

This set of minutes was approved at the Town Council meeting on April 21, 2008

**MINUTES
DURHAM TOWN COUNCIL
MONDAY, MARCH 17, 2008
DURHAM TOWN HALL – COUNCIL CHAMBERS
7:00 PM**

MEMBERS PRESENT: Chair Neil Niman; Councilor Karl Van Asselt; Councilor Jerry Needell; Councilor Julian Smith; Councilor Henry Smith; Councilor Peter Stanhope; Councilor Cathy Leach; Councilor Doug Clark

MEMBERS ABSENT: Councilor Mike Sievert

OTHERS PRESENT: Town Administrator Todd Selig; Town Engineer Dave Cedarholm; Business Manager Gail Jablonski; Lorrie Pitt, Town Clerk-Tax Collector

I. Call to Order

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

II. Approval of Agenda

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

Councilor Needell noted that there was an agenda item that needed to be completed that evening, and suggested that the Council therefore delete the requirement that the meeting adjourn by 10:00 pm.

Councilor Needell MOVED to delete the requirement that the meeting adjourn no later than 10:00 pm. Councilor Julian Smith SECONDED the motion.

Chair Niman said he hoped the Council would support this amendment, noting that there was an item under Other Business concerning the land use change tax allocation that was time sensitive. He provided details on this.

Councilor Henry Smith MOVED to amend the motion to say there would be an 11:00 pm adjournment time. Councilor Peter Stanhope SECONDED the motion.

Councilor Needell said he didn't see the reason to set an adjournment time, because the Council needed to complete the Agenda items.

The motion FAILED 2-6, with Councilor Henry Smith and Councilor Stanhope voting in favor if it.

Councilor Needell's motion to amend PASSED 7-1, with Councilor Henry Smith voting

against it.

The motion to approve the Agenda, as amended, PASSED unanimously 8-0.

III. Swearing in of Council Members

Town Clerk Lorrie Pitt swore in new Town Council member Doug Clarke and re-elected Councilor Julian Smith. Other Council members re-stated their vows to serve the Town as part of the swearing-in ceremony.

Chair Niman noted that new Council member Mike Sievert, who was not yet at the meeting, would be sworn in separately by Ms. Pitt.

IV. Selection of Council Chair and Chair Pro Tem

Councilor Stanhope MOVED to nominate Councilor Neil Niman as Chair, and Councilor Cathy Leach as Chair pro tem. Councilor Van Asselt SECONDED the motion

Councilor Henry Smith MOVED to appoint Councilor Julian Smith as Chair pro tem. There was no SECOND.

The original motion PASSED unanimously 8-0.

V. Special Announcements

No special announcements

VI. Approval of Minutes

February 18, 2008

Postponed

VII. Councilor and Town Administrator Roundtable

Councilor Leach said she had been hearing a lot from residents concerning the condition of the Town's roads, and asked Administrator Selig when they would be fixed, and what funding was available for this.

Administrator Selig said the road situation in Durham and elsewhere in NH was challenging, especially this time of year, when there were problems as a result of the winter, but patching so early in the season, when it was still cold, washed away quickly when it rained.

He noted that one of the worst roads was the west end of Main Street, and said the major work on this road was scheduled to be done as part of the 2009 CIP program. He said the plan for 2008 was to do a thin overlay on that road as soon as the materials were obtained

and the weather permitted.

Administrator Selig said Cedar Point Road was another road that was in bad shape, in part because of ongoing drainage problems. He explained that instead of doing the usual grading of that road, available funds would be put toward finding an engineering solution. He noted that some repairs had been made to the road that day, and also said the Public Works Department would do the best it could to keep up with road problems elsewhere in Town.

Councilor Van Asselt said the Economic Development Committee (EDC) had met the previous week, and had discussed the Planned Unit Development (PUD) draft ordinance. He noted that the Planning Board had recently reviewed the draft as well. He said it had been decided that some members from both the EDC and the Planning Board would continue to work on the draft, and then go from there.

He also said EDC members would be meeting the following week with representatives from the Durham Evangelical Church concerning the property and its possible future use by the Town.

He said once this was determined, the EDC would then come back to the Council, and would see about having some architectural drawings and an appraisal done for the property.

Councilor Julian Smith received confirmation that Council members would be notified of the time and date of this meeting. He also noted that at the EDC meeting he had attended the previous week, it was mentioned that the Evangelical Church might be developing workforce housing on the Beech Hill property. He asked whether if this happened, there would be an effort to claim that this was a nonprofit enterprise.

Councilor Van Asselt said from discussion, it seemed that this would be a taxable property.

Councilor Needell commented on the fact that the Planning Board had discussed the PUD draft ordinance, and that their comments had been provided to the EDC. He said Board was receptive to following up concerning the draft.

Councilor Henry Smith noted that some candidates for the Oyster River School Board had spoken under the Public Comments section at recent Council meetings. He questioned whether this was appropriate, and asked that the Council discuss it at some point in the future.

Councilor Smith also pointed out a recent article on Durham, England, which was a sister city to Durham, NH.

Administrator Selig said he didn't think it was problematic for individuals to come in to speak on whatever topic they liked, as long as they confined the comments to 5 minutes. He said he felt this was covered under the Rules of Procedure. He also said he had recently been in touch with the Lord Mayor of Durham England, who wanted to visit all of the "Durhams" in the US. He said the Town would need to provide a formal invitation

concerning this, if there interest in such a thing. There was brief discussion by the Council on this.

Administrator Selig said he attended the recent EDC meeting, and noted that a Durham business person had come to the meeting to discuss a business problem. He said the EDC had provided some good guidance, and said the Committee was coming into own as an entity where people could get advice and guidance.

He noted that the annual Easter Egg Hunt would take place at Old Landing on Saturday, March 22nd.

Councilor Julian Smith said the Mill Plaza Committee would have what was probably its final meeting on April 9th or 16th. He said the Committee was getting ready to turn the issue of redevelopment of Mill Plaza over to the Town Council for its attention. He said the Committee was hoping to schedule a presentation to the Council on either April 21st or May 5th.

Councilor Smith said a second issue was that the Conservation Commission had been working hard to draft a statement about how it proposes to use future land use change tax revenues. He also said he hoped some members of the Conservation Commission watching the Council meeting live on DCAT would come to the Council meeting later that evening, regarding this issue. He said the deadline of April 1st regarding possible changes concerning the land use change tax was a surprise to him, and also said he didn't know if the Conservation Commission was aware of it.

Councilor Leach asked if the Council had to have a full-blown discussion on this issue that evening.

Administrator Selig said the last discussion on the land use change tax allocation by the Council had taken place in October. He said that on Friday, he and Chair Niman had realized that unless the Council made any possible changes to the allocation by April 1st, the 100% allocation to the fund would stay in place for the year. He noted that the point of the Council addressing this issue now was not that it was necessarily going to make a change in the allocation.

Councilor Julian Smith asked if such a change could be made, absent a resolution concerning it.

Administrator Selig noted that the Council had actually crafted a resolution, which it had never acted on. He said he and Chair Niman had not provided advance warning to the Conservation Commission, with the expectation that there would be no decision concerning the allocation until after there had been a discussion with the Conservation Commission.

Chair Niman explained that there might be a way to preserve the option to make a decision after April 1st, so he and Administrator Selig wanted to talk with Councilors about some procedural things that might be done to keep the option open. He said he wanted there to be a decision on the Council about the allocation, and not simply a

situation where they had run out of time to make a decision.

Councilor Leach said that had been her concern, to be forced into something, and said it would be better if the Council could wait until after it heard from the Conservation Commission.

Chair Niman said the Council could do this in a way where there could be a meaningful discussion.

Councilor Van Asselt said the Council should have the EDC and the Conservation Commission get together to compare their different land use maps.

VIII. Public Comments (NLT 7:30 PM)

Jay Gooze, 9 Meadow Road, noted a recent email he had sent regarding an excessive amount of trash on the ground near some student rentals. He said the Council should be aware of the image this presented to residents and visitors. He said he felt there should be some accountability, including getting UNH involved with this.

He also said that regarding the issue of the ongoing discussion regarding the most conservative and restrictive interpretation of the Zoning Ordinance that the Council should remember the purpose of that ordinance in order to protect the health, safety, convenience, and general welfare of the public.

Mr. Gooze noted that he was the Chair of the ZBA, and that there were two vacancies on the Board that needed to be filled this year. He asked residents to consider serving on the Board.

Chair Niman noted that applications were due by March 28th.

Regarding the trash issue, Administrator Selig thanked Mr. Gooze for his letter. He said he had forwarded the complaint to the Rental Housing Commission, the Durham Landlord Association, the University, and the Greek system.

Roger Speidel, 7 Nobel K. Petersen Drive, read an article from Fosters Daily Democrat regarding a startup company named Vkernel in Durham that would be moving to Pease Tradeport, and said the president said the company could employ 5000 people within the next five years. Mr. Speidel asked why Durham instead could build the company a building in the Industrial Park, and he asked the Council to imagine how that would expand the tax base. He said the EDC should be aggressive concerning this, and should make the company welcome.

Mr. Speidel said he loved living in Durham, and said he didn't want to be taxed out of the Town. He said he was on a fixed income, and was on the edge right now. He asked that the Council work with the School Board to get taxes down.

Mr. Speidel also said the UNH football program had 12 kids on the academic all conference team, and said they owed this to Councilor Leach.

Robin Mower, Faculty Road, thanked Mr. Gooze for addressing the issue of litter, stating that it was also a considerable problem on Mill Road.

On the issue of gateways and the broader issue of sustainability, she said she was delighted to see the election of two new Councilors who had spoken in favor of protecting Durham's gateways while respecting the property rights of those who owned land along them. She said Councilor Clark perhaps nailed the issue on the head when he spoke during the campaign about a broad definition of sustainability, which encompassed both environmental and economic challenges of both current and future generations.

She said this meant that any community-approved or community-financed investment should meet the criterion of enduring value for the community as a whole. She said that therefore, any project that might compromise either the rural character or the ability of taxpayers to shoulder the proposed burden, must be viewed through the lens of how it would stand up in long term.

Ms. Mower said she hoped the Council would keep this goal of enduring value in mind when it discussed current matters before it such as the development at Stone Quarry Drive, the replacement bridge in the Wiswall Historic District, and the meeting's agenda item on possible changes to the Zoning Ordinance.

Ms. Mower said Administrator Selig's outline of the proposed amendment to the manner in which the Zoning & Code Enforcement Officer should interpret the Zoning Ordinance pointed to some of the basic conflicts of interest that underlay all Zoning Ordinance interpretation.

She said that over the last year, she'd heard many complaints that the permitting process was onerous; that it was impossible to get anything built in Durham; that the Planning Board was too difficult; and that Tom Johnson was unreasonable. She said she had also heard that Mr. Johnson was among the most qualified code officers in the area. She said that over the past year, she had come to believe that, like a good fence, a good zoning ordinance made good neighbors.

She said the question now being asked was whether the mandate to the Town's primary enforcer of the Zoning Ordinance should be to rely on discretion or the ordinance. She said if the proposed amendment was to stand, it must stand up to situations other than those affecting housing. She asked the Council to provide the public with examples of situations in which the ambiguity referred to in the proposed amendment might be at issue.

Ms. Mower said it was her understanding that resident Art Grant had written a letter regarding this proposed amendment, and said given his past communications, it might be in the public interest to have it read into the record. She asked that the Chair read this letter when she had finished her remarks.

Ms. Mower noted that the Council would be considering appointments to boards and committees later at the meeting. She said if the Council was to consider appointing Doug Clark as Council representative to the Planning Board, that would help bring his vision to

reality. She said while he was new to the Council, she was confident that if he was willing to serve, his commitment to finding solutions that addressed the needs of conflicting parties would serve the Planning Board well, whether this year or in years to come.

Ms. Mower said she seconded Mr. Gooze's concerns regarding trash in Durham, particularly near the Brookside Apartments. She also spoke about the planned discussion on the land use change tax later in the evening, a topic that had not been on the Agenda. She said she was concerned that there had been inadequate time for the Conservation Commission to respond, and said she hoped the Council would find a way to postpone making a decision on the land use change tax, in order to allow the Conservation Commission to be a part of the discussion.

Richard Kelley, 47 Stagecoach Road, said regarding the draft stormwater ordinance and regulations that the current stormwater related regulations were limited. He noted that Durham was an MS4 community, and that the EPA was getting a lot stricter. He said both the draft stormwater ordinance and regulations had been brought before the Planning Board, and said the Board had then gone over them with the Town Engineer and the Town Planner. He said he hoped the Council wouldn't get too bogged down with the details of the draft stormwater ordinance, and that both the ordinance and the regulations could be put in place to protect the Town's waters.

XI. Unanimous Consent Agenda

RESOLUTION #2008-09 establishing regular Town Council meeting dates for April 2008 through March 2009

Councilor Needell MOVED to approve RESOLUTION #2008-09 establishing regular Town Council meeting dates for April 2008 through March 2009. Councilor Leach SECONDED the motion, and it PASSED unanimously 7-0. (Councilor Van Asselt was not at the table)

X. Presentation Items

A. Financial Report through 12/31/07 – Gail Jablonski, Business Manager

Ms. Jablonski first noted that revenues had come in within 1% of what had been estimated. She said about \$71,000 from the fund balance had been needed, which was less than what had been estimated. She said expenses were over by about \$46,000, which was attributable to the floods, and preparations for after the World Series.

She provided details on offsetting revenues, including donations, the selling of surplus property, and FEMA reimbursement for the floods. She also noted some revenue lines that did not reach budget estimates, including revenues from parking fees, which were running lower because people were apparently observing the parking limits.

Councilor Van Asselt received clarification that if someone didn't pay their water bill, a lien was put on the property.

B. Draft stormwater regulations – David Cedarholm, Town Engineer

Mr. Cedarholm thanked Mr. Kelley for his comments on the draft documents. He said Mr. Kelley had provided some useful comments and information, and said he would be working with him further on the documents. He then presented a slide presentation on the draft Stormwater Ordinance and regulations. (See the March 26, 2008 Planning Board Minutes for this slide presentation)

He said the Town's regulations already contained high standards concerning storm water management, and said he was seeing good stormwater management solutions in projects. But he said these regulations would streamline the process, and make it easier for the Planning Board to review projects, because developers would have more specifics on what was expected. He said the regulations would also provide a platform for innovation, and he noted the Bryant project as a good example of this.

He said he hoped to have the Council review and comment on the Ordinance, which the Town needed to pass before the NPDES Stormwater Permit ran out as of May 1st. He explained that the Ordinance defined the legal authority that enabled the Town to administer subdivision and site plan applications for developments that would alter stormwater conditions on a site. He said the Ordinance also enforced compliance with the Town's NPDES Stormwater Permit, and defined illicit discharges.

He said as a new Ordinance, it would need to be approved by the Town Council, and would be administered by the Town Administrator, after consultation with the Planning Board and the Department of Public Works. He explained that as with the Solid Waste Ordinance, the Stormwater Ordinance gave the Town Administrator the authority to develop and implement stormwater regulations and procedures for the implementation of the Ordinance.

He said he was working closely with the Planning Board to hone the language of the regulations, stating that in the end, it was the Board's document, because it reviewed the development applications, including the drainage analyses.

Councilor Needell said in the waiver section of the Ordinance, the criteria under which a waiver would be granted was critical, but said he didn't see anything on this. He asked where this would come from. He also asked what happened if the Planning Board and the Public Works Department disagreed concerning granting a waiver. He said the way this was currently written, both would have review and approval authority.

Mr. Cedarholm said that was a good question, and said he didn't know yet how it would be addressed. He said that possibly there could be a review committee, and said he would provide clarification concerning this.

Councilor Van Asselt asked if what was proposed went further than what was required by State and Federal regulations.

Mr. Cedarholm said in some respects, the Town regulations went further, but he said the existing stormwater provisions in the site plan regulations did so as well. He provided details on this. He said the existing regulations required adequate stormwater management for all developments. He noted that the federal rules required stormwater management for

projects that disturbed more than an acre of land, but said for towns like Durham that were seeing stormwater issues and flooding problems, it was important to require stormwater management for smaller acreages than that.

Councilor Van Asselt asked if Mr. Cedarholm had worked with developers on what was being proposed.

Mr. Cedarholm said yes, noting that he had asked MJS Engineering, which was working with Mark Henderson on his project, to consider how closely the proposed stormwater management design for their project met the regulations. He said he felt pretty confident that it would.

He said one thing being introduced with the regulations was the requirement that recharge occur on a site whenever possible. He said where the soils were such that they didn't allow sufficient recharge, and for sites already covered by structures and paving, recharge couldn't be required, but the development would still be required to meet water quality standards, concerning turbidity and phosphorus. He provided details on this, and explained that with little difficulty, small developments downtown, like Jenkins Court, wouldn't have a problem meeting the regulations.

Councilor Van Asselt said he felt the Town's requirements concerning impervious surfaces were absurd, and said it seemed that these regulations granted some relief concerning this. He asked if this was an accurate statement.

Mr. Cedarholm said it was an accurate statement. He noted the development in Greenland where the Sylvania plant had been located, where the site contained clay soils that didn't allow for much infiltration. He said an innovative design was developed for the parking lot there, which included pervious pavement for the entire parking lot. He said this meant the company was able to develop a property that previously couldn't have been developed because of the soils on the site.

Councilor Clark asked if this had any effect on existing properties that were adversely impacting impaired waterways.

Mr. Cedarholm said no, but said the Town might have to address this with the next permit cycle. He provided details on this.

Councilor Julian Smith asked when it was expected that the Ordinance would be adopted, and also asked whether there was a time limit involved.

Mr. Cedarholm said that ideally, the Ordinance would be adopted before May 1st.

Councilor Julian Smith said the reason he was asking this question was that there were still a lot of problems with the draft in terms of ambiguity, grammar, etc., having to do with the comprehension of the document. He said he wasn't talking about huge substantive changes that were needed.

Mr. Cedarholm said he would welcome Councilor Smith's assistance with making those kinds of revisions to the document.

Administrator Selig said this was a work in progress, and it was understood that the document was still in draft form. He said the goal that evening was not for the Council to move the document on first reading.

Councilor Julian Smith said if the Council agreed, he would go through the document with Mr. Cedarholm.

Mr. Cedarholm said that would be fine with him.

Councilor Needell noted that this ordinance was not part of the Zoning Ordinance, so the Planning Board had no formal role in the review of it. He said it was strictly a Town Council review process.

XI. Unfinished Business

- A. **PUBLIC HEARING AND ACTION ON RESOLUTION #2008-10** 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 as well as creating a “Margery J. Milne Expendable Trust Fund” in the amount of \$25,000 as prescribed in the Margery J. Milne Revocable Trust of 1995

Councilor Van Asselt MOVED to open the public hearing on RESOLUTION #2008-10 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 as well as creating a “Margery J. Milne Expendable Trust Fund” in the amount of \$25,000 as prescribed in the Margery J. Milne Revocable Trust of 1995. Councilor Henry Smith SECONDED the motion, and it PASSED unanimously 8-0.

Administrator Selig read the following letter from former Town Councilor Diana Carroll, who was a Co-Trustee of the Margery Milne Trust:

“Margery Milne was always pleased knowing that the property she and Lorus owned on the Mill Pond would one day be given to the town to forever remain a refuge for local flora and fauna.

In her Trust Margery requested that at the site a stone monument remembering the Milnes be placed and a wild flower garden be established at the base of the monument. The Trust provides money for this and for maintenance.

Milne Cousin, Paul Litt, and I as Co-Trustees will oversee this project working cooperatively with Public Works and town government. Julian Smith has offered to help find a piece of local granite and the president and several members of the Durham Garden Club have offered their services in establishing and maintaining the wildflower garden.

One goal for the monument and wildflower garden is to spend as little money as possible allowing for a maximum amount of money to be used for upkeep over the years. This

would be in the spirit of Margery and congruent with how she lived her life. The little things she did not spend money on became large gifts upon her death – large gifts such as the Milne gift to the Durham Public Library and now this piece of land.

I ask the Town Council this evening to accept the Milnes' land bordering the Mill Pond, generously bequeathed to the town, in the spirit in which it is given. Lorus and Margery Milne, long time Durham residents, who loved this "little town", as Margery called it, and have left for all who live in Durham now and those to come a place of natural beauty and serenity."

Councilor Van Asselt MOVED to close the public hearing. Councilor Julian Smith SECONDED the motion, and it PASSED unanimously 8-0.

Councilor Julian Smith MOVED to approve RESOLUTION #2008-10 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 as well as creating a "Margery J. Milne Expendable Trust Fund" in the amount of \$25,000 as prescribed in the Margery J. Milne Revocable Trust of 1995. Councilor Henry Smith SECONDED the motion, and it PASSED unanimously 8-0.

The Council stood in recess from 8:32 – 8:40 PM.

- B. FIRST READING ON ORDINANCE #2008-04** amending Chapter 175 "Zoning", Section 175-7.A. "Definitions" of the Durham Town Code by amending the definition of "Wholesale Sales" to insert the word "exclusively" so the definition will read "Wholesale Sales - Trade that involves the sale of merchandise, in bulk or large quantities, exclusively to retailers for resale or to industrial, commercial, or large institutional users.

Chair Niman explained that when the TIF district was approved, concern was expressed by some residents that strip malls could be built in that corridor even though retail wasn't allowed there, and there was virtually no developable land. He said at the time, Councilor Needell had also said there was concern about BJ's type stores coming in. He said this proposed amendment to the definition of Wholesale sales was therefore being brought forward, to alleviate residents' fears.

Councilor Henry Smith MOVED on First Reading Ordinance #2008-04 amending Chapter 175 "Zoning", Section 175-7.A. "Definitions" of the Durham Town Code by amending the definition of "Wholesale Sales" to insert the word "exclusively" so the definition will read "Wholesale Sales - Trade that involves the sale of merchandise, in bulk or large quantities, exclusively to retailers for resale or to industrial, commercial, or large institutional users, and schedules the public hearing for April 7, 2008. Councilor Needell SECONDED the motion.

Councilor Van Asselt asked why the Council was doing this, if retail sales couldn't really happen here.

Councilor Needell said whether this could or couldn't happen was a matter of interpretation. He said this issue had come up often in the election campaign and in public

comments and forums last year. He said some people thought the Zoning Ordinance could be interpreted to allow retail sales, and said whether space could be found for it was another issue.

He said the Planning Board's attorney, when pressed, said the Ordinance wording didn't prevent this kind of facility. He said he therefore felt the proposed change was reasonable. He said it was agreed that the intent was not to allow this, so it was reasonable to bring the definition in line with the intent, and to close a potential loophole.

Councilor Van Asselt asked how the size issue fit into this.

Councilor Needell said the size issue wasn't the concern, and said it was just that by adding the word "exclusively", this removed the possibility that there could be retail sales from this type of facility. He also said people were generally comfortable with the size restrictions.

Councilor Van Asselt said he assumed there would be a discussion on the fact that there were some people who thought it wasn't a bad idea to have this kind of use, on some large lots in the community where this kind of activity fit.

Chair Niman said the Council could move this on to public hearing, and could have that debate at that time.

The motion PASSED 7-1, with Councilor Van Asselt voting against it.

- C. Discussion between Council and Administrator in evaluating the Town's current regulatory process, including Section 175-9 (A) 13, the "Most Conservative or Restrictive" provision, of the Durham Zoning Ordinance

Chair Niman first explained that this issue was going to be discussed by the Council because a Councilor had requested this discussion. He also noted that there were three aspects of the current regulatory process that the Council had been planning to talk about, and said only one of them would be discussed that evening. He said he wanted the Council to speak about each of the three issues individually, and said the other two would appear on future Council agendas.

Administrator Selig noted that his Friday Update had included his communication to the Council on the issue of whether the "most restrictive" interpretation mandate was an area the Council wanted to ease, in order to make Durham a more business friendly environment. He suggested that instead of reviewing the details of that communication, the Council should move on to discuss the issue itself.

Councilor Henry Smith read a letter from resident Arthur Grant. In his letter, Mr. Grant said he wished that Town government would concentrate on keeping Town streets passable, controlling speeders and illegal parking, and cleaning up unsightly and environmentally destructive snow piles (i.e., Mill Plaza) and would stop cooking up special interest issues that only served to divide the community.

Mr. Grant's letter said the memo for the March 17 meeting of the Town Council regarding the application of Section 175-9-A-13 of the Zoning Ordinance was a prime example. He said this communication should have underlined:

- a) the fact that the "most conservative - most restrictive" clauses in our Zoning Ordinance had been in place for several decades and were not concocted as a part of the 2000-2005 Zoning Ordinance rewrite.
- b) the fact that Durham went through a period of many years when the incompetence and lack of accountability on the part of part-time and shared-use code enforcement officers resulted in "discretionary" judgments by code enforcement officers that produced most of the problems: occupancy, use, fire safety and health codes, etc., which had confronted Mr. Johnson, the Planning Board and the ZBA in recent years.
- c) the fact that the specific Durham Zoning Ordinance provisions described as "unnecessarily restrictive" were based on, and reflected the provisions of state law (RSA 676:14)
- d) the fact that Durham's Zoning Ordinance and State laws already provide for "flexibility" through the work of the Planning Board, the ZBA, and the courts.

Mr. Grant's letter asked whether in today's "business friendly environment," Durham had reached the point where it needed to organize and staff a pressure group to represent and advocate for the broad public interests of all of its citizens.

Councilor Peter Stanhope said this was an area he had had concerns about before being a member of the Town Council. He said he thought the existing language created a situation where Mr. Johnson didn't have the same flexibility that code officers had in almost all the other towns in the State. He said in his practice, he was frequently in code officers' offices, and said he had asked them how they conducted enforcement practices. He said in many cases, code officers cited situations where a measurement was slightly off, but was allowed because it didn't represent an unsafe, unsound, or unsanitary situation.

He noted the \$7,000 cost the Town had incurred in a specific code enforcement situation concerning boarders in a fraternity house, only to reach an agreement out of court that affirmed the fact that boarders had resided there for over 50 years. He said it would have been better if the code officer had the authority to sit down with a property owner at the outset, could investigate the history of a property, and could find common ground rather than simply saying a use was contrary to the Ordinance. He noted that the Town's legal costs were exceeded in 2007. He also said that in addition to the expense for the Town because of the existing language, there was the expense for property owners.

Councilor Stanhope said he was not advocating unsafe, unsound properties, and said Mr. Johnson was more than capable of ensuring that properties were in accordance with the code, and allowing some reasonable variance when this didn't represent something unsafe, unsound, or unsanitary. He said the current language didn't allow him to do this. He said it would be prudent to modify the language so Mr. Johnson had some degree of flexibility to waive requirements. He said he didn't think forcing everything through the courts was good government.

In response to a question from Chair Niman concerning a hypothetical situation regarding the three unrelated rule, and how a revision to the Zoning Ordinance language to say

“conservative “ might impact it, Administrator Selig said every case was case specific, involving unique circumstances. He said frequently, these were old properties, and the Town’s own record on it was sporadic. He said it often fell to the property owner to prove a use was allowed, or grandfathered.

He said the language he was suggesting, to use the wording “Take a conservative approach when ambiguity existed” , would give Mr. Johnson some slight discretion, but said this would be very limited. He said if there was no ambiguity in the language in the Ordinance in a particular instance, and the case was clear cut, it wouldn’t make any difference.

He said it would allow more flexibility if a property owner who had owned a building that had existed for many years had some documentation that showed a reasonable case for certain uses in the past. He said easing up slightly in terms of the language that was proposed would give Mr. Johnson a little discretion in situations like this. He said it would be important to provide specific examples of where there might be some discretion allowed.

Administrator Selig said the other issue was his perception that the Town Council over time had been moving from a position where it placed great weight on the historical value of the Town, on conservation, and on other characteristics identified in the Zoning Ordinance, toward working in more of a collaborative way with people wanting to develop their properties. He said he thought Durham needed to find a middle ground, which among other things would allow Town staff to work more with landowners.

He said he had already implemented a process , which had started with the Economic Development Committee, where the Town was starting to meet with landowners who would like to develop their property. He gave as an example recent discussions between the Town and manager of the plaza property, who wanted to open a fitness center in the space once occupied by Zyla’s. He said Mr. Johnson, Mr. Campbell, and the Planning Board had worked toward changing the zoning in the Central Business District to allow fitness centers as an allowed use. He noted that the idea was brought up at the Planning Board meeting on Wednesday, March 12, 2008 and the Planning Board agreed that this would be an appropriate use in the Central Business District.

He said another example of making the process user-friendly, for a use that was perceived to be desirable for the community, involved Mill Plaza. He said that at a recent Mill Plaza Committee meeting, the representative for the owner of Mill Plaza said the Town needed to be more user-friendly in terms of code requirements. He said they had then sat down and discussed details, and worked through a lot of the concerns.

Administrator Selig said another piece of the issue was that at the Housing Taskforce meetings about a year ago, the, landlords had consistently stated that there was a cloud over some properties in Town, given the strictest interpretation of the Zoning Ordinance, which essentially forced them to go to the ZBA.

He said the “conservative” language he had suggested would give Mr. Johnson some slight degree of additional discretion in cases that were really at the margins, which would

allow some relief for people who otherwise would be forced to go to the ZBA. He said that from a psychological standpoint, this language change would send the message that the Town was open to some innovations, in the Ordinance and in the way it would be enforcing it.

He said this would be a desirable message to send to the Planning Board, ZBA and HDC. He said a conservative interpretation would give everyone a slight degree of flexibility. He said there was nothing wrong with this interpretation, and said it would achieve a certain philosophical outcome.

Councilor Needell said he felt they had to be careful in terms of language. He said the existing language was very specific, and said nothing about granting waivers, or about ambiguities. He said he was confused by some of the new terminology, and said if there were ambiguities in the Ordinance they should be fixed.

He said he was concerned that they were focusing on the wrong part of this issue. He also noted that waivers were not the purview of the Code enforcement officer, and were solely the purview of the ZBA. He asked what difference it would have made if Section 175-9, A (13) had never been introduced. He said he was trying to figure out what problem they were trying to fix by addressing this line, and why the introduction of the idea of ambiguity as a piece of the puzzle had crept into this.

Administrator Selig said it wasn't possible to cover every possible scenario in an ordinance, so there would always be some ambiguity in it. He said in cases where there was this ambiguity, his perception was that the "most conservative or restrictive" mandate meant that when there was a gray area, it had to be determined that something was not allowable. He said he would like to see some discretion concerning the facts in a particular situation, and that they be allowed to speak.

Councilor Needell said if an issue was forced to the ZBA, that Board would still be bound by the same Ordinance, and it would still be the guiding document.

Administrator Selig said changing the language might have an impact in terms of changing the way the ZBA looked at a case before it. He also said that if the code officer could look at the merits of a case, and could conclude that a conservative interpretation was that he could allow something, this would save the property owner from having to appeal the decision.

He said right now, the language said the Town was there to protect the residents of Durham, and it was not the Town's concern if a landowner needed to expend funds to appeal a decision. He said he heard, especially from the landlords, that this created an environment in Durham that wasn't business friendly. He said he believed the majority of Councilors would like to promote redevelopment of properties, and said easing the language would facilitate that. He said it would send the message that the Town was more open than it had been to seeing development move forward.

Councilor Julian Smith asked if the word ambiguity appeared anywhere in the current Zoning Ordinance. There was discussion on this, and he said he hadn't come across it. He

said the reason he was asking this was that if the intent of what was being suggested was to make it easier for businesses to prosper, he would think the language they would want was that when an ambiguity existed, the Town would take the most liberal interpretation.

He said the language proposed “to take a conservative approach when an ambiguity existed” was an invitation for the code officer to say he saw an ambiguity. He said when there was a conflict between two regulations, that was when the most conservative approach was typically taken. He said conflict and ambiguity were two separate things.

Chair Niman said the question was whether the Council wanted to see some sort of change or no change, and whether if it did want some kind of change, it wanted to follow what Administrator Selig was recommending, or something different. He said if they wanted something different, he would like them to explain what that was.

Councilor Van Asselt said Councilor Needell was right, in that the Ordinance itself wasn't going to change. He said what was behind this possible change in the language was the meetings with the landlords, but said that whatever the wording changes were, this wouldn't change the neighborhoods, and code enforcement concerning the houses in them.

He said the problem was the amnesty issue, and what existed from the past because the Town had been incompetent in dealing with landlords, the number of allowed students, etc. He provided details on what landlords of existing properties faced if they came forward and showed what they had in terms of present uses.

He said the wording change might change what happened in terms of where the Town would like to see student housing development occur. He noted that developers of new developments were presently reluctant because they were afraid the Town would make things too difficult.

Administrator Selig said there were three solutions to the issues Councilor Van Asselt had raised:

- looking at changing to the definition of habitable floor area
- allowing bonus occupancy for properties with professional property management
- Hiring a neutral code officer who was oriented in Durham's rules and regulations, and having this person speak with owners of rental properties with previous letters from the Town, to see whether a use could be grandfathered or not. He said this would avoid having to put Mr. Johnson in the position where he was reviewing a plan, and also saw the existing use of property so therefore had to take an enforcement action.

Councilor Van Asselt said the real issue with these situations is more than how Mr. Johnson interpreted the Ordinance. He said if they were trying to get at the issue of what prompted much of the discussion the past year among the landlords concerning student housing, he didn't think tinkering with the language in the Ordinance as proposed would do it. He said good ideas had been brought forward concerning habitable floor space, 4-6 unrelated in properly zoned areas, area, etc. He said it would be more productive to look at them, which would translate into solving the landlords' problems with past history of properties, and addressing his own interest in seeing new student housing development in appropriate areas.

Councilor Mr. Clark asked if this “most conservative or restrictive” language was developed because of inconsistent oversight, or in order to constrain new development. He said if it was because of inconsistent oversight, it seemed that it could now be assumed that there would be more consistent oversight.

Administrator Selig said it had been in effect for decades, and said he didn’t know the full history of it.

Councilor Van Asselt said unless they wanted to change the Zoning Ordinance, he didn’t think this interpretation language would change things very much. He said it didn’t address the bigger issues the rental housing people were talking about.

Administrator Selig said one way to overcome some concerns among property owners about code enforcement was to encourage property owners to sit down with Mr. Johnson upfront. He said if people knew the requirements ahead of time, there would be better outcomes. He said Town staff would be trying to provide more outreach to encourage people to do this.

Councilor Henry Smith noted that there were people in Town who liked working with Mr. Johnson. He said regarding Councilor Stanhope’s comment on the ZBA boarding house application that he thought the ZBA had done a good job on this. He noted that he was Chair of the ZBA at that time, and said there had been concern about setting a precedent. He provided details on this. He said that in many cases, Mr. Johnson was under the gun because of things that were not done properly in the past. He said Mr. Johnson had been criticized for being too strict, but said he had been doing what he was supposed to do.

Councilor Smith said he was not opposed to some changes in the wording, but said he thought the Council should be very careful in its approach, and in terms of what it might get itself into.

Councilor Stanhope said that most municipalities had no directive language as to how the zoning ordinance would be enforced, and therefore relied on having competent people to carry it out. He said regarding the issue of ambiguity that what Mr. Johnson often faced was a long past record involving some of the properties in town, and this record was in conflict. He said Mr. Johnson presently had to take the most restrictive record, and rely on it as the standard. He said in the end, the Town incurred legal expenses in rebuilding the record.

He said as long as the “most conservative or restrictive” language was there, there was a tendency to avoid Mr. Johnson. He said if this language was taken out, this would create an environment where people would ask for inspections, which might mean there were safer properties. He asked whether the current system was good government, and said the current language was burdensome.

Chair Niman said he wanted Councilors to weigh in on how they wanted to proceed concerning this issue.

Councilor Julian Smith suggested that the simplest change would be to take out Section 175-9, A (13) entirely, as superfluous, and he said that was his recommendation.

Councilor Needell said regarding the issue of good government that the part he was concerned about was that the proposed change in the wording would leave resolution of an issue that now went to the ZBA with the code officer instead. He said the public had no input into that process, and said he was very reluctant to change that balance intentionally.

He said he didn't disagree with Councilor Julian Smith that taking this line out probably would have no effect. He said he wasn't sure whether he wanted to say he was in favor of that, because it would clearly be sending a message, which could be very bad. He said this language had been in the Zoning Ordinance for a long time, and said taking it out said the Town was moving away from the point of view of those who had cherished that language, and was saying there was a change in Durham.

Councilor Stanhope said he recommended taking Section 175-9, A (13) out.

Councilor Leach said she was not against taking out Section 175-9, A (13), but said doing so might be more alarming than the change proposed by Administrator Selig. She said she felt Councilor Stanhope had made excellent points concerning the change Administrator Selig had suggested. She said she would be in favor of either approach.

Councilor Van Asselt said he had no problem with taking Section 175-9, A (13) out. But he said again that whether it was left in or taken out, it still didn't address what he had been talking about, which was the real concern, if they were thinking in terms of the landlords and student housing development.

Councilor Henry Smith said he was not in favor of taking Section 175-9, A (13) out. He said he felt the better approach, if a change was to be made, was to adopt what Administrator Selig had recommended, based on what Attorney Mitchell had suggested. He said this amendment gave the code officer another guideline to follow.

Councilor Clark said he saw the problem with the existing language not about striking fear in peoples' hearts, but more about increasing bureaucracy, and sending more and more people to the ZBA. He said he felt this issue applied beyond rental properties, to any use. He said knowing that uses were changing in Town, he assumed the wording "most conservative and restrictive" meant the use almost had to be explicitly listed in the Ordinance. He asked if there could be interpretation of the spirit and intent of the Ordinance, in terms of uses that were allowed.

Administrator Selig said that depended, stating that in many of the Ordinance chapters, it clearly stated what uses was allowed, while in others, it did not.

Councilor Clark said he was in favor of taking a "conservative approach when ambiguity existed" rather than the existing "most conservative and restrictive" language. He said the existing language created levels of bureaucracy that wasted time and money.

Chair Niman said he was in favor of getting rid of "most restrictive and conservative", but

at this point was not willing to get rid of Section 175-9, A (13) entirely because there were too many people in the community who thought this language was doing more for them than it actually was.

He said the world was changing, and one thing changing in Durham was that there were large student housing companies that were interested in coming to Town. He said his concern was that if this happened, it would be difficult for downtown landlords to compete with them. He said this was an important issue for the Council to address. He said if the Town hand strung those properties, the landlords wouldn't put money into them, and they would get rundown, which would create even larger problems for families and other homeowners in the downtown area.

He said the Council needed to support the landlords downtown, especially those that managed their properties professionally. He said he hoped the Council could address this issue in more detail in the future, because otherwise, he was concerned there would be an even bigger nightmare in the future.

Administrator Selig said it was his understanding that the majority of Councilors were in favor of the "conservative" language he had proposed, or striking Section 175-9, A (13) altogether. He said based on this, he would bring forward a recommendation for the Council to consider, at a future meeting. He said this would be a Council initiated change, and said the Planning Board would also have a public hearing on it. He said he thought this would allow a healthy discussion on this issue.

Councilor Van Asselt asked if the other issues he had spoken about were still on the table, and if so, who would pick them up.

Administrator Selig said it was very problematic to waive a wand and grant amnesty. He said the language change he had recommended was a good first step, and he noted the other ideas he had listed could be discussed as well.

Councilor Leach said these issues and ideas could be discussed at the Council's goal setting meeting.

XII. New Business

- A. Annual appointments of Council representatives to the various Town boards, commissions, and committees

Chair Niman said he would like Councilors to state their preferences in terms of serving on these boards and committees, and said they would then go from there. He said he didn't know what Councilor Sievert's preferences were, and asked if anyone had spoken with him about this.

Councilor Julian Smith said he had spoken with him, and he had said he was definitely not interested in serving on the Planning Board.

Councilor Leach asked if Councilor Sievert was perhaps interested in serving as an alternate, and Councilor Smith said he didn't say.

Councilor Clark said his preference was to serve on the EDC, and said his second choice would be the Parks and Recreation Committee. He also said he was interested in serving on the Energy Committee or the School funding formula committee.

Councilor Stanhope said he would like to serve as a possible alternate on the Planning Board, and would like to serve on the Rental Housing Committee. He noted that the IWMAC currently was suffering from a lack of participation by residents, and said he had suggested in the past the idea of integrating it into the Conservation Commission, the Energy Committee, or the Durham Green Committee. He said if he was on the Cemetery Committee, the Rental Housing Committee and possibly the Planning Board, he would step aside from the IWAC.

It was noted that there were three openings on the IWMAC. Councilor Leach said perhaps a reason that membership was down was that many of their goals had been met.

Councilor Henry Smith said he was currently on the HDC and the Cemetery Committee, and would be happy to remain on both.

Councilor Leach said she would stay on the Parks and Recreation Committee, but was also willing to be on the Conservation Commission. She said she would also like to stay with the Churchill Rink Advisory Committee.

Councilor Julian Smith said he would like to serve on the Planning Board, noted that he had been on the Board five years ago. He said he would also like to serve on the IWMAC.

Councilor Needell said that having served on the Planning Board for three years, he would like someone else to serve now, especially given his upcoming busy schedule. He said he would be interested in serving on the Conservation Commission and the Cemetery Committee. He said he would also be happy to serve on the Energy Committee, and on DCAT if there were a vacancy.

Councilor Van Asselt said he wanted to stay on the EDC. He said he had been serving on the Rental Housing Committee, but would be happy to have someone else serve in his place. He said he would be willing to serve on the Planning Board. He said he was not interested in any of the positions on Town working committees because there were people more qualified than him to serve on them.

The following assignments were made to the Charter-established Boards and Town Working Committees:

Rental Housing Commission -Councilor Stanhope

HDC- Councilor Henry Smith

EDC - Councilor Clark

EDC - Councilor Van Asselt

Parks and Recreation Committee - Councilor Sievert

Conservation Commission -Councilor Leach

DCAT - Councilor Needell

Churchill Rink - Councilor Leach
Energy Committee - Councilor Needell
IWMAC - Councilor Julian Smith

There was discussion on the idea of consolidating the IWMAC with some other Town boards, It was noted that the conclusion of the Conservation Commission was not to do this.

Councilor Leach asked if it was important that the alternate Council representative to the Planning Board be at Board meetings.

Councilor Needell said it was important that both Council representatives be there, noting among other things that if the regular Council representative couldn't be there, the alternate Council representative was the only Board member who could vote in his/her place.

He also said it was important that whenever possible both Council representatives should be at Board meetings because of the length of some application processes. He said while the alternate Council representative might not be a voting member at most meetings, this person could be a full participant in discussions.

Councilor Van Asselt said he was saying yes that night to the idea of being on the Planning Board because there were 4-6 major projects that would be coming along this year. He said he felt the Board would really need to work with the developers of these projects to see what was possible, and should not take the most conservative approach.

He said he was concerned that Councilor Julian Smith's possible approach to these developments. He said he was concerned that the Council representative should give them every opportunity to be developed, and said whoever was on the Board should give both sides a fair hearing. He said that was the kind of representative he wanted to be on the Planning Board.

Councilor Julian Smith said he was on the Mill Plaza Committee, and was very much in favor of redevelopment, and in fact was in favor of making changes to the Zoning Ordinance in order to make that development happen. He said that when he was on the Planning Board, and the Berton application for apartments came before the Board, he was the only person on the Board who thought the project should be approved.

He said he was not opposed to development, but said if Councilor Van Asselt wanted the regular Planning Board appointment, he could take the alternate appointment. He noted that there was a lot of work that would be involved in writing and making revisions to ordinances and regulations, and said the Board would need someone to help with this writing. He noted that there were already some things coming to the Council that were not ready.

Councilor Needell referenced comments made by Councilor Julian Smith and Councilor Van Asselt concerning the role of a Planning Board member. He said as Town Councilors, they could be involved in changing an Ordinance, but he said their primary role as

members of the Planning Board was to deal with the Master Plan, and to vote on applications. He said he was concerned with how both of them were approaching this.

Councilor Van Asselt said that was a fair description of the role of a Planning Board member, but he said for some projects that were coming forward, the Planning Board needed, within the constraints of the Ordinance, to work with developers in a friendlier environment.

There was discussion that Councilor Stanhope had said he wanted to be an alternate Council representative to the Planning Board.

Councilor Stanhope said he was in agreement with Councilor Van Asselt philosophically. He also said he felt that Councilor Julian Smith had made an enormous investment of time on the Mill Plaza Committee. He said Councilor Smith had said he would be willing to take the alternate position, and said if the Council was happy with that lineup, that was fine with him.

Councilor Henry Smith noted Councilor Van Asselt's comment that Councilor Julian Smith had an anti-development bias, but said he was hearing a development bias from Councilor Van Asselt.

Councilor Van Asselt recommended that Councilor Julian Smith be the regular Council representative to the Planning Board, and that Councilor Stanhope be the alternate member. He said he wanted to be on the EDC, and said if Councilor Smith approached development projects in general the way he had approached the Mill Plaza redevelopment, he was ok with this.

Councilor Needell said he didn't want, as a Councilor, to ask Councilor Julian Smith to shepherd the Mill Plaza redevelopment project through the review process. He said he didn't feel this was a charge the Council should give him, or even suggest that he undertake.

Councilor Julian Smith said there were other people who would be excellent shepherds for this project.

Councilor Leach noted that the Mill Plaza redevelopment concept would come before the Town Council before it would go before the Planning Board.

Chair Niman said that was correct, and explained that if the Council couldn't come to agreement on it, nothing would then go on to the Planning Board.

Councilor Stanhope agreed to serve as an alternate Council representative to the Planning Board.

It was determined that Councilor Julian Smith would serve as a regular Council representative to the Planning Board, and would also serve on the IWMAC. Chair Niman summarized that the following Council members would be appointed for one-year terms, said terms to expire in March 2009:

To Charter-Established Boards

Cemetery Committee Councilor Henry Smith, Councilor Stanhope and Councilor Needell
Conservation Commission - Councilor Leach
EDC - Councilor Van Asselt and Councilor Clark
HDC - Councilor Henry Smith
Parks and Recreation Committee - Councilor Sievert
Planning Board - regular member, Councilor Julian Smith; alternate member, Councilor Stanhope
Rental Housing Commission - Councilor Van Asselt

To Town Working Committees-

Churchill Rink - Councilor Leach
DCAT - Councilor Needell
Energy Committee - Councilor Needell
IWMAC - Councilor Julian Smith
School Funding Formula - Councilor Clark.

Councilor Leach MOVED to make these appointments. The motion was SECONDED by Councilor Stanhope, and it PASSED unanimously 8-0.

Councilor Leach suggested to Councilor Needell and Councilor Julian Smith that the Energy Committee and the IWMAC should talk about possible integrating of the two committees.

B. Other business

Chair Niman said he accepted full responsibility for creating the problem that occurred concerning the April 1st deadline for change to the disposition of the land use change tax. He said the Council had planned to have a workshop with the Conservation Commission regarding this issue, but it got pushed off several times. Administrator Selig also provided details on time delays that had led them to this point.

Administrator Selig said that some Councilors had said they wanted to see a change to LUCT allocation when it came up for re-authorization. He said if the Council did vote to change the allocation, he didn't want this change to be delayed from taking affect until 2009.

He said he had tried to determine if there was a way to delay things so that the Council could have a discussion with the Conservation Commission, could then decide whether or not to change the allocation, and if there was a change, this could take effect in 2008..

He said he had come up with a procedural approach that might solve the problem, which had to do with the way the land use change tax was implemented in Durham. He said one way it was implemented was to formally create a LUCT fund, so that when land was taken out of current use and was developed, the tax went into this fund.

But he said the Council, through an ordinance, could create a different fund for the tax money, and could then determine how the money flowed out of it. He said the Council would have to allocate, as part of the Budget process, where it would go, and if it didn't do this, the money would go into the General Fund. He said the Council would be able to set up how much of the land use change tax funds actually went into the conservation fund.

Chair Niman said the way things were currently structured, the funds immediately went into the Conservation Commission's conservation fund. He said the question was whether the Council wanted to keep things the way they were, or wanted to rescind the authority that money automatically went to the Conservation Commission, and then at the next Council meeting, formally create this fund that the dollars would flow into. He said when the Council then met with the Conservation Commission, and was ready to make its decision on the allocation, it would either send all, some, or none of the money back to the conservation fund.

Councilor Stanhope asked if it was correct that the Council wouldn't need to create the fund itself prior to April 1st.

Administrator Selig and Chair Niman provided details on how this would be set up according to State statute.

There was further detailed discussion between Councilors and Administrator Selig on how the process would work.

Councilor Needell said he appreciated the fact that nothing nefarious was going on, and that given the options, this was a very interesting approach to pursue. He said his own opinion was that the Council shouldn't make a change to the allocation of the land use change tax, so he was not anxious to jump forward.

But he said he could see the winds of change, and said the Council should have the best discussion it could on this subject. He said that to him, the April deadline was immaterial, and said he didn't feel they needed to rush because of it. He said letting things sit for a year while this issue was worked out made sense. He said what was proposed here was a complicated statutory process, and said it would be well into the year by the time it was settled.

Councilor Needell said he also said he didn't feel the dollars involved were worth the ill will that could occur. He said he felt the approach looked bad, and would not be worth it. He said having the discussion with the Conservation Commission was an elegant solution, and was one the Council should pursue.

Chair Niman said the motive here was not to take the money away, and said it was merely to give the Council the option to figure out what to do, and to work on the issue in 2008.

Councilor Leach said she totally agreed with Councilor Needell. She said she felt they should leave things as they were, discuss the issue, and make a better decision by 2009.

Councilor Van Asselt said the Council had had the votes to change the land use change tax, and said if there had been that vote, this discussion wouldn't now be taking place. He said the Council owed it to the Councilors who supported this process to keep things open to be able to make the change in 2008. He said it wasn't fair to punish those Councilors because of the time delays. He said the process outlined by Chair Niman and Administrator Selig made sense.

Councilor Julian Smith said the Council had had the opportunity to act, when there were 8 people at the table, and the Council's packet included a possible resolution concerning the land use change tax allocation. He said a motion was not made at that time, and said if it had been made, it would have failed.

He also said he wished Chair Niman and Administrator Selig had told him about this issue the previous week, and he would have contacted the Conservation Commission about it and researched the RSAs.

Administrator Selig said he and Chair Niman had discussed this very late the previous week.

Councilor Julian Smith said the Conservation Commission was not prepared for this discussion. He said until now, the land use change tax funds had flowed to the conservation fund, but what was now proposed was to put the funding in limbo, with the possibility that these funds would descend to the General Fund.

Chair Niman said they were trying to respect the will of Councilors who wanted to change the LUCT allocation, by giving them the opportunity to do so. He said he admitted that this issue had fallen between the cracks. He said he and Administrator Selig had discussed it on Friday, and had worked on it this afternoon.

Mr. Clarke received clarification that if the Council didn't act on this proposal now, a change in the land use change tax wouldn't take affect until April of 2009.

There was discussion on properties that might incur the land use change tax within the next year.

Councilor Henry Smith said he agreed with Councilor Van Asselt that it was unfair to those who voted in the majority, but he said it would be more unfair to make a decision that evening, for various reasons. He said given that, he felt the Council should not make a decision on the issue that evening. He said he didn't think it would hurt to wait a year. He said the Council was waiting to hear from the Conservation Commission, and said then the Council should have its discussion on the allocation. He said it would be unfair to change the process.

Councilor Leach noted that the Council would not be making a decision to change the allocation that evening.

Councilor Needell said if the decision on what was proposed that evening went through, this would mean taking the funds out of the conservation fund. The Council would then

have to decide whether to put some or all of it back in. He said there had been 5 Councilors ready to support the allocation change, the resolution was drawn up, and then, voting on it would have led to a 4-4 tie because one Councilor was away. He said through no one's fault, this change therefore didn't happen.

He said he felt the Council should move ahead with discussions, and should not be driven by the clock. He also said voting tonight would change the dynamics of future input from the public on the allocation. He said a public hearing at that point would be on whether to reinstate the money in the conservation fund, not whether to take it away.

Councilor Julian Smith said the discussion on the land use change tax funds had been very good, had gotten the Conservation Commission talking in some detail, about things like reimbursing the Public Works Department, contracting out for some services, etc. He noted that the Milne agenda item that evening included a number of responsibilities for the Commission.

He also said Public Works Director Mike Lynch had recently made two presentations to the Commission, one on Jackson's Landing and the other on the dredging of Mill Pond. He said it would take future revenues flowing out of the conservation fund to accomplish things like this, and said the Council would hear more detail on this when it met with the Conservation Commission.

Councilor Henry Smith said what the Council was voting on that evening was not to re-allocate the funds, but to create a new fund while they were waiting to resolve the allocation issue. But he said the vote would be taking the money away from the Conservation Commission, and he said it would be unfair to do that, that evening.

Administrator Selig noted his own preference to go to a 50/50 allocation of the land use change tax, He then spoke about how the Conservation Commission was starting to think about using the conservation fund for things in addition to land conservation. He noted the Jackson's landing project and the Mill Pond dredging project as good examples of this.

He said he and Chair Niman had gone into process mode concerning the allocation issue, given the time constraints. But he said he didn't really like the idea of creating a new fund. He said he thought it would be better for the Council to just decide how the land use change tax funds should be allocated. He said he thought that a 50/50 allocation made sense now, and said if the economy got bad, all the funds could be allocated to go to the General Fund.

He said if the process change was made tonight, this would create bad feelings, and would use up social capital. He recommended that things stay as they were for this year. He said the Council could exert sufficient pressure to make sure the conservation funds remained in tact until there was a project that made sense.

Councilor Stanhope MOVED to take the land use change tax funds and put them in the General Fund until such time as the Council heard from the Conservation Commission, and decided whether it would set up a separate fund. Councilor Van Asselt SECONDED the motion.

Administrator Selig said there was a Resolution concerning this that the Council could vote on.

Councilor Van Asselt said he resented anyone suggesting that he was interested in circumventing the process. He said the intent of this was based on where they come from, and said he still felt they were not honoring that process.

Councilor Needell said he didn't feel that any Councilors had implied this.

The motion FAILED 2-6, with Councilor Van Asselt and Councilor Stanhope voting in favor of it.

XIII. Nonpublic Session (if required)

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

XV. Adjourn

Councilor Van Asselt MOVED to adjourn the meeting. Councilor Stanhope SECONDED the motion, and it PASSED unanimously 8-0.

Adjournment at 11:00 pm

Victoria Parmele, Minutes taker