

**This set of minutes was approved at the December 5, 2011 Town Council meeting**

**Durham Town Council  
Monday September 26, 2011  
Durham Town Hall - Council Chambers  
7:00P.M.  
MINUTES**

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

**MEMBERS ABSENT:** None

**OTHERS PRESENT:** Town Administrator Todd Selig

**I. Call to Order**

Chair Carroll called the meeting to order at 7:03 pm.

**II. Approval of Agenda**

*Councilor Smith MOVED to approve the Agenda. Councilor Mower SECONDED the motion, and it PASSED unanimously 9-0.*

**III. Special Announcements**

No special announcements

**IV. Approval of Minutes**

August 15, 2011

*Councilor Smith MOVED to approve the August 15, 2011 Minutes. Councilor Mower SECONDED the motion.*

Page 5, should say, "Before the sign was up, it was not an environment devoid of sign pollution."

Page 7, above VIII, should read "The Council stood in recess from 7:55 to 8:03 pm

Page 10, second to last line on page should say "...backed by Ginnie Mae"

Page 19, 6<sup>th</sup> paragraph, should read "He noted that there were landlords who turned over renters all the time and didn't have these problems."

Page 25, 2<sup>nd</sup> paragraph, third line, should say "He said he would propose to the Planning Board..."

*The motion as amended passed 6-0-3, with Councilor Cote, Councilor Marple and Councilor Niman abstaining because of their absence from the meeting.*

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

Councilor Gooze said that at the September 14<sup>th</sup> Planning Board meeting, there was discussion with Charlie French of UNH Cooperative Extension on the results of the Master Plan survey. He said these results were posted on the Town web page, in several different formats.

He said there was a public hearing on a proposed amendment to the Zoning Ordinance Table of Uses to allow single family residences in the Professional Office district. He said the Planning Board then recommended this Zoning change to the Council on a 6-1 vote, and noted that he had voted against it.

Councilor Gooze said the Planning Board went through the design review process for an application for an 8 lot conservation subdivision on Mill Road with developer Jack Farrell. He said this proposal was somewhat different in that there wasn't a single conservation area proposed as part of the development, and instead the conservation land was proposed to be divided among the lots, based on the lay of the land. He said there would be some sharing of curb cuts.

Councilor Mower said she assumed that the Police Department would review the proposed project for traffic considerations.

Councilor Gooze said there was a presentation from the Nevada Land and Water Company concerning a site plan application related to a proposal to purchase the Cumberland Farms property, revamp it and lease it for an unspecified type of retail sales.

He said at this same Planning Board meeting, Administrator Selig and Business Manager Gail Jablonski introduced the 2012 to 2021 CIP to the Board.

Councilor Stanhope said on most mornings, he saw the public works cleaning up litter in the Central Business District. He said in looking at the accumulation of litter in areas other than that, he had noted that as one traveled along Madbury Road up to about the Library site in the early morning on weekends, there were a certain amount of alcohol containers, food boxes, etc., in the public way, and not on peoples' properties.

He said the conflict was whether the Town cited individual property owners there to maintain the public way, or instead provided a service similar to what it provided in the Central Business district. He said picking up litter along Madbury Road and some other streets would go a long way toward addressing this problem. He noted that the Town was currently faced with Budget shortfalls, but said if they were picking up trash elsewhere, it made sense to do it here as well.

Councilor Mower said she concurred with Councilor Stanhope's observations, and said he'd suggested an interesting idea. But she said on that stretch along Madbury Road, there was litter on private property as well, including in some egregious situations that might be repetitive. She said a combination of different efforts was required to address the problem.

Councilor Stanhope agreed.

Councilor Gooze said the Code Officer had given out over 30 trash violations. He also noted people he knew who collected some of the trash, so there was some public works happening for free. He suggested that others out walking could do the same.

Councilor Mower said there were walkers in many parts of Town who were doing this.

Chair Carroll said Administrator Selig had taken note of what Councilor Stanhope had said, and said this was an issue on which there should be continued discussion. She said it would come up during the Budget season.

Councilor Marple said the Rental Housing Commission had met the previous Wednesday, and said there was a heated discussion with the landlords concerning the health and safety inspection idea. She also noted that arrests on weekends were up 30% compared to last year.

Councilor Cote and Administrator Selig said that included in those arrests were more incidents of violent assaults, people going to jail, and people being admitted to local hospitals.

Chair Carroll acknowledged that there had been a dramatic increase in these incidents.

Chief Kurz said the Police Department had recently been busier than it had been in many a fall.

Councilor Stanhope spoke about the fact that the Police Department hadn't filled a vacancy in order to take its fair share because of Budget issues, and also noted that there had been some recent break-ins in Town. He said as things were cut back, it was to be expected that there would be a higher incidence of crime and violence in the community.

Councilor Cote said he'd recently run into the mason who replaced the stone wall along Pettee Brook Lane, and had complimented him on the remarkable match he'd done.

Councilor Gooze commended Anne Lawing, UNH Senior Vice President of Student Affairs, for her response concerning a recent incident near his home, involving noise problems on Strafford Ave. He provided details on this, and said Ms. Lawing did a tremendous job in trying to work through problems like this.

Councilor Gooze said Smith Chapel was now looking great, with its new slate roof and the work done on the windows.

He also noted that as he recently came out of the new Thai restaurant located downtown, a couple from Northwood came out and in answer to his question, said they had come to Town for the specific purpose of eating there.

Administrator Selig said the next discussion with the Planning Board regarding the CIP would take place at their meeting on October 5<sup>th</sup>.

He said Police Chief Dave Kurz would come in to speak with the Council about the recent increase in unruly activity in Town. He said there weren't plans to scale back Police Department staffing on weekends, given this level of activity.

Administrator Selig said Household Hazardous Waste day would be held on October 15<sup>th</sup>, and he provided details on this.

He noted that Durham Day was held a week ago, and was a very nice event. He said some very positive feedback had been received, and he thanked the Parks and Recreation Department, Parks and Recreation Director Sandra Devins and other volunteers for all of their hard work on this event.

Administrator Selig said Attorney Dana Bisbee would attend the next Council meeting in order to provide the Council with an update on the Instream Flow regulations and the 401 certificate.

Chair Carroll said on Sunday, Doug Bencks, who was a UNH planner as well as the Chair of the Library Board of Trustees, had led an architectural tour of the UNH campus. She provided details on the tour, stating that it was a lovely event, and a great opportunity for people in the community to learn about the buildings they passed every day.

## **VI. PublicComments (NLT 7:30 PM)**

**Bill Hall, Smith Park Lane**, said there were a number of people in State government who were rather sympathetic to Durham concerning the 401 issue. He said he had met with Andrew Renzullo, the head of the Natural Resources Committee on this issue. He said Mr. Renzullo said he believed that DES was not of a mind to defend any restriction of drinking water for Durham, and said the Town needed to apply for relief.

Mr. Hall said the idea that the Town would drain the Wiswall reservoir to supply Town water was crazy, and he provided details on this. He also noted that the reservoir had been drained the past two summers, yet there had been no study of possible environmental stress as a result of this. He said one would think that those who were concerned about that possibility would go out and document it, but he said they didn't want to do this because there was nothing wrong.

Mr. Hall described the results of taking water from the Oyster River, and said he hoped there was a rigorous campaign to rid the Town of the drinking water restrictions on the Lamprey River.

Councilor Smith said he had heard Mr. Hall speak on the 401 issue many times, and said he didn't think he should have had to speak before the Council so many times. Councilor Smith said after the last meeting, he asked Administrator Selig to do what he could to make this unnecessary.

He said he didn't expect that Administrator Selig would then decide to have Attorney Bisbee come in and tell the Council some nice, comforting things. He said it was necessary at this point for Administrator Selig to do what he could to make it clear to DES that the 401 certificate was troubling to many members of the community and some members of the Council, and that they wanted DES to do something about it.

Councilor Smith said the Instream flow regulations were almost incomprehensible, and said he didn't expect that if there was a presentation from Attorney Bisbee, they all would learn anything especially useful. He encouraged Administrator Selig to reconsider having Attorney Bisbee speak to the Council.

Councilor Stanhope said Mr. Hall had made a somewhat persuasive argument that the Council had failed to explore its options thoroughly. He said he was troubled that the Town had retained Attorney Bisbee, who had formerly worked at DES. He noted that the Town had made a mistake in hiring someone who had worked at the Department of Revenue Administration, who reviewed Assessor Dix's work and determined that he was more than competent. He said the Town was now paying the penalty for this, in the amount of more than \$250,000 in returned over-assessments.

He said he saw no value in hearing again from Attorney Bisbee, and said if they were going to hire legal assistance, it should be someone who had effectively challenged DES, and was capable of taking an adversarial position and advising the Council if they had strong grounds to proceed.

Councilor Stanhope said he hoped that at some point, Mr. Hall wouldn't have to come before the Council. He noted that he was disappointed in the way Mr. Hall referred to the Town Administrator, who he had great respect for. But he said it was time to put an end to this and seek the relief Mr. Hall had referred to, which the Town was entitled to.

Councilor Niman said he had a different perspective. He said Mr. Hall was correct that this was more about politics than about science. He said the Town could hire an attorney, take the State to court, and perhaps reach out to certain State legislators and get DES in line to forget about the whole thing.

He said the other strategy, which the Town had consciously adopted, was to work with DES to make concessions favorable to the Town that it could live with. He said if one was going to do that, it made sense to hire the former head of DES to represent the Town, in order to perhaps cut the best possible deal with DES. He said what he took from Councilor Stanhope's comments was that the Council should take another look at this strategy, and direct Administrator Selig to adopt a different strategy. He said perhaps the Council could discuss this at another time.

Chair Carroll said there would be more discussion on this issue at the Council's next meeting.

Councilor Stanhope said he was comfortable that if there was some active dialogue with DES, that would be one thing. But he said Attorney Bisbee was before the Council three years ago. He asked what a reasonable period of time was, and said at some point, the question needed to be asked. He said this might be an opportune time, given that the Legislature currently had a more libertarian perspective.

Administrator Selig said Attorney Bisbee was before the Council approximately one year ago, and said at that time, the Council consciously voted to not pursue legal action, and instead to work proactively with DES as part of the Instream flow process. He said this was

done, based on Attorney Bisbee's advice that this was the best course of action for a variety of reasons, which was explained to the Council in nonpublic session.

He said the purpose of the update at the next Council meeting was to ensure that anything done with DES was done in a very open and transparent way, as compared to accusations about the process that took place ten years ago concerning the 401 certificate. He said he was working very hard to ensure this, and said he wanted the Council to fully buy into what they were doing. He said the goal should not be to appease Mr. Hall, and said it should be to focus on the water users in Durham and the health of the Lamprey River.

Administrator Selig noted that former DES staff Paul Currier was before the Council a year ago, and indicated that when the Instream flow rules were put in place, the 401 certificate would go away. He said he had determined two months ago that DES had changed its perspective on this, and was prepared to include a line in the Instream flow regulations that referred to the 401 certificate.

He said the question for the Council was whether it would be satisfied with that solution, or if it instead believed that the Town should fight to abolish the 401 certificate. He said the Town had been advised by several attorneys over time that this would be a very challenging process. He said he wanted to check in with the Council on this before they went any further.

Councilor Mower asked whether the Council should have a discussion before inviting Attorney Bisbee to speak with them.

Administrator Selig said he was simply trying to get the best information to the Council in a timely way. He also said he agreed with Mr. Hall that the 401 certificate did not have merit. He said the Town had been living with it for many years, had argued strenuously to get rid of it, but had not been successful.

**Paul Schlie, Foss Farm Road**, said that regarding the 401 certificate issue, his insight, which was better than most, was that the initial restrictions imposed on the Town were baseless and were arbitrarily imposed by a federal agency. He said this was something the state should not heed, and he also spoke about the role the Town had played in regard to the original restrictions.

He said this was not done in Durham's interest, or the water users' interest, and also said various actions by the Town administration over the past ten years weren't in their interest either. He said there were State legislators who were willing to be helpful to the Town if requested, and said it was the Town's obligation to pursue this through reasonable avenues.

Mr. Schie said that regarding the proposed change in the disposition of the Land use change tax, all revenues should go into the General Fund. He said all possible uses of this revenue should compete for it, and said this was in the best interest of the taxpayers.

He said the overriding problem was that the Town had an expense problem that it hadn't gotten control over. He said generally there was an excessive payroll that needed to be addressed. He said over the past decade, the Town had continued to hire people when it shouldn't have, and said this needed to be addressed. He also said there was a propensity in

Durham to explore pet projects, and said this needed to be stopped. He said the Town should be under budget but was not, and said they needed to get their act together.

He said he greatly admired those contributing to the fund for the new Library, but said the current plans were absurd, and were way beyond the Town's means and the taxpayers' obligation to fund it. He said this matter should be tabled, and said no one had the right to impose financial burdens on others, by majority vote or otherwise.

**Hillary Scott, Davis Ave**, said she was trying to get an idea of how many parking spaces there would be for the new Library. She said if the building was in fact going to be built, she wanted to know that there would be enough parking to handle an event, and also if there would be enough room for possible future expansion. In addition, Ms. Scott asked that the Library staff consider the acoustics for the building, for music events, etc. She said if the acoustics were good, there might be more donations.

**Karl Van Asselt, 17 Fairchild Drive**, said he appreciated that the Council was looking for ways to make up for the shortfall in current revenues. He asked that they consider the potentially devastating increases in property taxes over the next 3-5 years. He said finding an alternative source of revenue was critical.

He noted that UNH students lived throughout the community, in UNH facilities and private apartments and buildings. He said many of these were grandfathered and were recognized as student rentals. He also said a large and unknown number of rooms in accessory apartments in owner-occupied single family homes were rented to students. He said this was operating a business.

He said placement of students in these houses increased the cost to residents to provide Town services. He reviewed these services, and said in recognition of this impact, some communities had elected to charge a fee to the homeowner, who was operating a rental business. He said to be fair, some houses with those facilities, especially accessory apartments, were assessed accordingly.

But he said many of them, especially those with rented rooms, were not. He asked if for those who were being assessed and paying, it was a fair and direct correlation between operating the business and the services demanded. He said he didn't know but said this should be looked at. He said if the Council was willing to look at this concept, he suggested asking the Rental Housing Committee to study it and then have it come back to the Council.

Mr. Van Asselt said he wasn't interested in fees and charges just to raise revenue, but said of there was a potential source of revenue that corresponded to town services supported by all property taxpayers, which he would argue they had here, this should be identified. He said such an investigation wouldn't be popular initially to those directly affected, but he said being unpopular was sometimes needed in order to get things done.

Councilor Marple noted that the Rental Housing Commission had looked into the ideas as rental properties as businesses.

Administrator Selig said there was no authority to assess a fee. But he said the Town did assess a property based on its highest and best use. He said that might or might not impact the valuation of the property. He said if single family home non-owner occupied properties were used in a lawful way, the highest and best use was as a single family home. He said the reality was that many were used illegally, with more than three unrelated there, which drove up the price. But he said the Town could only tax the property at what it was lawfully able to be used for. He said the same would apply to an owner occupied rental, and said this was looked at on a case by case basis.

Mr. Van Asselt said this was partially correct. He said the idea needed to be brought back to the RHC, and said he didn't think the Town was not in a position to make some kind of fee. He said they all were aware that rooms had become a popular student rental. He said most of the accessory apartments were assessed. He said when he looked at the four streets around him and realized there were 22 students living in rooms there, he had to ask what this did to the demands placed on Town services. He said this needed to be looked at, and he spoke about some communities that had imposed fees.

Councilor Gooze said he would respond to this idea during the extended Roundtable discussion, and said he had a lot of information on it.

Councilor Stanhope left the table at this point.

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

- A. Shall the Town Council, upon recommendation of the Administrator, approve a special event permit application submitted by the UNH Wildcat Marching Band to close a portion of Main Street for the band to march from Main Street in front of Thompson Hall to the entrance of Cowell Stadium during 2011 UNH home football games?

B.

***Councilor Smith MOVED that the Town Council, upon recommendation of the Administrator, does hereby approve the special event permit application submitted by Casey Goodwin, UNH Marching Band Director, requesting that a portion of Main Street in front of Thompson Hall to Cowell Stadium be temporarily closed for the UNH Marching Band during the UNH home football games scheduled as follows:***

***Saturday, October 1, 2011, 11:25 pm; Saturday, October 8, 2011, 11:20 am; Saturday, October 29, 2011, 11:20 am; Saturday, November 5, 2011; 11:20 am; Saturday, November 19, 2011, 11:20 am.***

***The motion was SECONDED by Councilor Mower, and PASSED unanimously 8-0.***

- B. Shall the Town Council adopt a schedule of supplemental meeting dates for the purpose of deliberating the proposed FY 2012 Operating, Capital, and Special Fund Budgets and the 2012-2021 Capital Improvement Plan, and schedule a public hearing for the proposed FY 2012 budgets for Monday, November 14, 2011?



***Councilor Smith MOVED that the Durham Town Council does hereby adopt the following schedule of special meeting dates, in addition to its regular legislative meeting dates, to deliberate, discuss, and take action on the proposed FY 2012 Operating, Capital, and Special Fund Budgets and the 2012-2021 Capital Improvement Plan:***

***Monday, November 14, 2011, 7:00 pm; Monday, November 28, 2011, 7:00 pm; Monday, December 19, 2011, 7:00 pm (if necessary)***

***and does hereby schedule a Public Hearing for the proposed FY 2011 Operating, Capital, and Special Fund Budgets for Monday, November 14, 2011, in accordance with Section 5.3 "Budget Hearings" of the Durham Town Charter.***

***The motion was SECONDED by Councilor Mower, and PASSED unanimously 8-0.***

Councilor Stanhope had left the room at 7:54 pm, and was not present for the vote.

## **VIII. Committee Appointments**

- A. Shall the Town Council appoint Steven Weglarz, 19 Cedar Point Road, to the Durham Energy Committee?

***Councilor Mower MOVED to appoint Steven Weglarz to the Durham Energy Committee. Councilor Marple SECONDED the motion.***

Councilor Mower said Mr. Weglarz had already attended some meetings, and had been an active participant. She said his participation on the Energy Committee was welcome.

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

- B. Shall the Town Council appoint Nathan Trauntvein, 15 Griffiths Drive, as a regular member to the Parks and Recreation Committee?

***Councilor Marple MOVED to appoint Nathan Trauntvein as a regular member of the Parks and Recreation Committee. Councilor Cote SECONDED the motion.***

Mr. Trauntvein said he'd just moved to Durham. He noted that he'd been the recreation director for a small city about Durham's size, and said he had just started as a professor of Recreation and Parks management. He also said he'd attended some Parks and Recreation Committee meetings.

Councilor Gooze said he appreciated the fact that Mr. Trauntvein had volunteered for this position.

Chair Carroll said the Parks and Recreation Committee had been doing a wonderful job this year, including their work on Durham Day.

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

- C. Shall the Town Council move Albert LaRoche, a regular member on the Durham Agricultural Commission, to fill the remaining alternate member term vacancy and appoint Raymond LaRoche, Jr. to fill Albert LaRoche's regular member term?

***Councilor Smith MOVED that The Durham Town Council does hereby move Albert LaRoche from his current regular member position on the Durham Agricultural Commission to fill the remaining alternate member term vacancy, said term to expire on April 30, 2013. Councilor Mower SECONDED the motion.***

Councilor Smith noted the email from Theresa Walker that explained why Albert LaRoche was stepping aside to allow his nephew, Raymond LaRoche, to serve as the regular member.

Chair Carroll also noted that Raymond LaRoche also wanted to serve as the Vice Chair of the Agricultural Commission, and said it was wonderful that he wanted to take on this responsibility.

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

***Councilor Smith MOVED that the Durham Town Council does hereby appoint Raymond LaRoche, Jr. to fill the regular member term vacancy of Albert LaRoche, said term to expire on April 30, 2014. Councilor Gooze SECONDED the motion, and it PASSED unanimously 8-0.***

## **IX. Presentation Items**

- A. Update on Durham Public Library fund-raising and design efforts – Doug Bencks, Chair Carroll, DPL Board of Trustees

Mr. Bencks spoke before the Council. He said they began moving forward 15 months ago when the property was purchased, and had gone through a detailed design process that results in a firm cost estimate. He said they began fundraising in April, with a goal of raising \$900,000 in addition to the \$1.2 million the library had previously received. He said that meant \$2.1 million of non-taxpayer money would go toward the project.

He said they had raised over 2/3 of the \$900,000 goal as a result of the work of dedicated fundraising volunteers, and some very committed people in and out of the community who had given generously. He said they were well on their way, and said over the next few months they would reach out more broadly to the community and ask them to give in whatever way they could. He said one donor had already given \$100,000 and had asked that the community match this over the fall with smaller gifts. He said they were very optimistic that they could do this.

Mr. Bencks said the intent was that they would be prepared to go to the voters in March to consider a bond issue for \$2.7 million of public money to fully realize this project. He said the Trustees looked forward to the opportunity at public hearings to go into as much detail on the project as people wanted. He said a preliminary analysis had been done on the impact of the bond on tax bills.

Councilor Mower asked how many donors there were in terms of indicating grassroots support, and Mr. Bencks said 80 people were responsible for \$644,000 of the donations. Councilor Mower asked how the \$2.1 million figure had been determined.

Mr. Bencks said they had the \$1.2 million in hand, which included a \$0.5 million bequest from Margery Milne about three years ago. He said the Trustees had then done a feasibility study, and got some idea of what was a realistic target was in terms of donations. He also said a year ago when they submitted information for the CIP, they said the proposed cost would result in a \$2.7 million bond issue.

He said when they got into the design, they had seen that in order to do the library they were talking about, it was realized that the cost would be somewhat more. He noted that with the additional fundraising that would be done, they would be able to keep the bond cost the same.

Councilor Gooze said if they hit the \$900,000 mark they would continue on, and if they got up another \$100,000-200,000, there was the chance that the bond amount would be less.

There was discussion about what the time frame for donations would be, in order to fit with the bond process.

Administrator Selig said if the \$2.7 million was approved, and subsequently the Trustees raised more than \$2.1 million in donations, the Town wouldn't have to utilize the full authority of \$2.7 million, and could issue debt for less.

Mr. Bencks also said that as bids came in, they might be able to lower the \$2.7 million bond figure, noting that it was a maximum number

Councilor Marple asked Mr. Bencks to provide a quick idea of how much the new library would cost residents per month and per year on their tax bills.

Mr. Bencks said using numbers from the Business Office, it had been determined that cost for a house assessed at \$300,000, at the most would be \$70 per year, based on something more than a 10 year bond. He noted that the length of the bond hadn't been finalized yet.

He also explained that a detailed analysis had been done on the operational costs for the library after it was built, and noted that it was a bigger building and would require a few more employees. He said the Town currently paid \$56,000 per year in rent for the current library space, and said the additional operational costs would be offset by the savings on this rent. He noted that the new library would be open the same number of hours per week.

Chair Carroll referred to a question that evening from a member of the public about parking spaces, and the acoustics issue.

Mr. Bencks said the plan included 50 spaces on site. He said for big evening events, there were additional parking spaces by the Middle School. He said it was an easy walk, and said the project had identified ways to enhance the safety of that walk. He said it was felt that

with this parking plan, the library could accommodate large events where there might be 100 people.

He said they hadn't yet gotten into the detail of acoustics, but said it was the intent to create a separation so that a reasonable level of music sound would not interfere with the operation of the library.

Councilor Stanhope returned to the table at 8:14 pm.

Chair Carroll thanked Mr. Bencks for the update.

The Council stood in recess from 8:15 to 8:25 pm.

B. Thomas Kelly, UNH Office of Sustainability

Administrator Selig noted that when the Council had adopted its goals in May of 2011, the #1 goal was to pursue long-term economic and environmental sustainability. He read the wording of this goal out loud.

He explained that Chair Carroll had been working to have Mr. Kelly speak with the Council for a number of months, and said this had no correlation to the land use change tax agenda item in terms of scheduling. But he said in some ways it was related to it.

Mr. Kelly said he would share from a conceptual perspective some of what was behind the detailed sustainability related projects at UNH. He said UNH had the first university wide program in the nation to integrate sustainability into the whole fabric of the institution. He said sustainability was a very big and complex topic, and said it was also a buzzword, so had all the problems that came with that.

He said to shift the discourse away from the sense that sustainability was another word for environment, the question had been asked what it took to sustain human beings and allow them to flourish as a human community, in a way that didn't preclude future generations from flourishing. He said underneath all of this was an intergenerational ethical obligation into the future, and in many ways into the past.

Mr. Kelley said these questions had been asked throughout history, but said the difference was that humanity now constituted a geological force on a planetary scale. He said humans were now operating in a human dominated climate system and hydrological system. He said this meant that collectively, they had to reason in a different way in order to take into account these impacts. He said this had profound for education, science, research and basically everything they did.

He said the sustainability concept came about as a critique of the development model that arose after WWII and began operating globally, which produced enormous amounts of wealth but also created tremendous inequality and ecological damage on a significant scale. He said that model came into questions in the 1970's, with the environmental movement. He said the Brundtland Commission in the 1980's coined the definition of "meeting the needs of the present without compromising the ability of future generations to meet their needs". He said in 1992 there was the Rio Earth Summit, in 2002 there was Johannesburg

summit, and he also said there were the Millennium development goals at the end of the millennium.

Mr. Kelley spoke about the various incentives in place in institutions to miss the big picture and interconnections, and to instead focus narrowly. He described a framework that included four key systems: climate and energy systems; biodiversity and ecosystems, food systems, and the cultural system, and that also looked at the interaction of all of these systems simultaneously. He said sustainability was sustaining the integrity of all of these systems simultaneously. He said it was a simple but important architecture to remind people not to think about things in isolation. He said it had enormous implications for doing things in a different way, across society.

He said at the University, this framework had been integrated into the CORE (curriculum, operations, research, and engagement.) As an example of how this worked, he said the University had established the first organic dairy research farm in the country. He noted that when he arrived at the University, there was a divestment away from agriculture, but said this had changed dramatically over the past decade.

He said this framework, if done right, helped to anticipate the future, as exemplified by the fact that there had now been a food revolution, and local agriculture was back in a very significant way. He said the University was now investing in it in a significant way, and said federal agencies were also doing this. He also said this was not being done in isolation, and instead was being done in the context of climate, ecosystems and culture.

He said that in the curriculum area, a dual major in Eco-gastronomy had been established, where students from any primary major could study the interaction of sustainable agriculture, cuisine and food entrepreneurship, and nutrition. He provided details on the importance of this interaction. He said the University was trying to put together educational resources and programs like this that emphasized the interactions. He said they didn't replace specialization, but were a necessary complement to specialization.

Mr. Kelley said in the town or university setting, it was important to have mechanisms in place to help them see the connections, so problems weren't solved in a narrow way. He said in the areas of curriculum and research, there was a sustainability research collaborative, which involved faculty from across the campus who organized in a completely integrative fashion in order to address the challenges of sustainability.

He said an institutional change had been made at UNH in order to organize this more formally, noting that it had been taking place to a certain extent on an informal basis in the past. He said more than 50 faculty were involved, and said there was a commitment among them to work with the Great Bay ecosystem as part of their efforts. He said many of the faculty had previously worked with ecosystems in other parts of around the world.

He said the University was currently designing a dual major in Sustainability, where students from any primary major could take this to complement their specialization with a broad, integrative framework that could help contextualize specialized knowledge.

Mr. Kelley noted that an energy task force that had been developed, which he said some residents of the Town had been a part of. He said it brought people together from different parts of campus to look systematically at energy and greenhouse gas emissions. He said it had allowed the establishment of a wide variety of policies, including a fund that invested in energy efficiency.

He said there was an ecosystem taskforce that focused on land use, water resources, etc. and said a food system taskforce would be established this year. He also said a cultural task force would be established.

He spoke about the University's goal of developing a global sustainability outlook among all students, regardless of their specialization. He said students would learn about the earth systems perspective, the public health perspective, the citizen of the world perspective, and the engaged intellectual perspective. He provided details on some of the things that were considered as part of each of these perspectives.

Councilor Mower asked Mr. Kelly to address the difference between resilience and sustainability.

Mr. Kelly said resilience had more of a technical connotation, but was an important part of sustainability. He said resilience was considered in terms of a something like a watershed, or a population. He said sustainability also had an historical component, looked at what it meant to develop, considered quality of life issues and how to value and support them.

Councilor Stanhope noted the importance of looking at the big picture. He said Mr. Kelly's responsibility was to meld parts of the University that might previously have been narrowly focused, and asked if it was a challenge to get people to look at things globally.

Mr. Kelly said it was a challenge, but said UNH was a very unique place in that there have been people working across those boundaries for decades. He said the challenge was how to go beyond the people who were already doing that work, and to institutionalize it.

He noted that the National Science Foundation now had a large commitment to sustainability science, which was explicitly about the interactions. He said the Foundation was discussing the idea of creating sustainability research networks that could cut across all disciplines, and could achieve the knowledge needed to support decisions leading to economic, environmental and cultural sustainability. He said the Foundation was also making reference to the emerging disciplines that could come out of this work. He said this kind of thinking was now in the mainstream.

Councilor Mower noted that economic sustainability wasn't specifically identified in the presentation, and asked if there were plans to work with the Business School, etc.

Mr. Kelly said he had been doing this since he had been at UNH. He said sustainability included economics, and said it didn't happen if economics wasn't reconciled with the ecosystem, the culture, etc. He said the lesson of this whole period of history was that they couldn't have just one of these things in isolation. He said sustainability projects at UNH had a very specific economic component.

He spoke about the fact that the ecosystems taskforce wanted to look at a 20-40 year time frame concerning water. He said all of the hydrological patterns were shifting, and said considering that there might be lengthy annual droughts in the future, a question was what needed to be put in place to ensure the resilience of the watersheds, under very different precipitation patterns.

Mr. Kelly said they had to also think about this in a way that worked economically, and he noted that the economic cost of not taking care of these things would be substantial. He said they needed to balance short-term and long-term, and environmental and economic, and said in order to do this, there needed to be a community of shared knowledge and value.

Chair Carroll asked Mr. Kelly how other municipalities he visited were grappling with these concepts.

Mr. Kelly said although there was no formal curriculum, they did it in a way that was similar to what the University did. He said people were very concerned about energy, air quality emissions, food systems, transportation, etc. He noted that the Farm to School program was run out of the Sustainability Academy at UNH and was a national movement to put quality and health back into school food systems, and was tied to local and regional farms. He provided details on this.

He also said there was the question of what a town wanted to sustain over the long-term in terms of a tangible and intangible heritage, which Durham had had a lot of discussion about. He said municipalities and agencies, nonprofits, and for profits were looking for young people who knew how to grapple with these issues, thinking laterally and working collaboratively.

Councilor Mower asked if there had been internal discussions at UNH about working with either the Town or the Oyster River School system to improve sustainability in the broader community. She said those living outside the UNH community would like to see some permeability to that bubble.

Mr. Kelley said absolutely, and said the Town had representation on some of the task forces.

Councilor Mower said it would be good for the Council to hear from those representatives if possible.

Mr. Kelly said sustainability was a positive, proactive set of issues that the University and Town could move forward together on. He said the long-term water issue was a really important issue that they could work together on.

Chair Carroll thanked Mr. Kelly, noting that the Council worked with big ideas but also worked with a lot of the details. She said it was good to have someone come in and speak about the big picture, and also said it was nice to be reminded that the University was right down the street. She suggested that there might be some residents calling to sign up for a course.

Councilor Gooze noted that the Oyster River School District had a sustainability committee, so there were connections that could be made between them and what UNH was doing.

Mr. Kelly said there had been communication for a long time with them, but said it was important to continue to make that link.

The Council stood in recess from 9:00 to 9:10 pm.

## **X. Unfinished Business**

- A. **PUBLIC HEARING AND POSSIBLE ACTION** on a proposed resolution to temporarily change the future disposition of the Town's Land Use Change Tax (LUCT)

*Councilor Smith MOVED to open the public hearing. Councilor Mower SECONDED the motion, and it PASSED unanimously 9-0.*

**Emma Rous, Adams Point Road**, said the voters approved a study committee in the last election that followed food, transportation and energy, and said they were starting to have public meetings to share the information they hoped to recommend to the School Board.

She said that regarding the charge of sustainability that included supporting the tax base and preserving the Town's assets, these were not contradictory goals. She read a letter into the public record from her husband Walter Rous, which expressed this. The letter noted that the Capstone project was converting a large amount of land from current use to developed land, and would result in a moderate amount of land use change tax and a large increase in property tax revenues. Mr. Rous's letter said he hoped they would let the current system function as it should. It said the one time land use change tax would find its way to projects that would help compensate for that conversion, and the much larger increase in property tax revenues would be available for the town budget every year.

Mr. Rous's letter said projects like Capstone were approved against a background of existing rules and assumptions, and to change the rules after the fact betrayed the spirit in which such a project was approved. The letter summarized that land use change tax money, if turned into a conservation project, added to the value of Town by adding to its natural resource assets.

**Dudley Dudley, Woodman Road**, read a letter in opposition to the proposal, and read the names of the 87 people who had signed it, representing 55 families. She noted that about 38% lived outside of Town, and about 62% lived in Town. The letter reviewed the numbers involved, and said they indicated that it was not the case that diverting the LUCT funds to the General Fund would result in significant tax relief for residents. It also noted the many benefits of keeping the LUCT in the conservation fund.

**John Parry, 5 Denbow Road**, noted that he was on the Conservation Commission. He showed a slide of conservation and public lands in Durham, and said permanent conservation land represented 27% of the land area of the Town, UNH land accounted for 13%, the developed public land portion was 3%, and the developed and undeveloped private land accounted for 57%.



He said land conservation was a good long-term investment, and provided a good return to the Town. He said it was hard to quantify the benefits of conserved land, but dollar figures could in fact be put on them. He said one reflected a reduced cost for services, noting that residential property development didn't always pay its way in terms of the services it required. He said a certain amount of open space land in a Town could therefore be a cost savings.

Mr. Parry said another way to look at the cost benefit of conservation land was to look at the environmental services it provided, such as improved water quality and stormwater management, which related to higher property values. He noted past discussions on the need to dredge the Oyster River and the high cost of doing this, and said a big cause of sedimentation there was new development as well as older residential land.

He read a letter from Conservation Commission member Jamie Houle, which discussed in great detail the value that land conservation provided in protecting the natural services that intact ecosystems provided for the Town. It noted that targeted conservation lands adjacent to the Oyster River and Lamprey River were projects the Conservation Commission was actively pursuing using the LUCT funds and said if these funds were gone, it would put a halt to them. He said an increase in property taxes would then be required if conservation lands were to be purchased. He said this would ultimately charge the bill to taxpayers rather than to developers. He urged the Council not to make this change.

Mr. Parry said a good body of evidence was being put together on the cost benefit of environmental services, and he spoke further on this. He said the Commission saw the conservation fund and the allocation to it as a good investment for the Town. He said when times were hard, there was the temptation to withdraw from it, but he asked if this was really a dire economic situation they were facing. He said making this change now would set a precedent, and he questioned if the funding would come back if it was taken away.

**Malcolm Smith, 45 Woodman Road**, noted that he worked for Cooperative Extension, an organization that had been involved with the issue of sustainability in Durham since 1892. He said making this proposed change with the land use change tax was a bad idea. He said the responses to the recent Master Plan survey indicated that living in a city that paid attention to the natural setting was important.

He said it was very clear that protection of Durham's natural amenities and water resources was important. He said he'd be happy to write a check for \$72 to maintain Durham as a nice place to live. He said what attracted young families to this Town was a continued vigilance to the beautiful resources they had next door, which was Great Bay.

**Phyllis Bennett, Deer Meadow Road**, said this was not the first time the citizens and officials of Durham had to decide between community values that benefitted all and addressing short-term economics. She spoke about 1973, when Aristotle Onassis came to Durham and the citizens voted resoundingly in favor of community values. She also noted the debate there had been over Wagon Farm, but said everyone had enjoyed the beauty of that purchase.

She said it was very poor policy, and not good finances, to make a short-term decision that was in conflict with historical and current values, as expressed by those who lived in Durham and participated in the community. She noted the work done on the Master Plan, and said the voices of the community had spoken. She also said the slide Tom Kelly had shown about the outlook for future generations should go next to the Town seal.

**Davis Sietz, 37 Mill Pond Road,** said when he heard about this proposal, he calculated that the \$300,000 came to \$50-75 per resident, and said that wasn't much of a return. He spoke further about some calculations he had done. He said he looked at what he needed to consider for his own budget, and said that was what he would do for the whole community. He spoke about the importance of long-term investments, and said he couldn't believe that this recommendation had come forward. He asked the Council not to take the LUCT money away from the conservation fund, and said if this happened a question was what would happen to the Conservation Commission.

**Dick Lord, Bennett Road,** said he was there as a representative of the Lamprey River Watershed Advisory Committee. He said the original State legislation regarding the LUCT reflected the idea that when a piece of property was taken out of current use, the mitigation was useful. He said impervious surfaces had a tremendous impact on a watershed, and said when towns reached 10% impervious surface, this could impair a water body and the river system beyond the tipping point where it could recover. He said they were facing difficult issues with Great Bay in terms of nutrient loading from wastewater treatment plants as well as nonpoint sources of pollution. He said nonpoint source pollution was directly mitigated by the conservation of land.

He said over 2600 acres of land and over 8.9 miles of river frontage in the Lamprey River corridor had been protected. He said they'd been able to do this because of financial partners, including the Conservation Commission. He said the recent Beaudette project was a classic example, in that the Conservation Commission invested \$50,000 and got \$500,000 of benefit for the Town as a result.

He said these projects didn't happen if the Town didn't support them. He said the money from the Conservation Commission was vitally important, because it told the other partners that the Town wanted to participate. He said if the money was taken away, the leverage was taken away. He urged the Council not to take away this money for short-term gain, which otherwise would have an amazing impact in the future in preserving Great Bay. He also noted that this would reduce the cost of some of the wastewater treatment upgrades that were needed.

**Perry Case, Orchard Drive,** noted that he had signed the letter that Ms. Dudley had read. He said he was a teacher in the Seacoast area for many years, and taught students to look to the future. He asked the Council to not move the LUCT to the General Fund, and instead to support conservation.

**Hillary Scott, 20 Davis Ave.,** said she agreed with comments already said, and said the presentation by Tom Kelly was very timely. She spoke about thinking long-term, and considering what the good life was, not looking at things in isolation, seeing connections, not solving problems in a narrow way, and balancing the short-term and long-term. She said she

valued Durham's rural character, and said maintaining 100% of the LUCT funds was crucial to supporting conservation projects and also protecting the rural character of the Town.

**Diane Woods, 21 Garden Lane**, read from a letter from Charles Forcey. It said all across the nation, towns had been dipping into such funds for short-term gains. Mr. Forcey said he had yet to hear that such a move had pulled a town out of a financial crisis. He said usually, such moves signaled that a town had lost its confidence, and its ability to plan for the long haul.

**Jennifer Pruvél, Bayview Road**, said the proposal was a bad idea. She said the funds helped balance growth and conservation, and noted that she had moved away from a place where the balance was lost. She said in coming to Durham, she had been looking for a downtown they could walk to, the University, easy access to work by car or bike, and green space. She said Durham exceeded all of the other towns in the area, even without UNH.

**Jerry Needell, Bagdad Road**, said it was poor fiscal policy to make this change. He said the funds that went into the conservation fund were well managed and multiplied several times in their impact. He said he found it quite disconnected in the Resolution in terms of why the change was being made, and said it wasn't clear why the LUCT was the fall guy. He agreed that there was a serious abatement issue, but asked what this had to do with the LUCT other than the fact that it was the low hanging fruit. He said it was a poor choice.

He said he didn't understand the temporary part of this Resolution, and said he wasn't even sure if it was legal. He said it didn't make sense that it would be binding on future Councils, and said he thought Councilors could only say what happened to the LUCT while they were on the Council. He said he was skeptical as to whether the funds would be returned to the conservation fund in the future, and said he saw this as a way to lighten the blow of the Resolution, and said he didn't think it had legal standing.

Mr. Needell said if the Resolution was enacted, the Council was taking the LUCT funds from the conservation fund, going forward. He asked if this was what they wanted to do. He said the impacts would be drastic in terms of the future of land conservation in Durham. He said if that was the goal, they should have that conversation with the community.

**Larry Harris, 56 Oyster River Road**, said he had been on the Conservation Commission for two years, and said he thought what was proposed was a really bad idea. He said a role of the Commission was to be able to act quickly, noting the Beaudette property as an example of this. He said there was no time to go elsewhere when the opportunity appeared.

He said particularly when they were talking about conserving land along the Oyster and Lamprey Rivers and around the Spruce Hole aquifer to protect the Town's water supplies, they didn't know when the next opportunity would arrive. He said if the money was taken away from the conservation fund, nothing would happen, and the ability to take advantage of opportunities would be lost. He urged the Council not to pass this Resolution.

**Dwight Baldwin, 6 Fairchild Drive**, said he agreed with the other speakers. He said the results of the Master Plan survey indicated that 90-96% of respondents believed protecting water quality for various purposes was very important. He also noted that 82% of

respondents said protecting agricultural lands was important for current and future food production. He said these survey results should be a key consideration for the Council as it considered making this change. He urged them not to do so.

**Tom Merrrick, 7 Canney Road**, said he supported having the LUCT go to the Conservation Commission forever more. He noted his own experience in having permanently protected his family's 20 acre property with a conservation easement in 2006. He said he appreciated the work of the volunteers and the Conservation Commission at that time, and especially the fact that funds to accomplish the work were available. He said this was extremely important. He described various projects on the property since that time, including work done by the Boy Scouts. He said the wildlife had benefited, and he provided details on this. He said he was especially pleased when he saw families, runners, residents with their dogs, walking the property.

Councilor Mower said her understanding was that Mr. Merrick's conservation easement was on significantly generous terms to the Town. She asked what the influence of the availability of the conservation funds had been in terms of the decision he had made to do this.

Mr. Merrick said he had known there wouldn't be a problem with the funding if he went forward with this, and said it made the decision a lot easier.

**Henry Smith, Packers Falls Road**, said in its wisdom, the Council ten years ago had voted to put 100% of LUCT in the conservation fund, and said the Conservation Commission had done splendid things with this money. He reviewed the land protection projects over the past several years, as well as the Jackson's Landing project. He also noted that the Commission had offered financial support of up to \$400,000 to protect 176 acres in the Spruce Wood forest, in part to protect the Oyster River. He said this was long-term thinking, and asked why the Council would want to make a change that endangered the long-term wellbeing of the Town. He urged them to continue the allocation of the LUCT to the conservation fund.

**Carden Welsh, 3 Fairchild Drive**, said he was a 20 year resident of Durham, and a member of the ZBA. He said he agreed with most of what fellow residents had said, and urged the Council to consider defeating this proposal. He said if this funding was removed for a year or two, it would take away a lot of conservation funding, but it wouldn't stop growth. He said the ZBA saw people every month people wanting variances to add to their properties, and he provided details on this.

He said there was nothing nefarious about this, in terms of trying to destroy Durham's environment, but said every time this was done, it had a negative impact on the environment. He said if this funding was taken away, it would take away some of the counterbalance of environmental protection that Durham had been so good at, in order to balance growth.

Mr. Welsh spoke about the fact that he and his wife Ann, who was on the Conservation Commission, had met Will Rogers, the head of the Trust for Public Land. He said Mr. Rogers had emphasized how discouraging it was right now, because local funding, which was key in order to attract national funding for land protection, was drying up. Mr. Welsh said when he heard this, he had given no thought at all to the fact that Durham would be considering taking away its local funding. He urged that this not be done.

**Ann Welsh, 3 Fairchild Drive,** noted that a study indicated that for every 10% of watershed that remained forested, there was a 20% decrease in water treatment needed, and said this was a real future economic savings. She said the areas the Conservation Commission was looking at trying to protect were areas around the Oyster and Lamprey Rivers. She also said developed land impacted the resiliency of aquifers, and she noted that the Council had supported the Spruce Hole aquifer project. She said she hoped the Council would defeat this proposal, and said it didn't make sense for Durham, economically speaking.

**Maggie Bogle, Croghan Lane,** read a letter from Dea Brickner Wood and Theresa Walker into the public record, which said the current policy of LUCT funds going to the conservation fund had served the Town well, and spoke against transferring those funds to the General Fund. Mrs. Bogle said she agreed with what the letter said, and also agreed with other comments that evening.

**Don Brautigam, Packers Falls Road,** said providing the LUCT revenue to the Conservation Commission was a proven, effective means to enable the Town to balance the continuous pressure to develop the remaining open space in Durham. He then read a letter from Judith Spang, which said the Master Plan was not to be taken lightly. Ms. Spang said when those adopting it decided that 100% should go to conservation, it was with a recognition that there would be competing demands for those funds.

She said the Master Plan committed the Town to setting those funds aside to assure that there would always be the resources to permanently protect important land, regardless of the momentary appeal of other expenditures. She urged the Council to think carefully about the purpose of the LUCT, as established in State statute, when considering diverting those funds for purposes for which they were not collected in the first place.

**Beth Olshansky, Packers Falls Road,** said she had followed the discussion two weeks ago by the Council. She also noted that when Charlie French had presented the Master Plan survey results, there were questions from the Council in terms of how valid the survey results were. She noted that some of the percentages in favor of conservation were quite remarkable. She said Mr. French had said they were somewhat valid, but that feedback needed to be gathered from other mechanisms. She said tonight was one of those other opportunities to get feedback.

She noted a question that had come up two weeks ago regarding how much money the Conservation Commission actually needed. She said the Commission had already committed \$400,000 to one water protection project, on one side of the river. She said there was a unique opportunity there, in that there was a convergence of two landowners, one on each side of the river, who were interested in conserving their land, which made water protection a possibility.

Ms. Olshansky said this would require another pot of money. She said there was an opportunity to talk with landowners interested in helping further this goal, and said this would be a terrible time to pull money away from the conservation fund, especially given the amount of leveraging that it offered.

She spoke about the investment opportunity of putting LUCT funds into the conservation fund, in order to protect the assets that made the community so valuable.

She noted concerns about taxes, and concerns that people wouldn't want to move here because taxes were too high. She said she had met people who had moved to Durham because they valued the conservation values that the Town stood by, and the natural resources and aesthetics here. She said the more that other towns in the area developed, the more that this made Durham special.

***Councilor Smith MOVED to suspend the 10:30 pm adjournment time. Councilor Stanhope SECONDED the motion, and it PASSED unanimously 9-0.***

Councilor Gooze left the table at 10:31 pm and returned a few minutes later.

**Malin Clyde, 51 Mill Road**, said these were tough economic times, but said the tough times for the economy also meant that it was tough time for funding sources. She said the LCHIP fund was essentially gone, and also said the State's Drinking Water Protection Program, which had provided matching funds for the Fogg project was gone. She said the money left was federal sources, which were very competitive,

She said the Town had a great track record of putting forth strong proposals, and had put together compelling arguments for protecting drinking water supplies. She said it was important to show local support and have a local match, so they needed to get at least 50% of the funds locally. She said there was essentially no State funding left.

Ms. Clyde said the tough economic times also meant there were some opportunities for land protection because land prices were lower. She also said owners were more likely to consider conservation and said there were some exciting projects in the wings. She said the Conservation Commission needed to be able to act quickly.

She also noted that despite the economic downturn, we still live in one of the fastest growing states in New England, and one of the fastest growing parts of the State despite a slight slowdown. She said Durham was an incredibly attractive place to live, and said the Town needed a way to mitigate that and the effects of that growth. She said the LUCT was an important way to do that.

Councilor Mower noted reference to the need for the Commission to be able to act quickly, and asked what this meant.

Ms. Clyde said as part of the process of being able to expend conservation funds, the Commission had to ask the Council if it had interest in a piece of property. She said it was a lot easier for the Council if the Commission had the conservation funds in hand, and said otherwise it meant raising taxes and spending bond money. She said this was a much higher bar, and also said it was a slower process.

Councilor Mower asked what circumstances might create the need to have available funds. She explained that it might be helpful for members of the public to understand what the need to act quickly meant.

Administrator Selig said there could be a variety of circumstances, including a distressed landowner who owned a track of valuable conservation land and because of hardship of some kind, etc., there was an opportunity to buy it. He said if the funds were available, it was easier to act quickly.

**Derek Sowers, 32 Oyster River Road** said he agreed with what others had said. He said as a member of the Conservation Commission, he wanted to stress that this was a real need, and they couldn't do their work without the LUCT funds. He said there was an existing commitment, and said they had less in the conservation fund than they needed in order to fulfill it.

He also said there were some pending projects in the works, and said they were of great interest. He said if the Commission started saying there weren't funds, but perhaps they could get a bond passed, this wouldn't make the projects happen. He provided details on this, and said the latter approach would create a lot of uncertainty.

Mr. Sowers also said there was the issue of respecting the community's stated will through the Master Plan process, existing policy of previous Town Councils, and the results of the recent Master Plan survey. He also said the Commission had a mission to inventory, manage and protect the natural resources of Durham. He said this was why they volunteered.

**Peter Smith, 100 Piscataqua Road**, said one of the points made at the previous Council meeting was that if the LUCT funds weren't in the conservation account and the Conservation Commission needed the money for a project, the Commission could come to the Council and get the money. But he said it didn't work if over a period of 2-4 years, a landowner reached a point of wanting to do something in terms of land conservation, and then the Commission had to go to the Council to get the money. He said it was totally unfeasible to do these deals under those circumstances.

Mr. Smith said the knowledge, commitment and unselfishness in the Council chambers right now was extraordinary, and said he admired all that had been said. He noted that he was the person who had introduced the resolution to put 100% rather than 50% of the LUCT funds into the conservation fund. He said he would feel really bad if the Council turned its back on this, and said he knew that the Council would do the right thing.

***Councilor Smith MOVED to close the public hearing. Councilor Mower SECONDED the motion.***

Councilor Smith noted that at the Council meeting two weeks ago he was one of three Councilors who voted to not go to public hearing on this proposal. He said he was glad that Councilors in favor of this change had now heard from members of the public, and said he didn't know how the Council could in good conscience vote to take the LUCT funds from the conservation fund.

***The motion PASSED unanimously 9-0.***

Councilor Gooze said he had voted to bring this to public hearing and did so because he felt the Council had a fiduciary duty to the Town to weigh a proposal. He said he had thought

that taking 50% from the LUCT fund was a compromise. He spoke about the fact that he would like to see water quality protection as a priority in terms of land protection. He also he respected very much the people who had spoken, and said in good conscience he therefore could not vote for this proposal. He said he would need to hear a very compelling argument in order to turn away from that decision.

Councilor Stanhope said Tom Kelly had said some interesting things regarding sustainability, including the importance of looking at the big picture and not just looking at a component in isolation. He said he respected those present that evening, but said as a Councilor, he had the responsibility to look at what the Town faced globally.

He said the State had cut back substantially on revenue that would come to the Town, and said there would have to be a substantial increase in the Town's contribution to the retirement fund. He said wages had been frozen for some time for administrative staff, and said a position on the police force had been left vacant. He also said they were asking the Fire Department to make cuts in their budget.

He said there was a part time recreation director, so the youth in Town were underserved. He also said they would have to bond the Roads Program over the next three years. He said they were also faced with the possibility of going to residents and asking them to participate in the funding of a new library.

Councilor Stanhope said the Conservation Commission had been asked to share the responsibility of what the community faced, because there would otherwise be a substantial tax increase, or continued cuts in services. He said he didn't believe that the Commission was so underfunded in terms of cash and bonding capacity that any project in their pipeline wouldn't be able to be accomplished. He also said if property taxes were allowed to increase, this in effect depressed property values, so the tax base would decrease and things would spiral downward.

He said he hoped that Councilor Gooze would rethink his suggestion of putting 50% of LUCT funds into the conservation fund, which was what the Master Plan had originally suggested. He said he would support that as a compromise.

Councilor Mower said the benefit to the Town budget from taking money from the LUCT would have a significantly smaller impact on the Town's assets than putting the money toward conservation projects that would protect land, drinking water supplies and Great Bay. She said the benefits of natural water filtration was great, relative to what the Town would otherwise have to pay in taxes for water and wastewater treatment. She said this was an infrastructure investment that they needed to consider.

She said the average annual revenue from the LUCT over the last few decades was \$28,000, which was a drop in the bucket for the General Fund as compared to leveraging it for conservation projects. She spoke of possible projects in the pipeline, and noted the federal requirement that there be matching funds provided by the Town. She said bonding wouldn't do the same thing, and said the money needed to be in hand in order to fill out the application.



Councilor Niman said there were a number of comments he didn't necessarily agree with. He said he believed \$900,000 in bonding was available, and said if there were all these projects and the need to have money upfront, the best thing to do was to take the \$900,000 and put it into the conservation fund.

Councilor Mower said that would involve property taxes as compared to the LUCT tax, which was paid by developers.

Councilor Marple said the taxes would go up whether they liked it or not.

Councilor Niman noted that Jerry Needell had said he didn't understand the logic of the Resolution. He said whether it was as a result of LUCT funds going to the conservation fund or having to cover the abatement requests, this would involve raising taxes. He said if one then considered the other expenses that Councilor Stanhope had outlined, they were looking at about a \$1.30 increase in the tax rate, which was about an 18% increase. He said he was very concerned about that.

He said if they could solve the problem by reducing spending, he would be glad to not take money from the LUCT funds, but he said he didn't see this happening.

Councilor Mower said it seemed curious to some that Councilor Niman would take the LUCT funds rather than another funding source, in looking to cut expenses.

Councilor Niman said he was talking about redirecting funds, and said he wasn't picking on the conservation fund.

Councilor Mower said this reflected a policy change.

Councilor Stanhope said in addition to all the other issues discussed, the fund balance was currently funded at about 60% of where it should be, so the Town was putting itself at risk. He said in funding further tax appeals, the fund balance would be at about 50%. He said if this wasn't the case, he would be on board with questioning why they were even looking at moving LUCT funds to the General Fund.

Councilor Marple said she'd had had a vision of coming here tonight and seeing both sides of this equation represented, but said there had been little to no support for making this change. She said the majority of people who had come here wanted the Council to leave the LUCT funds with the conservation fund. She said she didn't know the reason for a public hearing if this didn't sway people.

Administrator Selig said five emails of support for the Resolution had been received, and said there were approximately 34 emails in support of keeping things as they were. He noted that some of the emails were sent by people who were present at the meeting.

Councilor Mower said that regarding the fund balance, in past Budget discussions she had expressed concern about its low level. But she said if Durham were to go out and bond, this could affect the Town's bond rating as well.

Administrator Selig said this would have less of an impact, and said the fund balance was more of a salient point because it demonstrated to a bond rating agency that the Town was planning ahead and could address unforeseen circumstances.

Councilor Mower said that as part of looking at the total picture of the Budget, it was important to look at balancing growth with protection of natural resources, and balancing the potential cost for improvements to the water and wastewater treatment plants with the incredible investment obtained by leveraging someone else's money.

Councilor Smith said the LUCT penalty was 10% of the fair market price, at the time it went out of current use. He said if they really wanted to raid the LUCT revenues, they should talk to the legislative delegation about changing the RSA, so a piece of land in current use for 20 years would pay a higher penalty than one in current use for only one or two years. He said what they were asking for was premature, and said they should wait until there were greater revenues to be had. He noted that he was being cynical.

Councilor Lawson said he believed in strategic land conservation, and said the people in the room now had done this for Durham, and had served the Town well. He said when the proposal was brought forward, he was looking at it in terms of public policy and financial management. He said he realized the two couldn't be separated, and said he was looking for a balance.

He said the bigger concern for him was not the abatements, and said his concern was that the reserves in Town were insufficient in terms of the Council's policies and also from the perspective of the auditors. He said he had viewed this proposal as one of the ways to address that. He said department heads had been asked to look at how to reduce costs and still deliver the same services, and said it was reasonable to go to the Conservation Commission with something like this proposal and ask if they could do something like this and still fulfill their mission and the goals set in the Master Plan.

He said what was disappointing was that he was hearing generalities and not specifics in terms of pending projects and those that were in the wings. He said unlike dealings with other entities in Town as the Council went through the Budget process, in this case he hadn't been able to get the information from the Conservation Commission that allowed him to make that assessment.

Councilor Lawson said all he could do was look at the data in hand, and said even though strategic conservation was a priority to him, with the lack of specificity, he had concluded that at 100% redirection of LUCT funds into the General Fund, it would be difficult for the Conservation Commission to fulfill its mission over the next two years.

But he said he believed that at 50% funding, it would be possible. He said somehow, the Council would have to find a mechanism that would allow it to have a better understanding of these different projects that were pending and in the wings, in order to better assess the things that came forward from the Commission.

Councilor Lawson said strategic land conservation would continue to be important. But he noted that he'd asked some tough questions that people hadn't been able to answer,

concerning the transition they needed to face at some point from land acquisition to continued land stewardship and enhancement for public use. He said at this point, with the data he had, if there was a resolution where the funding would be 50%, which it was in 2/3 of the towns in southern NH, he would be supportive of the resolution.

Councilor Mower said one reason there was less specificity about anticipated costs for land purchases or easements was related to confidentiality agreements with landowners. She said they did know what had been committed from the fund for the Spruce Wood forest project, which was up to \$400,000. She said without explaining exactly how it happened, there was less money currently in the conservation fund than they had thought there was at the time this commitment was made. She said they might need, depending on how the appraisal came out, another \$100,000.

She said there was another project on the other side of the river that had come before the Commission and had been delayed because of a lack of federal funding. She said this was for the Amber Acres parcel, and she noted that the Farm and Ranchland Protection Program required a 50% match. She said they didn't have an appraisal for that parcel at the time of initial discussion and said any discussion on it would have to be held in nonpublic session.

She said the Thompson parcel was not on the table at the moment because the landowner received a lower appraisal than was attractive, and withdrew it from the process. She said this could change over the next few years. She said it was understood that it was a difficult situation in terms of the Council trying to understand how much money was being spent, and what would be required for what strategic purchases, and how that would benefit the Town. She said to a certain extent, there had to be a level of trust based on past performance by the Conservation Commission.

Councilor Mower said that regarding the stewardship issue, she had asked the Conservation Commission if it would be appropriate to bring a discussion to the Council about the fact that there was a very active land stewardship subcommittee. She said the Commission had taken note of the Council's concern a few years back that there needed to be a greater degree of stewardship and planning for public access in the current inventory of Town owned lands.

She also said the conservation fund had been used for things other than land acquisition, noting as examples the Jackson's Landing improvements and the hiring of expertise for reviewing the Zoning provisions that impacted conservation values, etc. She said those amounts did add up, and said there did need to be funding over the next few years that was significantly more than what there was now.

Councilor Cote said those people watching should now have a better appreciation of the things the Council had to balance. He said an overarching question he had was whether if the Council kept these funds with the Commission, it could ultimately result in the reduction of Town staff as services were cut back. He said if that was the case, he would be very disappointed. He also said one might say they were expecting only a few hundred thousand from the Capstone LUCT, and other projects, but he said this was significant when the Town needed every dollar it could get.

He said on the other side of the coin was the sustainability question. He said he really needed to opt for conservation in this instance because it was a far longer term impact than they would ever have with some of these smaller issues. He said the economy would get better, but purchasing a piece of land could be a once in a lifetime opportunity. He said he was inclined to consider the Resolution in total, and defeat it. He said he was swayed by Councilor Lawson's proposal of 50%, but said he would want to see more number crunching concerning it.

Councilor Gooze noted that he had somewhat proposed the 50% idea. He spoke about the way the LUCT worked, and also said as a result of the land being taken out of current use and developed, the Town would see an increase in property tax revenues, so it wasn't as if the Town wouldn't benefit financially.

He said he had to listen to the strong community voice that said Durham had decided to put 100% toward the LUCT. He also said he didn't think it would affect the fund balance much if they did 50-50 instead, and said something long-term had to be done about the fund balance. He said if he had to make a choice between giving up the 19<sup>th</sup> police officer and this proposal, he would give up the police officer, and said for him that was really saying something. He said he was a neighborhood person all the way.

Councilor Mower said a study published by a UNH professor in 1989 and updated in 2002 concluded that the LUCT penalty received by towns more than recouped the property taxes abated during the period the land was held in current use. She said the average annualized rate of return for the seven NH towns studied, which included Durham, was 9.3%.

She also said the Office of the State Comptroller for NY published a report called the Economic Benefits of Open Space Preservation in 2010, which said:

"The choice for natural drainage over an engineered replacement could translate into substantial costs savings for a municipality. This however is just one example of how public infrastructure costs and thus local taxes could be reduced by using the ecosystem services of open space. Regional economic growth can also be enhanced by preserving open space, whether by prompting industry, maintaining aesthetic values, or offering outdoor recreational opportunities. This in turn is linked to property values, which impact local revenues. The potential to rely on natural ecosystem services, rather than construction of artificial replacements, directly impacts local expenditures. The interconnection among the goals of fiscal health, affordable housing and economic growth makes it ever more important to ensure that open space plans are well designed.

Chair Carroll said she believed in savings accounts, and said she wished every project and program in Town had one. She said the conservation fund was a savings account for the Conservation Commission. She said since the meeting two weeks ago, she had tried to look at this issue from every angle, and had considered that perhaps the LUCT could be split 60-40. She said finally, she said no, and it had to be 100%, because otherwise they would cripple this program.

She said this was a program that worked. She spoke about what had been accomplished with the conservation fund, and said it didn't make sense to change the strategy. She said there

had been a lot of trust and cooperation between the Land Protection Working Group and the Council, with some good results. She said she therefore had to reject this proposal.

***Councilor Stanhope MOVED to Adopt Resolution #2011-18 as presented, temporarily changing the disposition of the Town's Land Use Change Tax. Councilor Niman SECONDED the motion, and it FAILED 3-6, with Councilor Niman, Councilor Stanhope and Councilor Lawson voting in favor of the motion.***

- B. **ACTION ON ORDINANCE #2011-05**, a Council-initiated ordinance, in accordance with Section 175-14 (B) of the Durham Zoning Ordinance, that would amend Article XII, Zone Requirements, Section 175-53 (A), the "Table of Uses", of the Durham Town Code, to allow single-family residences as a permitted use in the Professional Office District

Postponed because of the lateness of the hour.

**XI. New Business**

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

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

**XIV. Adjourn (NLT 10:30 PM)**

***Councilor Niman MOVED to adjourn the meeting. Councilor Cote SECONDED the motion, and it PASSED unanimously 9-0.***

Adjournment at 11:32 pm

Victoria Parmele, Minutes taker