

This set of minutes was approved at the May 3, 2004 Town Council meeting.

**DURHAM TOWN COUNCIL MINUTES
MONDAY, APRIL 12, 2004
PUBLIC HEARING ON PROPOSED ZONING ORDINANCE REVISIONS
DURHAM TOWN HALL -- COUNCIL CHAMBERS
7:00 PM**

MEMBERS PRESENT: Chair Malcolm Sandberg; Arthur Grant; John Kraus; Gerald Needell; Peter Smith; Mark Morong; Karl Van Asselt; Neil Niman; Annmarie Harris

MEMBERS ABSENT: None

OTHERS PRESENT: Town Administrator Todd Selig; Jim Campbell, Town Planner; Mark Eyerman, planning consultant for the Town; Planning Board members; Code Administrator Tom Johnson

I. Call to Order

Chair Sandberg called the meeting to order at 7:00 PM. Chair Sandberg noted that unfortunately there would not be live coverage of the hearing because of a scheduling problem and said the meeting was being taped.

II. Approval of Agenda

Councilor Kraus MOVED to approve the Agenda. The motion was SECONDED by Councilor Smith, and PASSED unanimously.

Administrator Selig briefly explained the Zoning Rewrite process, which had now led to a public hearing before the Town Council. He noted the Council had held a work session two weeks prior to discuss the zoning document the Planning Board had endorsed.

III. Public Hearing on Ordinance 2004-02 Amending or Rescinding Certain Sections of the Zoning Ordinance

Councilor Grant MOVED to open the public hearing on proposed changes to the Zoning Ordinance. Councilor Needell SECONDED the motion, and it PASSED unanimously.

Jim Jelmborg said he wished to thank the Zoning Rewrite Committee and the Planning Board for the tremendous effort they had made concerning the Zoning Ordinance, noting he had attended many of the meetings.

Margaret Bogle read a letter from Suzanne Loder. Ms. Loder said agricultural lands in Durham needed to be preserved, and said that having the capability to raise food locally was important for the long-term, as well as the short-term, noting there were a few local growers whose crops she eagerly awaited. She asked where in the zoning districts farming was not

only permitted, but protected, and noted this was not only a land use or zoning issue, but was also an issue of public health and welfare. She said looking at fields in Durham, one would think there was a large piece of farmland, but said this land was often zoned OR, or owned by the University. She said if the Town wished to preserve suitable farmland, this decision needed to be made while there was still appropriate land to protect, just as Wagon Hill had been protected. She asked if the Town had an inventory of agricultural lands to guide this kind of decision, and also asked if the Conservation Commission had this kind of capability.

Ms. Loder noted that in New Zealand, houses were built on sloped land so that farming could take place on the flat lands, where the soil was rich and water was available. She said Durham's conservation development plan appeared to put new homes on flatlands and conservation land on the slopes and wetlands. She said this might be the best use for most parcels, but asked the Town to consider preservation of some agricultural land before the Zoning Rewrite process was completed.

Beth Olshansky, Packers Falls Road thanked the Planning Board members and others for their work, and said they had a document that was close to being a good start, but said she would like to make sure it was forward thinking. She said she had some suggestions for fine tuning the document.

She said she really appreciated the new soils based regulations, which Rachel Rouillard worked so hard on with Jack Farrell, and said that this, along with the stricter septic regulations, were two important additions to the Ordinance.

Ms. Olshansky said she favored conservation subdivisions, and appreciated that the approach meant that land would be preserved. She said she also realized it would result in clustering of homes in all the Town's zones, so it was especially important to pay attention to the importance of roadside buffers. She noted that in the new Ordinance there was originally a 100 ft. buffer prescribed, but there was also a waiver statement that said it could be a 25 ft. vegetative buffer between a road and a new subdivision. She said if the Town wanted to retain its rural character, an important detail was to make sure there was a substantial buffer between the subdivision and the road. She noted that Hollis had a 200 ft. vegetative buffer between existing roads and new subdivisions.

Ms. Olshansky noted page 135 – streetscape buffer adjacent to existing public streets, and proposed that the waiver on that page allowing a 25 ft. buffer should be deleted, and the required buffer should be 200 ft., in line with what Hollis had done.

She noted on page 131-132 that it required no more than 100 ft. between driveway cuts, and pointed out that the most recent draft of the subdivision regulations, under Section 9.03 B said there couldn't be new roads or driveway cuts less than 300 ft. apart on scenic roads. She said the various distances didn't fit together and said she would rather have the stricter bar for scenic roads, as reflected in the subdivision regulations, and would like the Zoning Ordinance to be consistent with this.

Ms. Olshansky said she favored the stricter regulations in 175-139, p. 161 concerning septic systems, but said it appeared to be drafted specifically for individual septic systems. She asked if these same standards applied for community septic systems.

Chair Watt said it was his understanding that community septic systems were inspected and regulated by the State, but said Ms. Olshansky was correct that there was no local regulation specifically relating to them.

Mr. Eyerman said the language before them was intended to deal with individual systems serving a lot. He said that if the Town were going to allow community systems, it would be worthwhile to pursue development of specific standards for them.

Chair Sandberg asked whether, if community systems were not specifically allowed in the Zoning Ordinance, that meant they would not be permitted except by special exception or variance.

Mr. Eyerman said he did not know, noting this was an issue that had not been raised up until that point. He said he would have to read the ordinance in its entirety in order to answer the question.

Jim Campbell said the old ordinance had made no reference to a specific use for a septic system, which had always been considered an accessory use to a single-family residence. He said they would check on this.

Ms. Olshansky said her point was that as a community, Durham wasn't happy with the State septic standards, and was trying to provide more protection with local septic regulations, so if this line of thought was continued, it made sense to create regulations for community septic systems as well.

Mr. Eyerman said he had just checked the Zoning Ordinance and that a septic system was defined as a structure and that accessory structures were permitted uses in conjunction with allowed residential and nonresidential uses. He said he didn't believe what a septic system was had been defined or discussed, and said concerning Ms. Olshansky's question as to whether community systems were covered that they probably were not.

Ms. Olshansky noted the Planning Board had, after much consideration, finally moved from a 120,000 to 150,000 sq. ft minimum lot size in the Rural zone, with the rationale that this was to compensate for the unintended density bonus that occurred when the mathematics of how many houses could be fit per parcel was calculated on paper and not in the field. She said that along those same lines, she proposed to do something similar in the RA and RB zones. She suggested that to make up for density bonuses in these zones, there should be a 25,000 sq. ft. minimum lot size for the RA district, and 50,000 sq. ft. for the RB minimum lot size.

Ms. Olshansky also spoke about the property in Durham which because of the changes to the Zoning Map, had been rezoned to OR, but then changed back to RB by the Planning Board after much discussion. She noted that some people had suggested it be changed to Rural, because it abutted rural land in Madbury, and said she agreed with this.

Ms. Olshansky said she appreciated the whittling down of the number of uses that would still be allowed by conditional use permit in the revised ordinance, but said she was still wrestling with whether the Town should have the conditional use process at all. She said she understood that the rationale was that some uses were contentious, and it would make sense

to place stricter bars on them, so conditions could be placed on them. She said because of these contentious uses, it was important that the Town Council be involved, but also said that if the uses were contentious, why even permit them. Ms. Olshansky recommended making most of the CUs into prohibited uses, and if people really needed a use, they could come before the ZBA, as a relief mechanism.

Councilor Smith asked what uses Ms. Olshansky would like to see remain as CU, and also asked what she had in mind by relief mechanism, other than an applicant proposing changes in the Zoning Ordinance. Ms. Olshansky suggested a landowner could go before the ZBA with a hardship claim.

Councilor Smith asked what the rationale would be for thinking it was better for an applicant to go before the ZBA for permission rather than the Planning Board. Ms. Olshansky said one difference was whether the uses were labeled as X (prohibited) or SE (special exception). She said if a use was labeled as SE, this was the same as CU, and she would rather see the application go before the Planning Board and Council. But she said if the uses were X's, perhaps an applicant could go before the ZBA with a special request for a waiver.

Councilor Smith said he was curious as to what if any outlet other than legislation there should be, and why.

Chair Sandberg asked Mr. Campbell if, for example, someone who wanted to have a kennel in a zone where this was prohibited could somehow be allowed to do this, and Mr. Campbell said he did not believe the person could get a variance, and would have to petition for a zoning ordinance change.

Councilor Smith said part of this debate was whether or not, short of legislation, there should be a method/mechanism other than legislation to allow something in some but not all circumstances.

Ms. Olshansky said hers was not a legal point of view, and said if a hardship existed, or if the proposed use were a wonderful community project, etc., perhaps it was a matter of having a higher bar if considering allowing a prohibited use in a hardship situation.

Councilor Needell noted that the revised Zoning Ordinance restricted conditional uses significantly, and for the most part dealt with commercial applications. He asked where her specific concern was.

Ms. Olshansky agreed it was much better now, and also said she appreciated the design standards. But she said that the uses that would be allowed conditionally now were somewhat contentious, so if the Council decided to keep them, she said she would like it to discuss whether there should be two sets of eyes to review conditional use applications. Councilor Needell asked if it was her interpretation that the default had shifted to no conditional uses, so that the burden of proof now had shifted more to the applicant. Ms. Olshansky said that was a good point. She next spoke about elderly housing, and noted that multi-unit elderly housing was now allowed in all zones. She said this appeared to be a fairly radical change from the past, and said she would like to see them prohibited in the Rural and

RC zones. She also said she was not sure why religious uses were allowed by conditional use in all zones.

Councilor Harris asked why religious uses were allowed by CU in all zones. Chair Watt said the idea for allowing multi-unit elderly housing across the board was to encourage it because it was so tax positive. Regarding religious facilities, he said it was the Board's understanding that it was legally required to allow these facilities, because of a previous court ruling.

Chair Sandberg noted they had discussed this at the previous Council session on the Zoning Ordinance.

Councilor Smith noted there was some discussion about concerns about legal requirements at that meeting, but said it was not his understanding that the Board allowed religious uses by conditional use in all zones simply because it thought it was legally required to do this.

Chair Watt said that was in fact the Board's impression, and he agreed to make the court ruling on this available for Councilor Smith.

Dave Holland, Chesley Drive said he had been involved in the Master Plan process, but had not followed the Zoning Ordinance changes too closely. He said he supported the conservation design approach, which had proven it could work well in other communities. He also said he echoed the concerns about conditional use process oversight by the Council, and said it would be a mistake to remove the Council's role. Mr. Holland said if there was a controversial use, it should be held to higher scrutiny.

Councilor Smith asked Mr. Holland to explain why he would prefer the role of the Council to be a reviewer of an application, rather than to determine whether the zoning ordinance should be changed, since in both situations, the Council had a critical role to play. Mr. Holland said the Council could provide extra oversight as a safety check, so if someone missed something the first time, it could be caught the second time.

Councilor Smith asked Mr. Holland to assume that a land use was prohibited instead of being allowed by conditional use, and a person who wanted to exercise that use went to the Council and ask it to amend the zoning ordinance, in which case the Council was involved in the process in that way. He asked Mr. Holland if he liked that idea. Mr. Holland said that would be more of a blunt instrument. He said the question was what kind of end result one wanted - to change the zoning ordinance or to deal on more of a case by case basis. He said his preference was to use the conditional use process, with review by the Planning Board and the Council.

Henry Smith, ZBA Chair, 90 Packers Falls Road thanked the Planning Board and Zoning Rewrite committee for the tremendous work they had done in updating and improving the Ordinance. He noted that the ZBA had had increasingly lengthy agendas because of nonconformance issues, and said one of the important revisions to the ordinance was that if a homeowner wanted to renovate his house on a nonconforming lot but would not be expanding the footprint, he would no longer have to apply for a variance. He said this would cut down considerably on the number of people having to come before the ZBA.

Mr. Smith also said he supported the soils based regulations and new septic regulations. He concluded by saying that the ZBA took the Zoning Ordinance very seriously, and said that when people asked for variances, he wanted to be sure the Ordinance was respected. He said the revised Ordinance would conform more closely to the Master Plan, and would enhance the enforcement of the ordinance for the betterment of the Town.

Robin Rousseau, 345 Packers Falls Road and ZBA member said she had come to speak regarding 175:21- Conditional Use Permits. She said as she looked at the language here, it reminded her of problems the Town had had with the ordinance in the past. She said the language hadn't really changed that much, was controversial and nebulous, and questioned why she was looking at this kind of language again. She asked why the Town couldn't do this better, why it couldn't eliminate the conditional use process, and challenged the Planning Board and Council to make their vision of the community clear by making the allowed uses very clear.

She said if they wanted to allow a use by special exception, they could also state this clearly, and said perhaps the bar should be slightly higher for special exceptions, but not dramatically higher. She said the ZBA could not make a waiver on something that was not a permitted use, because they were making public policy when they did that.

Ms. Rousseau challenged the Council to read through the Table of Uses very carefully, because this would determine the land uses in the Town over the long run. She also noted the current process required the average person wanting a conditional use permit to hire experts to help them get through the process. She said that for the good of the community, the conditional use process should be eliminated. She said they should move forward without it, see how that worked, and if there were problems, the Town could move forward from there.

Ms. Rousseau said it was also helpful for the ZBA to have explicit instructions as to the intent and purpose of the Ordinance.

Councilor Smith asked if Ms. Rousseau could speak about what the alternative was to the conditional use process, and Ms. Rousseau said the alternative was special exceptions.

Councilor Smith asked what would be different in that procedure other than having a different board look at the application. He asked her what in the end she would want to have as criteria, and how they would differ from conditional use criteria. Ms. Rousseau said she would not have the Planning Board make the decision on the Conditional Use Permit. She said they were volunteers, and made the best decisions they could, just as the ZBA did. She said the special exception could allow some flexibility, but not a lot, and the ZBA could look at this and make sure a use would be appropriate for a particular neighborhood.

Councilor Smith said each board was made up of volunteers, and asked what it was by way of the criteria before the ZBA that would lead one to say these criteria were better than the criteria in 175:21. Ms. Rousseau said it depended on the specific case, but with special exceptions, the ZBA would not be looking at as high a bar as the Planning Board would be with conditional uses. She said the language in the ordinance was wide open concerning conditional use.

Councilor Needell said the language was wide open, but was tied to the Table of Uses in 175:53, which delineated where it could be applied. He also noted an effort had been made to not involve residential development. Ms. Rousseau said this didn't matter, they were still dealing with nebulous criteria, and said it would result in one attorney against another, and the dragging in of specialists. She also said it involved volunteers making social policy. She stressed again that special exception did not represent an extreme variance, and could be reviewed by the ZBA, as compared to a conditional use, which represented an extreme variance with very nebulous criteria.

Barry Ryan, Dame Farm said he saw a lot of changes to the agricultural rural zone, and said the Ordinance wanted to protect rural, agricultural character, but also said the ordinance appeared to be stripping away agricultural uses. He said large lot subdivisions and low impact subdivisions should be exempted from the zoning changes, since they were having to give up agricultural uses, because as these lands became less used for agriculture, and less developable, there should be some consideration given to the value of the land and what it could be used for.

He noted that parcels that were already subdivided were exempt, so basically did not have to adhere to the various soils criteria in the revised ordinance. He said if one had a 7 acre lot, he shouldn't have to adhere to these criteria either, especially because many of the agricultural uses were being stripped away.

Chair Watt asked for clarification concerning Mr. Ryan's comment about stripping away agricultural uses, and said they did not want to exclude agricultural uses from the table. Mr. Ryan said kennels, greenhouses, keeping of chickens, pigs, fowls, emus, etc. had been good uses in rural zones.

Chair Sandberg asked if any other members of the public wished to speak. No other members of the public asked to speak.

Councilor Grant said he regretted the hearing had not been televised live, and said it was advisable to continue the hearing for this and other reasons, in order to provide additional opportunity for the public to provide input.

Councilor Grant MOVED to continue the public hearing on the proposed revisions to the Zoning Ordinance until April 26th. Councilor Harris SECONDED the motion and it PASSED unanimously.

Chair Sandberg asked if there was further business.

Councilor Grant noted that several Planning Board members were present at the meeting, so it made sense to continue the discussion if Council members had questions.

Chair Sandberg suggested amending the agenda to include a new Item IV to consider these things.

Councilor Grant MOVED to add a new Item IV to allow for discussion regarding testimony heard so far on proposed changes to the Zoning Ordinance. The motion was

SECONDED by Councilor Needell. The motion PASSED 7-2, with Councilor Morong and Councilor Kraus voting against the motion.

IV. Continuation of Discussion on Revisions to the Zoning Ordinance

Councilor Niman noted the personal wireless ordinance hadn't changed much, and asked if the Board was happy with the ordinance, or was considering revisions to it based on recent experience.

Chair Watt noted Councilor Harris had written much of the personal wireless ordinance, and had gotten it just about right.

Councilor Smith said he had made a series of requests to consider one change to the ordinance.

Mr. Campbell said the Zoning Rewrite committee had yet to look at the overlay districts, and said Councilor Smith's comments had been duly noted. He said this was still a work in progress.

Chair Sandberg said he had a procedural question he wanted to share with the Council regarding what it might do if it found significant segments of the ordinance that it thought should be changed, for example the portions of the Table of Uses. He described possible scenarios, and said it was a logistical issue as to how the Council could best effect change. He said the phasing of the implementation of the Master Plan was of substantial importance to the Council.

Chair Sandberg said the Council needed to look at the Uses table and consider them carefully. He said if the Council wished to change the classification of a particular use, it could recommend this to the Board, and would probably have another hearing on this, so it would remain a Planning Board initiated amendment. He said he wasn't insisting this was the way to proceed, but was looking for a process that was fair, and comprehensive.

Councilor Kraus said if some permitted uses were to be changed to not permitted, etc. this shouldn't happen suddenly, and noted that the people affected wouldn't have the chance to come in and talk about these changes. He said if the Council was going to change these things, it might be eliminating opportunity to get input.

Councilor Grant said he liked the approach Chair Sandberg had noted, but said they needed to consider the timeframe for the process. He provided details on the timeframe that might needed to be followed.

Councilor Morong said that before reinventing the wheel, they should ask Mr. Eyerman how other towns handled this.

Mr. Eyerman said his professional judgment was that if the Council wanted significant changes to the Ordinance in terms of policy, remanding these recommended changes to the Planning Board was the proper approach to take. He said if the changes recommended were very minor, it was reasonable to adopt the Ordinance and then immediately post changes to

it. He noted that if significant changes were proposed, appropriate notices needed to be provided regarding the amendment process.

Mr. Eyerman said he had worked in a couple of communities where after the Council got the Planning Board proposal, the Council developed a punch list. He said there was an ad hoc committee comprised of some Council and Board members, to meet quickly to draft language that could be submitted to the Planning Board, and then resubmitted to the Council. He said details on the process should be referred to the Town Attorney.

Councilor Needell noted some of this was addressed in the Town Attorney's letter.

Councilor Smith said the Council was bound by the law, which included how the zoning code could be amended, and noted there were no proposed changes to this section of the Ordinance. He listed the following possible ways the Council could make changes to the Ordinance:

- 1) Make changes deemed to be technical or of minor substantive importance. Councilor Smith noted he had said the Council should interpret this very conservatively, and said he would not consider changing CU to an X as a minor change.
- 2) Refer the proposed ordinance back to the Planning Board. Councilor Smith said he agreed with the Town Attorney that this would mean returning the whole document. He said that route was provided for in Statute, which said the Board had 60 days to get it back to the Council. He said that if the Board should decide not to go with the changes recommended by the Council, no hearing was required, although for public policy reasons it would be a good idea to have one.
- 3) Councilor Smith said it was his view, that when the proposed changes were initiated by the Planning Board, and the draft was then sent to the Council, the Council had the authority to make changes without going back to the Planning Board. He said he did not believe the ordinance directly spoke to this, but it appeared to be implied. He said he had been inclined to want to use this approach, but then had reconsidered this.

He said one of the things that concerned him about this third approach was that it would be a discouraging exercise for the Planning Board, which had already worked so hard on the Ordinance. Councilor Smith noted that all three approaches contained some risk, because no approach would be instantaneous, and applications could come in, in the mean time.

Councilor Niman asked when talking about making changes during the 60 day period, which ordinance would be in effect.

Councilor Smith said the only zoning ordinance that existed was the one in existence right now, and said this had been the case since the new version of the ordinance was posted. He said state law stated that once a draft of the revised ordinance was posted, and an applicant came along, until it was determined whether the Town was going to go with the new ordinance or stick with the old, a developer, etc. was bound to obey both. He said the policy reason for this was to prevent a rush to the planner's office.

Councilor Morong said the third proposal described by Councilor Smith might move things along more quickly, but said he could see how the Planning Board might not like being excluded from the process. He suggested the punch list idea (option 2) was the way to go, so the Board could be included back in the discussion to explain their thinking about the items on the punch list.

Councilor Needell said he also supported the punch list idea, but said he recognized that Councilor Smith understood the amendment process. He also asked where option 3 was allowed in the Ordinance. He said it seemed that the only revisions that could be made after the first reading were minor revisions.

Councilor Smith said this was only the case if they did not have a public hearing. He said that each of the options was not adequately described in the Ordinance, so one could conceivably bounce back and forth forever between the two boards. But he noted he had not suggested option 3 as a way to cut the Board out of the process.

Councilor Grant said the punch list idea was a good approach, and said it was important for the Board as a whole to consider the punch list issues, because collective memory on this would be useful.

Chair Sandberg said hopefully the process would be an all inclusive review. He noted there were four major policy issues, and several minor ones, and said the Council would be sure the timing was right for dealing with each of them. He said he hoped the Planning Board would continue to come and work with the Council as they worked through the issues.

Chair Watt said the purpose of quarterly planning meetings for the Planning Board was in part to deal with punch list items concerning the Ordinance. He said the Board intended to use that approach, and said a punch list from the Council was the kind of input they would like.

Chair Sandberg said this setting would also represent the opportunity for legislative amendment by citizens to be heard.

Chair Watt noted the problem expressed by Mr. Ryan concerning agricultural uses, and said the Board, through quarterly planning meetings, wanted to provide the opportunity to provide input like this on the Zoning Ordinance more frequently than once every 10 years.

Chair Watt said he also wished to speak in support of the conditional use process, noting that one of the speakers that evening had grossly misrepresented this process. He said there were 54 towns in New Hampshire that allowed it, and said it was not true, as alleged, that the Board could relax standards. He said the Board could, however, add conditions.

He also spoke of the issue of the contentiousness of the conditional use process, and said the reality was that CUs often reflected hard issues. He said the only outrageous thing he had heard about the Board regarding conditional uses was that the Board didn't exercise due diligence concerning the Allen Farm subdivision. He provided details on this, and said the idea that they acted irresponsibly was wrong.

Chair Watt also spoke about the role of special exceptions, and said he had learned at a planning conference that special exceptions were meant to provide relief from hardship, if a property was unsuitable for dimensional or environmental reasons, so there wouldn't be a taking.

He said the conditional use process was a flexible planning tool, the uses allowed were very limited, and the process gave the Board the opportunity to consider community input to a significant degree.

Councilor Smith said someone earlier had raised the issue of the cost to the public of making meaningful contention before the Planning Board concerning the conditional use permit. He said he had only seen one occasion where citizens were able to launch an effort that was comparable to an effort that a professional developer applicant would be able to launch. He said this was his major concern, and asked Chair Watt if it bothered him.

Chair Watt said in most cases he had been involved with, citizens without attorneys represented themselves quite well. He noted two of these situations involved the PUD provisions of the ordinance, which was inherently confusing. He said in most cases, citizens did quite well, and gave as an example the hotel application. He said what Councilor Smith had said about resources available to push things through did concern him, but he said he didn't really think that would happen in Durham.

Councilor Needell asked why community centers were not permitted uses in Durham, according to the Table of Uses.

Chair Watt said this was because it was decided they were a government land use – so the Town could simply decide to have one if a community center if it wanted to.

Councilor Niman said it appeared that the Council would be going down the punch list road, and asked if it would be possible for Council members to share their individual lists with the Town Administrator so he could consider their ideas in advance.

Chair Sandberg noted the following key issues: Conditional Use; Conservation Subdivisions; the use of the Technical Review committee; and RSA 175:43 – Use Standards.

Councilor Smith spoke of the provisions concerning the University, which had been rearranged, and asked if Chair Watt was satisfied that the Town had fully exercised its right to use local zoning, to the full extent that was allowed by State law.

Mr. Eyerman noted language in 175:5 concerning the University, and said to the extent that UNH, etc. carried out non-government functions on its property, the intention of 175: 5 was to make it subject to the provisions of the zoning ordinance. He said the issue of joint use was a difficult one, and probably came down to what the primary use of the facility was, which the revised Ordinance reflected.

Councilor Needell said his impression was that the authors of the previous conditional use provisions intended it to be more restrictive than it had become. He asked if Chair Watt was

comfortable that the intent could be imposed on future boards to interpret conditional use in the way in which it was intended.

Chair Watt said the conditions were somewhat nebulous, but as long as there continued to be a lot of public input in Durham, they would work well.

Jay Gooze, 9 Meadow Road, and ZBA member said he was speaking as a ZBA member and as a citizen. He noted the letter from the Town Attorney, which could be interpreted in various ways. He said the ZBA was concerned about possible problems because of the state of flux the zoning ordinance was presently in, and asked for clarification from the Attorney.

He also said if the Council did continue the hearing, it could also be continued until the Council heard back from the Planning Board, and the Council could then make its final decision after closing the hearing.

V. Adjourn

Councilor Kraus MOVED to adjourn the meeting. The motion was SECONDED by Councilor Grant, and PASSED unanimously.

The meeting ADJOURNED at 9:15 pm

Victoria Parmele, Minute Taker