

This set of minutes was approved at the March 15, 2010 Town Council meeting

**Durham Town Council
Monday February 1, 2010
Durham Town Hall - Council Chambers
7:00P.M.
MINUTES**

MEMBERS PRESENT: Chair Neil Niman; Councilor Karl Van Asselt; Councilor Jerry Needell; Councilor Julian Smith; Councilor Doug Clark; Councilor Peter Stanhope; Councilor Mike Sievert; Councilor Diana Carroll; Councilor Robin Mower

MEMBERS ABSENT: None

OTHERS PRESENT: Town Administrator Todd Selig; Police Chief Dave Kurz; Public Works Director Michael Lynch; Code Enforcement Officer Tom Johnson

I. Call to Order

Chair Niman called the meeting to order at 7:05 PM.

II. Approval of Agenda

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

Councilor Mower asked if Item X D could be moved before Item X C, and Chair Niman suggested amending the Agenda later if needed.

Administrator Selig recommended postponing Item VII E, the public hearing on proposed fire prevention code amendments, until the March 1st Council meeting, because the key presenter was out of the State until that time.

The motion PASSED unanimously 9-0.

III. Special Announcements

Drawing of candidate names running for elected offices to establish order of listing on the March 9, 2010 Town Election ballot – Christopher Regan, Town Moderator; Lorrie Pitt, Town Clerk-Tax Collector

Town Councilor
Peter Stanhope
William Cote
Jay Gooze

Library Board of Trustees

Julian Smith
Sibylle Carlson
David Moore
Jenna Roberts

IV. Approval of Minutes

December 7, 2009

Page 28, bottom paragraph and top of Page 29, should read “After further discussion, it was determined that Councilor Carroll, Councilor Mower, Councilor Stanhope, and Councilor Sievert were in favor of \$200,000.”

Councilor Clark MOVED to approve the December 7, 2009 Minutes as amended. Councilor Smith SECONDED the motion, and it PASSED 7-0-2, with Councilor Needell and Councilor Van Asselt abstaining because of their absence from the meeting.

December 21, 2009

Page 28, paragraph beginning “Councilor Needell noted”, add “to build on but would use it” after the word “selling” in that paragraph.

Councilor Van Asselt MOVED to approve the December 21, 2009 Minutes as amended. Councilor Sievert SECONDED the motion, and it PASSED 8-0-1, with Councilor Smith abstaining because of his absence from the meeting.

V. Councilor and Town Administrator Roundtable

Councilor Mower asked for an update concerning the work being done by B. Dennis Town Design.

Administrator Selig said the draft report should be ready within a week, and said team members would then meet with Mr. Campbell and himself to see if they had included everything that had been hoped for, in anticipation of presentations before the Council and the Planning Board.

Councilor Carroll said the Integrated Waste Management Advisory Committee had met on January 12th, and addressed the spring newsletter as well as the idea of offering composting bins to residents. She also said Doug Bullen spoke at the meeting concerning a request from Administrator Selig to explore other possible approaches for dealing with household hazardous waste. Councilor Carroll noted that the annual pickup of these wastes had been removed from the 2010 Budget, and that the Council had discussed finding creative alternatives to this approach.

She said Mr. Bullen had determined that as a small quantity generator, the Town was entitled to store waste such as paint, compact bulbs, etc., but did not qualify for storage of hazardous waste. She said the Town didn’t have the trained staff to do this, so was not allowed to collect hazardous waste on a monthly basis, store it at the Transfer Station, and then ship it out.

Councilor Carroll also noted that Mr. Bullen had looked into the idea of a multi-town collection with Dover. She said he had found that entering into such an agreement would cost Durham

nearly double the current charge for doing it by itself, and said she had the technical details on this if Councilors wanted to see them. She said the IWMAC was looking into other possibilities, along with Administrator Selig.

Administrator Selig said the Durham Business Association would coordinate the upcoming “Meet the Candidates” night. He also said the School District budget deliberative session would be held on February 2nd at the High School.

Councilor Needell said the Conservation Commission had recently met, and that they received a presentation from the Trust for Public Lands on its proposal. He said the Commission had sent a letter of support for the project to the Council, which the Council could discuss as part of discussing the project itself. He said the Commission had encouraged the Council to seize the opportunity to work with the TPL.

Councilor Smith updated the Board on the most recent Planning Board meeting. He said the public hearings on the Seacoast Repertory Theatre site plan and conditional use permit applications had been continued to the February 10th meeting at the request of the applicant. He also said the Board had accepted a site plan application from Xmed to build a new building in place of its existing building because the company had outgrown it. He said a public hearing on this application was scheduled for February 10th.

VI. Public Comments (NLT 7:30 PM)

Henry Smith, Packers Falls Road, said he was present to speak about the Spruce Forest conservation proposal. He noted a 1998 survey that indicated that conservation and preservation of the Town’s natural resources was the highest priority in terms of spending tax dollars. He also quoted from the 2000 Master Plan, which cited the Oyster River corridor as a priority in terms of preservation.

Mr. Smith said the Trust for Public Lands was a fine organization, and said their request for funding would almost eliminate tax burden on the Town. He also said it appeared that the project would not have a negative impact on the tax base, and in fact could add to it, by allowing the economic development of the Grange property and perhaps adjacent lands. He said this could be a significant event for the Town in terms of developing the downtown, and said he highly recommended going forward.

Roger Speidel, 7 Nobel K. Peterson Drive, said the School Board’s deliberative session would be held the following evening. He also said on March 9th Durham taxpayers would be voting on the School Budget, and wouldn’t know a single thing in it. He noted a Budget item for \$728,000 called Other Programs, and questioned what this was. He also questioned other Budget items, and then asked if anyone in Town knew how the School Budget was put together. He said the voters in Durham were passive.

Mr. Speidel said the town of Bow spent less per student per year than the Oyster River School District, although ten years ago its spending was 2 ½ times higher than the OR School District, and said it wasn’t money that made a good school system. He said from 2001-2007, Durham lost 246 students, but during that same time, 10 more teachers were hired.

He said the School Board voted on its Budget on January 20th, and said at the time, he was the only citizen present. He questioned why this was, and said an audit of the School system was needed now. He then provided written copies to the Council of his statement at the January 20th School Board meeting.

Bill Hall, Smith Park Lane, said the method the Town used to replace elements of its infrastructure defied reason, and noted in some detail how the Mill Pond road job and Woodman Road job were examples of this. He also said the action plan for Public Works projects was ridiculous.

Jenna Roberts, Cowell Drive, said that while the conservation idea was a good one, she hesitated about the idea of giving up the Grange. She said she felt there were few resources left for community spaces, and asked that the Council reconsider giving it up.

She thanked the Council for agreeing to talk about possible fiscal mismanagement by the School District, and said the Town, which distributed funds to the schools, should ensure that these funds were being spent properly. She said the School Board was not being transparent, and said the public was being treated with contempt. She said she was looking for the School Board to communicate with the public, in the public eye, and to be held responsible.

Ms. Roberts said Durham should work with the other towns in the district to do a forensic audit, and said after that, they should remedy the problems. She said the Town Budget was the gold standard, while the Budget presented at the School board hearing, for \$38,000,000, was only two pages long. She asked how someone could make a decision on a budget like that, and said this was totally unacceptable.

Seth Bramante, Partridgeberry Lane, said he echoed what others had just said about the School Board issue. He first noted that he had come before the Council a few years back concerning issues with the School Board, and he provided details on this. He said 2/3 of residents' tax dollars went to the School District, and said it was important to understand what was going on. He said whenever he spoke to the School Board, he was met with opposition and branded as a troublemaker, even when he backed up his comments with facts.

He said he felt the School Board was at a stalemate, and said nothing seemed to get done. He noted that they had started a long term strategic plan, and said keeping this effort alive was imperative in terms of where things would be at in 5 years. He also said the Resolution before the Council was a good start, and suggested that there should be a forensic audit, and then the process should move forward.

Mr. Bramante said there was a tremendous disconnect between the Town and the School, but said the Friday Update was great, noting that he had seen Councilor Clark's Resolution on Friday. He said the Town was doing a phenomenal job, keeping costs down, while the School Board was increasing its costs each year.

He noted that the School Board had been asked to provide details on the current Technology

improvement warrant article, but said there had been no answers. He also said the Technology improvement plan last year had been voted down by one vote, but it was later found that the money voted down was still spent. He said this meant the Board had used surplus money that should have been returned to the voters.

Mr. Bramante also spoke about the amount of time it had taken the School Board to come up with job descriptions. He said he had gotten the sense that they hadn't had these descriptions, and questioned how compensation was determined without them.

Bob Eckert, UNH professor of Natural Resources, noted that he was co-teacher of a land conservation course. He said he also chaired a group called the Bellamy/Oyster River Protection Partnership, whose goal was to foster communication between the towns that shared these water resources. He said he was present to represent the watershed view, stating that what was being considered with the TPL proposal was important on a larger scale than just Durham, and that other communities were watching to see what happened.

He noted that the latest data indicated that Great Bay had pollution problems, and said the actions the Town took to protect the Oyster River were important. He said he hoped the Council would consider this point of view.

Joshua Myerowitz, 7 Chesley Drive, said he was excited about the TPL proposal, which seemed like a once in a lifetime opportunity to protect these resources, and said he hoped the Council would figure out how to make it happen. He said parts of the proposal could be written more clearly, and said he would like to hear more about UNH's connection to it, also stating that perhaps the Town could provide more incentive for UNH to be involved.

Mr. Myerowitz said the point made about losing the Grange as a public space was a good one, and said perhaps it could be considered as part of a more systemic discussion about a Town Hall, Library, etc. downtown. He also said he would like to see more information on whether the conserved land at Spruce Woods would be accessible to the public, stating the importance of allowing residents to enjoy the beauty of what would be conserved.

Lynn Holmes, 10 Meserve Road, said she supported the Spruce Forest conservation proposal. She said she understood the concern about taxes, but urged the Council not to sacrifice what Durham was now for development. She said once land was developed, they could never get it back.

Hillary Scott, 20 Davis Avenue, encouraged the Town to partner with the TPL to preserve the land out at Spruce Woods. She noted that the Master Plan recognized the Oyster River corridor as a conservation priority, and urged the Council to consider the idea of conserving this land while not considering everything else right away. She said if they were in favor of this, they could find a way to make it happen. She said this was a unique opportunity that TPL had come forward with this project, and said it was important to consider the long term picture.

Regarding the Durham Business Park, Ms. Scott encouraged members of the public to watch the potential development there closely. She said that area of Town was fragile in term of

maintaining land quality, and said it would be important to really look at the plans to make sure shoreland setbacks, building height limits, etc., were maintained. She said it would also be important to see that public access was provided.

Malcolm McNeill, 44 Colony Cove Road, said he wished to speak regarding the TPL proposal, particularly concerning his February 1st letter, and also in the context of his December 21, 2009 letter and the 2000 Master Plan. He said the TPL proposal would have the effect of removing a significant property from the ORLI District inventory of developable properties, and said in effect it would rezone the property. He said this was the very same property where the owners had requested and received a rezoning of the property to ORLI in 2008, alleging there were reasonable grounds for commercial uses, and that no environmental dangers existed. He said the Council had accepted this and rezoned the property.

Mr. McNeill said questions continued to exist that should be answered prior to the Council consenting to a contractual agreement with the TPL that would effectively re-zone this property for 4 years, and tie up the Grange for up to 4 years. He said there should first be a public hearing regarding the proposal, with full disclosure of all its terms prior to the Council entering into an agreement.

He said if it was the Town Hall or the Court House building being traded, or a dam was going to be fixed, there would be a public hearing. He said public funds and property were involved, and said the public had a right to be heard after full disclosure of the issues. He said this would not come from simply reading the TPL letter to the Council.

Mr. McNeill said the discussions over the past 16 months had not been public discussions, yet they were talking about public resources. He said if there was time pressure regarding the grant deadline, this deadline was not created by the Town, and should not drive an unrealistic and uninformed decision-making process.

He said TPL's letter of December 4th indicated a meeting with Administrator Selig, Councilor Mower, Councilor Niman and a developer. He said this meeting was discussed at the December 21st Council meeting, but no one could explain what would be developed and what the terms would be.

He said the TPL in its correspondence indicated the Town's purchase price was the Grange lot, valued at \$649,000 risk free, and said further investigation would reveal that this was an understatement of the purchase price. He said with this deal, a significant portion of ORLI would in effect be removed from the tax rolls and he said those costs must be assessed, especially in light of the 2008 rezoning.

Mr. McNeill said the purchase price also indicated potential, as raised by Councilor Clark at the May 18, 2009 Council meeting, that the effect of rezoning it would also prevent further development of other commercially zoned parcels in that area. He said this was because infrastructure would not be extended, because the antigrowth people would then say there was even less land to be developed.

He read from the 2000 Master Plan concerning the impacts of the Town's tax burden, and noted that it spoke about the need to manage the growth of single family homes, and also to increase revenues from acceptable commercial development and office research growth. He said this was exactly what the ORLI district was created for.

Mr. McNeill said the land swap proposal didn't indicate how the Grange would get developed, and he questioned whether surrounding property owners had been spoken to. He asked if the plan was for 6-7 story buildings in order to offset \$200,000,000, which what the Spruce Hole owners had at one time said was the value of developing that property. He asked where the fairness was of such a trade.

He also asked when the deal would happen, and said it should be conditioned upon there being a letter of agreement regarding the development, so the Town got the end of the deal that it was promised. He said otherwise, the easement would be irreversible because it would be perpetual. He said that property wouldn't be developed, the Town would get the Grange property back and there would be no development there either.

Mr. McNeill said the Town's trade of its asset, which was worth \$645,000 at least, in exchange for the loss of a Spruce Woods development was not only an undefined deal, but was clearly not a done deal. He questioned whether the entire deal should be dependent on a downtown development deal being consummated by an agreement before anything happened with regard to a conservation swap. He said the property under discussion was not rural, was not residential; it was ORLI. He said if conservation was going to exist there, perhaps all of the 3-5 parcels out there should be taken too.

James Houle, 95 Mill Road, said he was a water resource scientist and a member of the Conservation Commission, which supported this initiative. He noted that in 2008, he had spoken before the Council regarding the conservation of this area, and said he thought there was unanimous consent that the area necessitated some kind of conservation, which was represented by the pursuit of the easement.

He said he would not be up there if this was just a conservation initiative, stating that he was not anti-growth. He said growth should happen responsibly, and said this particular area was of extreme value in terms of its present and future water resources. He said UNH Professor Tom Ballestero had studied this issue for three decades, and said it was highly tied to economic development. Mr. Houle then read from a letter from Mr. Ballestero in support of the TPL project.

Kevin Gardner, 1 Stevens Way, noted that he was a faculty member at the UNH Civil Engineering Department, and was also a professional engineer. He said as Councilor Clark often liked to say, one had to look for those opportunities where many different interests came together. He said the TPL proposal struck him as just such an opportunity, where economic development, conservation, energy, and parks and recreation all came together. He said maybe it wasn't exactly perfect, but said it looked pretty close from his perspective.

He said this was not a conservation project, although it was great that people viewed it

that way. He said this was the Town of Durham's infrastructure they were considering; its water supply for 100 years, according to Dr. Ballestero. He said for \$650,000, which was incredibly inexpensive, he'd take it. He said this was an infrastructure project, where there would be the ability to infiltrate water and store it there. He said it was a good deal.

Mr. Gardner said a second point he wanted to make was that businesses located where the quality of life was good. He noted the research on this, and said a high-quality, high-quantity water supply was a really important part of quality of life. He said people tended to forget that the last 5 years had been, according to the state climatologists, the wettest years on record, and also said people tended to forget about the droughts that had been seen in the past. He also noted that having recreational opportunities at the conserved area was a nice feature of this proposal.

He said a third point was in regard to his major area of expertise, the remediation of places where gasoline, oil, solvents, etc., had spilled. He said \$650,000 wouldn't go very far if this needed to be done. He said the TPL proposal, which was a kind of insurance policy against future insults like those types of spills that were very likely to occur, was pretty cheap money.

Duane Hyde, 47 Emerson Road, said he was speaking as a citizen and as a Town water user. He congratulated the Town on all the hard work being done regarding the redevelopment of the downtown, as a primary focus area in order to expand the tax base. He said he was also there to support the TPL proposal, which was an incredible water supply protection project. He said there weren't many opportunities where two water supplies could be protected at once.

Mr. Hyde said this was also an incredible opportunity in that it had a conservation and infrastructure component as well as a potential economic development component, and he spoke in some detail on this. In addition, he said there could be the benefit of getting recreational fields, which the Town sorely needed. He said the TPL was an excellent organization, and said he hoped the Council would support this project.

Nancy Lambert, 17 Faculty Road, read a letter on behalf of the Strafford Rivers Conservancy. The letter stated that the 171 acre parcel under consideration was an excellent candidate for conservation, and said conserving it was an essential step toward protecting Durham's current and future water supplies. It said the extensive shoreline along the Oyster River, which was the Town's current water supply, as well as the proximity of the parcel to the Spruce Hole aquifer, which was the Town's future water supply, made this parcel particularly critical to ensuring adequate water quality and quantity.

The letter said a study by the Society for the Protection of NH Forests had noted that NH's public drinking water supply lands continued to be seriously underprotected, leaving them vulnerable to contamination. It said conservation was the least expensive option for guaranteeing the clean water and adequate supply necessary to sustain the Town's growth and economic development. The letter said towns in the Seacoast would be increasingly challenged to find adequate public water supplies, and said Durham was fortunate to have this opportunity to work with willing landowners.

The letter said the parcel was also noteworthy in enhancing the conservation value of existing open space in Durham, noting that contiguous open space had much more conservation and habitat value than isolated parcels of open space. It said the parcel was a key link to adjoining conservation areas, and said the investment in the parcel would enhance the conservation value of these other areas in this contiguous block.

The letter said the Strafford Rivers Conservancy was encouraged that this project bundled economic development and recreational interests with land conservation, stating that too often, conservation efforts were falsely portrayed as being anti-development. It said, as this project clearly demonstrated, conservation could help direct economic development to appropriate locations, while preserving the valuable ecosystem services conservation lands could provide. It also said protecting public water supplies now would enable continued growth and development of the Town into the future. It said if this project was successful, it would be held up as a model for similar projects.

The letter noted that the Conservancy had worked with Greg Caporossi and the TPL on a complex land conservation project in Barrington, and had great respect for them. It said the Conservancy was pleased they were leading this effort in Durham, and said they had demonstrated in many projects throughout the State their ability to execute complex projects that required significant resources and extensive partnerships.

David Hills, Piscataqua Road, noted the point made by Mr. McNeill that if land zoned for development was instead conserved, this gave up a potential future source of revenue. He said this was an issue the Town continually faced, and said it put people against each other. He also said the Town hadn't been very successful in developing areas that it had set aside for development. He noted as an example the Durham Business Park, but said it sounded like there might be something in the works for it now.

Mr. Hills said there was more discussion in the world these days about sustainability, and said a town had to be sustainable in order for people to be able to live there. He said this was becoming more of a challenge, and he noted that the School Budget drove a large percentage of the tax bill. He said the TPL proposal was an amazing opportunity, in that the TPL had said it would raise the money to do the easement, if the Town chipped in the Grange property. He said this was a dramatic amount of leveraging, which most towns would love to have.

Beth Olshansky, Packers Falls Road, said she was present to support the TPL proposal, which she said was balanced in terms of the goals it would achieve. She said based on Tom Ballester's comments, she couldn't see how one could think about developing this land. She said there couldn't be economic sustainability without good water, and said she didn't see how the Town could turn this proposal down.

Regarding the issue of the accuracy of the appraisal, Ms. Olshansky said she wasn't sure this mattered, when the Town's contribution right now was so small. Regarding the issue that the Grange would be given up to outside developers as a result of this proposal, she noted that whatever happened with the site, it would have to go through a review process. She also said if

the Council was concerned that the Ordinance wasn't sufficient in terms of supporting the kind of development they all would like to see downtown, there would be 18 months to refine it.

Ms. Olshansky said this was an incredible opportunity, and said the Town's water supply should be the most important issue in terms of sustainability. She said this was a time limited offer, so the Council would need to make a decision soon or else lose this opportunity. She also noted for those who would like to see economic development on this site that it was the landowner's preference to put a conservation easement there.

Ms. Olshansky pointed out that there were a number of people present who had not spoken but who were in support of the proposal.

Carroll Birch, 17 Garden Lane, said she supported the TPL proposal. She spoke about the importance of the Spruce Hole aquifer, and asked the Council to preserve this water supply.

Dwight Baldwin, 6 Fairchild Drive, said hydrogeology was his specialty, and he noted his recent letter in Fosters, which strongly supported the TPL proposal. Regarding the point made that one could go ahead and develop this area at no risk to the property, he said if the area was contaminated, it would be difficult to clean up. He said the best way to preserve the water quality of Spruce Hole and the Oyster River was to maintain the land in its natural state.

Mr. Baldwin explained that there needed to be diffuse infiltration of rain water in order to maintain the wells and the river for public use, and he questioned the idea of being able to develop this area and still maintain water quality. He said the land there was sloping, and noted that there were mature forests there because farmers had realized that if they cut the trees, there would be significant erosion. He said that had probably happened in the past.

Mr. Baldwin spoke about the use of stormwater management technologies, but said any engineer would say these structures were not foolproof, and could fail at the worst possible times. He said even if they worked perfectly and slowed the water down, infiltration would occur in a more limited area than would otherwise occur throughout the 171 acres, and that water would be channeled to the Oyster River.

Mr. Baldwin questioned the idea, as part of the TPL proposal, of putting Astroturf playing fields in the gravel pit, which would mean these fields would be built almost on top of the new water supply. He noted that the gravel pit was a likely place for the recharge basins to be located, and provided details on this. He also said there were still significant volumes of gravel to be taken out of the gravel pit. He said putting playing fields near the corner of Mill Road and Packers Falls Road made much more sense, stating that the aquifer material there had a lower transmissivity, and that the area was flat.

Tom Lee, resident of Lee, said he was a forest ecologist, and said the land in question was critical habitat, which supported a high diversity of species. He explained that it was a critical link in what was a regional wildlife corridor, which included protected lands to the east and to the west. He said it was a very significant piece of property.

Mr. Lee noted that the land abutted College Woods, which was a regionally significant property. He said these properties together were large blocks of forested ecosystem, and supported a remarkable diversity of life and ecological processes. He said if they were developed, the area would be turned into a habitat island, which would be impacted by various edge effects.

Malin Clyde, 51 Mill Road, said the highest and best use of the Grange was not as an empty building. She said she thought the TPL proposal was a great deal, and said she would love to see the Grange be a useful part of the downtown. But she also said she didn't think the Town should be in the development business. In addition, she spoke about recreational opportunities with the Spruce Wood parcel, and provided details on how she would love to see a trail system that tied into this project. She said it seemed like a great opportunity.

Sarah Wilson, Cold Spring Road, said while it would be great to have more recreational fields in Town, the cost of creating them on the Spruce Woods parcel and then managing them presented some large financial and other hurdles. She spoke in detail on this, and also questioned what would guarantee that there would be such fields, if this deal went through.

She said she trusted that the Council would make an educated decision on this deal, but asked that the fields be taken out of it, stating that she thought it was a tactic to make the deal a little more appealing. She said it would fall short of what the Town really needed for recreation fields, and asked that the Council make conservation the primary focus of the deal.

Mike Glover, 10 Hemlock Way, said he supported land conservation. He noted those who had said if the Spruce Woods land was put in conservation, this would represent a taking of property rights without compensation. He said the land in question had been rezoned a few years ago, and said perhaps this had been a hasty decision.

He spoke about the fact that College Woods stretched west, and said if the area in question was developed, the continuity of this whole area would be gone. He also noted that 50% impervious cover was allowed in the ORLI District, and then spoke about a development project in Texas that the company that had proposed the recent development at Spruce Woods had cited as an example of its work. He said he had seen this project, and said it was nothing to be proud of, in terms of the extent of impervious cover.

He said if the Spruce Woods land went into conservation, this raised property values, and was also something that made Durham a rich place to be. He noted that he was personally attached to this area, and said it was a wonderful place. He spoke in detail about the great extent to which the fields and forests of the country had been developed, and said it was important to consider what a more balanced approach was. He also noted he had been a soccer coach, and said there had never been too many soccer fields in Town.

Peter Smith, Route 4, noted that as a member of the Conservation Commission, he was fact-driven. He said the Commission had recently discussed the matter of the TPL proposal, and the Chair had sent the Council a letter regarding its position on it. He said that letter stated information that reflected the expertise of the Conservation Commission, and said its members were an amazing resource for the Town. He noted that the Council had heard from some of them

that evening, and asked that the Council also be fact-driven, and think very carefully about this expertise that had been freely given to the Council. He also said it was important to keep in mind that 80% of the human body was comprised of water.

Margaret Bogle, Croghan Lane, said she supported what others had said about the importance of having a clean water supply, whatever size the Town was. She said any development in the future would require clean water, and said she didn't think the Town could afford to pass up this opportunity.

Bill Hall said since 2008, the Town had for the most part gotten its water from the Lamprey River, and he provided details on this.

Diane McCann, 27 Oyster Road, said she supported the idea of a land swap involving the Spruce Wood property and the Grange. She then spoke about upcoming changes at UNH which would impact the Town's water supplies. She also noted the vote to preserve the Grange in the past, and said she hoped that whoever developed it would remember that it was an historic property.

Councilor Mower read a letter from Tom Kelly, UNH Chief Sustainability Officer & Director of the University Office of Sustainability. In the letter, Mr. Kelly said he was writing to express his full support for the TPL Proposal. He said some public decisions had a greater impact and reach than others, and said this proposal was one that was particularly significant for the immediate and long-term quality of life for the people of Durham. He said its importance would continue to grow over the next century.

Mr. Kelly's letter said the long-term health of the water supply was so fundamental to sustaining the quality of life that, paradoxically, it could be easily taken for granted and assumed, naively, to be permanent and self-perpetuating independent of their actions. But he said the land use decisions within the Oyster River Watershed and the Spruce Hole Aquifer represented one of the most direct impacts that they all had on the sustainability of their water supply.

Mr. Kelly's letter noted that over the past decade, there had been droughts by summer's end that had raised serious concerns about the Town's water quality and quantity. He said they all had a stake in this, and needed to take purposeful steps to enhance the resilience of the water supply through a coordinated and coherent set of actions. He said the TPL proposal presented a unique opportunity for the Town of Durham to take such action and to do so in a way that that facilitated downtown development and the siting of much needed recreation fields.

The Council stood in recess from 9:02 - 9:13 PM.

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, upon recommendation of the Town Administrator, reduce the appraisal of property owned by William and Patricia White at 18 Williams Way from \$578,300 to

\$469,400, grant a property tax abatement in the amount of \$108,900 of valuation to the Whites, and authorize the Town Administrator to sign a Settlement Agreement between the William White Living Trust Property and the Town of Durham relative to Docket No. 24062-08PT?

- B. Shall the Town Council, upon recommendation of the Town Administrator, approve two property tax abatements relative to disabled exemptions of \$32,000 each for properties located at 6 Tirrell Place and 38 Woodman Road?
- C. Shall the Town Council, upon recommendation of the Town Administrator, grant a Land Use Change Tax (LUCT) abatement in the amount of \$45,550 to River's Edge Apartments, LLC with respect to property located at 277 Main Street and authorize the Town Administrator to sign the LUCT tax abatement application form?
- D. Shall the Town Council, upon recommendation of the Town Administrator, authorize the Administrator to sign an extension of the Purchase and Sale Agreement between the Town of Durham and Chinburg Builders, Inc. for the Durham Business Park with said Agreement to expire on November 30, 2010, and authorize Chinburg Builders, Inc. to assign its interest in the Durham Business Park to Neuro-Rehab Associates, Inc. for the development of an in-patient rehabilitation facility?
- E. **FIRST READING ON ORDINANCE** #2010-02 amending certain sections of Chapter 68 "Fire Prevention" of the Durham Town Code as recommended by the Town Administrator and amending the fees associated with this section within the Town-wide "Master Fee Schedule"
- F. **FIRST READING ON ORDINANCE** #2010-03 amending Chapter 175 "Zoning", Article XII "Zone Requirements", Section 175-45(F)(2)(3)(4) "Courthouse District" of the Durham Town Code.
- G. Shall the Town Council, upon recommendation of the Town Administrator, award the 2010 Road Resurfacing Program bid to Suburban Paving of Bow, NH in the amount of \$129,472?

*Councilor Stanhope MOVED to approve Unanimous Consent Agenda Items A-G.
Councilor Van Asselt SECONDED the motion, and it PASSED unanimously 9-0.*

VIII. Committee Appointments - None

IX. Presentation Items

Durham Police Department Community Survey – Police Chief David Kurz and Dr. Andrew Smith, UNH Survey Center

Police Chief Dave Kurz said this was the 5th survey done over the last 15 years. He explained that it was done in order to make sure that the Police Department was listening to residents, and to look for emerging trends. He said UNH provided a great survey product at little cost to the Town. He thanked Andrew Smith of the UNH Survey Center, who he said always reminded him that a survey was only as good as what was done with the information in it. He said the Police Department tried to use this information.

Mr. Smith reviewed the survey results, first thanking UNH graduate student Chad Novak for his work on it as part of his masters program. He said the survey results indicated that there was very little change in terms of residents' perceptions about the Police Department. He said overall, residents maintained very favorable attitudes, and noted that this had remained relatively unchanged since 2000.

He provided details on the survey results, explaining among other things that the survey results indicated that Durham residents' feelings of safety had remained high in both day and nighttime hours. In addition, he said Durham residents continued to feel that crime over the past year had remained about the same.

Mr. Smith then reviewed the major concerns of Durham residents:

- 47% of Durham residents were concerned and 18% were very concerned about children being exposed to drugs during the daytime hours.
- 41% of residents were concerned about having their home burglarized
- 35% were concerned about their children being safe.
- 28% of residents were concerned about illegal parking near public schools
- 25% were concerned about illegal parking downtown
- 24% were concerned about strangers loitering near homes.
- 21% were concerned about illegal parking near their homes
- 17% were concerned about driving through Durham.
- 9% of residents were concerned about illegal parking near where they worked
- 7% were concerned about walking within Durham.

Mr. Smith next reviewed issues that were reported as most problematic by Durham residents:

- Pedestrians crossing streets outside of crosswalks
- Drug possession and use
- Speeding cars and screeching tires
- Cars not yielding to pedestrians
- Littering
- Public intoxication
- Bicycles riding against traffic
- Parking traffic
- Bicycles riding on sidewalks
- Inadequate street lighting

Councilor Mower asked to what extent the people who responded to the survey were generally the most satisfied.

Mr. Smith said typically those who responded were both the most satisfied and the most unsatisfied residents.

Councilor Mower asked if input from citizens regarding questions to include in the survey was welcome, and what the procedure would be for providing this input.

Mr. Smith noted that a trend line had been developed based on using the same questions for the surveys over time. But he said if there were specific areas of concern, these could be discussed with Chief Kurz.

Councilor Mower noted that answers to some of the questions would depend on where one lived in Town. She said the definition of neighborhood could be a skewing factor.

Mr. Smith explained that the data had been broken down by regions of the Town, including the downtown, so this information was available if someone wanted it.

Councilor Mower noted concerns of residents living in the downtown neighborhoods, who perhaps had a different experience than residents living outside of these neighborhoods.

Councilor Carroll pointed out that the survey response form had residents' name on it, but said some residents wanted their responses to be anonymous.

Mr. Smith said this had occurred because it was a self mailer, which was done in order to save money. He said his office ensured confidentiality of respondents when the surveys were received, and he provided details on this. But he said they could talk about the form next time.

Councilor Clark said the biggest concern expressed in the survey was the issue of children's exposure to drugs. He said Chief Kurz had said this was typical of concerns in general about drugs. He asked if that consistent answer had changed the way things were being done in terms of enforcement, and if residents should expect the number to go down.

Chief Kurz said there had been a meeting the previous week on a strategy to address this problem. He also said it was the Police Department's job to try to address it.

Councilor Smith said he had noticed that there were 65 pages of detailed breakdown regarding the survey results. He then noted that the Council had debated during the Budget season whether to add another police officer to the Department. He asked Chief Kurz if he had considered having a question in the survey that dealt with public perceptions on the size of the police force, and whether this was adequate.

Chief Kurz said this was a legitimate question, but said he thought what was of interest to residents was whether the Department satisfied the needs of the Town. He said the survey allowed him to determine whether the community was relatively satisfied with the services the Department was delivering, and he spoke in some detail on this.

X. Unfinished Business

- A. **PUBLIC HEARING AND ACTION ON ORDINANCE #2010-01** amending Chapter 98 "Rental Housing Commission", Section 98-3 of the Durham Town Code to change the current composition of the Rental Housing Commission

Councilor Van Asselt MOVED to open the Public Hearing on Ordinance #2010-01 amending Chapter 98 "Rental Housing Commission", Section 98-3 of the Durham Town Code to change the current composition of the Rental Housing Commission. Councilor Sievert SECONDED the motion.

Sam Flanders said he was currently the only neighborhood representative on the Rental Housing Commission, and said it had recommended that there be an additional neighborhood representative. He then noted that at the most recent Council meeting, Councilor Van Asselt had recommended removing the wording "that is affected by" in the sentence "The Durham Town Council shall appoint two members living in a neighborhood that is affected by rental property." He said he

thought that wording was there for a reason, and also said he thought the appointee needed to be an advocate for people affected by rental housing problems.

He said right now there were essentially four landlord representatives on the Commission, and said there needed to be more balance, especially now that the rental housing problems had more to do with residential properties. He proposed the following language: “The purpose of the neighborhood representative is to advocate for the interest of homeowners currently affected by rental housing issues, and to represent the interest of residential homeowners who do not have a direct or indirect financial interest in financial properties in Durham.”

Administrator Selig said an email had been received from Barbara Wright, who said she would like to see an equal number of neighborhood reps and UNH reps on the Rental Housing Commission.

He also noted the issue of Town staff representation as members on the Commission, which the Council had recently discussed. He said while the Commission hadn’t recently had a chance to discuss this, Chair Berton and Durham Landlords Association Chair Mark Henderson had said they were ok with eliminating this, as long as staff were represented in some way at the meetings when it was critical that they be there.

Diane McCann, 27 Oyster River Road, said she agreed with Mr. Flanders, and also said it was clear that there wasn’t enough understanding on the part of the University concerning the difficulties for residents in the neighborhoods. She said as taxpayers, they deserved representation on the Committee so there would be a better balance.

Councilor Van Asselt MOVED to close the Public Hearing. Councilor Stanhope SECONDED the motion, and it PASSED unanimously 9-0.

Councilor Van Asselt MOVED to Adopt Ordinance #2010-01 amending Chapter 98 “Rental Housing Commission”, Section 98-3 of the Durham Town Code to change the current composition of the Rental Housing Commission. Councilor Smith SECONDED the motion.

Councilor Van Asselt MOVED to amend the Ordinance by striking Item G “The Town Administrator shall designate one representative each from the Police Department, Fire Department, and Code Enforcement Office. Councilor Smith SECONDED the motion.

Councilor Mower said over the last several months, participation by the Deputy Chief of Police at Commission meetings had been exceptionally valuable. She noted that he had explained the constraints on the ability of the Department to act on code violations, and had also provided a picture of what life was like in certain neighborhoods these days. She said she didn’t think they needed to require a staff member to be at all meetings, but said this participation had been valuable, and said attendance should therefore be encouraged.

Councilor Needell said at the last Council meeting, concern was expressed that attendance at Commission meetings took too much of staff members’ time. But he said he assumed that when there was not a time of crisis, attending a quarterly meeting wouldn’t place a huge demand on their time.

He said he was comfortable with removing the member status, but said he would like to see it codified that staff would serve as non-voting members representing their departments. He said this would allow some flexibility concerning their presence at meetings.

Councilor Stanhope said he thought it might be more appropriate for the Town department heads and not the Town Administrator to determine who was best qualified to represent their departments at Commission meetings.

Councilor Smith recommended deleting G as a sensible measure. He said he assumed that as issues came up, the Commission would request information and advice from relevant Town departments.

Councilor Clark said he agreed.

Councilor Carroll said she had attended a number of Rental Housing Commission meetings and had seen the value of having Town staff there. She noted that if they were not there, another meeting might be needed when they were there. She said this was a vulnerable time for the neighborhoods, and said the input of Town staff was therefore needed. She also said when the situation stabilized, attendance at a few meetings per year shouldn't cause a negative impact on Town services.

Councilor Mower said it would be hard to know when the presence of Town staff at a meeting would be needed, because there hadn't been agendas for the meetings.

The motion to amend PASSED 6-3, with Councilor Needell, Councilor Carroll, and Councilor Mower voting against it.

Councilor Van Asselt noted that what had been Item G was now Item F.

Councilor Van Asselt MOVED that the Durham Town Council shall appoint two Durham residential home owners. The motion FAILED for lack of a second.

Councilor Mower suggested that the Council talk about incorporating the suggestion made by Mr. Flanders regarding intent and advocacy.

Councilor Clark said he thought the Ordinance was worded exactly as it should be, and he provided details on this.

Chair Niman asked if there was a specific motion proposed to amend the original motion.

Councilor Needell said it was hard to require that an "advocate" be appointed, and said he was ok with the current language "...two members living in a neighborhood including rental properties".

Councilor Carroll MOVED to change the number of neighborhood members from two to three.

She noted that this idea had been discussed by the Council. She said Durham had several neighborhoods, and said three was a good number.

Councilor Mower asked if the Council could make this change without the approval of the Durham Landlords Association, given the legal constraints of the settlement.

Chair Niman agreed that this needed to be considered.

Administrator Selig said if there was a motion on this, he suggested holding a subsequent public hearing and in the interim getting feedback from both the Rental Housing Commission and the Durham Landlords Association.

Councilor Mower SECONDED the motion, and it FAILED 3-6, with Councilor Smith, Councilor Mower, and Councilor Carroll voting in favor of it.

Councilor Smith MOVED to amend Section 98.3 Composition to read “The Town of Durham Rental Housing Commission shall consist of nine members...”. Councilor Mower SECONDED the motion, and it PASSED unanimously 9-0.

The original motion as amended PASSED unanimously 9-0.

- B. Continued Town Council discussion regarding a proposal by The Trust for Public Land for preservation of the Spruce Forest area

Chair Niman said he was not aware that the Council would be voting on anything that evening. But he said what needed to come out of the discussion was a sense of the Council concerning the need to conserve this land, and to hear what Councilors thought about the TPL proposal. He said these were two separate issues.

He also noted Mr. Ballestero’s letter regarding conservation of the Town’s water supply, and said Durham had a partner in this, the University, which owned half of the aquifer. He said the Town should therefore explore partnering with the University about conserving this land.

Councilor Needell said he thought the discussion that evening should be on the TPL proposal, and not on whether the Council wanted to conserve the land. He noted among other things the timing issue. He said what needed to come out of the discussion was whether the Council wanted to consider a partnership with TPL and a project in any form.

Chair Niman agreed, and said he just wanted it to be clear that if someone wasn’t in favor of the TPL proposal, this didn’t necessarily mean the person wasn’t in favor of conserving the land.

Councilor Needell said he wasn’t sure if they were at the point where they would decide on the proposal. He said they didn’t need to accept the terms that evening, but did need to agree as to whether they would make a decision within the next 6 weeks, and would work to accomplish this.

Administrator Selig said it was important to note that over a year ago, the discussion had included the Colasante parcels, but they were no longer included so they were down from 230

acres to 171 acres. He also said while Greg Caporossi of the Trust for Public Lands had planned to summarize the proposal, he felt the public had done a good job of recapping the situation for the viewing audience.

Administrator Selig reviewed how this proposal had come to pass over the past year. He said in March of 2009, Phil Auger and Mr. Caporossi had spoken with him about submitting an application for CELCP funding for a similar proposal. He said he was uncomfortable at that time about proceeding, and felt there needed to be a full public discussion of the proposal. He said over the last year, Mr. Caporossi, Mr. Auger and others had worked hard to pull something together.

He noted that questions had been raised during Phil Auger's recent presentation to the Council. He then said Mr. Caporossi had put together a very fair presentation on what was known and not known to date about the proposal. He said issues included how the Grange fit into the proposal; what acreage was involved; whether College Woods was essential to the project; questions concerning the appraisal, etc.

He said the proposal did a good job of laying out what was known to date, and said there were a lot of things that were still unknown, which would have to be worked out if there was interest on the Council in proceeding.

He said by the end of March, the Town would have to decide whether it wanted to submit the CECLP application to fund the great majority of the acquisition. He said if there was interest on the Council in doing this, it would have to provide guidance that it was open to proceeding in some way toward this proposal. He said the TPL would then prepare the grant application. He said the question for the Council now was whether given what was known to date, it was comfortable with the general parameters of the proposal, even though there were still a number of things that need to be fleshed out.

Councilor Van Asselt said it wasn't fair for anyone to ask whether the Council wanted to work with the TPL. He said the only thing he could comment on was what was in front of him, and said he had a number of questions with no answers. He said he refused to be driven by the developers' set deadline, and said he thought what was driving this project was the owners of privately owned property. He said if the Council was interested in filling in the gaps, whatever it took, this couldn't be done given the deadline. He said if that meant the deadline instead would be moved up 12 months, so be it.

Councilor Mower said her understanding was that the deadline was driven by the real world grant application process, and not by the landowners. She said the Town could, however, set the terms for the deadline for the development aspect of the proposal. She noted that the Council had heard about this proposal in May of 2009, and said perhaps they had lost some opportunity to discuss it earlier. But she said she was not denying that the Council had questions about the proposal.

Councilor Needell said the TPL was offering the Town an opportunity. He said what was in front of the Council right now was not a grant proposal, but rather an invitation to an opportunity. He

said the deadline was imposed by the funding source chosen, and the burden was on the TPL to answer to get a proposal before the Council that it was willing to accept.

He said the reason he was willing to embrace this offer was that he thought, as the testimony that evening had indicated, that this provided an opportunity the Council shouldn't pass up. He said the Town had a willing partner in TPL, which had worked with the landowner and was trying to broker a deal in their interest and in the Town's interest, to conserve this land that many in the community felt was very important.

He said there had been a reluctance to accomplish this alone, and there was an acceptance that this wouldn't succeed given the economic climate as well as the climate in the community. He said until this proposal had been brought forward, it wasn't considered a feasible prospect. But he said there was now an effort to bring in the developer as a motivated partner, using this linchpin property in the downtown. He said it was an interesting concept.

Councilor Needell said the constraints and the purchase and sale agreement that would be placed on the Town owned property would be a critical piece of this. He said those details needed to be worked out, and also said the proposal would need to be formulated in a way that the Council would entertain it. He said at some point, it would come back and the Council would have to vote on it, but he noted that if this didn't move ahead now, they wouldn't have something to vote on.

He said he saw this as an opportunity to conserve land but also to spur downtown development. He said the developers would be motivated to develop downtown, given the fact that they would lose their investment if they didn't. He also said the Town hadn't shown itself to be the greatest deal maker, in terms of the properties it owned downtown. He said he didn't see the Grange aspect of this proposal as a great risk or loss to the Town, and said he thought it instead would make development downtown more likely to occur. He said it was a unique proposal, and said the Council shouldn't throw it out just because it didn't have all the details. He said right now they needed to determine whether or not they wanted to entertain the concept.

Councilor Sievert said he agreed that there was a huge conservation aspect of this. He said Mr. Ballestero was gospel, noting that he studied under him. But he said what he disagreed with was how this project would spur downtown development. He also said that right now, there was already an outpouring of developers who were willing to develop downtown and take advantage of the incentives that were now available.

He also spoke about the fact that the Town had hired B. Dennis Design to show that it was more than willing to take a hard look at Zoning, and to invite development into the downtown.

Councilor Sievert said a big question was what "create incentives" meant in the document that had been provided concerning the TPL proposal. He also said there was a line of people who would purchase the Grange property, so \$650,000 or so could come to the Town tomorrow. He said he thought the reason the Town was holding on to the property was that it was part of a larger development possibility that tied into other pieces, involving Mill Plaza, different road accesses, etc.

Councilor Sievert also said while he was in favor of protecting the Spruce Hole aquifer, he didn't think the property under discussion was as developable as it had been said it was. He noted that this project was an unusual one for him, in that he usually worked for developers trying to design a project that elevated the value of their property. He said what often happened in such situations was that the TPL would come in and scrutinize that value and beat the price down, and the town and other partners would then come back to the landowner and offer a purchase price. He said he didn't see that kind of scrutiny happening with this parcel.

Councilor Sievert questioned again whether the Spruce Woods property could really be developed to the extent that had been stated, noting the outpouring of comments regarding the student housing proposal when they started looking at traffic impacts, etc.

Greg Caporossi of the Trust for Public Lands said they weren't yet at that level of scrutiny, and said that process was to come. He said the appraisal they currently had was not intended to be the final appraisal report, and said it would be a full narrative appraisal that would be developed through a rigorous process. He said they relied heavily on that process giving them a good indication of what the true value of the property was.

In answer to a question from Councilor Sievert regarding the risk to the Town, Mr. Caporossi said TPL would ask Durham to give TPL a free option on the Grange lot, and said this would be held for six months. He said during that time, they would have a good indication of whether they would get CECLP funding.

He said if it didn't look like they would get the funding, TPL would walk away, but said if it looked like they would get the funding, they would want the right to extend the option for another 12 months. He said this would allow them the time to close on the Spruce Wood/Tecce parcels. He said if in that 18 months they failed to raise the funds needed to acquire the properties, the Grange lot would revert back to the Town.

Mr. Caporossi said if they were able to close on these properties and they didn't perform in moving forward with a development proposal involving the Grange lot within 36 months of today, and then break ground within 12 months of receiving all of their permits, the Grange lot would revert back to the Town. He said in the meantime, the Town would have the 171 acre conservation parcel.

Councilor Sievert asked what the location was of the fields that were proposed, and Mr. Caporossi said this was all open for discussion, keeping in mind the broader conservation goals.

There was detailed discussion with Mr. Auger on what the appropriate location would be for ball fields, given the water and other natural resources values of the conservation property.

Councilor Sievert said he didn't think the ballfield scenario was a great one out there, noting among other things that to put the magnitude of fields out there that the Town needed would require large parking areas.

Mr. Auger noted that this idea had not come from the TPL.

Chair Niman asked what happened if the TPL could raise all the money needed except selling the Grange.

Mr. Caporossi said the performance criteria that would be stipulated in the option on the Grange lot would be outlined, and said if those criteria couldn't be met, the owners would lose the value of the Grange lot in the deal. He clarified that the purchase price for the conservation property was the grant funding plus the option on the Grange lot.

Councilor Mower said the landowner would get \$650,000 less than the purchase price.

Chair Niman said he simply wanted to clarify this, because a concern was that the land owners would come back to the Town and said they couldn't do anything with the property, and ask the Town to come up with this money.

Mr. Caporossi said the TPL fully expected there would be a signed Purchase and Sales agreement with the Town, which would stipulate how ownership of the 171 acres would be transferred to the Town, under what circumstances and at what price. He said the price would include the option on the Grange lot, which would be the sole contribution from the Town. He said that contracted price would mean the TPL wouldn't come back to the Town for more money.

Councilor Needell said if this went forward, in 18 months the sale of the land would be completed. He said it was important to note that the development of the Grange would occur after that, and had nothing to do with the purchase of the land. He said the Town would own that land regardless of what happened with the Grange.

Mr. Caporossi provided clarification that the Town would retain ownership of the Grange throughout the 18 month process, and said if the option with the Grange was subsequently terminated, the Town would continue to own it.

Councilor Sievert asked about the role of the University, and whether they had backed out of the process.

Mr. Caporossi said the University had never committed to the process. He said it had participated in the original discussions, and said TPL's goal had been to get a partnership that included getting an easement over College Woods. He said this could have been used to match the CECLP funding, and also said it would have meant there would be almost 400 acres involved. He said it would have made the grant proposal more competitive, but said the University was not prepared to do that at this point. But he said the conversations were moving forward.

Councilor Sievert said he was concerned that the University would pull out, or not jump in, yet the conservation of this area was hugely important to them.

Councilor Mower said their timeframe for making land policy decisions didn't fall within the

CELCP funding timeline.

Councilor Sievert asked how the incentive for downtown development would be created, and who would actually be doing the development downtown.

Mr. Caporossi said they had been speaking with a number of larger developers interested in developing downtown. He said the most likely partner was Sora Holdings LLC, and he noted that there had been a productive conversation with them. But he said the planning process for a development wouldn't unfold within the timeframe of the conservation aspect of this proposal.

Councilor Seivert said that was the hard part Councilors were struggling with. He said a fear was that there was already a captive audience regarding redevelopment downtown. He said it made him nervous to think of a major developer investing \$40-50 million into the downtown, and the Town putting all its eggs in one basket. He questioned whether the Town would then wind up owing that developer. He said right now there were about 10 interested developers, and also said he worried about a developer coming in and derailing the well planned zoning changes that were underway.

Mr. Caporossi said that was a legitimate fear. But he said by signing this proposal or an iteration of it, this didn't mean a developer would get carte blanche to do whatever he wanted.

Councilor Stanhope MOVED to extend the meeting beyond 10:30 pm, Councilor Mower SECONDED the motion, and it PASSED unanimously 9-0.

Councilor Stanhope noted a statement that there was a property under contract, and that it was at a substantial discount. He asked what the basis was for this, and Mr. Caporossi said it was the purchase price vs. the restricted appraisal report they had at this point.

Councilor Stanhope said he had reviewed that document, and said it was badly flawed. He asked Mr. Caporossi whether if the real appraisal went forward and they found the value of the property was only 30-40% of what the restricted appraisal report was, he anticipated that the seller would be responsive to a lower purchase price.

Mr. Caporossi first noted that the TPL as a nonprofit could not pay more than the fair market value for a property. He also said if the value of the full second appraisal was below the purchase price, he could either go to the landowner and discuss renegotiating the purchase price, or walk away from the deal.

Councilor Stanhope asked if there was any sense that the seller would agree to sell at the appraised value, and there was discussion with Mr. Caporossi. Councilor Stanhope said again that he thought the document had serious issues, and said if the current contract was based on it, he suspected the sellers were excited about selling at that price. He said they were taking the risk by taking the Grange as part of the deal, but if they accepted this price and it was more than fair, they weren't taking any risk at all. He said they could then walk away from the Grange, and the Town would have removed it during this time period from an opportunity to use it as an asset.

He said he respected the TPL for identifying a critical piece of infrastructure for the Town in the future, but asked what other alternatives the Council had. He also said if this land was that critical to the Town, it could consider taking it by eminent domain.

Mr. Caporossi said he didn't want to argue about the merits of the first appraisal. He said the TPL hired the most qualified appraisers they could and trusted them to do their job. He said whatever the final appraisal product was would have to go through a rigorous federal review. It was noted that Scott Dickman was the appraiser.

Councilor Mower asked Councilor Stanhope whether he wanted to know if there was a floor price at which the landowners would walk away, and he said yes. She said she didn't imagine there was any way to get that information, and said any landowner would like to get as much for their property as possible. She also said it would be harder for the TPL to raise the funds for a larger purchase price.

Mr. Caporossi said the TPL negotiated aggressively, and said they tried to make the best use of limited public resources.

Councilor Stanhope said assuming a lower price was negotiated, the Town's percentage based on the value of the Grange would increase.

Mr. Caporossi said that was a possibility, but said the Town could also put up a smaller percentage than what had been stated if the property went up in value. He said the question would then become whether the value of the Grange lot was worth the various upsides of moving forward with this proposal.

Councilor Smith said the Council had heard from the public, and had heard clear answers from the members of the TPL. He said he would like to know what more they needed to discuss that evening before starting the process for asking the TPL to do what was necessary to get a proposal before them in a timely fashion.

Administrator Selig said a large part of this proposal was the Grange, and whether that was an appropriate asset of the Town to commit toward this project.

Chair Niman said he would like to see the Council approach this in some other way, because there was an aspect of the present proposal he was uncomfortable with. He said the process was started with the best of intentions to try to bring land not in commercial development into development by swapping it with this land. But he said that didn't happen.

He said since then, he'd been concerned about how things had moved forward. He spoke about how the Business Park property had been considered as a Town property that could be swapped, but said it seemed like the Town would be playing a shell game, because the economic development component wouldn't be real when there was already a signed purchase and sales agreement with the original developer.

Chair Niman said he had been even more nervous when he was at the meeting with Global

Partners, which wanted to option the Pettee Brook parking lot and possibly put a parking garage on it. He said this was a very strategic property for development of the downtown because of the desire for parking for a new hotel and other businesses downtown. He provided details on this, and spoke about the approximately \$1 million in lease costs the Town would wind up paying to use the parking garage.

He said he had been very nervous that the developers they had spoken with were interested in building public infrastructure, using a strategic piece of Town property, and the Town would then be stuck with a sole source, and wouldn't be able to bid out a developer for a parking garage or a library, etc. He said all he could then see was the new hotel idea and other meaningful development downtown disappearing. He noted that UNH had recently been discussing partnering with the Town to put in a parking garage.

Chair Niman said the Grange had then been suggested. But he said he was having a hard time seeing how putting the Grange in the hands of the developers was going to spur downtown development. He said the reason why the Grange was worth \$650,000 was not because of the property itself, but because of its assemblage value, as part of the Plaza as an alternate entrance.

But he said if the Town gave up that asset, the question was how it could ensure there would be an alternate entrance into the Plaza. He provided details on how this could impact future negotiations with the owner of the Plaza, if a second access to the Plaza was desired. He said he didn't think putting the Grange in the hands of someone else would motivate the owner of the Plaza to sell.

Chair Niman also said the only way he thought the Plaza would be developed would be to allow enough density so the current owner could receive his windfall, but said he didn't think residents would accept this amount of density. He provided details on what Soros had envisioned, including 80 elderly units, 300 student beds, a bigger grocery store, and some additional retail, with corresponding surface parking. He said he didn't see that going anywhere.

He said if the goal was to develop the Plaza, they could give the Grange to someone, or sell it at a discounted price, potentially Varsity Durham. He noted that the company had been talking about redeveloping their properties near the Grange, and said the Grange was valuable to them because they could turn it into student apartments. He said as part of a negotiation with them, the Town could perhaps get them to preserve a right of way into the Plaza, to ensure that they didn't have to go through Chesley Drive.

He said there was also the issue of whether people wanted to develop the Grange property in the first place. He said people had discussed the historical value of the building, and also noted they were going through a design process for the downtown, and might be looking at some place downtown to put some open space.

Chair Niman said he had a difficult time with the notion that putting the Grange in the hands of individuals who had proven they couldn't really develop anything in this Town would spur development. He said his concern was that it would put the Town in a position that it didn't want, or would be forced to pay a ransom to get the Grange back so they could do what they

wanted downtown.

He said it was great if they wanted to protect the water supply, but said he didn't think throwing in the Grange so people could tell themselves there was an economic component was really the feel-good experience people thought it was. He said he thought it would do more to stop development, or lead to the kind of development the Town didn't want, because the Spruce Wood landowners would be desperate to get their \$650,000 back.

Mr. Caporossi noted that the Town wouldn't give up the Grange unless certain performance criteria were met. He also said it wasn't TPL's idea to put the Grange on the table, or to have an economic development component to this project, and said they would be more than happy to conserve the acreage without economic development. He said the TPL had responded to Durham's request to not only have conservation but also look for opportunities to expand the tax base.

Chair Niman said that was good to hear. He said the Council might say they wanted to conserve the land but take the economic development aspect out of it.

Mr. Caporossi said if that was the case, there would have to be a discussion on the Town contributing in some other way to that process.

Chair Niman said he would prefer to contribute a different way than tying up the Grange. But he noted it would depend on what other Councilors thought.

Councilor Mower said the planning guidelines that would be in place by the time this property went through the review process would apply. She said this could include revised Master Plan aspects, and the results of possible rezoning, which could be addressed within the next 24 months.

Councilor Clark said he was confused because he thought the whole premise of this was to transfer development rights from a property in the ORLI zone to something that wouldn't otherwise be developed. He said this had obviously become a conservation project. But he said a question was what they were giving up. He said he thought they were giving up one of the few pieces of property that might be able to increase the tax base, which he said he was more than willing to trade, as long as it created equivalent value, and more than \$650,000.

He said he had been struggling to see where the balance was, and said he didn't see how the math worked. He said it seemed they would be giving a \$650,000 asset away that they could instead sell any day of the week to fund the Fire Department capital reserve fund. He said it was his understanding that the Grange was very sellable.

Councilor Van Asselt said this was being sold to the community as an economic development project in addition to conservation. He said he thought the real problem in Durham was that unless it expanded its tax base beyond the single family home, they were done. He said he needed to see where the expanded tax base was from this project, and said he didn't see it.

He said a Council goal for years had been to expand the tax base. He said if people wanted conservation, there also had to be some place to expand the tax base. He said this proposal would take away one of the three parcels in ORLI where this could be done, and he asked if the Town would be willing to change the zoning, perhaps making some of the Rural District ORLI. He said he didn't think the Town was willing to do that.

Councilor Van Asselt said this potentially big project had a lot of questions that needed to be answered, but said to him the biggest one was what to do about the tax base. He said Durham wouldn't survive without an expanded tax base beyond the single family home. He said he wasn't saying Spruce Woods and the original \$200,000,000 plan was the answer.

But he said there was a corollary problem in Town, which was the student housing issue of non owner-occupied single family homes, and said students would prefer to live in a different kind of housing if it was available. He said whether or not Spruce Woods land could do that, he didn't know. But he said he needed a place for this kind of development to happen, and now one of the parcels where that could occur was gone. He said he didn't see where tax base and housing concerns were addressed in the TPL proposal.

Administrator Selig said this would be a much easier sell for the Council and the community if there was an actual development plan from a real developer, with an attached economic value. He said they didn't have that right now because it was too early in the process. He said Sora appeared to be interested in doing something, but hadn't had time to put something together.

Mr. Caporossi said there were sticks and carrots built into this process. He said Chair Niman was right that the value of the Grange was its assemblage value. He said with all of the difficulties outlined in getting that put together, the landowners were saying they were still willing to take the risk, which showed a spirit of cooperation with the community. He said it took a partnership to make this work, and said at some point, it was a leap of faith. He said the TPL would do everything it could to set up the transaction in a way that would protect everyone's interest.

Administrator Selig asked if the TPL was open to an approach where the Council said it would rather put up cash than the Grange, and make it a pure conservation project.

Mr. Caporossi said absolutely.

Administrator Selig asked if the TPL would be open to an alternative property.

Mr. Caporossi said yes, as long as it had development potential. He said the TPL was committed to working with the community to meet the three goals outlined at the outset. He provided details on this, and said settling for something less was also acceptable as long as the community was ok with that, the TPL thought it had a project that was competitive and would be funded, and the dynamics still worked for the landowners. He said it was his job to figure out what that balance was, and said it took a discussion like this to help figure that out.

Chair Niman said there might be a way to build an economic component into this, but said he was not sure they were going down the right road. He said another road might exist, but said the

problem was that they weren't sure they could do this in six weeks. He said he didn't think the Spruce Woods property would be going anywhere in the next year.

Mr. Caporossi noted that the TPL might not have an option in six months. He also said they had to evaluate this CELP opportunity relative to others out there.

Roger Cruise, the Vermont/NH state director for TPL, said he wouldn't be opposed if there was an opportunity to bifurcate the project. He suggested that they could get some approval to move ahead with the funding application, and if there was a desire to build a more comprehensive development strategy, that could occur during the course of the transaction, whether it was the Grange or something else. He said they could move on somewhat separate paths, but still have a connection that wasn't ironclad, which said they were committing to something today.

Councilor Needell said if they separated this, the Town would have to come up with \$650,000 of committed investment to move this forward.

Mr. Caporossi said right now it was pretty malleable, but said within six weeks it would be much less so.

Councilor Mower said the Town must commit a certain value that it couldn't pull out later.

Mr. Caporossi said there was the symbolic commitment, as well as the financial commitment that would be requested from the Town as either real estate or cash.

Councilor Van Asselt said he wasn't ready to make a decision tonight. He said they should think about this for two weeks, and talk about it some more.

Administrator Selig said there was no urgency to decide on this now. He said there would need to be discussion as to whether the Council wanted to proceed, and if so, how.

Councilor Carroll asked Mr. Caporossi if he needed anything from the Council right now.

Mr. Caporossi said he would need to know soon what the decision time frame would be, and who would review contracts and the grant application.

Administrator Selig said all those details would be worked out.

Councilor Mower talked about possibly getting input from the Whittemore Business School regarding developing the Grange property, and from the draft the Council would be getting back from B. Dennis Town Design. She said mostly, she was interested in hearing the Council was interested in continuing the discussion about a possible partnership.

Chair Niman said he hadn't heard anyone say they weren't interested in continuing the discussion.

Councilor Needell said he was surprised at the amount of discussion on possibly conserving the

land without the economic development component. He said a question was how that could be paid for, and he asked if that alternative could be formulated over the next two weeks so they could talk about it. He also said in order for Sora Holdings to develop downtown, the Zoning would have to change, and said the Council would have to be a partner in discussions on this. He said he didn't have a problem with doing this deal, but said if there was another way to do it, that would be great.

Administrator Selig said he could try to formulate the alternative Councilor Needell had referred to.

Councilor Mower said this would not be a passive conservation property, in that there would be a lot of public access for trails and possibly other opportunities, regardless of any recreation fields. She also said it would be an active asset to the Town because of the water supply. She noted that when one talked about the potential loss to the taxable base by not putting the property into development, one had to net out potential remediation costs if it were developed.

Chair Niman said he agreed with what Councilor Clark had said, and asked if they could explore something. He said there were very few places to do commercial development in Durham, and said they shouldn't lose sight of possible economic development opportunities as part of this project.

- C. Discussion regarding the results of the Town Administrator's annual performance evaluation and discussion on renewal of employment contract for the Town Administrator

Councilor Van Asselt MOVED to modify the Town Administrator's employment contract as described in the February 1, 2010 Council Communication. Councilor Stanhope SECONDED the motion and it PASSED unanimously 9-0.

- D. Discussion relative to residency requirements for membership on Town non-statutory boards, committees, and commissions

Postponed

XI. New Business

- A. **RESOLUTION #2010-02** requesting that the ORCSD School Board direct the ORCSD Administration to provide adequate documentation regarding the expenditure of surplus funds from the 2009 Fiscal Year

Administrator Selig said the question was whether they wanted to focus on the specific issue Councilor Clark had raised, or also wanted a forensic audit of the School District.

Councilor Clark said a forensic audit would let them know how their money was being spent. He said a warrant article was the most likely way this would happen, but said that couldn't happen for a year.

He said another thing he had been trying to do was to get the Council to have a real discussion about the fact that the School District was created as an autonomous entity, which the Town didn't really have a say about. He said this was an incredibly dynamic world, where curriculums and demographics were changing fast, but he said there was this static school system.

Councilor Clark said if they decided that the only sustainable solution for the School District was revisiting its structure, he thought the towns had to initiate this discussion. He said he wanted to find out these kinds of things, stating that right now the only thing he knew Durham could do was to say it wanted to withdraw from the School District. He said he didn't want the Town to do this, but said he did want the District to work. He said he wanted to make sure they were fully aware of what the needs would be in order to make it work and be sustainable.

Councilor Mower said at the Agenda setting meeting, she had wondered whether the Council could benefit from the advice of an attorney about its options.

Administrator Selig said he believed he knew some of the answers. He said ultimately the composition of the District was a political matter for the three towns. He said it could come from the School Board, the administration of the School District, and could also come from one or all of the governing bodies of the three towns, or could come forward as a citizen initiative.

He said he believed the School District could make contracts with other towns without the ok from the three towns, but said there was nothing to prevent any of the towns from saying the District didn't serve its needs, and in various ways to initiate change. He said if the Council didn't feel the District was running well, there was no reason it couldn't take an active role to advocate for change. He said they would have influence, and authority as citizens who could initiate a petition.

Councilor Carroll asked if this discussion was going on in Madbury and Lee. She said she would like it if all three communities said they wanted more information about what was happening with the Budget.

Councilor Clark said a year ago, Lee and Madbury were at the table with Durham, and they were intrigued by the discussion. He said this topic was as relevant to their governing bodies as it was to Durham.

Councilor Stanhope said he didn't think this would be resolved until the three towns sat together and concurrently negotiated each town withdrawing and then restructuring so there could be a format that allowed a higher degree of control. He said he had heard that all three towns were experiencing the same level of frustration. He said he didn't think the change would occur unless it came from the municipal level.

Councilor Smith said he supported Councilor Clark's Resolution as a good start, and said he was ready to second a motion on it.

Councilor Needell said Councilor Clark and Councilor Stanhope had raised some excellent long

term discussion points. He noted that he had encouraged Councilor Clark to bring this Resolution forward, and said that was the Council's role. He said they could work on the language, but said it was reasonable to start with a simple request. He said clearly, members of the community had said they didn't know what was going on with the finances of the School District, and said the Council's role was to mobilize the community to take action and go and address the School Board.

After further discussion, it was agreed that Councilors should submit possible language changes to the Resolution for the next meeting.

Councilor Mower asked if they should also take the opportunity to consider issues like the lack of supporting information for the Budget. She said she was at the first Budget public hearing, and agreed with some of the public comments.

Chair Niman said the Council would talk about this some more at the next meeting.

B. Discussion regarding the rental of parking spaces within the Town of Durham

This item was not discussed because of the motion to adjourn.

XII. Nonpublic Session (if required)

None

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

XIV. Adjourn (NLT 10:30 PM)

Councilor Van Asselt MOVED to adjourn the meeting. Councilor Sievert SECONDED the motion, and it PASSED unanimously 9-0.

Adjournment at 11:42 PM.

Victoria Parmele, Minute taker