

**This set of minutes was approved at the October 17, 2011 Town Council meeting**

**Durham Town Council  
Monday September 12, 2011  
Durham Town Hall - Council Chambers  
7:00P.M.  
MINUTES**

**MEMBERS PRESENT:** Council Chair Diana Carroll; Council Chair Pro Tem Jay Gooze;  
Councilor Julian Smith; Councilor Peter Stanhope; Councilor Bill Cote;  
Councilor Jim Lawson; Councilor Kitty Marple; Councilor Neil Niman

**MEMBERS ABSENT:** Councilor Robin Mower

**OTHERS PRESENT:** Town Administrator Todd Selig; Town Planner Jim Campbell

**I. Call to Order**

Chair Carroll called the meeting to order at 7:04 pm. She said before the meeting went forward, the Council would need to vote on whether Councilor Mower would participate in the meeting via speaker phone. She said Councilor Mower had anticipated attending the meeting, but an urgent family medical situation required her to extend her stay in Washington State by a week.

Administrator Selig said the State Right to Know Law did address the ability of board members to participate electronically, and he reviewed this language. He said the Council must make a determination as to whether it would allow the participation to occur. He said this same issue had come up in 2001, at a time when the Right to Know Law didn't yet address electronic communications.

He said it was the Durham Town Council that had initiated the legislation at the State level that had formed the Right to Know Commission, which had then updated the law to reflect what was in it today, which made it clear that electronic communication could occur. He said at that time, there had been a Council member who for medical reasons was unable to participate in a meeting. He said because the Statute was unclear at that time, the Councilor was allowed to participate but not vote, because of concern about jeopardizing the vote since the person wasn't at the meeting.

Administrator Selig said several years later, another Councilor was out due to a medical issue, and the member participated but didn't vote because this issue hadn't been codified in the law yet. He said subsequent to that, there was interest on the Council in drafting a Resolution to outline more specifically that process. But he said after reviewing it, the Council then decided that it wanted to deal with this issue on a case-by-case basis.

He recommended that in this day and age, participation in meetings from afar was becoming more and more common, and said he thought it was appropriate that the Council allow it. He suggested that it should be done on a case-by-case basis.

Councilor Smith said he thought this decision should be made only on the basis of medical and other emergencies.

Chair Carroll said it was clear that what was decided that evening wouldn't be setting a precedent, and that this decision would be made on a case-by-case basis.

***Councilor Smith MOVED to allow Councilor Mower to participate and vote telephonically. Councilor Stanhope SECONDED the motion.***

Councilor Smith noted that Councilor Mower was a member of the Conservation Commission, and there was a matter on the Agenda that evening that was of great concern and interest to the Commission. He said he was at their recent meeting as the Planning Board representative, and knew that Councilor Mower wanted very much to participate in that vote. He noted the memo from her on this issue, which he'd been asked to read into the public record.

Councilor Stanhope said he'd exchanged some emails with Councilor Mower, and said she had some positions on this matter that should be heard. He said the Council should not deny the point of view of the Conservation Commission to be brought to the discussion through Councilor Mower. He said he accepted the determination that this was a medical matter.

Councilor Lawson said this did set a precedent, and said he was uncomfortable that this would be decided on a case-by-case basis in the future. He said he had no way to tell what the cases in the future would be, and if they would be reasonable, based on this being set as a precedent. He asked who would be allowed to participate when two Councilors couldn't make a meeting, for good reason. He said he was an advocate of teleconferencing, but said the Town clearly didn't have the technology for this. He said Councilor Mower's input was important, and recommended deferring this agenda item until she could be present.

Councilor Niman said he recalled that when he was Council Chair, and Councilor Carroll participated in a Council meeting by phone, it was a disaster. He said he thought that afterward, the Council had said it wouldn't do this again.

Chair Carroll said it had been an awkward situation, noting that she participated but did not vote.

Councilor Niman said he wasn't interested in deferring the agenda item in question, regarding the LUCT, to another evening. He said the Council wasn't going to be deciding anything now, and said they would see if there were five Councilors interested in hearing from the public and possibly voting on this. He said he agreed that Councilor Mower's opinion was very important, but said he was curious right now as to whether there were five people on the Council who were interested in pursuing what he and Councilor Stanhope had proposed. He

said if there weren't, they should kill the idea and not drag on something that it turned out no one was interested in doing.

Councilor Stanhope said the Council wouldn't be making a formal policy change this evening. He said if Councilor Mower felt strongly enough to ask to participate, he didn't want to exclude her. He also said she'd have every opportunity to argue her case before a vote was taken. But he said if it was felt that the technology was not appropriate, that argument had merit as well.

Councilor Gooze said he thought the statement about seeing if there were five Councilors interested made Councilor Mower's participation moot, since she had already stated her opposition to what was proposed. He noted that Councilors had a formal paper from Councilor Mower on this issue. He said he didn't want to stop a Councilor from speaking, but said they knew her position, so he didn't think it was necessary for her to participate tonight.

Administrator Selig said the statute addressed the issue of what happened if more than one member wanted to participate electronically, and he provided details on this. He said if three Councilors wanted to participate electronically, it would be more challenging, but said the Town did have an account where that could be facilitated. He said whether everyone would hear each other adequately would still be a question, noting that the Town had not made an investment to date in the technology needed for this.

He also said he agreed with Councilor Gooze that he didn't believe anyone would sway Councilor Mower from her perspective, but said he wasn't certain in terms of her being able to sway another Councilor, if she was allowed to participate.

Councilor Gooze asked that Councilor Mower either speak or have her comments read into the record. He said if it was a public hearing, with a medical emergency, it would be different, but said he didn't think her participation was necessary now.

Councilor Smith said he could read what Councilor Mower had sent as a matter of convenience for the public and the Council. He also said when the matter came up for discussion later, it could very well be that someone made a statement that required or invited significant challenge or support from Councilor Mower. He said he agreed with Councilor Lawson's warning that it could be a very difficult situation in the future to do this on a case-by-case basis.

Councilor Stanhope said in seconding the motion, he wasn't aware that there was risk in the technology being used, and wasn't aware of Chair Carroll's experience with this. He said this raised concerns.

Chair Carroll said when she had spoken it was heard well enough by the Council, and on TV. But she said it was an awkward situation in that the Chair needed to acknowledge that the person at the other end of the phone was participating in a discussion.

Councilor Mower said she was having some difficulty hearing some Councilors speak, and it

might well be that they didn't have the microphones that would work with a speaker phone. She said she didn't think it was fair to other Councilors if she couldn't hear everything and then tried to participate.

Administrator Selig said he thought the Council needed to look at this as a policy issue, and at whether it was comfortable having this type of interaction. He encouraged Councilors to work toward having the technology to allow this.

Chair Carroll thanked Councilor Mower for her openness in regard to this situation. She also noted that former Councilor Peter Smith was in the audience, and was an expert on the Right to Know Law. She asked him if he wished to comment on what the Council was grappling with now.

Mr. Smith said that clearly, if Councilor Mower didn't wish to participate, the discussion was moot. But he pointed out that it was always going to be a decision made by the Council on a case-by-case basis, because this was what the statute required. He said it specifically gave the public body the right not to take advantage of the provision now in the law.

He said the Council could decide this matter in the abstract to never allow someone to speak electronically. He also said the decision could later be changed. He quoted from section III of the Right to Know Statute, and said the words there required the Council to make a decision based on particular factors, which would need to be determined on a case-by-case basis. He said what was decided now would therefore not create any kind of precedent.

Chair Carroll asked Administrator Selig to provide a copy of the Right to Know statute to Councilors.

Councilor Mower requested that the motion be withdrawn. She thanked Councilors for their time in considering her request, and said she would look forward to speaking with them at the next meeting.

Councilor Smith withdrew the motion, and Councilor Stanhope withdrew his second of the motion.

Councilor Mower noted that it had been difficult to hear Peter Smith as well.

## **II. Approval of Agenda**

*Councilor Smith MOVED to approve the Agenda. Councilor Cote SECONDED the motion, and it PASSED unanimously 8-0.*

## **III. Special Announcements**

None

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

July 25, 2011

***Councilor Smith MOVED to approve the July 25, 2011 Minutes. Councilor Gooze SECONDED the motion.***

Page 5, top paragraph, should read "...which could serve a lot of students from rentals in that area, as well as Durham residents. She said that unfortunately not enough students or residents were..."

Page 25, 5<sup>th</sup> paragraph, should read "...he had learned that Mr. Johnson was tired of..."

***The motion to approve the July 25, 2011 Minutes, as amended, PASSED unanimously 8-0.***

August 1, 2011

***Councilor Smith MOVED to approve the August 1, 2011 Minutes. Councilor Cote SECONDED the motion.***

Page 19, 4<sup>th</sup> paragraph from bottom, should read "...said he would want to see what a level funded budget would look like and what this would mean..."

***The motion to approve the August 1, 2011 Minutes, as amended, PASSED 7-0-1, with Councilor Marple abstaining because of her absence from the meeting.***

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

Councilor Marple said at the IWMAC meeting the previous week, there was a presentation from a UNH graduate doctoral candidate who as part of his thesis was sending out a survey about garbage collection and recycling, including different types of recycling options. She said it would be sent to 500 households in Durham as well as to some other towns, and the results would be shared with the Town.

Chair Carroll noted that this kind of free service was one of the benefits of living in a University town, and she urged residents receiving a survey to fill it out, because it would benefit Durham.

Councilor Gooze said at the Planning Board meeting on August 24<sup>th</sup>, there was a public hearing on an application by Metro PCS to place a cell tower that looked like a pine tree on the LaRoche property. He said the structure would be about 60 ft over the actual tree canopy. He said the application was approved unanimously.

Councilor Gooze said the public hearing on a site application concerning Great Bay Kennel was continued because of the need to work out some details with neighbors because of some noise issues. He said the applicant would be coming to the September 28<sup>th</sup> Planning Board meeting with a different plan.

He said there was discussion by the Planning Board on a possible change to the Table of Uses to allow single-family residences as a permitted use in the Professional Office district. He said the public hearing was set for September 14<sup>th</sup>.

He also said there was an update from Mr. Campbell on the Master Plan survey results.

Chair Carroll noted for members of the public that there would be a presentation on the survey results at the upcoming Planning Board meeting on Wednesday.

Councilor Gooze said fundraising for the new Library continued, and said about \$530,000 had been raised so far. He noted the sign on Madbury Road promoting the fundraising efforts.

Councilor Stanhope updated the Council on the most recent Historic District Commission meeting. He said the Great Bay Kennel proposal was modified to address some of the community's concerns about noise, by moving the proposed location for the new building from a higher elevation to a lower one closest to Route 108. He said a design of the administrative structure as well as the kennel structure with the appearance of a barn was presented to the HDC.

He said the HDC hadn't approved this for a series of reasons, because the building didn't seem to fit what the Town would want in terms of the gateway to Durham. He said the matter was tabled after some discussion, and said the applicant would bring a proposal back that was more in line with some of the issues raised.

He said subsequent to this meeting, Mike Sievert, the engineer for the project, said the applicant had retained a sound engineer to assist in adding as much sound mitigation as possible to the design. He said he expected that the application would come back to the HDC with some modifications, before going on to the Planning Board.

Councilor Niman said he wanted to alert Administrator Selig to what he considered to be a serious problem. He noted that he was the representative to the Parks and Recreation Committee, and that the Town had a part time Parks and Recreation Director. He said everybody seemed to like to dump everything in her lap, and she therefore had much more work than could be done in 20 hours per week.

He noted special events like Durham Day, and requests from Councilors that they would like it to be a zero trash event, and said this created a lot of additional work for her. He said there was no way she could get everything done. He said either they needed to expand the hours for the position, or Administrator Selig needed to make sure that peoples' expectations about events met the time that was available.

Chair Carroll said it was important that this be looked into. She said had put the Parks and Recreation Director in touch with the Chair of the IWMAC, which was very interested in waste free events. She said more coordination was needed, and said this shouldn't fall on the shoulders of one individual.

Councilor Lawson said the Economic Development Committee met in September, and finalized a draft of a downtown TIF district. He said it still needed some work, which would be provided primarily by Town staff and the consultant. He said this work would start in the next week or two, and said a draft would probably be available for the first Council meeting in October.

Councilor Lawson said that over the past three weekends, he'd ridden with the Fire Department as well as University and Town police until about 2 am, which was the point at which he was exhausted. He first said he wanted to commend the services and professionalism of all three organizations. He said his observations were those that other Councilors were already familiar with, having to do with 1500 to 2000 young people cycling through the downtown and neighborhoods on weekend nights when there was good weather.

He said every resource available and deployed this past Friday was used throughout the night, explaining that this included sector cars responsible for the downtown and the rest of the community, backup officers, sergeants, the Strafford County Sheriff's office, NH Liquor Enforcement and the State police. He said some of the arrests he'd observed required backup officers, and said it was somewhat disconcerting to observe the level to which some people would resist arrest.

Councilor Lawson also said all the arrests he witnessed was the result of police observing things as part of their patrols, and not the result of 911 calls. He said if the officer hadn't been there, the arrests and problems wouldn't have been addressed and resolved. He noted that the arrests he saw were more serious offenses than just alcohol possession. He said a police officer booking a simple arrest took more than an hour, and if one went to Strafford county jail, it took more than 45 minutes. He said transferring an arrest and evidence to the Strafford county van took about five minutes, and kept officers on the street.

He said his conclusion from this experience was that he was really uncomfortable and skeptical about any ideas about reducing the police presence or the level of police experience on weekends, based on what he'd observed this fall and last spring, as well as his experience with McGregor Ambulance.

Chair Carroll said Councilor Lawson had given the Council a lot to think about.

Councilor Cote said on Sunday morning, he, Chair Carroll, Councilor Gooze, Councilor Lawson and Administrator Selig, as well as spouses, attended the 10<sup>th</sup> anniversary remembrance of September 11<sup>th</sup>, which was put on by the Fire Department. He said representatives from the Town and University police departments, McGregor Ambulance Corps, ROTC on campus, and the Madbury Fire Department were present.

He said it was a very appropriate, well done ceremony that took place to the rear of the Fire Department, where members of the department had put in a rock and flower garden. He described a patio area as part of this that included symbols of the twin towers, the plane that went down in Pennsylvania, and the Pentagon. He said it was very tastefully done.

Chair Carroll asked residents to put Sept 25<sup>th</sup> on their calendar, when there would be an architectural tour of UNH given by University planner Doug Bencks. She provided details on this. She also noted that the upcoming date for the annual pickup of Household Hazard waste.

Administrator Selig noted that residents needed to call the DPW to make appointments for the Household Hazardous Waste event.

He said he'd met that day with Doug Bencks and Library Director Tom Madden to discuss the CIP, and said it was agreed that Mr. Bencks would speak with the Council about fundraising and design efforts for the new Library on September 26<sup>th</sup>.

Administrator Selig said the "State of the University" address would take place that week, and he provided details on this. He encouraged people to attend if they could.

He said the Master Plan survey results were available online at the Town web page, and said there would be a presentation of the results at the Planning Board meeting on Wednesday.

He said they were in the midst of reviewing proposals from boards and committees regarding the 2012-2021 CIP Plan. He thanked Councilor Gooze for attending 5 hours of CIP discussions on Friday. He also said they were well into the budget development process. He said most departments had submitted their proposals to the Business Office, and meetings would be scheduled with them, which Councilors were welcome to attend.

Administrator Selig said that regarding the issue of investment in policing services, the Town continued to monitor this carefully. He said calls for service were up about 30%, and said at this point, the feedback was that the department was very busy. He said at this point, he wasn't hopeful that they would be able to make reductions in overtime or staffing, but said they continued to look at this.

He said the Right to Know session was scheduled for Oct 31<sup>st</sup> at 7 pm for board, committee and commission members and citizens. He said invitations had been extended to Lee, Madbury, and the Oyster River Cooperative School District as well, and said the session would be broadcast on DCAT as well.

Administrator Selig noted that the walkway next to the Grange property would be closed for a period of time during construction. He also said the closing documents for the property were being finalized, and said he was hopeful that in the next few days, he could get something out to Councilors interested in reviewing the workforce housing aspects of this. He said it was hoped that the closing would happen by the end of the week.

He said Durham was in the running for financial aid from the State revolving loan fund, where a certain amount of principal was forgiven for loans. He said this included \$418,000 for automated water meters, which would cut down on staffing needed, and would allow the Town to move to a quarterly billing system. He said the automated format would also help with water conservation measures if needed.



He also said there was \$750,000 in grant money for an upgrade to the pump station on Old Concord Road, as well as \$2.5 million for an upgrade to the sludge dewatering facility at the wastewater treatment plant.

He said Durham Day would be held on September 17<sup>th</sup>, and said the rain day was September 18<sup>th</sup>. He said the Conservation Commission had scheduled a nature walk, and also said there would be boat rides, food, etc. He said the event would be waste free to the extent possible.

There was discussion about how people would know if it was a rain day or not.

Chair Carroll noted that a cake from a bakery in Somersworth that was sold that day at the Durham Farmers Market, containing blackberries from Barrington, would be served after 9 pm.

## **VI. Public Comments**

**Roger Speidel, 7 Nobel K Peterson Drive**, said a CNN poll had indicated that Dover was one of the 100 best places to live in America. He said they accomplished this with economic development, and said it was also the fastest growing town in New Hampshire. He said this was accomplished while maintaining the quality of life there. He said the City had broadened its tax base with economic development. He said in the past 2 years, Dover had brought in 35 new businesses, and said this had not disturbed the Town, and had instead improved it.

He said a reason Durham wasn't on the list was that taxes were too high. He said along with the need to get the ORCSD budget under control, a second problem was the lack of economic development, which was needed to broaden the tax base. He said he was glad to see the Capstone development. But he said that Technology Drive had had water and sewer for 20 years, yet there was only one business on it.

He said many in Durham seemed to fear development, and thought it would change the character of the Town. But he said the character would change because of the lack of development. He said the school system was losing enrollment, noting that the total enrollment would drop under 2,000 this year for the first time representing a loss of 355 students since 2000.

Mr. Speidel said the School District had lost 474 residents under the age of 18 between 2000 and 2010. He said their families moved out, and said one reason was because the taxes were too high. He said at the same time, Dover gained 474 residents under 18, because young families could afford to move there. He noted that the source of these figures was the 2010 Census.

He said the reduction in the School budget and economic development must happen together to maintain the vibrancy of the Town, and said they couldn't rely on UNH to keep them afloat as a community. He said towns died as school systems died, and said with taxes too high, old families moved out, and young families couldn't afford to move in. He said the ORCSD board had to have the will to reduce its budget, and the Council had to have the will to pursue economic development with determination.

He noted that the Oyster River taxpayers would meet on September 20<sup>th</sup> at 7 pm in the Durham Town Hall. He said School District Superintendent Levesque would be there and would share his views.

**Bill Hall, Smith Park Lane**, said apparently people on the Council didn't understand that the Town couldn't take water from two places at once, and he provided details on this. He said the 401 certificate was on some pretty thin ice, and said he believed this might be the time to go after relief, either in Concord or in the courts. He said it probably wouldn't stand a competent challenge, which he said the Town should be giving it.

**Richard Whitney**, of Lee, and owner of Mariner Realty and Main Street Mailing, said that for a number of years, he'd sponsored the UNH cycling team. He said next year, the team would try to put on a bike race in Durham, called a criterium. He provided details on what a criterium was, and said he was present now because the course tentatively being looked at for Durham would require closing Mill Road for a one block area. He said there would be a request for this under a future Unanimous Consent Agenda.

He said the race would run between MacDaniel Drive and Academic Way, and would take place on the first Sunday in April. He said about 45 colleges would be involved, with about 400 racers doing 13 separate races. He said the thought was that that if there was the annual longer duration road race at Nippo Lake on a Saturday, and then the criterium on a Sunday, this would be good for the Town of Durham because the racers would be staying in Town. He said most of the courses would be on UNH land, and said the sanctioning body liked this because a lot of UNH students would get to see the race.

Chair Carroll noted that there would be 400 people who might like to eat in Durham as well as take advantage of other services in the Town as part of this event.

Councilor Smith said he would like to either respond to something Mr. Hall said, or get the Council's assurance that he could speak on it at the end of the meeting.

## **VII. Unanimous Consent Agenda**

- A. Resolution #2011-17 amending Resolution #2007-14 relative to membership on the Durham Energy Committee by replacing the Public Works Department representative position with a community member and increasing the total number of positions to be as many as nine (9) members

***Councilor Smith MOVED that the Durham Town Council does hereby adopt Resolution #2011-17 amending Resolution #2007-14 relative to membership on the Durham Energy Committee by replacing the Public Works Department representative position with a community member and increasing the total number of positions to be as many as nine (9) members. Councilor Stanhope SECONDED the motion, and it PASSED unanimously 8-0.***

Chair Carroll noted that many people wanted to join the Energy Committee, which was great.

### **VIII. Committee Appointments**

Shall the Town Council appoint Karen Bishop, 135 Packers Falls Road as an alternate member to the Durham Agricultural Commission?

***Councilor Smith MOVED that the Durham Town Council does hereby appoint Karen Bishop, 135 Packers Falls Road, as an alternate member to the Durham Agricultural Commission for a three year term to expire on April 30, 2012. Councilor Marple SECONDED the motion.***

Councilor Smith said Ms. Bishop lived near him, and had a horse boarding/training operation in the barn where he used to go to buy milk 40 years ago from Doc Allen. He said she and Bill McGowan maintained an old farm and kept the land open, and said she would be a good addition to the Agricultural Commission.

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

Chair Carroll thanked Ms. Bishop for stepping forward, and said people like her who did so were what made a good community a great community.

### **IX. Presentation Items**

#### **A. Receive annual report of the Zoning Board of Adjustment - Robbi Woodburn, Chair**

Ms. Woodburn first summarized what the ZBA did, and the rules under which it operated. She noted there was currently an opening for an alternate on the Board.

She reviewed the types of applications the ZBA heard. She explained that special exceptions were specified permitted uses that were allowed when clearly defined criteria were met. She noted that the ZBA could not refuse to grant a special exception if these criteria were met. She said a variance on the other hand was the relaxation of a provision of the Zoning Ordinance, if five criteria were met. She reviewed these criteria.

She also reviewed when an equitable waiver could be applied for, noting that the Board rarely saw these. In addition, she said there were requests for re-hearings if an applicant thought the Board had erred or thought there was new evidence.

She said this year, from January to August, the Board had met 9 times, which was less chaotic than 2010. She said there were 22 variance requests, and 17 were approved. She said there had been one request for re-hearing, which was denied, and one appeal of administrative decision, which was withdrawn. She said there was one request for a special exception.

She said there were 13 variance requests to place a structure in a setback, 2 to place a structure in the shoreland setback, 8 to place a structure in the wetland setback. She said 5 variance applications had to do with the replacement of septic systems and leach fields. She said there had not been any requests related to the three unrelated occupancy rule.

Ms. Woodburn said there were 3 requests regarding parking, 2 requests concerning a change of use, 1 asking that a higher building height be allowed, one request to subdivide a lot that was smaller than what was required, one request for an accessory apartment, one request to amend a previously granted variance, and one request for a wireless tower that was higher than what was allowed. She said two cases had gone to Superior Court, and said both were decided in favor of the ZBA's original decision.

She said something that had taken quite a bit of time this year had to do with the definition of a structure, which wasn't quite as precise in the Zoning Ordinance as was needed.

Councilor Gooze asked if there were other issues that needed more clarification.

Ms. Woodburn said last year, there were a lot of septic system applications, because the way the regulations were worded, the ZBA had to decide on all of them. She explained that there was the option to allow the Code Officer to have criteria in order to make decisions himself in very straightforward cases. She said the Board needed to make this happen, and said this would streamline the process. She said she didn't know if it was the ZBA or the Planning Board that would provide these criteria, but said she would be happy to participate in crafting them.

Councilor Smith asked if there were any other Zoning provision the Planning Board or Council might want to reconsider in order to stop property owners from having to come to the ZBA for relief.

Ms. Woodburn stated again that the structure issue needed to be clarified.

Councilor Smith noted that there were a number of variance requests having to do with setback requirements, and he asked if the ZBA would be comfortable making some recommendations to the Planning Board to review this issue.

Ms. Woodburn said she didn't think these applications had been an issue.

Councilor Gooze said it wasn't up to the ZBA to make these kinds of decisions, and he provided details on this.

Ms. Woodburn said property line variances weren't out of the ordinary, and said deciding on them was straightforward, especially depending on input/lack of input from abutters.

Councilor Gooze said there was really no way to tell if the 3 unrelated rule was being adhered to. He said one way to try to get a sense of it was the amount of parking, and said they hadn't been seeing that extra parking on properties lately. But he said there was no other way to tell how many people were living in a property, and said somewhere down the line, there should be a roundtable discussion on ways to allow the Town to find this out.

The Council stood in recess from 8:36 to 8:41 PM.

**X. Unfinished Business**

Continued discussion regarding methods to promote/market the Town of Durham

Councilor Smith said his idea was not to simply advertise the many reasons to come to Durham, but to think about what Councilors on particular committees could do. He said beyond that, he would like to raise issues as to how they could better market Durham as a place to live. He said in some cases, they would need the help of the University.

He said the University needed to do what they did in the 1950's and 1960's, which was to encourage young faculty members and families to live in Durham. He provided details on this. He noted recent discussion about the state of single-family homes in the PO district, where he would like to see single-family residences restored as a permitted use. He said if the University could help young families buy houses near campus, and if the Code Officer, police officers and the Rental Housing Committee continued the process that had begun on absentee landlords, he thought they could get some pioneering families living near campus.

Councilor Smith said he'd ask the Planning Board to consider scheduling a formal discussion and perhaps a public hearing on the relationship between dimensional controls in the Rural district and the purpose of that district, as defined in 175-37 of the Zoning Ordinance. He noted that he had provided a history of the evolution from no minimum lot size in the Rural district to 150,000 sf. He said it would be worth looking carefully at why this was thought to be necessary in a district where there were houses on much smaller lots.

He said the purpose of the Rural district was to protect rural character, and said his experience was that large lots in the Rural district tended to break up the possibility of keeping fields open. He said he had seen this happen again and again over the 46 years he had lived in the Rural district, as well as in the RB district that used to extend into the Rural district. He said there were a number of possibilities to re-examine this issue, and said he thought they would need more families in Durham, workforce housing, middle class professional families connected to the University, and families whose members commuted to Boston on the train. He said more families would be needed to share the tax burden in the community.

Councilor Smith said he would like the Planning Board and the Council to have a discussion on such issues as infill development. He said a few years ago, they changed a portion of the Rural zone to ORLI, when the minimum lot size went from 150,000 sf to 40,000 sf. He said one of the reasons for the push to apply conservation subdivision regulations to the ORLI and MUDOR districts was that the Council permitted on behalf of Capstone and other potential developers allowing single-family residences in the ORLI and MUDOR zones.

He said he thought some changes had been made recently that provided the possibility for more residential housing, especially in the ORLI zone. But he said they might also encourage more development of a good portion of the Rural zone, especially in the southwest part of Town, along the Mill Road and Packers Falls Road corridor, which would make it easier to sustain a bus line, etc.

Councilor Lawson said he didn't have questions for Councilor Smith, but said he would commend and support efforts to better market Durham as a place to live. He said expanding opportunities for families to come to Durham was important.

He said he was glad to see that the Durham Business Association had weighed in on this issue. He said in terms of current businesses, he felt it was important for them to market themselves, and to decide what markets they were going after. He said he didn't feel this was the Town's responsibility given the resources it had.

Councilor Lawson said a general observation was that the Town didn't have a lot of things to market. He said office space was limited and was of poor quality, and said he dismissed the idea that there was no need for quality office space, because of a few examples in new buildings.

He said the retail in the community was very limited with the exception of groceries, a drug store, and banking, and said the rest of retail was focused on students.

He said this wasn't a reason for people to come to Durham. He said the focus of the Council should be less on how to market Durham, and how to develop zoning, strategic partnerships and programs to facilitate the transformation of the downtown and other commercial zones, so they became economic engines in the community.

Councilor Lawson said he was encouraged by the willingness to do things with the Grange, and to use RSA 79 E at 9-11 Madbury Road. But he said the fear right now was that a transforming opportunity would present itself, and the Town would hesitate and lose it, because they were so concerned about change, and wanted to mitigate every possible risk. He said he would like the Council to get to the point where it was willing to market itself as a Council and town government that embraced change that led to economic development, along with the partnerships and zoning behind it.

He said focusing today on how to market the Town, with the exception of how to attract families, wouldn't address the biggest challenges ahead of them.

Chair Carroll said the downtown area had been discussed by many Councilors and residents as a place that needed to be focused on. She said it would be interesting to see, in the coming months, when there were programs put out there to show what could be done to transform it, and by doing this, make it a place people would want to spend time in.

Councilor Gooze said something he would be recommending to the Planning Board was to allow light manufacturing in nonresidential zones. He said he knew of a few instances where it would have come to Durham if it had been allowed in the Professional Office zone and others. He said there were performance standards to address this use. He spoke about what had happened with the PO district and the Durham Business park, and said perhaps they needed to do something else.

He said that regarding Councilor Smith's suggestions, the Master Plan survey indicated that a very high percentage of respondents looked at Durham as a rural community, and he provided details on this. He also said a high percentage of people didn't want taxes to go up. He said he wasn't sure he would want to change zoning in the rural districts, and said he would be much more inclined to go through the EDC and try to figure out a way to get businesses to provide tax money.

Councilor Stanhope said that concerning marketing the Town, Durham was not considered a difficult community anymore, which meant every opportunity that presented itself should be embraced. He said Councilor Smith's interest in marketing the Town to young families, although not objectionable, ran contrary to the preservation of the Town's rural character. He said if the lot size was reduced in the rural zones, it would allow a substantial amount of housing development, and said this was a fundamental issue the Town faced. He said philosophically the Town wasn't ready to accept this, and said he personally wasn't either.

He said marketing Durham meant having a tax rate that was competitive with the communities that were drawing incubator businesses, office development, retail development, and light industrial development. He said the cost of occupancy was not only the rent, but was also the common area maintenance, which include taxes. He said considering this, Durham was not competitive. He said economic development needed to be cost effective for a developer, and said the only way to do this was to bring the tax rate in line. He said the towns in the state with low taxes didn't have a problem attracting high quality development that Durham would love to have. He noted Amherst, Bedford and Hollis as examples of this.

Chair Carroll said the ideas suggested would be important to look at in the future. She said while they looked at the things they needed, it was important to look at the things they had. She said the University had many amenities, and said the Town was blessed with natural beauty, and history, for people coming to Durham for a day, coming to live, or setting up a business. She agreed that the Council needed to work on what they didn't have, and which would be helpful to the Town.

Councilor Smith noted ideas provided by Katie Muth of the Durham Business Association:

1. The DBA website, which has the Town's promotional video on it.
2. The Durham Map & Guide.
3. Business After Hours with other towns (to date the DBA has hosted with Newmarket &

Exeter).

4. Introduction to new UNH families through orientations.
5. Postings on "Durham: Ifs Where U Live" website.
6. Email blasts to members (several who are not Durham residents) with the Town's "Friday Updates" information, media releases, and activities/events of interest.
7. Press releases are sent to various media outlets when there is anything of interest.

Councilor Smith said he hoped to continue the discussion with the Planning Board, and perhaps to bring it back to the Council.

Chair Carroll said there would be that opportunity.

## **XI. New Business**

- A. **First Reading on Ordinance #2011-06** amending Chapter 175 "Zoning", Article XIX "Conservation Subdivisions" of the Durham Town Code by adding a new Section 175-107-II Titled "Workforce Housing Option"

Chair Carroll noted that Town planner Jim Campbell and consultant Jack Mettee were present to discuss this matter.

Councilor Gooze said according to State Statute, the Town was required to provide workforce housing. He noted that there had been proposed State legislation this year to remove this requirement, but it didn't pass. He said this meant that if a developer wanted to do a workforce development on a property, he could do what he wanted and where he wanted to do it, and if this went to court, the court would say the developer could do this because there was nothing in Durham's ordinances that met the workforce housing RSA.

He said in order to be proactive, a committee was formed under the direction of Jack Mettee, to look at different ways to address this. He said they came up with what they thought was the quickest and best way to do so, which was to work with the conservation subdivision provisions that were already in the Zoning Ordinance. He said the idea was to allow an increase in density for both market rate and workforce units as part of such a development, when workforce housing was put in.

Councilor Gooze said they decided to go mostly with owned units rather than rentals as part of the Ordinance. He said it was realized that there might be a different way to address the issue, such as having a workforce housing overlay. But he said in order to get this through so the RSA was met, it was thought that what was proposed was a good way to go.

Administrator Selig noted that the Town had sought and received a \$9,000 grant from the NH Housing Finance Authority to fund this initiative.

Mr. Campbell thanked the committee that had worked on this for a number of months. He said it was comprised of Councilor Gooze; Susan Fuller, who was a member of the Planning Board and was a real estate agent; Doug Bencks; and Lee Ann Parks, who was a



real estate agent. He said developer Eric Chinburg had helped out as well, so there was a good mix on the committee. He said they took their work to the Planning Board for discussion, and it then held a public hearing in July and recommended that the Council make the Zoning change.

Councilor Gooze said through covenants, the Town could be sure that the workforce housing would continue to be used that way. He noted that because of the income requirements to qualify for workforce housing, it would be very unusual for students to occupy the housing. He provided details on this.

He said it wasn't clear that the density increase that would be allowed would be enough to get developers to actually build workforce housing. He said if nothing came forward and the Town really wanted it, they might have to allow more density. He also noted that the conservation subdivision provisions themselves were pretty restrictive, and there were parts that might be able to be changed to allow greater density. But he said this was a good proposal, said it would have to be tweaked as they went along.

Chair Carroll asked if there had been a presentation on this final proposal for the general public.

Mr. Campbell said there had been a public information meeting on it, and said the Planning Board had also spent 3-4 meetings on it, including the public hearing. He said it was posted on the website, and was put out on Friday Updates. He said there was information available for the public, including a good memo from Mr. Mettee, the draft language, a developer's guidance document, and the sample restrictive covenants. He also said there was a two page summary, including the workforce housing RSA as well as a quick overview of inclusionary zoning and the Inclusionary Zoning Implementation program.

Chair Carroll asked if the presentation on DCAT could be accessed, and Mr. Campbell said he could check to see if it was still running.

Chair Carroll said if this passed on first reading now, it was important that the information would be out there in time for the public hearing.

Councilor Gooze and Administrator Selig said this proposal had been discussed well already, and was primed to go forward so they could hear from the public.

Councilor Gooze noted that the proposal did not address things he had referred to that might be changed in the conservation subdivision regulations. He said that was for discussion further down the line.

Councilor Marple asked how the mechanism happened where a workforce housing development actually came about.

Mr. Campbell said if this ordinance passed, it would be incumbent on his office and Mr.

Johnson's office that this development option was available.  
Councilor Marple asked if there was land available for such development.

Mr. Campbell said there was, but said what a developer could make of that land was another thing, which got into some of the other things that were discussed.

Jack Mettee said by State law, the Town wasn't required to build workforce housing, or find a specific spot for it. But he said the ordinance was a good step toward providing it. He noted discussion about putting it in the Rural zone, and explained that the RSA said a town needed to provide 50% of the land within the Rural zone for possible workforce housing. He said this was a pretty big segment of Durham because it was primarily rural and was residentially zoned.

Councilor Stanhope noted specific requirements under G 3: "More than fifty percent of the workforce housing units in the development shall contain two or more bedrooms"; and H 2, concerning a deed restriction that the workforce housing units must meet the affordability standards for a minimum of 30 years. He asked if these were statutory requirements.

Mr. Mettee said the 50% requirement was State law. He said the 30-year requirement reflected a goal of maintaining long term affordability, and was not required statutorily.

Councilor Stanhope said his concern was that as they added bedrooms, they often added students to the school system, but because of the workforce restriction, they effectively capped the property taxes they'd be able to collect on the units, given the deed restriction. He said this put the community at some risk, and meant that the entire body of taxpayers would subsidize this housing.

Mr. Mettee said this was a good question, and said the answer wasn't a simple one. He said typically a workforce housing house was smaller, and tended to be 2 bedrooms, so had a very low relative number of students per household. He said statewide, it was about 0.25 students, so 4 units would be needed in order to get a single student. He said with a cost per student to the Town was \$18,000, a 2 bedroom house would pay \$5,000 in taxes, and a 4 bedroom house would pay \$7,000, so neither one would make up the difference tax wise for that school child. He said with 4 and 5 bedroom houses, there were more school children, but these properties were still not paying their way in terms of taxes. Councilor Lawson asked if the Town in fact already had the workforce housing that was required, which was houses in the Faculty development, the areas off of Madbury Road, when such a higher percentage of the MLS listings were in the range below what HUD required.

Mr. Mettee said the workforce housing law came about because of a change in housing prices between 2002-2005. He said since then, they had leveled off, along with incomes. He said as a result, more houses came close to the definition of workforce housing. He said the 100% for a family of 4 was probably not a significant threshold, and was probably done for political reasons. He said in a lot of other states, they did 60% or 80%,

but said it was felt this would be too much in NH.

He said over time, the economy was likely to change, and the wage structure and housing market would change, and said the law might be perfectly applicable at that time. He also noted that there needed to be a long-term assurance of affordability according to the RSA.

Councilor Lawson said there were many houses that were well below that threshold, and said it was understood that they were in a depressed market. He asked whether they should be considering a policy change that changed zoning in the rural zones when the evidence said it wasn't needed at this time. He asked if they should instead consider it in the future, when the evidence was more compelling that it was needed. He asked what the risk was of putting something in place, and then finding that it put pricing pressure on places like the Faculty development and made houses there more attractive for student housing.

Councilor Smith referred to section H 2 under Assurance of Affordability, and confirmed that if someone qualified for workforce housing in 2012 and then increased his income, he didn't have to sell his house. He said this could therefore be a very limited benefit. He also noted C 2, Permitted Uses, and asked if C 1 meant that the door would be opened to duplexes and multi-units in the Rural district.

Mr. Mettee said it did provide that opportunity.

Councilor Smith asked why the RC zone was excluded from the districts, noting that it was a large zone.

Mr. Mettee said it was because it was a coastal zone.

Councilor Smith noted that there were some small houses there, which if not made available would be turned into mini McMansions.

Councilor Stanhope said there seemed to be an underlying agenda to move workforce housing out of the Town core. He noted the concept of smart growth, which focused development in urban centers and made it pedestrian, bike and public transportation friendly. He said his concern was that he didn't want to see Durham lose its rural character with tract housing, including workforce housing, and said he would rather see redevelopment of existing properties downtown. He said that made a lot more sense, for people they thought would be working in Durham, and said the last thing Durham needed was more cars coming into Town.

Councilor Gooze said this was all discussed by the committee.

Mr. Mettee again noted that at least 50% of the residential zones needed to be available for workforce housing.

Councilor Gooze said it might be true that there were houses all over that met the price

level, but were not set up to be workforce housing.

Councilor Lawson asked why a 3 bedroom house in the Faculty development wouldn't be workforce housing, if the price was right.

Councilor Gooze said there might need to be a workforce housing overlay, but said the committee was trying to get something that would satisfy the requirements of the RSA. He said the best and easiest way to do it was to use conservation subdivision, which would provide protection from tract houses, and would meet the 50% available land area requirement in the residential areas. But he said he thought other places to do it in Town were needed.

Mr. Mettee said the risk potentially could be a developer determining what kind of density and design style he wanted, and the Town would have no recourse. He said if the developer didn't get an approval, he could go directly to Superior Court, and within six months could get a judgment that might allow him to proceed with the development. He said one way to potentially manage that was to have something in place that allowed the Town to negotiate from a position of strength with a developer.

He also said he agreed about having workforce housing downtown, but said they tended to be rental units. He said with the State law, they needed to also address owner occupied units, which typically went beyond the downtown.

Councilor Smith said he and some of the people he saw in the audience lived in houses that had been occupied by workforce families before they bought them. He also said the term workforce housing was a misnomer.

Councilor Stanhope said there was nothing to prevent a developer from condominiumizing a workforce housing rental space. He said in NH right now, those types of developments were selling for \$150,000-200,000, and said developers could develop them profitably.

Mr. Mettee agreed.

Chair Carroll said she had read the material, and thought there were some good points. But she said she was concerned about the housing they already had. She said she didn't think that if they were going to have workforce housing, they needed to build it from the ground up. She said they didn't have to use up precious land when buildings were already standing. She said she wasn't ready to move this ordinance on first reading, and said she would like to see more work done on it before moving ahead with it.

Councilor Gooze said more needed to be looked at, but said the idea with this proposal was to get the Town into compliance with the State. He said if they didn't pass something, a developer could come in and do what he wanted with a property.

Chair Carroll asked how they could amend sections that some Councilors felt needed to be changed.

Councilor Gooze said additional changes would take months to get through. He repeated what the committee had tried to accomplish, and said he realized the Council would still need to do more.

Mr. Campbell said it was important to remember what the residential zones were. He said he was all for putting workforce housing in the Central Business District, but said that did nothing to meet State statute, and the requirements sent down by the Supreme Court.

Councilor Smith said the Church Hill district permitted single-family residences, but Mr. Campbell said that district was considered to be a commercial and not a residential district.

Administrator Selig said the reality of Durham was that it would be challenging to develop marketable workforce housing, because of high taxes, and the fact that it wasn't proximate to jobs that weren't affiliated with the University. He also said several years ago, the Council had talked about incentivizing workforce housing within a development, and said this effort did that. He said it didn't create a ghetto of workforce housing, and said the aesthetic illustrations were the kind of development they would like to see.

He also said not having something in the Ordinance left the Town open to someone coming in with a large density project that would be worthwhile to the developer, but which wouldn't fit with Durham's character. He said he was very supportive of the work of the committee. He said he agreed that more work needed to be done, but said what was proposed now was a good intermediate step.

Mr. Campbell provided two non-substantive changes.

***Councilor Gooze MOVED that the Durham Town Council does hereby move on First Reading, as amended, Ordinance #2011-06 amending Chapter 175 "Zoning", Article XIX "Conservation Subdivisions" of the Durham Town Code by adding a new Section 175-107-II titled if Workforce Housing Option" and schedules a Public Hearing for Monday, October 3, 2011. Councilor Stanhope SECONDED the motion,, and it PASSED unanimously 8-0.***

Mr. Campbell said the conservation subdivision provisions were approved in 2004, and said since that time, there had been one application that had gone through the review process and had been approved. He said the density bonus would have provided one more market unit and one workforce housing unit for that development, if it had been applied to it.

Chair Carroll said she had asked Mr. Campbell to calculate this, and said it could be discussed when the public hearing was held.

The Council stood in recess from 9:47 to 10:01 PM.

- B. Shall the Town Council schedule a Public Hearing for Monday, September 26, 2011 regarding a temporary change in the disposition of the Land Use Change Tax (LUCT)?

Administrator Selig first explained that what was proposed was a Council initiated Resolution to change the disposition of the LUCT from 100% allocated to the conservation fund, to 100% allocated to the General Fund until 2015, at which time it would revert back to the conservation fund. He then provided a detailed review of the history and functioning of the State's Current Use program, as the basis for the generation of the land use change tax.

He said when the program was put in place, a segment of the NH community was very much in favor of it, because it conserved open space, allowing large tracts of land to remain in their present ownership without the pressure of development. But he said there were also the taxpayers who didn't own big tracts of land, who said that as a result of the program, they would have to pay more in taxes.

Administrator Selig said if someone with land chose at some point in time to remove his parcel from current use, the person would have to pay the land use change tax, which was a penalty for taking the land out of current use. He read from the current use statute, which noted among other things that this tax would be 10% of the full and true value of the land at the date of the change in use, and would be in addition to the annual real estate tax imposed on the land. He said this was where the taxpayer who didn't have preferentially treated land was reimbursed.

He explained that by default, the LUCT came back to the General Fund, unless the community opted to divert the penalty to the conservation fund to further conservation purposes in the community. He said in 2001-2002, the LUCT went 50% to the General Fund and 50% to the conservation fund. He said the 2000 Master Plan recommended that the penalty go 100% to the conservation fund, and the Council made that change in 2002.

Administrator Selig said since that time, the question was raised as to whether it would be appropriate to divert those funds back to the General Fund, but said to date, the Council had opted to keep the allocation in favor of the conservation fund. He restated that the present proposal was to move the funds to the General Fund until 2015.

Councilor Smith said he believed they were only talking about allocation of future land use tax change revenues, and not funds currently in the Conservation fund.

Administrator Selig agreed, stating that once LUCT funds were placed in the Conservation fund, they were considered conservation funds.

Councilor Smith said this would need to be reflected in a motion, if one came forward.

Councilor Gooze asked when the change of use was considered to have occurred.

Administrator Selig said once the Town was aware a property didn't qualify for current use anymore, it had 18 months to send the bill. He said when payment was received,

wherever the allocation was, was where it was placed.  
Councilor Gooze asked what exactly triggered the tax being imposed.

There was discussion, with Councilor Stanhope noting that there had been a lot of litigation about what the actual point in time was. He said the 18 months was usually when the LUCT was negotiated, because it went to what the value was at that time.

Administrator Selig said if the Council were to change the allocation, it would go into effect on April 1, 2012.

Councilor Marple asked why the proposal was that the change in allocation would go until 2015, and it was noted that this would be explained.

Councilor Stanhope first said he had voted to send the LUCT to the conservation fund in the first place. He said the Town was now faced with a minimum of a couple of hundred thousand dollars to have to return to property owners as a result of abatements that had been granted. He said those funds would likely have to come out of the unreserved fund balance, which presently had about \$900,000 in it. He said this should be \$1.5 million, which meant the fund was currently under-funded by about 40%.

He said if an additional \$200,000 were withdrawn from the fund balance, it would be under-funded by about 60%, which would leave the Town exposed to a significant amount of risk if there was a major emergency. He said the LUCT were taxes deferred to a time when the land use changed, and said it should be a benefit to the taxpayers who had subsidized the discount in taxes paid on some properties over a long period of time.

Councilor Stanhope said the Conservation Commission currently had slightly more than \$300,000 in their fund. He said over more than two decades, they had expended about \$450,000 on land acquisition, and also made a contribution to the redevelopment of Jackson Landing. He said in no one year did they expend more than \$220,000, and said that amount was spent on one occasion, in 1999 for their contribution to the Roselawn property. He said there didn't appear to be any risk that there wouldn't be sufficient funding there, should the Council chose to make this change for that period of time. He said this was an emergency request, and said the alternative was to cut services, increase the tax rate to cover the shortfall, or take the money out of the fund balance. He said he hoped the Council would bring this to public hearing in order to hear from residents as to whether this was an appropriate use of the LUCT for addressing the shortfall. He noted that if a reasonable proposal for acquisition of conservation land or development rights came forward, he would support it and if necessary bond it if there weren't sufficient funds.

Councilor Stanhope said a problem the community faced was its tax rate, and said he didn't want to see services cut. He said this was why his name was on the Council Communication.

Chair Carroll said several members of the Conservation Commission were present, and suggested that they come to the table to speak with the Council.

Councilor Stanhope said he thought the meeting where the public hearing was held would be the appropriate time for them to do this.

Councilor Smith said there would be discussion on whether a public hearing should be scheduled.

Administrator Selig said this had been a very sensitive issue in the past, and said the Conservation Commission would like to provide its feedback at this stage in the discussion. He said if the Council heard their perspective and decided not to go to public hearing, residents wouldn't need to come in and voice their perspectives on the issue. He also said in speaking with Councilor Carroll, Councilor Smith, Councilor Mower, and Councilor Niman, it was thought that it was important that as they discussed this issue, they were speaking about it with the best of intentions. He said including the Conservation Commission members in the discussion furthered the understanding that the Council was trying to be open-minded as it dealt with some difficult fiscal issues.

Councilor Stanhope said to invite the Conservation Commission to speak and not invite other points of view didn't create total transparency and fairness.

Chair Carroll said the Conservation Commission was different than the general community. She said as far as she knew, the Conservation Commission wasn't informed until last Wednesday that this would be on the agenda. She said their meeting was on Thursday, and said putting it on their agenda and being here now was a tribute to them.

Councilor Niman said this idea had occurred in July, in a conversation with Councilor Stanhope, and it developed from there. He said originally they were going to bring a proposal up at the second meeting in August, but he couldn't be there. He said he had followed the procedure concerning the Council Communication for this meeting, and said he didn't want people to get the idea that this idea was cooked up three days ago and sneaked into an agenda.

He said at the agenda setting meeting, someone asked if there would be a public hearing, and he said that was fine. He said the Conservation Commission posed the question of whether this proposal should be moved on to a public hearing. He said Administrator Selig then did call him about the idea of hearing from the Commission, and said at the time, he was talking about the Chair of the Conservation Commission coming in.

But he said that had morphed into three Commission members, and a number of people in the room. He noted that he wasn't uncomfortable hearing from the Commission, but said there was justified concern that a group of people with a vested interest and specialized knowledge might put undue pressure on the Council without other points of view, to stop the proposal before it went to public hearing and the Council heard from everyone.

Chair Carroll said she found out on Tuesday that the Commission was invited to speak. She said if she knew Councilor Stanhope hadn't been informed about this, she would have contacted him. She apologized for this, and said it was more than an awkward



situation.

Councilor Gooze said the Commission did a tremendous job, and said he had been hoping to ask them some questions. He said he thought there would be someone from the Commission there to answer questions about things like projects coming up in the future.

Councilor Cote received clarification that this kind of situation, where a committee provided input to the Council on an issue, had been done before.

Chair Carroll said the entire Conservation Commission had come before the Council in 2007.

Councilor Cote said he still remained troubled. He said perhaps one member of the Commission could answer questions, but not present positions. He said it was patently unfair and non-transparent to hear just from them and not from those with opposing views.

Administrator Selig said at the agenda setting meeting, the conversation was whether there should be a public hearing. He said he had said there absolutely should be a hearing, and said he wasn't thinking at the time about sending an invitation to the Commission. He said he had thought that if the Council decided to have the public hearing, the Commission would then be invited to be there. But he said Chair Carroll, Councilor Mower and Councilor Smith felt strongly that the Council should include them this evening.

He said the Council didn't typically invite boards to sit at the table concerning issues that might affect them. But he said this topic had been given special consideration over the years, and the Commission had been invited. He said in terms of three members of the Commission being present, John Parry was the newly appointed Chair, and because he did not have a lot of background on this topic he was going to introduce Ms. Clyde and Mr. Sowers, who both had prepared comments. He said he wasn't thinking that they would sit at the table, but other Councilors had a different vision.

***Councilor Smith MOVED to extend the meeting time past the 10:30 adjournment time. Councilor Gooze SECONDED the motion, and it PASSED unanimously 8-0.***

Councilor Lawson suggested that members of the Commission make a brief presentation about the public hearing, and be available at the podium to answer questions.

Councilor Stanhope said he wasn't comfortable with this.

Chair Carroll noted that John Parry, the newly appointed Chair of the Conservation Commission, worked for the Forest Service and coordinated the urban forestry program. She said he had been a volunteer serving on the Regional Planning Commission and the Parks and Recreation Committee for many years.

Mr. Parry apologized for the misunderstanding, noting that he hadn't been sure how

informative he would have been to the Council on his own. He said Ms. Clyde was the expert on the Conservation fund, and Mr. Sowers was the expert on the LUCT, He said they didn't intend any problems with this.

He said the Commission met last week on this issue, and knew about it ahead of time so had time to discuss it. He said all members had significant concerns about the proposed change. He noted a letter from former Conservation Commission Chair Cynthia Belowksi when this issue came up four years ago. He said some of the concerns expressed by her were the same expressed now, although there were some changes. He said there was some new information.

He said at that time, as today, there was overwhelming support for the use of these funds by the Commission, and said based on the Master Plan survey results, the support for conservation was still there. He said Ms. Belowski's letter discussed projects funded, and said there were many new ones. He said the Commission thought they were a great investment, with a long-term payoff.

He also said the letter spoke about the use of the LUCT, and whether it was a reliable substitute for money going into the General Fund. He noted that it was one of the only sources of local and state funding for conservation, and was used to leverage much more funding from federal grants. He said without it, the Town would lose a lot.

Conservation Commission member Malin Clyde explained the reasoning behind having a few members of the Commission present. She said Durham was a conservation minded town, noting that 77% of the town had authorized the conservation bond. She noted that those were very different economic times. She said the Master Plan in 2000 was very supportive of conservation, and also said the responses in the recent Master Plan survey showed a strong consensus around protecting drinking water, preserving the natural setting, and land conservation. She said she was worried about the pausing of the funding for 3 years, and said things people really cared about might not happen without it. She reviewed expenditures from the Conservation fund in recent years, noting that it paid for a portion of the Mill Pond easement, a portion of the Roselawn farm project, and a portion of the Beaudette farm conservation easement. She said this was done without having to raise taxes, and said the funding allowed the Commission to act quickly. She said Durham's contribution to the total for all these projects was only about 16%, so it was heavily leveraged money.

Ms. Clyde acknowledged that these were really bad economic times, which among other things had affected the conservation funding field. She said there was no state funding, noting that LCHIP was on its last payout, and that the source water protection program, which was used to help pay for the Fogg project, was gone. She said what was left was federal programs, and said all of them required matching money, which made the importance of local or private funding especially important right now.

She said times were tough, but this also meant there were a lot of good opportunities for conservation. She said there were projects coming up that Commission members were

excited about and that were important for the Town in terms of protecting the drinking water supply and helping to shape the face of the Town for future generations. She said \$300,000 might seem like a lot of money, but noted that a lot of the projects had been done using the conservation bond money.

Ms. Clyde said no one would say that bonding right now was a good idea. She said the Conservation fund allowed the leveraging of money, and noted that there were some very talented grant writers and project partners who worked hard on their behalf. She noted that the Spruce Woods forest project was still out there, and said they were hopeful that this project would happen, and that the Commission would be able to contribute a small piece to make it happen. She said \$300,000 wasn't enough to ensure that they would be able to do the projects that were coming down the pike.

Councilor Gooze asked what they anticipated that the Commission would contribute to Spruce Woods.

Ms. Clyde said she didn't know but said when the grant proposal was submitted by the Trust for Public Land, Durham's contribution was going to be up to \$400,000. She noted that the Commission hadn't wanted to ignore the Beaudette project for a project like Spruce Woods, which was uncertain.

Councilor Gooze asked what the Town would do if the Spruce Woods property came on board, the Town decided to contribute \$400,000, and there wasn't that funding in the Conservation fund.

Administrator Selig said his understanding was that the Commission had been upfront with the Trust for Public Land about the potential shortfall. He said if the Commission wasn't able to provide the additional funding, perhaps the Trust for Public Land would seek to fundraise elsewhere, or the Commission would ask the Council to use some of the conservation bond authorization.

Ms. Clyde said there was about \$900,000 left of conservation bond authority.

Administrator Selig said the Trust for Public Land project would be subject to a full appraisal, and that he expected one done today would be much lower than the estimate provided some time ago.

Councilor Stanhope said the appraisal was premised on building a hotel out there, and was badly flawed. He said absent the various entities willing to pay the price that this appraisal had indicated, there was no guarantee the developer would accept a lower amount. He said he didn't think it was a reasoned assumption that the Spruce Woods project was out there with a high degree of probability.

Conservation Commission member Derek Sowers said in terms of the timing issue, conservation happened sporadically, which was why it appeared that the Commission wasn't spending money at times. He said the money needed to be there to match an

opportunity when it came up. He said if they took a hiatus for a couple of years, they would miss conservation opportunities that presented themselves. He said the realities were that local funding was key to bringing such opportunities to fruition, now more than ever.

He said about 69% of towns in the Seacoast region put LUCT into a conservation fund, and said of those, about 36% had 100% of the funds going to it. He said this fund was mitigating some of the negative aspects of development, so was directly matched with what they were trying to preserve in terms of community character, clean water, and the best wildlife habitat. He said he would hate to see that capacity go away.

Mr. Sowers noted that Durham was in difficult financial times, but noted that the current Master Plan said that under current zoning, full build-out wasn't that far out, and would be reached by 2028. He said this issue was partly about preserving options for the future, and said there was a limited window to protect some key areas.

He said there was very good consensus now about where those areas were, particularly emphasizing protecting current and future drinking water supplies. He said the Commission was honing in on addressing those areas, and said if they didn't have the resources to protect them, the opportunities would pass them by. He said it was a conscious tradeoff they were making. He said it would be nice to use the funds for the abatements, but said they should think about how well the revenue source aligned with that need.

He said if the Spruce Woods project came tomorrow, the Commission had said it would fund it up to \$400,000. He said there was already a demonstrated need for a key natural area that the Commission would like to protect for the community, with limited resources.

Chair Carroll noted that some people thought there was enough conservation land in Durham, around 24% of the land in Town. She asked why they needed more.

Mr. Sowers said the key thing was where the land was, and said there were compelling reasons to protect some land that wasn't protected now. He said a lot of the services the Town got now were free and were taken for granted, because people were keeping land in current use. He said if it was taken out of current use, the Town lost the public benefits, such as forests that provided clean water. He said if they had to pay more for clean water in the future, he didn't think that was a good tradeoff.

He also said what was counted as conservation land included UNH land, which had no legal protection mechanism on it, so wasn't truly permanently conserved land.

Councilor Cote asked if the bond could be tapped to make up the difference.

Mr. Sowers said it was recognized that there was still bonding authority, but said right now he didn't see people voting for it unless it was an absolute critical thing in their minds. He said the LUCT was dedicated for that purpose, and mitigated development.

Councilor Stanhope said that bond had already been voted on, so those funds were already available.

Mr. Sowers said he understood that the authority was there, but said a question was the Council's willingness to raise taxes to pay for it.

Councilor Stanhope said there had probably never been a better time to seek bonding for a project.

Councilor Marple asked if the taxpayer's association would agree to that, and Councilor Stanhope said that would be up to the Council after listening to the public. Councilor Stanhope said if taxpayers came forward and said the money should stay where it was, that was fine. But he said the issue wasn't the good the Conservation fund had done, or the Commission's intent. He said this was an economic decision, looking at the choices the Council faced. He also said he thought the Spruce Wood project had little possibility of ever going forward, because the value wasn't there, and the developer wouldn't accept the price a legitimate appraiser would put on the property.

Councilor Niman said Mr. Sowers had hit the essence of the issue, and said it was taxes one way or the other. He said there was nothing to stop the Town from continuing to acquire conservation easements and land. He said if the Conservation fund had been zero for the Beaudette project, the Commission would have come to the Council and ask for \$45,000. He said his guess was that the Council would have either revised the Budget, or bonded it, and the project would have happened.

He said he agreed with Mr. Sowers that it was easier to do a project if the funds were simply available in the Conservation fund. But he said it was problematic to say they didn't want to ask the taxpayers for the funds. He said in this economy, and because of the property tax abatements, the Town had to either raise the money, cut services, or take the money out of the fund balance.

He noted that Administrator Selig was talking about raising taxes to finance the shortfall. He said the question was whether to do it now, or at some time in the future because the LUCT was used now to finance the abatement shortfall, and so the Commission must then come to the Council for money to do a conservation project in the future, which might mean the Council would raise taxes at a later date.

He spoke further on this, and said his preference was to raise taxes at some uncertain point in the future and not now. He said there was a \$900,000 bond already approved, or the Council could amend the budget whenever it wanted to find the funds to support anything it wanted to do.

Mr. Sowers said this would essentially be a change in policy that had been supported by the Master Plan and voters. He said the proposal was for a temporary change, and said it would be hard to get back once it was gone. He questioned how many rules in Durham

had a sunset provision.

Councilor Niman said the motion would automatically go back after 2015, and said this wouldn't require a vote of the Council.

Mr. Sowers said it would be in the General Fund for several years, and then it would feel like they were losing revenue again, and they would need to raise taxes to make up for this. He said there would be opposition to that, and they would have the same discussion about the value of using that money for land protection.

Councilor Gooze asked when the Capstone project would come on board, and the LUCT from that land going out of current use would be available.

Administrator Selig it would be within 18 months. He said he anticipated that the LUCT would be around \$200,000. He said they could expedite the bill so it came in before April 1<sup>st</sup> of 2012, which would ensure that those funds went into the Conservation fund regardless of the outcome of this discussion. He also said they could delay issuance of the bill until after April 1<sup>st</sup> so it would be sure to go to the General Fund. He said the issue right now is really about where that \$200,000 was going to go to replenish the fund balance, or to the Conservation fund. He said they didn't know about other penalties that might come about in the meantime.

Councilor Gooze said he'd looked over the numbers, and had looked over the Master Plan survey results. He said he was a conservationist, but also was looking at the public, who were asking for help with taxes. He suggested that this should be done 50/50, and not at 100% going into the General Fund. He said with the amount of money coming from the Capstone project, this provided a good amount of money for the Conservation fund, and also for General Fund. He said he wasn't sure he'd go to 2015 with this, and might want to go to the end of 2014.

Councilor Lawson asked if the percent could be changed after the public hearing.

Administrator Selig said the public hearing wasn't required in this instance. He agreed with Councilor Gooze that his proposal could be made after the public hearing.

Councilor Lawson said it sounded reasonable, but said he still had more questions than could be answered now. He said he would like to ask questions at the public hearing, and then decide how to proceed.

Councilor Smith said Councilor Niman and Councilor Stanhope knew that what they proposed would agitate quite a few citizens, and some members of the Council. He said he would read the letter from Councilor Mower, and noted that she had been on the Conservation Commission in 2007, the last time there was an attempt to divert LUCT revenues.

Because I am not able to attend tonight's meeting and speak to this issue, I request that you ask another Councilor to read into the record this memo setting forth my reasons for objecting to the proposal to temporarily change the disposition of future Land Use

Change Tax revenues.

For the past two years I have been Council Representative to the Conservation Commission, and prior to that I was a member of the Commission. As you know, I have taken an active role in supporting the efforts of the Commission to carry out its State-legislated mandate to properly use and protect Durham's natural and watershed resources.

The Conservation Commission has reaffirmed a position communicated to the Council in 2007, which in turn reaffirmed the Council's decision in 2001 to allocate 100% of the Land Use Change Tax to the Conservation Fund. That letter stressed the fundamental point that allocation to the Conservation Fund carries out the intent of the supporting RSA. It also noted that "Funding the conservation account with 100% of the LUCT does not put an additional tax burden on the community to accomplish land conservation goals—the Town is funding the impacts of development from development itself." Those highlights are especially worth noting.

I would like to add other arguments for the support of the 100% allocation. But first let me address the basic argument set forth in the Council Communication on this agenda item. It links one-time property abatements to the Conservation Fund. Just what is that logical connection?

I don't think the connection is logical at all. The Capstone student housing development is not mentioned by name in the Communication, but it can be read between the lines. Since word first got out about the development's large scale, people have speculated about how much the removal of that parcel from current use would cost the developers in Land Use Change Tax penalty—eventually landing in the coffers of the Town of Durham.

One should instead be asking, "Is it not enough that the Capstone development will bring a significant increase to the tax base?" We know that it will compromise high-quality conservation values. Must the town now lose the opportunity to mitigate those losses by using funds intended to protect other natural resources to pay instead for a real estate market gone sour? I think not.

My arguments for retaining the 100% allocation to the Conservation Fund may be summed up in these keywords: *relationships, leverage, nimbleness, vision, and water.*

By the very nature of its work, the Conservation Commission is engaged in long-term relationships with landowners, whether for potential easement donations or land purchases or for stewardship planning and monitoring. It must also have a long-term relationship with the Town, whereby both entities commit to working through thick and thin to enable the Commission to do its job. It can serve the long-term interests of the community only if it has its trust, and only if it has resources to work with.

Leverage of these resources is critical for conservation projects. In fact, it would be hard to get a bigger bang for your buck than a dollar invested in the Conservation Fund. As the former volunteer Land Protection Working Group noted in its final 2007 issue of *Scenic Durham*, "For every \$1 of funds spent by the town, we have received more than \$3.20 in conservation value."

However, if this past year is any example, funding on the state and federal level will continue to dry up. At the same time, we are likely to face increased state and federal environmental protection scrutiny and possible stricter regulations, such as those for wastewater treatment relative to the impairment of the Great Bay. As a result, Durham's projects will face stiffer competition for fewer dollars in grant and matching funds. Those communities that have shown commitment to projects, i.e., that are willing to put money toward them, stand a greater chance of attracting outside support. In other words, leverage may be the name of the game, but if you don't have money to bring to the table, you can't play.

Dollars in the Conservation Fund allow the Town to be nimble—in responding to a

landowner who has finally reached a selling point in a year-long, carefully nurtured relationship. It allows the Town to be nimble in leveraging its dollars through seeking new sources of funding that have tight deadlines. If the Town had to go out to bond each time an appropriate opportunity arose, it would lose that nimbleness. The Town would also lose nimbleness as the elasticity of its bonding capability decreased due to outstanding conservation bonds.

Most, if not all, Conservation Commission projects reflect a vision of Durham that is based on building a legacy. Previous generations of Durham taxpayers recognized the value of resource conservation and took steps to protect resources for future generations, even as they paid significantly higher federal taxes than today's taxpayers do. It's time in turn for this generation to plan for and sacrifice its "wants" for the needs of future generations, as previous generations have done for them.

Finally, to me the most compelling reason for retaining the 100% allocation of Land Use Change Tax funds to the Conservation Fund is that conservation of land is inseparable from protection of water resources. Access to a reliable source of clean water will be the key global challenge for human health, social equity and economic stability in the not-too-distant future. All you have to do is imagine the prospect of limited access to safe drinking water that currently face many other parts of the world, and that we, too, may face in our lifetimes.

Three major conservation projects discussed in the last year, ranked high among the Commission's priorities, would protect portions of the Oyster and Lamprey rivers, part of Durham's drinking water supply. Since these watersheds drain into the Great Bay, these same projects would also contribute to its protection. What better use of Land Use Change Tax funds?

Why should we focus on water resources *now*? A project of the Society for the Protection of New Hampshire Forests titled "Population Growth and Land Use Change in the Granite State of New Hampshire Forests in 2010" notes:

*Recent studies of domestic water demand and groundwater recharge in the Seacoast region project a 54% increase in demand by 2025 (about 3.65 Councilor Coteion gallons per year), while climate change impacts are forecast to reduce groundwater supplies by 5% by 2025 (1 Councilor Coteion gallons per year). This will result in a water deficit in the region that will affect existing water users and future development potential and points to the need to manage and protect the natural systems that provide clean and abundant water.*

Disaster mentality? Unwarranted pessimism? I don't think so. We currently experience an excess of water—hurricanes and floods, no less—in our own region, so the scarcity of clean water seems, as a novelist observed following the Japanese nuclear disaster, "a distant hypothesis, improbable." But as demand grows and supply shrinks, we, too, will begin to think of water in a different way and wonder why we didn't take steps today to protect this essence of life.

We can talk about needing to protect our water resources, or we can do something about it. I recommend that we continue to allocate 100% of the Land Use Change Tax to the Conservation Fund, which will seek the good for the community through its efforts to protect our water resources. I would prefer the Council to drop this matter for once and for all, but if it wishes to continue the conversation, by all means, vote to hold a public hearing.

Councilor Smith said Councilor Niman had spoken about how the funds would go back to the Conservation fund by 2015. But he noted that Councils changed. He encouraged those who were new to the Council to vote to drop this matter this evening.

Chair Carroll said she would vote to keep the status quo. She said she saw the value of



the conservation fund, and said it was working.

***Councilor Gooze MOVED that the Durham Town Council does hereby schedule a public hearing on September 26, 2011 to gather input before deciding whether or not to adopt a proposed resolution related to a temporary change in the disposition of the Land Use Change Tax. Councilor Niman SECONDED the motion.***

Councilor Smith suggested a friendly amendment so that the motion would say "...temporary change in the future disposition of LUCT revenues."

Administrator Selig said he thought the intent was clear either way.

There was no second to Councilor Smith's motion and it was clarified that the intention of what he was saying was already in the motion.

Councilor Gooze said he wanted to be sure that at the time of the public hearing, there could be changes to the proposal, or else he wouldn't vote in favor of the motion now.

***The motion PASSED 5-3, with Chair Carroll, Councilor Smith, and Councilor Marple voting against it.***

Chair Carroll said the public hearing would be held on September 26<sup>th</sup>.

C. Other business

## **XII. Nonpublic Session (if required)**

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

Councilor Smith said if he didn't make his comments tonight, he would have to comment on Mr. Hall's comments immediately after what he said at the next meeting.

Councilor Cote said the following day, there would be someone from Homeland Security at Spruce Wood putting on an event for residents about preparation for emergencies. He also said the Police Department, Fire Department, and McGregor would be honored for all their efforts during routine events as well as emergencies. He said it would be good to have someone there representing the Town, when its staff was being honored.

Administrator Selig said he would be there.

## **XIV. Adjourn**

***Councilor Cote MOVED to adjourn the meeting, Councilor Niman SECONDED the motion, and it PASSED unanimously 8-0.***

Adjournment at 11:27 pm

Victoria Parmele, Minutes taker