

**This set of minutes was approved at the September 19, 2005, Town Council meeting.**

**DURHAM TOWN COUNCIL MINUTES  
MONDAY, AUGUST 15, 2005  
DURHAM TOWN HALL -- COUNCIL CHAMBERS**

**MEMBERS PRESENT:** Chair Malcolm Sandberg; John Kraus; Neil Niman; Peter Smith; Karl Van Asselt; Mark Morong; Gerald Needell; Diana Carroll; Julian Smith

**MEMBERS ABSENT:** None

**OTHERS PRESENT:** Town Administrator Todd Selig; Public Works Director Mike Lynch; Police Chief Kurz; Town Planner Jim Campbell; Planning Consultant Mark Eyerman; Planning Board Chair Richard Kelley

**I. Call to Order**

**II. Approval of Agenda**

*Councilor Needell MOVED to approve the Agenda as submitted. The motion was SECONDED by Councilor Morong, and PASSED 9-0.*

**III. Special Announcements**

No special announcements

**IV. Approval of Minutes**

July 18, 2005

*Councilor Kraus MOVED to approve the July 18, 2005 Minutes as submitted. The motion was SECONDED by Councilor Morong.*

1<sup>st</sup> page, the motion should say “..PASSED unanimously 8-0.”

2<sup>nd</sup> page, 1<sup>st</sup> paragraph, said “..had lived on this road for more than 40 years...”. (It was later noted by Mr. Lord that he had lived on Bennett Road for 48 years.)

*Councilor Julian Smith MOVED that the Council postpone voting on the July 18<sup>th</sup>, 2005 Minutes until it found out how long Dick Lord has lived on Bennett Road. Councilor Morong SECONDED the motion, and it FAILED 2-7.*

*The July 18, 2005 minutes as amended PASSED 8-0-1, with Councilor Needell abstaining because of his absence from the July 18, 2005 meeting.*

**V. Report of Administrator**

- Administrator Selig noted the upcoming Labor Day holiday on September 5th, and said

the next Council meeting would be held on September 12th.

- Administrator Selig noted that the number of members who have signed up on the Town's listserver has increased to 612.
- Administrator Selig provided details on Unanimous Consent Agenda Item VIII A concerning a request by the Durham Business Association to close Jenkins Court in order to hold a barbecue for UNH students who were involved in providing community service projects throughout the Seacoast region. He noted that Councilors were welcome to attend the picnic.
- Administrator Selig said the next Rental Housing Commission meeting would be held on Wednesday, August 17<sup>th</sup> at 4:00 PM. He encouraged residents who had rental properties in their neighborhoods to let the Commission know about any problems with these properties. He said the Commission had been quite active in recent years.
- Administrator Selig said the bids awarded for the Packers Falls Bridge project would come forward to the Council at the September 12th meeting.
- Administrator Selig provided details to Councilors on the tax bills that the Town of Durham had sent to the Town of Lee.
- Administrator Selig said the Durham Historic District Commission received a grant for approximately \$3,000 to develop a Durham Historic Guide.
- Administrator Selig updated the Council on the status of the proposed cell tower located in Newmarket, but accessed from Simons Lane in Durham. He said the Town had been contacted by Verizon about the possibility of the Town allowing it to co-locate on the Sprint cell tower on the flagpole of the Durham Landfill.

He noted a settlement some years back that did not allow such a co-location, but said he would talk with Sprint to see if an agreement could be reached. He said the benefit of this approach would be a shorter cell tower off of Simons Lane. He noted that perhaps Verizon's goals could be accomplished without the need to install an additional cell tower.

- Administrator Selig noted that Durham Day would be held on Sunday, September 18, 2005 from 1:00 to 4:00 PM at Wagon Hill Farm. He said a wonderful volunteer coordinator was setting up various activities for the day, including the traditional boat rides. He asked Councilors who were interested in working at the grill to let Jen Berry know.
- Administrator Selig said that in his weekly update, he had asked residents what their experience has been concerning Jackson's Landing. He said he would take all of this input into consideration, as the issue was brought back to the Council in the future.

## **VI. Reports and Comments of Councilors**

Councilor Carroll shared with the Council comments she had recently received from a resident who was very happy about the fact that the entrance to her driveway that was impacted by road construction was repaired within a day of contacting the Public Works

Department. Councilor Carroll said this was another example of the kind of service the Public Works Department provided, and said she was thankful for the service of these Town employees.

Councilor Carroll also noted that the Durham Farmer's Market, which provided locally grown vegetables, fruits, and other items, was still open. She urged residents to take advantage of it before the season ended. She also noted the picnic benches available for residents at the Mill Pond, and said places such as these, that exemplified quality of life issues, were the reasons why people live in Durham

Councilor Kraus noted the opening of the Hotel New Hampshire, and thanked Mr. Berton for the enterprise and the excellent job he had done on the project. He said he was proud to have voted for it, and was pleased the Planning Board and Mr. Berton were able to work together to make this happen. He said it appeared the establishment was already doing a good business, and thought it was a wonderful addition to the Town and an improvement to this location.

Councilor Kraus also noted, concerning the Integrated Waste Management Committee, that residents should be clear that barrels for trash shouldn't weigh more than 50 pounds. He provided details on this, and said if barrels set out weighed more than 50 pounds, they would not be picked up.

Councilor Needell said the public hearing on the proposed Irving station had been closed at the most recent Planning Board meeting. He said the next meeting would in part be devoted to deliberation on the applications.

Councilor Needell also noted that the Planning Board's next quarterly planning meeting would cover several key issues including long-term traffic solutions and parking at the Wiswall Dam area.

Councilor Needell said he had looked at the entire process of rehabilitation of the Packers Falls Bridge as a learning process, but said he was concerned that some lessons hadn't been learned. He said what he was concerned about was a seemingly small part of the problem: the terminations of the guardrails.

He said when the Council voted to approve the project, it had voted to approve the funding method and to go ahead with the bid process, with the intent to fund the project. He said there was no doubt in his mind that that was exactly what the Council voted to do, and said he stood behind that vote. However, he said that at that meeting there was discussion about the rail terminations, and objections to the NHDOT design for the guardrail terminations were raised. He said he wanted to raise the question as to what should be done if there was not going to be a NHDOT approved railing.

Councilor Needell noted that Councilor Grant had objected to going forward with the plan at that time. Councilor Needell read from the minutes concerning his statement of his own concerns at that time. He said the reason he brought this up was that bids had gone out and a design had come back which did not include NHDOT approved guardrails. He said his understanding was that since this was an issue brought up previously, the Council would have the chance to decide how to go on this, rather than being forced to vote up or down on an entire package.

He said this present process appeared to be reminiscent of how the Town got to where it was on this issue. He said this was a fundamental problem in the process, and would clearly impact his ability to support the project, depending on what information was presented at the next meeting. He said he regretted that this was the case.

Councilor Van Asselt noted that zoning and budget issues would take a considerable amount of the Council's time for the rest of the year, and he urged the Council to consider whether some additional work sessions were needed to address the key goals the Council had developed.

Councilor Van Asselt also noted Unanimous Consent Agenda Item VIII B concerning a surplus truck the Town wanted to sell to the Town of Hooksett. He asked if the Town used the minimum State standards, or something less than this, in terms of bidding on this property.

Administrator Selig said he did not have the answer to this question, but would get an answer for Councilor Van Asselt.

## **VII. Public Comments**

Chair Sandberg noted that members of the public desiring to speak to the public hearing issues later on the agenda should do so at that time.

**Dick Houghton, President of the Durham Business Association**, provided details on the Association's sponsorship of an upcoming outdoor barbecue for UNH students who were involved in providing community service projects throughout the Seacoast region. He said he had volunteered his property and Jenkins Court for the barbecue, and said UNH hospitality services would provide food for the event.

**Laurie Potter, 1 Deer Meadow Road**, encouraged the Council to take the next step to pursue funding for the Oyster River dredging project. She noted that the Town seal depicted a riverfront town, but that more and more the channel was silted in, and the decrease in navigable water was significant. She said there was a real need to look at this issue, including the potential contributors of nonpoint pollution to the sedimentation problem.

**Jim Jelmborg, Park Court**, spoke about the issue of using the conditional use process versus design standards. He said that until there were more specific design standards, the conditional use process was necessary for proposed uses in the Courthouse district. He said Ms. Harris was right that the uses she had listed should be considered under conditional use, and said beyond this he deferred to Planning Board member Art Grant who had looked into this more than most people in Town. He said he hoped the Town Council would consider keeping the conditional use requirement for the Courthouse district.

**Larry Harris, 56 Oyster River Road**, spoke in favor of going forward with the proposal to potentially dredge the Oyster River, noting Councilor Carroll's comments about the quality of life in Durham. He said that from a historical perspective, the river was no longer useful as it once had been for recreation during a good part of the day, especially during the spring tides. He said that biologically, what now existed in the upper part of the river was mud-dwelling worms and snails, and these species would re-colonize if the dredging took place. He said few fish could survive there at present, but if the channel were increased, these fish would

come back. He said the dredging could improve the biological productivity and the overall ecology of the area, along with the recreational use of the resource.

**Dick Lord, 85 Bennett Road,** said that he had lived on Bennett Road for 48 years. He noted, in response to Councilor Needell's comments, that he had been on the Packers Falls Bridge Committee. He said he couldn't speak for the Public Works Department concerning the railings, but at the time the railing was discussed the problem that had come up was that the plan was to taper the railings into the ground. He said there was concern that this kind of railing could launch cars into the air. He said the design had been changed to a full curved railing, such as those that existed on 3 major bridges in Newmarket, which were approved at the time they were put in.

Mr. Lord read a letter from Beth Olshansky regarding new information on the Bennett Road intersection. Ms. Olshansky's letter noted that Brad and Mary Jo Gregg had spoken with her about a spot where black ice formed on 108 a few hundred feet south of the intersection. She said she wondered how many of the 13 accidents reported for this general area had occurred at that spot and noted this would have nothing to do with the configuration of the intersection.

**Theresa Walker, 62 Bennett Road,** urged the Council not to endorse the proposal to realign the Bennett Road intersection. She said the existing conditions (i.e., the scenic road, the historic character, and the traffic calming aspect of the road) provided enormous benefits to the Town. She also noted that this area was a favorite haunt of those who wanted to drive fast, and she said any realignment would probably encourage that activity. She urged the Town to maintain the few remaining scenic roads in Durham.

Ms. Walker also said she endorsed the dredging of the Oyster River, and hoped the Council would endorse this as well. She noted she had been Chair of the Conservation Commission when the feasibility study began and since that time other rivers in the region had been dredged.

**Richard Kelley, 47 Stagecoach Road,** said that the current alignment of Bennett Road did not provide traffic calming. He said it was a substandard intersection because of the skew angle of the intersecting roads, the wide width of pavement at the bottom, the grade of the road, and the fact that there was no approach landing when one reached the bottom of the road. He said what NHDOT proposed would be an improvement concerning this, and he urged the Council to support the project.

**Bill Hall, Smith Park Lane,** spoke in some detail about the possibility of rewriting the agreement for Jackson's Landing with the entities allowed to have structures there.

He provided history on this issue and said with this in mind, the Council had previously done a good job of rewriting the lease agreement. He said when there was an event down there, it was extremely tight, and said it was not a good situation. He said it seemed that by sheer numbers, some users from UNH thought they could take over the place. He said the Town needed to put in a regulation that when people used the landing to launch their boats, they needed to take their trailers home with them.

**Roberta (Robbi) Woodburn, 6 Cormorant Circle,** said she was involved in rowing activities in Durham, and said if she was not mistaken, UNH rowing people had a race,

involving all of those trailers, once every other year. She said although this was an inconvenience, it was infrequent.

Concerning the proposed dredging of the Oyster River, Ms. Woodburn said this was a quality of life issue for Durham. She spoke about the importance of the river to the Town, and said that unfortunately, it was a dwindling resource. She noted that currently, people could only use the river for about 3 hours on either side of the high tide. She said people talked about the fact that the filling in of Mill Pond was a natural process, but she said this was affected by various impacts, including development in the area. She noted that any erosion ended up in Mill Pond and then in the river. She said it was the Town's responsibility to give serious consideration to moving on to the next step, to investigate what would be required to fix the problem.

**Lee Alexander, 32 Dover Road**, said he lived in the house on the Town seal. He said nonpoint source pollution was a serious problem, noting the Oyster River continued to fill with sediments, and said the opportunity to use the river as a natural and recreational resource was decreasing. He said if this had happened in another part of the country, it would have been addressed years ago, and he encouraged the Council to explore next steps and solutions, including federal funding. Mr. Alexander said he was offering these suggestions as a private citizen, but also noted he had worked on the study on the Oyster River, and was also on the Conservation Commission.

**Steve Roberts, Packers Falls Road**, noted the Conservation Commission had supported the dredging of the Oyster River, and he urged the Council to support it as well. Mr. Roberts also spoke about a second issue, the Bennett Road intersection. He said he had lived in this area since 1972 and had commuted to Dover for 15 years. He said that as much as he admired the aesthetics of the road, he was pained, as an engineer, to say the present intersection was dangerous. He said the guidelines of the US Highway Administration, which were excellent, would call this a bad intersection. He provided details of the dangers of the present intersection, and urged the Council to support the re-design of the intersection. He said this would be an opportunity to highlight the historical marker, and to advertise some of the benefits the road offered.

**Bill Hall** spoke about the recommendation from a Town consultant that the Oyster River reservoir should be dredged because of the importance of having an adequate reservoir on the Oyster River to supply water to UNH.

He said the cove at Mill Pond was not navigable 50 years ago, and provided details on this. He said he wouldn't be surprised if some siltation had occurred in the Oyster River, but said that whatever dredging occurred, it would not have a major impact on the dilution of wastewater at the treatment plant. He provided additional details on this.

He said he objected to the very expensive approach being recommended to do the dredging, and said the job was perfect for a hydraulic dredge operation, which could be done for one third the cost. He said a number of issues concerning the dredging were problematic.

**Rob Swift, 18 Mill Road**, said he was involved with the study group on the Oyster River, noting his special area of study was tidal dynamics. He said the dredging would result in a dilution in the vicinity of the treatment plant. He said presently at low water, one could

actually see the upwelling from the sewage outfall, and said with the dredging, there would be a much greater volume for the effluent to diffuse out into. He provided additional details on the positive impacts that would result from the dredging.

Chair Sandberg thanked residents for the various public comments, and said the Council would take them under advisement.

### **VIII. Unanimous Consent Agenda**

- A. Shall the Town Council approve the special event application submitted by the Durham Business Association requesting that Jenkins Court be closed to conduct a barbecue on Tuesday, August 23, 2005, from 4:30 to 8:00 PM?
- B. Shall the Town Council award a bid and authorize the sale of surplus equipment (1993 International 4600 SSI Truck) to the Town of Hooksett, NH for the sum of \$31,500?

***Councilor Kraus MOVED to approve Unanimous Consent Agenda Items A and B. The motion was SECONDED by Councilor Van Asselt, and PASSED 9-0.***

### **IX. Presentation Items**

Oyster River channel restoration study – Judith Spang

Ms. Spang provided some history on the study. She said she was approached by various Town boards to seek a grant to study this issue. She said the Conservation Commission was concerned about restoration of the Oyster River channel from an ecological point of view, while the Parks and Recreation Committee was concerned about the loss of recreational opportunities. She said the mandate in the Master Plan was strong to look into this issue, and went far in recommending that this dredging should happen. She said the study was designed to carry out the Master Plan recommendations, and said the study team was comprised of experts from the UNH scientific community, Durham Town boards, and the general community.

She said a grant was obtained from the NH Coastal Program for the initial study, and explained that the study had later been enlarged to look into modeling the extent to which the dredging would help to solve the problem. She said much of the work that was done by professionals on the study was done on a volunteer basis.

Ms. Spang spoke about the results of the study. She provided details on how the navigability of the river had decreased in recent decades, and how the shoreline had been altered during this time. She said the analysis had determined that there were pockets of areas that were deep enough, but they were not connected. She also said that ecologically speaking, the river in many respects had become a wasteland, noting among other things the decrease in oyster beds during this time.

She said the study had determined that restoring the channel to what it was in the 1950's would return the river to a decent navigability for small boats at all tides. She said the study also found there would be ecological benefits, by removing excessively silty sediments. She said there would be migrating fish in the river at more hours of the day if the dredging occurred, and provide additional details on habitat improvements that would occur.

Ms. Spang said the dredging could also help the wastewater treatment by providing better dilution of wastewater. She provided details on this, and said the improvement would depend on the geometry of the channel that was chosen.

She said the character of the river's sediments had been studied to determine if toxic sediments would be released if it was dredged, and said it was found that for the most part the river was very clean. She also said it was determined that if the river were dredged, there wouldn't be significant ecological problems, because the existing organisms were fairly tolerant.

Ms. Spang provided details on the depth and length of dredging that was proposed, and spoke about the possibility of extending the outfall pipe simultaneously with the dredging of the channel.

She noted the various Town regulations that were helping the Town keep sediments out of the water, but said there was still a lot to be done. Ms. Spang noted that when NHDOT had done the road work on Gasoline Alley, a noticeable change was seen, and that one of the biggest changes that was observed resulted from the 1986 floods. She said that Mill Pond appeared to be silting up, and explained that once a water body became shallower, it started to drop silt more, which accelerated the siltation process.

Ms. Spang said the Conservation Commission and the Planning Board had endorsed moving forward with the dredging project, and that formal Town Council endorsement was felt to be necessary in order to move to the next step. She said this would be a significant effort, and said the study team was now taking on a new role, in terms of administration, and fundraising.

She noted that grant money was needed for more refined data gathering and to prepare permits. She said funds would also need to be found to determine the best dredging method to use, to dispose of the dredged material, and for the dredging itself. She said federal, state, and corporate sources of this funding were possible.

Ms. Spang said it was understood that the Town of Durham would not fund the dredging, and that the money for this work would come from grants and other sources. She said she was not asking the Town to put money for this project in the CIP, and said if the study group reached the point where it was determined that the project would require funding the Town was unwilling to put up, that would be the end of the project as far as the study group was concerned.

She said it would be appreciated if the Council could work expeditiously, because there were grant funds available if the deadlines for the applications could be met.

Chair Sandberg thanked those who had prepared this very impressive report. He asked if there was specific language the study group would like the Council to consider using, which would meet its needs.

Ms. Spang said the study group would like the Town Council to endorse the dredging of the Oyster River, with the understanding that funding would be sought from other sources. She said this language would accompany any grant proposals, noting among other things that if they wanted Congress to support the project, formal Town endorsement was important.



Councilor Kraus said the reason the dredging was proposed appeared to be for recreational purposes, but if the dredging were done, there would then be hooligan boaters disturbing the tranquility of the Town. He said he understood there were ecological aspects of the problem, but that the residents with waterfront property who owned boats would benefit from the dredging, while other residents would not. He said this made the paradox of Durham clear.

Councilor Needell said that in the presentation by the Oyster River Channel Restoration Study Committee at a recent Planning Board meeting, he had been struck by the fact that this would be the first time, to anyone's knowledge, that the river would be dredged.. He asked what would prevent the river from filling in again, and wondered whether the Town would have to do it again within another 20 years or so.

Ms. Spang said this was a perceptive question. She said the Army Corps of Engineers had never dredged the river, but noted that Sharon Meeker of the Sea Grant Program wondered if perhaps some informal dredging had occurred on the river in the past in order to maintain the shipyards. She described the acceleration of the siltation problem that took place as the river filled in, but said that if a good job was done on the dredging, one could expect the river to stay clear for a fair amount of time. She said she was optimistic that if significant work was done on stormwater management and control of erosion and sedimentation, the problem could be prevented.

Chair Sandberg asked Councilors if they had any proposals for how to proceed.

Councilor Peter Smith said that given all the items on the Agenda, he thought the Council had no choice but to move on. Having said that, he thought there were dozens of questions that needed to be raised before the Council wanted to pass a resolution. He said that prior to making a decision about the proposed resolution he would want a public hearing to be held.

He said his only substantive question about the process was whether the proposal would continue to carry the wording in Councilors' packets. He said he was interested to know if the word "significant" was a mistake. He said the Council would have to answer the question as to whether it wanted to spend any money on this project, and said he would also like to know if the Council would view expenditure of money to include the time that Town staff spent on the project.

Chair Sandberg said he knew time was of the essence for Ms. Spang as well, and asked if it would be reasonable for the Council to receive the specific language Ms. Spang would like the Council to consider for endorsement, and what her thoughts were on the idea of having public hearing.

Ms. Spang said she looked forward to working on language with Administrator Selig and Chair Sandberg. She said the word "significant" was used because if the dredging was geared to also solving the wastewater treatment plant's dilution problem, the Town would be involved as part of that effort. But she said they could come up with some other wording. She said she thought having a public hearing was appropriate, and also said that if Councilors had questions they should provide them to the study group in advance of the hearing, so these questions could be responded to in an organized way.

Councilor Niman volunteered to work on this language with Ms. Spang, and to get it onto the Council's Agenda for September 12<sup>th</sup>.

Councilor Carroll said the key thing to take away from the discussion that evening was that the Oyster River was suffering ecologically because of human activity, and as good stewards, one way to look at the proposed project was that it was their responsibility that the life forms in the river should not be degraded, and to do what was required to see that future destruction of that ecosystem did not take place.

Councilor Kraus asked Ms. Spang if she was bringing this forward as a State representative, or as a citizen.

Ms. Spang said in this instance, she was forward as a citizen.

Councilor Julian Smith said he supported Councilor Carroll's words. He said he supported the hypothesis that the Town in past centuries did indeed dredge the Oyster River channel as necessary to support shipping, and noted he couldn't believe that this had not happened. He also said he thought the dredging was necessary now, even if some Town funds needed to be spent on it.

Chair Sandberg stated again that the Council appreciated the efforts of the professional volunteers on the study committee.

Councilor Needell asked if the Council would schedule a public hearing on this when Councilor Niman brought forward the revised language.

Councilor Niman said he thought the Council could decide on this when the more substantive language was brought forward.

**X. Unfinished Business (*NLT 8:15 PM*)**

- A. Shall the Town Council endorse a modification proposed by the New Hampshire Department of Transportation (NHDOT) on Option 1 previously endorsed by the Town of Durham relative to the Route 108 bicycle shoulder project at the Bennett Road intersection?

Administrator Selig said the Town had received information and feedback on this issue, including from members of the public. He noted he had felt it was important that the NHDOT public hearing take place before the Town weighed in on the issue. He said the Council had previously endorsed Option 1 approximately a year ago, and said since that time, NHDOT had asked whether the Town would consider modifying this recommendation to endorse Option 2, in order to create more of a right angle at the intersection because of the terrain and other onsite issues.

He said that a year ago, the Council had received only one or two letters from residents on Option 1, and had proceeded to endorse it, noting that this option had been recommended by the Traffic Safety Committee. He said there had been an Option 2 and an Option 3 at that time, and said Option 3 would have left the current alignment essentially as it was, with the installation of a traffic island that would allow traffic coming from Bennett Road turning right onto Route 108 to have a 90-degree angle turn. But he said this design would not create any need for traffic traveling from Durham toward Newmarket and exiting on to Bennett Road to slow at that location. He said there was a report as part of the Council's packet in 2004, developed by Rizzo Associates, which said Option 3 resulted in little difference over existing conditions.

Administrator Selig said that Town staff now recommended Option 2, in terms of safety. But he said that if, as a result of public input, the Council would like to consider the aesthetic characteristics of this scenic road, Town staff recommended that Option 3 be endorsed. He said the Town Engineer felt this was a better solution than the existing situation at the intersection.

***Councilor Julian Smith MOVED to endorse Option 3 as presented by the New Hampshire Department of Transportation (NHDOT) in 2004, which would include the addition of a small traffic island at the end of Bennett Road where it intersects with Route 108. The island would force cars coming off of Bennett Road to bear at a 90 degree angle, and would compel cars coming from Newmarket on Route 108, desiring to turn left onto Bennett Road, to slow down and make a deliberate turn. Councilor Morong SECONDED the motion.***

Councilor Julian Smith said he didn't think they could go on encouraging NHDOT to keep throwing money at old curves and bridges, because every improvement made in one place shifted the problem to somewhere else. He said he would like to see the most modest solution possible for this intersection, which was Option 3. He noted there were also enforcement possibilities that could help solve the problems at that location.

Councilor Peter Smith said that among three proposals, he supported the one on the table, Option 3. He said he recalled that the previous vote on this was 8-0-1, noting that he was the Councilor who had abstained, based on the fact that he didn't have adequate information. He said he had more information now, and had also made a site visit. He said he thought Options 1 and 2 would be an enormous waste of money.

He said although he was not an engineer, he had lived in Durham off and on for 65 years, and every day when he came in and out of his driveway onto Route 4, it was a hazardous situation. He provided details on this, noting that people on the road didn't think the people ahead of them should want to turn into their driveways. He said he was very sympathetic to the idea that what was most dangerous was not the road design, it was the impatience of drivers, and said he thought that was exactly what went on at the corner of Bennett Road. He said unless there was data showing substantial numbers of accidents right at that intersection, he didn't see how any alleged safety issues outweighed huge aesthetic issues.

Councilor Kraus asked if Option 3 was something spoken about at a previous meeting, or something that was newly introduced.

Administrator Selig said that a year ago, the Traffic Safety Committee had talked about all three options, and thought Option 1 was the best solution. He said this was brought forward as a recommendation of the Council, in conjunction with recommendations for other intersections in Town..

Councilor Kraus asked if NHDOT had recently commented on the Town's interest in Option 3, and the possibility that the Council might endorse it.

Administrator Selig said it had not. He said NHDOT knew the Council was looking at this issue and that in the last few weeks, many residents had come out in opposition to Options 1 and 2.

Councilor Needell said he was a little taken aback with seeing Option 3 now, and said he didn't remember it being discussed the previous year. He said although he agreed to a large extent with what had been said, he didn't feel comfortable, given the amount of information provided to the Council on Option 3, to endorse it at present.

Chair Sandberg asked Councilor Needell if there was language that would make him more comfortable, for example if the motion said the Council endorsed in spirit, Option 3, and requested that NHDOT come back with refinement to the concept.

Councilor Needell asked if Option 3 would have any impact on the grade of the road.

Public Works Director Mike Lynch said he did not know, noting the Traffic Safety Committee had spent very little time looking at Option 3, and had been focused on Option 1.

Councilor Needell said he thought some serious concerns had been raised about Option 2, and said he felt that if the Council determined it was not comfortable with this option, this was a response the Council could now provide to NHDOT. But he said he had just seen Option 3 for the first time, and was not prepared to endorse it that evening.

Chair Sandberg said Councilor Needell could amend the motion if he wished to do so.

Councilor Morong said he would have voted to leave the intersection alone, but said it looked like Option 3 would be an improvement, noting that the traffic island could even have some flowers on it, which would enhance the gateway to the Town. But he said Councilor Needell's point was very well taken, and asked that the Council tell NHDOT that the Town was not comfortable with Option 2, and should bring something else forward.

Chair Sandberg said the Council could keep the present motion on the table, but postpone action pending an answer from NHDOT, including drawings, and the opportunity to discuss with them updated work on Option 3. He said in that way, the Council could decide at a future date how to proceed.

Councilor Julian Smith said he would withdraw his motion, and frankly would prefer that the Council discuss whether or not it would endorse Option 2. He said he hoped it would not, and said the Council could then have further discussion with NHDOT about improving the intersection without making major changes.

Chair Sandberg said that if the Council said no to Option 1, having previously endorsed it, it would be in default. He suggested that postponing action on the motion would be more on target, and then asked Administrator Selig for input on this.

Administrator Selig said the Council had previously endorsed Option 1, and said if it was no longer comfortable with that, it should state this. He said the next step could be to endorse leaving the configuration as it currently existed, or to consider improvements to it. He suggested that the Council could invite NHDOT to meet with the Town on this, although noting that the agency might grow impatient with the Town.

Councilor Peter Smith said NHDOT had years ago given up feeling it had to become impatient with the Town of Durham. He said he agreed it was time for the Council to say explicitly what it thought of Options 1 and 2.

Chair Sandberg asked if Councilors had any objection to withdrawing the motion on the table, and no objections were expressed.

***Councilor Peter Smith MOVED that the Town Council a) withdraws its previous support as expressed in motion of June 7 2004, favoring what was then designated as Option 1; and b) states that upon due consideration, it does not support Option 2. Councilor Julian Smith SECONDED the motion.***

Councilor Needell said he had voted for the original endorsement of Option 1, based on the recommendations at the time, and very little information and input. He said since that time, he had thought about this issue a lot, and was torn. He said he agreed the improvements would make the intersection safer. He said he had driven this road often, and didn't particularly like this intersection, but he said there were a lot of intersections in Town he didn't like. He said information on the impacts from this intersection were sketchy, and said he was leaning toward leaving it alone.

Councilor Needell also noted that in recent discussions, Mr. Hall had spoken of the possibility of the southern connector. He said there was discussion in Town about looking at the long term traffic issues, and said one of the questions he would like to see addressed was whether building the southern connector from Mill Road to Longmarsh Road, coming in at the same general area as Bennett Road, would change the situation for Bennett Road. He said these were intertwined issues, and he would hate to see money spent on Option 2 when it would later have to be completely redone, or might preclude other plans for the road. He said he supported the present motion on the table.

Councilor Kraus said he opposed this motion. He said he had listened carefully to those who had testified, and said what was compelling to him was that the present intersection was unsafe. He said he believed it was an enormously dangerous practice for a town to fundamentally endorse what was an unsafe intersection, in opposition to much evidence that this was the case. He said he would not be comfortable voting for an unsafe intersection (leaving it as it was), and then finding out that an accident occurred there in the future, which the Town was responsible for.

Councilor Van Asselt asked what NHDOT would do immediately if the present motion passed.

Administrator Selig said NHDOT really did value the Town's input, and said his sense was that if the Town said to leave the intersection as it was, they would do that, and would consider this a cost savings.

Councilor Van Asselt said he had to encourage Councilors to vote no on this. He said this was an unsafe intersection, and questioned why the Town should tell NHDOT to go away, when it had the option to negotiate an arrangement with the agency to make an improvement.

Councilor Morong said he didn't see that history supported that this was an unsafe intersection. He noted he had spent the last several days in Los Angeles, which was an engineer's dream, and said he didn't want to see that happen in Durham.

Chair Sandberg said he appreciated the comments of Councilor Kraus and Councilor Van Asselt. He suggested the Council should consider adding to the motion that the NHDOT

should be encouraged to further develop the specifics of Option 3, which was an improvement over the existing situation. He noted it was NHDOT that had originally proposed Option 3, and said he felt it would be perfectly appropriate to ask them to elaborate further on it.

***Councilor Peter Smith MOVED to amend the original motion by adding - c) to encourage NHDOT to further develop the specifics of Option 3, and to prepare appropriate drawings, and make a presentation before Town staff. The motion was SECONDED by Councilor Julian Smith. The motion to amend PASSED 8-0-1, with Councilor Kraus abstaining because the motion wasn't clear.***

Councilor Niman said he would like to speak against the motion. He said he lived in the vicinity of the Bennett Road intersection, and said it was not safe. He said he could recall three separate incidents at that location when he was on his bike and was almost hit by a car. He said people coming from Newmarket thought they could take an easy left hand turn, and didn't want to slow down, and said they zoomed through the intersection because it was so wide.

He said people making right-hand turns on to Bennett Road also zoomed through the intersection because of the angle of the entrance, which contributed to speeding on the roadway. He said maybe he would be lucky, and no one would hit him in the future, but he stated again that the intersection was not safe. He said he would like to see some changes made to it, and said he did not endorse an expansion of Option 3.

Councilor Julian Smith said he agreed the intersection was not particularly safe, but said this had a lot to do with the way people drove, and said there was no guarantee that the proposed design of Option 2 would make things safer. He noted Councilor Kraus had said that if NHDOT was encouraged to do nothing, there could be an accident, but said there could also be a fatal accident as a result of changes to the intersection. He said he would vote in favor of the motion, as amended.

***The motion, as amended, PASSED 6-3, with Councilors Kraus, Van Asselt, and Niman voting against it.***

Chair Sandberg declared a recess at 8:57 PM. The meeting resumed at 9:05 PM.

## **XI. New Business (NLT 9:00 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.

Administrator Selig explained that this Ordinance came about as a result of a traffic evaluation report.

Chief Kurz said this was part of a short-term goal concerning parking enforcement. He said there were a few instances where parking violators owed multiple hundreds of dollars, and came back to Town with new cars and plates. He said it was frustrating trying to deal with this problem, and said this Ordinance would allow the Police Department to impound the car in question after three unpaid tickets, and notification of the person receiving the tickets. He

said the Ordinance was copied from the Portsmouth ordinance.

Councilor Peter Smith asked Chief Kurz whether, assuming an officer encountered a car where three or more tickets had been issued, if he anticipated it would be the policy to impound the car regardless of where in Town it was parked.

Chief Kurz said he had a discussion with Councilor Peter Smith about this. He said perhaps it made more sense to say “in the public way”, instead of “within the jurisdictional bounds”.

Councilor Smith suggested deleting "within the jurisdictional bounds" and substituting "on the public ways".

Chair Sandberg asked if this would include parking lots, and Chief Kurz said it would. He said he had no problem with wording such as “where the public has access”.

Councilor Smith said to make it clearer, the language could say “land to which the public has full access.”

Administrator Selig said there was no urgency to this, and suggested that Town staff take this input and bring the Ordinance back as first reading under Unanimous Consent, and could then go to public hearing after this.

Councilor Julian Smith asked if when the Town lost the storage of cars at Smitty’s, it would be possible for Town parking people to use a boot instead of towing cars.

Chief Kurz said that was possible, but said this exposed the Town to litigation issues he would rather not get into. In answer to Councilor Julian Smith, he said it was actually easier to move a car than impound it in place.

Councilor Kraus asked if the car was identified on one of the public roads, if it would be impounded at that time when there were three tickets.

Chief Kurz said that was correct.

Councilor Needell noted that many of the perpetrators were out-of-state. He asked how one dealt with noticing in this case, and Chief Kurz provided details on this.

Councilor Morong asked how the Department tracked the same owner of different vehicles, and Chief Kurz provided details on this. He said it was not complicated, even if the owner lived out of state.

Chair Sandberg asked if Councilors had any other concerns, or amendments to provide concerning the proposed ordinance.

***Councilor Kraus MOVED to postpone action. The motion was SECONDED by Councilor Morong and PASSED unanimously 9-0.***

Chair Sandberg said this would be brought up at a future date.

Administrator Selig said regarding towing, in an effort to be innovative, and realizing Smitty’s wouldn’t be towing cars in the future, the Town had looked at whether it would be economical for the Public Works Department to go into this business. He said there was

another business interested in taking over the towing service, but said if there was such a void in such service in the future, the Town would pursue this.

## **X. Unfinished Business**

- B. **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.

Chair Sandberg noted the Council had received written testimony from former Planning Board Chair Stephen Roberts. He outlined the options for moving forward with these sections. He then declared the public hearings on Section A and Section B re-opened.

He asked if there was any new testimony on these proposed Zoning changes from members of the public, and there was no response. He then asked if Councilors had questions on the proposed changes.

Councilor Needell asked, regarding the somewhat poorly drained soils issue, how many variance requests had come in since this provision had taken effect. He noted it had been said that people had an "out" with the ZBA, and said he wondered if this option had been used.

Mr. Campbell said no applications had come in using conservation subdivision, although noting one developer was going through conceptual consultation and design review with the Board for a proposed conservation subdivision. He said other people had come in to discuss possible projects, and when they had seen the usable area calculation requirements, were upset when they saw that in some instances this took away buildable lots, and certainly took away more land from development than they wanted.

Councilor Needell questioned whether this was particularly because of somewhat poorly drained soils.

Councilor Niman noted that the memo from Mr. Campbell and Mr. Eyerman spoke about "empirical evidence" on page 4. He asked Mr. Campbell what this was referring to.

Mr. Campbell said this referred to people he had met with in his office who had spoken about the soils on their properties. He said this should say "anecdotal evidence" rather than "empirical evidence".

Councilor Peter Smith noted the first paragraph of page 2 of the memo to the Council, and said he was trying to get a sense of the perspective of the authors in saying this. He said he read this as saying that if there were a lot of variance requests, this meant the law should be changed. He asked if the Planning Board really meant that the existence or substantial possibility of applications going to the ZBA showed that the policy decision causing this was wrong.

Mr. Campbell said it could. He said he was apprehensive about passing something that said people could always go for a variance if the Ordinance caused them a problem. He said the



question was whether the Planning Board really wanted to be sending applications to the ZBA when there were other options.

Councilor Peter Smith said he was trying to get a sense of how he should value the wisdom of the Planning Board's recommendation on this. He asked if what was behind the recommendation was centrally the concern that there would be a substantial series of objections to the way this policy impacted homeowners, so they would go to the ZBA for relief. He said that might well be the case, but he said that as a reason for making a change to the existing ordinance, this was rather different than saying that as a matter of policy, the Planning Board didn't feel there should be this additional encumbrance on the use of land.

Mr. Campbell said he didn't think the variance issue was the central argument, and was one of many the Planning Board had discussed.

Councilor Kraus said in other words, the sign of a bad ordinance was that excessive use of the ZBA was a sign of a bad ordinance.

Councilor Peter Smith asked, with respect to somewhat poorly drained soils, what the Planning Board's view was of the proper use of soils classified in this way.

Mr. Campbell said the proper use of these soils was generally considered to be just for the calculation of density, and not necessarily to be included in the usable area to build a house on. He also noted there were other provisions in place, including the determination of primary and secondary conservation areas, which took these soils into consideration.

Councilor Smith asked if the Ordinance provisions meant that these soils could only be used for the calculation of usable area, but could not be used for the building of a structure. He asked what could give a person confidence that the Planning Board would not allow a structure to be put on these soils.

Mr. Campbell said these soils most likely would be found within a buffer area anyway.

Chair Sandberg asked if there was any prohibition on building structures on somewhat poorly drained soils in the Ordinance.

Mr. Campbell said he didn't believe there was specific wording that said this.

Mr. Eyerman said there was no specific prohibition in the subdivision regulations against this, but he said there was a requirement that usable area calculation requirements would only apply to conservation subdivisions. He said as part of this process, there was the requirement to do a site inventory and analysis, including identification in detail of the types of soil on the property, and based on this, to determine areas that were most suitable for open space, and areas most suitable for development.

He said the presumption, although this was not always the case, was that there was a continuity of soils, from developable to not developable, and he said the somewhat poorly drained soils were in the marginally developable category, so when the site analysis was done, it would be determined that these soils probably should be included in open space.

He said the subdivision regulations then required that a subdivision had to be laid out to reflect this analysis. But he said this didn't mean that there would never be a house lot that

didn't include somewhat poorly drained soils. He said it did mean that when someone developed a conservation subdivision, developable areas for houses and roads needed to be located on the more suitable portions of the site. He said somewhat poorly drained soils were less likely to be included in the developable portion.

Councilor Niman said he had heard people at the hearings give three reasons why somewhat poorly drained soils should be excluded from the ordinance: 1) including them would greatly reduce the number of houses that could be built in the Town, compared to prior buildout analyses; 2) including somewhat poorly drained soils would not be fair to landowners; and 3) the Society of Soil Scientists of Northern New England does not include them, so Durham shouldn't either. He asked if it boiled down to these three things, and also asked if perhaps one reason was more dominant than the others.

Mr. Campbell said the answer was yes, and more. He said one could also say that there were other protections in place that assured good development, such as wetland provisions, the conservation subdivision regulations, etc., which and addressed peoples' concerns about somewhat poorly drained soils.

Councilor Needell said he had heard the issues Councilor Niman had listed, but said he had different interpretations of them. Concerning the results of the most recent buildout analysis, he said his conclusion was that the conservation subdivision approach had very little effect on buildable lots, so he didn't think the claim that it had taken a great number of lots out was supported.

Chair Sandberg noted page 6, Item 10 concerning exempt subdivisions, and asked if the minimum usable area requirement didn't apply, what did apply.

There was detailed discussion about this.

Mr. Campbell said that for an exempt subdivision, the minimum usable areas requirement did not apply. He said the he minimum lot area in the table would apply.

Councilor Needell explained that the key difference was that there was no calculation of usable area for these exempt subdivisions

Councilor Peter Smith asked if this would now be purely a discretionary decision for the Planning Board to say one could not build on these soils, or if there would be a more rigorous restraint than just this discretion from application to application, applied by whoever was on the Board at a particular time.

He said if there would be no adverse impact as a result of this, it was not a big issue. But he asked if it wasn't a good idea from an environmental perspective to build on these soils, why he shouldn't be concerned there wasn't something more strict that the Planning Board could tell a developer regarding building structures on somewhat poorly drained soils.

Mr. Campbell said he had a right to be concerned, and could address this by amending the subdivision regulations. But he said the language in the Zoning Ordinance didn't need to be changed.

Planning Board Chair Richard Kelley said he had spent a lot of time on this issue, and came

to understand that somewhat poorly drained soils were very much on the fence. He said the conditions that made them somewhat poorly drained varied significantly, and he provided details on this. He said putting a foundation on some of these soils might be appropriate, and said the issue was very site specific, in terms of the surrounding resources, the type of poorly drained soil, and the nature of what made it a somewhat poorly drained soil. He said the HISS mapping would provide a lot of insight into these things, and said these were the kinds of things that came into play when the Planning Board looked at an application.

Councilor Peter Smith asked whether this gave too much open ended discretion to members of the Planning Board. He asked Mr. Kelley if the Board needed to be able to have this discretion.

Mr. Kelley said he did not think this provided too much discretion, and said the Board needed to be able to have discretion because the conditions varied so much.

Councilor Morong said it seemed that part of the problem was the perception of what somewhat poorly drained soils were. He said in his experience with clay soils on his property, they were located high enough on the site to be well drained, so he had no problems with them. He noted the septic system was obviously not placed in this soil. He said he therefore agreed that under certain conditions, even somewhat poorly drained soils could be used for a house without problems.

Mr. Kelley said what made him comfortable with pulling somewhat poorly drained soils out of the soils to be included in the calculation of usable had nothing to do with the ZBA. He noted that after the usable area was calculated, 30% of that land still had to be set aside as conservation land. He said on top of that, there were wetlands setbacks.

***Councilor Kraus MOVED to close the 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”. Councilor Julian Smith SECONDED the motion, and it PASSED 9-0.***

Chair Sandberg asked if the Council should postpone action on this until the Sept 12th meeting, given the lateness of the hour.

***Councilor Kraus MOVED to postpone further deliberation on Ordinance #2005-06 (A) proposing amendments to Chapter 175 “Zoning” of the Durham Town Code, Section 2005-06 (A) “to address questions with prior amendments” " until the September 12th, 2005 meeting. Councilor Carroll SECONDED the motion, and it PASSED unanimously 9-0.***

Chair Sandberg said if there was no objection, he would re-open the public hearing on #2005-06 (B). He then asked if any members of the public wished to speak on the proposed amendments, and there was no response. He asked Councilors if they had any questions concerning the proposed amendments.

Councilor Niman said he was curious in terms of the development standards for the MUDOR district and ORLI districts, listed on page 24 and page 27. He noted this said that 50% of the lot had to be maintained as open space, and asked where this came from and if it was excessive, given the small amount of commercially developable land available in Town.

Mr. Eyerman said he didn't know.

Mr. Campbell noted that the Table of Dimensional Requirements included an impervious surface ratio requirement, where any impervious surface had to be included toward lot coverage. He said this table indicated that the impervious coverage ratio was 50%, which meant 50% should be open space.

Councilor Niman asked if he had a 50-acre lot, if this meant 25 acres couldn't be built on.

Mr. Campbell said he believed the people working on the Zoning rewrite thought that there were some nice parcels in this area, and they wanted to keep some of the rural character while still allowing some economic development. He noted his own economic development perspective was somewhat different.

Mr. Eyerman said he recalled there was testimony at the public hearing on these non-residential amendments which expressed concern about the extent of impervious surface in this area, given that it was within the recharge area of the University's water supply. He said this provision was in part based on an intentional effort to ensure that the water supply was maintained, and that recharge occurred.

***Councilor Morong MOVED to extend the meeting until 10:30 pm, and to leave at 10:30 pm. Councilor Kraus SECONDED the motion.***

Chair Sandberg noted there was also the opportunity to vote this down and further extend the meeting.

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

Councilor Needell said he had heard testimony that the removal of the conditional use process for the Courthouse district was bad, because this process was necessary to preserve the character of the area. He asked if it was intentional to have permitted uses in that area, in order to implement the goals of the Master Plan and to encourage things to happen, but with design guidelines in place.

He said it had been argued that these would not be strong enough. He asked who determined compliance with design guidelines as part of the site plan review process. He noted the present process the Board was going through with the Irving applications, and asked what kind of process would be followed under the new Ordinance.

Mr. Campbell said that so far with the Irving applications, the Planning Board had seen what would occur under the new Ordinance. He said the development standards were being applied.

Councilor Needell asked if development standards were within the purview of the Planning Board, and were not delegated to the Code Enforcement Officer.

Mr. Campbell said the Code Enforcement Officer also had to follow the ordinance..

Chair Sandberg asked what page Councilor Needell was referring to, and was told it was page 42, Table of Uses.

Councilor Peter Smith said he had heard from public testimony up to this point that the use of architectural guidelines didn't provide as much rigor in terms of the Planning Board being able to influence how applications came out. He asked if it was Mr. Campbell's view that the Planning Board would have the same degree of leverage in moving things toward what was more responsible development for the Town, if it kept conditional use out, and just relied on architectural standards as part of the site plan review process, or whether this was unknown at present.

Mr. Campbell said the Planning Board would definitely have more leverage with the conditional use process because it would have another standard it had to apply.

Councilor Peter Smith asked Mr. Campbell whether, keeping in mind that the "of benefit" language no longer existed, and the present language concerning the conditional use process, he believed the conditional use process created greater leverage.

Mr. Campbell said yes. He said it depended on the situation, but said the way it was adopted the previous year, the conditional use process provided the Planning Board with considerable leverage, if they applied all the additional standards that could be applied, and looked at the various criteria.

Chair Sandberg asked what the rationale was to not have the conditional use process for the Courthouse district.

There was discussion about this. Mr. Campbell said the Planning Board chose this route because in the Master Plan, a lot of uses were not recommended for conditional use in Gasoline Alley. He noted that for other downtown areas, it was broken out a lot more, in terms of conditional use, but this was not done for Gasoline Alley.

Chair Sandberg asked if the Board chose to not have conditional use in the Courthouse district because it felt this was in the best interest of the Town, or because the Master Plan suggested this.

Mr. Campbell said it was a policy decision to consistently stick with the recommendations of the Master Plan, although he noted this issue received significant debate.

Chair Sandberg said by vote, the Planning Board had said that not having conditional use was in the best interest of the Town.

Councilor Kraus asked what leverage meant in this context; leverage that would be used against a person, or for a particular group that happened to be dominant, for example. He asked for a definition of what was intended by the use of this word.

Councilor Peter Smith said he was using it to describe the breadth of power of the Planning Board, to the extent it provided greater opportunity to use discretion, faced with a particular application. He said a fundamental point the Council needed to decide on was whether it was good idea or not for the Planning Board to have more or less power in that regard. He said the more the power resided exclusively in the words of the statute, or on the other hand, in the ability of the Planning Board to make choices, which was how the power shifted.

Councilor Needell noted the conditional use permit required 5 out of 7 votes, while the site

plan review process required only a majority vote. He also asked if there was no change of use, if this would be handled by the Code Enforcement Officer, and Mr. Campbell said that was correct.

Councilor Needell said the Irving review process had been conducted primarily as site plan review, although noting there was a fair amount of discussion on architecture guidelines, which were covered in the Zoning Ordinance. He said that therefore, much of what occurred during this process would still occur in the future, for this district, although the voting requirements would differ.

Mr. Eyerman noted as an outsider that anyone reading the Master Plan could see the conflict in it. He said it came down hard and said the community had a problem with property tax rates because of the lack of nonresidential development to share the burden of the school system, and said part of the reason for this was the regulatory climate the Town had created with respect to those uses, which scared development away.

He said the Master Plan stated fairly directly that the Town should make clear what development it wanted and didn't want, and how it wanted it done, and then should set up rules to support this. He said the Plan said there should not be an enormous, elaborate review process. He said the recommendations for the nonresidential zoning districts were fairly consistent with that policy. He said the Plan said most uses should be allowed, but there should be design standards for how those things happened in the various districts.

Mr. Eyerman said Durham needed to strike a balance, by encouraging good nonresidential development at the same time that there was a level of protection to assure there was good development. He said this really was the message of the Master Plan.

Councilor Niman posed a question with respect to the Professional office district, discussed on page 10. He noted that economics favored the continuation of fraternities, sororities, or apartment buildings in this area, but asked if there was anything else that could be put in the Ordinance to encourage the transition to professional office uses of fraternity building in areas adjacent to downtown.

Mr. Eyerman said that was a very good question. He said that to be honest, the Professional Office District was the most troubling part of the Master Plan, in that it was very difficult to envision fraternities changing to office use. He said the Zoning Ordinance only created the potential for it to happen, but said he thought it might be worthwhile to consider whether there were any economic incentives the community could offer to encourage the first move in this direction. He said another possibility was that on some campuses, graduates of a university who were successful could be contacted and asked to help clean up problem properties, including relocation of fraternities to other places in Town.

***Councilor Kraus MOVED to close the public hearing on Section 2005-06 (B) “to implement the Master Plan recommendations dealing with the Non-Residential Zones” Councilor Julian Smith SECONDED the motion.***

Councilor Needell asked that a member of the public be allowed to speak.

***The motion FAILED 1-8, with Councilor Julian Smith voting for the motion.***

Mr. Kelley noted the Planning Board had seen a presentation about private entities creating student housing. He said this was important in part because the Town needed to provide alternative places in Town for students to live, and said this was key to creating a transition to professional offices.

***Councilor Julian Smith MOVED to close the public hearing on Section 2005-06 (B) “to implement the Master Plan recommendations dealing with the Non-Residential Zone . The motion was SECONDED by Councilor Kraus, and PASSED unanimously 9-0.***

- C. **PUBLIC HEARING on Ordinance #2005-06** proposing amendments to Chapter 175 “Zoning” of the Durham Town Code, **Section #2005-06 (C)** - Relative to the Shore land 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

Chair Sandberg asked if any members of the public were present to speak on any of these proposed amendments. There was no response.

***Councilor Needell MOVED to open the public hearing on Ordinance #2005-06 proposing amendments to Chapter 175 “Zoning” of the Durham Town Code, Section (C) - Relative to the Shore land Protection Overlay District. The motion was SECONDED by Councilor Kraus, and PASSED unanimously 9-0.***

***Councilor Julian Smith MOVED to continue the public hearing on Section C until September 12<sup>th</sup>, 2005. The motion was SECONDED by Councilor Kraus, and PASSED unanimously 9-0.***

***Councilor Needell MOVED to open the public hearing on Ordinance #2005-06 proposing amendments to Chapter 175 “Zoning” of the Durham Town Code, Section (D) - Relative to the Wetland Conservation Overlay District. The motion was SECONDED by Councilor Kraus, and PASSED unanimously 9-0.***

***Councilor Kraus MOVED to continue the public hearing on Section D until September 12<sup>th</sup>, 2005. The motion was SECONDED by Councilor Julian Smith, and PASSED unanimously 9-0.***

***Councilor Kraus MOVED to open the public hearing on Ordinance #2005-06 proposing amendments to Chapter 175 “Zoning” of the Durham Town Code, Section (E) – Relative to the Aquifer Protection Overlay District. The motion was SECONDED by Councilor Julian Smith, and PASSED unanimously 9-0.***

***Councilor Kraus MOVED to continue the public hearing on Section E until September 12<sup>th</sup>, 2005. The motion was SECONDED by Councilor Julian Smith, and PASSED unanimously 9-0.***

## **XI. New Business**

### **B. Other Business**

None

**XII. Nonpublic Session**

None required

**XIII. Adjourn (NLT 10:00 PM)**

Councilor Needell noted that the public hearings on Section A and B had been closed, and said a new punch list for these Sections would be very useful. He suggested that if Councilors had areas they wanted to make sure were addressed, these could be circulated so all Councilors would be able to look at them and refer to them.

Chair Sandberg said the vision he contemplated was that it would be useful for the Council to develop a consensus on what it thought was good in the proposed Zoning amendments, and what specific items weren't in the interest of the Town, so the Planning Board would have a clear picture of what the Council did and did not support. He asked that Councilors think along those lines for the September 12th meeting, to preserve the good work done by the Planning Board so far, but also to provide guidance to the Board.

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

Adjournment at 10:30 pm

Victoria Parmele, Minutes taker