

This set of minutes was approved at the Town Council meeting on September 12, 2005

**DURHAM TOWN COUNCIL MINUTES
MONDAY, AUGUST 1, 2005
DURHAM TOWN HALL -- COUNCIL CHAMBERS**

MEMBERS PRESENT: Chair Malcolm Sandberg; John Kraus; Peter Smith; Mark Morong; Gerald Needell; Diana Carroll; Julian Smith

MEMBERS ABSENT: Neil Niman; Karl Van Asselt

OTHERS PRESENT: Town Administrator Todd Selig; Richard Kelley, Chair, Planning Board; Jay Gooze, Chair, ZBA; David Kurz, Police Chief

I. Call to Order

II. Approval of Agenda

Councilor Kraus MOVED to approve the Agenda as submitted. The motion was SECONDED by Councilor Carroll, and PASSED unanimously 8-0.

III. Special Announcements

None

IV. Approval of Minutes

June 6th, 2005 Nonpublic Minutes

Councilor Julian Smith MOVED to approve the June 6th, 2005 Nonpublic Minutes as amended. Councilor Kraus SECONDED the motion, and it PASSED 6-0-1, with Councilor Peter Smith abstaining because of his absence from the original meeting.

June 20th, 2005 Minutes

Councilor Needell MOVED to approve the June 20th, 2005 Minutes as submitted. The motion was SECONDED by Councilor Kraus.

Page 2 Spelling of Administrator Selig, second bullet from bottom of page

Page 4 2nd bullet, should read "...an upper tier of properties..."

Page 5, 3rd full paragraph should read "...a possible multi-tier parking garage..."

Page 13 -

Councilor Peter Smith MOVED to amend the June 20th, 2005 Minutes to read "...to approve the project, with the understanding that it would subsequently have to vote on whether to approve construction bids. Councilor Needell SECONDED the motion and it PASSED unanimously 7-0.

Page 14, 6th full paragraph, should read "Mr. Valena.." Bottom of page, motion should read "Councilor Kraus MOVED to CLOSE the public hearing on Ordinance #2005-04....."

The June 20th, 2005 Minutes as amended PASSED unanimously 7-0.

July 11th, 2005 Minutes

Councilor Kraus MOVED to approve the July 11th, 2005 Minutes as presented. The motion was SECONDED by Councilor Julian Smith.

Page 14, 3rd paragraph from bottom should read "He said he would appreciate it if for the next meeting, Councilors could be provided with a document setting forth the items brought forth by the Council, along with what action the Planning Board took with each of those items,(e.g., accepted, didn't accept) and why.

Also last paragraph on page 14, delete last line "He said he would like to op..."

Councilor Peter Smith MOVED to amend the Minutes as amended. The motion was SECONDED by Councilor Kraus and PASSED unanimously 7-0.

The July 11th, 2005 Minutes as amended PASSED unanimously 7-0.

V. Report of Administrator

- Administrator Selig noted there was a new web page for the Historical Association which could be found under the Community section of the Town's web page.
- Administrator Selig said the State's Commission on Disability had concerns regarding ADA issues at the Courthouse. He said his perspective was that Durham wanted to maintain the District Court in the community. He noted he had lobbied aggressively to keep the Court in Town in the past, and would follow up from that perspective unless he heard otherwise from the Council.
- Administrator Selig said NHDOT had notified the Town it planned to dispose of two pieces of land it had originally acquired for a future upgrade of Route 4. He said the land was located off of Pendexter Road, at the end of Edgewood Road adjacent to Route 4. He provided details on the Town's interest in this property and said Parcel A, which encompassed 1.7 acres, would be sold to the Town for \$11,600. He said Parcel B, encompassing 0.9 acres, would be sold to the Town for \$6,400, for a total cost of \$18,000.
- Administrator Selig spoke about an issue concerning Jackson's Landing. He said the owner of a parcel of land next to it with a new duplex had approached the Town and the University to see if they would allow him to purchase and install a private dock at the end of the University's rubber float system. He said initially the Town had responded that it was the University's dock system, so the person should speak with the crew coach. Administrator Selig said he himself started to have some concerns about allowing a private individual to have a dock on a town pier. He said he was interested to hear from the Council on this issue, but said it was his perspective that it was poor public policy for a private landowner to permanently dock a boat at the end of a municipal pier system, particularly in this location. He said that as a result of this,

he had said no to allowing this arrangement to proceed, noting that this might necessitate a complete reconfiguration of the docking system. He said a long-range thought had been to relocate both the existing boat ramp area and dock system at Jackson's Landing to address siltation at the end of the launching ramp and low tide launching issues.

- Administrator Selig said the demolition of buildings at the Craig Supply site was about half done, and said he would be moving the project forward to the Planning Board for an advisory consultation.
- Administrator Selig noted that Town staff had appeared before the Planning Board concerning the proposed Town Office parking area, and was seriously considering input from the Board concerning screening, lighting, and landscaping issues, while still looking to do the upgrade as inexpensively as possible. He said he saw this as a transitional use for the lot, noting this might be the natural place to expand Town facilities in the future, and therefore didn't want to invest significant dollars there at present. He noted that an abutter of the Durham Village Garage had approached the Town about using 14 spaces for the use of their station, and explained that if the Smitty's 108 Sunoco Station was in fact going to close, this would likely mean additional business for the Durham Village Garage, and additional vehicle storage parking would be needed for the business.

He said if the Town did lease the spaces to the Durham Village garage, the business would handle plowing, which would allow the Town to reduce somewhat the per space rental amount. He said the idea would be explored further, and said he planned to return to the Planning Board concerning the project at the Board's second meeting in August.

- Administrator Selig said he had traveled to Boston for the CALEA (Commission on Accreditation for Law Enforcement Agencies) ceremony on Saturday with two members of the Police Department, as well as with Councilor Peter Smith and Councilor Needell. He noted that in April of this year, a team of CALEA assessors examined all aspects of the Durham Police Department's policy and procedures, management, operations, and support services. He said the team had completed a review of the agency that was extremely positive and reported back to the full Commission, which had then granted the Police Department accredited status, for a third consecutive three-year term.
- Administrator Selig said there had recently been a meeting of the Packers Falls Bridge Committee to review final bid documents and present the plan for the replacement of the railings at the Packers Fall Bridge. He said this plan would be presented to the Town Council on August 15, 2005.
- Administrator Selig said he hoped to start bringing forward the various joint Town/University agreements for the August 15th Council meeting, noting they were working to have a single document that would be used by both the University Board of Trustees and the Council. He said if the document was not ready by the 15th, it would be ready by the first of September.
- Administrator Selig said the annual Household Hazardous Waste day would take place on September 10, 2005.
- Administrator Selig said the Town had received a number of letters from citizens concerning the Bennett Road/Route 108 intersection issue, and said these were on the table that evening.

VI. Reports and Comments of Councilors

Councilor Peter Smith said he had attended the CALEA ceremony the previous Saturday. He said the procedure for receiving accreditation was very complex, and that it was unusual for small towns to seek and get this accreditation. He noted that Councilors had recently been given a copy of the report from CALEA, and he pointed out that the Police Department had purposely scheduled the inspection of the Department by the CALEA personnel for the occasion of the UNH Spring Fling. He said the report indicated that the Department was a shining example of a police force, and said the inspectors had recommended that accreditation be given for another 3 years. Councilor Smith said the meeting in Boston on Saturday was very in-depth, and the presentation indicated just how highly the Police Department, and the Police Chief, were regarded by CALEA. He said it was really something to hear this, and that he couldn't stress enough how lucky the Town was to have Chief Kurz in Durham.

Councilor Needell said it was very obvious at the meeting on Saturday how highly esteemed Chief Kurz and the entire Police Department were. He said the CALEA process was very impressive and professional, and focused on finding problem areas and room for improvement. He said it was a tremendous reminder of the professionalism of the Town's Police Department, and said he was very proud to be at the ceremony as a representative of the Town.

Councilor Needell said the Planning Board would continue the public hearing on the proposed Irving site at the next Board meeting. He said the process was moving along, and said if people had any concerns about the project, they still had the opportunity to voice them.

Councilor Needell asked Administrator Selig to explain why the Craig Supply site parking proposal was being brought forward in a different way than the proposed Town Hall parking lot.

Administrator Selig explained that when the Town brought forward an application to the Planning Board as a regular application, it was constrained to follow the Town regulations just as it would for any other applicant. He said he didn't want to put the Board in the position to have to follow all the regulations at present for the Craig Supply/Depot Road site, when the primary goal for the site was to address the contamination there. He said the Town was seeking input from the Board on the proposal, and said he was fully committed to getting this input. He said once the site was cleaned up, that was the time to follow the regulations and seek Planning Board review concerning the future use of the site.

Chair Sandberg said that on behalf of the community, compliments went to Chief Kurz and other members of the Durham Police Department and for the exemplary review the Department had received from CALEA. He said he appreciated it that Administrator Selig, and Councilors Peter Smith and Needell had attended the ceremony, and said this was something that all Durham's citizens could be proud of. He asked Chief Kurz to extend the Town's thanks to his entire staff.

VII. Public Comments

Richard Lord, 85 Bennett Road, said he wanted to address the proposed realignment of the Bennett Road/Route 108 intersection, and first noted he had been asked to read a letter from Monica Smith. This letter, addressed to NHDOT, said Ms. Smith was a 40 year resident of the area, and objected to the realignment, as a totally unnecessary project. She said it would not facilitate traffic, and noted that as a result of it, commercial vehicles might be prompted to use back routes. She provided details on a design that would make the area more accessible to residents while eliminating unwarranted through traffic. She said with scarce dollars, NHDOT could find a better project to implement.

Mr. Lord then read his own recent letter to NHDOT. He said while he was pleased the project would provide for safer bicycle travel on Route 108, the proposed realignment of the intersection was of concern. He noted the sensitivity given to the Durham Point intersection changes, but said similar sensitivity was not given to the Bennett Rod intersection even though it was a designated scenic road.. He said the replacement of the historic alignment of rural intersections with new perpendicular alignment introduced a uniformity that eroded the rural heritage. He urged NHDOT to consider what could be done with the present alignment to address safety concerns. He said he had lived on this road for 48 years, and would hate to see a change unless there was a substantial need to make that change. He asked the Council to give careful consideration to the historical rural nature of the present entrance on Bennett Road, and the impact on the neighborhood of this proposal.

Mr. Lord said the number of accidents in this area had been mentioned by NHDOT, but said no details had been given as to whether the present alignment of Bennett Road was to blame for this. He said there were 22 accidents in the area in 8 years between 1995 and 2003, and said he had been told by NHDOT that there actually only 13 that were relevant, since they were within 200 yards of the intersection. He said no details were provided as to what was attributable to Longmarsh Road, and what was attributable to Bennett Road. He also said the proposed route would cut through an area with ledge, and provided details on this. He urged the Council not to endorse the plan.

Jim Jelmborg, Park Court, thanked the Council for holding several hearings on Sections A and B of the Zoning Rewrite, and said this seemed especially generous given the other Sections the Council needed to consider. He also said he appreciated the information provided to him on conditional use, and thanked the Planning Board for its guidance throughout this whole process.

Lawrence O'Connell, 5 Sullivan Falls Road, spoke regarding the Bennett Road/108 intersection. He said he would not like to see another entrance cut to the south of the present intersection. But he said the present intersection was unsatisfactory, and asked the Town to talk with NHDOT about the possibility of tightening the entrance, where the hill would be kept in place, but the wide entrance would be cut down. He said it was not a safe entrance, but said to argue that cutting up the hill and having to exit Route 108 at a high rate of speed was traffic calming was simply not true. He said he did not see there would be a diminution of the historic authenticity of the area if the entrance was tightened up, and there was striping. He

said he did not feel it was satisfactory to keep the entrance as it was for the long term. He said it was the responsibility of the Council and NHDOT to make sound public policy for all citizens for the future, and said to leave the intersection as it presently was would not accomplish this.

There was discussion about a petition that had been signed by some residents of the area. It was noted the Council hadn't yet seen this petition.

Henry Smith, Packers Falls Road, noted he had driven this road for many years, but said while some might say it was unsafe, he had never seen or had an accident on the road. He said the fact that Mr. Lord had discovered there were only 15 accidents during the time period was very significant, and also said he questioned whether even this was a meaningful statistic, when the particulars of where they occurred, and what kind of accidents they were weren't known. Said driving off Route 108 up the hill was a very safe turn because there was ample room to make the turn, and to see oncoming traffic said in winter, any prudent driver would drive with great care and work to avoid accidents. He felt if anything, reconfiguration would make the intersection more unsafe.

He suggested one change to the road that would improve it would be to smooth out the shoulder where cars poised to turn left onto Longmarsh Road. He also spoke about the issue of drivers being surprised by cars coming over the crest of the hill on Bennett Road. He said most drivers in this area were familiar with the route, and said it was a matter of being cautious in this area. He suggested that a yellow warning sign should be placed prior to the descent to indicate to drivers that something was ahead that merited their careful attention.

Michelle Scott, 98 Bennett Road, said she agreed with what Mr. Smith had said. She said the State was not fully aware that this was more of a local road that didn't have much through traffic. She said she found it quite comforting that cars didn't have to stop completely in order to turn right onto Bennett Road, noting she didn't like the feeling of cars piling up behind her. She said she did think the hill was dangerous when approaching Route 108, but said the proposed project was an expense that was not necessary. She said that perhaps a compromise would be to level the hill a bit. She said she would like to see the nature of the country road maintained.

Richard Kelley, 47 Stagecoach Road, said he didn't come to the meeting specifically to speak on this, but felt compelled to do so. He said as a professional engineer, he didn't design roads for those familiar with a road, but designed with all drivers on the road in mind, including people who had never traveled on this road. He said he found this road a beautiful way to get to Lee, and also noted that Packers Falls brought in people from outside the community. He said there might be a compromise that could be reached between Options 1 and 2, and said tightening the intersection was sound traffic calming.

He said maintaining an 8+% grade, in hopes of slowing traffic down, was not a good idea, noting he still found himself a bit surprised at the acceleration that occurred going over the hill. He said this was not a safe situation, and said he supported revision of the grade to increase site distance. He noted the Planning Board often spoke about site distance in projects before the Town, and he said he found it surprising that on such a short segment of a beautiful

road, safety could be improved without affecting the entire corridor. He urged the Council to support an alternative that would improve the safety of the intersection

Chair Sandberg asked Mr. Kelley which Option he preferred, and Mr. Kelley said Option 2 seemed to be a compromise.

Don Brautigam, Packers Falls Road, said Bennett Road was a nice country road, noting there were a number of places on it with sharp corners, but they didn't want to have to straighten all of these out. He said he often came off of Route 108, but slowed down in this area as he approached the hill. He said there were signs posted for some areas of the road, and said a 25 mph sign as one approached the hill would be appropriate, with a 35 mph hour sign beyond that. He said perhaps the grade could be taken down a bit, but said he was against any major blasting project to realign the road. Mr. Brautigam said he was not an engineer, and said he would be interested to see any studies on whether it was safer to have the perpendicular angle getting off of Route 108 or the present, more gradual angle.

Beth Olshansky, Packers Falls Road, said she had attended the public hearing on the Bennett Road intersection, and said NHDOT said it wanted to respect the Town's scenic roads and historic vistas. She noted NHDOT had talked about the design for the Durham Point Road intersection, which because of those qualities, had been modified. She said given that, she had been surprised to see the plan for Bennett Road, which didn't appear to have the same sensitivity. She said she spoke with the Commissioner after the meeting, and asked if he realized Bennett Road was a designated scenic road. She said he didn't acknowledge that he knew that before.

She said the intersection was called substandard at the hearing, and said the NHDOT person who gave the presentation said this meant it was not a right angle. She then spoke about the sudden rise going up Bennett Road, noting that this was sudden if one was going too fast. She said she didn't go fast, and this rise was therefore not a surprise. She said she was concerned about safety on Bennett Road, and said one easy solution was to post a 25 mph sign. She noted that other parts of Bennett Road were posted this way. She asked why drivers were presently being told to go faster than that at a place that was considered a blind spot.

Ms. Olshansky noted that Laurel Lane had a nerve-wracking turn, and said a friend who lived on this road was terrified to pull onto it, so first pulled off into the shoulder because there were so many times she was almost rear ended. Ms. Olshansky said this intersection was similar to the proposed Bennett Road intersection. She described her own recent experience at the Laurel Lane intersection, and said she would hate to see this kind of situation at Bennett Road. She said she believed the proposed sharper intersection would cause more safety problems, and noted that the reason one didn't see more problems at the Laurel Lane intersection was that was only one family used this road regularly. She said she had checked with the Strafford Regional Planning Commission, and had found there were 100 times more entrances and exits onto Bennett Road than onto Laurel Road. She said if the Town did what NHDOT proposed, it would eventually wind up with a traffic light.

Ms. Olshansky presented a petition signed by 175 people, most of whom traveled the road daily, and many of whom had lived in the area for many years. It was clarified that this

petition was an endorsement of Ms Olshansky's position.

Howard Burrows, 40 Wiswall Road, said there were two dangers to the road, one of which was that it was steep. He said it would be nice to have something to calm traffic down after exiting the hill toward Route 108, and said the real danger was people coming from Newmarket turning left onto the road. He said people cut this turn very short, with heavy traffic, and said he would love to see no left turn allowed there, or something else that helped the situation. He said he thought Options 1 and 2 were bad, and provided details on a design he would prefer.

Deborah Burrows, 40 Wiswall Road, said she had recently had a very close call in this area heading toward Route 108, when someone entered Bennett Road very rapidly. She said she wouldn't want to change the road, but said a sign of some kind in this area so people would be more aware would be good.

Pat Walker, 62 Bennett Road, said Bennett Road had character, which people wanted to keep. He said all he heard about was speed, and said if people slowed down, the road was fine. He said the road had been paved the previous year, and now there was talk about tearing it out and spending more money for something else. He said he didn't think this was money that would be well spent. He said he knew how fast people went, but said he really loved living on the road, with its character and curves. He said if one listened to NHDOT, everything would be right angles, and straight, which was boring, and said he didn't think anyone wanted to live on a road like that.

Chair Sandberg thanked members of the public for their comments, and said the Council would take this information under advisement, and would be addressing the issue later at the meeting.

VIII. Unanimous Consent Agenda

Shall the Town Council move on FIRST READING Ordinance #2005-06 proposing amendments to Chapter 175 "Zoning" of the Durham Town Code, **Section #2005-06 (C)** - Relative to the Shoreland Protection Overlay District, **Section #2005-06 (D)** - Relative to the Wetland Conservation Overlay District, and **Section #2005-06 (E)** - Relative to the Aquifer Protection Overlay District, and scheduled a public hearing to be held on Monday, August 15, 2005,

Chair Sandberg read through the Unanimous Consent Agenda Item.

Councilor Peter Smith asked whether, if the Council proceeded with these Sections on the Unanimous Consent Agenda, this would cause the Council to have to treat these three Sections as one item, for purposes of the issue discussed at the previous meeting.

Chair Sandberg said there would be three separate hearings, one for each of these three items. There was discussion as whether that would in fact be the case.

Councilor Needell asked that this Item be taken off the Unanimous Consent Agenda.

Administrator Selig provided background on this Item. He said the intent was to have three separated public hearings, and said perhaps there should be a separate motion for each Section.

Councilor Peter Smith MOVED on FIRST READING Ordinance #2005-06 proposing amendments to Chapter 175 "Zoning" of the Durham Town Code, Section #2005-06 (C) - Relative to the Shoreland Protection Overlay District and scheduled a public hearing to be held on Monday, August 15, 2005. The motion was SECONDED by Councilor Needell, and PASSED unanimously 7-0.

Councilor Julian Smith MOVED on FIRST READING Ordinance #2005-06 proposing amendments to Chapter 175 "Zoning" of the Durham Town Code, Section #2005-06 (D) - Relative to the Wetland Conservation Overlay District and scheduled a public hearing to be held on Monday, August 15, 2005. The motion was SECONDED by Councilor Kraus, and PASSED unanimously 7-0.

Councilor Carroll MOVED on FIRST READING Ordinance #2005-06 proposing amendments to Chapter 175 "Zoning" of the Durham Town Code, Section #2005-06 (E) - Relative to the Aquifer Protection Overlay District and scheduled a public hearing to be held on Monday, August 15, 2005. The motion was SECONDED by Councilor Needell, and PASSED unanimously 7-0.

IX. Presentation Item

A. Annual report from the Planning Board - Richard Kelley, Chair

Administrator Selig introduced Mr. Kelley.

Mr. Kelley said he had only been Planning Board Chair for a short period of time, but said there were some dynamic, uniquely qualified individuals on the Board. He said they were dedicated, open-minded individuals, and said it was a pleasure to serve with them. He also said he couldn't say enough about the people on the Zoning Rewrite committee, those serving in the past and presently. He said they all looked forward to the end of the Zoning Rewrite process.

He said the Board was gearing up to work on the Master Plan rewrite, and said Mr. Campbell and planning consultant Mark Eyerman had presented the Board with a process they had mapped out for systematically looking at it.

Mr. Kelley said he would like the Planning Board to be an entity that did more than review plans and negotiate with developers, and to instead be more involved with the planning issues facing the Town. He said with that in mind, some issues the Board would be discussing under New Business at Board meetings were issues such as traffic congestion and water supplies. He also said he had offered to give some informal sessions on technical issues, to answer questions other Board members might have. He noted he had given many presentations before local Boards. He said there was some interest in this idea, and said he hoped to pursue it.

Mr. Kelley said as always, he welcomed any advice and criticism the Council and public at

large might have.

Councilor Peter Smith said he was intrigued about the idea of the Planning Board looking into planning issues, beyond reviewing applications and working on the Master Plan.

Mr. Kelley said it was important for the Board to look at the larger issues facing the community, and said he would like it to discuss them and entertain possible solutions to them.

Administrator Selig said that over the last few years, he had tried to have staff from the various Town departments review applications with a great deal of rigor. He asked Mr. Kelley if this in fact was happening, and also asked him if the Planning Board had the technical and legal support it needed for its work.

Mr. Kelley said the summary reports of input from Town staff concerning projects, which were created by Mr. Campbell, were very valuable, and said the only time he became alarmed was when he saw the comment "nothing at this time", because there might not be another time for Town staff to provide comments on an application or issue. He asked that Town staff be informed of this, although noting he recognized these people were busy with other projects. He said he had not felt anything lacking in terms of resources, and said he and other Board members were not reluctant to ask for an opinion from Town staff when needed.

Chair Sandberg thanked Mr. Kelley for his willingness to serve as Chair. He also thanked other members of the Board for their diligence and willingness to serve.

B. Annual report from the Zoning Board of Adjustment - Jay Gooze, Chair

Mr. Gooze noted he had been serving for three months as Chair, although he had served on the Board for a couple of years. He said it had been his pleasure to serve with the other ZBA members, describing the Board as a group that listened very carefully, and strived to make the best decisions it could. He listed the current members of the Board, noting they were presently short of one alternate member.

He said the Board was good about attending State sponsored forums on zoning matter, which was important because of the quasi-judicial nature of the ZBA. He also said he had tried to gear the Board to make concise decisions, so that from a legal standpoint, the Board's reasons for granting or denying applications were very clear in the Minutes and on video. He said granting a variance required that all five variance criteria were met, and said the courts had been very strict about this.

Mr. Gooze noted that the Supreme Court had changed things in some of its recent decisions regarding area variances, and said now under hardship criteria, it was now easier for an applicant to be granted a variance. He said the Court also said if a Board felt an application didn't meet one of the criteria, if this was brought out carefully in the decision, the Board's decision would be upheld.

He said the Board had been seeing fewer appeals of administrative decisions, and also noted that for those that had gone on to the courts, the Town's position had been upheld because of

the careful consideration it gave to these cases.

Mr. Gooze said the ZBA didn't have a particular agenda, and was charged with upholding the Zoning Ordinance, by looking at variance applications to see if they met the variance criteria, by determining whether an administrative decision was proper, and by deciding whether a special exception was warranted. He said he appreciated the work done on the Zoning rewrite, and said among other things this was providing better wording for things like the definition of an accessory apartment, and the three unrelated persons provisions.

He noted a number of recent applications involved shoreland protection issues, including specifically septic issues. He said one member of the Board was an engineer, and had pointed out that septic designs had changed greatly. He said he hoped this would be looked at, but said the Board would follow the Zoning Ordinance.

Councilor Peter Smith said he viewed the ZBA as a distinctly quasi-judicial entity that was different than other Boards in Town. He said the general model for resolution of disputes was that there was a disinterested, neutral entity, in this case the ZBA. He said the Town obviously had an interest in what was done with respect to granting of variances, but said the present model the Town had didn't include having someone there representing the Town in a fairly active way. He noted that the Zoning Administrator was there, and certainly was a resource to make facts available, but he asked Mr. Gooze if it would be easier to search out the truth of a matter if a model was used where there was someone who was presenting a more affirmative position. He asked if the role the Zoning Administrator played was sufficient to allow the full protection of the public interest, as compared to someone who was more actively involved.

Mr. Gooze said he believed the present model was working. He said the current Zoning Administrator, to him, was important for the Town, not because he had an agenda, but because he took a conservative approach in interpreting the Zoning Ordinance. He said perhaps the ZBA got more applications because of this, but said the model worked well. Mr. Gooze said to him, the idea was not to present the opposite side to the applicant, but was to meet specific criteria. He said the Board didn't need an advocate in order to achieve this, and said as long as they stuck to the facts on paper and in the minutes, the model worked.

Councilor Needell said he regularly watched the ZBA meetings, and said he was impressed how carefully the Board focused on the criteria.

Mr. Gooze said in his reading about ZBA cases in other places, he had realized that even when the Board thought it was doing well at this, perhaps it was not focusing on the criteria carefully enough to stand up in court. He said the Board was working to get even better at this.

Administrator Selig said if one considered the rigor with which enforcement was taking place, the number of cases had increased dramatically over the last few years, although he noted that with some changes to the Ordinance, this had dropped somewhat. He said he occasionally heard complaints about the Town being too aggressive with enforcement, and asked Mr. Gooze if the Board had discussed this.

Mr. Gooze said didn't think enforcement was too strict, noting that the Board saw very few applications where it said it shouldn't have heard them.

Chair Sandberg thanked Mr. Gooze for his willingness to serve as Chair, and thanked the Board for its work. He said this was important, and difficult work. He noted there was an opening on the Board for someone with an interest in this work, and said he hoped someone would step forward.

X. Unfinished Business

A. PUBLIC HEARING AND ACTION on Ordinance #2005-05 amending Chapter 59 "Fire Department Service Call Fees", Section 59-4 (D) of the Durham Town Code by properly referencing that service call fees for apparatus responses are contained within the Town Master Fee Schedule

Administrator Selig explained that a number of years back, the Town had adopted an ordinance where people who caused excess false alarms would be charged a fee. He explained that it came about because of an elderly resident who called the Town time after time when she had problems. He said the Town developed the ordinance in response to the situation, including a request from the family that a way be found to dissuade the woman from calling regularly.

He said subsequent to passing the ordinance, the Town developed a Master Fee schedule that dealt with this fee, but neglected to eliminate the provision in the ordinance regarding the fee. He provided additional details about this, and on the proposed modification to the wording in the ordinance.

He noted when this issue came before the Council for a first reading earlier in the year, there was some discussion about other aspects of the ordinance. He noted the changes the Council recommended at that time, and then read through the wording that was presently included, along with details on the justification for this. But he repeated that the reason for the current Ordinance was cut and dried, and was to bring Chapter 59-4 (D) into conformance with the Master Fee Schedule.

Councilor Kraus MOVED to open the public hearing on Ordinance #2005-05 amending Chapter 59 "Fire Department Service Call Fees", Section 59-4 (D) of the Durham Town Code by properly referencing that service call fees for apparatus responses are contained within the Town Master Fee Schedule Councilor Carroll SECONDED the motion, and it PASSED unanimously 7-0.

Bill Hall, Durham, said the Town had s situation that was not shared by anyone else in the State, and provided details on this. He said by the time a fee got on the Fee schedule for these kinds of calls, the calls had probably already cost the taxpayers several thousand dollars. He said this Ordinance was probably simply a way to get people to be more mindful about making these kinds of calls. He said the Town had had some real problems in this area, and to its credit, things had improved. He said this Ordinance was just a tweaking of this.

Councilor Kraus MOVED to close the public hearing. The motion was SECONDED by Councilor Morong, and PASSED unanimously 7-0.

Councilor Julian Smith MOVED to adopt Ordinance #2005-05 as presented, amending

Chapter 59 “Fire Department Service Call Fees”, Section 59-4 (D) of the Durham Town Code by properly referencing that service call fees for apparatus responses are contained within the Town Master Fee Schedule. The motion was SECONDED by Councilor Kraus.

Councilor Peter Smith handed out a draft of a rewritten version of the Ordinance which he had developed. He said he had originally done this as a matter of form, to lay things out more clearly, but also said there were three substantive issues regarding the Ordinance that needed to be discussed.

He said the first issue was whether or not the Ordinance was deficient in not further defining what constituted an emergency. He provided details on this, and said he was troubled about it. He also questioned who would decide what an emergency was.

He said a second issue was the question of use of the word "shall" or "may", noting the way the Ordinance was currently drafted, he believed there was some contradiction as to whether it said if a person set off an emergency response, this would require that a fee be paid. He said if this was going to be mandatory, it should be mandatory throughout the Ordinance. He said he had chosen to use the word "shall" in his draft of the ordinance.

He said the third substantive issue had to do with the fact that the Ordinance said the Fire Department "will inform the owner or occupant of any residence, or the owner of any business in writing after the third service call response within a calendar year." He said he thought the option of informing the owner or the occupant would cause significant problems, and should be clarified. He said he was inclined that as matter of policy, the responsibility ran with the owner of the building, just as if there was a code violation, and said he had used the word owner in his draft of the Ordinance.

Chair Sandberg noted that neither version of the Ordinance included wording about the option for an appeal of the process, and asked Councilor Smith if he felt there was a need for such language.

Councilor Smith said this related in part to whether the Ordinance would be written in a discretionary way, and also related to who got to decide.

Councilor Needell said he was sympathetic to the suggested changes, but said what was before the Council was essentially about a housekeeping change, and did not substantively change how the fee was imposed. He said he was not prepared to adopt the more substantive changes Councilor Smith was addressing without a much more involved discussion.

Councilor Smith noted that in bringing up this matter at the present meeting, he was seeking to postpone voting on the Ordinance.

Chair Sandberg said the purpose of Ordinance #2005-05 was housekeeping in nature, and said if the Council moved to take care of this that evening, Councilor Smith could at a later date bring forward an amendment to the Ordinance for first reading. He asked Councilor Smith if he thought there would be particular problems if the Town took this route.

Councilor Smith explained that he viewed these kinds of occasions as an opportunity to improve what was on the Town's book of laws. But he said unless Administrator Selig felt that failure to adopt the Ordinance that evening would create a major problem, he thought it would be more sensible to postpone the vote, and let Council members look at the draft, and the issues he had raised.

Chair Sandberg asked Administrator Selig if he thought this would require another public hearing.

Administrator Selig said it would depend on the nature of the changes. He said he believed the proposed changes would require an additional hearing.

Chair Sandberg described the options for the Council in terms of proceeding concerning the Ordinance that evening.

Councilor Smith asked if there was an urgency to take the vote at the present meeting.

Administrator Selig said there was not. He then noted that Chapter 59 already included provisions that included a concrete definition of a service call. He also pointed out that in terms of who would assess the bill, there were multiple references to the Fire Department in Chapter 59, even though the wording didn't specifically say the Fire Department shall assess the bill.

He said the bigger issue was that if the language was changed to say owner of a residence or business, this would represent a philosophical change from what was originally intended when the language was first written. He explained that the goal had been to assess the person using the service, and to have the flexibility to get at that person if there was an abuse of the service call system. He provided details on this. He said it might make sense to use the word owner, and said this could provide a real benefit.

Councilor Smith said he agreed that there was a substantive difference between owner and resident, and agreed there would have to be a public hearing concerning this possible wording change. He said the proposal at present was exceptionally vague, in that it could be construed to apply to the owner, or occupant.

There was discussion as to how to proceed concerning the Ordinance.

Chair Sandberg said he would recommend that the Council pass the present Ordinance, and Councilor Smith could then bring forward his proposed amendments and any other refinements at the next meeting for first reading. He said at that time, the Council could move forward with addressing the concerns raised by Administrator Selig as well as Councilor Smith.

Administrator Selig said a compromise position would be to leave the wording in paragraphs A, B and C as it had been before the Council had recommended changes to them, and to only amend Section D for the time being.

Councilor Smith said this was a reasonable way to proceed.

Councilor Peter Smith moved to amend the motion by striking the new language in 59-4 (A), (B), and (C), and to amend D as set forth in the proposal. The motion was SECONDED by Councilor Needell, and PASSED 6-1, with Councilor Morong voting against it.

The original motion, as amended, PASSED unanimously 7-0.

- B. **PUBLIC HEARING AND ACTION on Ordinance #2005-07** amending Chapter 153 “Vehicles and Traffic”, Section 153-49 “Parking Prohibited Certain Hours” of the Durham Town Code by adding a parking restriction at the Wiswall Road Park from 9:00 PM to 5:00 AM.

Administrator Selig provided background on the issue. He said neighbors had complained there was late night activity at the park, and people parking in the early hours of morning and partying on private property. He said in response to this, it was appropriate to adopt parking restrictions in the evening hours. He said the Town was trying to be respectful of people who wanted to use the park late in the afternoon and early morning, and to approximate the time it got dark, noting this time changed depending on the time of year. He said it seemed that 9:00 pm was a reasonable time.

Councilor Julian Smith MOVED to open the public hearing on Ordinance #2005-07 amending Chapter 153 “Vehicles and Traffic”, Section 153-49 “Parking Prohibited Certain Hours” of the Durham Town Code by adding a parking restriction at the Wiswall Road Park from 9:00 PM to 5:00 AM. The motion was SECONDED by Councilor Kraus, and PASSED unanimously 7-0.

Annmarie Harris, Oyster River Road, said this was a wonderful swimming area that residents had enjoyed, but said the area had been abused. She said patient, generous abutters had recognized people loved to swim at this area. She said it was important that it be accessible, but also some consideration should be given to allowing the neighbors to have a quiet enjoyment of the area.

She said there was an enormous amount of noise and imposition on the neighbors, noting that kids come from far and wide, not just Durham. She said limiting the hours the park was open would help, but said she felt this was still too generous, and suggested closing it earlier. She recommended that the hours of operation be dawn to dusk, or early morning to 7:30. She noted that the season when swimming was the most enjoyable at Wiswall was short. She said fisherman could get down to this area to fish without having to use the parking lot.

Councilor Peter Smith asked what hours Mrs. Harris would specify.

Mrs. Harris said 5:00 am to 7:00 pm.

Carl Spang, 55 Wiswall Road suggested that the hours of operation should be sunset to sunrise, to accommodate the shift in seasons. He also urged that this restriction be consistent with parking restrictions at other similar areas in Town.

Al Baker, Wiswall Road, said he agreed with Mr. Spang, also noting the letter written concerning this matter by Judith Spang covered his concerns. He said this was more than a noise issue, and said it was a major public safety issue because of kids on the bridge, especially after dark. He also said this was an issue of resource conservation, noting the trees that had been cut down. He said keeping the park open after dark promoted this behavior, and said the current 1:00 am closing was totally inadequate. He said a 9:00 pm closing time for the parking area wouldn't take into account the shifting seasons, and said dusk to dawn, or sunrise to sunset would be a big improvement.

Howard Burrows said the residents out there needed help with the problem, and said he agreed that dawn to dusk would be much better.

Cynthia Belowski, Lamprey River Advisory Committee, Edgewood Road said the Committee appreciated that the Town was looking at this precious resource and the importance of using it wisely. She said she agreed that having the park open after dark caused enforcement problems, and said she advocated the hours of dawn to dusk.

Dick Lord, 85 Bennett Road, said the hours of daylight generally determined who used the park, with neighbors generally using the area during the day. He recommended using the hours of dawn to dusk. He also noted he was a member of the Lamprey River Advisory Committee, and said that parking for Wiswall park was a result of a joint project between the Town and the National Park Service. He said some signage and landscaping plans for the area had been somewhat delayed because of work to be done on the Wiswall dam, and fish ladder issues. He urged the Council to work with the Advisory Committee on signage, and also urged that the parking lot not be expanded beyond what it presently was.

Janet Tiberghien, 72 Wiswall Road, asked that the hours Wiswall Park was open should be shortened. She noted that when she drove home, kids were there on the bridge, and were sometimes antagonistic. She said this was very dangerous, especially when it was dark. She said having the hours of dusk to dawn seemed the easiest to work with because of the changing hours of daylight, but said anything was better than a closing time of 9:00 pm.

Beth Olshansky, Packers Falls Road, said she supported the sentiments of those who lived on Wiswall Road. She said there were real safety issues at the water's edge and in the woods, and said the Town should not enable these dangerous behaviors.

Bill Hall said this was Town property, and said the area didn't belong exclusively to the neighbors, although their needs should be considered. He noted he had a facility next to his home that was not always convenient for him. He said he was confident that 9:00 pm to 5:00 was adequate, noting that the people who went there after dark wouldn't be interested in doing so when they knew there was a finite time when the park was closed. He said this shouldn't be difficult to enforce.

Mr. Hall also said he was disappointed that the Lamprey Advisory Committee didn't want the amount of parking at the park increased. He said he hoped that when restrictions were put in place to help the neighbors, the Town would also understand that the public might be availed of more parking spaces than there currently were.

Judith Spang said Mr. Hall raises the question of this being a public facility, but she asked whether the Town really wanted people, some of them intoxicated, jumping into the water after dark. She said the current parking hours enabled them to do this, and enabled them to get onto her land for parking, camping, cutting trees, etc. She said she had put up signs, but they were taken down, so the residents of the area were at the mercy of the Town, because parking controlled how many people used the area. She said it was a public park, but activity there did impact private landowners,

She commended the Council for undertaking this issue, and said it sent a strong message to landowners, which showed that the Town would work cooperatively with them if they opened up their lands to public use. She noted she had talked with Julian Smith about the idea of a river steward program, and said she would like to see the Town involved in initiatives like this to help control problems such as this. She said she thought the parking restriction should be from dusk to dawn, or sunset to sunrise, but said it needed to be something that moved with the seasons.

Steve Roberts, Packers Falls Road noted that when he went swimming with his son there in years past between 9:00 am and 9:00 pm, there was no drinking there. He said times had changed, and said the neighbors needed to be respected. He said this area was a vanishing resource and said the Town should do what it could to protect it.

Councilor Kraus MOVED to close the public hearing. The motion was SECONDED by Councilor Julian Smith, and PASSED unanimously 7-0.

Administrator Selig noted the Council was required to get to New Business no later than 9:30 pm, and it was now 9:55 pm.

Councilor Needell MOVED to amend the Agenda to delete the references of 9:30 PM at Item XI, and to delete the reference of 10:00 PM at Item XIII. Councilor Peter Smith SECONDED the motion, and it PASSED unanimously 7-0.

Councilor Kraus called a point of order, and noted that Councilor Peter Smith had spoken a total of 28 minutes at the meeting. He asked Chair Sandberg to ask Councilor Smith to limit his comments so the meeting could be completed in a timely way.

Chair Sandberg asked Councilors to be as succinct as possible so the Agenda could be completed.

Councilor Peter Smith asked if Chief Kurz could speak on the issue of the proposed parking restrictions at Wiswall Park, noting this was crucial to the Council's deliberations.

Chief Kurz said the Police Department was cognizant of the issues that were faced there. He said he felt providing specific times was less ambiguous, so made enforcement easier, and noted that the issues facing the community in this area were limited primarily to July and August. He said using sunset to sunrise would allow the Department to work with specific times.

Councilor Smith asked if enough ambiguity was removed by specifying sunrise to sunset.

Chief Kurz said the reality was that the police wouldn't be there with time clocks to determine when it got dark. He said they probably would be there when it was dark, and said using sunset to sunrise was sufficient, noting again that this was an primarily in the summer.

Administrator Selig noted that where people parked near Packers Falls Bridge, the signage didn't say when people couldn't park there, it said when they could park there. He said the Ordinance, on the other hand, said people couldn't park there between 9:00 pm and 7:00 am. He also said there had been a suggestion about having a gate, but said he had concerns about this because it would mean someone would have to lock it every day. He said if the Council was inclined to install a gate, it would be important to provide specific times when the parking area would be closed.

Councilor Kraus MOVED to adopt as presented Ordinance #2005-07 amending Chapter 153 "Vehicles and Traffic", Section 153-49 "Parking Prohibited Certain Hours" of the Durham Town Code by adding a parking restriction at the Wiswall Road Park from 9:00 PM to 5:00 AM. The motion was SECONDED by Councilor Julian Smith.

Councilor Kraus said he would support these times, noting it was helpful to have specific times, and that 5:00 am to 9:00 pm. approximated sunrise to sunset.

Councilor Peter Smith said he agreed it was easier if there were specific times, but said the real issue was whether the Police Department felt it could appropriately enforce this. He said he thought dawn to dusk wouldn't work, but said sunrise to sunset wouldn't be difficult for the Department to determine. He also said 9:00 pm to 5:00 am didn't take the seasons adequately into account.

Councilor Peter Smith MOVED to amend the motion by deleting "from 9:00 pm to 5:00 am" and replacing it with "from sunset to sunrise". The motion was SECONDED by Councilor Julian Smith.

Councilor Morong said he couldn't support the current amendment, and said he would rather see that the period when there would be no parking would be between half an hour after sunset to half an hour before sunrise, which more closely approximated dusk to dawn.

Councilor Kraus said he was opposed to the amendment. He said police officers had information on the time of sunset and sunrise, but swimmers didn't, and said there was no need to exacerbate the situation with this kind of ambiguity. He said this was a public area, and although it could be a burden to abutters at times, it was important to be fair to both sides. He said there were people who came to Wiswall Park from other parts of Durham and other towns, and he didn't want this to be a "NIMBY" situation. He said there should be accessibility to these facilities, and said having times that were clear would help the general public understand when they could use the facility.

Councilor Needell said he didn't think there was anything unclear about saying sunset to sunrise. He said he had heard testimony that evening that the problem was use of the bridge after dark. He said this was inherently a problematic situation, and said this was an easy way to fix it. He also said he had heard that practically speaking, the police would be there after dark. He said he supported Councilor Peter Smith's amendment.

Councilor Julian Smith said he agreed the time of sunset and sunrise was well fixed, and said if necessary, the times could be posted. He agreed with Councilor Needell that the police would probably not be enforcing the rule until after dark, and what this was all getting at was that the park should be closed down after dark.

Councilor Carroll said she liked the idea of a variable time the park was closed. She said this did set a standard, but there would be some sensitivity by the police in terms of enforcement.

Councilor Morong said this motion should be defeated, in which case he would bring up another amendment.

The motion to amend PASSED 5-2, with Councilors Kraus and Morong voting against it. The original motion as amended PASSED 5-2, with Councilors Kraus and Morong voting against it.

- C. **PUBLIC HEARING AND ACTION on Ordinance #2005-08** amending Chapter 153 "Vehicles and Traffic", Section 153-28 "Permitted Parking, Durham Resident Parking Permits" of the Durham Town Code by amending the language with respect to the regulation of parking permits and to allow parking, including overnight parking and/or temporary overnight parking, in certain municipal parking lots through the parking permit process

Administrator Selig said this allowed the Police Department to develop and manage a parking permit system that would apply to municipal parking lots.

Councilor Julian Smith MOVED to open the public hearing on Ordinance #2005-08 amending Chapter 153 "Vehicles and Traffic", Section 153-28 "Permitted Parking, Durham Resident Parking Permits" of the Durham Town Code by amending the language with respect to the regulation of parking permits and to allow parking, including overnight

parking and/or temporary overnight parking, in certain municipal parking lots through the parking permit process. The motion was SECONDED by Councilor Kraus, and PASSED unanimously 7-0.

Bill Hall said he hoped the process for getting permission to park overnight would not become too onerous. He also said he was concerned about the situation at Jackson's landing, noting the crew people drove their cars and trailers to the landing, and then left on their boats for the weekend. He said the parking area shouldn't be used that way, and said he hoped the Town would encourage the University to plan so that crew trips left from one of their parking lots, and not from Jackson's Landing.

Councilor Kraus MOVED to close the public hearing. The motion was SECONDED by Councilor Julian Smith, and PASSED unanimously 7-0.

Councilor Julian Smith MOVED to adopt Ordinance #2005-08 amending Chapter 153 "Vehicles and Traffic", Section 153-28 "Permitted Parking, Durham Resident Parking Permits" of the Durham Town Code by amending the language with respect to the regulation of parking permits and to allow parking, including overnight parking and/or temporary overnight parking, in certain municipal parking lots through the parking permit process. The motion was SECONDED by Councilor Kraus, and PASSED unanimously 7-0.

- D. **PUBLIC HEARING AND ACTION on Ordinance #2005-09** amending Chapter 153 "Vehicles and Traffic", Section 153-49 "Parking Prohibited Certain Hours" of the Durham Town Code by allowing residents to obtain parking permits through the Police Department for parking, including overnight parking and/or temporary overnight parking at the Craig Supply, Town Hall, and Jackson's Landing municipal parking lots

Administrator Selig provided details on this ordinance. He explained that among other things, this ordinance would allow Durham residents to get temporary overnight parking for Jackson's Landing. He said it also addressed the situation of the University and the Durham Boat Club leaving trailers for crew boats, and that the ordinance would allow them to be left overnight during the active rowing season.

Councilor Kraus MOVED to open the public hearing on Ordinance #2005-09 amending Chapter 153 "Vehicles and Traffic", Section 153-49 "Parking Prohibited Certain Hours" of the Durham Town Code by allowing residents to obtain parking permits through the Police Department for parking, including overnight parking and/or temporary overnight parking at the Craig Supply, Town Hall, and Jackson's Landing municipal parking lots. Councilor Needell SECONDED the motion, and it PASSED unanimously 7-0.

Bill Hall said he found troubling the idea of allowing long-term parking for the University at the lot at Jackson's Landing. He provided details on this, and said the University should be told to take its trailers and park at a University lot instead. He said the idea of allowing dead storage for this equipment was crazy, noting Jackson's Landing was a public facility, and was used by a lot of people. He said the Town should make it very that the University could park somewhere else.

Annmarie Harris said she would think the Town could limit the number of permits for overnight parking at these various parking lots, so there would be adequate space for the general public.

Richard Kelley noted the proposed ordinance referenced residents, and asked if this could

relate to UNH crew teams and visiting crew teams using the area.

Administrator Selig said the ordinance did not specify residents, and provided details on this. He also said he had not received complaints from residents about a lack of space at Jackson's Landing, although noting he had heard that the crew team had made some residents uncomfortable when they tried to use the area.

Councilor Needell said, in response to Mr. Kelley's comment that the wording "residence" did not actually appear in the Ordinance.

Steve Roberts, Packers Falls Road, asked if this ordinance applied to the Depot Road lot, which hopefully would serve residents who could leave their cars there when using the train. He said student parking could totally overwhelm use of this lot.

Administrator Selig said the Town was planning to reserve 5-10 spaces for Durham residents who wanted to use the train. He said it was the intention to rent permits for the other 160 spaces for a longer period of time, and said some of these permits could conceivably go to people who commuted on the train.

Mr. Roberts said there were more than 5-10 Durham residents who went to Boston every day, so 5-10 spaces wasn't enough..

Bill Hall said before Administrator Selig came to Durham, every person he knew who used Jackson's Landing had an unpleasant situation there with the University. He provided examples of some of the problems. He said it was a long battle to get this problem solved, and said there could have been more support from Town staff on this.

Councilor Kraus MOVED to close the public hearing. The motion was SECONDED by Councilor Julian Smith, and PASSED unanimously 7-0.

Councilor Kraus MOVED to adopt Ordinance #2005-09 as presented, amending Chapter 153 "Vehicles and Traffic", Section 153-49 "Parking Prohibited Certain Hours" of the Durham Town Code by allowing residents to obtain parking permits through the Police Department for parking, including overnight parking and/or temporary overnight parking at the Craig Supply, Town Hall, and Jackson's Landing municipal parking lots. Councilor Julian Smith SECONDED the motion..

Councilor Morong said when he had a boat some years back, he had been treated rudely at Jackson's Landing, and was made to feel unwelcome. He asked if this ordinance passed, whether UNH vehicles would have to get a new permit every year. Administrator Selig said yes.

Councilor Morong asked whether, if the Town had a problem with parking for residents at the pool, the Town could therefore say it wouldn't allow parking at Jackson's Landing.

Administrator Selig said it could. He noted he was beginning talks with the University about the Jackson's Landing agreement, and provide some details of this.

Councilor Morong said there seemed to be recurring problems for residents trying to find parking at the pool, and said it would seem the Town should have a similar agreement concerning this parking as the crew team had concerning parking at Jackson's Landing. He said these two agreements should both run for a similar period of time.

Councilor Needell asked how many spaces remained for others to use when spaces were allocated to be tied up for the season by the University or the Great Bay Rowing Club.

Councilor Peter Smith said had real problems with this. He said overnight was one thing, but said a week or more was something else. He said the facility was not big enough to allow this, and said it troubled him if there were not careful analysis of what this could turn into. He said there needed to be some definition for overnight.

Councilor Smith noted that the Council had just passed another ordinance that amended this section of the law in another way, so if the current ordinance under consideration passed, there would be two inconsistent ordinances. He said this ordinance would have to be amended to incorporate the changes made to the previous ordinance.

Chair Sandberg suggested postponing action on this Item until it could be redrafted to incorporate language adopted in 2005-07. He said the Council could then continue to discuss the issues raised by Mr. Hall and Councilor Smith concerning parking at Jackson's Landing.

Councilor Needell said he had no problem with postponing action, but he noted the proposed ordinance was elegantly vague. He said it was an administrative detail as to how temporary overnight parking was permitted, and was not in the ordinance. He said he would prefer to keep it that way.

Administrator Selig said the intention was to allow crew trailers to be stored night after night during the active rowing season, and to allow resident to park there a single night at time.

Councilor Needell said the ordinance didn't deal with crew trailers, but the backup did. He said this was flexible enough so that if it became a problem, it could be dealt with by the Town Administrator.

Councilor Peter Smith said the underlying policy of this ordinance needed to be thought through carefully.

Councilor Peter Smith MOVED to postpone action on Ordinance #2005-09. The motion was SECONDED by Councilor Julian Smith.

Councilor Morong asked for some backup information on the length of the rowing season, and the agreement with the University.

The motion PASSED unanimously 7-0.

Councilor Peter Smith said it would be a grave error to begin the next agenda Items at 10:45 pm.

Chair Sandberg asked what the will of the Council was on this.

Councilor Morong asked if the Route 108/Bennett Road issue was time sensitive.

Administrator Selig said he had called the State, and they were open to waiting until after the next Council meeting.

Councilor Needell said it was appropriate to postpone the Bennett Road discussion, noting the Council had received input from the public, and would take it under consideration. But he said he would like to hear from members of the public present who wished to speak on the Zoning amendments.

Chair Sandberg described the options for the Council, including the fact that it could decide have an additional meeting the following week.

Councilor Carroll suggested that when the next Agenda was set, the Council should keep in mind people who had come to speak on certain issues, and would arrange issues so that these issues could be heard first.

Administrator Selig said it was important to at least continue the hearings on the Zoning amendments to the next meeting.

Chair Sandberg suggested there could be a series of motions to postpone action on the various Agenda Items. He said if the Council didn't want to postpone a particular Item, it could vote the motion on it down, and could then address it.

- E. **CONTINUED PUBLIC HEARING on Ordinance #2005-06** proposing amendments to Chapter 175 “Zoning” of the Durham Town Code, Section 2005-06 (A) “to address questions with prior amendments” and Section 2005-06 (B) “to implement the Master Plan recommendations dealing with the Non-Residential Zones”. The proposed revisions in 2005-06 (B) pertain to the zoning map, non-residential zoning district provisions, definitions, tables of uses, and table of dimensional requirements.

Councilor Morong MOVED to postpone Item X E until the next meeting. The motion was SECONDED by Councilor Peter Smith.

Councilor Julian Smith asked how many people were present to speak on this, and it was noted there were four members of the public, in addition to members of the Planning Board were still present.

Councilor Needell said he would vote against this motion, and would like to hear people speak.

The motion FAILED 2-4, with Councilors Morong and Peter Smith voting for it.

Jim Jelmborg, Park Court, said he felt the 21-day stay put the hotel at a disadvantage since the owner had already agreed to a 10 day stay. He said he hoped the Council would consider keeping the present provision for a two-week stay.

Beth Olshansky, Packers Falls Road, said regarding the Table of Uses, that in the Rewrite process, an effort was made to remove some of the conditional uses because of the burden that the conditional use process imposed on the Council. She said that now that the Planning Board handled the conditional use process, it had come in very handy in evaluating gateway proposals. She said with the Irving application, having the conditional use process gave the Board some leverage to talk about design issues in this part of Town that were important to the community.

She said she was in favor of revisiting the Courthouse District uses, noting that many presently permitted uses there could result in architecture that was not pleasing. She said having the conditional use process gave the Board much more leverage. She said if the Irving proposal was defeated, and another gas station came in as a permitted use, the Board wouldn't have that leverage. She noted the design standards created for the district, but said it was hard to anticipate what would come forward, and said she therefore didn't think these design standards would be adequate.

Ms. Olshansky also noted concerning 175-55 F that in the Master Plan, there was specific language that spoke about setting a base line density at 3 acres in the current R and RC districts, with lower densities allowed for less suitable soils. She noted the Master Plan also referenced Randall Arendt's conservation subdivision approach. She said the soils based model the State was now pushing was very different than the model Durham had chosen, noting the minimum lot size the State allowed was 3/4 acres, and the model didn't have different lot sizes for the various rural districts. She said she didn't know that this was therefore an appropriate model for Durham to go to.

She also pointed out that Planning Board member Steve Roberts had brought up the issue of 132,000 sf. being the appropriate minimum lot size for somewhat poorly drained land, and had also said that since the Rural Zone in Durham had a minimum lot size of 150,000 sf, Durham was well over that requirement. But she said with conservation subdivision, 50% of the land had to be set aside for conservation, so the average lot size would be 75,000 sf, so even looking at using the State's scientific approach, the recommended amendments didn't meet this for somewhat poorly drained soils.

Jim Jelmsberg urged the Council to keep in the Courthouse district some conditional uses that had now been listed as permitted uses, to allow consistency of lighting, traffic, and architecture in the Town's gateway. He said the current process with Irving had benefited greatly from being conditional use, and had brought about positive modifications in terms of lighting, possibly traffic, etc. He also said that with the hotel project, and also the Gibbs project, the Town had benefited from having the conditional use process.

Chair Sandberg noted that convenience stores/gasoline stations were now permitted uses, and asked if Mr. Jelmsberg would like this to be a conditional use. He also said it would be helpful if there was more specific information from members of the public who wished certain uses to be conditional uses.

Mr. Jelmsberg went through a list of eight uses, that were changed from conditional use to permitted use, and Chair Sandberg asked him if he could provide this as a written list.

Councilor Peter Smith said his concern with conditional use was that it was inherently vague, and asked if it was possible with a permitted use to develop the appropriate standards, of appropriate strength, so the Board could accomplish with them what could be accomplished from using conditional use. He said he hadn't heard any discussion on this, but would like to hear this discussed at a future meeting.

Annmarie Harris, Oyster River Road, noted that with the current Irving project, because the conditional use process was being used, the Planning Board Chair had requested that the applicant "dazzle" the Board. She said the Board could say this because of the conditional use process. She said they were not a professional board and didn't have an incredibly strong advocate who met regularly with developers. She said in this gateway area of the community, without the conditional use process, the Town would get less quality in development projects. She said this worried her greatly. She noted the hotel was a very different product than it originally was, as a result of the conditional use process. She then went through the list of uses that were now permitted in the Courthouse district.

Chair Sandberg said unless there was more new information, he proposed continuing the meeting until August 15th.

Councilor Morong MOVED to continue the public hearing on Section 2005-06 (A) until August 15th. Councilor Julian Smith SECONDED the motion, and it PASSED unanimously 6-0.

Councilor Julian Smith MOVED to continue the public hearing on Section 2005-06 (B) until August 15th. Councilor Peter Smith SECONDED the motion, and it PASSED unanimously 6-0.

- F. Shall the Town Council endorse the modification proposed by the NHDOT on Option 1 previously endorsed by the Town of Durham relative to the Route 108 bicycle shoulder project at the Bennett Road intersection?

Councilor Morong MOVED to postpone action on Item X F, - Shall the Town Council endorse the modification proposed by the NHDOT on Option 1 previously endorsed by the Town of Durham relative to the Route 108 bicycle shoulder project at the Bennett Road intersection - until August 15th. The motion was SECONDED by Councilor Peter Smith.

Councilor Julian Smith spoke against postponing action on this Item, noting it was such a simple matter, and there had been a lot of public comment on it..

Councilor Morong said he didn't think this was a simple matter.

The motion PASSED 5-1, with Councilor Julian Smith voting against it.

XI. New Business (NLT 9:30 PM)

- A. **FIRST READING on Ordinance #2005-10** amending Chapter 153 “Vehicles and Traffic”, Section 153-32 (C) “Penalties for Offense” of the Durham Town Code by changing the language relating to parking violations

Councilor Peter Smith MOVED to postpone Item XI A. The motion was SECONDED by Julian Smith and PASSED unanimously 6-0.

- B. Other Business

XII. Adjournment

Councilor Morong MOVED to adjourn the meeting. The motion was SECONDED by Councilor Julian Smith, and PASSED unanimously 6-0.

Adjournment at 11:08 pm

Victoria Parmele, Minutes taker