

This set of minutes was approved at the November 21, 2005 Town Council meeting.

**DURHAM TOWN COUNCIL
MONDAY, OCTOBER 24, 2005
DURHAM TOWN HALL – COUNCIL CHAMBERS
7:00 PM**

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

MEMBERS ABSENT: None

OTHERS PRESENT: Town Administrator Todd Selig; Town Planner Jim Campbell; Planning Consultant Mark Eyerman; Planning Board Chair Richard Kelley

I. Call to Order

Chair Sandberg called the meeting to order at 7:02 PM.

II. Approval of Agenda

Councilor Kraus MOVED to approve the Agenda as submitted. Councilor Morong SECONDED the motion, and it PASSED unanimously 9-0.

III. Special Announcements

None

IV. Approval of Minutes

September 15, 2005 Minutes

Councilor Kraus MOVED to approve the September 15, 2005 Minutes as presented. Councilor Morong SECONDED the motion.

Page 4, next to last paragraph, should read “Councilor Kraus remarked facetiously that restoring the channel would open the soft underbelly of Durham to....” and that “He said it was important that the task force address recreational uses among other issues...”

Page 6, 2nd full paragraph, should read “..bottom of his statement on Page 4.”

Page 8, 4th full paragraph, should read “..it would be premature to endorse the motion “and that the rest of the sentence should be deleted.”

Page 14, 5th full paragraph, should refer to “UNH Vice President for Finance Administration.”

Councilor Kraus provided copies of a paragraph he wanted placed at the bottom of page 14 and the top of page 15, which he said was a more detailed and accurate depiction of his words at that meeting.

There was discussion on the paragraph to be inserted.

Councilor Peter Smith MOVED to postpone the final decision on this wording. The motion FAILED for lack of a SECOND.

Chair Sandberg asked if there was any objection to asking Victoria Parmele, the Minutes taker, to edit/reformat this paragraph to make it fit better with the style of the minutes.

Councilor Kraus said he had no objection to this.

Councilor Morong MOVED to send the September 15, 2005 Minutes back to Victoria to allow her to revise the paragraph in a style that was consistent with the Minutes. The motion was SECONDED by Councilor Peter Smith, and PASSED unanimously.

September 21, 2005 Minutes

Councilor Carroll MOVED to approve the September 21, 2005 Minutes as presented. The motion was SECONDED by Councilor Kraus.

Page 7, 1st full paragraph, should read “..agreement for school services, where...”
Page 10, top paragraph, should read “..that this agreement was unacceptable, and..”
Page 12, the 8th, 10th, 11th and 14th paragraphs should read “Councilor Julian Smith”

Councilor Kraus MOVED to approve the amendments to the September 21, 2005 Minutes. Councilor Morong SECONDED the motion, and it PASSED unanimously 9-0.

The September 21st, 2005 Minutes as amended PASSED unanimously 9-0.

V. Report of Administrator

- Administrator Selig provided details on efforts underway to respond to Councilor Kraus’s question about the need to better outline the historic district.
- Administrator Selig noted that Councilor Van Asselt had raised questions regarding the availability of information on the acreage of the various zoning districts. He provided an update on the availability of this information.
- Administrator Selig provided details on an upcoming flu clinic for Town staff.
- Administrator Selig said the Library Board of Trustees’ site selection committee was looking at Town-owned land across from the skating park at Jackson’s Landing and that the Trustees would like to discuss this at an upcoming Council meeting.
- Administrator Selig said the annual Town trick-or-treat would be held from 5:00-7:00 PM on Sunday, October 30th.
- Administrator Selig said the Parks and Recreation Committee and the Conservation Commission were putting together a committee to look at making improvements to Jackson’s Landing. He said people interested in participating in this effort should contact Jen Berry at the Town Office.
- Administrator Selig noted Councilors had received copies of the Annual Financial Report and said there would be a formal presentation on this in the coming weeks.

- Administrator Selig said he was still working on the FY 2006 Operating Budget and the 2006-20016 Capital Improvement Plan, and would make a presentation on them at the November 7th Council meeting. He said copies of the documents would be provided to Councilors by October 31st.
- Administrator Selig said there were two finalists for the Fire Chief position who would be undergoing a series of interviews that week. He asked if Councilors in addition to Councilors Sandberg and Kraus would be interested in sitting in on any of the sessions.
- Administrator Selig provided details on the finalized 2005 tax rate.
- Administrator Selig said that the annual fall leaf pickup would take place on Monday, November 7th and noted that residents should use paper bags for their leaves.

VI. Reports and Comments of Councilors

Councilor Kraus said he had been contacted by a citizen about a police survey that had been sent out. He said the citizen was concerned that people were supposed to be able to reply anonymously but their address labels were attached to the survey. He said there was also a number of some kind on the survey, as well as a bar code. He asked the Town Administrator to do what he could to assure citizens that their response to the survey could be anonymous. He noted that citizens were aware of the existence of clever surveying techniques.

Administrator Selig said he had not seen the survey but had received a similar message concerning this. He explained that the bar code was for bulk mailing purposes and that the stickers placed on the surveys by the UNH survey center could be removed.

There was additional discussion about the surveys. Administrator Selig said he would look into the matter more thoroughly.

Councilor Needell noted that the documents for the financial audit were dated back in March and asked why this was the case.

Administrator Selig said there were some new accounting standards and procedures that Durham and other towns in the state were required to comply with. He provided details on this and said the situation had caused a backlog at the audit firm. He said he had only recently seen these documents.

Chair Sandberg said he had received several calls about a wooden dock at Jackson's Landing where UNH material was apparently being stored, making it difficult for citizens to use the Town dock. He asked if Administrator Selig was aware of this, and if so, had steps been taken to address the problem.

Administrator Selig said he had received a complaint about this three weeks ago, prior to the reconfiguration of the UNH float system. He provided additional details on the matter. Chair Sandberg said perhaps the Public Works Department could look into the current situation.

VII. Public Comments

There were no public comments.

VIII. Unanimous Consent Agenda

- A. Shall the Town Council award a bid and authorize the purchase of a new heavy-duty four-wheel drive diesel backhoe to Casey Equipment of Brentwood, NH for a total cost of \$61,876.00?
- B. Shall the town Council adopt a schedule of supplemental meeting dates for the purpose of deliberating the proposed FY 2006 Operating Budgets and 2006-2015 Capital Improvement Plan, and schedule a public hearing for the proposed FY 2006 Operating Budgets for Monday, November 14, 2005?

Councilor Kraus MOVED to approve Unanimous Consent Agenda Items A and B. The motion was SECONDED by Councilor Julian Smith.

Councilor Peter Smith asked if Councilors should reserve the November 28th and December 12th meetings dates, subject to possible cancellation if they were not needed. Chair Sandberg replied that they should.

IX Unfinished Business

- A. **Public Hearing on Ordinance #2005-06** proposing amendments to Chapter 175 “Zoning” of the Durham Town Code, **Section #2005-06 (F)** – Relative to the Historic Overlay District

Town Planner Jim Campbell explained that the entire Historic District Ordinance had been revised, and outlined the following proposed changes:

- Added definitions
- Rewrote the purpose statement
- Clarified the powers and duties of the Historic District Commission
- Created procedures for designation of an historic district
- Clarified the identification and delineation of the Historic District, and let the District as it was.
- Clarified the purview of the Commission.
- Rewrote the procedures for review of a certificate of approval and review of application.
- Created guidelines for review
- Created a Demolition by Neglect provision.

Councilor Peter Smith said he would be interested in knowing what the Planning Board now viewed as the mechanisms in the revised statute that constituted enforcement provisions, especially with regard to the new Demolition by Neglect section. He said he would also like to know why the Planning Board had made the choices it made in handling it.

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

There were no comments from members of the public.

Councilor Needell Moved to close the public hearing. The motion was SECONDED by Councilor Kraus, and PASSED unanimously 9-0.

Councilor Morong MOVED to approve the recommendations for the amended Zoning Ordinance relative to #2005-06 (F), as submitted. Councilor Needell SECONDED the motion.

Councilor Peter Smith MOVED to postpone action on this until completion of Section E. The motion was SECONDED by Councilor Kraus, and PASSED unanimously 9-0.

B. Public Hearing on Ordinance #2005-06 proposing amendments to Chapter 175 “Zoning” of the Durham Town Code, **Section #2005-06 (G)** – Relative to the Personal Wireless Facilities Ordinance

Mr. Campbell reviewed the following proposed changes to the Personal Wireless Facilities Ordinance:

- Added definitions
- Ordinance encourages the location of PWSF in non-residential zones and discourages them in residential zones
- Excludes PWSF from conservation land
- Language was added for use of alternative technologies
- Requires applicant to demonstrate by technological evidence that the height requested is the minimum height necessary to fulfill the site’s function.
- Adds design and performance standards for concealment and disguise of facilities
- Adds design and performance standards stating that no antenna shall cause localized interference with the reception or transmission of any other communications signals including, but not limited to, public safety signals and television and radio broadcast signals. Must provide certification.

Councilor Morong MOVED to open the public hearing on Ordinance #2005-06 proposing amendments to Chapter 175 “Zoning” of the Durham Town Code, Section #2005-06 (G) – Relative to the Personal Wireless Facilities Ordinance. Councilor Carroll SECONDED the motion, and it PASSED unanimously 9-0.

There were no comments from members of the public.

Councilor Julian Smith MOVED to close the public hearing. Councilor Kraus SECONDED the motion, and it PASSED unanimously 9-0.

Councilor Morong MOVED to approve the recommendations for the amended Zoning Ordinance relative to #2005-06 (G), as submitted. Councilor Peter Smith SECONDED the motion.

Councilor Kraus MOVED to postpone action on this until completion of Section F. The motion was SECONDED by Councilor Peter Smith, and PASSED unanimously 9-0.

- C. Continued Deliberation on Ordinance #2005-06** proposing amendments to Chapter 175 “Zoning” of the Durham Town Code, **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, **Section #2005-06 (C)** - Relative to the Shoreland Protection Overlay District, **Section #2005-06 (D)** - Relative to the Wetland Conservation Overlay District, **Section #2005-06 (E)** – Relative to the Aquifer Protection Overlay District

Councilor Niman said he didn’t understand how Young Drive was compatible with the Coe’s Corner district.

Mr. Campbell said when this was originally proposed, Young Drive was in the RA District, and said discussion by the Planning Board led them to remove it from this district and put in the Coe’s Corner District in an effort to transform the area and create something different, if the opportunity arose.

Mr. Eyerman said his understanding was that it was there because the Master Plan put it there. He said his understanding was that the Master Plan envisioned that existing duplex development on Young Drive would be converted to offices and services. He said the Planning Board without enthusiasm therefore put it back into the Coe’s Corner designation, noting the Board had difficulty with the recommendation in the Master Plan, but felt its obligation was to respect that, and put the proposal forward to the Council.

Councilor Peter Smith asked what the reasons were for the reluctance to put Young Drive in the Coe’s Corner District, and asked why the Board thought that if, free of the constraint imposed by the Master Plan, it would be better policy not to take that action.

Mr. Campbell said for some Board members, it was the realization that Young Drive was what it was, and wouldn’t change no matter what its Zoning district was changed to. He said others thought there was an opportunity to continue to have housing there that hopefully wouldn’t be student housing. He provided additional details on this.

Councilor Peter Smith asked if the bottom line was that the Planning Board thought there would be less incentive to put student housing there if Young Drive was put in Coe’s Corner. Mr. Campbell replied in the affirmative.

Councilor Kraus said he was interested in the linkage between the Master Plan and the Zoning Ordinance. He said he might be mistaken, but said he heard members of the Council tend to dismiss the linkages Councilor Niman was making. He said it was unclear when this linkage was on, and when it was is off.

Mr. Campbell said the Master Plan called for the area to be Coe’s Corner, and that was what the Planning Board did. But he said not everything in the Master Plan was in the Ordinance, and noted the Board realized there was time to achieve this.

Councilor Kraus asked if by omission, this was saying the Master Plan didn’t necessarily dictate everything in the Zoning Ordinance.

Mr. Campbell said there could be some uses that weren't necessarily listed within the Table in the Master Plan, but which made it into the Zoning Ordinance's Table of Uses.

Chair Sandberg asked if there was discussion by the Board about phasing in specific recommendations of the Master Plan over time.

Mr. Campbell provided an example of a phased approach being used, for the area north of Beech Hill. He said the Master Plan had called for it to be part of the ORLI District, but said that due to comments from the public, etc, the Board didn't see the need to make it ORLI at present. He said there were other areas in the ORLI district that could be developed first.

Chair Sandberg asked if this same kind of discussion occurred regarding Young Drive, and Mr. Campbell said he didn't think it had.

Councilor Needell noted Councilor Kraus's characterization of the discussion, and said he had a different take on it. He said the point he had tried to make was that there were many things Councilor Niman was correctly pointing out that were in the Master Plan but were not in the Ordinance, and there was no expectation that the Ordinance would now implement everything in the Plan.

But he said the critical question was whether there were things in the Ordinance that were inconsistent with the Master Plan, and said where there were deviations, this had to be done carefully.

He said he didn't think there was a criticism from Councilor Niman that there were things in the Master Plan that were being dismissed, or more importantly, not followed. He asked Councilor Niman if this characterization was correct.

Councilor Niman said the Master Plan talked about multi-unit housing on the periphery of Town, but said he didn't see the Ordinance implementing this. He also said the Master Plan also talked about the need to do as much as possible to make the limited amount of land available for commercial development economically viable. He said he seriously question the Ordinance regarding this as well.

Chair Sandberg said the challenge for the Council was to determine if the proposal before it was consistent with what was envisioned by the Master Plan, and said if the Council went off on a tangent that was not discussed by the Plan there would be a problem. He said he didn't think there was any intention that everything in the Plan would be incorporated in the Ordinance as part of the current process.

He said he felt there were some places where the Ordinance had gone too far too fast, which was somewhat different than saying the Ordinance had gone off in the wrong direction.

Councilor Van Asselt asked if the Table of Uses, under Coe's Corner, said Young Drive was going to be changed from student housing.

Mr. Campbell said it was, by not allowing residential duplexes.

Councilor Van Asselt said that as a practical matter, Young Drive was what it was, and whether they liked this or not was not relevant. He said putting it in the Coe's Corner District instead of the RA District was not how development occurred, and said this wasn't going to happen. He said the question was what they were trying to accomplish. He said no one would build an office between the students, and questioned who would develop Young Drive since one couldn't build multi-units now.

He said this was why he wanted to know how much developable land was actually available, because once the standards were applied, the question was how much land would be left in this area to develop. He said under the proposed standards, there was nothing left on Young Drive.

Chair Sandberg asked if that was the intention of the Planning Board, that nothing happen here.

Mr. Campbell said unless there was a change of use, Young Drive could continue as it presently was.

Councilor Carroll said this also said what the area wouldn't become--more residences for students. She said what was there now in terms of student housing was as large as it was going to get, and it would either stay that way or change into something else. She said this seemed to be consistent with the Master Plan.

Councilor Morong said he agreed it was consistent with the Master Plan, and said this was also consistent with what the Council had heard at public hearings from people living in the pocket neighborhoods, who didn't want to see any more impacts from multi-student housing. He said if another use could go there, that would be great, but if not, there would be no further students.

Councilor Peter Smith said what they were all saying was that they didn't want more student housing, so the Ordinance needed to be designed to get to that. He also said it was unlikely that as long as Young Drive in its current state was there, elderly housing and other things would be built, so this was in essence like a conservation easement.

He asked if there was discussion by the Planning Board about a way of zoning that land so that choices for the future would not be limited in the way just described, or if the Board said the reality was that the Town was stuck with Young Drive, so would do it this way.

Councilor Peter Smith said he was searching for whether there was anything further to be said which could lead to a result other than what was described by Councilor Van Asselt and Councilor Carroll.

Chair Sandberg asked if there was an open discussion about the goals and objectives on this.

Mr. Campbell said yes, and said it was a fully intentional process.

Councilor Peter Smith asked how the Planning Board saw this, and Mr. Campbell said the Board was holding on to the hope that the area could change. Councilor Smith asked if there was any reason to warrant that optimism at present.

Administrator Selig noted that the Master Plan was looking out 50 years, and said the proposed language in the Ordinance set things in a certain direction to not allow greater intensity of student housing, and set up types of uses that were desirable for that part of Town.

Councilor Needell said the area was approximately half occupied, with several lots available for development. He asked if the Ordinance was adopted, if the owners of this land were grandfathered to build a particular kind of housing.

Mr. Campbell said they were not grandfathered to build a duplex.

Councilor Needell said this seemed to be a punitive piece of the Ordinance, and asked if the Town was on firm legal footing to make this change. He said he could imagine a variance application that would claim a proposed development wouldn't affect the character of the neighborhood.

Mr. Campbell said there might be a problem if the Ordinance just picked on Young Drive, but he said there were other sections to the District.

Councilor Niman said he had never understood why Young Drive was put in Coe's Corner, and was glad to hear this explanation. He noted that #4 of the development standards on page 18 for this district spoke about re-use of structures, and asked if 20 years from now, someone wanted to build an office building there, if he would be prevented from tearing down a duplex.

Chair Sandberg noted that what the document said today might not be in effect 20 years from now, or even one year from now. He said if a Councilor saw a flaw in the Ordinance, a proposed change should be developed concerning this, and if there was consensus that it should be changed, Section B could be remanded, and could include the recommended change.

Mr. Campbell said if one wanted to reuse the building, development standard #4 would apply. But he said if the lots were merged, there would be nothing to stop someone from tearing down the buildings.

Councilor Julian Smith said he agreed with Mr. Campbell, and said paragraph #4 didn't say the buildings couldn't be torn down. He also noted regarding #4 that it should be the residential "appearance" of the building that was of concern there.

Councilor Kraus made note of Councilor Peter Smith's statement that the fact that these properties couldn't be developed was something like a conservation easement. He said he saw this perspective as symptomatic of many aspects of the Ordinance. He said in this case, people with these properties didn't get money for this, and were just stuck with them and couldn't develop them. He said this wasn't like a conservation easement; it was a problem for

these people. He also said if the Town intended to get any revenues, it needed to do this sooner than in 40 years.

Councilor Carroll said they were talking about a transition for this area of Town, and some people would get caught in this transition. But she said that on the other hand, if there was any hope for these areas to get any better usage, they had to undergo the transitions. She said she hoped this didn't put any undue burdens on residents there, but said it was important to plan for the future and see the big picture.

Chair Sandberg said this was in the nature of zoning ordinances that people couldn't do as much as they could have prior to the ordinance being in effect.

Councilor Van Asselt said he was not advocating that more duplexes be allowed in Coe's Corner. But he said if it was going to be prohibited there, it was important to look at the ORLI District, and make provisions for those same students that wouldn't be allowed at Coe's Corner.

Councilor Sandberg noted the discussion the Council had had concerning the MUDOR District. He said the direction the Planning Board proposed was to transition out of residential on Young Drive, and to open to it in MUDOR.

Councilor Van Asselt said he would love to see that transition, but asked where the land was where this could happen.

There was discussion about the acreage involved. Chair Sandberg said the land available in the MUDOR section looked to be at least three times greater than the Young Drive section.

Councilor Peter Smith said the privately held land in the MUDOR District was small compared to the entire MUDOR area, and said there was an invitation to the University to develop its land in the district, or make it available to private developers. He also said there was another way out of this dilemma, noting the recent Supreme Court decision dealing with eminent domain. He provided details on this, and said there was no question that the Town could take the land, if there was the ability to develop it into an appropriate commercial area.

Mr. Campbell said it wasn't a unanimous decision by the Planning Board to say there could be no multi-unit housing in the ORLI District. He provided details on the acreage of some of the properties in the district. He said the owners were being encouraged to hold on to their properties, and that this housing option was one avenue they could pursue.

Mr. Eyerman said the RA district currently prohibited multi-family housing, so the multifamily housing on Young Drive was already nonconforming. He said uses that were currently not permitted were being recommended for the vacant land in the Coe's Corner District.

He said this district was somewhat problematic in that different sections of the Master Plan talked differently about the character of the district, so there was some contradiction on what direction it should go in.

He said if the Council had some wisdom to share on this, it would be very helpful.

Chair Sandberg said the Master Plan was trying to express an anti-Miracle Mile approach for this area, so that although commercial development would be encouraged there, its appearance should be sensitive to the fact that it was the gateway of the area.

Councilor Needell said there were two faces to Coe's Corner, and provided details on this. He then asked, concerning the approach of remedying problem areas by changing them to professional office space, if there was enough demand for this much office space, so that it was likely to be developed.

Councilor Carroll said housing seemed to be a recurring theme, and said she thought the Council should make a decision at some point on how it would deal with housing issues facing the Town. She noted the possible idea of having a Housing Commission for the Town, and urged the Council to consider doing this in the near future.

Chair Sandberg said the mechanism for this would be for the Council to explore this idea.

Councilor Peter Smith said the precursor to the Master Plan had been a community development study, and said a recurring theme that came out of this was that Durham must preserve the gateways to the community. He said as decisions were made regarding Coe's Corner, the most important thing was that they were consistent with preserving the Town's gateway, whatever the development was, so it wouldn't turn into the road to Exeter.

Chair Sandberg asked if the wording on page 17 achieved this.

Councilor Peter Smith said what assured this was the dimensional requirements.

Councilor Van Asselt asked what the sentence in the purpose statement for the Office and Research District (ORLI) meant.

Mr. Campbell said it was trying to say that this was a pretty rural area, so if something were built, the area in front would have a 100 ft. setback, and would remain open and vegetated.

Councilor Van Asselt asked how much land they were talking about.

Mr. Campbell said there were a few parcels, and some of them were small.

Councilor Van Asselt said this district as well would not provide land for multi-unit development for non-elderly housing, and said the student-housing problem would only intensify because of this.

Mr. Campbell noted that duplexes were not permitted in any of the districts unless they were for the elderly. He said they only places they were allowed were as part of adaptive reuse in the Professional Office District, or in the MUDOR District as a conditional use. He also noted mixed use development could be done in the Downtown district.

Chair Sandberg asked if the consistent theme was to encourage student housing to be closer to the campus, with less on the periphery, so taxable business enterprises could be developed further out. Mr. Campbell replied that it was.

Councilor Niman said that was what didn't make sense to him. He said the Master Plan noted the limited land available in Town for commercial development, - about 10% of developable land. He asked why single family elderly housing would be allowed in the OR-Route 108 District, given there was so little commercially developable land to begin with, and said this didn't seem to be the highest and beset use of the land.

Mr. Eyerman said he didn't think he was in a position to speak for why that decision was made, except to say that several sections of the Master Plan talked in terms of elderly housing being a positive tax generator for the community, as opposed to other forms of housing development

Councilor Niman asked why the Board then didn't say the Master Plan was now 5-6 years old, and was developed before Spruce Woods, Fitts Farm, etc. were built, but that now times had changed, and the Town should change with this.

Mr. Campbell said the Board was trying to implement what was currently in the Plan, although noting it was budgeted to start updating the Master Plan.

Councilor Needell said he was curious as to why all types of elderly housing were allowed, and if this was simply because the Master Plan said to allow elderly housing.

Mr. Eyerman said there had been discussion on this, and the Board had noted that these days, a mix of housing types was often found for elderly housing, so included them because it was felt these would be desirable.

Chair Sandberg called for a 5-minute recess at 8:52 PM.

The meeting resumed at 8:59 PM.

Councilor Van Asselt said the important question was whether in its deliberations, the Planning Board directly addressed the question of where student-housing fit into the new Zoning Ordinance, given that this issue drove so much of what happened in Town.

Mr. Eyerman said the Board was guided in large part by the Master Plan vision that the desired goal for student housing was that it be accommodated close to, and west of the UNH campus. He said one of the assumptions in this analysis of the availability of land had been that most of the land in MUDOR was owned by UNH, and therefore was not going to be private housing development. He said he recalled a Planning Board discussion where the sense was that the University, in trying to address housing issues, might consider leasing land to private developers for student housing.

He noted a presentation to the Board on this issue by a developer, and said the Board had therefore factored in that it might be possible that UNH would make some of its land available to meet the need.

Councilor Needell asked whether, if the University leased land to a developer, if the Zoning Ordinance would apply to that land, and there was discussion on this.

In answer to a question from Councilor Kraus, it was noted that 5-10% of the land in the MUDOR District was privately owned. He said it was important to keep this in mind.

Chair Sandberg noted that this acreage represented a substantial increase compared to the Young Drive area.

Councilor Niman noted the requirement that 50% of a lot be in open space for several zones, and said that then adding in the dimensional requirements, it was hard to fit in anything.

Councilor Peter Smith asked concerning the performance standards in general, what the mechanism was for someone to seek to opt out of the requirements.

Chair Sandberg asked if this meant the ZBA would be overwhelmed, and there was discussion about this.

Councilor Peter Smith asked if the Planning Board discussed whether these standards were likely to be upheld as legitimate requirements, so variances for the most part wouldn't be granted, given the variance criteria.

Mr. Campbell said yes, and said it was thought these performance standards were reasonable.

Councilor Van Asselt noted that page 25 spoke about outdoor recreation space for multi-unit dwellings in the MUDOR District, and asked if the amount of space indicated there would really be required.

Mr. Eyerman said the Board's sense about this was that for 50 units of student housing, a recreational area 50 ft. x 50 ft. was not excessive.

There was detailed discussion about the space requirements for outdoor recreation for the MUDOR District.

Councilor Niman asked if it was the appropriate time to say that the 50% open space requirement was not consistent with the Master Plan.

Chair Sandberg said if Councilors had specific suggestions, they should propose them, and when the Council ultimately voted and this issue was remanded, the Council could give the Planning Board guidance as to what it would like them to do with it.

Councilor Kraus asked if there would be motions on these things.

Chair Sandberg described the process that would be followed.

Councilor Van Asselt noted there were two issues that had been discussed previously that he would like to see remanded back to the Board, and asked if this was the time for Councilors to suggest things they thought needed to be changed.

There was additional discussion about the process.

Mr. Eyerman said Councilor Niman had raised the issue of the 50% open space requirement, and noted there was some redundancy in the Ordinance in that the Table of Dimensional Requirements included an impervious surface ratio, which was essentially the reverse of the open space requirement. He explained that the 50% was arrived at based on looking at the proposed Power Span development that was previously proposed for the Durham Business Park.

Chair Sandberg noted this figure was applicable in the presently proposed version of the Ordinance, but said the Planning Board might decide to change that in the future.

Councilor Needell noted the language in Section A concerning minimum lot area per dwelling unit, where the density calculation was based on the entire lot, minus wetlands, and not on the impervious surface ratio or the open space requirements.

There was discussion on the meaning of the words impervious and pervious. It was noted that depending on how it was used, some so-called pervious materials could become impervious, in areas that were used a lot.

Councilor Niman said he objected to the open space requirements for the commercial zones, and said he didn't believe this met the spirit and intent of the Master Plan. He quoted from page 9.22 of the Section on Commercial Land Availability, and it was noted that this wording had changed in a later version of the Master Plan.

Councilor Julian Smith suggested that on page 27, the 2nd development standard regarding "Dumpsters and other Storage Areas" should be shortened.

Chair Sandberg recommended that the first sentence should stay as it was, but the second sentence should say "Dumpsters and storage areas..."

Councilor Van Asselt said the 50% open space requirement was much too restrictive for the ORLI District. Asked by Councilor Peter Smith why he had reached this conclusion, Councilor Van Asselt said this was because of the limited land there to begin with. He also said if the Town wanted to generate revenue, it needed to do more than what was in the Table of Uses, where residential development other than elderly housing was currently prohibited.

Chair Sandberg said this could be discussed more when the Council went through the Table of Uses in detail.

Chair Needell said he thought the reason for the open space requirement was to encourage commercial development in ORLI, but not extremely high-density development that would not fit the rural nature of the area. He said he wasn't sure this was out of character with the intent of the Master Plan.

There was discussion about the Goss facility on Technology Drive as it related to this requirement.

Chair Sandberg said that because this was a gateway area of Town, it was important that any commercial development be screened, and that this development not be too dense.

Councilor Van Asselt said he didn't have a problem with these comments, but said if there was interest in having these land uses in Town, he didn't think they were getting there by saying that 50% of a lot had to remain as open space.

Chair Sandberg said it remained to be seen whether the ORLI District would be developed, but he said it was accessible and had a big commercial potential. He said perhaps some time down the road, the open space requirement would be reduced, and said this was the start to opening the door wider than had been the case in the past.

Councilor Peter Smith said from watching how people voted on certain issues, he thought what they wanted were things that clashed, - lower taxes and a rural looking town. He said he himself went in different directions on this, and said that as a starting point, he thought the 50% requirement was not unreasonable, and was a probable recognition that people had asked for both of these things.

Councilor Van Asselt said Councilor Smith was correct, and said he was not sure these two things were compatible. He noted that one couldn't enjoy the open space in Durham if he couldn't afford to live there, and said it was important to look as hard as possible at making inroads on this issue. He said it was a tax base issue.

Councilor Niman said he didn't want to see ugly buildings either, but he did want to broaden the tax base. He said the question for him was whether the goal of not wanting to look at commercial and light industrial buildings could be achieved without imposing a 50% open space requirement.

He said this present requirement made it economically non-viable to develop these properties, so that developers didn't even look at Durham.

Councilor Needell said there was debate on these things by the Planning Board. He said Councilor Niman had a valid argument, but said he didn't think now was the time to rewrite the Ordinance. He said he felt the Council needed to defer to the people who had spent a tremendous amount of time on this.

Councilor Peter Smith said there were a lot of feelings on each side of this issue. He noted that for the soils issue, he was asking for more data, and it came down to the fact in that instance that until there was more data, the Council wouldn't change what currently existed in the Ordinance.

He said Councilor Niman had the feeling that the 50% open space requirement was too discouraging for developers, but said this was speculation. He said he was inclined to want to change what the Planning Board did if there was reasonably compelling data indicating that the factual premise was wrong, or was right but the policy was wrong. But he said he didn't feel they were yet at that point.

Councilor Kraus said regarding what Councilor Niman had said, that the consequence of not having available land to put industry on aggravated the difficulties with the University. He

said when the Town didn't have other revenue sources, it went after the University with more intensity than it otherwise would, and said this sometimes made a difficult situation worse. Councilor Kraus said that anything that could be done to facilitate the growth of revenue sources would be a good thing.

Mr. Kelley said if one took at a square shaped 2-acre site and applied the setbacks, it would be found that half of the open space would be taken up by the setbacks, so the open space requirement might be somewhat redundant in that other things in the Ordinance would create undevelopable land and allow a developer to achieve open space.

Councilor Van Asselt asked why one place in the Ordinance said that significant open space should be retained, while the 50% open space requirement was found in other places. Councilor Needell said the dimensional standards ruled, so even where it said "significant open space", the 50% impervious cover and 50% open space ruled.

Councilor Van Asselt said he would like the Planning Board to look at what "upgraded" meant concerning the Professional Office District on Madbury Road, noting the Council's discussion on this at a previous meeting.

Chair Sandberg asked Mr. Eyerman what he thought the Planning Board was being asked to do concerning this.

Mr. Eyerman said his understanding was that the Board needed to clarify what the word "upgraded" really meant with respect to re-use of fraternity/sorority buildings, and whether the conditional use standards would assure there would be decent units in that area.

Councilor Peter Smith said one piece for the Board was to define the term, and another was to then explain what it was in this zoning provision that was likely to make that happen.

Chair Sandberg determined it was the consensus of the Council that further work was needed on Section 175-43. A concerning the use of the word "upgraded" multifamily housing.

Councilor Van Asselt noted the Council had discussed the drive-through service issue, and said he didn't think there was resolution on it.

Councilor Needell said the ball was in the Council's court because it was a policy issue.

Mr. Eyerman said in the discussion the previous week, there was the realization that there were two different types of drive-throughs, and said he thought the agreement was that that issue of how "other services" was to be treated needed to be remanded. He provided additional details on this.

Councilor Peter Smith said the last entry on page 45 of the Table of Uses obscured the clarity of what Mr. Eyerman had said. He asked if it would be helpful to the Planning Board for the Council to provide a sense of the appropriateness of drive-throughs in Town other than for restaurants.

There was discussion about what a drive-through restaurant involved.

It was determined that the consensus of the Council was that drive-throughs were appropriate for other services like banks, but not for restaurants.

Councilor Van Asselt noted the purpose statement for the Office Research –Route 108 District, and asked Mr. Campbell if he knew how many residential homes were in the district, to get a sense of how many people would be impacted by his proposal to delete elderly housing from this district, and focus more on Office Research uses.

Councilors agreed that the meeting would be continued to the following Monday, October 31st.

Councilor Van Asselt asked if more information could be provided on how much space was available for development in the various districts that had been created.

Councilor Peter Smith MOVED to continue the meeting until October 31st. The motion was SECONDED by Councilor Julian Smith, and PASSED unanimously 9-0.

The meeting concluded at 10:12 PM.

Victoria Parmele, Minutes Taker