

This set of minutes was approved at the Town Council meeting on March 3, 2008

**DURHAM TOWN COUNCIL
MONDAY, JANUARY 28, 2008
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; Town Planner Jim Campbell; Director of Public Works Mike Lynch

I. Call to Order

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

II. Approval of Agenda

Councilor Van Asselt MOVED to approve the Agenda as presented. Councilor Stanhope SECONDED the motion.

Administrator Selig said Item XI B had been taken off the Agenda because the Stone Quarry Drive TIF development agreement wasn't ready yet.

Councilor Julian Smith MOVED to amend the Agenda by taking off Item XI B. Councilor Henry Smith SECONDED the motion, and it PASSED unanimously 9-0.

The motion as amended PASSED unanimously 9-0.

III. Special Announcements

There were no special announcements.

IV. Approval of Minutes

December 17, 2007

Page 3, 4th full paragraph, should read "...a proposal from a local resident to the Parks and Recreation Committee to develop...."

Page 11, 1st paragraph, should read "...recommendations concerning this. He said

there was no urgency to doing this.”

Page 12, 1st paragraph, should read “..would revert to the one that was presented....”

Page 14, 1st full paragraph, should read “..experienced a negative reaction to this.”

Councilor Van Asselt MOVED to approve the December 17, 2007 Minutes as amended. Councilor Julian Smith SECONDED the motion, and it PASSED unanimously 9-0.

December 17, 2007 (Nonpublic Session)

Page 1, under Others Present, take off names other than Administrator Selig and Business Manager Gail Jablonski. Also, under Members Present, it should be noted that Councilor Henry Smith was present. Remove “Arrived at 6:35 PM” after name of Councilor VanAsselt.

Councilor Van Asselt MOVED to approve the December 17, 2007 Nonpublic Session Minutes as amended. Councilor Julian Smith SECONDED the motion, and it PASSED unanimously 9-0.

V. Councilor and Town Administrator Roundtable

Councilor Stanhope suggested that candidates for public office should be able to make a 10 minute presentation on DCAT, which would be informative and would be cost efficient for the candidates. He said he thought that the more public information residents had, the better able they were to make informed decisions.

There was discussion on this by Council members, and Chair Niman suggested that this was perhaps something that the DCAT committee could look at.

There was discussion among Council members that the Trustees of the Trust fund positions were still open.

Councilor Needell said an information session had tentatively been set up for 7 pm in the Council Chambers on Monday Feb 25th, concerning the Granite State Fair Tax Coalition Resolution Warrant Article. He said hopefully it would be broadcast on DCAT.

Councilor Carroll noted that the Energy Steering Committee would be at the Planning Board’s quarterly planning meeting on February 28th. She said the purpose of the meeting was to engage the Planning Board in further discussion on energy issues that concerned the Town.

Administrator Selig said he had recently attended an initial meeting with the University regarding policing issues. He said some progress was made, and said another meeting was scheduled for the following week.

He welcomed Council members to be involved in monitoring activities downtown

toward the end of the Super Bowl, also that cameras would again be set up downtown for monitoring purposes.

Administrator Selig said the transition of the dispatch center to the County facility was ongoing, and continued to be a challenging process. He provided some details on this, but said March 1st was still planned as the transition date.

Administrator Selig said he had recently met with Scott Mitchell concerning a possible interest in acquiring the Town Hall site for approximately \$2 million. He provided some details on this.

Administrator Selig updated the Council on the Stone Quarry Drive development agreement, stating that it was moving forward but there were still various details to be worked out.

He noted that the Council had previously asked him and Chair Niman to have a discussion with Attorney Ari Pollock, representing Stonemark Management, in order to try to work out a win-win solution for the Town and the developer. He said there would be an update for the Council on this that evening, in Nonpublic Session.

Administrator Selig updated the Council on the situation concerning the vacancies in the Fire Department. He explained that the proposal he had developed, to eliminate existing captain positions and create new lieutenant positions, had turned out not to be viable, and had therefore been abandoned. He provided details on this.

Administrator Selig said he had recently been visited by representatives of John Pinto, the owner of Mill Plaza. He said this was the first specific expression of interest on the part of Mr. Pinto, and said it was viewed as a very positive development. He said the representatives were meeting with various people who were involved with the Mill Plaza study, and said they would be leaving with illuminating information on the proposed development project.

Administrator Selig noted that about 3 years ago, the Town had acquired the Lee Five Corners property, for \$290,000, and with Lee, had gone after a NHDES source water protection grant. He said the grant was received, and he explained that Durham would be pledging as a match its two Garrity road gravel pits, which were located in Lee. He said Lee would reimburse Durham the \$290,000 expenditure in order to acquire the pit, and Durham would get an easement to assure that there would be no further development there, in order to protect the Lee well. He said the deeds for the Council to act on would appear at an upcoming meeting.

Councilor Julian Smith said the Mill Plaza committee would be having a meeting on Wednesday, February 20th, and said it would be a very interesting, informative meeting.

Councilor Carroll said there was a recent celebration at the Durham Town Library in

remembrance of Maragery Milne, who had left a large bequest to the library. She said 65 people in attendance, and said it was quite an event.

Chair Niman said he was disappointed that the Fire Department proposal Administrator Selig had referred to, which would have saved the Town money, hadn't gone the way he had hoped. He said there was still an opportunity for the Council to say something about it, and to do something in terms of reorganizing the Fire Department in order to save the Town some money. He asked if there were any Council members who were interested in suggesting some other possible organizational changes, before making commitments to an employee structure that would last for 10-20 years.

Councilor Leach said she thought it was a great idea to take a look at this issue.

Councilor Needell said Administrator Selig had just gone through a lengthy process of looking at this issue, and had decided not to move forward with a proposal concerning it. He said if Administrator Selig thought there was another process that could be developed, he would bring it to the Council. Councilor Needell said he accepted this situation, and said he was not particularly interested in imposing some kind of structure on the Fire Department.

Chair Niman said he was simply challenging everyone to come up with other ways to save the Town money.

Councilor Stanhope asked why the process Administrator Selig had recently gone through had failed.

Administrator Selig said the core challenge was that there was a Fire Department shift on duty at all times, and there needed to be someone to manage the unit. He said the person who had carried out that task for many years was the captain, and said the task needed to be done whether that person was a captain or a lieutenant. He provided details on the problems the Firefighters' union had had with his proposal, including the fact that the mid-managers had filed an unfair labor charge. He said he had concluded that given the current structure of the Fire Department, and the outlook of the fire employee associations, his proposed change wouldn't be viable.

Councilor Stanhope asked Administrator Selig if he thought there were other possible avenues at this time for savings in the Fire Department.

Administrator Selig said if the idea was to keep existing services as they were, the possible avenues had been played out. He said that in 2009, there would be the option to replace the captains with fire fighters, which would result in significant savings. But he said if the Town was after some real savings, it needed to look at the issue of shift staffing. He said that presently, there was a 5 person shift, which included 4 firefighters and 1 captain.

He said cost savings would result from allowing a 4 person shift on weekends and evenings, but he noted that this related to levels of service. He said bigger savings, approximately \$125,000, would result from dropping to a 4 person shift in general. He noted that the Council again and again had chosen to stay with the status quo concerning the 5 person shift.

Councilor members agreed that they would discuss this issue further, later on at the meeting.

Administrator Selig noted that if the Council was in fact going to have a discussion on this issue, it should do it soon, given the existing Fire Department vacancies for 2008.

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

Roger Speidel, Nobel K Peterson Drive, noted that there were two handicap parking spaces on Main Street located to the left of Young's Restaurant, but they couldn't be used because of the snow buildup on the sidewalk. He asked that the snow be cleared so that on each side of a car, the pavement would be dry.

Councilor Needell said he assumed that the Town Administrator's office would respond to a request like this when it was brought to their attention.

Bill Hall, Smith Park Lane, provided pictures of the launching ramp at Jackson's Landing from many years back, as compared to the present situation. He said there were many documented examples of existing problems, including backing up boat trailers at Jackson's Landing, and he provided details on this. He said the design of the proposed plan for Jackson's Landing would also result in these kinds of problems, and said the idea that the parking along the launch ramp would be taken away and turned into grass was crazy. He noted among other things that when the University boaters were there, there were typically 20-25 cars and buses.

He said the best way to do parking would be with pull through spaces, and he provided further details on the design that was needed. He asked that the Town suspend the idea of turning the area between the boathouse and the ramp into a grassy area, and that it leave the parking there.

Ted McNitt, Durham Point Road, said he had launched a lot of boats, over many years in many places, under good and bad conditions. He said he had always considered Jackson's Landing to be one of the assets of the Durham community. He noted that there were a lot of people in Durham who didn't have kids in school, and did use the water. He said from what he had seen of the layout, it was going to be very difficult to maneuver a boat trailer at Jackson's Landing, both coming and going.

He said he saw this as a situation where one of the privileges of living in Durham would be made so difficult that people wouldn't be able to use it. He noted that

Jackson's Landing was the only active launch facility in Durham, with a ramp, dock, and parking. He said he hated to see taxes go up and also see the things in Town he used the most go down.

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

- A. **RESOLUTION #2008-01** approving an Intermunicipal Agreement for Assessing Services between the Town of Durham and the Town of Lee, NH in accordance with RSA 53-A and authorizing the Town Administrator to sign said agreement on behalf of the Town of Durham

Item VII A was taken off of the Unanimous Consent Agenda.

- B. **RESOLUTION #2008-02** establishing an advisory board for the Stone Quarry Drive Tax Increment Finance district in accordance with Section XIX of the Stone Quarry Drive Mixed Use Tax Increment Finance (TIF) district Development Program and Financing Plan approved by the Town Council on October 15, 2007

Councilor Van Asselt MOVED to approve Unanimous Consent Agenda Item B. Councilor Julian Smith SECONDED the motion, and it PASSED unanimously 9-0.

The Council then discussed Item VII A.

Councilor Stanhope asked Administrator Selig what the breakdown was in terms of the number of parcels of land assessed in Durham and Lee respectively, and the breakdown between vacant, residential, commercial, and industrial land.

Administrator Selig said he didn't have that level of detailed information available at the meeting. But he said about 3/5 of the parcels were in Durham, and 2/5 were in Lee, and said the feeling was that the division of labor, in terms of the Durham Town Assessor's time, would be equitable.

Councilor Stanhope provided details on his skepticism concerning the Durham Town Assessor's current workload and proposed workload, and there was discussion on this with Administrator Selig.

Administrator Selig said there would be a trial period to see if the division of labor was acceptable to everyone, and to see if Mr. Dix would have sufficient time to do what was required.

He said if it was found that the demands were too much, he would reassess the situation either part way into the year or at the end of the year. He said both towns had an interest in trying to make this work, in an economical way. He said Mr. Dix had in fact been busy prior to this proposal, but said he could be busier, and said this was one of the reasons this idea had been proposed.

Councilor Morong said he had similar concerns. He noted the Assessor's task of having to do rolling property valuations, and said he assumed that this was time-consuming. He noted that Lee hired out this work, which might make the 3/5, 2/5 formula more acceptable.

Administrator Selig said a clerk would be hired to do day-to-day work, and to help manage the workload. He provided details on how the rolling evaluation process would be handled by Mr. Dix.

There was discussion that Mr. Dix was a salaried employee, and was not paid overtime.

Councilor Julian Smith MOVED to approve an Intermunicipal Agreement for Assessing Services between the Town of Durham and the Town of Lee, NH in accordance with RSA 53-A and authorizing the Town Administrator to sign said agreement on behalf of the Town of Durham. Councilor Carroll SECONDED the motion.

Councilor Van Asselt said he hadn't asked that this be taken off the Unanimous Consent Agenda because Councilor Stanhope had spoken up first. He then asked Administrator Selig if the Town Council had asked him (Administrator Selig) to go ahead and prepare this agreement.

Administrator Selig said the Council had asked him to come up with ways to save money, and he said this proposal was something he had explored, and had thought would work. He acknowledged that they were entering into new territory, trying to be entrepreneurial as a Town. He said if this approach didn't work, he would acknowledge this and move on. He said he had been open with the Council regarding moving forward with this proposal.

Councilor Van Asselt said he didn't feel this Item belonged on the Unanimous Consent Agenda, and he noted that if the Council voted no on it, this would mean that \$40,000 would come out of the fund balance. He said this was the second time in two meetings where this kind of thing had happened. He said this was the same fund balance that the majority of Council members didn't want to touch during the Budget sessions.

He said he was the biggest supporter of Administrator Selig doing these kinds of things administratively, but he said this particular issue involved a significant program change in terms of Town staff, so it was different.

Chair Niman said he didn't understand the source of Councilor Van Asselt's surprise. He said the Council had been discussing this issue since July. He noted that it had been Administrator Selig's expectation that this agreement would have been signed several months ago, before the Council voted on the Budget. He said the fact that the

agreement was coming before the Council after the Budget was finalized was not Administrator Selig's fault.

There was further discussion on this. Chair Niman noted that there had been plenty of opportunity for Councilors to say they didn't like this idea.

Councilor Van Asselt said he thought this was a significant policy issue, and said there should have been a way to deal with it as part of the larger Budget process.

Councilor Needell said he disagreed with the premise that this was fundamentally a policy issue, and said he saw this as an administrative issue.

Councilor Morong asked Administrator Selig if he felt the Durham Assessor's Office was stable enough so that 2-3 years from now, the Town wouldn't have to hire a clerk. He said he didn't want to see this happen, and he expressed his concern that Mr. Dix's workload might expand.

Administrator Selig said there would be a year-to-year agreement. He also explained that he saw his role as putting together and presenting a Budget that was viable. He said it was up to the Council, if it disagreed, to veto the Budget, but he said the Council had approved it. He also said this proposed program had been specifically outlined in the Budget proposal.

He said many hours had been spent in negotiating with the Town of Lee, noting there were some sensitive issues to address. He said he had been ready to bring the agreement forward months ago, but didn't have the engagement that was necessary. He said he had been asked to find innovative ways to cut costs, and said he was surprised at Councilor Van Asselt's response, because he had been one of the most vocal persons to say the Town should look for cost savings. He said while he couldn't guarantee that this program would be successful, it was certainly worth trying.

Councilor Henry Smith said this would be a one-year trial period to see if the program worked, and also noted that either town could choose to terminate the agreement with 60 days notice.

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

VIII. Committee Appointment

Nell Neal, an applicant for the Integrated Waste Management Advisory Committee, said she was passionate about environmental concerns, and noted that when she had moved to Town a few years back, she had volunteered at the Swap Shop. She said she was a teacher at the Moharimet School in Madbury, and could serve as a liaison between the Committee and the school.

Councilor Leach asked if a member of the IWMAC Committee had served as a liaison with the schools in the past, and was told that Jesse McCone had previously served in this capacity..

Administrator Selig provided details on the results of this connection between the Committee and the local schools, noting that among other things the schools were recycling paper and cardboard and were using recycled paper.

Councilor Carroll said that the school Ms. Neal taught at had previously been using more paper than other Oyster River School District schools, but now, under her leadership, was using less paper than the other local schools. She also said reusable salad bowls were used now instead of throw-away containers.

Ms. Neal said the list of items being addressed continued to grow, and noted that cafeteria food waste was fed to local pigs. She said thousands of dollars had been saved as a result of the various changes that had been made.

Councilor Stanhope MOVED to appoint Nell Neal to serve on the Integrated Waste Management Advisory Committee. Councilor Carroll SECONDED the motion, and it PASSED unanimously 9-0.

IX. Presentation Item

Improvements to Jackson's Landing – Dwight Baldwin, John Parry, and Robbi Woodburn, members of the Jackson's Landing Master Plan Committee

Chair Niman noted that he had been one of the original members of this committee. He said he really appreciated the significant amount of time and effort the members of this committee had spent on the project.

Councilor Van Asselt asked that someone answer the questions that had been raised concerning the plan.

Dwight Baldwin, 6 Fairchild Drive, provided some background on how the committee had been put together, and on how the plan and proposal for Jackson's Landing had subsequently been developed. He noted that the Council had accepted this plan, and had then asked the committee to find the funding to make it happen.

He said two grant proposals had been submitted to NHDES, neither of which was successful, noting that the Town had set aside \$200,000 as matching funds from the land conservation fund, in anticipation that the grant proposals would be successful.

He said Public Works Director Mike Lynch had then pulled together a grant proposal and submitted it to the federal Natural Resource Conservation Service, for a project that would allow the Town to address all the issues outlined in the Committee's original report. He said this grant was received, and said the Committee was very excited about what the grant money would allow the Town to do.

He said erosion control would be addressed, and said they would also now have the ability to make Jackson's Landing one of the Town's prime recreational areas.

Mr. Baldwin said there had been some refinements to the original Jackson's Landing master plan, and said committee member Robbi Woodburn would provide details on this.

Landscape architect Robbi Woodburn said the plan started as an erosion control program, and then went on to address other issues, including the existence of 40 parking spaces near the waterfront. She said the plan was to have a more green and interesting recreational area near the waterfront.

She provided details on the turnaround for cars with boat trailers in front of the existing boathouse, and said it would allow for a sweeping turn, not a jack knife, and would allow drivers to back their trailers to the boat ramp. She also spoke in detail about the location and number of parking spaces that had been provided as part of the design. She said there was going to be a sidewalk trail that led from the new parking area down to the playground and boathouse. She said they were trying to find a balance on the site between green space and parking.

Councilor Stanhope said he had two concerns about the plan, one of which was the turn-around areas, and the likelihood that this would become a policing issue. He noted that he lived near Jackson's Landing, and people tended to park there in a random way. He said policing would be required to enforce the no parking areas. He also said that by limiting the parking area available near the water, when UNH held an event, there would be more chaos than ever.

Ms. Woodburn said that concerning Councilor Stanhope's first point, the upper parking lot could be used as a staging area, and UNH people could then walk down to the water with their kayaks. Concerning the policing issue, she said "no parking" signs would need to be put up, and the area would need to be policed until people got in the habit of not parking in these areas.

Councilor Needell asked Ms. Woodburn if she thought there was in fact room for vehicles and boat trailers to maneuver successfully on the site. She said yes, there was room, and provided details on this. There was discussion of what the industry standard was for turning radiuses.

Councilor Morong said he liked various aspects of the plan, but said he also had some reservations concerning it. He said he thought it would be difficult to share the shoreland area with the UNH boat club, noting that he had been treated rudely when trying to launch a boat there, by someone who wasn't a resident of Durham. He also said he didn't think the vehicles with boat trailers would be able to maneuver on the site, and said this was a huge reservation he had concerning the plan. He said the parking spaces looked difficult to back into, especially if some of them were already filled.

Councilor Morong said it would be nice to have some park-like area at Jackson's Landing, but he said there were such areas up the river and down the river. He said the primary focus of this site was that there was a boat landing, and said he wasn't as worried about having a large park there as he was about having adequate area for the landing.

Mike Sievert, 28 Riverview Road, provided details on the wetland issues that were involved on this site, and the fact that one aspect of the plan, given the shoreland protection concerns, was to trade parking near the water for parking elsewhere on the site. He noted that the amount of parking for the ice rink had been increased. He also said a trailer would be able to back into the spaces near the water, noting that these spaces would be wider.

There was discussion on this, and Mr. Sievert said that perhaps a couple of more parking spaces could be put in near the water, by removing some of the landscaped area that was planned.

Ms. Woodburn said there was the possibility of putting in one more trailer space, but said she wouldn't want to have to get rid of the accessible parking area in order to get this. She also noted that the idea of putting in some pervious pavement had been looked at, but they decided not to go with this because it wouldn't work, given the soils in that area.

Councilor Carroll said there were a lot of good elements in this plan, but said she was concerned about having parking on Piscataqua Drive, because there would be kids coming out of these cars.

Ms. Woodburn said the original design kept all of the parking spaces off the street, but said it involved some wetlands encroachment, and NHDES had said no to this. She said the committee had therefore kept these parking spaces in the plan.

Councilor Carroll said there was an opportunity with this plan to do some alternative kinds of things in terms of energy supply and demand. She said that more energy efficient lighting fixtures could be used, and also suggested that this would be a great site in terms of solar energy opportunities. She said this might be something that the committee could work on with the Town's new Energy Committee.

Councilor Carroll next asked why removal of the phragmites would be the last thing to be addressed on the site, and Ms. Woodburn provided details on this.

Councilor Carroll noted that the area on the other side of Piscataqua Drive, where the large parking area was proposed, was woodland. She said there had been talk about managing this woodland area, along with other Town woodland properties, and asked if this should be considered as part of this project.

Mr. Lynch said he was in the process of starting to look at the woodland plan developed by forester Charlie Morino, which did include Jackson's Landing. But he said it would not be addressed as part of the current plan for the site because of the funding schemes in place. He said it would be easy to access the site to do some selective tree harvesting, once this project was done.

Councilor Carroll asked if there were any aspects of this plan where there could be community involvement, such as building picnic tables, etc., in order to get more ownership of it from the public, and social capital from the project.

There was further discussion about the parking plans for the site, including the fact that there would be an increase of 25 parking spaces, including 3 handicap spaces.

Councilor Henry Smith received clarification that a grant the Town had received from NHDES for Jackson's Landing was for the trail on the site. He asked why the Army Corps of Engineers did a permit review for the project, and Mr. Lynch said they reviewed all permits on tidal waters.

Councilor Morong said there were already conflicts among users of Jackson's Landing, and said he would like to see fewer conflicts there in the future.

Ms. Woodburn said UNH and the Great Bay rowing group were part of the design process, and she said they understood this.

Councilor Needell receive confirmation that items marked "proposed future" on the plan were not part of what would be done now. He also determined that the original drainage plan for the site was not part of this present plan, and said perhaps there was therefore more flexibility as to where the walking trail could be located, which meant more area could be provided for parking.

Ms. Woodburn said there were some other features that constrained the number of parking spaces that could be provided, and she provided details on this.

Administrator Selig noted that regarding the issue of boat trailers, they could possible turn around at the end of the road.

Chair Niman said at some point, the Council would have to accept the grant money, and would need to have a public hearing at that time. Administrator Selig said the public hearing would probably be held on February 18th.

John Parry, Chair of the Town's Parks and Recreation Committee, said the Jackson's Landing committee saw the site as one that would be great to invest in. He noted that it was one of the few recreational areas in Durham that was within walking distance of so many different things, and also said it was one of few sites in Town that could allow for multiple uses. He said it was therefore an ideal site to try to make into a multiple use site.

He said that while the parking scheme that had been designed would be less convenient for boaters, it would provide more convenience for others, so there was a tradeoff. He said the Churchill rink was used a lot by hockey teams, and said the parking for these kinds of users would be improved. He noted that the Town owned the site, and was trying to generate revenues from the rink.

Mr. Parry described the trail system that was planned, through a separate grant program, and said it would provide people with a direct path down to the waterfront. He noted that this would be a universal access path, and that the footpath trail through the woods would include interpretative panels on the environment.

He said Ms. Woodburn and others had done a great job in thinking about future uses of the site. He said the current plan covered about 20% of what the Committee had talked about, and he provided some detail on some of these possible future uses, including a possible hookup with the existing network of walking trails in that area of Town, at Old Town Landing, Mill Pond, etc.

Mr. Parry said the Parks and Recreation Committee supported this plan, and had provided a lot of support for it throughout the process.

Chair Niman thanked Committee members again for the presentation, and for their hard work on this project.

The Council stood in recess from 9:00-9:08 PM.

Chair Niman said the plan was for the Council to go into nonpublic session at 10:00 pm, and said any Agenda items not completed by that time would go onto the February 4th Agenda.

X. Unfinished Business

A. PUBLIC HEARING AND ACTION ON ORDINANCE #2008-01 amending Chapter 4 “Administrative Code”, Article VI “Procurement”, Sections 4-20 “Competitive Purchases”, 4-21 “Professional Services, and 4-24 “Sale of Surplus Materials” of the Durham Town Code by increasing purchasing amounts requiring Town Council approval

Councilor Julian Smith MOVED to open the public hearing on ORDINANCE #2008-01 amending Chapter 4 “Administrative Code”, Article VI “Procurement”, Sections 4-20 “Competitive Purchases”, 4-21 “Professional Services, and 4-24 “Sale of Surplus Materials” of the Durham Town Code by increasing purchasing amounts requiring Town Council approval. Councilor Stanhope SECONDED the motion, and it PASSED unanimously 9-0.

There were no members of the public who came forward to speak.

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

Councilor Van Asselt MOVED to approve ORDINANCE #2008-01 amending Chapter 4 “Administrative Code”, Article VI “Procurement”, Sections 4-20 “Competitive Purchases”, 4-21 “Professional Services, and 4-24 “Sale of Surplus Materials” of the Durham Town Code by increasing purchasing amounts requiring Town Council approval. Councilor Morong SECONDED the motion.

Councilor Stanhope noted that he had previously asked if any purchases of these amounts regarding contracts were reported to the Town Council, and Administrator Selig had said no. He said he thought it was important for members of the Council and members of the public to be aware of this.

The motion PASSED unanimously 9-0.

- B. Shall the Town Council approve the extension of the Purchase and Sale Agreement between the Town of Durham and Chinburg Builders, Inc., for the Durham Business Park as recommended by the Town Administrator?

Administrator Selig explained that Chinburg Builders had requested a one year extension, due first of all to delays from NHDOT in answering the company’s questions as to the number of vehicles that could enter the site at certain times of the day. He noted that the type of uses envisioned for the site were ones where there would be ongoing entering and leaving the site by cars, rather than office uses where everyone would be coming or going at specific times of the day.

He said the second issue had to do with market conditions, and the fact that the economy had fallen off somewhat. He said his feeling was that Chinburg had been doing due diligence, that these were factors that were beyond their control, and that the company was still a good partner for the Town.

Councilor Van Asselt MOVED to approve the extension of the Purchase and Sale Agreement between the Town of Durham and Chinburg Builders, Inc., for the Durham Business Park as recommended by the Town Administrator. Councilor Stanhope SECONDED the motion.

Councilor Carroll said she appreciated that these were factors that were out of Chinburg’s control, and asked whether the company had paid any money to the Town yet.

Administrator Selig said a \$1,000 deposit had been paid to the Town, which was being held in an escrow account by the Town Attorney. He said that if the purchase and sale agreement didn’t move forward, Chinburg would get this money back along

with the interest. But he said that no hard, refundable money had been paid to the Town yet, and said this was not proposed right now.

Councilor Carroll said everyone had been hoping that this project would mean some tax relief for the Town, and said she wondered if it could be explored whether the Town might ask for something now, in exchange for the good faith on its part.

Councilor Needell said the property was off the market, and he asked whether a message was being sent that the Town would want to know that someone else could make an offer at a certain point, if no progress was made. He said a question was at what point the Town would want to do that. He said he wasn't concerned about that this year, but said there had to be a limit somewhere, and said at some point a decision would have to be made on this.

Councilor Morong recused himself from the discussion and left the table.

Councilor Stanhope said Chinburg Builders had been the only party that had stepped up concerning this property, and said they had committed a certain amount of resources to move this project to the point where it was economically viable. He said he was comfortable that given market conditions, and the situation with NHDOT, it was reasonable to extend the purchase and sale agreement for one year. But he said he agreed with Councilor Needell.

Councilor Julian Smith said he would vote in favor of this motion. He noted that five years ago, the Power Span agreement was backed out of, and it had then taken three years to get an RFP for the property. He asked if this parcel could be rezoned back to RC, noting that there was RC land all around it, and that it had been zoned RC previously.

Administrator Selig said the Council could in fact decide to rezone the property. But he noted that Chinburg had been moving forward. He said it had done the wetland delineation, had been working with NHDOT, an agency which was in flux right now, and had a variance application before the ZBA to allow a sign on the property. He also said there were in fact some market issues to deal with right now.

Councilor Carroll noted that the information provided to the Council indicated that there were more wetlands on the site than had been anticipated, and she asked if the Conservation Commission was aware of that.

Councilor Julian Smith said there had been no discussion on this by the Conservation Commission.

Councilor Henry Smith said having seen the difficulties the company was facing, he felt they had done due diligence and were making a good faith effort concerning the property, so should be granted the one-year extension.

Councilor Carroll said it was hard to know what would be happening with the economy. She said she didn't feel Chinburg had done anything wrong, just as taxpayers who couldn't pay their taxes now hadn't done anything wrong. She said that looking toward the future there were some things the Council would have to look at.

The motion PASSED 8-0, with Councilor Morong not at the table by reason of refusal.

Councilor Morong returned to the table following the vote.

XI. New Business

- A. **FIRST READING ON ORDINANCE #2008-02** amending Chapter 175 "Zoning", Sections 175-7 Definitions; 175-53 Table of Uses; 175-54 Table of Dimensional Standards; and 175-55 General Dimensional Controls of the Durham Town Code as recommended by the Planning Board

Town planner Jim Campbell reviewed the proposed definition changes, first noting that the change to the Subdivision definition would allow it to conform to what was written in the Subdivision Regulations and State Statute. He also reviewed the definitions proposed for Mixed Use with Residential (Office down, multi-unit up) and Mixed Use with Parking (Parking and Office).

He then went through in detail the proposed changes to the Table of Uses in Section 175-53, for Excavation and Mining, as well as the four Mixed Use land use categories, including the two new ones. He explained that the two new mixed uses were created because for the Professional Office (PO) District, the concern had been, during a site plan application reviewed by the Planning Board, that perhaps retail uses shouldn't be allowed there. He said the retail use issue had also come up concerning the Office Research 108 (OR) District during discussions on the Stone Quarry Drive TIF district.

He said another proposed change was to the Table of Dimensional Standards (Section 175-54), concerning the inclusion of a 15 ft minimum front yard setback in the Church Hill District. He also noted a change to the RSA referenced under Maximum Permitted Building Height, in that same Table.

Finally, Mr. Campbell noted a change to Section 175-55, General Dimensional Controls. He said under F, Calculation of useable area, the proposed change to #4 was: "Fifty (50) percent of the area with moderate depth-to-ledge soils (20" to 40" to bedrock) as identified in the HISS, if the site will use on-site sewage disposal.

Councilor Henry Smith MOVED to pass on first reading ORDINANCE #2008-02 amending Chapter 175 "Zoning", Sections 175-7 Definitions; 175-53 Table of Uses; 175-54 Table of Dimensional Standards; and 175-55 General Dimensional

***Controls of the Durham Town Code as recommended by the Planning Board.
Councilor Needell SECONDED the motion.***

Councilor Van Asselt said he would vote against this motion. He said at least one significant change was being recommended, the change concerning elimination of retail uses from the PO and OR Districts, and said he thought the Council should talk about this before the proposed changes went to public hearing.

Councilor Leach asked what the Planning Board's reasoning was behind wanting to exclude retail uses in the OR District.

Mr. Campbell explained that when the Board had reviewed a site plan application for a mixed used development proposed for Strafford Ave., there was a lot of discussion that this wasn't the greatest place in Durham to put retail businesses. He said the Zoning Rewrite committee, and subsequently the Planning Board had decided to move forward with the recommendation to remove retail from the PO District. He also said that given the discussion on the TIF district, the Planning Board felt it was a good idea to recommend the change to allow mixed use but not retail in the OR District.

Councilor Van Asselt said he wasn't questioning the Planning Board process, but said the process now didn't allow him talk about what he thought was a significant issue.

Mr. Campbell noted that at the Planning Board's hearing on these proposed changes, there were no public comments on these proposed changes.

Councilor Needell agreed that there had been very little in the way of public comments on the proposed changes at the public hearing. He also noted that the proposed change regarding the OR District was one that the Council had decided to send to the Planning Board because the Planning Board was already working on it. He said he did agree that the proposed change to remove retail was a significant one, and should be discussed by the Council, either before or after the public hearing.

There was discussion that this issue could be put on the February 4th Agenda, before scheduling it for the public hearing.

Councilor Van Asselt MOVED to amend the motion to pull out Section 175-53, the Table of Uses, from the original motion. Councilor Stanhope SECONDED the motion.

Councilor Henry Smith suggested that the Council could simply continue this discussion to the next meeting.

Chair Niman said the motion had already been made, and said Councilor Smith could choose to vote against it.

Councilor Needell said these proposed Zoning Ordinance changes had already been posted, so any application coming forward would have to meet the more restrictive version of the Ordinance, while these issues were being resolved. He said why not postpone action now and have that discussion, stating that it wouldn't really take any more or less time this way.

Chair Niman said if the Council postponed action now, and this issue reappeared on the February 4th Agenda for discussion, there would be ample time to schedule a public hearing for March 3rd. He agreed that this approach wouldn't involve doing anything different than would happen anyway.

Councilor Van Asselt withdrew his motion to amend, and Councilor Stanhope withdrew his second of that motion.

Councilor Needell asked what information Councilor Van Asselt needed in order to have the discussion at the February 4th Council meeting.

Councilor Van Asselt said Mr. Campbell could put together information on the potential impacts of the proposed changes, and he provided details on this.

Councilor Leach said she had some questions about that as well.

Councilor Needell asked if Councilors would like to have some Planning Board members at the meeting on February 4th.

Councilor Van Asselt asked for information on the questions that had been asked by the Planning Board concerning the implications of taking retail out, and Mr. Campbell said he would provide that information.

Councilor Van Asselt MOVED to postpone action on ORDINANCE #2008-02 amending Chapter 175 "Zoning", Sections 175-7 Definitions; 175-53 Table of Uses; 175-54 Table of Dimensional Standards; and 175-55 General Dimensional Controls of the Durham Town Code as recommended by the Planning Board. Councilor Morong SECONDED the motion.

Administrator Selig said he would bring this item back on the February 4th meeting, and he recommended that some Planning Board members attend the meeting if they could.

The motion PASSED unanimously 9-0.

- B. Shall the Town Council approve the development agreement between the Town of Durham and Rockingham Properties 1 LP in accordance with the provisions of the Stone Quarry Drive Mixed Use Tax Increment Finance (TIF) district approved the Town Council on October 15, 2007?

Postponed.

C. Discussion on the possible establishment of an agricultural commission under the provisions of RSA 673:1-11 as requested by the Conservation Commission

Councilor Julian Smith said this commission was being proposed because Durham was losing farmland to development, while there was an aging farming population. He said this idea was also being proposed because the Conservation Commission could use some support from a group that was independent from it, which could advocate for agricultural land uses and protection.

He explained that an agricultural commission would be an independent body, and according to the statute could be set up in a number of ways. He provided details on this, noting among other things that members could include, but were not required to be Town Council or Planning Board members. He said there could be anywhere from 3 to 7 members on the commission, and he suggested starting with 3 members.

Councilor Smith said there were a substantial number of farms in Durham, and he provided details on this. He also said an agricultural commission could look at some of the abandoned agricultural fields in Town, and could consider whether there might be people who were interested in making productive use of this land for agricultural purposes. He noted as examples that the commission could advocate for agricultural use of portions of the Fogg easement and the Rosewood farm easement, for such things as community gardens, etc.

Councilor Smith summarized that there were a number of practical reasons for Durham to have an agricultural commission, and said the question that evening was whether the Council would like him to proceed with drawing up a specific proposal.

Councilor Needell said he would be happy to have Councilor Smith continue on with this. He noted that RSA 674:44-f indicated that an agricultural commission could review and comment on plans that came forward, but could not impose requirements. He also said a commission could conduct various other activities if it wished, such as doing surveys and inventories of agricultural resources, and could also receive gifts of money.

Councilor Leach asked for some examples of where productive agricultural use might be made of some properties in Durham.

Councilor Julian Smith noted that he had voted against the conservation easement for the Fogg property, because the instrument that was brought forward didn't make any provision for maintenance of the hay field. He said he had also voted against the Langley conservation easement because there was no provision that if the buffalo farm no longer existed, the pasture land would be maintained and remain in some kind of production.

He said an agricultural commission could advocate strongly for this kind of thing. He

also said that if someone bought a property that contained agricultural land, the agricultural commission could help the new owner keep that land in production. He noted that Durham might need more local agricultural land in production as oil became scarcer. He said it would be prudent to have an agricultural commission to address this need.

Councilor Leach said she still had questions, and was not yet sure that she could support the idea of having an agricultural commission. She said she could ask those additional questions at another time.

Chair Niman said this item would be put on the February 4th agenda for further discussion.

Councilor Julian Smith MOVED to extend the meeting to 10:30 pm. Councilor Leach SECONDED the motion, and it PASSED unanimously 9-0.

Councilor Van Asselt MOVED to go into Nonpublic Session, in accordance with RSA 91-A II (d). Councilor Julian Smith SECONDED the motion, and it PASSED unanimously 9-0 by roll call vote: Chair Neil Niman, yes; Councilor Diana Carroll, yes; Councilor Mark Morong, yes; Councilor Julian Smith, yes; Councilor Karl Van Asselt, yes; Councilor Henry Smith, yes; Councilor Jerry Needell, yes; Councilor Peter Stanhope, yes; Councilor Cathy Leach, yes

The Council went into Nonpublic Session at 10:03 PM.

The Council returned to public session at 10:53 PM.

Councilor Leach MOVED to seal the Nonpublic session Minutes. Councilor Needell SECONDED the motion, and it PASSED unanimously 9-0.

XIII. Extended Councilor and Town Administrator Roundtable

XIV. Adjournment

Councilor Henry Smith MOVED to adjourn the meeting. Councilor Carroll SECONDED the motion.

Chair Niman said the discussion on the Fire Department staffing issue would be continued at the February 4th meeting.

The motion PASSED unanimously 9-0

Adjournment at 10:55 pm.

Victoria Parmele, Minutes taker