

This set of minutes was approved at the Town Council meeting on April 7, 2008

**DURHAM TOWN COUNCIL
MONDAY, MARCH 3, 2008
DURHAM TOWN HALL – COUNCIL CHAMBERS
7:00 PM**

MEMBERS PRESENT: Chair Neil Niman; Councilor Mark Morong; Councilor Jerry Needell; Councilor Diana Carroll; Councilor Julian Smith; Councilor Henry Smith; Councilor Peter Stanhope (arrived at 7:08 PM); Councilor Cathy Leach

MEMBERS ABSENT: Councilor Karl Van Asselt

OTHERS PRESENT: Town Administrator Todd Selig; Town Planner Jim Campbell, Public Works Director Mike Lynch

I. Call to Order

Chair Niman called the meeting to order at 7:02 pm.

II. Approval of Agenda

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

Councilor Henry Smith MOVED to switch Agenda Item IX D and IX E. Councilor Julian Smith SECONDED the motion, and it PASSED unanimously 7-0.

The agenda as amended PASSED unanimously 7-0.

III. Special Announcements

IV. Approval of Minutes

January 28, 2008

Page 8, bottom paragraph, should read "...a teacher at the Maharomet School in Madbury, and could serve...."

Page 9, 3rd paragraph, should read "...more paper than other Oyster River School District schools, but now,..."

Councilor Carroll MOVED to approve the January 28, 2008 Minutes as amended. Councilor Julian Smith SECONDED the motion, and it PASSED unanimously 7-0.

Councilor Stanhope arrived at the meeting at 7:08 pm.

January 28, 2008 (Nonpublic Session)

Page 4, bottom of page, 2nd sentence from bottom, Take out sentence starting with “Councilor Van Asselt...”, and change it to “Councilors Van Asselt and Leach recused themselves from offering direction, due to a potential conflict of interest.”

Councilor Leach MOVED to approve the January 28, 2008 Nonpublic session Minutes as amended. Councilor Henry Smith SECONDED the motion, and it PASSED unanimously 8-0.

February 4, 2008

Page 11, motion at bottom of page should read “*The motion PASSED 5-2, with Councilor Carroll and Councilor Needell voting against it.*”

Page 14, first motion on page should read “*..and it PASSED 5-2, with Councilor Van Asselt and Councilor Leach voting against it.*”

Councilor Leach MOVED to approve the February 4, 2008 Minutes as amended. Councilor Carroll SECONDED the motion, and it PASSED 7-0-1 with Councilor Henry Smith abstaining because of his absence from that meeting.

February 4, 2008 (Nonpublic Session)

Councilor Henry Smith MOVED to approve the February 4, 2008 Nonpublic Session Minutes as presented. Councilor Leach SECONDED the motion, and it PASSED unanimously 8-0.

V. Councilor and Town Administrator Roundtable

Councilor Henry Smith said he had been absent from the February 4th Council meeting, but had read through the minutes. He said an issue of concern to him regarding the discussion on not allowing retail in the Professional Office District had been the recusal of Councilor Stanhope after his participation in that discussion. He said he had done some research on this issue, and he provided some details on this.

He said he would like to recommend that a Councilor should recuse himself/herself at the beginning of a discussion, and should also leave the table, so it was clear that the person was not participating. He noted that the person could speak to the issue as a member of the public

Councilor Stanhope said he recalled the incident, had looked into the issue of recusal as well, and had found that there were no specific guidelines on this. He noted that he had recused himself after checking the Zoning Map and the location of his property on it. He also noted that he had voted on the agenda item concerning the Lee well, and that his firm, although not he personally, had prepared the appraisals for the land in question. He spoke about the issue of whether Councilors who had connections of some kind with the University should recuse themselves on University matters. He said these were troubling issues concerning the public trust, and said perhaps some further research on this would be useful.

Chair Niman asked Councilor Henry Smith if he would be willing to prepare a Council Communication on this, as a broad policy issue, and said the Council could then talk about it at a future meeting.

Councilor Henry Smith said he would be happy to do this, and reiterated that he was interested in the wider issue of recusal, not a specific instance concerning it.

Administrator Selig provided the following updates to the Council:

He said the Elections would take place on Tuesday, March 11th, from 7:00 am to 7:00 pm at the Oyster River High School.

He said some research had been done on previous interest in agricultural commissions/committees, and noted that the focus on this idea in the past in Durham had been on Wagon Hill Farm. He said the Town was now reaching out to the Town of Lee concerning the approach they had taken.

Councilor Julian Smith said that Lee had an agricultural committee, but also had a warrant article to establish an agricultural commission.

Administrator Selig noted that he had forwarded an update to the Council on the transition of the dispatch center to the County. He said the plan had been for the entire transition to occur by March 1st, but he said there were still some outstanding issues. He said it would therefore not be responsible to make the move yet, and said the implementation date would be established when the system was ready. He said it was likely that it would be another two months. He provided some details on the outstanding issues.

Councilor Needell asked that the Memorandum of Understanding concerning this project be made public so people could see it. He also noted that these various outstanding issues had been outlined in the letter to the Council, and asked for assurances that all of them would be resolved prior to making the transition.

Administrator Selig said that some of the issues were more critical than others. He said they were focused on issues of safety, and he provided some detail on this. He said there were certain elements on the list that could wait, but said he hoped that they, along with the more critical issues, could be resolved sooner rather than later.

Councilor Needell said he would appreciate it if the Council got a status report prior to the go live date.

Councilor Julian Smith thanked Administrator Selig for the detailed memo he had provided on the status of the Mill Plaza initiative. He invited members of the public to attend the Committee's next meeting on Wednesday at 7 pm. He said one of the items to be discussed at that meeting was where to go next, and whether the Committee was ready to pass on to the Council a set of recommendations regarding the Plaza.

Councilor Carroll noted that the Energy Committee had met with the Planning Board again the previous Wednesday. She said there had been a slide presentation on the work the Committee

was involved with, including a greenhouse gas inventory done for Durham. She noted that this report was available for residents.

She said the Committee had explained to the Board several ideas it was thinking of recommending to the Board and the Council, and she provided details on this. She said the Committee was looking at all of the possible ways to deal with Durham's energy future, and said ideas and recommendations from residents as well as UNH students and faculty were welcome. She said she hoped people would bring these ideas forward.

VI. Public Comments (NLT 7:30 PM)

Mike Blake, 7 Carriage Way, said he was present to speak about public safety issues concerning the transition of the dispatch center to the County. He first said he would like to know how much money was needed to complete the project, including what had already been spent. Administrator Selig said the total cost was \$500,000. Mr. Blake asked for a timeline on when the Town would recoup the expenses, and Administrator Selig said that while he hadn't brought it with him, this timeline had been presented some time ago.

Mr. Blake asked what the payment formula was based on, and also asked whether the Town had to purchase the infrastructure to make the transition possible. Administrator Selig provided details on this.

There was discussion between Mr. Blake and Administrator Selig on how the system would work if there was an emergency at UNH. Mr. Blake summarized that he believed the transition of the dispatch center to the County was a bad idea, for the community and the firefighters. He provided details on his belief that the funds would have been better spent if it was invested in the existing infrastructure.

Dennis Meadows, 34 Laurel Lane said he said he loved Durham, but lived on a fixed income and worried about taxes. He said he therefore understood the need for compromise. But he said the tax benefits projected for the TIF district were small, uncertain, and far into the future. He said the economy had changed enormously, and said that while the benefits of the TIF had gotten smaller, the possible cost to the Town had gotten larger. He said he therefore thought moving forward with it would be a mistake.

He provided details on this, noting among other things that the costs for everything were at a period of rapid inflation, so there was no way to know what the cost of the project would be. He said the Town's bond rating was currently pretty good, but said they had no idea what it would actually cost to borrow money, and how this would affect the bond rating. Mr. Meadows also said the real estate market was collapsing, and said the TIF concept was based upon some assumptions that were fantasies. He provided additional details on this.

Henry Brackett, resident of Lee, said he was a candidate for the School Board, and provided details on his background. He said he had attended several School Board meetings in recent years, and said he had some major concerns about the current Board. He said he had decided to try to change some of the things he had seen were happening, and said there was a lot of room for improvement.

He said the School Board had missed the opportunity to involve the community and town officials in major decisions. He said he wanted both a quality education for students as well as fiscal responsibility, and said he wanted to involve the parents and community members more in the process.

Bill Hall, Durham, spoke about the ammonia issue at the Whittemore Center, and the fact that the Town hadn't heeded him, and had allowed parking on Davis Ave. He said he wouldn't want to locate an emergency center that close to the Whittemore Center, as had been recommended, and said he was surprised at that recommendation.

Mr. Hall spoke in detail about an email regarding a water meeting, and said the Town didn't have the right personnel working on the 401 water quality issue.

Regarding the Stone Quarry Drive TIF project, he said it could be cut a lot, and this wouldn't affect the developer one bit.

Pete Cathy, UNH Rowing coach, spoke in favor of the Jackson's Landing plan that had been developed. He said there was clearly an erosion problem there, and said what was proposed would be a vast improvement in terms of the look and the function of Jackson's Landing. He noted the concern that had been expressed about parking, and said this could be dealt with, along with the various other issues.

Robin Mower, Faculty Road, received confirmation that the notice of the upcoming Mill Plaza Committee meeting had been put on the listserv. She then urged that Economic Development Committee members attend that meeting.

Ms. Mower also asked for and received clarification that the properties referred to on page 2 of the TIF agreement were the properties at the rear of the site.

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

- A. **RESOLUTION #2008-06** recognizing outgoing elected officials for their dedication and service to the Town of Durham
- B. **RESOLUTION #2008-07** memorializing the results of the Administrator's Annual Performance Evaluation and approving an amendment to the employment agreement dated February 19, 2007 between the Town of Durham and Administrator Todd I. Selig to reflect a Cost of Living Adjustment, a performance bonus, and authorizing the Council Chairman to sign said agreement on behalf of the Town Council
- C. Shall the Town Council schedule a public hearing for Monday, March 17, 2008 on a resolution accepting land on Mill Pond Road formerly owned by Margery J. Milne and authorizing the Town Administrator to sign a Quitclaim Deed for said property and creating the "Margery J. Milne Expendable Trust Fund" in the amount of \$25,000 as prescribed in the Margery J. Milne Revocable Trust of 1995?

Councilor Leach asked that Item VII B be removed from the Unanimous Consent Agenda.

Councilor Julian Smith MOVED to approve Unanimous Consent Agenda items A and C. Councilor Carroll SECONDED the motion, and it PASSED unanimously 7-0.

Councilor Leach said she had some concern about Resolution #2008-07, stating that she didn't remember discussion and agreement by the Council that the salary increase for Administrator Selig from 2% to 3% represented a performance bonus. She said she didn't think there had been consensus on that wording, and said her concern was that this might set a precedent.

There was discussion on this with Councilor Needell, who said there was a difference of understanding on this. He said he had thought there had been consensus from the Council on this, and that the Council had provided the additional 1% increase to award performance. He said in his mind it was a merit award, not a one time performance bonus. He said if that was not the case, he thought the Council needed to revisit this.

After further discussion, Councilor Julian Smith recommended a change in language.

Councilor Julian Smith MOVED to drop the final Whereas in Resolution #2008-07, and to amend the one above it to read: Mr. Selig will be awarded a 3% increase to his base pay. Councilor Leach SECONDED the motion.

Councilor Needell MOVED to amend the motion, to remove the 3%, put it back to 2%, and reinsert the paragraph (final Whereas) back to Resolution #2008-07.

Councilor Needell said if the Council had felt Administrator Selig had not performed in an exemplary manner, it would have left him with a 2% increase, or less. He noted that Administrator Selig had suggested that in lieu of an additional raise, he be granted extra vacation time, but the Council had decided it was more comfortable granting an additional 1% increase.

He said it was important that the Council make a statement that this increase was being given because it felt Administrator Selig deserved it. He said he was not comfortable with this resolution unless it made that clear.

Councilor Carroll SECONDED the motion.

Councilor Carroll asked if Councilor Leach would find acceptable the wording "annual bonus award" and Councilor Leach said no, because to her that meant a one time thing. She said she remembered the Council discussing that it didn't want it to be that.

The motion to amend PASSED 5-3, with Councilor Stanhope, Councilor Leach and Councilor Julian Smith voting against it.

At this point, Chair Niman said the Council would be voting on the motion to adopt the resolution, but there was not actually such a motion.

The motion PASSED 5-2-1, with Councilor Leach and Councilor Stanhope voting against it, and Councilor Henry Smith abstaining because of his absence from that discussion.

VIII. Presentation Items

Acknowledgement for contributions made by outgoing Town Council members

Chair Niman presented Councilor Carroll with a certificate of appreciation from the Town for her service on the Town Council.

Councilor Carroll thanked the people who had supported her 3 years ago, and said it had been an honor to serve the Town. She said it had been a valuable experience that she would cherish. She thanked her fellow Councilors for listening to her views, and for being so cooperative.

Chair Niman also presented Councilor Morong and Councilor Julian Smith with certificates of appreciation.

IX. Unfinished Business

- A. **PUBLIC HEARING AND ACTION ON ORDINANCE #2008-02** amending Sections 175-7, Definitions; 175-53, Table of Uses; 175-54, Table of Dimensional Standards; and 175-55, General Dimensional Controls of the Durham Zoning Ordinance

Councilor Stanhope recused himself.

Councilor Needell MOVED to open the public hearing. Councilor Julian Smith SECONDED the motion, and it PASSED unanimously 7-0.

Town Planner Jim Campbell provided background on these proposed Ordinance changes. (See Agenda Item X A in the February 4, 2008 Town Council Minutes for details on this.)

Councilor Leach received clarification from Mr. Campbell that the change in the Table of Dimensional Standards regarding building height had to do with the fact that the RSA had been wrongly identified in the existing Ordinance.

Bill Hall, Smith Park Lane, noted that the frontyard setback in the Central Business District had previously been set at 0 ft, but was now proposed to be 15 ft. He spoke in some detail about the need for the setback, especially from a public safety perspective. He noted that other buildings in the area were set back 15 ft, and said this was a good distance.

Councilor Leach MOVED to close the public hearing. Councilor Julian Smith SECONDED the motion, and it PASSED unanimously 7-0.

Chair Niman noted that Planning Board Chair Bill McGowan was present, and thanked him for attending.

Councilor Julian Smith MOVED to approve ORDINANCE #2008-02 amending Sections 175-7, Definitions; 175-53, Table of Uses; 175-54, Table of Dimensional Standards; and 175-55, General Dimensional Controls of the Durham Zoning Ordinance. Councilor Henry Smith SECONDED the motion, and it PASSED unanimously 7-0.

- B. **PUBLIC HEARING AND ACTION ON ORDINANCE #2008-03** amending Section 132-5

“Veterans’ Tax Credit”, Chapter 132 “Tax Exemptions and Credits”, Sections 132-4 Service-Connected Total Disability, 132-5 Veterans’ Tax Credit, and 132-6 Surviving Spouse of the Durham Town Code by increasing the tax credit amounts

Councilor Stanhope returned to the table.

Councilor Julian Smith MOVED to open the public hearing. Councilor Carroll SECONDED the motion, and it PASSED unanimously 8-0.

Administrator Selig provided background on this issue, noting that it had first been introduced at the February 18th Council meeting, when he had provided the Council with a draft ordinance that proposed increasing all service-related tax credit amounts incrementally over a period of 4 years to their maximum amounts.

He said the Council had moved Ordinance #2008-03 on first reading, as amended, and said this amended version of the Ordinance recommended that maximum credit amounts of \$2,000 be provided to both the service-connected total disability and the surviving spouse as of April 1, 2008. He said the Council had also decided to implement the veteran’s tax credit incrementally by \$100 per year over 4 years, starting at \$200 in 2008.

Councilor Stanhope received confirmation that although he was a veteran, he did not have to recuse himself on this Agenda item.

Bill Hall, Smith Park Lane, said that as a veteran, he appreciated the Council’s consideration of this matter.

Councilor Leach MOVED to close the public hearing. Councilor Morong SECONDED the motion, and it PASSED unanimously 8-0.

Councilor Julian Smith MOVED to approve ORDINANCE #2008-03 amending Section 132-5 “Veterans’ Tax Credit”, Chapter 132 “Tax Exemptions and Credits”, Sections 132-4 Service-Connected Total Disability, 132-5 Veterans’ Tax Credit, and 132-6 Surviving Spouse of the Durham Town Code by increasing the tax credit amounts. Councilor Peter Stanhope SECONDED the motion.

Councilor Carroll said that since the last meeting, she had researched what other towns in the area were doing concerning this, and said what was proposed was right in line with what these other towns were doing. She also said she hoped that the service-connected total disability credit could be made even higher in the future.

The motion PASSED unanimously 8-0.

The Council stood in recess from 8:25-8:30 pm

- C. PUBLIC HEARING on an erosion control plan and improvements for Jackson’s Landing recreational area and action on RESOLUTION #2008-08** authorizing the acceptance and expenditure of \$257,672 in unanticipated revenues in the form of grant funds from the Natural Resources Conservation Service for use in making improvements to Jackson’s Landing

Councilor Henry Smith MOVED to open the public hearing. Councilor Carroll SECONDED the motion, and it PASSED unanimously 7-0 with Councilor Morong not voting because he had not yet returned to the table..

Administrator Selig said the Jackson's Landing Committee would provide an update on the changes made to the plan since the last time they had discussed it with the Council.

Committee member Dwight Baldwin reviewed the recommendations that had been developed for Jackson's Landing, and noted those that could be implemented with the proposed plan and available funds. He emphasized that over the past two years, the entire community had been asked to provide their input, and said the Committee had continued to listen to suggestions up to the present time.

Mr. Baldwin said some recent suggestions had been considered and were going to be adopted. He also noted that some additional changes to the plan might be required by the State and the Federal government, as the wetland permit application was reviewed.

Committee member John Parry said this had started as an erosion control project, but said a number of things had been included in it that would provide recreational benefits. He said the park would be a good investment for the Town, given its location within walking distance of central Durham. He also said this would be a multiple-use site, where residents would be able to participate in a variety of different activities. He noted that the Town has taken over management of the ice rink, which would bring in revenue for the Town. He said he felt that many of the improvements proposed for Jackson's Landing would make the ice rink a more usable place, and would increase the economic viability of the rink for the Town.

Mr. Parry said the recreation benefits from the proposed changes to Jackson's Landing were important for the welfare of the community. He provided details on this, and said the most common comment from the public was the importance of doing this to make the waterfront a more attractive place to go.

He said the existing boat ramp was in disrepair, and said the new ramp would be similar to what existed at Adams Point. He provided details on this, and said it would be more usable, and easier to maintain.

He provided details on the trail system that was proposed, which would connect with the various uses in the area. He also said the plan greatly improved the efficiency and safety of parking, which would enhance the recreation experience on the site. He said the plan would help the major user groups of Jackson's Landing, but also noted that the site would accommodate future uses. He provided details on this.

Mr. Parry said he was very impressed by the planning effort that has gone into this project, stating that the Committee had received some really good professional help from Robbi Woodburn, Mike Sievert, Dwight Baldwin, Mike Lynch and others. He said this had made all the difference.

He said Ms. Woodburn would present the changes that had been made to the plan since the

previous discussion with the Council. He said the Committee had received good input, and said it would continue to receive input from residents, as information was received from State and federal agencies.

Committee member Robbi Woodburn said one change to the plan was to make the parking spaces for trailers, next to the boat house, 12 ft wide instead of 10 ft wide. She also said the Committee had heard the comments concerning the turnaround issue, and said as a result, they had moved the spaces 20 ft into the lawn area.

She said there had been a lot of comments on the issue of overflow parking for trailers. She said it had been determined from discussion with UNH that during its peak use times, hockey was not a big use of the site, so there could be shared parking. She said the parking lot for the rink could be used for overflow parking.

Ms. Woodburn noted a question she had received during the break concerning the issue of permeable paving. She explained that when the project had originally been conceptualized, it had been thought it would be good to use permeable paving. But she said test pit results had indicated that the water table was too high to provide the reservoir area needed under the pavement. She said the current plan used asphalt for the turnaround and the trailer parking spaces. She said these areas pitched back to the boat house, explaining that there was a vegetated swale there that would treat the water and then release it to the wetland.

Bill Hall, Durham, said there was a 50 ft radius for turning, until UNH parked their boats. He said one couldn't get them to move these boats. He also said with the 40 ft boat he had, he didn't think he would be able to turn around in the back parking lot. He said this plan, which was not well thought out, would take the existing bad situation and make it next to impossible.

John Churchill, 30 Piscataqua Road, noted that he lived in Herb Jackson's old house. He thanked the Committee for going through this long planning process. He said he thought the plan was good and was well thought out. He said it addressed the two immediate problems, the public safety issue at the ice rink and the soil erosion problem. He said he didn't see much point in having a boat launching area if the erosion continued. He noted that there was currently no shoreland buffer there, and said the site should follow the Shoreland Protection overlay provisions.

Mr. Churchill said he had experience with turning boats around, and said he couldn't think of any sites where a boat could be swung around the way some people would like. He said the Committee had been responsive on this issue, and had come up with some viable alternatives.

Mike Hoffman, Durham Point Road, said that on behalf of the parents of kids who now played hockey or would play it in the future, he thought the plan that had been developed was fantastic. He also said his son was a rower, and said the existing parking at the site was dangerous. He said what was proposed was a vast improvement. He stressed that the Town really needed to take care of the environmental issues at this site. He thanked the people who had put all of the work into this project.

Robin Mower, Faculty Road, asked if someone could address some of the points that Mr. Hall had made, and was told that Ms. Woodburn would address them.

Mark Lessard, 10 McGrath Road, said he was on the Jackson's Landing Committee, and also noted that he used to be a rowing coach. He said the plans for the site, with increased green space, would make this into a beautiful spot, and said this would be greatly appreciated. He said although this meant having to give us some parking, the benefits would be for everyone, and said the park would be well used.

Charles Ward, 22 Old Piscataqua Road, said his family had lived near Jackson's Landing for almost 20 years, and said he had spent a lot of time walking on the site. He said he was very pleased with the plan, and noted that his son had been on the Committee. He said he thought the project was viable, and would be able to handle the boats. He agreed that it was tough to put big boats in there, but said he seldom saw big boat trailers there, and said most people used the site for canoeing.

He said it was good to see that the plan had been funded. He said one of the biggest problems on the site had been safety issues concerning parking for the ice rink, and said the plan that was proposed should solve a lot of problems. He also said one of his biggest concerns had been the idea of overflow parking further down Old Piscataqua Road.

It was clarified that that idea was now off the table.

Jerry Dee, 46 Woodridge Road, said he was pleased that the parking issues had been addressed. He said it was a great plan, which was long overdue. He said the plan would make Jackson's Landing a wonderful place to go.

Steve Nadeau, Emerson Road, spoke about the tensions between boaters and rowers at the site. He also provided details on the limited boat ramp facilities in the seacoast area, stating among other things that the only all tide ramps were basically in Rye, Elliot, and Newington. He said his concern was that Jackson's Landing was one of the only resources in Durham for people with motorized boats. He said the plan did represent some improvements for the site, but said he hoped that the Town realized that the site was an asset for motor boaters, just as it was for other users, and that it should be available to all users.

Ms. Woodburn provided details on the dock in response to some previous comments. Concerning the issue of conflicts between UNH rowers and boaters, she said that if there was a different design for the boathouse, the conflict could be addressed. But she said the situation was what it was, and said they could only go so far to fix the problems. She said that regarding the 50 ft radius, it wasn't expected that it would be a traffic circle, but said there would be enough room to allow half turns.

She spoke in detail about rowing events, and the fact that there was conflict with boaters during these times. But she said this overlap in use was not great, and was a minimal inconvenience, which was outweighed by the benefits to the Town. She also said that although she wished there could be a turnaround on the street, this wasn't possible. She said trailers would have to go into the overflow area, and then back out. But she said she envisioned that it was UNH trailers that would be back there, and said the drivers with those trailers were very skilled.

Councilor Henry Smith noted that some of the proposed green area had been compromised for

the larger parking spaces, and Ms. Woodburn said that was correct.

There was discussion on this issue of parallel parking on the road. There was also discussion as to whether there was a cross walk on the plan, and that it needed to be there.

Councilor Morong spoke about discourteous behavior by some rowers when the boaters were trying to launch their boats at Jackson's Landing.

Ms. Woodburn said they all needed to be courteous, and said they all were neighbors. She said no one had anymore rights than anyone else to use the landing.

Councilor Morong said people did need room to launch their boats, and Ms. Woodburn agreed.

There was discussion that installation of the flagpole shown on the plan would be an additional expense.

Councilor Carroll asked what the timeline for the project was if it moved forward, and Public Works Director Mike Lynch said the work would be done this summer. Councilor Carroll noted that there were agency approvals that needed to happen, and asked if this would happen quickly enough.

Mr. Lynch said the wetland permit application had already gone to DES, and said this would take about 60 days. He said the Committee might have to come back to the Council, given that the permit would dictate some of what happened on the site.

Mr. Hall said if the rowing activity at the boat house was not there, this might be a workable plan. He provided details on the conflicts because the activity was there, and also spoke about traffic problems he expected on the site, including conflicts between pedestrians and cars on the roadway.

There was discussion about this with Ms. Woodburn.

Committee member Dennis Byrne said he thought this was a good plan that made a lot of sense. He said that as a UNH representative on the Committee, he knew that the UNH crew team was more than cognizant of the issues they caused at the site. He said this would be reconciled based on the public need. He said they were willing to make accommodations, and also said if a member of the team was rude, this needed to be brought to their attention, and would not be tolerated. He said he recommended passing the Resolution.

Councilor Henry Smith said the rowing crew were outstanding young people, from his personal experience.

Councilor Morong said he agreed with Mr. Hall that there could be conflicts between pedestrians and cars, noting he didn't see a designated pedestrian area.

Ms. Woodburn said the roadway was in fact too narrow, but said there was a pathway for pedestrians through the woods to the parking area. She also said that hopefully, with proper signage, they wouldn't have too many people going down there.

Councilor Morong agreed that signage would be a good idea, and Councilor Leach said that people could be encouraged to use the new trail.

Councilor Peter Stanhope MOVED to close the public hearing. Councilor Henry Smith SECONDED the motion, and it PASSED unanimously 8-0.

Councilor Leach MOVED to approve RESOLUTION #2008-08 authorizing the acceptance and expenditure of \$257,672 in unanticipated revenues in the form of grant funds from the Natural Resources Conservation Service for use in making improvements to Jackson's Landing. Councilor Needell SECONDED the motion.

Councilor Leach received clarification that the total cost for the project was \$317,000, the grant was for \$257,000, and that the difference would be made up through the Conservation Commission's conservation fund.

Councilor Carroll said it was important to acknowledge this use of conservation fund money for this project, and said this was money that wouldn't have to come from property taxes. She said it was wonderful that the Town had accounts like this with money that had been set aside, and she said the conservation fund was doing some wonderful things. She thanked the Conservation Commission for stepping forward to correct the erosion problem, and said what was being provided was a large portion of the money in the conservation fund.

Councilor Leach said she supported this plan, and said she agreed with Mr. Parry that this fit with the Town's recreation plan, and that it would make this site more of a recreational venue for the community.

Councilor Stanhope said this plan did a lot of good things, and said it was therefore hard to be opposed to it. He said there was a degree of chaos at the site now, and said he was not sure that this would be cured with this plan. He said this would become a lovely spot to have a picnic, but said cars would come there as part of this. He also said the row boats were often left out longer than had been indicated by Ms. Woodburn, and said the long term concern was that this would become a nuisance, which would require policing and signage.

He said that in general, he could support this resolution, but with the caveat that department heads would have to work very hard to make this work. He said public education would be required, and said the Town might have to put a police office there at times, for example during rowing regattas and other high intensity activities.

Councilor Morong said he was pleased that the concerns that had been brought up had been considered and addressed by the Committee. He said Ms. Woodburn and others had done a lot of work on this plan, and said he appreciated this. He said there were parts of the plan that worried him, and said he was not 100% on board with it. He said he liked the erosion control measures, and the parking for the ice rink. He said that overall, it was a good project, and would support it, with some reservations.

Councilor Leach noted that the Council was voting on accepting the funds for the project.

Councilor Julian Smith asked what the connection was between acceptance of the funds that evening and the revised plan. He also asked if there was any possibility of amending the plan further, or if the Council was adopting the plan before it, which was a good one.

Administrator Selig said both were being done together in order to have one public hearing. But he said once the permit came back, the Committee could provide the Council with an update, at which point there would be one final opportunity to discuss the plan.

Councilor Julian Smith said perhaps the plan could be tweaked further to show parallel parking, etc., and there was brief discussion on this.

Councilor Henry Smith said he would not be surprised if there were problems at the site because of the various uses, whether these problems were anticipated or not. He said he thought the Town would have to work hard to manage the site. But he said he would like to give the Committee a huge vote of thanks for the outstanding work the members had done. He said this was an excellent plan, and said he was very much in favor of it.

Councilor Carroll agreed, and said it was wonderful to see another area of Town where members of the community could come to. She thanked the Committee for getting the grant for this project, and thus saving the taxpayers that amount of money. She also thanked Mr. Lynch for his work regarding the grant and other things that made these kinds of projects possible.

Councilor Needell thanked the Public Works Department and the Committee for the grant and all their work on the plan. He said if problems occurred, some of which had occurred in the past, this would involve some expense in the use of police officers to address it. He said he assumed these issues could be addressed when they occurred. He said what he was hearing was that the parties involved were cognizant of the problems, and he said the Town would have some recourse if these problems continued.

Councilor Morong suggested that the dates of the rowing regattas could be put on the Town listserv.

Chair Niman said he was one of the original members of the Committee, and could attest to the hours the Committee had put into this project. He said the Town was blessed to have these volunteers. He said he had supported this project from the beginning and hoped to see it completed.

He also said the Town needed to look at this project from a broader perspective. He noted that UNH has generously kept its pool open so residents could use it, and he said if the price the Town paid for this was some inconvenience for boaters when there was a regatta, that was a good tradeoff. He said he wished that the boathouse, etc. could be reconfigured, but said they had to make the best of the situation, and again, look at the broader context. He said UNH did some wonderful recreational things for the Town, and said he was therefore supportive of having the Town do something for UNH as well.

The motion PASSED unanimously 8-0.

- D. Discussion regarding draft 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

Administrator Selig reviewed the history of this issue, and outlined the 3 phases of the project that were planned as part of the Tax Incremental Finance (TIF) district. He said the phase that impacted the developer was getting water and sewer out to Stone Quarry Drive, noting that this was needed in order to allow the density the owner wanted.

He said during discussion about TIF, the Council had discussed the idea of the developer providing surety of some type to the Town, in case the Town took out a bond and there was then insufficient value generated from the property to cover the payment on the bond. He said the owner had now declined to provide this surety, and he provided some details on this. He then spoke about an alternative approach he had put together to protect the interests of the Town while at the same time allowing the development to remain viable for the owner. He explained that the approach involved using 4 of the lots of the Stone Quarry Drive subdivision as the surety the Town needed, and he explained this approach in great detail.

Administrator Selig said another issue was the 4-year exemption the developer had from having to abide by the existing Zoning Ordinance. He said the subdivision known as Stone Quarry Drive was approved in April 2004, just prior to a number of Zoning changes that if applicable to this property, would serve to scale back what would be possible to construct on the site.

He said that unless the Town was certain that there were 15 buildable lots, it should exercise caution in approving the agreement with Rockingham Properties. He said if the Council wanted absolute protection for the Town, it should insist on a surety, but said this might kill the deal. He said he believed the approach he had put together provided reasonable protection for the Town, and allowed the development to move forward. He asked the Council to let him know whether it was comfortable with what he had proposed.

Councilor Needell MOVED to strike the 10:00 adjournment time. Councilor Julian Smith SECONDED the motion.

Councilor Stanhope MOVED to amend the motion, and to adjourn the meeting at 10:30 pm. Councilor Morong SECONDED the motion, and it PASSED 7-1, with Councilor Needell voting against it.

The amended motion passed unanimously 8-0.

Councilor Stanhope said he had supported the TIF district, and said he and others who had supported it had agreed that the Town must be protected, if the district went forward. He said the numbers provided by Administrator Selig in his alternative approach were Pollyannaish, and he provided details on this. He said he was against this, and said the exposure to the Town was too great, given the bond market. He said what could result was that the Town would have 4 unmarketable lots, and said he hoped the Council would put an end to this idea immediately, and not waste time with something that did not have sufficient financial strength.

Councilor Morong said he had supported the TIF district previously, but said he was against what Administrator Selig had now proposed.

Councilor Needell said he agreed with both Councilor Stanhope and Councilor Morong, but complimented Administrator Selig for putting together a reasonable modicum of protection for the Town. But he was there were representations throughout this process that there would be more protection for the Town than this, and said he couldn't support what Administrator Selig had proposed.

Councilor Leach said that before she had read Administrator Selig's memo, she had felt the same way other Councilors did. But she said she thought Administrator Selig had done a good job on what he had put together, and said it didn't put the Town at as much risk as she had expected. She said the approach provided more than a reasonable modicum of protection for the Town, and said she was not strongly opposed to it, also noting that she was not strongly in favor of it either.

Councilor Henry Smith said when he had read that the developer had declined to provide surety, this was a red flag. He said he felt that the Town had to have a surety, and had to say no to the project if it didn't have it. He said there were fluctuating circumstances regarding the housing market, the bond market, etc., and said he couldn't agree to this if the developer didn't come through.

Councilor Julian Smith said if this assurance was not forthcoming, the process should stop.

Administrator Selig said his perception had been that it was a real goal of the Council to go forward with the TIF, and he spoke in some detail about this. He said he felt that the document he had developed substantially protected the interests of the Town, it did so although it did so on an order that was less than a surety did.

Councilor Carroll said she agreed with other Councilors that they had to have sufficient protection for the taxpayers.

Councilor Leach said there was protection for the taxpayers, stating that there were other ways to do this other than with a surety. She said she didn't feel Administrator Selig would have gone down this path if he didn't think so.

Administrator Selig said he felt the number he had come up with concerning the property values was reasonable, but noted that they were entering a period where there was a softening of the real estate market.

Councilor Needell said he didn't disagree with Councilor Leach that this was a valid attempt Administrator Selig had made, and that there was a reasonable chance of success. But he said that at the meetings where the TIF district was discussed, assurances were made over and over again that there would not be any risks to the Town. He said it was always said that such risk could not occur in a properly structured TIF district. He said the Town had to hold up its end of the bargain now.

Councilor Julian Smith said residents would be a lot less afraid of TIFs in the future if the Town could politely back away from this, when it hadn't seen the assurances that had been expected.

Councilor Leach asked what happened from here.

Administrator Selig said he could go back to the owner and say the Town needed to be provided with a surety, noting that he had not wanted to provide this to date. He also said that regarding the ZBA issue, he had planned to write a letter in favor of granting a variance, given the fact that the Town Council had envisioned development there. But he said he wanted to make sure the Council was comfortable with that. He said that assuming the variance was granted, and the developer could still get 15 lots, if the owner wanted to provide a surety, there would be a new agreement.

Councilor Needell received clarification that the variance request said the new Ordinance applied, and the applicant was seeking relief from it. It was noted that the issues concerned setbacks and lot coverage.

Councilor Henry Smith said he questioned the idea of the Council sending a letter as an attempt to influence the ZBA.

Administrator Selig said that in such cases, the Town had a perspective, and the Council was the voice of the Town. He said he would represent the Town's perspective that it was in the best interest of the community to grant relief from the new Zoning Ordinance. But he said the Council should raise its questions on this now, if it was uncomfortable with this approach.

Councilor Stanhope said he agreed with Councilor Henry Smith, and also said Administrator Selig would be expressing the interests of the Council in a letter, not the interests of the Town. He said the letter would contradict the Council's previous adoption of the new Zoning Ordinance, which had been done with the best interests of the Town in mind.

Chair Niman said he disagreed. He said when he had voted in favor of the new Zoning Ordinance, he knew that the Stone Quarry Drive subdivision had already been approved, and that those rights would vest, so voting on the new Zoning Ordinance wouldn't take away those rights.

He said if the Town had been more expeditious in approving the TIF, the developer could have built the road, and the rights would have vested, so this wouldn't be an issue now. He said because the Town was new at the TIF business, the process took longer than he personally would have liked. He said getting relief from the ZBA was as much a function of this process as anything else, and said he would hate to see the property owner victimized because of the Town's inexperience with this process.

Councilor Needell said he didn't disagree with a lot of what Chair Niman said, but he said the 4-year limit was not the Council's doing. He said one could argue that the process wasn't as fast as it should have been, but he said it was what it was. He said it was an unfortunate time limit, and said the question was how the developer went forward. He said if the Council expressed its will concerning this, he didn't have a problem with that. He noted that the ZBA

could ignore this. But he said he didn't think he was ready to agree to a letter, when he didn't know what the variances would be for.

Councilor Carroll said before a letter was written, the Council should speak out, as the representatives of the Town. She said they had nothing to go on concerning the variances being requested. She urged Administrator Selig not to write a letter before the Council could vote on something concerning this.

Councilor Henry Smith said he agreed with Councilor Carroll, and also said he disagreed with casting the owner in the role of victim.

Councilor Carroll said Mr. Garvey was an experienced developer, and knew how long these kinds of things could take. She also said she didn't feel the Council had been negligent in terms of the length of this process. She also said everyone assumed that if things had happened sooner, everything would have worked out. But she said this might or might not have happened.

Councilor Leach said it might be helpful to provide the ZBA with some information. She didn't see how the ZBA could make a decision without the broader view of how the Town saw this.

Councilor Henry Smith said he disagreed, and said the ZBA went by the Zoning Ordinance, not by what the Council thought.

Councilor Needell MOVED to extend the meeting. Councilor Julian Smith SECONDED the motion.

Councilor Needell said the Council need to give Administrator Selig some direction on this, and Councilor Julian Smith noted that two and perhaps three of the existing Councilors would not be at the next Council meeting because of the Election.

Councilor Henry Smith MOVED to go no later than 10:45 pm. Councilor Stanhope SECONDED the motion, and it FAILED 4-4 for lack of a majority, with Councilor Henry Smith, Councilor Stanhope, Councilor Julian Smith and Councilor Morong voting in favor of it .

The original motion PASSED 5-2, with Councilor Stanhope and Councilor Morong voting against it.

Administrator Selig said that in his letter, he would encourage the ZBA to look favorably upon the request for a variance, in light of the Council's interest in promoting the TIF district in this location.

Councilor Needell said he had no objection to a letter stating that the Council had approved the TIF district, and that it felt this was in the public interest. But he said he didn't know what the variance were for, so could not say they could be supported.

Councilor Leach said he didn't have a problem with trusting Administrator Selig to go further than that.

Councilor Morong said he would probably abstain on this.

Councilor Julian Smith said he agreed with Councilor Needell that a letter could be written setting forth the facts, and said that could include the vote at the table that Administrator Selig had been authorized to write the letter. He said he would be against any effort to sell the variance.

Councilor Needell noted that the ZBA's focus was narrow, and that what the Council provided concerning a variance request would need to address specifics.

Councilor Carroll said one of the facts was that the Council was not moving forward with the agreement that evening, and was in a different place now than it was when this process started.

Chair Niman said he agreed with Councilor Leach regarding the draft development agreement, but said he thought the consensus of the Council was that the agreement as currently written was unacceptable to the majority of Councilors. He said that was different than saying that Administrator Selig couldn't craft an agreement that would be acceptable to the Council.

He said the facts that should be provided to the ZBA was that the current agreement was unacceptable, but that the consensus of the Council appeared to be to continue to talk with the developer. He said he would have no problem with providing a fact like this. He asked if the Council wanted Administrator Selig to write a letter that stated these facts, so the ZBA had full information in order to make a decision.

Councilor Stanhope said this would mean voting on a letter that he hadn't seen.

Councilor Needell said he was hearing that Councilors wanted to convey to the ZBA the Council's support of this development throughout the process they had all gone through, and said he was also hearing that the letter shouldn't reference the specific variance requests. He said the ZBA would have to address the five variance criteria, and he said the public interest was only one of these.

Chair Niman asked if the consensus was for the Council to proceed along the lines of what Councilor Needell had said.

Councilor Carroll said she would be happy without the letter being sent.

Councilor Morong said he agreed, and said he thought the developer would know the facts.

Councilor Needell MOVED that the Town Administrator send a letter to the ZBA outlining the facts to this point. Councilor Julian Smith SECONDED the motion.

Councilor Julian Smith received confirmation that this kind of letter had been sent to the ZBA by the Town Council in the past.

The motion PASSED 5-3, with Councilor Stanhope, Councilor Morong, and Councilor Carroll voting against it.

E. Discuss possible ideas for simplifying and streamlining the Town's current regulatory process

The Council ran out of time before it could discuss this matter.

X. New Business

Other business

There was no other business.

XI. Nonpublic Session (if required)

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

XIII. Adjourn

Councilor Morong MOVED to adjourn the meeting. Councilor Carroll SECONDED the motion and it PASSED unanimously 8-0.

Adjournment at 10:45 pm

Victoria Parmele, Minutes taker