

**This set of minutes was approved at the Town Council meeting on May 19, 2008**

**AGENDA  
DURHAM TOWN COUNCIL  
MONDAY, APRIL 21, 2008  
DURHAM TOWN HALL – COUNCIL CHAMBERS  
7:00 PM**

**MEMBERS PRESENT:** Chair Neil Niman; Councilor Jerry Needell; Councilor Julian Smith; Councilor Henry Smith; Councilor Cathy Leach; Councilor Doug Clark; Councilor Mike Sievert

**MEMBERS ABSENT:** Councilor Peter Stanhope

**OTHERS PRESENT:** Town Administrator Todd Selig; Town Planner Jim Campbell, Town Engineer Dave Cedarholm, Public Works Director Michael Lynch

**I. Call to Order**

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

**II. Approval of Agenda**

***Councilor Van Asselt MOVED to approve the Agenda as submitted. Councilor Clark SECONDED the motion.***

Councilor Needell noted Agenda item X B regarding the disposition of the Land Use Change Tax. He said there should be clarification for members of the public who might wish to comment on the issue, as well as assurances that action on the Resolution provided to Councilors concerning it wouldn't occur that evening.

Chair Niman explained that this was the Resolution the Council had asked Administrator Selig to bring forward in September of 2007. He said Councilor Needell felt the Council had addressed this issue already, but said another Council member had asked him when the Council would be voting on it. He said this was why this item was in the packet. He said it was not his intention to vote on it, but said a motion could be brought forward concerning it.

After additional discussion on this issue, Councilor Needell said he would like to make a motion to remove Item X B from the Agenda.

Chair Niman said he didn't feel this was an appropriate way to handle the situation, and Councilor Needell recommended that they therefore move on with the meeting.

Chair Niman said he expected that the Council would discuss the document the Conservation Commission had recently submitted regarding the disposition of the Land Use Change Tax, and also said he hoped there would be time to get through the discussion on the Policy document.

Concerning Agenda Item X C, Councilor Henry Smith said he wasn't sure what the reason was for discussing this matter again.

Chair Niman explained that Mr. Cedarholm had previously told the Council that the Public Works Department had a plan concerning the idea of the Town being able to draw water out of the Lamprey River by September. He said the Council had asked Mr. Cedarholm to provide a timeline concerning this, and said he expected Mr. Cedarholm to provide that timeline at the present meeting. He said the intention was not to have a detailed discussion on the 401 water quality permit.

Councilor Henry Smith said he didn't see such a timeline from Mr. Cedarholm in the packet.

***The motion to approve the Agenda PASSED unanimously 8-0.***

### **III. Special Announcements**

### **IV. Approval of Minutes**

March 17, 2008

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Councilor Needell said he thought the Resolution was voted on that evening, based on Administrator Selig's comment on page 27, and said he thought the Minutes should reflect that.

There was detailed discussion on this, and it was agreed to keep the Minutes as they were.

***Although no one moved to approve the March 17, 2008 minutes, they were approved unanimously, 8-0.***

### **V. Councilor and Town Administrator Roundtable**

Chair Niman said it had been decided that the Council's goal setting session would take place on Tuesday, May 6<sup>th</sup>, in the Council chambers. He said Administrator Selig was in the process of finding out whether the meeting would be broadcast live on DCAT, or would be taped and broadcast at some other time.

Chair Niman noted that recent Council meetings were lasting until 11 pm, and asked Councilors if they would like to schedule additional meetings in order to be able to address all the issues facing them. After detailed discussion on this, the consensus of the Council was to stay with the same number of meetings. Chair Niman said he would try to move things along as quickly as possible.

Councilor Julian Smith said the Mill Plaza Redevelopment Committee had finished its work, and would be providing a report to the Council at the May 5<sup>th</sup> meeting. He said the full report developed by the Committee was over 500 pages long, but said Council members would receive only a small portion of this.

Councilor Smith updated the Council on applications that had come before the Planning Board at the April 9<sup>th</sup> meeting, and those that would be before the Board at its upcoming meeting, on Wednesday.

Councilor Henry Smith thanked Conservation Commission member Duane Hyde and developer Jack Farrell for the site walk recently conducted on the Tecce property, where the proposed 210 unit student housing development was proposed. He said it had been quite helpful.

Councilor Needell said if the application from the Oyster River School District concerning membership on DCAT had not arrived, it hopefully would be coming in soon.

Councilor Needell also said that developer Dave Garvey had recently made a presentation to the Durham Energy Committee, and he provided some details on this.

Administrator Selig provided details on the Town's 2008 mosquito control strategy (available on the Town website.)

He also explained that Town staff was in the process of updating the 1989 personnel plan.

He said the Roselawn Farm closing had taken place the previous week. He noted that Dea Brickner-Wood had done a great job of shepherding the project, in both Durham and Madbury, and deserved a lot of credit from both towns.

## **.VI. Public Comments**

**Roger Speidel, Nobel K. Peterson Drive**, provided a graph that showed declining student enrollment trends in the Oyster River Cooperative School District, yet the number of teachers had gone up. He noted that he had presented figures from this graph at the April 2<sup>nd</sup> School District meeting, and was told the figures were wrong. But he said the figures had been checked with the State.

He said he had presented these numbers again at the April 16<sup>th</sup> School Board meeting, and said the Superintendent had presented his own figures on teaching positions. He said the data on the number of teachers needed to be viewed against declining enrollment, and he questioned why, with fewer students in the schools, every teaching position needed to be replaced. He provided further details on more recent data he had obtained, and said he planned to return to the School Board on May 7<sup>th</sup> with this information.

Mr. Speidel said he was glad Councilor Needell had attended the recent School Board meeting, and said he could provide details to the Council on this meeting.

**Jack Farrell, Little John Road**, said that the Land Use Change Tax funds should stay where they presently were, in the conservation fund. He noted that he was a developer, and said having these funds for open space protection was particularly important and appropriate. He said there were already enough challenges raising money for land protection.

**Dick Lord, Bennett Road**, said he was also present to speak in favor of keeping the Land Use Change Tax funds in the conservation fund. He said land protection opportunities sometimes appeared when there was a short time frame to act on them. He also noted that conservation funds from the State and Federal government often required a local match, which meant that money from the Land Use Change Tax was often leveraged 4-5 times its actual value. He noted that \$50,000 added to the General Fund instead of the Conservation fund would reduce a resident's tax bill by only two to three dollars.

**John Kraus, 7 Cutts Road**, said Durham prided itself on being an enlightened community, and said in that spirit, he asked the Council to have a receptive and open mind regarding the Wiswall Bridge project. He quoted wording from the Town website, and said the Council had the chance this time to make an intimate quiet setting in an active and thriving neighborhood.

He suggested that the Council consider having no bridge at all, or a graceful walking and biking bridgeway, in lieu of a barebones, one lane, sidewalk-less traffic conduit that was correctly all that the Town could afford. He said this locale was a wonderful place, steeped in the history of the Town, which for many held beautiful memories of picnicking, swimming, sunrises, and sunsets. He noted that part of the location adjoining the river and bridge footing was a Town park area.

He said the Council's instructions regarding a replacement bridge at this location were quite clear, that it be minimal and low cost. He said it didn't seem that this message had gotten through to Town staff or many residents of Wiswall Road, who continued to pursue an idealist and excessively expensive concept of a replacement structure.

Mr. Kraus asked the Council and Administrator Selig to follow the enlightened example of previous Town Administrator Ralph Freedman, who had the courage and vision to cut the Gordian knot of citizen dissent and turmoil over the Oyster River Bridge project. He said Mr. Freedman had proposed the elegant walkway-sidewalk that now paralleled the Route 108 Bridge over the Oyster River.

He said the Council and Administrator Selig must not sit passively by, and instead must take direct initiative to investigate, pursue, and promote this approach, and should provide residents of the neighborhood with a view and foresight that would reach out decades. He said the Council must provide an understanding for the neighbors that having no bridge, or a connecting walkway, would enhance their environment and property values. He said the Council had the obligation to rise above parochial, bureaucratic thinking, and to take a forward role in giving the whole Town a place of beauty to cherish for the generations to follow.

**William Hall, Smith Park Lane**, said Durham had more water to meet its needs than any other town in the Seacoast area, and said there were no water shortages. He said there was no precedence for the 401 permit being used as it presently was in Durham, stating that this was a water quality permit, not a withdrawal permit. He said the water that would be withdrawn from the Lamprey wouldn't impact water quality. He provided details on the problems with the 401 permit, and said there was no basis for it. He also

said that procedurally speaking, it had been adopted incorrectly.

**Diana Carroll, 54 Canney Road**, said she first wanted to thank the Houghton family for 30 years of wonderful service to the Town of Durham. She also thanked Ron Gerry of Durham Copy for the level of service he had provided to the Town. He said these two businesses had provided essential services to the Town, and would be missed.

Regarding the Land Use Change Tax funds issue, Ms. Carroll said the Conservation Commission's report on this had been comprehensive. She noted the recent conservation easement for Roselawn Farm, and said if the Conservation Commission hadn't stepped up, and if there hadn't been money in the conservation fund, she wondered how long the Council's discussion on this proposed easement would have taken. She said in this case, everything was in place, so the discussion was short. She said this was one example of why the Land Use Change Tax funds should stay where they were.

Ms. Carroll urged Council members not to pit recreation and conservation programs against each other. She said they needed to have both of these elements, and more in order to have a healthy community,

**Bill Hall** said the Town was pitting the boaters against other users, with the Jackson's Landing plan.

**Robin Mower, 11 Faculty Road**, noted a recent walk she had taken with the Strafford Rivers Conservation Commission, on 400 acres of conserved space. She said she spoke with the group leader about wildlife habitat, and said many towns in the County were approaching the Commission because they had become very much aware that once land was developed, it was no longer available as habitat, prime agricultural soils, etc. She said she would like to think Durham had been in a leadership role concerning this, and that this would continue.

She said she was not there to speak on the Land Use Change Tax, although she was in favor of keeping it where it was. She said that at the Council's meeting in October where the Land Use Change Tax funds were discussed, people had left the meeting with the impression that there would be a joint workshop between the Council and the Conservation Commission.

Ms. Mower said she hoped there would be such a workshop, to discuss common goals. She asked that the Council and the public trust the Conservation Commission, stating that many of them were professionals with significant experience in their respective fields. She also asked that Commission's presentation to the Council be posted online for residents to read.

**Maggie Moore, 138 Lee Road**, said she would like to speak in support of keeping the Land Use Change Tax funds where they were, in the Conservation fund.

**Nancy Sandberg, 15 Langley Road**, said she was one person among many urging the Council to support using all of the Land Use Change Tax funds for land preservation. She said this was a win-win for the whole Town, and noted that the people of Durham had

demonstrated their support for land conservation at the ballot box. She urged the Council to continue in this tradition.

**Joe Moore, 138 Lee Road**, said he wished to speak in support of continuing to use the Land Use Change Tax funds as they were presently used. He said Durham was a fortunate town, including the fact that local developer Jack Farrell spoke about the need for balance. He noted that the balance had changed a bit on the Council, but said this was still important to remember.

He noted that Councilor Stanhope had spoken about the quality of life in Durham, and said the people in the room that evening had contributed in the past to making the Town a special place. He said it wouldn't remain a special place if they didn't take care of what they had, and said the Town could protect it by using the Land Use Change Tax funds when land protection opportunities came up, without having to ask the taxpayers for the money to pay for this.

**Annmarie Harris, 56 Oyster River Road**, said she supported leaving the Land Use Change Tax funds where they presently were. She asked for a show of hands of how many people in the audience were also in support of this, and a large majority of members of the public at the meeting raised their hands. She said she hoped the Councilor who had urged consideration of this issue that evening would take note of the number of hands that had been raised.

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

Chair Niman took Item B off the Unanimous Consent Agenda.

- A. Shall the Town Council approve the water and sewer warrant for spring 2008 in the amount of \$420,639.49 and authorize the Town Administrator to sign said warrant?

***Councilor Needell MOVED to approve Unanimous Consent Agenda Item VII A. Councilor Leach SECONDED the motion, and it PASSED unanimously 8-0.***

- B. Shall the Town Council award bids for erosion control/parking lot, landscaping, and boat launch improvements for the Jackson's Landing recreational area as recommended by the Department of Public Works and Jackson's Landing Master Plan Committee?

Councilor Clark said he needed clarification concerning this process, stating that it seemed funny to approving the bidding while there was a Planning Board public hearing still going on concerning this project.

Administrator Selig said Public Works Director Mike Lynch was present to provide an overview on this Agenda item.

Mr. Lynch said the bid process had been put together so the Town would be ready to start construction. He said this was simply an effort to keep the project moving forward.

Councilor Clark said his understanding was that the Council had already approved the Jackson's Landing plan, and it would not be coming back to the Council.

Administrator Selig said that was the case, unless the Council requested that it come back. He said the Town was moving forward with the plan, and would incorporate as much Planning Board input as possible into the plan.

Councilor Clark said it seemed that there were some conflicts in terms of what the land was intended to be, and what the grant stipulated.

Administrator Selig reviewed the process that had taken place so far. He said if the Planning Board was going to recommend wholesale changes to the plan the Council had approved, especially concerning the waterfront area, he would think this would then have to come back to the Council. He provided details on this.

Councilor Clark said he found it frustrating that this piece of land was meant to meet the needs of boaters, but the boaters were the only ones who were not happy with the plan. He said he wasn't saying they should take another vote. He spoke about how the grant appeared to constrain what could be done on the site.

Councilor Leach spoke in details about the fact that she believed this project would benefit the entire community, and would not prevent the boaters from using the property. She said it might provide actually provide a better situation for the boaters. She said perhaps Councilor Clark would have concluded this if he had been part of the whole discussion on the project.

Regarding the comment from Councilor Clark regarding the role of the grant in all of this, Mr. Lynch said the grant didn't dictate anything. He said the project would meet the requirements of the grant, which included restoration of wetlands, and the enhancement of the watershed leading to the Oyster River. He said the erosion situation would be better, and said the project wouldn't take away from the use of the property by the boaters.

He noted that this plan had gone through many design revisions over the past 3 years, and acknowledged there were some conflicts. He said the boaters weren't that unhappy, and noted that there were boaters who had demonstrated that the boats could be backed in. He also said there wouldn't be conflicts between the boaters and other users all the time.

Councilor Clark said the land was intended to meet the needs of boaters, and said he was not sure that all the implications for boaters had been considered.

Councilor Leach noted that the Conservation Commission had supported this plan, along with the Parks and Recreation Committee.

***Councilor Van Asselt MOVED to award, upon recommendation from the Town Administrator, the Jackson's Landing erosion control/parking lot scope of work bid to Britton's Landscaping & Excavation of Sandown, NH at a cost of \$94,428; to be paid for from Capital Fund Account #07-0722-502-89-000, and the Jackson's Landing***

***landscaping scope of work bid to A.J. Cameron's Landscaping & Sod Farm of Farmington, NH, at a cost of \$72,347; to be paid from Capital Fund Account #07-0822-502-89-000. Councilor Leach SECONDED the motion.***

Councilor Julian Smith stated that the Council would be responsive to suggestions and recommendations from the Planning Board, following closure of their public hearing and discussion of the issue. He said he hoped some modifications might be possible, to make more room for boaters and their trailers. He said he had studied the Memorandum of Understanding on Jackson's Landing, and it didn't say it was to be used exclusively by boaters, and didn't exclude other uses. He also said there was no reference to providing parking.

Administrator Selig said the Council had endorsed the plan, and the Planning Board would provide non-binding recommendations on it. He said the Public Works Department and the Jackson's Landing Committee would listen to these recommendations and respond to the extent that they felt they could, and to the extent that this was consistent with the grant and the plan the Council had approved.

He said if there were wholesale changes to the plan, he felt it would need to come back to the Council, said absent that, this issue would not come back to the Council.

***The motion PASSED unanimously 8-0.***

#### **VIII. Committee Appointments**

Annual appointments of citizens to various Town boards, commissions, and committees

##### DCAT

***Councilor Van Asselt MOVED to appoint Erika Mantz to a one-year term as the UNH representative to the DCAT Governance Committee, with a term expiration date of April 30, 2009. Councilor Needell SECONDED the motion, and it PASSED unanimously 8-0.***

##### Durham Public Library Board of Trustees

***Councilor Van Asselt MOVED to appoint Robin Balducci, Emily Smith and Ann Windsor to one-year terms as alternate members on the Durham Public Library Board of Trustees with term expiration dates of April 30, 2009. Councilor Julian Smith SECONDED the motion, and it PASSED unanimously 8-0.***

##### Economic Development Committee

***Councilor Leach MOVED to appoint Jason Lenk to a three-year term on the Economic Development Committee, with a term expiration date of April 30, 2011. Councilor Sievert SECONDED the motion, and it PASSED unanimously 8-0.***

##### Historic District Commission

***Councilor Van Asselt MOVED to appoint Crawford Mills to a three-year term on the Historic District Commission, with a term expiration date of April 30, 2011. Councilor Henry Smith SECONDED the motion, and it PASSED unanimously 8-0.***



There was discussion about the fact that Ruth Davis and Carden Welsh both wished to be appointed as regular members of the ZBA, and that Ms. Davis had been on the ZBA longer than Mr. Welsh.

Zoning Board of Adjustment

***Councilor Henry Smith MOVED to appoint Ruth Davis to a three-year term on the Zoning Board of Adjustment, with a term expiration date of April 30, 2011, and Carden Welsh to a three year term on the Zoning Board of Adjustment, with a term expiration date of April 30, 2010. Councilor Julian Smith SECONDED the motion, and it PASSED unanimously 8-0.***

It was noted that as a result of these appointments, there were now three vacant alternate positions. Chair Niman also said there was a vacancy on the HDC, and on DCAT.

The Council reviewed the proposed appointments for positions where there were more applicants than openings.

Councilor Needell asked that Councilors express their preference for the person to be appointed for these positions in order to reach some kind of consensus, before making any motions.

Churchill Rink at Jackson's Landing

The consensus was that Pam Appleton should be appointed to this position.

***Councilor Leach MOVED to appoint Pam Appleton to a three-year term on the Churchill Rink at Jackson's Landing Advisory Committee, with a term expiration date of April 30, 2011. Councilor Clark SECONDED the motion, and it PASSED unanimously 8-0.***

Conservation Commission

***Councilor Needell MOVED to re-appoint Cynthia Belowski and Beryl Harper to three-year terms on the Conservation Commission, with a term expiration date of April 30, 2011, and to appoint Dwight Baldwin to a one-year term on the Conservation Commission, with a term expiration date of April 30, 2009. Councilor Leach SECONDED the motion, and it PASSED unanimously 8-0.***

It was noted that because Mr. Baldwin had now gone from an alternate to a regular member position, there was an opening for an alternate. Councilor Needell asked if either Mr. Ferris or Ms. Mower would like to be appointed to this position, and they said they both said they were interested.

***Councilor Julian Smith MOVED to appoint Robin Mower to a one-year alternate position on the Conservation Commission, with a term expiration date of April 30, 2009. Councilor Clark SECONDED the motion.***

Councilor Smith noted that he had been the Council representative to the Conservation Commission for the last year. He said Ms. Mower had been a frequent attendee of those meetings, and had spoken on a number of issues of importance to the Town.

Councilor Needell said this was exactly the position he didn't want to be in, because of the position it put the other applicant in. He said he would therefore amend the motion, in order to allow the Council to make a choice.

***Councilor Needell MOVED to amend the motion, and to appoint Neal Ferris to a one-year alternate position on the Conservation Commission, with a term expiration date of April 30, 2009. Councilor Van Asselt SECONDED the motion.***

He said if the Council had gone around the table and Councilors had stated their preference for this position, he would have stated that this was a difficult choice, because they were both long time advocates for conservation, who would serve the community well. He said he had chosen to support Mr. Ferris's application because of his continued service and dedication to the Town over time on other committees.

Councilor Leach noted an email received from Conservation Commission Chair Cynthia Belowski, which said that Commission members would be equally happy with either Mr. Ferris or Ms. Mower being appointed. She said the letter also indicated that not being appointed wouldn't be the end, and that they would try to involve the person who was not appointed with the Commission in some way.

Mr. Ferris said he needed time to think about whether he wanted to be an alternate, noting that being on the Conservation Commission would mean he would be leaving the Integrated Waste Management Advisory Committee.

***Councilor Needell MOVED to postpone action until the end of the process. Councilor Julian Smith SECONDED the motion, and it PASSED unanimously 8-0.***

#### Parks and Recreation Committee

There was detailed discussion by the Council on who should be appointed to which position.

***Councilor Sievert MOVED to appoint Gregg Moore and David Leach to a two-year term on the Parks and Recreation Committee, with a term expiration date of April 30, 2010; Emily Slama, Amy Cunningham and Patrick Houle to a three-year term on the Parks and Recreation Committee, with a term expiration date of April 30, 2011; and Jenna Roberts to a three-year alternate member term on the Parks and Recreation Committee, with an expiration date of April 30, 2010. Councilor Clark SECONDED the motion, and it PASSED unanimously 8-0.***

#### Planning Board

***Councilor Leach MOVED to re-appoint Susan Fuller and Richard Kelley to a three-year regular member term on the Planning Board, with a term expiration date of April 30, 2011. Councilor Needell SECONDED the motion, and it PASSED unanimously 8-0.***

It was noted that Mr. Greene would remain in his alternate position, and that another alternate position was available.

***Councilor Leach MOVED to appoint Kevin Gardner to a one-year alternate member***

***term on the Planning Board, with a term expiration date of April 30, 2009. Councilor Needell SECONDED the motion, and it PASSED unanimously 8-0.***

Continuation of Conservation Commission appointment process - discussion on amended motion

Councilor Henry Smith said there were two very fine applicants for the alternate position, but said he was leaning toward wanting Ms. Mower to be appointed to this position, and asking Mr. Ferris to remain a member of the IWMAC because he had done a good job on this committee.

***The motion to appoint Neil Ferris Neal to a one-year alternate position on the Conservation Commission, with a term expiration date of April 30, 2009 FAILED 1-6-1, with Councilor Needell voting in favor of the motion, and Chair Niman abstaining.***

***The original motion, to appoint Robin Mower to a one-year alternate position on the Conservation Commission, with a term expiration date of April 30, 2009, PASSED 7-1, with Councilor Van Asselt voting against it.***

Chair Niman pointed out that there were three vacancies on the Integrated Waste Management Advisory Committee, and two vacancies on the Strafford Regional Planning Commission.

**IX. Presentation Item – None**

**X. Unfinished Business**

- A. PUBLIC HEARING AND ACTION ON ORDINANCE #2008-05** amending Chapter 175 “Zoning”, Section 175-7 “Definitions” of the Durham Town Code to allow fitness centers within zoning districts where personal services are allowed

***Councilor Mike Sievert MOVED to open the public hearing on ORDINANCE #2008-05 amending Chapter 175 “Zoning”, Section 175-7 “Definitions” of the Durham Town Code to allow fitness centers within zoning districts where personal services are allowed. Councilor Julian Smith SECONDED the motion, and it PASSED 8-0.***

Chair Niman asked if there were any members of the public who wished to speak on this issue.

**Bill Hall, Durham,** said he would think the Council should approve this Ordinance as quickly as possible.

***Councilor Needell MOVED to close the public hearing. Councilor Julian Smith SECONDED the motion, and it PASSED 8-0***

***Councilor Clark MOVED to approve ORDINANCE #2008-05 amending Chapter 175 “Zoning”, Section 175-7 “Definitions” of the Durham Town Code to allow fitness***

***centers within zoning districts where personal services are allowed. Councilor Needell SECONDED the motion, and it PASSED unanimously 8-0.***

The Council stood in recess from 8:36 to 8:44 PM

- B. Discussion on the disposition of Land Use Change Taxes with members of the Conservation Commission and proposed revisions to the current Policy for Acquiring Legal Interest in Conservation/Open Space Land adopted by the Town Council on May 3, 2004

Chair Niman said he would like to see if the Council could get through the discussion on the Policy for Acquiring Legal Interest in Conservation/Open Space Land that evening.

Councilor Needell noted that this Agenda item was billed as a discussion with the Conservation Commission, and he suggested that Commission members should sit at the table with the Council rather than standing individually at the podium when they spoke.

***Councilor Needell MOVED to have Conservation Commission members seated at the Council table. Councilor Julian Smith SECONDED the motion.***

There was discussion on what the most appropriate way was to have this discussion.

***The motion FAILED 3-5, with Councilor Julian Smith, Councilor Needell and Councilor Henry Smith voting in favor of it.***

Conservation Commission Chair Cynthia Belowski summarized the Commission's most recent communication to the Council. She said that with the anticipated use of the conservation funds over the next couple of years, the Commission was looking at a shortfall if more Land Use Change Tax funds were not received. She noted that this only took into account projects they were currently aware of.

She also spoke in detail about how conservation funds could be leveraged, and about how they allowed the Commission to act quickly when projects came along. In addition, she said these funds would assist the Commission as it took responsibility for, and worked with professionals in managing Town owned land.

She said she had read the Minutes of the August 2007 Council meeting, and said there were some recommendations made at that time that she was not aware of, concerning how these funds might be used. She also noted from this meeting that there was a misconception about the amount of land in Durham that was actually conserved in perpetuity. She stated that it was about 18% of the land in Durham that fit this category, and she noted among other things that a lot of the undeveloped land in Durham was owned by UNH, and as far as the Conservation Commission knew, was not preserved in perpetuity.

Councilor Sievert asked if the 18% included the lands that were part of conservation subdivisions, and Ms. Belowski said it included any deeded conservation land.

There was discussion of the \$10,000 stewardship endowment for the Merrick and Fogg properties. Chair Niman asked how this worked, and whether there would be regular expenditures to take care of these properties.

Ms. Belowski said they were already doing work on the Merrick property. Concerning the Fogg property, she said the Commission was required by DES to do annual monitoring. She noted that they might have to hire an outside organization to do the monitoring.

Chair Niman asked if there would be income generated to pay for these kinds of management services.

Ms. Belowski noted that the way the conservation subdivision regulations were set up, a stewardship endowment was required for conservation subdivision developments. She said the interest income on this would be used pay for these things. But she said the larger portion of the endowment would be needed as insurance, in case an easement had to be defended in the future. She said the endowment account had not been set up, and said \$10,000 would need to be moved into the new account.

Councilor Henry Smith received clarification that there were no easements that had yet needed to be defended in Durham, but that this had happened in the State.

Administrator Selig noted that this money could also be used to manage trails, etc.

Councilor Leach said that at the last meeting with the Conservation Commission, there was some confusion on what a stewardship fund would be. She said there was an overall fund, and a fund that was part of a homeowners association for a new conservation subdivision.

Ms. Belowski noted that both the Merrick and Fogg projects were conservation easements, and also said setting aside stewardship endowments had not been done by the Town previously. She said there had been a discussion about endowments for all of the other properties, but said no conclusions had been reached on this yet. She said the Conservation commission had never been responsible for managing these properties. She said it was realized there was a possible need out there, and said this was a Town discussion that needed to happen.

Councilor Sievert said that need existed, and he asked who would pay for that. He asked if the money would be taken from the Land Use Change Tax funds, if the Town wanted to do more active management of the properties it owned.

Ms Belowski said this could be done, and said where it made sense, the Commission would be in support of this.

Councilor Sievert asked if this would pit recreation against conservation interests.

Ms. Belowski noted that the Parks and Recreation Committee had worked closely with the Conservation Commission on the Longmarsh preserve area., and also on the Jackson's Landing project. She said she didn't see this idea of pitting one group against

the other.  
Councilor Sievert agreed.

Councilor Leach said the groups had worked well together, but said she wondered if some of the Land Use Change Tax money could be used not only for conservation purposes, and incorporated more into recreation opportunities as well. She noted that it would be hard for volunteers in any one group to manage all these lands. She said if this was something that the Conservation Commission would be open to, and thought could be done.

Ms. Belowski said what the Conservation Commission did had to have a natural resource component to it, and there was discussion with Councilor Leach that this was why the Commission had been able to contribute to the Jackson's Landing project, because of its erosion control aspect.

Councilor Leach asked if these kinds of projects were things the Commission would be open to doing more of, and Ms Belowski said absolutely.

Councilor Needell said the Conservation Commission had shown that it was responsive to these kinds of things. But he said he would look to them to decide whether there was a reasonable match, for a particular project.

Councilor Van Asselt said he was delighted to see in the Commission's most recent letter to the Council that it didn't say that it bought conservation land in order to keep property taxes down in Durham. He provided details on this, and then said he was curious as to how Beech Hill had made the list of land in Durham that should be protected.

Conservation Commission member Duane Hyde said the area of Beech Hill the Commission had in mind had been identified in a regional coastal conservation plan, as land of statewide importance. He said the Durham component of this tract was very small, and he also noted that it went further than Beech Hill Road. He said in terms of resource values, it influenced the water supply to the Oyster River, and was also part of an un-fragmented block of forest land.

Chair Niman said if they assumed there was no money in the Land Use Change Tax fund, and no bond, couldn't they still amend the Budget at any time, if a proposal came in to buy a conservation easement.

There was discussion on this, with Mr. Hyde stating among other things that he said he would hope the Council would look cautiously at the idea of amending the Budget.

Chair Niman asked if the comments in bold on the May 1, 2007 Draft Revision to the Policy for Acquiring Legal Interest in Conservation/Open Space Land were made by Mr. Hyde.

Mr. Hyde said they were, and said the Conservation Commission had endorsed them.

Chair Niman reviewed the process by which a conservation easement that had been

recommended was evaluated by the Town. He said he wanted to find some place in this policy where the expectation was that the Town Administrator would be thinking about the broader picture, and would use this as part of his recommendation to the Council concerning a proposed conservation easement on a particular property.

Mr. Hyde agreed that this should happen, and also noted that for every project the Commission considered, it always looked at the fiscal impacts.

Chair Niman said that he hadn't voted for one of the six conservation easement projects that had come before the Council in recent years because he didn't think it was good for the economy of the Town. He said there had then been some hostility about his decision. He suggested that there should be something in the policy document that said the Town Administrator or the Town Council could include economic considerations in the discussion on a particular conservation easement that was proposed.

Mr. Hyde said fiscal information was a fair thing to have when weighing how to vote.

Councilor Van Asselt agreed that fiscal information should be included, but he said there should be more than that. He said the Council had been told that for some of the conservation easement proposals the Town needed to buy them because someone might otherwise build houses on the land. He said the Council was also told that the fiscal impact of this would be much worse than spending the money on the land. .

Mr. Hyde said the reasons for acquiring the Fogg conservation easement had nothing to do with not having more kids in the schools. He also noted that doing a true fiscal impact analysis could be expensive, if done right.

Councilor Needell said the Council had previously discussed the idea of including a clause about fiscal impacts. He said he didn't disagree with the importance of weighing fiscal impacts, but said this phrase either belonged in every document the Town had, or the concept was inherent in any recommendations the Council or the Town Administrator made. He said he didn't think it had a role in the guidelines for any group who wanted to bring forward a land protection opportunity for the Town. He said it was the Council's job to be concerned with overall fiscal impacts to the Town.

Councilor Julian Smith said he agreed.

Councilor Henry Smith noted that there had also been discussion about elderly housing, with the Fogg property. He said the Council had the right to bring up the fiscal impact perspective, and said doing this was already built into the process.

Councilor Leach asked if Councilors wanted to continue to discuss the policy guidelines, or perhaps had more questions concerning the Conservation Commission's April 2008 report.

Councilor Van Asselt asked if the Conservation Commission had thought about the idea that those funds, if they stayed with the Conservation Commission, were also environmental funds. He said there was nothing wrong with considering

environmental/green issues as part of conservation, and said these issues were of more interest to him than scenic views of land.

Ms. Belowski said the Commission hadn't discussed this.

Mr. Hyde said according to State statute, the conservation fund could only be expended on items related to the purposes of the Conservation Commission, but said these purposes were rather broad, and had a lot to do with water quality and land conservation. He said he didn't think climate change was on the table when the RSA was written.

He said the Commission had thought about this, and he noted that conservation funds would be used for the erosion and sedimentation aspects of the Jackson's Landing project, and for invasive species removal. He said they were looking to do other projects outside of land conservation, but noted that land conservation got a lot of attention because it was expensive.

Councilor Van Asselt said Jackson's Landing was a perfect example of what he was talking about, and also said Jack Farrell's project was another opportunity for the Conservation Commission to work with a developer. He provided details on this, and said the possibility of the Land Use Change Tax funds having an impact there was real. He said he wasn't talking in terms of land conservation, and said the impact on the river should be of as much interest to the Conservation Commission as the project's economic impact was to the EDC.

Mr. Hyde agreed, and said there was a lot the commission did that didn't have to do with expending funds.

There was discussion on the role the Conservation Commission could play with this project, and about whether any conservation funds might be involved.

Mr. Clark asked if there was a rule of thumb, in terms of what percent of the conservation fund should be put toward stewardship programs, as opposed to acquisitions.

There was discussion on this. Mr. Hyde provided details on how the fund operated, and said it was a very insecure fund to look at, in terms of how money came in and went out.

Mr. Clark also asked if there was as robust a plan for land management as there was for land acquisition.

Ms. Belowski said they had provided some numbers on this, and Councilor Clark asked if this was what the Commission expected to happen, moving forward. Ms. Belowski said land acquisition was far more expensive than building trails, managing properties, etc.

Councilor Clark said he could think of some really big ticket items that would be great for the environment and for the Town, like zero carbon transportation to connect neighborhoods to downtown, and renewable energy plants.

Ms. Belowski said that was why she had been hesitant in her answer, because she didn't



know if these kinds of things fit under the RSA. She said these kinds of things were much bigger than what the Commission had discussed.

Councilor Julian Smith read from the State statute concerning Conservation Commissions, and said they referred to the protection and utilization of natural resources. He said producing renewable energy from firewood, planting trees to cleanse the air, etc. were broad environmental issues this legislation was meant to cover.

Councilor Leach said what she was hearing was that people were looking for the Conservation Commission and its funds to broaden out, to consider things beyond just land acquisition. She said the perception had been largely that the Conservation Commission bought land to conserve. She said what the Commission had presented that evening had been helpful. She said it sounded like most of the Council was encouraged buy this, and were asking the Commission to continue with this.

Councilor Leach asked if the Council could perhaps go back to discussing the guidelines.

Councilor Henry Smith said Jackson's Landing was a great example of this.

Ms. Belowski said the Longmarsh preserve project was another good example. She said she didn't think people realized the amount of effort that had gone into this project.

Councilor Sievert said he first had some general questions about the money issues. He noted that Mr. Hyde had been involved in the writing of the Zoning Ordinance, and asked him if he thought the Ordinance were good or bad for peoples' property. He said he saw the Ordinance as potentially impacting peoples' properties negatively and positively. He said he amount of lots one could get from a particular property were now less, so in a sense, land was being conserved in this way. He said this tended to decrease the value in developing a particular property, and said how much the fund had to continue to grow if the regulations in place were restrictive enough to protect the majority of the properties.

Mr. Hyde said he didn't think that the Zoning regulations were so strict that they would fundamentally protect large areas of land. He said that Durham did a pretty good job of designating primary and secondary conservation areas, but from a wildlife point of view, there were still minimal buffers. He said from a water quality point of view, there were minimums. He noted that there were plenty of areas in town with important resource values that if developed, would impact resource values.

Councilor Sievert asked how much money we need to amass, if we have other protections, including the Zoning Ordinance. He asked where/how money might be re-routed to other areas that needed help and Mr. Hyde said that was a hard question to answer.

Councilor Julian Smith suggested that the Council move on to discuss the Policy document. He said the Council had put off revising this for some months now.

Ms. Belowski said the Commission was anxious to get resolution on the Land Use Change Tax issue. She said it had taken significant time and attention on the part of the

Commission,

Peter Smith, Commission member, said he was sympathetic to what the Conservation Commission Chair had just said. He also said there were members of the Council who were anxious to resolve this issue. He said not resolving this issue was enormously destructive in terms of time and in terms of morale, and said he would like to see it resolved.

He said the Council had been very wise originally to devote half of the Land Use Change Tax money, and then 100%, to the conservation fund. He said if the Zoning Ordinance at some future point did what Councilor Sievert suggested it now leaned toward, he would agree that the Commission should end its further work on land acquisition.

But he said if one looked at the recent changes in the Ordinance that promoted certain protections, those were minimal at the margin issues. He said they were a long way from having a code that was arranged to bring about the sort of land and environmental protection that the land acquisition work was accomplishing.

Mr. Smith said the movement of the Town to do conservation easements was not commenced by the Council or by the Conservation Commission, and instead was begun by a number of interested citizens. He said subsequent to that, citizens worked, spoke and voted substantially in favor of spending \$2.5 million for land acquisition.

He said he was very interested to see that Jack Farrell, Durham's leading developer, had indicated his strong support for keeping the Land Use Change Tax funds where they were. He said in his own view, this was a revolving fund, and he provided details on this. He said putting this money into the general budget of the Council was tempting, given the cost of running the schools and the town. But he said in putting it into the conservation fund, it could be used responsibly to protect a piece of land with funds that came from a penalty on another piece of land that had gone out of current use. He said that was why he thought it was totally logical for the Legislature to authorize the Town Council to say it could use whatever percentage it wanted for this purpose.

Mr. Smith said that based on the work of the Commission since that time, one would have to conclude that it had been incredibly open to making certain that for any project where a subsequent amount of money was spent, it came to the Council even if it didn't have to. He said the expenditure of conservation funds that had been made without that consultation with the Council had involved nickel and dime amounts, and he provided details on this.

He said to the extent that anyone out there thought the Conservation Commission had been throwing money around and acting independently, nothing could be further from the truth. He said the Commission was constrained by Statute, and said there was therefore no good answer to Councilor Clark's question. He said it was correct that the original legislation didn't contemplate global warming, and also said there had been no litigation on this issue. He said the Conservation Commission would be judicious concerning this, but he said the picture did change over time as to what was meant by conservation.

Councilor Leach said there probably wouldn't be time for the Council to discuss the guidelines that evening, and said she wanted to get clarification on what the Commission would like the Council to do in regard to the Land Use Change Tax issue that evening.

Mr. Smith said he hoped the Council would do nothing that evening, for some very compelling reasons. He also said if the Council wished to make a change, he pleaded to at least schedule a public hearing.

Ms. Belowski said she agreed that if the Council voted to make a change, there needed to be a public hearing. She said if the Council voted not to make a change, that would be fine.

Councilor Needell said the nicest thing to do would be to never talk about this again.

Councilor Leach said she was not saying the Council would never talk about this issue again, and also said she thought it would be a mistake to do something or not do something on it that evening.

Ms. Belowski said she felt that if the Council took this up in the future without input from the Commission, and without a public hearing, that would be unfair.

Chair Niman thanked the Conservation Commission Chair for her letter and for coming that night. He said there had been one member of the Council who was disappointed that the Council hadn't resolved the Land Use Change Tax issue. He said if someone wanted to change the LUCT allocation, that evening had been the time to do this. He said if there was no motion, he didn't see this coming back on a future Council agenda. He said if the Councilor who had brought this up said he wanted to bring it back, he would say there had been the opportunity, which was now gone.

Councilor Van Asselt said he didn't like that approach.

Councilor Leach said she didn't have problem with leaving things the way they were. She noted that the Council had voted a few weeks back to leave things as they were to April of 2009 anyway. But she this might be a topic that would come up again, especially when discussing the Budget. She also said she didn't have all the information she needed to decide one way or another, so didn't want to say it would never come back to the Council.

Councilor Van Asselt said he had no interest in voting on this that evening, but said he took issue with the suggestion that couldn't come back. He said any Councilor could bring it back. He said he thought what the Conservation Commission had put together made sense, and said he was willing to keep talking and thinking about this issue. He said they should let it sit for now.

Councilor Needell said there was no reason to vote on anything, and there was also nothing to prevent the topic from coming up again. He said he thought that if it did come up, it should come up as a new topic, and the discussion should start over. He said he also agreed that if a Resolution was brought forward, there should be a public hearing.

Chair Niman said he agreed with Councilor Needell, and should have stated it that way himself.

It was agreed to put off further discussion on the policy document until a future meeting.

C. Answer questions from Councilors relative to plan for addressing issues surrounding the Lamprey River 401 Certificate

Chair Niman said he didn't think there was interest on the Council in going over old ground regarding the 401 certificate. He said the last time Mr. Cedarholm, was before the Council, he had asked Mr. Cedarholm when water from the Lamprey River would be available to the Town. He said that was the question for him. He said Mr. Cedarholm had indicated that the Public Works Department had a plan, and a member of the Council had then asked for some kind of timeline. Chair Niman asked Mr. Cedarholm to speak about this timeline.

Mr. Cedarholm first explained that the Town was able to pump water from the river today, as long as flows were at least 45 cfs, with the 401 permit applying when the flows were less than this. He said he had presented somewhat of a timeline in a February memo, and since that time, had met with ten NH water supply managers in NH as well as the State, in March, to discuss issues relating to the 401 permit.

He noted that Durham's water supply was the only one with the permit, but he said the others would be faced with it soon. He said one of the items on the timeline was the fact that DES had a policy that was in the development stages, which would require water supplies with reservoirs to monitor nearby wetlands, to see if there was a negative impact to them from fluctuations in water levels.

Mr. Cedarholm said all of the water supply engineers for these water supplies felt this was a pretty ridiculous idea. He said that certainly, there were water level fluctuations and temperature impacts over time, but he said wetlands had been adjusting to this for as long as the reservoirs had been around. He said the State was moving forward with this policy, and he provided details on this, including the fact that it would be reviewed and debated by a water quality advisory committee comprised of regulators, residents, water supply engineers, scientists, etc.

He said the State's Attorney General was backing up DES in terms of what it had done with the 401 certificates to date. He said the DES Commissioner and the Administrator of the Water Division were equally concerned about where this policy would go. He said the Commissioner had been at the meeting with the water suppliers, and had listened to their concerns.

Mr. Cedarholm said the Public Works Department was also working on a flow monitoring plan, which would be submitted the following week. He said the flow monitoring plan included a proposal to do all of the in-stream monitoring at a gauged station immediately downstream of the dam. He also said the Town would ask DES to allow a withdrawal increase from ½ inch to 1 inch, and he said it also made sense to reiterate the Town's interest in increasing the drawdown 12 or 18 inches.

Councilor Leach asked when the actual testing would be done, and Mr. Cedarholm said he expected that DES would get back to them right away to say whether the plan was acceptable. He noted that the Town should be able to withdraw water even while establishing the stream gauge, and he provided details on this.

He said this would depend on how low the flows went this year, and said if it got down to 5 cfs, that would be good, because it would allow water withdrawal while also allowing them to test the system. He said Public Works had already gotten a quote for this work, so they would be ready to go if the plan was approved.

Administrator Selig noted that the previous year, the Town had provided DES with a flow monitoring plan that the State rejected.

Councilor Leach asked if it was possible that the plan would be rejected again this year.

Mr. Cedarholm said the State's concern the previous year had been that the Town had proposed to use the weir of the spillway itself as the location for the monitoring, and he provided details on this. He said the State hadn't liked that idea.

Councilor Henry Smith said the Town could submit a monitoring plan that the State would then reject, and said this was why he was saying there wasn't really a timeline.

Mr. Cedarholm said DES was being somewhat reasonable about this, and was interested in allowing the Town to use the river. He said establishing a gauge immediately downstream would provide the Town with the data it needed, and he also noted that there was a USGS gauge at Packers Falls that would provide a backup, and could confirm the new data. He said his sense was that Paul Currier of DES would allow the Town to move forward and give this a try. He noted that the Town had gotten informal conditional approval for a flow monitoring plan in 2002.

Chair Niman asked if the conclusion to this was that if the plan was approved, the Town would be able to take water out of the river and carefully monitor it during low flow season.

Mr. Cedarholm said that was his intention.

Councilor Needell noted a 1990 letter in Councilors' packet from former Council Chair Pat Samuels, regarding the issue of the Lamprey River being the backup drinking water for the Town. He asked if this was the way the Town considered the Lamprey now.

Administrator Selig explained that before the hard-pipe was connected to the water treatment plant, the Town had looked at the Lamprey as a backup water supply. But he said after it was connected, the water quality from the Lamprey tended to be better than the water quality from the Oyster River, resulting in decreased operation costs at the treatment plant. He said it therefore made sense to rely on the Lamprey more heavily.

He said in the first year of operation of the hard pipe, the Lamprey was therefore drawn a great deal. But he said concerns arose about the Town meeting monitoring requirements.

He provided details on this, and said a challenge had been finding an upstream monitoring location that was reliable.

Councilor Needell asked if it was correct to say that if the monitoring was acceptable, the Lamprey River would be used more heavily as the primary water source.

Mr. Cedarholm noted that recently, until the flow dropped below 45 cfs, the Town drew from the Lamprey.

Councilor Needell said in other words, the Town had decided that when the flows got low, it would not draw from the Lamprey so as not to be in the position of not meeting the requirements. He said his understanding was that if this plan was approved, the Town would have more flexibility, and that the intent would be to use the Lamprey during high flows, and not simply as a backup.

Mr. Cedarholm said that was correct, also noting that it was problematic to use the Lamprey in the winter because of the possibility of the pipe freezing.

Councilor Leach noted that the other recommendations Mr. Cedarholm had provided, especially the water conservation plan, were really good.

Mr. Cedarholm noted that the Town had a consultant working on the water conservation plan, and he said this would be submitted with the Spruce Hole preliminary well siting application. He also said that contract included helping the Town update its water ordinance with water restrictions.

D. Update on reconstituting the Durham Apportionment Committee as the Tri Town Education Committee

Administrator Selig said the School Board had received the letter he had written on behalf of the Council, and said they were planning to talk about it at their next meeting in 2 weeks.

Councilor Needell said he was at the most recent School Board meeting, and said the letter had arrived after the Board's packet was put together. He also said the Board had had a full agenda that evening.

Chair Niman said he would look forward to the School Board discussing the letter at their next meeting, and said he would put this item on a future Council Agenda.

E. Continued discussion on annual pay increases for non-unionized employees

Chair Niman noted that there had been some discussion on this issue in non-public session, and said they would now finish the discussion in public session.

Administrator Selig explained that this issue in the past had come to the Council under the Unanimous Consent Agenda, but some Councilors had found it uncomfortable approving this without some discussion. He said the pattern had therefore been changed

for the past two years to allow Council discussion, either in nonpublic session about specific employees, or in public session about more general issues, before approving a Resolution on annual pay increases.

Councilor Leach noted that Administrator Selig had said in his Council Communication that there was the opportunity for a 2% increase, but that there was also often the opportunity for an additional 1% to address classification improvements.

Administrator Selig said the adjustment concerning classification improvements had been done at the beginning of the year. He said it showed up in the base pay for 2008, and said in some cases, the adjustment was more than 1%, noting that it tracked the midpoint in a way that was consistent with where the employee was the year before.

Councilor Van Asselt said he didn't have any problem with doing the Resolution. But he said there came a time when positions were maxed out, in terms of annual pay increases. He noted that he had told people in his department at work who had reached a certain level that if they wanted to make more money, they would need to go elsewhere. He said in that case, it was because revenues continued to shrink.

He said he didn't see anything wrong with this line of thinking. He said he was not arguing that salaries were too high, and was not saying that a cap should be put on certain positions. But he said this issue should be given some consideration over the next 5 years, given concerns about revenues, and the tax rate. He provided details on this, and noted that 85% of the Town budget went to salaries.

Administrator Selig said he agreed completely with this, and said it had already been taken into consideration with particular positions. He provided details on this, explaining that individuals who had reached the maximum threshold only got the 2% cost of living increase. He said most of the non-union employees aggregated around the midpoint, and said if they had been in Durham for a number of years, they were typically between the midpoint and upper level, which he said was a good place for them. In answer to a question from Councilor Leach, he said an employee who had reached that upper level and only got the 2% cost of living increase was aware of this reality.

Councilor Leach said she agreed with Councilor Van Asselt, and said this did not mean they thought employees were overpaid, or didn't earn their money. She said the issue was taxes, and said some of these salaries were high. She said the question was where this ended.

After discussion, Chair Niman said a Resolution would be brought back to the Council.

## **XI. New Business**

- A. Appoint alternate Council representative to replace Councilor Peter Stanhope on the Durham Planning Board

Chair Niman said he had thought he could replace Councilor Stanhope as the Alternate Council representative to the Planning Board, but it turned out he could not. He asked if

someone else would volunteer, and noted that if there wasn't an alternate, the Council would be violating the Town Charter.

There was discussion on the possible consequences of violating the Charter in this way.

Administrator Selig said an option might be for the alternate to only have to attend Planning Board meetings when the regular Council representative could not attend. He said the alternate would have to be responsible to talk with Councilor Smith on the history of particular projects, and then would have to exercise his/her best judgment, without having sat through all of the meetings.

Councilor Needell said as much as he would like to see someone volunteer for this position, it shouldn't be minimized what was involved in taking it, in terms of getting up to speed. He said there were very long application processes before the Planning Board these days, and said filling in on the Board on a haphazard basis compromised the integrity of the process, and would open it to legal challenge.

Chair Niman said he hadn't received an actual resignation from Councilor Stanhope, and said if no one wanted to step forward, he could still be considered the alternate.

Councilor Leach said she thought the Council should let this go and not have an alternate until someone stepped forward to take the position. She noted there were other boards that were unfilled.

Councilor Needell said he fundamentally disagreed, and said the boards that were unfilled did have Council members on them, which was a requirement. He said he couldn't allow the Council to abdicate that responsibility, and said he would therefore reluctantly agree to take the position, but said he couldn't take it on and also be on the Energy Committee, DCAT and the Cemetery Committee. He said he also thought the Council should think seriously about why they had agreed to serve on other committees, but not on the Planning Board.

There was further discussion, and Chair Niman said he would check with Councilor Stanhope. He said he would also solicit volunteers for the other committees Councilor Needell was on, and would bring forward something on this at the next meeting.

***Councilor Julian Smith MOVED to suspend the 10:30 adjournment time. Councilor Leach SECONDED the motion, and it PASSED unanimously 8-0.***

- B. Review proposed Council-initiated Ordinance to Amend Section 175-32 "Zoning Map" of the Durham Town Code and refer said ordinance to the Durham Planning Board for review and study in accordance with Section 175-14 (B) of the Zoning Ordinance

Town Planner Jim Campbell provided background on the proposed amendments, explaining that the EDC had discussed them at their April 11<sup>th</sup> meeting, and had voted to send them to the Council, to see if they would initiate these changes and send them to the Planning Board.



He described the proposed changes: an extension of the Central Business District up Church Hill; an extension of the MUDOR district in the area of Madbury Road to include the Perry Bryant properties; and incorporation of some properties that were now Residential B, in the area of Spruce Wood into the ORLI district.

Councilor Van Asselt said it was important to note that Beech Hill was not on the list, stating that there were questions about that possible change, and that the EDC didn't feel this was ready to move to the Council. But he said the proposed Central Business district change made a lot of sense, and also said developer Perry Bryant had been to the EDC three times regarding possible changes to the Route 4/Madbury Road area.

He also noted that developer Jack Farrell had demonstrated for the EDC what he would like to do with an extension of the ORLI district to include a portion of the Spruce Woods property. He said it made sense to bring these ideas forward for further discussion.

Councilor Needell said it was important to point out that this was the first time these proposals had been discussed by the Council. He also said they were not sent by the Council to the EDC, but were sent there by a letter from Chair Niman, acting as an individual, not as Chair. He said this was fine. He said some Councilors had been involved in discussion on these proposed changes, but many others had not. He said consideration of these proposed amendments by the Council was starting now, and said he had a lot of questions and suggestions.

He said it was a responsibility of the person making the recommendation to root it in the Master Plan, and said he wanted to be sure the Council had done its homework on this. He said he had looked through the Master Plan concerning each of the three items. He suggested that if they were going to go forward with these recommendations, they should be sent forth individually, to be acted on independently.

He said the simplest proposed change was to extend ORLI just to accommodate the JLB land plan around the Tecce farm. He said that was now rolled into a much larger change of expanding ORLI into what was now the RB district, and said he encouraged the Council, given comments from the Conservation Commission and others, to think of these as two separate Zoning amendment requests. He said there were questions as to whether the Master Plan supported the larger change, and said this was a pretty big step.

Councilor Needell said the Council needed to clarify what the Master Plan said about the proposed MUDOR change. He said he thought perhaps ORLI would be more appropriate there, which would involve the conditional use process for a multiunit project in that area. He also said a key question that would have to be asked concerning this area was the future of the Route 4/Madbury Road intersection. He noted that there had been a lot of discussion about this, and said if it were closed off, that would impact in a major way the land uses in that area.

He said he had looked at the 1995 Community Development plan, and said it was pretty specific that it didn't want the Central Business District to grow. He also said the Master Plan, which followed from that, spoke heavily about limiting the impact on Church Hill and preserving its historic character. He said he didn't disagree with arguments as to why

the change would be a good idea, but said they were still bound by some of the other rules. Councilor Needell said he would like the Council to resolve these issues before sending the proposed changes to the Planning Board.

Councilor Van Asselt said he didn't have a problem with these questions, but did have a problem with references to the Master Plan. He said it was outdated, and asked how long they would say no to change because someone found some particular language in the Master Plan. He said he respected the research Councilor Needell had done, but asked how tied the Council should be to specifics in the Master Plan about what properties should be in what district.

He said he agreed with Councilor Needell that there should be two separate proposals concerning changes from Residence B to ORLI. He also said there needed to be a public discussion of these three proposed changes now, before the Planning Board, and then before the Council again, but he said he then wanted to see them move beyond having more discussion.

Councilor Needell said he didn't disagree with wanting to move more quickly, but he said this was a complex process. He said the Master Plan was a fundamental part of this, and said the Town was required to plan. He said if they were going to make Zoning changes, it didn't make sense to contradict the Master Plan. He said the Master Plan was there to slow the process down, and to make it a bit more difficult to change at the whim of an elected body whose membership changed every year.

He noted that the Town didn't often do Council-initiated changes, but said this was its prerogative. He said this was a strong statement the Council had made in initiating this process, and said the Council therefore needed to do its homework. He also noted that the citizens, through the EDC, could send these three proposed changes to the Planning Board.

There was discussion that having the Council involved now was a way to move things along faster.

Chair Niman said his guess was that there was something in the Master Plan that said Chesley Drive shouldn't be opened up, and said part of his idea about expanding the Central Business District was to create an economically viable entrance to Main Street. He said that idea fit with the Chesley Drive recommendation, and said he felt comfortable with that.

Regarding the proposed change to the property in the area of Route 4 and Madbury Road, he said his understanding was that this land was supposed to be zoned OR, according to the Master Plan.

Councilor Needell noted that both ORLI and MUDOR were OR.

Chair Niman said the problem with the Master Plan was that it said the Town was going to solve all the Town's problems with age-restricted housing. He said the need now was for workforce housing, and said Mr. Bryant was trying to do a development that included

student housing as well as workforce housing, with the student housing subsidizing the workforce housing. He said the needs of the State had changed, so the Master Plan was dated concerning this.

Councilor Needell said he was simply saying they needed to have that kind of discussion, which Chair Niman was providing a good example of, before sending these proposed changes on to the Planning Board.

Councilor Leach said she agreed. She said the things Councilor Needell had said were things the Council needed to know, and the Planning Board needed to know. She suggested that more detail could be provided in the written information on each of the proposals.

There was discussion on how the Master Plan applied to proposed Zoning changes. There was also discussion on why the ORLI district hadn't previously been drawn all the way to the Lee town boundary.

Councilor Needell said he believed there was specific reference in the Master Plan that anything south of the Oyster River should stay residential, and he read from the Master Plan concerning this. He noted that the Tecce property was on both sides of the river, and those writing the Master Plan didn't want to split it into two districts.

It was agreed that Chair Niman and Mr. Campbell would do further work on these proposed changes.

C. Other business

Councilor Leach handed out the information for the upcoming goals session, and explained that the goals to be discussed had been divided into 4 categories. Chair Niman said they tried to keep the wording exactly as it was presented to them.

**XII. Nonpublic Session**

None

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

**XIV. Adjourn**

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

Adjournment at 11:03 pm

Victoria Parmele, Minutes taker