

This set of minutes was approved at the December 5, 2005 Town Council meeting.

**DURHAM TOWN COUNCIL
MONDAY, OCTOBER 31, 2005
(Continued Meeting of October 24, 2005)
DURHAM TOWN HALL – COUNCIL CHAMBERS
7:00 PM**

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

MEMBERS ABSENT: Diana Carroll

OTHERS PRESENT: Planning Consultant Mark Eyerman; Planning Board Chair Richard Kelley

Chair Sandberg called the meeting back to order at 7:00 PM and explained that this was a continuation of the Town Council meeting held on Monday, October 24, 2005. He noted that the Council was continuing its deliberations on Section B of the proposed revisions to the Zoning Ordinance.

Councilor Peter Smith MOVED to table the Agenda Item for a few minutes, and if agreed, move to go into nonpublic session immediately to discuss the litigation matter. Councilor Needell SECONDED the motion.

Councilor Kraus said he found this inappropriate, odd, and unusual, and noted communication between Councilors Peter Smith and Sandberg on this. He said the meeting was supposed to be a continuation of the previous meeting, and said it was inappropriate to do this on a nonpublic matter.

Councilor Peter Smith said the Council had a nonpublic session at its October 24th meeting, and one of the issues covered then was a possible legal matter. He said there was an urgent reason why this matter needed to be addressed that evening, and said this would only take ten minutes.

The motion PASSED 7-1, with Councilor Kraus voting against it.

Peter Smith MOVED to go into nonpublic session in accordance with RSA 91-A:3 II (e) consideration or negotiation of pending claims or litigation. Councilor Needell SECONDED the motion. The motion PASSED on a roll call vote of 7-1 as follows:

<i>Julian Smith</i>	<i>AYE</i>	<i>Neil Niman</i>	<i>AYE</i>
<i>John Kraus</i>	<i>NAY</i>	<i>Malcolm Sandberg</i>	<i>AYE</i>
<i>Diana Carroll</i>	<i>ABSENT</i>	<i>Mark Morong</i>	<i>AYE</i>
<i>Karl Van Asselt</i>	<i>AYE</i>	<i>Jerry Needell</i>	<i>AYE</i>
<i>Peter Smith</i>	<i>AYE</i>		

The Council entered into Nonpublic Session at 7:19 PM.

The Council returned to public session at approximately 7:30 PM.

Councilor Morong MOVED to seal the nonpublic minutes. Councilor Peter Smith SECONDED the motion, and it PASSED unanimously 8-0.

Councilor Peter Smith MOVED that the Town Council file with the Zoning Board of Adjustment of the Town of Durham, a motion for reconsideration of the ZBA's oral decision of October 11th, 2005, and written decision of October 13, 2005, on the request for variance submitted by Ted and Shelley Mulligan of SEJ Properties, Durham, New Hampshire. Councilor Julian Smith SECONDED the motion, and it PASSED unanimously 8-0.

IX. Unfinished Business

- 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 Peter Smith MOVED to remove from the table Ordinance #2005-06 Section (B) for further discussion. Councilor Needell SECONDED the motion, and it PASSED unanimously 8-0.

Councilor Niman noted the boundaries of the ORLI district, and asked why a specific parcel wasn't in this district, but instead was in the Residential B district.

Mr. Eyerman said this property was proposed to be in the ORLI district, but said there was significant public comment on that area. He explained that access to the land came mostly through a residential area in the adjacent Town of Madbury. He said as a result of this, the Planning Board and Zoning Rewrite Committee decided it was not appropriate for this property to be non-residential.

Councilor Niman asked about a State property in this area that the Town was interested in.

Administrator Selig said he had not heard back from the State on this, and didn't know what the state's plans were for the property.

Councilor Niman asked if the Town did acquire this property, could the property provide access to the other property he had just been saying should be in the ORLI District. There was discussion about this.

Councilor Van Asselt spoke about the fact that in the proposed Ordinance, some of the districts had the requirement that 50% of a lot had to be left as open space. He asked if perhaps it was the interest of the Council to send this language back to the Planning Board and to insert some new language in its place. He said if the Ordinance already said that buffers and setbacks had to be maintained, this should be enough, and said he was simply looking for more land that could be used for development.

There was discussion that if the 50% number was taken out, there was no purpose to the paragraph it was in for several districts. Councilor Van Asselt said he could live without the paragraph.

Mr. Eyerman said it was important to recognize that setbacks and buffers had different impacts depending on the dimensions of a particular lot. He provided details on this. He also said the Planning Board was inconsistent in inclusion of the 50% open space language for some of the districts.

Mr. Eyerman noted that the Table of Dimensional requirements included the 50% impervious cover ratio, which was the reverse of the 50% open space requirement. He said as one was changed the other also had to be changed. He said the 50% impervious cover ratio was arrived at by looking at a development proposal for the Durham Business Park, which the Planning Board felt was fairly typical of the kind of development the community was trying to achieve, balancing the built and the natural environment.

Councilor Kraus said he concurred with Councilor Van Asselt, and said that the 50% open space requirement seemed redundant, given the setback and buffer requirements.

Councilor Peter Smith said he agreed that if the 50% open space requirement was removed, there was no point to the rest of the paragraph. But he said the real question was whether it should be removed. He noted that Mr. Eyerman had said the Planning Board had been inconsistent concerning this requirement, and asked what was meant by that statement. He also asked why the Coe's Corner district was treated differently than the other districts concerning this.

Mr. Eyerman said in the Table of Dimensional Requirements on page 49, an impervious cover ratio was established for all of the districts. But he said the specific wording concerning 50% open space was put in for districts where there was more concern about the use of the land parcels there.

Councilor Peter Smith said the core of Councilor Van Asselt's question was what evidence the Council should consider as to whether having the 50% open space requirement reduced too much the availability of land for building.

Mr. Eyerman said the answer was that the Planning Board looked at the Powerspan proposal for the Durham Business Park and decided that requiring 50% open space at that location seemed reasonable. He said there were two things the Council might consider, if it wanted to do anything concerning this requirement. It could ask that the Planning Board be consistent and either put the language in for all the districts or take it out for all of them, or it could look

at whether the 50% open space requirement was reasonable. He said that perhaps the Board could look at developments in neighboring communities to see if this seemed reasonable. Chair Sandberg asked if this 50% open space requirement was a change.

Mr. Eyerman said it was, noting that currently there was something in the Ordinance called "maximum building coverage". He said there had been concern expressed in previous discussions about the increase in the amount of stormwater runoff that resulted when the amount of building coverage of a site increased.

Councilor Needell provided clarification that changing the open space percentage wouldn't change the impervious surface ratio requirement, so the wording of both parts of the Ordinance would have to be changed.

Councilor Needell said the issue of whether to change the impervious surface ratio was one the Council should discuss, but said he was not compelled to make this change without more information.

Councilor Niman said he had been waiting to discuss his concerns about the impervious surface ratio requirements, and said he would do so when the Council got to page 49, the Table of Uses.

He said the Durham Business Park property was used to develop the standard in the proposed Ordinance, but that this seemed odd, given this was a special property which had its own district designation.

Mr. Eyerman said it was used because the Planning Board was familiar with it and had recent experience with a development proposal there. He said this was felt to be fairly indicative of the kind of development that would occur in Town.

Councilor Morong said Councilors Van Asselt and Niman might have a point concerning the Durham Business Park, and said he thought the Planning Board could look at industrial park models from other towns.

Administrator Selig noted there was a significant amount of wetland on this parcel, which was not always common in other locations.

Councilor Peter Smith said the Business Park had 25 acres, 5 acres of which was buildable when the shoreland and wetland ordinance requirements were considered. He said he didn't know what the thinking of the Planning Board was in considering that this was a typical development parcel. He said he would be in favor of trying to understand the Board's thinking and what went into the 50% open space requirement, other than a hunch.

Councilor Kraus said he agreed it was a good idea to determine if this was a purposeful or accidental decision by the Board.

Chair Sandberg asked Mr. Eyerman if his sense was that this was an accident, noting that several public hearings were held. He also said the Zoning Ordinance was a living document, which was subject to change.

Mr. Eyerman said he wouldn't say it was a mistake, and said it was the subject of quite a bit of discussion. He said he was not sure the Board considered the 50% requirement in relation to all of the districts and the specific development scenarios for each of them. He said he didn't think there was a problem for the Council to ask the Board to take another look at the requirement.

Administrator Selig asked if the influence of the Hollis Ordinance related to this, and Mr. Eyerman said it didn't.

Councilor Needell asked if this Item were to be remanded, if the Board was being asked to revisit particular zones. He also asked if Councilor Van Asselt was saying the impervious surface ratios could be eliminated, given the existence of setbacks.

Councilor Van Asselt said his concern was that the Durham Business Park was not representative of land in the ORLI district. He also spoke about the fact that there wasn't information available on the acreage of buildable land in these new districts, and said this information was important in order to be able to make policy decisions.

Chair Sandberg asked if Section B was remanded, if the Council could get this information on the amount of acreage in these districts in order to justify the impervious surface ratios.

There was discussion on the importance of having this information and the ability to come up with it through GIS and other means.

Councilor Van Asselt said it wasn't so much why the district lines were drawn the way they were; it was a policy question as to how much land was there and whether the new Ordinance allowed for more, the same, or less development of office research land uses.

Councilor Kraus said he was curious that they were all engaged in this zoning exercise and couldn't simply determine by looking at tax cards how much land there was, without having to use GIS.

Mr. Eyerman noted that the exercise would only provide the gross amount of land and wouldn't answer the question of how much of the land was usable/buildable.

In answer to a question from Councilor Kraus, Administrator Selig said the aerial photos used in the GIS mapping showed pervious and impervious surfaces.

Chair Sandberg said the question was how many buildable acres the new OR district allowed as compared to the old OR district. He said these were terrific questions being raised. But he said a valid question to be asked was whether those questions were showstoppers.

Councilor Needell said if this Ordinance was not adopted, the existing Ordinance said the impervious surface ratio for the districts was 50%.

Councilor Peter Smith said the problem was that there had been a proposal for a very substantial change on how the districts were drawn. He said if this were not the case, he would feel more comfortable about saying let's go ahead and adopt a particular requirement and changes could be made to it later if needed. He also said he didn't want the Planning Board to dig up this information simply to give to the Council, but to do this so it could determine what its professional opinion was on the open space requirement.

Chair Sandberg asked if the consensus of the Council was to remand the open space issue based on this discussion, it was clear to the Planning Board what the Council still needed to know.

In reference to Councilor Peter Smith's comment, Councilor Needell noted that the new districts were created out of the previous districts, and he said there was no change to the impervious surface ratios that were required in any of this land area. He said he didn't see that a dramatic change in land use was proposed, and said this proposed Ordinance implemented what the Master Plan had requested. He said the Board was taking this one step at a time, and said he wasn't sure the Council should be remanding this issue now.

Councilor Kraus said he concurred with what Councilor Peter Smith had said.

Councilor Peter Smith said he was willing to postpone whether this should be remanded, so that the Planning Board could explain what they did. He said this was a legitimate question that had been asked.

Chair Sandberg said the Planning Board could take this all under advisement, and said there could be a question mark as to whether to remand this. He noted that whatever happened, the 50% open space ratio wasn't really changed because the fallback position was the 50% impervious coverage ratio.

Mr. Eyerman said that concerning the impervious surface ratio/open space ratio, it was pretty clear what the Council was asking concerning this. But he said the larger issue of where the district lines were drawn, and how much land was in the districts, was more complicated.

He said the Master Plan had those calculations in it, and the Planning Board viewed its role as implementing the Master Plan. He provided details on information in the Master Plan concerning this. He said that by and large, what was proposed on the Zoning map mirrored what was in the Master Plan. He said the Planning Board didn't feel it was its role to redo this work.

Councilor Niman said the problem he had was that in the Planning Board's decisions to implement the Master Plan, it chose to remove certain areas from commercial development, and yet hadn't decided to put it someplace else. He noted the discussion in the Master Plan about tax stabilization, etc., but said he didn't see that theme reflected in the Zoning Ordinance.

He said that for the MUDOR and ORLI districts, it turned out that there were only a few parcels that were actually developable, and said he was not sure that the Master Plan envisioned this. He said these zones didn't make sense in achieving the goals of the Master Plan. He said he therefore questioned to what extent the Board jettisoned these goals to pacify residents, without asking what this would mean to the future viability of the Town, and making it affordable for people to live in Durham.

Councilor Needell said he didn't disagree with what Councilor Niman was saying, but said it had never been the intent of the Board to implement the entire Master Plan now. He then asked for clarification on Councilor Niman's comments on particular parcels.

Councilor Niman said he was troubled with the borders of the MUDOR District, and said he thought the district should be larger. He said he was also troubled by the borders of the OR-Route 108 District, noting he had suggested to the Planning Board previously that it should be larger, and that perhaps multi-unit housing should be allowed there as well.

He said he was looking for land on the periphery of Town that people didn't have to look at, which would not cause a traffic nuisance, but would create more options for the Town to broaden the tax base. He noted he was not interested in bringing in strip development.

Chair Sandberg said the Town had put in sewer and water out by the ORLI area, including expanding to include Beech Hill Road, so it was allowing for growth and development out there.

There was discussion about the land parcels out there, and who owned them. Chair Sandberg said all the Town could do was open up the opportunity for development out there, just as it did for the Durham Business Park. He said the proposed Ordinance expanded on opportunities for development.

Councilor Kraus noted there had been a discussion about remanding the open space requirement issue, and said he would like to hear what Councilors felt about this. He said the conversation had been sidetracked concerning this.

Councilor Van Asselt said the Council had talked about policy issues, including commercial development that was needed in order to work on the tax base, and multi-unit housing for students outside residential areas. He asked if these things were being encouraged with the proposed Ordinance.

Mr. Eyerman said the Planning Board had asked these questions continually, and felt it had tried to balance residential preservation, and accommodation of multi-family and non-residential commercial growth. He said if the issue of where the lines for the districts was drawn was an important one, he suggested that before the Council voted, it should sit down with the Planning Board and talk about this.

He noted that for the MUDOR district, the Planning Board thought it was possible that University property might become available for private multi-unit development, so the Board included it in the district. He also noted that the public was involved with the discussion on where multi-family development should be allowed. He said what was proposed in the Ordinance concerning these things was the result of a lot of discussion. Chair Sandberg suggested the Planning Board could further enlighten the Council on this issue.

Councilor Van Asselt said the Planning Board's responsibility was not the policy issues the Council was involved with right now. He said their responsibility was to implement the Master Plan. He said it seemed that the Council's responsibility was to determine if this Ordinance reduced students in the neighborhoods, and increased commercial development, and said he thought it didn't do either of these things, because it didn't encourage multi-unit development the Town needed. He said he was inclined to vote against it.

Councilor Needell said he appreciated what Councilor Van Asselt had said, but said the question was whether if he voted down the Ordinance, he would be accomplishing his goal.

Councilor Niman said this highlighted the contradictions in the Ordinance. He said if it was adopted, one could take all the commercial land in the OR 108 District and put it in elderly housing. He noted elderly housing was also a conditional use in the MUDOR and ORLI districts. He questioned whether this was preserving what was said in the Master Plan. He said he didn't understand how elderly housing broadened the tax base, and also said he didn't see how multi-unit elderly housing but not regular multi-unit housing could be allowed. He said if the latter was designed properly, he didn't see that the Town would wind up with a lot more kids in the schools.

Councilor Kraus said it was not clear what had happened to the idea of developing a consensus about remanding the 50% open space requirement. There was discussion about this.

Councilor Morong said it seemed that the conversation was going in circles. He said Councilors Niman and Van Asselt had brought up good issues, and said their mission should be to bring forward changes concerning these issues in the future.

Councilor Peter Smith said Councilor Van Asselt had brought up a specific issue he could put his brain around, but said it would be more difficult to accomplish this concerning the issues Councilor Niman had raised.

Councilor Peter Smith suggested a motion should be made to park the open space requirement issue.

Chair Sandberg suggested that he get the consensus of the Council on this issue instead. He also said he felt he should be able to speak on this issue. He said he appreciated all of the work the Planning Board had done on the Ordinance, and noted there were split votes on some issues. He said he appreciated the points made by his fellow Councilors, but said

unless they provided specific suggestions as to what the open space requirement /impervious cover ratio should be changed to, this shouldn't be remand at this point.

He said he agreed with Councilor Morong that if the Council saw it as its mission, there was no reason why it couldn't initiate a revision to the Ordinance concerning this.

Councilor Van Asselt said if the majority of the Council was prepared to pass the Ordinance without sending it back to the Planning Board, it should do this and get on with the Budget. He said the Council could work on the Ordinance later.

Chair Sandberg noted that the Council had already agreed to send back two items in Section B, and said his comments had been made in reference to the open space requirement/impervious surface issue. He said there was no specific proposal from the Council on this.

Councilor Van Asselt said he would be satisfied if the Planning Board were to come back and tell the Council how much land was available.

Councilor Needell said this was a reasonable request, but said he agreed with Chair Sandberg. He said this was an important policy discussion the Council should be having, and said it would take some time. He said at present, the Council should be focusing on the proposed changes to the Ordinance.

Chair Sandberg asked if there was consensus on remanding the open space/impervious surface ratio requirement.

Councilors provided their perspectives, and Chair Sandberg determined that the consensus of the Council was that it needed more information from the Planning Board, and when it got this, it could then decide what specific recommendations it wanted to make.

Chair Sandberg called for a 5-minute recess.

Councilor Van Asselt noted page 10, concerning the purpose of the Professional Office District. He said he would like it to say "multi-unit housing" instead of "continuation of upgraded multifamily housing".

Chair Sandberg said the Council had already agreed to remand this item.

Councilor Van Asselt asked if in sending this back to the Board, if this kind of language made sense. He said no one knew what upgraded multi-family housing meant.

Chair Sandberg said as he understood the conversation, the idea was that these buildings should not be torn down, and the Town should encourage adaptive reuse to preserve the buildings and architecture to the extent possible.

There was discussion about the language in this section.

Councilor Van Asselt said if there was going to be housing in this area, he thought it should be multi-unit housing for students, because that was who lived in this part of Durham.

Chair Sandberg said the Master Plan was looking toward encouraging professional development and multi-family housing in that area, and shifting it away from student housing. He said the term multi-family implied it was set up for families. He asked if the language Councilor Van Asselt proposed would undo this.

Councilor Van Asselt said that no matter what the Master Plan said, it was the economics that drove things, and said the best they should strive for was to keep the character the way it was now.

Councilor Needell said the term multi-family was not defined, and should be stricken. He said the word multi-unit was the proper term, and also said the suggestion to remand this issue was reasonable.

Chair Sandberg said Mr. Eyerman had acknowledged that the word “multi-family” wasn’t in the Definitions section, so needed to be investigated.

Councilor Julian Smith said wasn’t it obvious that multi-units could be units that allowed families, but multi-family units were units that excluded students.

Councilor Van Asselt noted the development standards on page 29 concerning the Durham Business Park. He asked why the Council was responsible for these, and whether there were alternatives.

There was discussion that this was a Town owned property, and what would exist there in the future was a function of decisions the Council made.

Councilor Van Asselt asked if Council was proper body to be doing this, and there was further discussion on this.

Chair Sandberg said he was inclined to feel this shouldn’t be in the Zoning Ordinance, which should reflect the zoning requirements. He said if the property were sold, the Council would then decide if there were specific covenants that should be included. He said that was a separate thing.

Councilor Needell noted the design guidelines were not part of the Zoning Ordinance, and the Council could change them when it wanted to, without consulting the Planning Board.

Councilor Peter Smith noted that approval of 175-52 would necessarily resolve the conflict among two different goals set forth by the Council for 2005 concerning the Business Park. He said his own view was that the area should be used for active and passive recreational purposes, but said he wouldn’t vote for or against the Ordinance based on that one issue.

He also said the issue went beyond the Business Park, as to where design standards should be set forth.

Chair Sandberg asked Councilor Smith if thought 175-52.F.1 was appropriate.

Councilor Smith said he didn't think the Council should do the design guidelines, but was in favor of having them, and putting them in this section.

Councilor Needell said he didn't see the necessity of including the reference here, and said the guidelines existed whether the reference was there or not.

Mr. Eyerman said 175-52.F. 1 was put there as a reminder that there were such guidelines, but said he didn't think the Planning Board cared whether it was left there or not.

In answer to a question from Chair Sandberg, Mr. Eyerman said there was no discussion by the Planning Board of what the guidelines should or should not be, but there was discussion that the Council created them, so the ball was in its court. He said the Board was simply trying to indicate on page 29 that there were such guidelines, to make sure they weren't forgotten if someone was looking at the property.

Councilor Peter Smith said it was good to reference the guidelines here, but said he didn't think the Council should be developing the guidelines for properties.

Councilor Needell said the problem was that they existed, and said he thought this inclusion was an acknowledgement that the Council took an active roll in this, and that the Planning Board was not involved.

There was additional discussion about the design standards/guidelines. There was also discussion about the existence of the Durham Business Park as a separate district. Councilor Peter Smith provided some history on how the district came to exist.

It was then determined that the consensus of the Council was to leave the wording of 175-52 as it was for the time being.

Councilor Needell noted two additional amendments handed out to the Council on September 26th concerning 175-53, to correct the references to the districts in the General Use Regulations on page 74 of the existing Ordinance, concerning the 3 unrelated rule.

Chair Sandberg also noted that the word "household" would be inserted under the Definitions section.

Councilor Peter Smith asked if the usefulness of the "3 unrelated" concept was discussed by the Planning Board in revising the Ordinance.

Mr. Eyerman said the definition was assumed to be a given, since the Town had gone to court and had won concerning it. But he said that from time to time, the concept had come up in discussions, and he noted there was an amendment in Section A that had to do with it.

Councilor Peter Smith said he had always been very troubled with the concept, and felt it should be handled in another way. But he said this was too complicated an issue to look at right now.

The Council next discussed in detail the Table of Uses which started on page 32 of the Ordinance.

Mr. Eyerman said essentially no changes were proposed under the Residential districts, noting these had been dealt with in 2004. He said the only change was under Excavation and/or mining, which was now allowed by conditional use in the Rural District.

The Council again discussed the fact that for some uses in the Table of Uses, there was an entire row of X's, and that perhaps this shouldn't be done.

Councilor Needell said some of the rows of X's were there for emphasis, and some were there to satisfy state law. Concerning the Planning Board's decision to change Excavation and/or mining from a totally prohibited use to one that was allowed by conditional use in the Rural District, he said the Board did this because it realized this land use needed to be addressed in some way.

He noted the Council had recently questioned the reasoning behind the decision, and said the Planning Board realized this issue needed more in-depth analysis to come up with the proper treatment for this land use in Town. He said there was a commitment of the Planning Board to address this soon, but not immediately.

Councilor Peter Smith said there was a compelling reason to get to the bottom of this issue, noting he was fairly confident that what the Town had now was illegal. He said the question of how to address this land use was sophisticated, more so than what the Planning Board had looked at. He said he thought this issue should be addressed fairly rapidly.

He said his opinion concerning the issue of whether or not X's should be put in to indicate prohibited uses was that the Board was making a mistake by doing this for emphasis, given the concept of permissive zoning. He suggested that except where it was required, it shouldn't be done.

There was detailed discussion of the land use "commercial animal husbandry", - what it meant, and the distinction between the various possible subcategories under this land use.

Councilor Julian Smith asked why land uses like timber harvesting, sod farming, water extraction and wind farming were not listed under "Natural Resource Uses" in the Table of Uses. He asked if there had been a survey of these possible uses.

Mr. Eyerman said he didn't recall that the Planning Board had discussed those kinds of land uses, including the possible treatment of them. He said he didn't have a reason for why they were not discussed.

Chair Sandberg said the Council was charged with evaluating what was before it. He said this wasn't an end document, and said there might be a time when those kinds of land uses might be addressed in a future ordinance. He also said that sod farming could be considered a kind of excavation/mining.

Councilor Julian Smith said it seemed that the rural uses category was redundant and incorrectly named, noting that a number of rural uses were natural resources uses, and also that some rural uses didn't actually take place in the Rural District.

Chair Sandberg asked if Councilor Smith had a particular suggestion concerning how the categorization could be improved, and Councilor Smith said he would come back to this.

Councilor Kraus said plant nurseries should be a permitted use in the Durham Business Park, noting he could see how a low impact building could fit there, and the vistas could be maintained. He said in this way, the land could be used in a way that would get around the objections that had previously been expressed.

Chair Sandberg asked if the Council was ready to go down the Table of Uses, to see what Councilors had to say about each of them, and to develop a consensus on each.

Councilor Peter Smith asked why "Conservation Activities" was listed as a conditional use under the Durham Business Park.

Mr. Eyerman said he didn't have a reason for this.

Councilor Julian Smith said the implication was that the Council didn't want the Business Park wasted on conservation activities.

Chair Sandberg said perhaps the Planning Board could provide an answer to Councilor Peter Smith's question.

Councilor Needell said the Planning Board had recently recommended removal of excavation and/or mining as a conditional use in the Rural District, for the time being. He said he thought this land use might be addressed in a different form in the Ordinance, perhaps as a separate section.

Councilor Julian Smith suggested leaving it in as a land use category, and having the Planning Board replace some of the X's with CU.

Councilor Needell said that simply placing CU's in the Table did not deal with the issue thoughtfully enough, and said the Planning Board wanted to give careful consideration to it.

He said the Planning Board was not prepared to agree on where in the Table to put the P's and CU's concerning this land use at the present time.

Chair Sandberg said the plan therefore was to remove this line in the Table of Uses, for "excavation and/or mining", with the understanding that this issue would come back in the future.

There was detailed discussion of the various "Principal Uses" listed in the Table of Uses, under the larger heading "Rural Uses".

There was also detailed discussion on "The keeping of pigs, chickens, and fowl for commercial purposes" and the fact that it was a prohibited use but was in the Table of Uses.

Councilor Peter Smith provided details on why it should be removed from the Table. He also noted that the definition of commercial agriculture specifically excluded the keeping of pigs, chicken and fowl for commercial purposes.

Chair Sandberg asked if any Councilors disagreed with the idea of removing this land use from the Table of Uses, and the consensus was that it should be removed.

There was discussion about the land use "Animal Feedlot", which was in the Table of Uses but was a prohibited use for all districts.

Councilor Peter Smith said the only question was whether this land use could somehow be slipped in as part of commercial agriculture or commercial husbandry.

There was discussion about this. There was also discussion that the definition of "Commercial Agriculture" needed to be revised to exclude animal feedlots. The consensus of the Council was that this should be remanded to the Planning Board for re-definition.

Chair Sandberg noted that Councilor Kraus had recommended that plant nurseries should be a permitted use, instead of being prohibited, in the Durham Business Park.

Councilor Van Asselt said that in general, the land use category decisions concerning the Business Park were confusing.

Councilor Needell said he didn't disagree with allowing plant nurseries in the Durham Business Park, but noted this would be the only retail activity permitted there.

Chair Sandberg noted it was 10:00 pm. It was agreed the discussion on Section B would continue at the regularly scheduled Council meeting on November 7th.

Councilor Kraus MOVED to adjourn the meeting. The motion was SECONDED by Councilor Peter Smith, and PASSED unanimously 8-0.

Adjournment at 10:00 pm

Victoria Parmele, Minutes taker