

This set of minutes was approved at the April 5, 2010 Town Council meeting

**Durham Town Council
Monday February 15, 2010
Durham Town Hall - Council Chambers
6:30 P.M.
MINUTES**

MEMBERS PRESENT: Chair Neil Niman; Councilor Karl Van Asselt (arrived at 6:33 PM); Councilor Jerry Needell; Councilor Julian Smith; Councilor Doug Clark; Councilor Peter Stanhope; Councilor Mike Sievert (arrived at 6:33 PM); Councilor Diana Carroll; Councilor Robin Mower (arrived at 6:33 PM)

MEMBERS ABSENT: None

OTHERS PRESENT: Town Administrator Todd Selig; Town Clerk-Tax Collector Lorrie Pitt; Town Planner Jim Campbell; ; Gregg Caparossi, the Trust for Public Lands; Phil Auger, UNH Cooperative Education

I. Call to Order

Chair Niman called the meeting to order at 6:30 PM and noted that the Council would first go into Nonpublic session.

II. Nonpublic Session

Land matters associated with potential sites for a new public library facility in accordance with 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 Smith MOVED to go into nonpublic session under RSA 91-A:3 II (d).
Councilor Needell SECONDED the motion, and it PASSED by roll call vote:
as roll call vote 6-0:*

*Chair Niman yes
Councilor Needell yes
Councilor Smith yes
Councilor Clark yes
Councilor Stanhope yes
Councilor Carroll yes*

The Council entered Nonpublic Session at 6:32 PM.

The Council returned to public session at 6:59 PM.

Councilor Smith MOVED to seal the Nonpublic session Minutes. Councilor Mower SECONDED the motion, and it PASSED 9-0.

The Council stood in recess from 7:00 to 7:05 PM.

III. Approval of Agenda

Councilor Van Asselt MOVED to approve the Agenda as submitted. Councilor Smith SECONDED the motion, and it PASSED unanimously 9-0.

IV. Special Announcements - None

V. Approval of Minutes

January 11, 2010

Councilor Julian Smith MOVED to adopt the January 11, 2010 Minutes as presented. Councilor Van Asselt SECONDED the motion, and it PASSED 8-0-1, with Councilor Carroll abstaining because of her absence from the meeting.

VI. Councilor and Town Administrator Roundtable

Councilor Carroll said DCAT had met on Wednesday, and said most of the meeting focused on the renewal of the Comcast agreement.

Councilor Needell said the Conservation Commission had recently met, and heard a presentation from the Trust for Public Lands. He said they then voted unanimously to reiterate their support for the Spruce Woods property, and to express their willingness to commit and use land use change tax funds, not to exceed \$400,000, toward the project. He said the Commission wanted to make it clear that this was a very high priority.

Councilor Mower said the Energy Committee had recently met with State Senator Amanda Merrill regarding energy legislation that was in the works, and ways the Energy Committee could support this.

She said the Planning Board's Water Resource Protection subcommittee was working on draft amendments to the site plan regulations to address stormwater management issues, and said members of the subcommittee would speak with the Planning Board about this at its upcoming quarterly planning meeting. She also said there would be some Ordinance changes proposed concerning stormwater management.

Councilor Mower also noted that Town Engineer Dave Cedarholm had drawn up a checklist from previous downtown projects regarding water resources management issues, and said this would be discussed as well at the Planning Board meeting.

Councilor Smith said at the most recent Planning Board meeting, the Board accepted a site plan application from Seacoast Repertory Theatre and then held a public hearing on it as well as a conditional use application from Seacoast Rep. He said several members of the public spoke in favor of the project, and also said an abutter spoke at great length in opposition to it.

Councilor Smith said the Board approved a site plan application for Xmed, noting that an abutter had raised several issues before the approval. He said the Board also approved a voluntary lot merger of three lots on Woodside Drive.

Councilor Clark said the EDC had met with downtown developers Matt Crape and the Kostis family, and said a sobering issue discussed was the belief that the only viable industry in Durham was student housing, and that something had to be done about this. He said there was discussion about what uses could be put on which floor, and spoke about the fact that a developer couldn't put a commercial use on the top floor even if this made sense. He said it was an eye-opening discussion to see how zoning got in the way of good thinking, and said this issue should be visited again.

Councilor Mower said she imagined that B. Dennis Town Design would be providing some ideas on this.

Councilor Needell said the Conservation Commission had heard a presentation on the forestry work that forester Charlie Moreno was doing in the Spruce Hole area. He said they were surprised to hear about it, and had asked for some details.

Administrator Selig said there were two Town owned parcels involved, one which included Spruce Hole, and the other which ran from Mill Road to Spruce Hole. He said as part of the well analysis, and after the Conservation Commission presentation on stewardship plans, it became clear that some selective tree cutting and good forest management in general was needed there. He noted that profit was not the goal.

He said he spoke with some Public Works employees who thought this would be a good first step to doing some selective cutting in Town, and that they could then look at doing some other Town tracts. He said DPW chose Mr. Moreno, and he also said he told the Conservation Commission chair that if the Commission had any concerns, he would be responsive.

Administrator Selig said the 2009 Town Reports were now available, and he provided details on this. He thanked Jenny Berry for the great work she had done on it.

He said the recent Chili Fest was a great success, with 200-300 people in attendance. He listed the names of the many volunteers who had made this great event possible.

Administrator Selig said 21 violation letters had recently gone out to single family, non-owner-occupied rental properties, and said more of these would be going out. He explained that the Town was trying to be responsive to concerns about these properties, and said he hoped this effort would send a message. He noted that there would also be an article in the UNH paper about students living off campus, as a result of joint efforts with Ann Lawing of UNH.

He said the Council would be asked to take action on allowing the Town to accept credit card payments, and said information on this would be available in the Friday Update.

VII. Public Comments (NLT 7:30 PM)

Roger Speidel, 7 Nobel K. Peterson Drive, said he was in favor of having a great school system, but was against wasting taxpayer money. He said he had recently gone to Bow, NH to talk to the School District business administrator. He noted that this school system was comparable in size to Durham's and was near the top academically in State. He said it had reduced the cost per student per year, over 10 years, while the Oyster River School District cost had increased its cost per student over the state average by 1000%, and the average cost in the State had doubled.

He said Bow's school budget had been reduced last year, and would see a zero increase this year. He said this town was cognizant of the economy and taxpayer frustration, and among other things had removed 7 positions because of declining enrollment. But he said while the Oyster River School District had seen a decrease in students, it had hired new teachers and replaces some others.

Mr. Speidel said cost of living increases were frozen for Bow school personnel, while the Oyster River School District gave step and cost of living increases to all teachers. He said the School District was completely out of touch with the economic environment in the State and the country, and provided further details on this. He stated again that spending more money didn't necessarily create a better school system, and said Bow had proven this. He noted that the Oyster River School District accounted for 70% of the total budget for Durham, and he asked the Town Council as well as the selectmen from Lee and Madbury to request an audit of the entire School System budget. He said the taxpayers needed their help.

Jay Gooze, 9 Meadow Road, said he was present to announce that he was running for the Town Council. He said he had lived in Durham for 32 years, and noted that among other things, he was the team physician for the UNH hockey team. He said he came to Durham because of its good school system, and because of its vibrant university community. He noted that he had three daughters and that his wife had served as the Chair of the School Board.

He said there were a lot of things the Town needed to work on, noting that there were diverse opinions on this but that everyone was cognizant of the present economic conditions. He said he had been on the ZBA for the past seven years and noted that this board upheld but did not make new zoning. He said he had tried to be fair in the way he had dealt with people while on the ZBA, and said he wanted to bring this same approach to the Town Council. He said he had been co-chair of the subcommittee that had recommended the no more than 3 unrelated rule, which had worked well. He said he would like to help figure out what to do now to get the single family non-owner-occupied student rental situation back into line.

Mr. Gooze said he supported the TPL project, stating that it was a very good to take advantage of grant money, and keep taxes down. He noted that the Candidate Forum would take place on February 23rd.

Bill Cote, 21 Little Hale Road, said he was running for the Town Council. He said the Town was at a critical juncture, when many decisions needing to be made that would

have immediate and long term impacts on the Town. He provided details on his work with the Town in various capacities in the past and present, and noted that he served on the Planning Board from 1996-2002, during the time when the Master Plan was updated. He said he had good knowledge of the Town and its needs.

Bill Hall, Smith Park Lane, said some of the information presented at the recent Conservation Commission meeting on forestry work being done at Spruce Hole was contradictory. He said among other things that there was no reason for the restriction on cutting within 400 ft of the wellhead, and provided details on this. He also said Mr. Moreno had been almost apologetic that the Town could make some money from cutting wood on the land. Mr. Hall said he hoped there could be a commercial cut at Spruce Hole, and said it would be better to go in and do that rather than cutting a little here and a little there.

He said sooner or later with the latter approach, there would be a mess of dead trees. He noted the grass fire that had occurred in February, in a winter when there was a minimum of snow and there were limbs on the ground. He said not keeping up with forestry work was not cost effective, and represented poor forest management. He said he hoped the Town would get a firm grip on its forestry operations.

Malcolm McNeill, Colony Cove Road, said he was pleased to see the construction crane on appropriately zoned land on Mast Road, which represented expanding of the tax base. He also noted the letter he had forwarded to the Council on the TPL proposal, and said it was based on 39 years of practice as a land use attorney.

Mr. McNeill read into the public record a letter dated February 8, 2010 concerning his opposition to the TPL proposal.

Andrew Kun, 22 Faculty Road, read into the public record a letter from Kevin Gardner regarding his support for the TPL proposal.

Beth Olshansky, Packers Falls Road, said she appreciated the Council's recent discussion regarding the TPL proposal. She said it was a good airing of concerns, and said some of the things that Councilor Sievert and Chair Niman had said about the Grange made sense. She said she was also pleased that Chair Niman had suggested that this proposal would be better as a straight conservation proposal.

She said she had attended the most recent Conservation Commission meeting, and was pleased to see they voted unanimously to approve putting land use change tax funds toward the proposal should the Town need it, because they saw this as property of the highest priority, based on the criteria that had been established.

Ms. Olshansky said she spoke with Administrator Selig on Friday, and had spoken about her dismay at bringing in UNH at this late date. She then spoke in detail about the fact that what the Trust for Public Lands was offering to the Town regarding the grant was an incredibly valuable service and opportunity. She said the Town would only have to offer a small contribution, which would not raise their taxes. She said water resources were dear to everyone in Durham, and she noted that in some other NH communities, there

had been disastrous situations where the water supply had to be cleaned up.

She said this was a win-win situation for Durham, and if they let it slip by, they would be looking at much greater costs in the future. She noted that Rachel Rouillard, the former Executive Director of the LCHIP program, had said that the TPL had a wonderful track record of raising money. Ms. Olshansky said she didn't see why the Town wouldn't want to submit this federal grant application.

Cathy Leach, Fairchild Drive, said she didn't have a strong opinion regarding the protection of the Spruce Woods forest, stating that she didn't have enough information on many aspects of the first TPL proposal, and was not certain whether that proposal was still on the table. She said she hoped this would be clarified early in the discussion that evening.

She said most of her comments had more to do with the process than the conservation itself. She spoke first about the property appraisal, and the fact that the TPL representative had indicated that the assessed value was anywhere from \$5-8 million. She said this seemed high unless it had been done based on possible development. She noted that at the previous Council meeting, Councilor Stanhope brought up many concerns about the appraisal, and she said she strongly supported his suggestion that the Town get its own appraisal done on the property.

Ms. Leach said if the appraisal came in lower, that could potentially be money saved for the Town, and not as much funding would need to come from the LUCT fund, which could result in additional funding for other projects the Conservation Commission was considering now or over the next 18-24 months. She said a lower price could also reduce the pressure on the TPL to raise large sums of money through grants, donations, etc.

She said it seemed like basic, sound business practice to get another appraisal, and questioned whether any of them would accept the first price given on a house or a car. She said perhaps there was concern that another appraisal would not satisfy the landowners, but said the Council was charged with protecting the Town and its citizens, not private landowners. She said getting an additional appraisal was the only responsible way to enter a financial commitment of this magnitude.

Ms. Leach said she had found some similarities between this issue and the process the Council had gone through concerning the establishment of a TIF district for Stone Quarry. She said Council Minutes over at least an 8 month period in 2008 included many discussions on this issue, discussions which included five current Council members speaking either as Councilors or as members of the public about being sure that the Town was 100% protected. She said every possible outcome, good or bad, was considered over a very long time frame, with numerous public hearings and presentations.

Ms. Leach said those Councilors who were initially convinced there was minimal risk to the Town eventually listened and agreed, and in the absence of a surety, the purchase and sales agreement was not agreed to. She noted that ironically, they were dealing with the same developer on these two issues. But she said her point was that the TPL project didn't seem to be following the same procedure that was undergone concerning the TIF

district.

Regarding possible outcomes, she asked what would happen if the TPL was unable to secure the entire funding amount, and if there was absolute surety that it would walk away. She asked whether the TPL or Town residents would then come to the Town and ask for funding that would affect the tax rate. She said this was a large project with many possible outcomes, which could mean large risk for the Town. She said these questions need to be asked and answered, and she noted that some Councilors had begun that process.

Ms. Leach said there was no imminent danger of the property being developed, and said she didn't understand the urgency of pushing this through except for a grant deadline. She questioned when the Town had allowed itself to make decisions based on grant deadlines in the past.

Concerning the issue of the conservation of Spruce Forest, she said many residents, no matter what side they fell on, talked about balance between conservation and economic development. She said if the downtown economic redevelopment aspect of this proposal was removed, they should consider how to possibly maintain balance with the Spruce Woods forest itself, which contained 176 acres. She suggested spending some time considering whether some of it could be preserved, and some of it could be built on.

Dea Brickner Wood, Colony Cove Road, said she was present to support the TPL project. She spoke in detail about the fact that the property involved was surrounded by other conservation properties, so that all of the benefits of the property got multiplied, making it a very wise conservation investment.

She said what was before the Council now was an opportunity where the stars had lined up so that there was a willing landowner, community support, and federal funding sources that favored properties like this. She said there was also the fact that the Town had the TPL as a project partner to complete the package. She asked that the Town take advantage of this opportunity.

VIII. 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, approve a special event permit application submitted by the Oyster River Alumni Association, the Bobcat Bolt, and the Oyster River Festival requesting that certain roads be closed to conduct a 5k and 10k road race and community music/art festival fund-raising event on Saturday, May 15, 2010?
- B. Shall the Town Council, upon recommendation of the Town Administrator, allow the Town to accept credit card, debit card, and other forms of electronic payments?
- C. Shall the Town Council approve the sale of a 0.079 acre parcel of vacant land located in the Pettee Brook parking lot located behind the former Don Thompson Real Estate building to Ionian Properties, LLC, and authorize the Town Administrator to sign the

Warranty Deed for the sum of \$22,000.00?

Councilor Sievert recused himself.

Councilor Van Asselt MOVED to approve Unanimous Consent Agenda Items A, B, and C. Councilor Needell SECONDED the motion, and it PASSED unanimously 9-0.

IX. Committee Appointments

None

X. Presentation Items

None

XI. Unfinished Business

- A. PUBLIC HEARING AND ACTION 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

Councilor Smith MOVED to open the Public Hearing 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. Councilor Clark SECONDED the motion, and it PASSED unanimously 9-0.

Councilor Mower noted at the Planning Board’s two public hearings on the proposed changes concerning the Courthouse District, there were no members of the public who spoke.

Administrator Selig said this proposed change was prompted by the desire to see the Cumberland Farms property redeveloped, noting that the parking situation there was a major impediment.

Mr. Campbell reviewed the process of developing these proposed Zoning changes since the fall of 2009. He noted that as part of this process, the Council had not moved the Ordinance on first reading because they didn’t want parking to be a conditional use in the front setback, and also had some concerns about the specifics of the landscape buffer requirement.

He said the proposal was sent back to the Planning Board, which eliminated the conditional use language the Board had proposed, and instead developed the following wording for Section 175-45 (F)(2): “New parking shall be located to the side or rear of the building, unless the Planning Board allows parking between the front wall of the principal building and the front property line, including within the setback, as part of a site plan review application or conditional use application.”

Mr. Campbell said another change was to get rid of the existing language on “Landscape Streetscape Strip“, and instead to include the following language concerning the “Front

Yard Area”: “The area between the front wall of the principal building and the front property line that is not used for pedestrian access, vehicular access or parking shall be maintained as a vegetated landscaped area or lawn.”

Bill Cote, 21 Little Hale Road, said he was on the Planning Board during the development of the 2000 Master Plan, when they had taken a look at Gasoline Alley. He said the focus of many was on making it a gateway into Town. He said he would like to see something in the Ordinance that required a developer to make a property there more presentable, and he urged the Planning Board to keep some element of landscape buffering in the Ordinance.

Linda Tatarczuh, Fitts Farm received clarification that this change to the Zoning Ordinance would pertain to new development.

Councilor Smith explained that at present, there were a number of properties in the Courthouse District that had no buffer at all. He said if they were redeveloped under the existing Ordinance, there would have to be more landscaping than there was now. But he said the problem was that some Councilors thought that if the Ordinance wasn't changed to make it more attractive to redevelop parcels, it was likely that there would continue to be an unattractive situation, noting the Cumberland Farms property. He said the proposed change was to make the redevelopment of properties along this whole area more attractive, which would increase the tax base and increase services to the community.

Katie Ellis, Coe Drive, said she appreciated the purpose of the proposed Ordinance concerning redevelopment along Gasoline Alley. She asked if there was a way to encourage developers to consider the beautification of these properties.

Chair Niman said the Zoning Ordinance currently mandated a 10 ft landscaped strip, and explained that the Council wanted to allow some flexibility because different properties were configured in strange ways. He said the idea was to not put an onus on the property so that it couldn't be redeveloped.

Ms. Ellis asked if there were other ordinances that controlled parking configuration, etc.

Mr. Campbell said the Ordinance required a certain amount of parking, and said if one wanted to put in more than this, the maximum allowed was 10% more, so there was a limit on the number of spaces there could be.

Malcolm McNeill, Colony Cove Road, said he was in favor of this Zoning Change, stating that Zoning was always a balancing act, especially over time since the passage of the Master Plan. He noted that the Planning Board would retain the right to have site review authority, which always implied protection not even in the Ordinance. He also said there were sections of the roadway in the Courthouse District that needed to be redeveloped

Mr. McNeill said this process of amending the Ordinance had been one involving scrutiny, and pointed out that what was proposed was a minor change compared to the TPL proposal.

Beth Olshansky, Packers Falls Road, received clarification that there would be some kind of landscaped buffer with this proposed change. She said it was her understanding that this Zoning change had been inspired by a desire to redevelop the Cumberland Farms property, and she asked why the decision hadn't been made to go for a variance for the property instead of trying to rezone the area.

Councilor Smith said the reason the Planning Board had decided to do it this way was because there were a number of other properties in the Courthouse District that might eventually be redeveloped, and that didn't have landscaping. He said the proposed Zoning Change was designed to benefit the entire stretch of the District that had not been redeveloped.

Councilor Needell said if the area in front of the building was not used for parking, a landscaped buffer of some kind was required, but he said this change allowed the Planning Board the discretion to allow parking there, in which case there would be no buffer.

Mr. Campbell said depending on the proposed use, a conditional use application or a site plan application would be required. He said there could be a situation where there might not be a landscaped buffer.

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

Councilor Van Asselt MOVED to adopt 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. Councilor Smith SECONDED the motion.

Councilor Needell noted that under Section 175-45 (F)(2), it said "...as part of a site plan review application or a conditional use application." He asked if a development proposal would have to go through site plan review, even if there was also a conditional use application required.

Mr. Campbell said it would have to go through one or the other, based on the Table of Uses.

Councilor Mower said she saw this Zoning change as part of a process. She said she thought that when the Town got the B. Dennis Town Design report back, it would encourage design standards, and said some of them might relate to this type of Ordinance change in downtown Zoning districts.

Councilor Stanhope said this proposed Zoning change was not just for the Cumberland Farms property. He said as they looked forward, it was likely that as the demand for services in Town increased, other properties in the District would become available for redevelopment. He said he thought that with the revised language, the Planning Board would still retain the ability to ask that all reasonable landscaping would be placed on a property.

Councilor Carroll said some flexibility had been built into the language, but she said as always, the Planning Board had to remain vigilant. She said there was an expectation from the community concerning this gateway area, and said it looked like the revised Zoning language would be very helpful in regard to this. She said she was hopeful that it would work out well.

Councilor Smith said he supported this Zoning change. He also noted that the numbering of the provisions of Section 175-45 (F) would need to be changed.

The motion PASSED unanimously 9-0.

- B. **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

Councilor Clark said there had been some responses from the School Board. He said in the end, they had spent the money in question, so there was not a surplus. But he said the real question was one regarding the sustainability of the School District. He said a lot of residents were questioning affordability, and he noted that school taxes were 70% of the tax burden. He said he got a sense from residents that they didn't like the trajectory of taxes. He said this Resolution was the first step toward accountability, to help people become aware of where their tax dollars were going. He said based on what they all learned, they could decide whether to take the next step.

Councilor Mower said people often used the 70% figure, and said she had been told that it might not be taking revenues into account on the school side.

Administrator Selig provided details that the figure was close to 70%.

Councilor Stanhope said he was glad Councilor Clark had brought this Resolution forward. He noted recent concerns expressed about the neighborhoods, and said some of the problems they were seeing were economic. He said the Town was no longer seeing in-migration of families because of the School District, because schools in other towns were seen as competitive and taxes in these towns were substantially lower. He said families were not finding neighborhood properties as attractive as they once had, and he provided details on this.

He said while the authority to run the School District was with the School Board, he thought the Town Council should raise these issues forcefully, and said he would therefore support the Resolution.

Councilor Needell said he supported the idea of bringing this Resolution so there could be a discussion on it. He noted that in the past, he had opposed the idea of the Council writing a letter to the School Board, which was an independent political body that the Council had no authority over. He said a Council Resolution was a statement of consensus which was meant to notify constituents and the School Board. But he said a response from the School Board was not owed to the Council, and said the Council had to

be careful about this, He then said there were a number of things in Councilor Clark's communication that could be discussed.

Administrator Selig said that regarding the issue of the way technology monies were spent, if the Council wanted, he had received correspondence back from the school, and could sit down with them to get more information on this. He also noted that it was possible that a forensic audit could be done. He said the Resolution itself contained big picture items, and he encouraged the Council to discuss them with the School Board and the other towns in the District, including the issue of whether the School District was still relevant. He said he wasn't sure that the Resolution would get at this more quickly than a conversation with the appropriate entities would.

Councilor Carroll said the Council had heard from residents about their concerns regarding what was happening administratively with the School Board, including concerns about trying to understand the School Budget. She said this Resolution was one way to address the situation, but she said there were two autonomous systems in Durham, and each listened to what the voters said, and was responsible to them.

She said she was concerned about some precedent issues, in terms of how far the Council should go in regard to school issues, stating that since she had lived in Durham, she had never seen a Council take direct action like this. She said it had tried to work in other ways with the School Board, and she suggested that this continue. She also asked if citizens of the other towns had the same concerns as Durham citizens.

Administrator Selig noted that the Madbury Selectmen, after hearing about the dialogue, had asked to talk with the Madbury School Board representative. He said this discussion had occurred, and included the School District Business Manager and Superintendent. He noted that the School Board Chair and Vice Chair were present at the Council meeting, one of which was the Durham representative to the School Board, which was an opportunity to have a dialogue with them.

Councilor Smith said he was sympathetic to the fact that members of the audience were present to discuss the next Agenda item. He said he would support the Resolution.

Chair Niman asked if the School Board had answered the questions that had been asked.

Councilor Clark said there had been a targeted surplus, but by the end of the year there wasn't one, based on disclosures. He said then said he looked at this as a first step in asking for some accountability, given that the schools made up a large percentage of the tax rate, which was unsustainable. He said for whatever reason, there was a decrease in enrollment but an increase in the School Budget.

He said anyone who was serious about affordability had to address this issue. He said he wasn't sure this particular school system made sense, and said he wanted to begin a discussion of where they were headed. He said the only real power they had was to withdraw from the School District, which he noted he was not in favor of. He said while some towns had done this, it didn't seem like the Durham way.

Chair Niman suggested the idea of inviting Jocelyn O'Quinn to the next Council meeting to hear the Council's concerns. He said he would vote for the Resolution, but said they also needed a next step

Councilor Clark said that was a great idea, and said getting answers to questions would probably raise more questions. He noted that attempts had been made in the past to get a discussion going about the possible benefits of adding more towns to the School District. He spoke in some detail on this, and said he hoped State statute allowed the Council to suggest that the optimal structure of the School District needed to be rethought. He spoke further on this.

Councilor Sievert said he thought the School Board owed everyone an explanation. He said perhaps there should be a public hearing of the issues, so the School Board could hear from the public.

Councilor Needell encouraged people to bring their concerns to the School Board.

Councilor Sievert noted what Mr. Speidel had said about School Board meetings over the last few years, and said he wasn't sure people were getting enough time to speak.

Councilor Needell said before this came back to the Council for another discussion, it would be helpful to get a legal opinion on the role of the Town. He said he had spoken with the Local Government Center regarding the issue of dissolution of a School District, and which entity(s) made the decision on this. He spoke in some detail on this, and said it wasn't clear what the role of the Town was in this, legally speaking. He said before this went any further, it would be good to clarify the role of the Town.

Councilor Smith said much of this discussion was broader than what the Council should be having right now.

Councilor Smith MOVED to Adopt 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 Resolution. Councilor Clark SECONDED the motion.

Councilor Mower said she saw this as the tip of the iceberg, and also said given the response from the School District business manager, she wondered if this was the best approach. She said there were a lot of different issues involved, and said just getting a simple answer on this might not answer the big questions. She agreed that a discussion on the structure of the School District was in order, and asked if the Council could consider having its own auditor look at the typical annual audits of the School District.

Administrator Selig said in some cases, the Town's auditor had audited the School District Budget. He said the Town could ask them to do this, but said he didn't think this would be a forensic audit.

Councilor Mower said she liked the idea of inviting the local School Board representative to talk with the Council. She also noted that she had some questions about some of the

whereas clauses included in the Resolution.

Administrator Selig said they could invite Ms. Joycelyn O'Quinn to speak with the Council. He also suggested that he alone or with some Councilors could get on a School Board agenda, so the whole School Board would be represented.

Councilor Needell said he didn't have a problem with the School Board explaining things better, but he said they needed to explain this to the Town, not to the Council. He said he had some serious problems with some of the "whereas" clauses, and said he wouldn't vote for the motion unless some of this was changed. He recommended deleting #3 and #4, which he said were not relevant to the Resolution and should be part of a different discussion.

He said he thought it would make some sense, given the communication from the School District business administrator, to remove the reference to the amount of the surplus. He also said that concerning the last whereas clause, if it was not certain that the School Board had not approved the expenditure of the surplus, the statement should be taken out.

Councilor Needell MOVED to amend Resolution #2010-02 by striking Whereas #3 and #4; removing the words "\$1.2 million" from Whereas #5; and changing the wording in Whereas #7 to read "Whereas, expenditures in at least one instance were spent on items explicitly voted down by the voters, and"

Chair Niman said he agreed with Whereas #3 and #4, and asked Councilor Needell what he thought was wrong with them.

Councilor Needell said he hadn't heard enough information to decide if the statements were correct. He also said even if they were correct, he didn't see their relevance in the Resolution.

Councilor Mower agreed, and said the focus of the Resolution should be narrower.

The motion to amend the original motion PASSED 6-3, with Councilor Smith, Councilor Stanhope, and Chair Niman voting against it.

The original motion as amended PASSED unanimously 9-0.

There was discussion on what the next step should be, with Administrator Selig suggesting that he and some Councilors could deliver the Resolution and have a conversation with the School Board.

After further discussion, Chair Niman said they would see what happened and then go from there.

Councilor Sievert said he wasn't sure it was appropriate to go forward with the Resolution before going to the School Board.

The Council stood in recess from 9:00 -9:15pm

C. Continued discussion regarding a proposal by The Trust for Public Land for preservation of the Spruce Forest area

Administrator Selig noted that he had had more discussion with the TPL and would update the Council on this. He then provided a detailed review of how the project had come about, and what had transpired over the past two years. He noted that after lengthy discussion in May of 2009, the Council had generally indicated an interest in supporting the project as then envisioned, and that since that time, he had been engaged with ongoing discussions with the TPL, Mr. Farrell and Mr. Garvey, and the University.

He said that as the project progressed, it became clear for a variety of reasons that the timeframes for TPL, the property owners, and UNH did not coincide for such a collaboration. He said efforts were therefore made over many months to identify other parcels on which economic development could be created, in conjunction with the Spruce Forest parcel. He said these included the Depot Road parking lot, the Durham Business Park, the Pettee Brook Parking Lot, the Store 24 Parking Lot, and others.

Administrator Selig said that after much consideration, it appeared that the Grange site, with a 2009 appraisal value of \$650,000, could be an “elegant solution” to leverage a Mill Plaza development coming on line. The Sprucewood owners introduced Town officials to a variety of large external development corporations, and said one of these, Sora Holdings, based in Towson, Maryland, expressed interest in December 2009 in the Grange parcel and a Mill Plaza redevelopment.

He said that unfortunately, a March 2009 CELCP grant deadline precluded the ability of Sora to bring forward a bona fide development proposal in time for the community to realistically consider whether the \$650,000 Grange asset would in fact leverage the kind of new taxable development necessary to replace the loss of economic potential within the 171 acre Spruce Forest parcel.

Administrator Selig noted that at the February 1st Council meeting, concern was expressed about utilizing the Grange as a Durham asset contribution toward the conservation of the Spruce Forest area. He said there was also concern around the viability of locating municipal ball fields off Mill Road; the validity of the confidential restricted appraisal which had been prepared for TPL on the parcel; and whether the project had ultimately become a pure conservation project versus one that could realistically be expected to leverage the creation of new taxable value.

He said in response to this discussion, he had worked on behalf of the Town over the last two weeks to leverage as beneficial a deal for the community as possible, which included the following:

1. De-link the Grange from the program.
2. Durham’s contribution would be \$400,000 or 10% of the final appraised value of the Spruce Forest area at closing, whichever is less, with a minimum contribution of \$300,000
3. The Durham Conservation Commission has indicated a willingness to support the full \$400,000 purchase price utilizing Land Use Change Tax proceeds

4. A minimum of 5-10 acres located off Mill Road will be reserved for the potential creation of recreation fields with the possibility of more acreage being set aside.
[Note that there has been NO analysis as to the viability of recreational field development, there is no money budgeted for the development of ball fields, and it has not been discussed whether we even desire fields in this location.]
5. Conversations are taking place as to whether approx. 28 acres of Colasante land adjacent to Spruce Forest and Spruce Hole could also be leveraged as part of the project -- as well as whether it would be possible to set aside approximately 3.5 acres of land for the creation of affordable housing (a Council goal) along Mill Road – all as part of this project.
6. We plan to evaluate whether the implementation of a new zoning provision allowing for the Transfer of Density Credits from the Spruce Forest project to our Central Downtown Core could in fact leverage the kind of new taxable value the Council has aspired to create for the last several years.
7. Public access will be guaranteed as part of the project.
8. The Town will have the ability to connect municipal infrastructure such as water lines from the Spruce Hole Well across the Spruce Forest parcel to meet the community's future infrastructure needs.

Administrator Selig said unless a transfer of density credit program was created and utilized for this parcel, these proposed changes would mean that this would not be an economic development project. He noted however that it would have the effect of greatly enhancing the protection of Durham's water supply, which did indirectly support future economic development efforts.

He said according to the criteria, the Conservation Commission and Town Council used when evaluating a conservation project, the Spruce Forest parcel ranked very highly. He spoke in detail on how the criteria were met with the proposal. He said it was a great conservation project and a good deal.

He noted that the deadline for the CELCP grant application was March 15th. He provided details on the funding sources that TPL was going after, and noted that there was a chance they wouldn't be successful. He noted they had a good track record, but there was no guarantee. He said the TPL was prepared to memorialize the \$400,000 number that had been agreed upon in a purchase and sale agreement.

He said this project was moving faster than the University could move, and they needed another year or so to evaluate whether it made sense to participate. He said he had met with senior University people on this, and they were open to considering this, but he said he couldn't guarantee it. He said it was good that the Conservation Commission had been able to commit the \$400,000 if the Council was interested in pursuing the project.

Concerning the issue of whether the water supply was safe, Administrator Selig noted the aquifer protection district in place, and shoreland protection buffers, as well as other zoning in place. He provided a map that showed the Spruce Forest and Tecce parcels relative to the aquifer protection district. He said the vast southerly portion of the Spruce Forest area lay within that district, and said it raised the question of whether it made sense to put ball fields in the area proposed, which would be right on top of the district.

He spoke in some detail on this.

He also pointed out the 3.5 acre parcel of land along Mill Road that was not within the Aquifer protection district, and which could possibly be used for the creation of affordable housing as part of this project. He noted that this was a Council goal, and suggested that the Town could perhaps create some kind of covenant that required this.

He said the Town had received an appraisal on the value of the Spruce Forest areas and the Tecce parcel which was in the range of \$5-8 million. He said the TPL had asked the Town to keep this information confidential, and said the Town was respecting that wish. He said this made the situation challenging in that it was hard to understand how good the deal might be. But he said tying the amount the Town would pay to a percentage of the appraisal significantly reduced the downside.

He said the deadline was not flexible because there were performance standards in the Purchase and Sale agreement between the TPL and Mr. Garvey and Mr. Farrell, as well as an expiration date. He also explained that the TPL had put a lot of effort into this process, but at some point would need to decide if this or another project was a better prospect for the CELCP funding.

Concerning the work that needed to be done regarding the grant application, Administrator Selig said the TPL was doing the due diligence that the Land Protection Working Group (LPWG) usually did with land conservation projects. He noted that in the past, the Council had expressed some frustration with LPWG submitting a grant application before talking to the Council, which was why this project was in front of the Council now. He said he wanted to make sure the Council was comfortable before moving forward, but he noted that this was really just the beginning of the process.

Regarding the issue of the Town's relationship with Mr. Garvey and Mr. Farrell, he said the Town would not have a relationship with them, and would have a relationship with the TPL for this project.

Administrator Selig spoke about the rezoning of some of the land in this area of Town to ORLI a few years back. He also noted the intense pressure that developer JLB Partners had run into concerning their proposed student housing project, in regard to traffic concerns and concerns about possible impacts on the Oyster River from the development scenarios. He said since that time, a number of developers had looked at the parcel but had not pursued it. He said there didn't appear to be a developer waiting in the wings, but said he didn't know this for sure.

He said theoretically, the Town could do the project itself, but said it couldn't leverage the kind of resources that the TPL could, also noting that the TPL had access to private benefactors who were willing to bring serious capital to the table. He said a question for the Council was whether it was comfortable with him proceeding with submitting the application. He said if it was, it was a commitment on the part of the Town to proceed in good faith. He said he would commit to continue to argue strenuously to promote economic development here and in other parts of Town to the extent possible while promoting other Council goals.

Councilor Mower asked for clarification about whether they were in agreement that they were no longer talking about the Grange as part of this project.

Chair Niman asked if any Councilors were in support of putting the Grange into the deal, and continuing to support this. He observed that there was no support for this.

Councilor Mower asked if by default they were therefore talking about this as a pure conservation project.

Councilor Van Asselt noted that Councilor Mower had asked if anyone was interested in keeping the Grange in the mix, which was different than asking if anyone was interested in having part of the downtown as an economic development component as part of the project.

Councilor Carroll said it had come up that evening that it would be nice to have UNH on Board. She said she did know that the UNH Lands committee had looked at the project, and had submitted a report to the University unanimously supporting the project and urging the University to move forward with an easement on College Woods that would have strengthened the application.

She said the UNH Administration wasn't ready to say what they could do, and said although they hadn't heard from the Administration, they had heard from the people on the ground. She noted that at the previous Council meeting, they heard from several UNH faculty who were experts in the areas of natural resources and land management, who had told the Council that the land under consideration was critical to the Town.

Administrator Selig said he worked closely with the UNH Administration in a number of areas, including water resources. He spoke in some detail on this, and said to be fair to the University, it needed to make sure that it took some time regarding the issue of the future of Spruce Forest. He said in an ideal world there would be another year to work all of this through.

Chair Niman said the people who had spoken before the Council had also carried their message to the University Administration, and he spoke in some detail on this. He said one couldn't fault the Administration for asking for more science and more time, so they could go to the Trustees to say they needed to purchase the land that was needed to protect the water supply.

Councilor Carroll said no aspersions were being cast on the UNH Administration, and said what was known was that the Town would need to decide about going forward with this project at this meeting or the next, so there might not be the possibility of a cooperative effort with UNH right now. She also said there was no guarantee that UNH would be ready for this in a year. But she said the scientific information was out there. She said the Council had heard it, and the UNH Administration had heard it too.

Administrator Selig said there wasn't a firm commitment today from the UNH Administration, but said it might exist a year from now. But he said there was no guarantee.

Councilor Mower said there was no reason not to submit the grant and continue with discussions. She said there would then be 18 months to negotiate with UNH.

Councilor Carroll spoke about the Spruce Forest area, noting that part of it had already been developed, as the Inn at Spruce Woods as well as the housing units nearby. She said the Inn paid \$335,000 in taxes per year, and also said Spruce Woods could be developed further.

Councilor Van Asselt said even if there was heightened interest in development out there, it couldn't happen without Town approval. Administrator Selig said municipal sewer would be required, and Councilor Van Asselt said since the Town owned the sewer, it controlled anything that happened there in the short-term.

He noted that he had sent Administrator Selig a list of questions and had discussed them with him, which had been helpful. But he said he thought there were still many unanswered questions, and said he suspected that for the community at large there must be many more.

He said perhaps there was a proposal that would work, but said he didn't think it was ready to go ahead. He said it wasn't clear how there could be a balanced project, and also said it wasn't clear why there wasn't a less expensive approach to protect the present and future water supplies. He also questioned the playing fields aspect of the project.

Councilor Van Asselt said the Council was interested in public participation, but said that kind of openness had not happened with this proposal. He said the Council and the community hadn't had the chance to understand a multi-million dollar project on a major piece of land regarding the Town water supply. He said there should be public hearings, etc., before the train left the station. He said the train should be designed long before it left the station.

Councilor Needell said he agreed with some things Councilor Van Asselt had said about the train leaving the station. But he said all that was being asked right now was for the Town to submit a grant application. He said he would not agree to commit the Grange without a public hearing, or to do bonding or use LUCT funds without a hearing.

He said his understanding was that once the grant application was sent, they would know within 6 months how the project ranked. He then spoke in some detail about the fact that he wanted it to be clear what the Town was committing to now, if it went ahead. He said he supported the conservation of this land for the reasons that had been stated. He said if there were other ways to leverage the project for economic development that would be great. But he said the goal was to secure the conservation easement on this land.

He said the rest of the process would be taken up by a future Council. He said the present Council was authorizing Administrator Selig to file the grant, and tell the story of what the plan would be to fund the project. He asked if that was a fair statement.

Administrator Selig said it was, and said some specifics would be set in stone, including

the land area involved and the maximum amount of money that the Town would potentially contribute. But he said there were other details to be worked out. He noted that some aspects of the process were governed by the CELCP program.

He said he envisioned the Town owning a fee interest in the land, and the conservation easement placed on all or a portion of the land being held by a third party, probably the Southeast Land Trust. He said the TPL had put together a framework for this.

Councilor Needell said the Council would have the ability to say yes or no later on.

Councilor Clark noted that he was elected to the Council at the time when there was discussion about rezoning this property. He said at the time, the Town Engineer told the Council that the regulations in place would mean that any proposed developments there would be protective of water supplies. He said he was confused about how much water would come from the Spruce Hole aquifer vs. the Lamprey River, as well as the need for recharge of the aquifer.

He said it had gone from a discussion on one of the few pieces of land that could increase the tax base, to the protection of that land, which he said he wasn't necessarily against. He said the Council had been teased into the idea of a land trade, and said he was offended now about the economic development piece of this. He said it had now become at least 90% a conservation project.

Administrator Selig said the TPL had been earnest in trying to create a balance between conservation and economic development. But he said there wasn't nearly enough detail to pledge the Grange, so it had to be off the table. He said this left them with a pure conservation deal, unless some other things came to fruition. He said perhaps these other things could be worked through later.

Councilor Smith said Administrator Selig had come back to the Council with a list of things that could be done. He said the bottom line was whether he recommended that the Council agreed to cooperate with the TPL to move forward with the application.

Administrator Selig said the challenge was that there was no right or wrong answer. He said he believed development could take place on the parcel as long as it was done properly, and in conformance with the Town regulations. But he said he didn't have confidence that this would happen any time soon. He said if they were worried about protecting the water supply, there were other ways to do this than putting a conservation easement on the parcel. He said in an ideal world, it was better to protect all of this land. But he said there were tradeoffs. He said it was challenging for him to recommend one course, in seeing the merits of both perspectives.

Administrator Selig said this was probably the best opportunity to conserve this land that the Council would see in many years. He noted that they could thank those who had chosen to rezone it for creating a situation where enough value had been added to the parcel so the owners were interested in conserving it. He then said that from a pure conservation perspective, they should move forward to preserve this land.

Councilor Smith pointed out that all the work done to rezone the parcel had increased the economic value of the land and said he hoped there would soon be a motion.

Administrator Selig said this was not how he would have proceeded with this project, and said it was an awkward scenario. But he said he didn't have much confidence that there would be economic development there, so this proposal was a good way to proceed.

Councilor Stanhope said he was troubled by the fact that the Council had been given a report stamped confidential, which meant that they couldn't express their reservations about the document. He said the Council had heard a series of experts from UNH, yet the experts who prepared the appraisal document had not come forward to answer questions. He also said the report that had been provided was a restricted report of a full appraisal of the property, not a restricted appraisal.

He said he was troubled by the reluctance of the TPL to give the Council any authority over reviewing the appraisal, although the Council wanted to protect the Town's interest, and would be committing the Town's money. He asked Administrator Selig what his confidence level was in the appraisal.

Administrator Selig said he had serious questions about the conclusions reached in terms of value. He also said providing the threshold he had outlined would substantially protect the Town's interest. He said his gut feeling was that the value of the land was between \$3-4 million, and said an appraisal that came in at that would ensure that the Town's purchase price was within that range.

Councilor Stanhope said another concern was that the Council had been led to believe that the agreement between the TPL and the owners was in part based on this appraisal the Council had been given. He said if the final appraisal was more consistent with what Administrator Selig had just said, there was the possibility that this was an amount below what the sellers would accept for the land.

Administrator Selig said the TPL was not permitted to pay more than the appraised value.

Councilor Stanhope said he had heard that the TPL was unwilling to allow the Council to determine that the appraisal was valid.

Greg Caparossi from the Trust for Public Lands said that was not the case, and said he had stated that the TPL wouldn't give the Council the opportunity to choose the appraiser. He said the reason for this should be evident. But he said there would be the current appraisal as well as the full appraisal done later, as well as the federal review process that would be done. He said if the appraisal didn't meet that process, the TPL would terminate its option. He said there would be no risk to the Town from this.

He also noted that he had given Councilors the appraiser's contact information.

Councilor Stanhope said with all due respect to the federal process, he didn't have confidence that it protected the best interests of the Town.

Mr. Caparossi said that was the best process they had, and said the TPL worked with it around the country on federal land protection projects. He said they hired the best appraisers they could and trusted them to do their job. He said the federal review process should be good enough for Durham.

Chair Niman asked Mr. Caparossi if he felt the work done up to this point on the appraisal met the federal guidelines.

Mr. Caparossi said it was not intended to meet them, and was intended to give TPL an opinion of value so they could get the property to the point of an option agreement. He also said he had listed it as a restricted appraisal because it was not intended to be a public document.

Chair Niman said Administrator Selig's concern was that the final appraisal would come in substantially lower, and that could create a problem. He said his concern was that the final appraisal would be consistent with the value they currently saw. He said he believed it overstated the value of the property, and said he thought the current appraisal document was sloppy and had some factual errors. He said his concern was that the bar was being set so high that TPL wouldn't be able to get there, and residents would later come back to the Council and ask the Town to make up the difference, and the Town would then increase its contribution to an amount he didn't believe in.

Mr. Caparossi said there would be a purchase and sale agreement between the TPL and the Town that said how much the Town would buy the property for. He said anything beyond that would require a renegotiation, and said he wouldn't do that, and would walk away from the project.

Phil Auger from the Trust for Public Lands said the TPL would like to be able to provide to the appraiser the comments made by Councilors and Administrator Selig. He asked that they be put in writing.

Councilor Stanhope asked if the TPL would be willing to go forward with the application contingent upon the Town's independent appraisal of the property supporting its participation.

Mr. Caparossi said no.

Councilor Sievert said he thought that a portion of the property could be developed in a way that would protect the water resources there. He also said he agreed with Mr. Ballestero that the Spruce Hole aquifer had to be protected, and that the aquifer, including recharging, was the ways things would happen. He said the best way to make this project complete would be to allow the development rights from the property to be transferred. He said there should be more discussion on what the development ability would be, and where the development rights could go to. He said that was what they should really be talking about if they were thinking of this as a conservation and economic development project.

Councilor Sievert said he was glad the Grange had been taken out of the project. He also

said he had been concerned that the Council would make a final decision about the project without a public hearing. But he said he didn't see why they shouldn't go forward now with the application, noting the threshold of money the Town would contribute to the potential to conserve the property.

He also said he thought the discussion of the value of the property would fall out in the end, and noted that the access problems in terms of developing it were enormous. In addition, he said he didn't even know why they were talking about the idea of ball fields on top of the aquifer, and given the access problems. He said he was in favor of going forward with the application, but would be 100% in favor of it if they could get some economic development out of the project.

Administrator Selig said if they went forward with the application, the economic development aspect would definitely be pursued. But he said it was hard to say whether it would work. He said the Planning Board had an interest in looking at the transfer of development rights anyway, but said this would ratchet up the importance of doing that.

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

Administrator Selig said his sense was that there was probably support around the table to move ahead on this.

Councilor Mower said there was some confusion as to whether there was adequate protection for water out there, noting that 50% impervious cover was allowed in the ORLI District, while anything more than 10% was believed to impact water quality. She also said the ordinance and regulations were the result of a political process, and lagged behind current research. She said it was unfair to say there hadn't been science presented before the Council, both during the rezoning discussion and over the last few weeks.

She also said many could see that this area was more valuable to the Town under conservation, as an area contributing to the Town's water infrastructure, which would be of economic benefit to the Town as it grew. She said water quality and supply was part of the quality of life.

Councilor Mower said the Oyster River adjacent to Spruce Woods was already officially listed as impaired under the Clean Water Act because of high bacteria concentrations. She noted that Durham was an MS4 community, and had the obligation to control polluted runoff to impaired waterways. She also said they should be talking about watersheds when considering protecting water, and noted that neighboring towns upstream had spent a great deal of money protecting water that Durham benefited from. She provided details on this, and said Durham hadn't done that much to protect the Oyster River or the Lamprey. She noted that the aquifer would double the Town's water capacity.

Councilor Mower also said this was a great time to ask for money, and noted that Senator Gregg was the sponsor of the CELCP program and was in his last year in office, and that this was therefore an incredible time for the Town to take advantage of this opportunity.

She said she hoped the Council would see that, and could work out some of the other things later, like the transfer of development rights issue. She said they shouldn't lose this opportunity to get the wheels moving.

Councilor Smith said he didn't want to make a comment but that he wanted to move forward with the grant application and asked the Chair to go around the table.

Chair Niman said he didn't care that this particular land be developed, but objected to the idea that there was other land out there waiting to be developed, so not developing the Spruce Forest area didn't matter. He said it wasn't clear where there was land to transfer the development rights to. He said perhaps they could find some different land not in the inventory and allow it to be developed, in exchange for taking the Spruce Forest land out of development.

He said his concern was that if they moved forward with this project, that part of the conversation would disappear, and there wouldn't be a subsequent discussion on finding land not currently in the inventory and bringing it into the inventory. He noted that it wasn't that the TPL hadn't tried to accomplish this.

Chair Niman also said Councilor Mower had made a persuasive argument, but said the other issue was that he didn't believe in the appraisals, which made him uncomfortable about going to the federal government with the numbers. He said he would feel more comfortable if the Town could do the appraisal. He also said he didn't think this land would ever be developed because of the water and sewer infrastructure issues as well as the access issues. He then said he'd have to think some more about how he wanted to go on this.

Councilor Mower said it came down to whether one wanted to risk the health of the water supply. She said the pressure on development in the Seacoast area was pretty high, and said someone would come up with an idea to develop out there. She also said the zoning could change, but conservation was permanent. She said to her, \$400,000 was a pretty cheap price to protect the water supply, and to gain all of the other conservation values of this property. She spoke in some detail on this.

Councilor Needell said the appraisal wasn't used to argue for the grant. He said when the proposal did go forward, the full appraisal would be there, and people would be able to challenge it and vote no on it. He said he therefore didn't see what the concern was.

Chair Niman said his fear was that once the train left the station, they couldn't get it back. He said he was pleased to hear that the TPL wouldn't come back for more money. But he also said they were making some representations in the application regarding the value of the property, which he didn't believe was there.

Councilor Stanhope said the TPL would have another appraisal done. He said he wanted to see the property preserved, and said the first eight points laid out by Administrator Selig were a great negotiating position to be in, except for the \$400,000 amount. But he said if they thought the \$400,000 was a flawed amount, they wouldn't have any recourse.

Councilor Needell said a Councilor could then vote against the project.

Administrator Selig said there would be nothing to stop the Town from doing its own appraisal, and Councilor Stanhope said in that case, he was fine with this, and could vote for moving forward with the application.

Councilor Mower asked how much leverage Councilor Stanhope thought he could live with, and Councilor Stanhope said as long as they had the right not to fund the project if they were uncomfortable with the documentation, he would support this.

Councilor Clark said he had no problem conserving this land, but said to him, the issue was what the Town would get back. He said the most important thing on Administrator Selig's list was therefore to be able to get the connecting infrastructure across the land, so the other land in that area zoned for development had a chance of being developed. Mr. Caparossi said that could be done.

Chair Niman asked if there had been any concern by the Conservation Commission that dollars that went to this project wouldn't go for some other projects they were talking about.

Councilor Needell said his sense was that this was the highest priority conservation issue the Commission could conceive of, and that they recommended wholeheartedly going for it.

There was discussion about what would happen to other projects on the Commission's list as a result of funding this project.

Administrator Selig said the Thompson parcel on the Lamprey River was another project on the Commission's list, and said it had been weighing how much it would have left for it. He said it was a great project, and said the Town should participate in it.

Councilor Carroll noted that over time, money kept being adding to the LUCT fund.

Councilor Mower said her understanding was that the Commission made this decision in part because it was a slam dunk, but also because this was the only project before them.

Councilor Van Asselt said if the Council said yes to submitting the application, the train would have left the station, and 176 acres would be conserved. But he said there was no guarantee that there would be any economic development, and no guarantee that the tax rate would go down, He said there were some in Durham who were running out of the ability to live there.

He said he didn't understand why they couldn't first work out the transfer of development rights aspect of this project, and find ways to make economic development happen as a result of this piece of land. He said that would not happen if the application was submitted. He said when the 2012 Town Council had to make the decision, there would be the same pressure to move forward with conservation as there was now.

Councilor Van Asselt said they needed to stop kidding themselves about having economic development as part of this project. He said there hadn't been any evidence of this to date, and said based on experience, it wouldn't happen. He said he knew Administrator Selig would make every effort to make it happen, but said he didn't see it coming out of the community given its current state.

Councilor Sievert said the development train was empty, and said he would like to see the development rights pulled out of the Spruce Forest property and given to other parcels, perhaps even in the same district. He also noted that there was in fact development going on downtown.

Councilor Clark said exchanging development rights didn't do any good without the infrastructure. He asked who had the authority to put the conditions in concerning things like infrastructure connection across the land, and public access.

Administrator Selig said the Town would set the terms, and said these were allowed uses as part of the CELCP. He also said at the time the Town extended the infrastructure improvements, it would pay for them.

Chair Niman said there would be no undeveloped land to connect the water and sewer pipes to.

Councilor Mower said TDR (transfer of development rights) and PUD (planned unit development) discussions so far in Town had gone nowhere, but said the Conservation Commission and conservation community were getting somewhere because they were working hard on it. She said these approaches were available for people to work on. She also said it had yet to be seen that development definitely resulted in lower taxes in Durham and in other towns.

Councilor Smith said there had been discussion about TDR every year he had been on the Council, and suggested that Councilor Van Asselt tell the Council to send a message to the Planning Board to start this process.

Councilor Stanhope said he thought the Council should support the application based on the points Administrator Selig had outlined, as well as some others raised at the table that evening. He said he would like to see these points put together in a more formal format.

Councilor Mower noted that there were time constraints involved.

Councilor Smith said he wanted to go forward with the application. He also said he was worried that the train would leave the station without them, and wanted the Council to get on the train.

Councilor Mower said she had bought a ticket on the train, and was in favor of proceeding.

Councilor Stanhope said he wanted to know what train he was on.

Chair Niman looked at Councilor Van Asselt and said he didn't want to get on the train.

Councilor Sievert said he was on the train.

Councilor Carroll said she was on the train. She also said perhaps Administrator Selig could read the eight points, if anyone wanted to hear them.

Councilor Needell said he was on the train.

Councilor Clark said he needed to be convinced that the Town could use this as leverage to do more than spend \$400,000 to conserve the land.

Chair Niman said he had heard five Councilors say there were on the train.

- D. Continued discussion regarding the results of the Town Administrator's annual performance evaluation

Not discussed because of adjournment.

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

Not discussed because of adjournment.

XII. New Business - None

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

XIV. Adjourn (NLT 10:30 PM)

Councilor Van Asselt MOVED to adjourn. Councilor Carroll SECONDED the motion, and it PASSED 7-2, with Councilor Needell and Councilor Smith voting against the motion.

Adjournment at 11:07 PM.

Victoria Parmele, Minutes taker