

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

**AGENDA
DURHAM TOWN COUNCIL
MONDAY, MAY 19, 2008
DURHAM TOWN HALL – COUNCIL CHAMBERS
7:00 PM**

MEMBERS PRESENT: Chair Neil Niman; Councilor Jerry Needell; Councilor Julian Smith; Councilor Peter Stanhope; Councilor Cathy Leach (arrived at 7:15 PM); Councilor Doug Clark; Councilor Mike Sievert

MEMBERS ABSENT: Councilor Henry Smith

OTHERS PRESENT: Town Administrator Todd Selig, Director of Public Works
Mike Lynch, Assessor Robb Dix

I. Call to Order

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

II. Approval of Agenda

Councilor Van Asselt and Councilor Stanhope MOVED to approve the Agenda.

Administrator Selig suggested that Agenda Item XI A, the public hearing and Resolution concerning the Brownfields Cleanup Grant Program, be move up earlier on the Agenda, in case citizens were present to speak at the hearing. It was agreed the hearing would be held after VIII – Committee Appointments

Councilor Van Asselt and Councilor Stanhope agreed informally that the motion to approve the Agenda should be amended to reflect this.

Councilor Needell said he was surprised to see Item X A on the Agenda, and said his recollection was that this item would come back as part of continuation of the discussion, and that members of the Conservation Commission would be a part of this. He recommended that the Council therefore defer this discussion this could be arranged.

Councilor Needell MOVED to strike Item X A from the Agenda. Councilor Stanhope SECONDED the motion.

Councilor Julian Smith said he was on the Conservation Commission when it had looked at Administrator Selig's suggested revisions to the document. He said the Commission made its own recommendations at that time. He noted that last fall when the Council had met with the Commission, he had suggested that the document be taken care of then.

He said this was the Council's document, and said he thought the Council should address it that evening. He said if more input was still needed after this, it could be tabled and brought back. He recommended that the Agenda therefore not be changed.

Chair Niman agreed, stating that he had previously thrown out to the Council the idea of putting this on the Agenda when there was an opening. He said he didn't hear the Conservation Commission members say at that time that they wanted to be in the room for that.

Councilor Sievert said that was how he remembered this as well.

Councilor Needell said some new language had been proposed, and said he had therefore thought it was important to invite them, as a courtesy.

Chair Niman said he had asked Duane Hyde about this at the meeting the Conservation Commission had attended, and he noted that this was reflected in the Minutes.

The motion FAILED 1-6, with Councilor Needell voting in favor of it.

The original motion to approve the Agenda, as amended, PASSED 7-0.

III. Special Announcements

David Emanuel – Promotion to Fire Captain

Arthur Boutin – New Firefighter

Fire Chief O'Leary said this was an exciting time for Durham, in seeing an existing member of the department attain the rank of captain, and in welcoming a new fire fighter. He said the person holding this vital captain's position needed to be a jack of all trades, and said there was no one better suited to do this work than Mr. Emmanuel. He noted that he was a UNH graduate, and was a former President of the Firefighters' union. He said Arthur Boutin was a longstanding member of the McGregor EMS, was a UNH graduate, and was a longstanding member of the Madbury volunteer Fire Department.

He said the formal swearing in of these employees, and the ceremony for the three retiring captains would take place on June 7th.

Town Clerk Lorrie Pitt swore in Mr. Emmanuel and Mr. Boutin.

IV. Approval of Minutes

April 21, 2008

Councilor Van Asselt MOVED to approve the April 21, 2008 Minutes. Councilor Julian Smith SECONDED the motion, and it PASSED unanimously 7-0.

V. Councilor and Town Administrator Roundtable

Councilor Leach arrived at the meeting at 7:15 pm.

Administrator Selig said the Memorial Day parade ceremony would take place on May 26th following a ceremony at 9:00 AM at the MUB. He said the parade itself would take place at 10 am, and he provided details on this.

He noted that swimming pool vouchers were now available for the 2008 season, and said there was a \$35 discount for kids between 2-17, and for people over 62 years old.

Councilor Needell said he had attended the most recent School District meeting, and said they were moving forward with a committee to study the idea of a budget committee. He said one part of the process was to appoint an ad hoc budget committee to see how it worked, and he said residents were encouraged to get involved with this. He said information on this was available on both the Town and School websites.

Administrator Selig said he, Councilor Van Asselt and Mr. Campbell had recently spoken with Steve Schuster of Chinburg Builders, concerning the Durham Business Park. He explained that NHDOT currently had a limit on the number of vehicles that could enter and exit the site, based on a 35,000 sf building. He said Chinburg was working with NHDOT to see if the agency would allow them to propose a building that would be allowed a higher vehicle count. He said there appeared to be some willingness on the part of NHDOT to talk, and he said the Council would be updated on the situation as information became available.

He also explained that because of some culverts previously put in on the site, some additional wetland area had been created, which meant that two formerly buildable lots were no longer buildable. He also said Chinburg was looking to have either a business park or elder care facility on the site, and was doing a national advertising campaign.

Administrator Selig said the Mill Plaza Study Committee's project had been named project of the year by the NH Planner's Association, and also said the project was mentioned at a regional conference in Boston held the previous week. He congratulated the Committee and others for their work on this project.

Councilor Julian Smith said the Planning Board had met the previous week, and had held a public hearing on the Council's recommended deletion of Section 175-9 (A)(13) of the Zoning Ordinance, concerning taking the most conservative or restrictive approach in applying or interpreting the Zoning Ordinance. He said the Board had subsequently voted to recommend this proposed change

He said the Planning Board had also continued the conceptual consultation with JLB Partners, and said one of the main issues discussed was the idea of accessing the proposed development via Mill Road. He said the Board had asked the developer to come back with suggested ways to mitigate some of the consequences of increased traffic along Mill Road as a result of this development.

Councilor Sievert said he had attended the most recent Recreation Committee meeting, and said it was exciting to see the input from new members of the Committee.

Councilor Van Asselt referred to the recent meeting with Steve Schuster of Chinburg Builders. He said the Council had done the right thing regarding the Purchase and Sales agreement, and also said taking time with the development of the site made sense as compared to simply throwing a development up there and seeing what happened.

Administrator Selig said developer Dave Garvey wanted to speak with him regarding a new proposal for Stone Quarry Drive. He said he didn't have any specifics on this yet.

Councilor Leach said the Churchill Rink meeting to do strategy planning for next year would take place on Wednesday. She said anyone with ideas concerning this should email either herself, Councilor Sievert, or Public Works Director Mike Lynch.

Administrator Selig updated the Council on the Right to Know legislation that a Statewide Study Committee had been continuing to work on. He said it appeared that consensus had been reached and that the Governor would sign it. He said an attorney from the NH Municipal Association would provide an update on this at the appropriate time.

VI. Public Comments (NLT 7:30 PM)

Roger Speidel, 7 Nobel K Petersen Drive, updated the Council on his recent attendance at School Board meetings, and comments he had made to the Board at these meetings. He provided details on data he had provided to the Board that indicated that student enrollments had gone down while the number of teachers replaced, and hired new, had gone up. He spoke about the projected loss of additional students in the coming years, and said he therefore didn't see any justification for adding teachers. He said in a fiscally responsible school district, fewer students should mean few teachers, not more.

Susan Fuller, 68 Bennett Road, said she was present as a realtor to represent Walter Angoff, Trustee of the Congdon Revocable Trust, regarding an abatement request concerning the property located at 25 Newmarket Road. She provided details on this.

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

- A. Shall the Town Council approve a special event permit application submitted by the Town of Durham and the Bourgoin-Reardon Unit 94 American Legion Auxiliary to conduct the annual Memorial Day Parade to be held on Monday, May 26, 2008?
- B. Shall the Town Council approve a special event permit application submitted by Seacoast Growers' Association to conduct its Farmer's Market during the period June 2-October 6, 2008?
- C. Shall the Town Council approve a non-industrial sewer extension application for the River's Edge Apartments by Tritech Engineering Corporation on behalf of Northam Builders as recommended by the Durham Water, Wastewater, and Solid Waste Committee?
- D. Shall the Town Council award a bid to and authorize the Town Administrator to sign a contract with Stephens Associates of Brentwood, NH for engineering services at the Oyster River Dam?
- E. Shall the Town Council award a bid and authorize the purchase of a 2008 John Deere skid steer Model 328 tractor with attachments from Shaw's Ridge Equipment, Inc. of Dover NH and Sanford ME in the amount of \$39,153 and authorize the trade-in of a 1997 Bobcat Model 963 skid steer tractor as part of the transaction?
- F. Shall the Town Council authorize the Town Administrator to sign the 2008 tax warrant and direct the Town Clerk-Tax Collector to collect partial payment of property taxes assessed on April 1, 2008?
- G. Shall the Town Council correct a procedural error in regard to the approval of the Town Council meeting minutes of March 17, 2008?

Councilor Van Asselt MOVED to approve Unanimous Consent Agenda Items A-G. Councilor Sievert SECONDED the motion, and it PASSED unanimously 8-0.

VIII. Committee Appointments

- A. Shall the Town Council appoint Edmund Harvey, 196 Packers Falls Road, as an alternate on the Zoning Board of Adjustment?

Mr. Harvey said he worked in Financial Services at UNH, and noted that the work he had done in graduate school had related to master planning and zoning issues. He said he wanted to be an active member of the Durham community.

Councilor Stanhope asked Mr. Harvey where he stood philosophically, regarding public and private property rights.

Mr. Harvey said this depended on the situation, and the town. He said he strongly believed in public property rights but also respected private property rights, as a property owner. He provided further details on his perspective.

Administrator Selig noted that the ZBA was one of the Town's more complex Boards, and he said there were Statewide training courses available concerning the ZBA. He said he wanted to be sure that Mr. Harvey would be willing to make time for this training.

Mr. Harvey said he would absolutely make himself available for the training, and understood the importance of keeping up education in a particular field.

Councilor Leach MOVED to appoint Edmund Harvey, 196 Packers Falls Road, as an alternate member to the Durham Zoning Board of Adjustment, with a term expiration of April 30, 2011. Councilor Julian Smith SECONDED the motion, and it PASSED unanimously 8-0.

- B. Shall the Town Council appoint Heather Harvey, 196 Packers Falls Road, to the Integrated Waste Management Advisory Committee?

Heather Harvey said she worked at Lonza Biologics, and said as part of her work, she was involved in greening the company and its image. She provided details on this and on the environmental advocacy work she had done as a volunteer, which related to the work of the IWAC. She said she wished to serve the Durham community.

Councilor Julian Smith MOVED to appoint Heather Harvey, 196 Packers Falls Road, to the Integrated Waste Management Advisory Committee, effective immediately. Councilor Stanhope SECONDED the motion.

Councilor Stanhope spoke about the idea of a possible merger between the IWAC and the Energy Committee, and said he thought Ms. Harvey could perhaps bring a lot of energy to this approach.

Councilor Needell said it had been requested that the Chairs of these two committees meet to discuss the idea of a merger. He said he felt that was the extent to which the Council should be involved with this.

Councilor Julian Smith said he endorsed the comments of Councilor Needell and Councilor Stanhope. He noted that the IWAC had discussed how it should be interacting with the Energy Committee at a recent meeting, and he thanked Ms. Harvey for attending that meeting.

Chair Niman said hopefully Ms. Harvey could bring some new energy to this situation.

The motion PASSED unanimously 8-0.

- C. Shall the Town Council appoint Edward Valena, 9 Bagdad Road, to the DCAT Governance Committee?

Councilor Julian Smith MOVED to appoint Edward Valena to the DCAT Governance Committee. Councilor Sievert SECONDED the motion.

Councilor Leach noted that she had a time conflict, regarding the DCAT meetings, and said the Council might need to appoint a different Council representative to DCAT.

The motion PASSED unanimously 8-0.

XI. New Business

- A. **PUBLIC HEARING** to obtain input from citizens on a grant application in the amount of \$200,000 under the Brownfields Cleanup Grant Program from the United States Environmental Protection Agency for the remediation of the former Craig Supply site, now known as the Depot Road parking lot, as well as to hold a **PUBLIC HEARING AND APPROVE RESOLUTION #2008-17** authorizing the acceptance and expenditure of said grant funds for the purpose of repairing the 7-foot high concrete culvert at the Depot Road parking lot

Councilor Julian Smith MOVED to open the PUBLIC HEARING to obtain input from citizens on a grant application in the amount of \$200,000 under the Brownfields Cleanup Grant Program from the United States Environmental Protection Agency for the remediation of the former Craig Supply site, now known as the Depot Road parking lot, as well as to hold a PUBLIC HEARING AND APPROVE RESOLUTION #2008-17 authorizing the acceptance and expenditure of said grant funds for the purpose of repairing the 7-foot high concrete culvert at the Depot Road parking lot. Councilor Leach SECONDED the motion, and it PASSED unanimously 7-0.

There were no members of the public who wished to speak on this issue.

Councilor Leach MOVED to close the Public Hearing to obtain input from citizens on a grant application in the amount of \$200,000 under the Brownfields Cleanup Grant Program from the United States Environmental Protection Agency for the remediation of the former Craig Supply site, now known as the Depot Road parking lot, as well as to hold a PUBLIC HEARING AND APPROVE RESOLUTION #2008-17 authorizing the acceptance and expenditure of said grant funds for the purpose of repairing the 7-foot high concrete culvert at the Depot Road parking lot. Councilor Sievert SECONDED the motion, and it PASSED unanimously 8-0.

Councilor Clark MOVED to adopt Resolution #2008-17 as presented, authorizing the acceptance and expenditure of said grant funds for the purpose of repairing the 7-foot high concrete culvert at the Depot Road parking lot. Councilor Van Asselt SECONDED the motion.

In answer to questions from Councilor Van Asselt concerning the need for this work, and the bearing it had on other things the Council had talked about regarding the future of the Depot Road site, Administrator Selig said it was the next stop of the remediation process. He said as long as the Town owned the property, it needed to proceed with this work.

There was discussion between Councilor Van Asselt and Administrator Selig concerning the Town's commitment and investment in this property and about what would be involved if a developer was interested in doing something else with the property besides parking cars.

Administrator Selig noted that the long-term mitigation plan had not yet been approved, and that the technology concerning mitigation was frequently changing. He also said no money was available at present for actual remediation of the site, and said the EPA was content to have the Town stabilize the site, including repairing the concrete culvert. He noted that whatever the grant didn't cover concerning the repair, the State would cover.

He also explained that a private entity wishing to develop the property would have to negotiate with the State to see if it was ok with the proposed long-term use of the property. He said a new owner of the property would also have to provide assurances that the development wouldn't make the property worse, from an environmental perspective.

Councilor Van Asselt noted that he had raised the issue 2-3 years ago about the danger of going down the road of remediating the site, and then not having the funding for it. He said this was still a legitimate concern, and said the question was whether the Council wanted to continue down the road of making improvements if at some point, the Town might be responsible for continued improvement of the site, locally, which could end up costing millions.

He said another scenario was that the Town instead could sell the property, in which case it could wait regarding the remediation, and could pass this on to the new owner. He asked if the Town had some kind of long term plan for the property.

Administrator Selig explained that the parking lot, which had a membrane underneath it in the location of the plume to contain pollutants, had been approved by NHDES. He said the agency had been asked if it would let the Town retain the parking lot for evermore, and it hadn't said yes or no. He said the EPA was also thinking about this, and he said there was currently no pressure from these agencies that the Town invest the money to remediate the site. He also noted that the funds for the initial investment in site work would be transferred back to the General Fund, and said these funds would come from parking revenues.

He said if the Town was allowed to keep the parking lot, more money could be generated for the Town's parking fund. He said a second option was to trade the property to UNH for a property that was perhaps more valuable to the Town, but he noted that a challenge at present was that the Depot Road property had a negative value. He said a third option would be to sell the property to a private entity, but he said such an entity wouldn't necessarily want to take on the responsibilities involved with this property. He noted that the Town had a certain amount of immunity concerning this.

Councilor Van Asselt said he didn't want the Town to spend a lot of money to make this a positive piece of land, and said Administrator Selig had indicated to date that this would not be the case.

Councilor Leach received clarification that the work for which this grant funding had been provided was absolutely necessary.

The motion PASSED unanimously 8-0.

IX. Presentation Item

Review 2006/07 property tax abatements and hold a question and answer session with the Town Assessor

Administrator Selig said more information had been provided for Councilors this year on abatement requests than in the past. He said Town Assessor Robb Dix would provide an overview on them, and would focus on a few of the requests and on trends he had been seeing. He said there was no expectation that the Council would act on these requests that evening, and said there were two additional weeks for the Council to speak with him about the requests. He also explained that the individual files were available for Councilors to look at if they needed more details.

Mr. Dix said overall, this year had been a real challenge, given the volatility of the real estate market, and the uncertainty of the market looking toward the future. He said he had tried to take into consideration taxpayer concerns, and to respond to them responsibly and clearly. He noted the spreadsheet he had developed for 27 properties for which abatements had been requested. He also provided details on Addendum A, an analysis of waterfront properties for which tax abatements had been requested.

He explained that he hadn't had enough information in 2007 to address that segment of the market, even though he could see the changes that were occurring. He said the analysis he had now developed addressed that segment, and it boiled down to the fact that unless there were other extenuating circumstances, he was recommending a 15% reduction for the waterfront properties that had applied for abatements. He said he could provide further details on this if the Council had questions.

Mr. Dix also provided details on the fact that he had recommended settlements for two Chittendon Corp. properties.

Councilor Stanhope asked Mr. Dix what specifically he had included in the population of waterfront properties.

Mr. Dix said this included properties on the Oyster River and Great/Little Bay that had filed abatement requests. He said he was not reassessing those waterfront properties that did not apply for an abatement, and said that would happen when the revaluation occurred. In response to comments from Councilor Needell, he said the abatements the Council was looking at that evening were based on April 1, 2007. He noted that Addendum A said "We expect this analysis to be the starting point for how we value waterfront properties for the 2008 statistical update."

Chair Niman said the approach reflected in Addendum A seemed like very bad public policy, and also seemed to be terribly unfair, in that someone who complained got a 15% reduction, while someone who didn't complain did not get it.

Mr. Dix said the nature of abatements was that they were given to people who appealed. He said it was a taxpayer's responsibility to say something was wrong with an assessment.

Chair Niman said when the Town saw a major shift in the market, wasn't it the Town's obligation to do right by the citizens, and to adjust the assessments so they were fair, rather than responding to complainers.

Mr. Dix said in order to accomplish that, the Town would have had to do a statistical update in 2007 instead of 2008. He said there would be adjustments in 2008, for various segments of the market. But he said in order to accomplish what Chair Niman was saying, an update would have to be done every year.

In answer to a question from Councilor Leach, Mr. Dix provided details on the assessment process, and the variables that needed to be considered, as the real estate market changed from a sellers' to a buyers' market.

Councilor Clark said one number in the list of waterfront properties was skewing the whole list. He also asked if this same kind of analysis had been done for non-waterfront properties. He said if the 15% decrease was just for waterfront properties, it was important to distinguish between high end and middle end properties. He said statewide, high-end waterfront properties weren't decreasing.

Mr. Dix said to do what Councilor Clark had suggested, an analysis would have to be done of the whole Town.

Councilor Clark said even an analysis of 10 non-waterfront properties would be useful.

Councilor Julian Smith noted that 12 of the properties on the spreadsheet were located either on Bay Road or Deer Meadow Road, and he asked whether this was a coincidence; if they were on or near the waterfront; or if something else was going on.

Mr. Dix said they were the highest end waterfront the Town had, so would be more aware. Regarding Councilor Clark's comments about high end vs. middle end waterfront properties, he said Durham's waterfront properties had to compete with other waterfront properties in the region. He said in a buyers' market, where there was plenty of inventory, buyers of waterfront found a place like Rye more attractive, including the fact that it had a lower tax rate than Durham.

There was detailed discussion about assessment scenarios, including the assessment of the 571 Bay Road property.

Councilor Stanhope said he thought the approach of saying the sales price could determine market value, and applying that to establish the assessment on the property, was a badly flawed policy. He said if they didn't understand why that price was so much in variance with the market overall, they were giving an advantage to the property that it was not entitled to.

He said he was concerned with the statistical analysis that had been done, stating that he didn't think the population used was large enough, and that not enough was known about the variables in this population to know if the 15% was real or not. He said the change in market values in Durham was more universal than the application to a subset of the market, and noted that this application would increase the burden of taxation on the remainder of the population of the community. He said it was a flawed policy, and said he had always disagreed with defending assessments as compared to trying to find equity in the taxation of real estate.

Mr. Dix said he understood the difference between sale price and market value. He said they had investigated the sale of the 571 Bay Road property, and he provided details on this, stating that it met all the requirements of a fair market sale. He said this was a property specific situation, and said if

they didn't adjust the assessment in a realistic manner, given what it sold for, the Town would have to defend the assessment.

Councilor Needell asked what kind of change in assessments was anticipated Town wide, and whether the 15% would be blended in with this.

Mr. Dix said the waterfront market segment was unique, and said there was no analysis yet on the other categories. He noted that the EQV town-wide assessment in 2006 was 87, and in 2007 was 93, which indicated a 5% trend. He said he anticipated it would be closer to 100 for 2008.

Councilor Needell asked what this meant in terms of the shift in tax dollars.

There was discussion about this, with Mr. Dix noting on the other end of things that there were some dramatic student housing sales that were very much over the assessments. He said these assessments would also have to be adjusted, and said the waterfront and student housing segments would offset each other. He said the other properties would probably see a mild shift of some kind.

Councilor Sievert asked if assessments in all NH towns fluctuated up and down with the market, or if this flawed system was specific to Durham.

Mr. Dix said he disagreed that it was flawed, and noted that this was only the second time since World War II that the values had declined. He said each town did its own study as to what sales said the market was, and adjusted accordingly.

There was further discussion on this.

Councilor Clark said he thought abatements were supposed to be exceptions. He said he thought it was very problematic applying an abatement across broad categories, in a radically changing market, as opposed to saying the whole Town needed to be reassessed.

Mr. Dix said the comment was accurate, but he said that on a property specific basis, if an abatement were not granted, it would be appealed, and the Town would have to defend this. He said when there had been a sale, such as at 571 Bay Road, the Town was painted into a corner.

Councilor Stanhope said the defense was right here, in that statistically it was so far out of line with the other waterfront properties, that the sale was not reflective of market value.

Chair Niman said he was trying to reconcile what Mr. Dix had said with his own experience, as a homeowner. He described the process of buying his house, which had been in foreclosure, and was in horrible condition. He said a list was made of the things that were wrong with it, he told the bank he wouldn't ask for money to fix it up, and a price was negotiated. He said Mr. Dix was saying that was the fair market value of the house.

Mr. Dix said by definition, a foreclosure house was not an arms length sale. He said if an abatement was requested for such a situation, he would deny it.

Chair Niman said when he had bought his house, it was unlivable, and money needed to be invested before he could even move in. He said the logic Mr. Dix seemed to be using was that if this occurred after April 1st, that increase in value couldn't be taken into account. He said he didn't

understand why Mr. Dix couldn't say, as a reasonable person, that there had to be a reasonable expectation on the part of the Town that when he bought that house, he would make the necessary improvements to make it livable, and therefore the value of the house should not reflect the price that was paid for it, but the price paid plus the value of the improvements.

Mr. Dix said those weren't the rules the Town played by. He said he agreed with Chair Niman completely, depending on the timing. He said the reality was that if the house was bought on March 31st and the improvements weren't made until June 1st, he couldn't take those improvements into account, for that year.

Chair Niman said he would argue that those improvements were necessary in order to determine the true market value of the house, which was not its sales price.

Mr. Dix said if it was a fair market sale, it was the true market value as of the day it was sold.

Chair Niman said Councilors would review the information provided, and would have the opportunity to ask Mr. Dix additional questions. He said this would come back on the next Agenda.

Councilor Leach said Councilors all had varying levels of understanding. She also said something to think about for the future was that for the future, it would good to provide more information for the public on such things as typical abatement cases, reasons why someone would file for an abatement, etc.

Administrator Selig said the deadline for this process was July 1st, and if no action was taken, the appeals were automatically denied. He said the property owner could then appeal this beyond the Town. He said there were therefore two meetings where the Council could discuss these matters further.

The Council stood in recess from 8:45 to 8:57 PM.

X. Unfinished Business

- A. Discuss the current Policy for Acquiring Legal Interest in Conservation/Open Space Land adopted by the Town Council on May 3, 2004

Administrator Selig reviewed the history of these draft revisions to this policy document, including input received from the Conservation Commission. He noted that the Commission would prefer that the document say that when a recommendation concerning a proposed project was forwarded to the Council, a public hearing would automatically be scheduled. He said the Commission's rationale for this was that land conservation was very important to the community and they would like the Town Council to get input from the public before making a determination one way or the other.

He said the present wording in the draft document under 2 B said the Council would first schedule the project proposal for discussion at a regular meeting, and then would determine whether to forward it to a public hearing. He explained that the rationale for this approach was that there was not a difference between the Council's handling of a conservation proposal and any other kind of proposal coming to the Council. He provided further details about this policy, and explained that the Commission had some concerns about it.

Administrator Selig also said some additional language had been added to the draft document at the request of the Council, subsequent to its April 21st meeting, under 8 D. “The recommendation put forward by the Town Administrator in Section 2 item C shall weigh the benefits of the proposed acquisition against the broader tax implications and the municipal priorities that currently exist in the community.” He noted that similar language had been stricken from 7 iv.c). He noted that the Conservation Commission had thought 7 iv.c). should be eliminated because it was assumed that all projects would be weighed in terms of the broader perspective.

He said Chair Niman, who had recommended the insertion of 8 D, felt it was important that when the Town Administrator was making a recommendation on a conservation proposal, this proposal should be based on a broader analysis than simply determining that the proposal met the legal requirements. He noted that this came out of Council discussion in 2006.

Administrator Selig explained that he was not attempting to insert himself into this process, and that this had been a Council request.

Councilor Leach said she agreed with the rationale for keeping the language that the Council would look at a project proposal before scheduling a public hearing on it. She also said she agreed with the placement of wording in 8 D.

She asked what was meant by “the project package is complete” under 2 b, and Administrator provided details on this. She also discussed with Administrator Selig the issue of who did the appraisal of a particular property being recommended.

Councilor Leach recommended regarding 2 D that the wording should say “If the project moves to public hearing, and after considering public input, the Council shall discuss...”

Under 7, Criteria to Evaluate Real Estate Interests for Conservation/Open Space, she recommended that instead of saying any project....shall meet at least one of these criteria”, it could also say “but recommend that it meet more of the criteria”.

Under 7 i, she also questioned d) “provide added weight if these resources are threatened by development pressure”, stating that this criterion might be a little subjective. Regarding 7 iii - “maintain prominent scenic vistas and viewsheds that are important to Durham’s rural atmosphere and historical landscapes”, she asked if these vistas were referred to in the Master Plan..

Administrator Selig said the way this had been handled to date, it was up to the person proposing a project to provide a thoughtful argument that these criteria were met, and it was then up to the Council to decide if this argument was credible.

Councilor Leach asked how the Council would do that in regard to 7 i.d), regarding resources threatened by development pressure.

Administrator Selig said in some instances, a property owner had expressed interest in putting a property on the market. He said this could also be evaluated based on the way an area was zoned, whether there was infrastructure in place, what was happening in the area, etc.

There was discussion between Administrator Selig and Councilor Leach regarding the language under criterion 7 iv., “Build upon, create, and connect large blocks and corridors of un-fragmented

land....”, and what this meant concerning contiguity and size of parcels. Councilor Leach asked what some of the guidelines were for this. After Administrator Selig provided some examples of projects where these criteria came into play, Councilor Leach said some of the criteria seemed subjective, which perhaps made it hard to make the case strongly for them.

Administrator Selig said the guidelines had not been intended to be the be all and end all, but instead something to guide the process.

Administrator Selig said regarding 2 C. dealing with having a meeting before scheduling the public hearing, he said that with Roselawn Farm project, the Council had done this. He noted that two previous projects had come forward suddenly, and some Councilors had felt they were caught off guard on this. He said with an initial conversation in public session, this gave everyone the opportunity to learn about a project, before the public hearing was scheduled.

In response to a comment from Councilor Leach that the first Council discussion on the Roselawn Farm project was in nonpublic session, Administrator Selig said it had been the policy of the Conservation Commission to meet with the Council early in the process to see if there was willingness to consider a particular conservation parcel.

Councilor Stanhope said regarding the wording in 2 C, the Council didn’t want to limit public comments. He said people could make comments on the night when the project was on the Council’s agenda for discussion, under Public Comments. He also said, in reference to previous comments, that when a property became available, the appraisal would consider its development potential, and said this was not a subjective process.

Councilor Clark said the Council had talked about the need for a master plan that balanced economic development and conservation. He said a question was how these things were integrated for a particular property, and in terms of an optimal plan for the Town. He said they sort of had to keep score on this.

Councilor Van Asselt asked if this policy did not apply to projects involving land use change tax money, and Administrator Selig said it applied to all conservation proposals brought forward. Councilor Van Asselt said when he heard about the urgency of land threatened by development, there was also urgency in terms of developers dealing with tax issues. He said he didn’t hear concerns expressed about this.

He also said that in terms of the idea of conservation being part of smart growth, there was also nothing wrong with spending conservation money on developed areas as well as rural areas. He said he had always wondered about the preferential treatment given to undeveloped areas, in the criteria under #7.

He said he concurred with Councilor Leach regarding her comments on 7 d). He said he didn’t understand why development got negative treatment in that sentence.

He also said that under 7 ii., regarding “enhance public access to open space and opportunities for passive, nature-oriented recreational opportunities....”, he said he thought recreation was a separate issue, and that this phrase didn’t belong there.

Administrator Selig said to him, the more public access provided by conservation properties, the better.

Councilor Van Asselt agreed, but said it was important not to confuse public access to open space with recreation. He also said he didn't agree that a project had to meet only one criterion, stating that there were there more issues that needed to be considered, when talking about spending a few million dollars.

Councilor Needell said regarding the issue of having to meet one criterion, the reason that wording was there, and was ok, was that each of the 4 criteria, if met, were sufficient to justify consideration of a conservation property. He said this was a judgment call, and that these were guidelines.

But he said he was concerned about saying that a project had to meet more than one criterion because this would mean the whole document needed to be reevaluated. He provided details on this, stating that it would be untenable to bring a project forward if it had to meet too many criteria. He said this would be a huge change to the document, and suggested that if they were going to do this, they should start over.

Regarding 2 C and the issue of the timing of the public hearing, he said what made this situation different than other ordinances coming before the Council was that there was no there was no appeal process involved. He also said with other ordinances coming before the Council, there wasn't generally as much leg work involved, and he spoke about the fact that there was the opportunity to meet early in the process in nonpublic session to see if a particular project was a nonstarter.

He said he felt these projects fell into a special category, noting among other things that they weren't that common. He also said what had caused this process was an outpouring of support from the community that it wanted the Town to protect conservation land. He said he was not comfortable with changing the wording of 2 C, and would oppose this.

Councilor Needell said he agreed with Councilor Clark that an overall plan was needed, but he said this didn't have anything to do with this document. He also said he felt 8 D. was unnecessary, and was something that was already a part of Administrator Selig's job. He said it cluttered up the document.

Councilor Julian Smith said when the Conservation Commission took this issue up last year, he was the Council representative to the Commission. He said he was the person who had said 7 iv. c) was assumed. He said he saw no harm in 8 D, stating it wasn't needed, and that he didn't care if it was included or not.

Regarding the language in 7 on criteria, he would suggest that even if a project met all 4 criteria, if the price was too high, or if the property was not that desirable and only met the criteria in a minimal way, the Town could walk away from the project.

Regarding wording in 7 ii. "developed areas in town..", he said there was a piece of land south of College Brook that was a great example of an opportunity to acquire or protect land in developed areas of town. He said he hoped they would find more.

Chair Niman said he would like to see whether the Council wanted to adopt the April 15, 2008 revisions or not, and if so, if there were some additional changes that Councilors wanted.

Councilor Leach suggested that this could be called “Guidelines for Acquiring Legal Interest in Conservation/Open Space Land”. She said in terms of comments on language in the document, perhaps it was more important for the Conservation Commission and the Land Protection Working Group to have an understanding of this conversation and the concerns expressed.

Councilor Sievert MOVED to adopt the Guidelines for Acquiring Legal Interest in Conservation/Open Space Land”, draft revision of April 15, 2008, with the change on page 2, 2 D to remove the language “After hearing testimony at the public hearing..”, and replacing it with ““If the project moves to public hearing, and after considering public input..” Councilor Stanhope SECONDED the motion.

Councilor Needell received confirmation that if the Council approved this, these were then the guidelines, until further amended.

Councilor Van Asselt received confirmation that if a Council member wanted to do something with one of the criteria, he/she could bring this forward in the future.

Councilor Julian Smith noted that the word “policy” was used in the document, and asked whether it would stay. There was discussion on this, and Administrator Selig said he would look at this issue throughout the document and change the word “policy” to “guideline” where appropriate consistent with the Council’s change to the document’s title.

Councilor Van Asselt said he wanted to be sure it was clear that these guidelines allowed full public input in the process, but that there was a step before the public hearing.

Councilor Needell said in order to approve a project, there needed to be a public hearing, but he said in order to deny a project, there didn’t need to be a public hearing. He said this was why he was voting against this.

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

B. Complete the Town Council’s list of goals for 2008/09

Chair Niman said a lot of the goals for this year were fuzzier than last year’s goals. He asked whether it would be a good idea for the Council to take some of this fuzz off, or if perhaps that was a good thing. He said it was hard to task Town staff to just work on big picture issues, and said the Council should think about how to operationalize the big picture.

Councilor Leach said there might be entire goals, or parts of goals that needed to be taken out to make the rest more reachable.

Councilor Van Asselt said he had no problem with being more specific on some of these goals, but said he they had to be careful in that he wasn’t sure some of these topics could be more than fuzzy. He also said he would like to see a goals category on Durham livability issues like recreation issues, the viability of providing affordable housing, etc.

He also suggested that there could be another possible goals category on Management and Organization.

Councilor Julian Smith pointed out that only part of one of his three goals appeared in the list of goals compiled by Councilor Leach. He pointed out that the Council had never had a serious and meaningful discussion of building a combined Town Hall and library.

Find a way to cut back on repetitious discussions

Councilor Julian Smith noted that the discussion on the Land Use Change Tax issue had gone on and on. He said he would like the Council to try to avoid situations like this where there was continued discussion over time on the same issue. He commented on the fact that Councilors sometimes continued to speak when the die was already cast, and they knew how the vote was going to go.

There was detailed discussion on this, with other Councilors disagreeing with Councilor Smith. Councilor Needell said he was not willing sit back quietly when he was in the minority on an issue. He said people deserved an explanation.

Councilor Leach said the process inevitably meant there was a lot of discussion on some issues, and she noted that Councilors were at different levels of understanding on specific issues.

Councilor Van Asselt said the process was what it was, and said there wasn't a place for Councilor Smith's recommended goal. He said the issue the Council spent a lot of time on were important to talk about, and he gave the TIF District as an example of this.

Chair Niman agreed that limiting discussion was not the way to go, and he provided details on this.

Issues related to Involvement - Review the Town committee structure

Councilor Van Asselt said the number of committees had grown, and said he thought the Town needed to re-think this.

Issues related to Involvement - Develop a strategy to increase citizen involvement

Councilor Needell said this was an important goal to him, noting that this citizen involvement had dropped off recently. He said he didn't recommend coupling this goal with the committee structure goal, and said he didn't think that was the problem. He also said committees should feel free to suggest changes, but said this was not the Council's business or its problem

Councilor Van Asselt suggested the importance of making the work of committees of more interest. He noted the work of the EDC as a good example of this, and said the Council had given this committee some things to work on. He said it was important to look beyond the idea of simply getting more applicants for committees.

Councilor Leach agreed, and said it was also important to look at strengthening communication between committees, even if this just included information sharing.

Councilor Needell said there should be a free exchange between committees. Regarding the town committee structure issue, he said he didn't have a problem with what Councilor Van Asselt had said, and said perhaps there was a way to improve the situation. But he said he was particularly sensitive about the issue that had come up of possibly restructuring the Energy Committee and the

IWMAC. He said they had discussed this idea several times and had not come up with anything. He said he didn't want the Council to be a heavy-handed player in this.

There was discussion on the IWMAC and why interest in it had declined. Chair Niman provided details on possible reasons, and said he thought the Council should grapple with this, and what perhaps could be done about this.

Councilor Needell said if that committee felt it was floundering, that was one thing, but he said he didn't think that had happened. He said he was concerned that some assumptions were being made about this situation.

Councilor Clark said there needed to be a vision that included green development, and he suggested that the IMWAC could be thinking about their contribution to this, in terms of the issues of zero waste, renewable energy, etc.

Chair Niman said the Council would keep "Issues related to Involvement" as a goal, and said they would talk about it some more and refine it further.

Issues related to time:

There was discussion that resident Jerry Gottsacker was working on some recommendations for the EDC concerning streamlining the application process to make it easier for developments to move forward. Administrator Selig said he was comfortable with this idea, and said his sense was that this was a goal of the Council.

Councilor Needell said he wasn't sure about that. He said he thought this was an inherent result of other goals, about Economic Development, etc, and said if those were the goals of the Council, then the streamlining would happen. But he said he was uncomfortable having it as a separate goal.

Councilor Sievert suggested that it could be put under the goal of economic development initiatives.

Councilor Leach said there were other non-economic development related areas where Town staff could improve the efficiency of operations, and there was discussion about this.

Continue discussions on the viability of affordable housing

Councilor Van Asselt asked if the Council was prepared to say, concerning this goal, that it wanted to create, say, 48 units of affordable housing. He said if the goal was in fact to create affordable housing, this should be stated specifically.

Councilor Leach noted that no consensus had been reached on this idea at the last meeting

Negotiate continued use by Town of Store 24 Lot..

Councilor Van Asselt asked if the decision had been made yet whether the Town wanted to keep this arrangement. He said the way this was worded, it sounded like it had already been concluded that there was no other option than to negotiate this continued use. He said he felt there were other options.

Administrator Selig said that was not the intent of the wording, and said it would be reworded to reflect the fact that it was on the Council's radar screen.

Councilor Needell said he was not prepared to say how many units of affordable housing he was willing to support or not support. He said he was willing to say it should be a goal of the Council to have Councilor Van Asselt bring forward a communication on this. He agreed that lip service had been paid to this issue, and said if someone wanted to go beyond this stage, that would be good.

Councilor Van Asselt said he would like the Council to say it wanted to support specific affordable housing.

Councilor Needell said he would need to understand what it meant, in order to say that.

Councilor Stanhope said if this was something the Council wanted to energize, it should send a communication to the EDC to take this on. He said he felt this was part of the mandate of the EDC, and that these ideas should be incubated there, not at the Council level.

Councilor Needell said he didn't mean to imply that these kinds of things shouldn't be thrown at committees.

Councilor Van Asselt said committees were more inclined to work on issues when the Council supported their efforts, and he provided examples of this.

Others

Councilor Needell said the idea of reviewing the Town Administrator's performance quarterly was not a goal of his, and said he didn't think it should be a goal.

Councilor Stanhope said perhaps "performance" wasn't the right word, and that instead there should be a quarterly review of the Town Council/Town Administrator relationship. He said he had thrown this in because he saw it as part of a process where the Council could ask the Town Administrator what he was bringing forward, and could indicate where it would like him to focus his interest.

He said this was an opportunity to find out where certain items were in terms of the Town Administrator working them through the system. He also said it allowed the Town Administrator to get a better sense of where the Council was philosophically on a particular issue.

Councilor Van Asselt suggested broadening this. He noted that Administrator Selig had done a summary of Council goals last year, six months into the year, and this had also given the Council the opportunity to give him some direction. He provided further details on what he had in mind.

Administrator Selig said perhaps he could build the updates he provided on various issues into a broader conversation with the Council.

Councilor Needell asked for clarification on what goals the Council had agreed on. He said there were several things in the first two pages he didn't agree that the Council had agreed on as goals.

Chair Niman said he understood this, and said at some point, the Council would have to go back and address this. He said they were just trying to get all the goals out to consider.

Issues related to recreation

Councilor Van Asselt said this goal should include regional recreational offerings. He said this needed to be looked at.

Councilor Leach said she thought they should look at facilities as well.

Chair Niman suggested that the Recreation Committee could be tasked this year to look at the Town owned land around Spruce Hole as a place where some playing fields could perhaps be put in, without harming the aquifer. He provided details on this.

Councilor Leach said another recreation issue was the trails issue, and the roles of various groups in relation to this. There was discussion that Councilor Leach and Councilor Sievert could facilitate looking at this issue, without telling people what to do.

Councilor Sievert said the Parks and Recreation Committee had said it would like to get away from conservation and move toward recreation.

Chair Niman said some recreation goals would be included in the Goals list.

There was discussion on where to go from here with the Goals list. Chair Niman asked Councilors to provide additional comments. He said these would be collected, and the document would then be brought back. He said the Council could go through this at their next meeting.

Councilor Needell said he highly recommended watching the replay of the recent School District meeting, and said the discussion was fairly pointed

There was discussion about possibly putting off Agenda Item X C regarding reconstituting the Durham Apportionment Committee. Chair Niman said it could be postponed, noting that some more background work would be done on this idea.

Core Values

Councilor Needell said he would like to see the Core Values as an overarching statement in the Goals.

Councilor Leach disagreed, and there was further discussion on this.

Councilor Leach said she would summarize Councilors' comments and put them in the Goals document. There was further discussion on the process.

Administrator Selig noted that a previous Council had spent half a day carefully defining the core values.

He also said it would be helpful to provide more details for members of the public concerning Agenda Item X C, specifically concerning the discussion at the School Board meeting. Regarding this discussion, he noted that he had participated in the selection process for Newmarket's current Town Manager, and had a good relationship with the Town Council there. He said a topic they had

discussed was whether the School Board would be interested in reaching out to Newmarket for possible collaboration.

He said he wasn't certain whether the School Board had done this, but said he would be happy to reach out to the Newmarket Town Council on behalf of the Durham Town Council, to explore this idea.

Councilor Stanhope left the meeting at 10:32 pm.

Councilor Sievert MOVED to extend the meeting 10 minutes. Councilor Van Asselt SECONDED the motion, and it PASSED unanimously 7-0.

Councilor Needell said he had no interest in having Administrator Selig talk to the Town of Newmarket about school issues on behalf of the Town of Durham. He said the School District should talk to the Newmarket School District.

Councilor Sievert said he thought Administrator Selig should talk to them. He said the OR School Board was already feeling attacked, and said he thought it was more appropriate for the Town to have this discussion.

Chair Niman said he was in favor of reaching out to Newmarket.

Councilor Clark said the reaction to Durham's letter at the School Board meeting explained why some Council members were interested in reaching out to Newmarket. He said it seemed that the letter had been interpreted as another way to attack the funding formula. He said it was clear that the School Board had an interest in preserving itself, and didn't want to even explore the possibility of options that involved dissolving the School District. He said if the Council was serious about looking at other options, this wouldn't happen at the School Board. He said he was definitely interested in exploring options.

Councilor Needell agreed that the School District had misinterpreted the letter. But he said the letter was actually more serious than they had taken it to be. He said he didn't feel the letter had any business coming from the Council. He said at least 3 School Board members said there was a tri-Town education committee, and they were it. He said if Councilors wanted to influence the matters of the School District, they had a place to go, and that was to the School District meetings.

Councilor Leach said she was on the fence as to whether this should be the Council's issue or not. She also questioned whether the issue was worth the time some Council members would have to put into it.

Councilor Clark said if the funding formula was simply reconstituted, it was true that they wouldn't get anywhere for their efforts. But he said with a tri-town committee, there could be a conversation that tried to find points of unity, and to ensure that after 50 years, educational objectives were being maintained.

There was further discussion about this.

Chair Niman said they could possibly inspire people to look at potential alternatives, to run for the School Board, etc. He said if they didn't talk about this, it couldn't happen.

Councilor Leach suggested that the Council wait to see what Council members who wanted this committee came up with.

- C. Receive update on reconstituting the Durham Apportionment Committee as the Tri Town Education Committee
- B. Other business

XII. Nonpublic Session

None

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

None

IX. Adjourn (NLT 10:30 PM)

Councilor Van Asselt MOVED to adjourn the meeting. Councilor Sievert SECONDED the motion.

There was discussion on the idea of Administrator Selig communicating with the Town of Newmarket. The consensus was that he should do this, and he said he would call them.

The motion to adjourn PASSED unanimously 7-0.

Adjournment at 10:45 pm

Victoria Parmele, Minutes taker