED the motion, and it PASSED unanimously 9-0.

XIII. Extended Councilor and Town Administrator Roundtable (if required)

XIV. Adjourn (NLT 10:00 PM)

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

Adjournment at 10:35 pm

Victoria Parmele, Minutes taker