

Neil Niman
Chair, Durham Town Council
Durham Town Hall
15 Newmarket Road
Durham, NH 03824

Re: Disposition of the Land Use Change Tax

Dear Neil:

On June 26th, the day following the recent Town Council budget workshop, Town Administrator Todd Selig sent me an e-mail indicating the Council had discussed the possibility of depositing future Land Use Change Tax (LUCT) proceeds in the General Fund to help offset taxes instead of depositing them in the Conservation Account. At our meeting on July 12, the Conservation Commission agreed unanimously that we should ask the Council to leave the allocation of LUCT revenues unchanged.

It is important to note that the Town of Durham's Master Plan recommends that the funding of the Conservation Account be increased to 100% of the LUCT. I quote from the Master Plan of the Town of Durham, 2000, Chapter 4: Environmental and Cultural Resources; Conservation Funding Options, Recommendation #1. (website pg. 4.33, hardcopy pg. 4.52):

"The Town should increase the funding of the conservation account from the current level of funding via 50% of the land-use-change tax to use 100% of the land-use change tax."

As you know, in 2001 the Town Council overwhelmingly supported the change to 100% funding of the Conservation Account from the LUCT because of this recommendation.

The policy incorporated in Durham's 2000 Master Plan is fully consistent with the policy of the State of New Hampshire as set forth in its laws authorizing and encouraging the preservation of land in its natural state by creating tax incentives. RSA 79-A, which established the "current use" law, states:

"It is hereby declared to be in the public interest to encourage the preservation of open space, thus providing a healthful and attractive outdoor environment for work and recreation of the state's citizens, maintaining the character of the state's landscape, and conserving the land, water, forest, agricultural and wildlife resources. It is further declared to be in the public interest to prevent the loss of open space due to property taxation at values incompatible with open space usage. Open space land imposes few if any costs on local government and is therefore an economic benefit to its citizens." (RSA 79-A.I).

The State has adopted a similar law to encourage the establishment of "discretionary easements" to preserve in their nature state parcels of land smaller than 10 acres. See RSA 79-C. When land is placed in conservation under these laws, this important state policy is furthered.

To the extent that these preserved parcels are subsequently withdrawn from their protected state and developed, the landowner is required to pay a penalty (the "land use change tax"), which is not surprising since the decision to develop is inconsistent with the foregoing policy that encouraged the preservation of that land. Nor is it surprising that the Legislature specifically

invited the cities and towns to place up to 100 percent of the LUCT in a special conservation fund to be expended for the purposes set forth in the state law creating conservation commissions, which include actions to “acquire, maintain, improve, protect, or limit the future use of or otherwise conserve and properly utilize open spaces and other land and water areas within their city or town” RSA 36-A:4. See RSA 79-A:25.II (disposition of current use tax revenues).

Using LUCT funds in this fashion merely insures that the original legislative purpose of having allowed reduced taxation for current use or discretionary easements in the first place does not get frustrated years later by spending the LUCT dollars for purposes unrelated to the State’s original goal—the preservation of land.

In addition, we offer the following thoughts that we hope you keep in mind when considering this proposed change:

- The LUCT is not a steady and reliable source of funds. In a year when a significant amount of LUCT is received it may be possible to only minimally increase the Town portion of the tax rate. But, if there is little or no LUCT the following year, the difference will have to be found elsewhere making budget increases particularly onerous that year. Therefore, using the LUCT when it is available would mask the true increase in the cost of running the Town.
- For the six conservation projects that have been completed in the last three years the Town’s contribution has averaged 33% of the total cost. This is due to significant efforts to leverage these dollars. By diverting the LUCT to the General Fund we would lose the ability to leverage our dollars—essentially turning away outside funds that would benefit the community.
- The ability to leverage funds is a result of finding grant sources to assist in land conservation efforts. The competition for these funds is greater every year and proposals that show strong monetary support from municipalities have a much greater competitive advantage.
- 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.
- Over the last seven years we have collected \$646,000 in LUCT revenues. This is an average of less than \$100,000 per year. Each \$100,000 added to the General Fund results in a 12 cent reduction in the total tax rate (12 cents/\$1,000 valuation), or .4%. This does not appear to us to be a significant reduction in the rate. Yet these funds are very significant in providing a source of funds that can be tapped easily to advance important land conservation efforts.
- These funds are not only used directly for acquisition of land, but to ensure that land conservation happens by funding transaction costs such as appraisals, surveys and legal fees. These transaction costs can be substantial and a barrier to land conservation.
- The DCC believes that, given the cost of land in Durham today, the \$900,000 left from the bond plus \$625,000 in the Conservation Account will most likely be used very quickly for the conservation of open space in our town. Therefore, a change in the

disposition of the LUCT could greatly diminish our ability to be successful with future conservation projects.

- The DCC is in the process of developing management and stewardship plans for all Town-owned lands and conservation easements. In some cases development of these plans will require the services of a professional experienced in managing forests and wildlife habitat. It is likely that these management plans will include recommendations for changes to trails, restoration of habitat, elimination of invasive species, actions to control erosion, etc. All of these things will cost money and the Conservation Account is the current source of funds available to support these efforts.
- The Town does not have a stewardship fund. At this time the Conservation Account would be the likely source of funding to defend conservation easements in court if they are challenged.

In closing, we hope that upon review of these points the Town Council will agree with the Conservation Commission that the current allocation of the Land Use Change Tax is in the best interest of the Town.

Sincerely,

Cynthia Belowski
Chair, Durham Conservation Commission

CC: Todd Selig, Durham Town Administrator