

This set of minutes was approved at the Town Council meeting on August 4, 2008

**DURHAM TOWN COUNCIL
MONDAY, JUNE 16, 2008
DURHAM TOWN HALL – COUNCIL CHAMBERS
MINUTES**

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

MEMBERS ABSENT: Councilor Doug Clark

OTHERS PRESENT: Town Administrator Todd Selig; Town Planner Jim Campbell; Code
Enforcement Officer Tom Johnson

I. Call to Order

Chair Niman called the meeting to order at 6:34 pm.

Councilor Henry Smith MOVED to go into nonpublic session for personnel matters related to:

RSA 91-A:3 II (a) “The dismissal, promotion or compensation of any public employee or the disciplining of such employee, or the investigation of any charges against him, unless the employee affected (1) has a right to a meeting and (2) requests that the meeting be open, in which case the request shall be granted”; and

RSA 91-A:3 II (c) “Matters which, if discussed in public, would likely affect adversely the reputation of any person, other than a member of the body or agency itself, unless such person requests an open meeting. This exemption shall extend to any application for assistance or tax abatement or waiver of a fee, fine, or other levy, if based on inability to pay or poverty of the applicant”; and

RSA 91-A:3 II (d) “Consideration of the acquisition, sale or lease of real or personal property which, if discussed in public, would likely benefit a party or parties whose interests are adverse to those of the general community”.

Councilor Sievert SECONDED the motion.

Councilor Stanhope asked if more specifics could provide on what the matter was concerning RSA 91-A:3 II (a).

Administrator Selig said this was in regard to an employee. He said there were two distinct situations the Council should be aware of, and said neither at this time involved the right of an

employee to request that the session be open to the public. He said the State statute allowed this process.

Councilor Van Asselt said it was important to remind Council members about the nature of nonpublic sessions and minutes.

The motion PASSED unanimously by roll call vote:

<i>Chair Neil Niman</i>	<i>yes</i>	<i>Councilor Henry Smith</i>	<i>yes</i>
<i>Councilor Jerry Needell</i>	<i>yes</i>	<i>Councilor Cathy Leach</i>	<i>yes</i>
<i>Councilor Julian Smith</i>	<i>yes</i>	<i>Councilor Mike Sievert</i>	<i>yes</i>
<i>Councilor Peter Stanhope</i>	<i>yes</i>	<i>Councilor Van Asselt</i>	<i>yes</i>

The Council entered public session at 7:06 PM.

Councilor Needell MOVED to seal the Minutes from the nonpublic session. Councilor Leach SECONDED the motion, and it PASSED unanimously 8-0.

The Council stood in recess from 7:07-7:11 PM.

III. Approve of Agenda

Councilor Van Asselt MOVED to approve the Agenda as submitted. Councilor Sievert SECONDED the motion, and it PASSED unanimously 8-0.

IV. Special Announcements

None

V. Approval of Minutes

May 5, 2008

Page 10, 3rd full paragraph should read “..Perry Bryant property...”

Page 12, problem with motions.

The Town Council decided to postpone approval of these minutes in order to check the correct motions from page 12 on.

VI. Councilor and Town Administrator Roundtable

Administrator Selig said the transitioning of the Dispatch center to the County facility had occurred that morning. He said there were still a few glitches being worked out, and said problems would be addressed as they came up.

He said that an email had been received from Attorney Bernie Waugh that the Court had affirmed the ZBA decision on the Stonemark case on both the contiguous/density issue and the 80% elderly housing issue.

Administrator Selig noted that three members of the Council had been unable to attend the recent Budget session, and said at that meeting, Council members had been asked to forward to him any ideas that they had, over the next few weeks. He said the Council had discussed the idea of scheduling additional budget sessions, and said if September 15th didn't work, they could find another.

He said he had been asked to bring back a Budget reflecting a 0% spending increase, along with the ramifications of this. He said this was intended to generate discussion. He said he was inviting Councilors to sit in on discussions with Town department heads, which occurred in October.

Councilor Leach said Council members were supposed to get a document from Business Manager Gail Jablonski, before providing comments on the Budget, and Administrator Selig said she was working on it.

Councilor Julian Smith said the Planning Board had recently held its quarterly planning session. He said items discussed included the implications for Durham of a State bill on workforce housing. He noted that this bill didn't actually identify the term "workforce". He said on July 18th, Planning Board would hold a public hearing on Council initiated changes to some of the Town's Zoning districts.

Councilor Needell noted that at the June 2nd meeting, the Council had voted on its goals. He said he didn't support some of them, and had some goals that the Council had not supported, which was fine. But he said he was disappointed at the removal of the Core Values section, for two reasons. He said they were removed with very little discussion, or consideration. He said he realized they were general, but said those core values were the reason why he was on the Council..

Councilor Henry Smith said he too thought the Core Values should remain, as an important backdrop for what the Council did.

Councilor Julian Smith said Councilors were told there would be an analysis of the Evangelical Church's suitability for housing several Town departments (Town Hall, Police Station and the Court).

There was discussion on whether to possibly hold a site walk. It was agreed that a site walk would be done by the Council at some point, with Councilor Smith stating that he'd get in touch with Administrator Selig about doing a site walk on his own.

Councilor Henry Smith mentioned visiting the site of a proposed bridge across the Oyster River on the Tecce property. Following a question from Councilor Needell, Councilor Julian Smith clarified that this site walk was not an official function of either the Planning Board or the Town Council and that he and Councilor Henry Smith had visited this site with Jack Farrell.

VII. Public Comments

Jay Gooze, Meadow Road, Chair of the ZBA, said he knew Shawn Starkey, who had requested to be appointed as an alternate on the ZBA, and said he hoped he would be approved for this position.

Roger Speidel, Nobel K. Peterson Drive, updated the Council on the most recent ORCSD Board meeting. He said between 2001 and 2007, 40.6 teachers had been replaced, and 7.7 teachers had been added, while there were 246 fewer students. He said instead of these increases, the faculty should have been reduced by 11.8 teachers. He said these unnecessary replacements and additions had cost the Town \$1,462,000.

He said they all must work toward getting a 0% increase in the School Budget. He said the cost per student, per year, had escalated 600% greater than the State average between 2001 and 2007, and said property taxes had sky-rocked as a result of this. He reviewed the school tax rates of other NH towns compared to Durham, and noted that there had been tax revolts in some of these towns that had lower rates than Durham did.

Bill Hall, Smith Park Lane, said he had recently gone to the in-stream flow meeting at DES, relative to the Lamprey River. He said a consultant from Normandeau Associates at the meeting was uninformed about where Durham drew the water from. He also said he didn't think the Town's representatives did a diligent job of protecting the Towns interests. He said these interests weren't being properly evaluated.

Mr. Hall expressed his frustration that the Town had stopped pumping from the Lamprey in May, when there were 30 million gallons going over the dam, because of monitoring issues. He provided details on issues discussed at the meeting, and said most didn't make sense at all. He said he didn't think these people had good numbers regarding adequate withdrawals. He said he had followed these issues for a long time, and said he had found the performance bizarre.

Diana Carroll, Canney Road, said the issue that evening regarding the Stone Quarry TIF was the financial agreement between the developer and the Town. She noted the Council's March vote, that there would be no financial risk to the Town as part of this agreement. She said that during the discussion on the TIF, the issue of financial risk was discussed at length. She urged that the Council only enter into a financial agreement concerning the TIF when there was no degree of risk for taxpayers.

Robin Mower, Faculty Road, said the Energy Committee had come to the Planning Board's recent quarterly planning meeting, and said it would perhaps be interesting for members of the public to know about this, and perhaps to follow up on that discussion.

She then spoke in detail about the Stone Quarry TIF agreement, including financial data on the taxes that would be paid on the property under various scenarios. She said all of this did come back to the question of how much risk the Town was willing to take on.

Ms. Mower also noted that a traffic light would be needed out there, before construction began. She asked if this would be possible, given the anticipated increase in traffic during the construction process. She noted a NHDOT study that indicated this was an ideal place for a stop light.

Administrator Selig said this traffic light was in NHDOT's long-range plan, but was not scheduled to happen for several years.

Ms. Mower asked if perhaps the Town should request that this issue be covered in the development agreement.

She then read Arthur Grant's June 9, 2008 letter to the Council: *"I am stunned that within months after hearing fervent assurances that the interests of this Town's taxpayers would be amply protected in the adoption of the north-end TIF district, the Administrator and some Councilors are suggesting that financial guarantees for a substantial water and sewer extension project within the district are unnecessary."*

There are good reasons why the developer cannot (or does not want to) obtain the sureties the Council's respected and well-paid consultant insisted were so important to this project. One has but to look at the current mortgage and bonding crisis and its far-reaching impact on our economy to understand what happens when financial institutions do not uphold the basic rules and principles of business. To now hear suggestions from some public officials that similar rules and principles relating to public investment of taxpayers' funds can be waived or ignored is simply unbelievable.

Numerous citizens opposed establishment of the TIF district as an unrealistic sop to developers and speculators. The concerns of these citizens were partially allayed by the Administrator and Council's assurances that the public investment would be underwritten and protected by financial remedies. To tamper with easing or ignoring those financial protections is unwise, particularly in the current economic scene.

Our Administrator and Councilors, especially our newly elected Councilors, should review the video tapes of the discussions at numerous meetings leading up to adoption of the TIF district before considering any further concessions on this issue."

Beth Olshansky, Packers Falls Road, said she had read through the Minutes on the TIF, and said it was clear that the Council had agreed that there needed to be a 100% guarantee. But she said there were differences among Council members concerning what that guarantee would be. She noted that Councilor Van Asselt had said the Town wouldn't move ahead without a surety bond, in order to protect the Town.

She said she assumed that was the bottom line, for everyone. She asked the Council to consider, as they moved forward with negotiations, what precedent was being established for future negotiations, and future TIFs. She said they all wanted to make sure this one was successful, so the tool would be available for future projects.

She said the Minutes had reminded her that the numbers concerning the TIF had come late in the process, and when they came, they were less than anticipated in terms of tax revenue. She noted that this was before the economic downtown.

Ms. Olshansky also spoke about the discussion there had been about the idea of protecting the field on the development site, and as part of this, the idea of trading density from the front to the back of the site. She said she had recently met with Dave Garvey concerning whether he would be willing to negotiate with the Town to preserve those front fields, which were noted in the Master Plan as one of the Town's gateways.

She said she hoped the Council would consider the idea of finding a balance between economic development and preserving Durham's character, and said she would look forward to discussion on this, and on the action plan to meet this goal.

VIII. Unanimous Consent Agenda

Shall the Town Council approve a non-industrial wastewater discharge permit application for a proposed mixed use apartment building on Strafford Avenue (Tax map 2, lot 6-0) known as Pine Ledge Apartments?

Councilor Henry Smith MOVED to approve the Unanimous Consent Agenda. Councilor Sievert SECONDED the motion, and it PASSED unanimously 8-0.

IX. Committee Appointment

Shall the Town Council appoint Sean Starkey, 80 Madbury Road, as an alternate on the Zoning Board of Adjustment.

Mr. Starkey spoke briefly before the Council. He said he had been a resident since 2003, and was in the real estate business. He said he had learned a bit about Zoning as part of this, and said the alternate position was a good place for him to start, to get a good feel for what the Board did. He said he had wanted to get involved in the Town in some way, hopefully to do what he could to keep the Town's integrity.

Councilor Stanhope asked Mr. Starkey where he saw himself in the discussion of public and private property rights.

Mr. Starkey said he would use the five variance criteria to make sure everyone got a fair shake.

Councilor Needell recommended and encouraged Mr. Starkey to attend the various conferences and training available to ZBA members.

Mr. Starkey said he would definitely make use of these training opportunities.

Councilor Sievert MOVED to appoint Sean Starkey, 80 Madbury Road, as an alternate member to the Zoning Board of Adjustment. Councilor Leach SECONDED the motion, and it PASSED unanimously 8-0.

X. Presentation Item

A. Receive annual report of the Rental Housing Commission – Mark Henderson, Chair

Mr. Henderson spoke before the Council. He reviewed the work and accomplishments of the RHC in 2007, which included addressing neighborhood disturbances, cooperation with UNH, and cooperation with the Zoning Officer and the Police Department. He said the Commission met infrequently in 2007 because there were not a lot of complaints. He said the year was quiet until fall homecoming, and the system put in place prior to 2007 was able to go right after the problems at that time. He said the commission met with the tenants and the property owner, and the system worked. He provided details on this. He said it was almost an educational process for the tenants to learn how they were perceived by the neighbors.

He said UNH had done a phenomenal job in educating younger kids, and said there had been great cooperation with the police.

He said 2008 goals of the RHC included keeping up the current positive communications with the neighborhoods, UNH, Zoning, and the Durham Landlords Association. He said the DLA strove to have its members be responsible for their properties/ He said a few of the properties in town that were not well kept or well behaved were not part of the DLA, and he said the Rental Housing Commission had reached out to them.

He said a goal for 2008 was to strive to have property owners that were local, and if not, to have a local property manager. He said when there were local people, the problems could be solved and repeat offenders could be minimized.

He said that moving forward with the system that had been developed, the Commission was now not that active. But he said it wanted to propose to work with the Council and Planner to establish a viable and sufficient rental housing market. He said the Commission was well connected, and would like to get involved in discussions on existing and new rental properties that might come on line, to see that there was a balance and that things ran smoothly. He said there had been some turnover of rental properties in recent years, and said the Commission was generally happy with the new owners, some of whom were not local.

He said the Commission would also like to work with UNH to determine the needs of their student population with regards to housing. He said this was somewhat a grey area, what the number of beds on campus and off campus were. He said the student housing market was an important market in Durham, but he said things were changing, because of the economy and other factors.

He said he was stepping down as the Chair of the Commission, and said Paul Berton would be the new chairperson of the RHC as of July 1, 2008.

Councilor Henry Smith noted the private student housing that was coming on line and proposed, and asked what Mr. Henderson had found out concerning the University's intent to provide further student housing.

Mr. Henderson said the Commission didn't know the answer to this. He provided details on likely enrollment at UNH as well as crowding issues in some units. He said the Durham Landlords Association had found that this was a tough year, and noted that some students had had to leave school for financial reasons. He said it was expected that there would be more changes because of the difficult economy. He said he had some vacancies in his units right now.

Councilor Needell said he had always assumed that there was an infinite supply of students looking for housing in Durham, and that if housing was provided in Town, it was preferable to housing provided that was further away. He asked if it was true that if there was housing in Durham, the Town would be able to draw in students from further away.

Mr. Henderson said previously he would have said yes, but he said these days, people were looking for cheaper beds, and might decide to drive or perhaps take the bus from out of Town. He said Dover and Newmarket might still be viable places to live, especially if the transportation was there.

Councilor Stanhope said Durham's professional landlords did a good job in Town, but he asked how the Town could become more proactive concerning single family homes that had become rental properties, at the outset.

Mr. Henderson said they had done a good job of narrowing down the number of single-family properties where there were problems. He said the various entities continued to work on this issue, but he said there was no magic formula to stop these problems.

Councilor Van Asselt said he couldn't figure out why the Town couldn't get UNH to provide some land, and to work with private developers, and in return, the Town would only collect taxes on the buildings. He said everyone would win, because the University would get housing, and besides taxes, there would be more control for the Town in terms of where the students would be living. He said this related to the Rental Housing Commission's proposal to work with the Council. He said he didn't know who should take the lead on this, but said someone should pick this big issue up and do something with it.

Councilor Sievert asked what was meant by a proposal to work with the Council. He said he thought the question of working with UNH was one that needed to be answered.

Mr. Henderson said the original goal of the Commission was to settle complaints, but he said the ultimate goal of the Commission had changed.

Councilor Needell said an area ripe for discussion was possible development of Lee Wood orchards. He said it might be one area for early discussion, noting there was a desperate need for graduate and faculty rental housing, especially with the loss of Forest Park. He said he agreed with Councilor Van Asselt that this kind of thing should happen, although he said he didn't know what would make it happen.

Administrator Selig said this had come up in numerous discussions with the University, noting it had come up as part of police discussions. He said to date, the University had been reluctant about the idea of private housing on its property because this would mean some loss of control. He provided details on recent thinking on this issue.

Mr. Henderson said these ideas would be considered further by the Commission, and said they could put together a proposal for the Council at their late summer meeting, where the Commission could assist the Planning Board, the Town Council and the ZBA in making its decisions on student rental issues.

Chair Niman thanked Mr. Henderson for his years of service as Chair of the Committee.

B. Receive annual report of the DCAT Governance Committee – Todd Ziemek, Chair

Mr. Ziemek said DCAT was stable, but said over the last few months, two of the committee's most significant members had departed, both Paul Gasowski and Tom Merrick. He said Mr. Gasowski's departure left a void in DCAT programming, and said currently, they were unsure how Oyster River was going to provide programming. He noted that DCAT had been assured that School Board programming would continue. He said the ORCSD representative to DCAT had yet to be appointed, and said they would find out about this in August.

He said DCAT had developed some new goals. He said the first goal was to meet with the School district and UNH to discuss future programming, and possible connectivity between both entities and the Town. He noted that there was fiber-optic cable that went from the High School down to Stoke Hall, and said it could be useful to look into how this might be used in the future.

He said a second goal was to determine the role of the UNH representative on DCAT. He said a third goal was to examine how a network between UNH, the ORCSD, and the Town might happen. He said a fourth goal was to put on a monthly TV show. He said they were discussing what the format of such a show might be, and said it might be some kind of talk show, on subjects that would concern the community.

He said a fifth goal was to possibly do video streaming so people other than those with Comcast service could receive DCAT broadcasts. He said a sixth goal was to pursue new equipment that might be needed by the Town, and to keep up with the digital transition.

Mr. Ziemek said Council members with programming ideas were welcome to provide them to DCAT through Councilor Leach, the Council representative to DCAT.

There was discussion on the possible use of fiber optic cable. Mr. Ziemek noted that UNH had its own broadcast system, and that UNH students didn't even get Channel 22. He said this was something the committee would like to address.

Councilor Needell asked if there were any goals DCAT would like the Council to play a role in.

Mr. Ziemek said not especially, but he said public input on programming was always welcome.

The Council stood in recess from 8:29-8:38 pm

XI. Unfinished Business

- A. Public Hearing and Action on Ordinance #2008-04 initiated by the Town Council amending Chapter 175 “Zoning”, Section 175-7(A) “Definitions” of the Durham Town Code relating to the definition of “Wholesale Sales”.

Councilor Sievert MOVED to open the public hearing on Ordinance #2008-04 initiated by the Town Council amending Chapter 175 “Zoning”, Section 175-7(A) “Definitions” of the Durham Town Code relating to the definition of “Wholesale Sales”. Councilor Henry Smith SECONDED the motion, and it PASSED unanimously 8-0.

Beth Olshansky, Packers Falls Road, spoke in favor of this proposed Ordinance change. She said it was an important tweaking of the Ordinance, and said it also fit with the Council’s 2008 goals regarding protecting town character. She asked that the Table of Uses definitions be in keeping with preserving Durham’s character, as the Town moved forward with its economic development proposals.

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

Councilor Julian Smith MOVED to adopt Ordinance #2008-04 initiated by the Town Council amending Chapter 175 “Zoning”, Section 175-7(A) “Definitions” of the Durham Town Code relating to the definition of “Wholesale Sales”. Councilor Leach SECONDED the motion.

Councilor Van Asselt said he would vote no on this proposed change, noting that it had been his position all along that it was not necessary.

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

- B. Public Hearing and Action on Ordinance #2008-07 initiated by the Town Council amending Chapter 175 “Zoning”, Article III, Section 175-9(A) of the Durham Town Code by striking paragraph 13 relating to the “most conservative or restrictive” provision.

Councilor Van Asselt MOVED to open the public hearing on Ordinance #2008-07 initiated by the Town Council amending Chapter 175 “Zoning”, Article III, Section 175-9(A) of the Durham Town Code by striking paragraph 13 relating to the “most conservative or restrictive” provision. Councilor Sievert SECONDED the motion, and it PASSED unanimously 8-0.

Administrator Selig provided some history on this proposed Zoning change, which had been initiated by the Town Council. He said there had been a lot of discussion on it, at both the Council and Planning Board levels. He said no members of the public had spoken at the Planning Board’s public hearing, and the Board had then recommended moving forward with it. He noted that both Code Administrator/Enforcement officer Tom Johnson and Town Planner Jim

Campbell were present to answer any questions. He also said the Town attorney's comments on the ramifications of this change were available on the Town website.

Bill Hall said he was concerned about the existing perception that interpretation of the Zoning Ordinance was conservative and restrictive, and said this was not true. He described a personal experience with the Town where the Technical Review Committee had overridden the Zoning Ordinance. He said Town staff were not helpful concerning this, but said the Planning Board had agreed that this was not allowed. He said he could then not get Mr. Johnson to enforce the setback, so he had gone to the ZBA to ask for an administrative directive to direct Mr. Johnson to enforce the Ordinance. Mr. Hall said it depended on who you were, in terms of how the Zoning was interpreted.

But he said he was willing to see the most conservative and restrictive language changed.

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

Councilor Stanhope MOVED to adopt Ordinance #2008-07 initiated by the Town Council amending Chapter 175 "Zoning", Article III, Section 175-9(A) of the Durham Town Code by striking paragraph 13 relating to the "most conservative or restrictive" provision. Councilor Van Asselt SECONDED the motion.

Councilor Needell said he had been very surprised that in two public hearings, Mr. Hall's comments were the only ones, and even those didn't directly address the proposed change. He asked Mr. Johnson if this change was a good idea.

Mr. Johnson said he didn't have a strong opinion on this, and said it didn't really affect his job. He said there was similar language to what was being taken out in the construction codes and in another part of the Zoning Ordinance. He also said that with particular cases, there had been provisions that took precedence over this language in section 13.

Councilor Leach said she appreciated the information provided by Attorney Mitchell. She read through his comments, and said she felt comfortable approving this change, based on them as well as on Mr. Johnson's comments.

Councilor Needell noted that Mr. Johnson had said this change had nothing to do with enforcement of the building codes.

Chair Niman said he also didn't want there to be any confusion that this change would give Mr. Johnson the ability to subjectively interpret the Zoning Ordinance, for something like the 3 unrelated rule. He said 3 meant 3.

Councilor Henry Smith provided details on his objections to striking this section. He said he could see striking the word restrictive, even though it was in the RSA, and leaving conservative. But he said the entire clause should not be stricken.

The motion PASSED 6-2, with Councilor Henry smith and Councilor Needell voting against it.

C. Discussion regarding recent proposal submitted by Rockingham Properties, Inc. regarding the Stone Quarry Drive TIF Development Proposal

Administrator Selig said when the idea of Tax Increment Financing (TIF) was considered by the Town, there had been a great deal of discussion on surety for the Town. He said he had meant by surety the type of financial instrument that would remove any and all risk to the Town. He provided details on this, and said clearly there was a goal of protecting the financial interests of the Town. He said the word surety could mean a lot of different things, but said generally there was consensus that the Council wanted to protect the interests of the Town in a worst case scenario.

He said as the development agreement was being worked on, Rockingham Properties said it was having trouble dealing with the banks, etc., because there were so many moving parts of the project that needed to be analyzed, such as how quickly the development would build out, what the interest rate would be, the value of the properties once utilities were extended, what the buildout would be, etc.

He said the developer had said he was having difficulty finding a letter of credit, or surety, but still wanted to move ahead with the project and provide the Town with a reasonable level of assurance that it wouldn't be in the position of issuing debt, building the infrastructure, and then not have the development move ahead, so that the tax payers would have to foot the bill.

Administrator Selig reviewed the initial agreement brought forward in March of 2008. He said this agreement utilized a cash escrow deposit of \$102,000. He said it also utilized first mortgages and deeds in lieu of foreclosure to be held in escrow on 4 lots of the Town's choosing from within the Stone Quarry Drive subdivision, as security against the possibility of the development sitting idle and not generating the tax revenues needed to meet the Town's long term debt obligations for the noted infrastructure improvements budgeted at \$850,000. He said the Town would be able to sell off these lots to recoup any shortfall, and he explained how this would work.

He said a question was what the value of one of the lots would be, and said while the developer said it would be worth about \$150,000-200,000, the Town Assessor was more comfortable with \$125,000-150,000 per lot. He said the more conservative number he had used was \$100,000 per lot, and said this would raise approximately \$400,000 in cash to cover any type of shortfall.

He said the Council had not felt that this was sufficient surety for the Town, and had asked him to go back to ask the developer to consider some kind of letter of credit or insurance policy to protect the Town against any and all circumstances. He said another question in March of this year was what the interest rate would be. He noted that as of June 12th, the NH Municipal Bond Bank anticipated a rate of about 4.25%, and also said he expected to get between a 4.0-5.0% rate when the Town went out to bond.

He said Rockingham Properties, after that meeting, said it was willing to increase the initial cash deposit to \$180,000. He noted that he had told the Council this at the previous Council meeting, and the Council had said it was interested in discussing the issue further. He said he and Chair Niman had then met with Mr. Garvey to discuss whether more could be done to provide security for the Town, including various alternative arrangements that might be utilized.

He noted that Rockingham Properties had said it would provide a letter of credit to build the internal infrastructure for the project, worth \$400,000 to 500,000, and said a question was whether the developer's willingness to do this was a sign that they were willing to move forward with the project and market it.

He said when he had estimated how much incremental value the Town's tax rate would raise over a 20-year period, he had kept the tax rate the same for that time period. He said that in reality, it was likely to increase by some measure. He said Chair Niman had taken this likely tax rate increase into consideration in the analysis he had done.

Administrator Selig said he and Chair Niman had asked Mr. Garvey whether in lieu of 4 lots, Rockingham Properties would consider providing a letter of credit for a specific amount of money, with some lots as backup. He said there was no answer back on this yet.

Administrator Selig then spoke about the need to weigh the risks and the Town's tolerance for risk against the benefits of moving forward with the development, and said there needed to be some kind of balance. He said if a 100% guarantee was needed, some kind of surety or letter of credit would need to be provided, but he said it had to be realized that this might mean the development would not happen. He said his goal had been to provide some reasonable assumptions the Council could base its decisions on.

Chair Niman reviewed the spreadsheet he had developed in order to try to put a dollar value on some of the things he had been hearing. He said the chart showed how much incremental tax value was generated over 20 years, using three different values for each of the lots in the development. He said the chart also showed how much of the Town's money was at risk, using the various values of the properties at the various interest rates.

He then spoke about the liquidation value of the 4 lots, and said a worst case scenario was that they would only be worth \$50,000 a piece, which was \$100,000 cut in half. He said he then looked at the potential losses to the Town, at the various interest rates. He said it was only the scenario of a \$100,000 lot, never developed, with a value that didn't change over the next 20 years where the Town had a problem, in that what the developer was offering wouldn't be sufficient.

He said he had asked himself why someone would put up \$600,000 and then not build anything, and he showed some calculations of building something, over particular time periods. He said if the developer built something in the fifth year, at both the 4.4% and 5% interest rates, the Town was covered, but said it was not completely covered if the interest rate was 5.5%. But he noted that the Town probably wouldn't have to pay 5.5%, based on the recent bond sale figures. He

said each Councilor would have to decide for himself/herself what the level of protection was, given the variables he had used.

Chair Niman said another thing he had considered was that after remaining unchanged for 4 years because of a possibly lingering recession, the value of the lots would then go up at 3% per year after that. He then reviewed the last sheet he had developed, using those numbers, and assuming there was no construction on the lots over 20 years.

There was discussion about the fact that the only variable that was not subjective in this analysis was the bond rate, and that even this was not totally certain.

Councilor Van Asselt said one thing they really had to know was what the cost of the bond would be, and he provided details on this. He asked how one decided how to go forward, without knowing the bond interest rate, and there was discussion.

Councilor Needell said Councilor Van Asselt's question focused clearly on the dilemma concerning the risk. He said this proposed development was not one of the worst risks someone could make. But he said he felt that during the whole TIF process, the Council had made the representation that there would be no financial risk to the Town from this project. He said he didn't think it was a good idea to use land as collateral, noting that the Town hadn't done very well with land that it acquired. He said he could live with the project not going forward.

Councilor Sievert said he had read the Minutes and emails on this issue and had also spoken with people in Town who knew about and cared about the TIF district. He said he hadn't read anything specific about a surety, and also said he had concluded from his research that the Town should move forward with this project. He said it was viable, and provided the development opportunities the Town needed. He said there was some protection for the Town. He also said it was absurd to think that one of the commercial lots, with utilities, would be worth only \$50,000, even in a bad economy.

Administrator Selig said what he had been looking out for was a worst-case scenario, such as if the developer went bankrupt, and said he therefore wanted to be sure the Town would have something that was bankable, such as the escrow account and the lots.

Councilor Stanhope said he wanted to see the infrastructure extended out to that area. He said the question was whether the Town would partner with Rockingham on this, and whether this was something the Council had led the public to believe would be the case. He said in his mind, that was not what he had represented, in supporting the TIF. He said the consultant had led the public to believe there would be no risk to the Town, but he said the current proposal left the Town taking more risk than the developer.

He questioned the idea of the Town having ownership of the 4 lots. He also asked why, if the properties were not currently bankable, the Town was being asked to be the banker. He said he would like to see the \$180,000, the 4 lots, and a letter of credit for \$750,000, which to him would insulate the Town from any risk. He said he would be willing to look at a letter of credit for \$500,000, but said he could not support just \$180,000 and 4 lots.

There was further discussion on the value of the lots under various scenarios.

Councilor Leach received clarification that there were 15 buildable lots, and asked whether interest had been expressed in developing any of these lots.

Mr. Garvey said there had been a number of interested parties, and he provided details on this. But he said until the development agreement was signed, it didn't make sense to do anything. In response to a question from the Council, he said the building proposed was 10,000 sf.

In answer to a question from Mr. Sievert, Mr. Garvey said Rockingham Properties had been in business since the mid 1980's. He provided details on this. He also said the bond would be in place for the infrastructure, and said the company would hope that as soon as the agreement for construction of the utilities was in place, the development would be under construction.

There was discussion on the terms of the agreement regarding building the infrastructure for the site. Councilor Sievert asked why Rockingham Properties wouldn't want to just go ahead and build the road to the development itself, and not involve the Town at this point.

Mr. Garvey said the company believed that in the first two years, they would have at least two buildings up.

Councilor Stanhope asked if Rockingham Properties would be willing to give the Town an audited financial statement, and Mr. Garvey said probably not, knowing Mr. Schwartz. There was discussion.

Councilor Van Asselt said considering the skittishness of banks at present, he would like to know what Rockingham Properties needed to take from possible further negotiations with Administrator Selig, in order to give the Council the security it wanted.

Mr. Garvey said there would have to be some numbers nailed down concerning the variables, noting that the banks otherwise drew back. He said this property was owned free and clear, so the banks liked the property. He said there was a lot that could be done there, including without the bank. But he said the banks were very strange at present about letters of credit. He said he didn't know whether what Councilor Stanhope had suggested was possible.

Councilor Henry Smith said there was very little that could be known for sure about this project. He noted that he and Councilor Julian Smith had gone to Raymond concerning that town's TIF district the previous year, and said he had also spoken with the Town of Hooksett concerning its TIF districts. He said in both cases, there were letters of credit, and there was no risk to the Town. He said he agreed with what Councilor Stanhope had proposed, and said the Town needed to be at no risk. He said this was what Mr. Jutton had said to the Council, and was what the Council had said to the Town.

Councilor Van Asselt said he would like Administrator Selig to continue negotiations with Rockingham Properties, based on what Mr. Garvey had heard from the Council that evening. He

also said using public moneys to support private development was not a novel idea, and he provided examples of this. He said the real question came down to whether, if this project came forward and the Council had to spend a couple of hundred thousand dollars, the Council would be willing to do this.

He said he went back to the Council's overall goal, to find properties in Durham that could be developed, provide property taxes, provide services, and address tax issues facing single family home owners who couldn't afford to live in Durham anymore. He said that was one of the reasons they had started talking about this project and others. He said if the TIF fell a bit short, the Town might need to make the investment necessary in order to reach the goal of economic development in this area.

He said the Town could be the bank to make this project work. He said that was what public entities did. He encouraged the Council to support the idea of Administrator Selig continuing negotiations with Mr. Garvey, given what Councilors had said that evening.

Chair Niman said Administrator Selig would continue to talk with Rockingham Properties.

Councilor Needell said the last time the Council had taken an action concerning this project, it was to tell Administrator Selig it wasn't interested in anything other than having a surety provided. He said he believed that in order for Administrator Selig to continue to work on something less than that, the Council needed to direct him to do that.

There was discussion, with Administrator Selig stating that what Mr. Garvey would bring back would be less than the absolute guarantee that had been discussed by the Council.

Councilor Leach said she felt the Council should wait to see what Rockingham Properties came back with.

Councilor Sievert MOVED to have Administrator Selig go back one last time, and come back with a final figure. Councilor Stanhope SECONDED the motion.

Councilor Needell said he would oppose this. He said that while he agreed with what Councilor Van Asselt had said concerning public/private partnerships, this wasn't the discussion the Council had when it voted for the TIF project. He said he wouldn't change the rules at this point.

Councilor Stanhope said Mr. Garvey had heard from Council members, and said if he came back with something that alleviated the concerns, the Council would have met the representation it made to the public.

Councilor Henry Smith said he agreed with Councilor Needell that the Council should not ask Rockingham Properties to come back with anything less than had been agreed upon by the Council. He said that basic guarantee was needed.

Councilor Van Asselt said Councilor Needell was correct in what he was saying. But he said the final 100% was going to be contingent upon approval of the development agreement. He said the

two drafts of the agreement did not meet that goal, but said to him, this did not say the Council should tell Administrator Selig to stop looking for that goal. He said that was why he thought the Council should tell Administrator Selig to keep working toward that goal. He said the Council would then need to talk about whether a compromise was possible, once the final negotiations were completed.

The motion PASSED 6-2, with Councilor Needell and Councilor Julian Smith voting against it.

- D. Develop an action plan to begin implementing the 2008-2009 list of Town Council goals adopted on June 2, 2008

This agenda item was postponed.

XII. New Business

- A. **First Reading on Ordinance #2008-08** amending Chapter 175 “Zoning”, Article XXI “Off Street Parking and Loading”, Sections 175-110 to 175-117 of the Durham Town Code to be consistent with the Town Master Plan and to make overall content updates

Town Planner Jim Campbell provided background on this issue. He said one of the goals of the Zoning Rewrite Committee was to amend the parking and loading regulations. He noted that the 2000 Master Plan spoke about the idea of eliminating parking requirements in the Central Business District, as part of encouraging business development, expansion and density in the downtown area.

He said the Planning Board had hired a consultant to help finish the process of updating these provisions, and said the Planning Board had reviewed and revised the draft amendments over the last year. He said the Board held public hearings on the amendment at two public hearings, one on April 23, 2008 and the other on May 14, 2008. He said there were no members of the public who spoke for or against the proposed changes, and said that after closing the hearing, the Planning Board unanimously recommended that the Town Council adopt the amendments.

There was discussion that previously, non-residential development in the Central Business District could get an exemption from the parking requirements, but residential development could not. It was noted that these proposed changes now allowed residential development to be exempt from the parking requirements, but that language concerning having to pay a fee for not having to provide parking was kept in the Ordinance.

There was discussion about how the Master Plan goals had been considered in developing these changes, with Mr. Campbell also noting that it had been some time since the parking provisions in the Ordinance had been looked at.

Councilor Leach asked if any of the landlords were included in discussion on these proposed changes, and if the Durham Business Association had been given copies of them.

Mr. Campbell said he had provided the draft to landlords when they came to his office, but said it was not provided directly to the DBA.

Councilor Leach asked Mr. Campbell if he felt these regulations would be problematic to downtown business owners.

Mr. Campbell said the idea with these changes was to encourage and facilitate expansion, not to put up barriers. He provided details on this, including the fact that a new section on shared parking had been created.

Councilor Sievert asked if business owners could get rid of the parking they had, or had to keep it.

Mr. Campbell noted that the proposed changes said elimination of parking spaces could be done if approved by the Planning Board during the review process.

Councilor Needell said if this went to public hearing, forwarding a copy of the Durham Business Association and others as appropriate would be a good idea.

Councilor Julian Smith MOVED on First Reading, as presented, Ordinance #2008-08 Amending Chapter 175 “Zoning”, Article XXI, “Off-Street Parking and Loading”, Sections 175-110 to 175-117 of the Durham Town Code and schedules a Public Hearing for Monday, July 7, 2008. Councilor Sievert SECONDED the motion, and it PASSED unanimously 8-0.

Mr. Campbell noted that Code Administrator/Enforcement Officer Tom Johnson had reviewed the various drafts of these proposed changes.

B. First Reading on Ordinance #2008-09 amending Chapter 175 “Zoning”, Article XXIII “Signs and Utility Structures”, Sections 175-126 to 175-137 of the Durham Town Code to make overall content updates

Mr. Campbell said this was another example of the Zoning Rewrite that hadn’t occurred when the entire Zoning Ordinance had been updated a few years back. He said this was something that was called for in the Master Plan. He said the process began in March of 2007, and said that over the next several months, the Planning Board had reviewed the amendments and submitted comments back to a consultant.

He said the final draft was received on November 8, 2007. He said the Board held public hearings on the proposed amendments at the April 23, 2008 and May 14, 2008 meetings, and said there were no public comments for or against the amendments. He said after closing the public hearing, the Planning Board unanimously recommended that the Town Council adopt the amendments.

There was discussion on the revision to the provision on sandwich board signs.

Councilor Needell noted that some pictures of signage had been provided as part of the Planning Board's public hearing process. He said it would be very helpful to provide them as handouts for the Council's public hearing.

Administrator Selig noted section 175-133 at the bottom of page 4 and the top of page 5, regarding snipe signs. He said he didn't understand why the wording "not including election signs" was included under 175-133 B.2, stating that it seemed to be covered already at the end of B.2.

He also said that under 4, he didn't understand what was meant by "approved 22 foot area around a private driveway", and Mr. Campbell said this wording came from the latest State changes concerning this. He said he would provide further clarification on this.

Administrator Selig asked why Section 175-133 said the Town Council needed to be a part of granting approval for directory signs located in the Town right-of-way, on secondary streets within the CB District.

Mr. Campbell said this was because the sign would be placed on Town property.

Administrator Selig asked why it didn't make more sense to allow the Public Works Department to address this with the Code enforcement officer.

There was discussion on this, and it was agreed that a change could be made to this provision as part of the public hearing process.

Councilor Van Asselt MOVED on First Reading, as presented, Ordinance #2008-09 Amending Chapter 175 "Zoning", Article XXIII "Signs and Utility Structures", Off-Street Parking and Loading", Sections 175-126 to 175-137 of the Durham Town Code and schedules a public hearing for Monday, July 7, 2008. Councilor Leach SECONDED the motion.

Councilor Needell asked that a copy of these proposed amendments be forwarded to the Durham Business Association and anyone else who would be appropriate.

The motion PASSED unanimously 8-0.

C. Other business

XIII. Adjournment

Councilor Leach MOVED to adjourn the meeting. Councilor Henry Smith SECONDED the motion, and it PASSED unanimously 8-0.

Adjournment at 10:30 pm.

Victoria Parmele, Minutes taker