

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

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

MEMBERS PRESENT: Chair Malcolm Sandberg; Peter Smith; Neil Niman; Gerald Needell; Julian Smith; Diana Carroll; John Kraus (arrived at 7:07 PM); Mark Morong (arrived at 7:04 PM); Karl Van Asselt (arrived at 8:00 PM)

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 noted that Councilors Kraus, Van Asselt, and Councilor Morong were not present at the beginning of the meeting.

II. Approval of Agenda

Councilor Julian Smith MOVED to approve the Agenda as submitted. The motion was seconded by Councilor Carroll and PASSED unanimously 6-0.

III. Special Announcements

No special announcements

IV. Approval of Minutes

September 15, 2005

Chair Sandberg noted that the Council had previously discussed this set of minutes at a previous meeting and that action had been postponed pending the revision of language on pages 14-15 that were proposed by Councilor Kraus. He said this wording had now been revised.

Councilor Peter Smith MOVED to approve all of the amendments to the September 15, 2005 Minutes (continued meeting of September 12, 2005).

The motion was SECONDED by Councilor Needell.

There was discussion as to whether the word “fulsome” contained in the minutes was actually used. No change was made, however.

The motion to approve all of the proposed amendments that had been discussed to date PASSED unanimously 6-0.

Councilor Julian Smith asked that the word “through” be changed to “thorough” in the second to last line at the top of the paragraph on page 15.

Councilor Morong arrived at 7:04 PM.

The amended minutes were approved unanimously 7-0.

September 26, 2005 (continued meeting of September 12, 2005)

Councilor Kraus arrived at 7:07 PM.

Councilor Julian Smith MOVED to approve the September 26th, 2005 Minutes (Continued meeting of September 12th, 2005 as presented. The motion was SECONDED by Councilor Needell, and PASSED unanimously 8-0.

October 17, 2005

Councilor Carroll MOVED to approve the October 17, 2005 Minutes as presented. Councilor Morong SECONDED the motion.

Councilor Morong MOVED to amend the October 17, 2005 minutes.

Page 12, 4th full paragraph, should read "..., and therefore thought bringing in more affordable housing would cost the town money."

The motion was SECONDED by Councilor Needell, and PASSED unanimously 8-0.

The October 17, 2005 Minutes as amended PASSED unanimously 8-0.

October 17, 2005 (Nonpublic Session)

Councilor Needell MOVED to approve the October 17, 2005 Nonpublic Session Minutes as presented. The motion was SECONDED by Councilor Kraus.

Councilor Needell noted that page 6, the 4th paragraph from the bottom, the Councilor referred to as "Another Councilor" should read "Councilor Needell".

The October 17, 2005 Nonpublic Session Minutes, as amended, PASSED unanimously 8-0.

V. Report of Administrator

Administrator Selig said the Town's list server had been temporarily suspended, and described the problems being experienced with it. He said until these problems could be corrected, there would be no broadcast emails sent out.

Administrator Selig said the Town engineer position had been filled by David Cedarholm and said he would introduce him to the Council at a future meeting.

VI. Reports and Comments of Councilors

Councilor Carroll updated the Council on the Downeaster train service. She said that Durham departures and arrivals grew to 5,100 in September, and was up 45% from September of 2004. She noted that Durham had the highest ridership in the state for September, and exceeded Exeter's numbers for the first time.

Councilor Carroll also said that C&J Trailways had a new cooperative agreement with the Downeaster that would allow riders to use either the train or the bus when they departed from Durham. She said the tickets were interchangeable.

Councilor Niman said the Parks and Recreation Committee and the Conservation Commission were forming a subcommittee to look at revitalizing Jackson's Landing. He noted that he was the Council representative to the Parks and Recreation Committee, and said there were some slots on the subcommittee for interested citizens.

Councilor Needell said at its October 26th meeting, the Planning Board had accepted the Verizon site plan review application for the proposed cell facility on the roof of the New England Center. He said the public hearing and deliberation on the application would take place on Wednesday, November 9th.

Councilor Needell said that the Planning Board had held a public hearing at the October 26th meeting on the proposed Zoning amendment concerning the definition of fraternity/sorority house. He said the Board then voted to approve this amendment, and said it would move on to the Town Council soon.

He also said the Planning Board had voted to support the appeal of the recent ZBA decision on 10 Madbury Road, and endorsed appropriate means for furthering that process.

He indicated that the public hearing on the Verizon application would take place at Wednesday's Planning Board meeting, and also said the Board would be updating its Rules and Procedures.

Public Comments

There were no public comments.

VIII. Unanimous Consent Agenda *(Requires unanimous approval. Individual items may be removed by any councilor for separate discussion and vote)*

Both Unanimous Consent Agenda Items were removed from the Agenda, and were dealt with individually.

- A. Shall the Town Council authorize the Town Administrator to sign the 2005 Tax Warrant as confirmed by the Department of Revenue Administration?

Administrator Selig said that because of a software difficulty, the warrant could not be printed in time for the Council meeting. He said he would bring it to the Council meeting on the following Monday, and noted this would push the due date out to the week before Christmas.

Councilor Peter Smith MOVED to postpone action on Unanimous Consent Agenda Item VIII. A. The motion was SECONDED by Councilor Needell, and PASSED unanimously 8-0.

- B. Shall the Town Council award the purchase and installation of a 15,000-gallon water supply cistern to J. Parker and Daughters, Inc. of Pittsfield, NH in the amount of \$51,200 as recommended by the Town Administrator?

Councilor Morong asked what the general life expectancy was of cisterns.

Interim Fire Chief Mike Blake explained that cisterns are constructed of an aggregate of concrete and had a life expectancy of 15-25 years. He provided details on this, and said they were virtually maintenance free if they were imbedded properly.

Councilor Morong asked if the Town would be responsible for replacement of the cistern, and Administrator said it would be. He noted that the cistern would be a meaningful safety improvement in the neighborhood of Pinecrest Drive.

Councilor Morong MOVED to award the bid for purchase and installation of a 15,000-gallon water supply cistern to J. Parker and Daughters Construction Company, Inc. of Pittsfield, New Hampshire in the amount of \$51,200, as recommended by the Town Administrator. The motion was SECONDED by Councilor Kraus.

Councilor Peter Smith noted the second paragraph of the Council Communication on this Agenda item, which spoke about the cistern for the Little John Road area. He asked whose financial responsibility it would be when this cistern failed.

Mr. Blake said it would be the Town's responsibility at that point.

There was discussion about the fact that the contract document for the new cistern was not signed. Chair Sandberg asked if Councilors needed further information on this.

Councilor Kraus said he would vote for this, with the assurance that Administrator Selig would make sure all of the paperwork was in order.

Administrator Selig said he would take care of this.

The motion PASSED unanimously 8-0.

IX. Presentation Item

A. 2004 Audit Report – Plodzik and Sanderson, Town Auditors

Administrator Selig introduced Greg Colby of Plodzik and Sanderson, explaining that he would walk the Council through the firm's findings.

Mr. Colby reviewed the process by which the Town's audit was conducted, in accordance with the Governmental Accounting Standards Board (GASB) Statement No. 34, issued in June of 1999. He explained that this statement established new financial reporting requirements for all state and local governments, noting that it required new information, and restructured much of the information that governments had presented in the past.

Mr. Colby provided an overview of the audit numbers for Council members.

Administrator Selig asked Mr. Colby to explain the issue of fixed assets.

Mr. Colby said the general purpose financial statements of the Town of Durham did not include the general fixed assets account group, which should be included in order to conform to the accounting principles generally accepted in the United States. He explained that this wasn't done because Durham, like many New Hampshire towns, had not maintained historical records on its fixed assets, so there was no figure available on this.

Administrator Selig said in order for the Town to have done this according to GASB 34 it would have had to go back to the original date when the Town's roads and buildings were built, establish that initial cost, and then depreciate that over time. He said the Town had opted not to do that, because it wasn't felt this would be a good use of taxpayer resources.

Mr. Colby said that except for this omission, the Town's general purpose financial statements presented fairly the financial position of the Town and the results of its operations and the cash flows of its nonexpendable trust funds for 2004, in conformity with the accounting principles generally accepted in the United States.

Councilor Peter Smith said this Auditor's Report was fine, if it was only read by accountants, but said for most people, it would be useful if the report included some kind of footnote statement that explained why the report looked like it was saying the Town was not in compliance, when this wasn't really a problem. He asked if there was some law that said such a footnote couldn't be included in the report.

Mr. Colby said he was not aware of any law that would allow the firm to include language on this, but said these were Durham's financial statements, so the Town could perhaps include a statement like this. There was further discussion about the legality of including additional language.

Councilor Needell asked if the third paragraph in the Auditor's Report, which explained that the financial statements did not include fixed assets, would be in all future Auditor's Reports. There was discussion about this.

Mr. Colby provided a detailed synopsis of the audit that was done. Where appropriate, he showed aspects of the report that had been changed in accordance with the new standards.

Mr. Colby said that similar to prior years, his firm had noted no material weaknesses in the Town's accounting procedures. He said it was an arduous task to undertake the audit, this year more than ever, and said Town staff had done an excellent job in assisting with this and were to be commended.

Chair Sandberg noted that the new GASB 34 requirements had slowed down the audit process this year, and asked if this was a one-time phenomenon.

Mr. Colby said he hoped it would be and that he expected the process to be completed significantly sooner in 2006.

Councilor Needell pointed out that the Auditor's Report was dated March of 2004 and asked why this was the case.

Mr. Colby said this date reflected the last date of significant fieldwork at the Town offices.

Administrator Selig said the Town's auditor was a safeguard to make sure things were done right. He asked if there were any minor problems concerning the financial statements, even though there were no major problems.

Mr. Colby said he didn't recall anything specific in terms of minor problems.

Councilor Kraus noted the financial records the Town had kept not so long ago, and said there had been significant improvement over the last several years. He said it was important to note this.

Chair Sandberg thanked Mr. Colby for his work on the audit.

B. Proposed FY 2006 Operating Budgets and 2006-2015 Capital Improvement Plan

Councilor Van Asselt arrived at 8:00 PM.

Administrator Selig provided introductory remarks and summary information concerning the proposed Operating Budget for 2006. He noted that these documents could be found at the Town's web site, under the Town Administrator's section.

He noted that the fiscal forecast that was included as part of the Budget every year, and said it provided the opportunity to predict with some confidence what was to come in the future.

He said the budget of \$9,799,490 for 2006 represented an increase of approximately \$438,785, or a 4.68% increase over fiscal year 2005. He said this would increase the local portion of the tax rate from 6.28 to 6.59 per thousand dollars of assessed valuation, an increase of \$0.31 or 4.8%.

He said the reason for the 4.8% increase was first of all that Town staff was trying to develop an increase over time that was sustainable. He said that given the trends the Town was experiencing, approximately a 5% increase was sustainable, if the Town maintained a healthy fund balance, and other things remained on track. He provided details on various consumer price indexes for December 2004-December 2005, and said 4.8% seemed reasonable in light of these.

Administrator Selig walked the Council through the various sections of the Budget. He noted new Tables in the Budget, one which tracked the number of Town personnel positions from 1996-2006, and the other which compared the number of autos the Town owned in 2005 as compared to 1992.

Administrator Selig noted that page 10 of the budget listed the highlights of changes from the 2005 Amended General Fund Budget to the 2006 Budget.

Councilor Needell asked if each of the highlighted items on page 10 were mutually exclusive, and was told they were.

Administrator Selig continued to describe the sections of the Budget and spoke in some detail about the fiscal forecast section. He discussed the table on page 16 which showed 'Projected Future General Fund Budgets and Impact on the Tax Rate (with \$2.5 million Conservation, Library and Beech Hill shown separately)'

He noted this table indicated that the actual spending being proposed for 2006 was an increase of 4.7%. He said revenues were projected to increase 6.2% in large part because the Council had approved the agreements with the University, which would bring in just under \$200,000 in additional revenue.

He indicated where in the table the increased tax rate of 4.8%, to 6.59 was shown, and said in order to maintain that tax rate, it was necessary to use \$276,000 of fund balance. He indicated that the remaining fund balance would be \$1,099,223. He said he believed the Town should carry between \$1-2 million in fund balance, ideally about \$1.5 million.

Administrator Selig said that looking toward the future, if the tax rate was locked in at no more than 4.8%, additional fund balance would be needed, and he demonstrated this in the table on page 16.

He said he had asked Town Business Manager Paul Beaudoin to demonstrate what would happen if the tax rate was capped at 3.0% instead of using 4.8%

Mr. Beaudoin demonstrated with a spreadsheet that getting down to 3% would require increasing the amount of fund balance used over the next several years.

Administrator Selig said these calculations assumed the Town did not sell the bond for land protection, and spent no money for a new Library or the improvements to Technology Drive.

He said there were a number of different ways to address future impacts to the tax rate: to use the fund balance; to address the amount of money the Town was spending; and to broaden the tax base by encouraging new development that hopefully would have minimal impact on the services the Town provided.

Administrator Selig noted another factor to keep in mind was that the largest portion of the overall budget was the school system, and the way the costs for this were apportioned between the three towns.

He said the tax base increase was projected to be about 1.5% per year, and said there was approximately a 5% increase per year in the cost of service delivery.

Councilor Kraus said that one possible solution to the increase in the tax rate, which wasn't included, was to not use the fund balance, and to let the tax rate rise, so citizens of Durham could understand the spending that was taking place.

Administrator Selig gave a brief summary of the Capital Improvements Program (CIP). He explained that the FY 2006 Budget had been integrated with the 2006 CIP proposals so the Council could utilize the fiscal forecast.

He said both the Council and the Planning Board had received draft copies of the CIP in September, and noted that the Board had offered a number of recommendations, many of which were incorporated into the plan.

Administrator Selig provided some detail on the Table on page 3 "Town Administrator's Proposed 2006-2015 Capital Improvements Program General Fund". He noted that for each department, items were ranked according to what priority they were, and explained that page 3 indicated the total amount of funding required for a project, while page 7 listed the specific sources of funding for a project.

Administrator Selig discussed the highlights of the FY 2006 Budget/ CIP (these are available at the Town of Durham Web site, in the Town Administrator's letter to the Town Council.)

- A proposed new Durham Public Library facility has been moved to 2007/2008 in the Administrator's proposed CIP to allow for additional site, size, fund raising, and operational planning development. An increase of \$26,018 to continue to fully support the ongoing operations of the Durham Public Library for a 2006 total library appropriation of \$189,527. The Library Director's position has been increased to full-time.

- Per the Planning Board's strong recommendation, \$30,000 has been included as part of the 2006 Capital budget to hire a consulting engineer to perform an analysis of the University and Town Master Plans in order to develop a Request for Proposal (RFP) for a larger transportation plan study focusing upon ways to improve transportation connections between the core of Durham and UNH to the regional transportation system.
- \$55,889 has been added to the MIS budget to support a full-time technical position to manage the daily computer and information technology needs of the municipality. This is presently a _ position and the additional cost will be partially offset through related savings in other areas of the budget.
- The Training & Safety Captain position at the Durham Fire Department has been eliminated with a corresponding savings of \$79,607. Training and safety will be coordinated by the Assistant Chief and performed by the four shift duty captains with some outsourcing.
- In order to minimize the cost of Durham Fire Department overtime shift coverage in 2006, the department plans to extend its "drop down" policy from five to four people on shift, effective January 1, 2006, to include nights, weekends, and holidays. When extenuating emergency circumstances arise, the department will provide coverage for this fifth person. The estimated savings will be \$60,500 in 2006. Although these funds are still budgeted, our hope is that the program will be successful and that we will be able to reduce the 2007 budget accordingly.
- A total of \$309,812 has been budgeted for the proposed 2006 road program as part of the Capital budget. In addition, the Department of Public Works Operational budget includes \$22,500 for sidewalk improvements along Faculty Road in conjunction with planned 2006 road program improvements in this location.
- An additional \$10,000 has been added to the contingency line bringing the total recommended appropriation from \$60,000 to \$70,000 in 2006. It is the Administrator's goal to increase the contingency line to \$100,000 over time in order to provide a meaningful buffer in the event of unanticipated circumstances. If not approved for expenditure by the Town Council at year end, funds would be returned to the General Fund.
- Funding in the amount of \$70,000 to continue the improvement of the sidewalks and lighting in the downtown area from in front of the Alpha Tau Omega fraternity to Pettee Brook Lane is included in the 2006 budget. The CIP includes the remainder of these sidewalk improvements to complete the loop along Pettee Brook Lane back to Madbury Road in 2007 and 2008. In 2004, the stretch of sidewalk from Main Street in front of the Post Office to Pettee Brook Lane was upgraded with very positive results.
- Sustained funding has been included for area social service agencies serving Durham residents in need of assistance.
- \$10,000 has been budgeted within the Planning Department budget to hire consultants to help develop methodologies for sewer, water, and public safety impact fees. These funds will also be utilized to contract with an economic development specialist to work with the Town's Economic Development Committee.
- \$20,000 has again been included in the Planning Department budget to support the continued development and implementation of GIS technology in Durham. This program is being phased in over a number of years in an effort to be fiscally responsible, yet proactive.

- \$10,000 is allocated for Master Plan consultant services within the Planning Board budget to initiate an ongoing process of Master Plan review.
- \$1,000 has been included within the Parks and Recreation Committee budget to assist in planning for expansion of the Wiswall Dam Park parking area.

Administrator Selig noted that the FY 2006 Budget was not reflective of the impact of the \$2.5 million land protection bond that was approved by the citizens of Durham at the polls on March 11, 2003, but has yet to be approved by the Town Council. He said that if debt were issued for the total \$2.5 million value in FY 2006, the projected FY 2007 tax rate would increase by an additional \$.31.

He closed his presentation by noting that the Town Council had until the last day of December to approve the FY 2006 Budget, or it became the de-facto budget.

Chair Sandberg said a public hearing was scheduled on these documents for the November 14, 2005 Council meeting. He said copies of the documents were available to the public at Town Hall.

Councilor Kraus said this was the 4th budget process he had been involved in, and said Town staff had imbedded in the documents everything the Council had asked for. He said the documents provided an excellent overview, and provided the information needed to make decisions.

Councilor Kraus also commended Interim Fire Chief Mike Blake for working to make staff reductions.

X. Unfinished Business (NLT 8:00 PM)

A. First Reading on Ordinance #2005-10(A) 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

Chief Kurz provided background information on this proposed ordinance. He said he had worked with Councilor Peter Smith to formulate language for the Ordinance that would meet the Police Department’s need to tow vehicles that were in arrears, while ensuring that the Town’s ability to tow vehicles was not so far reaching as to be egregious. He said he appreciated the time Councilor Smith had put into this, and said hopefully the Ordinance would meet everyone’s needs.

Chair Sandberg noted that the proposed ordinance was a revision of what the Council had before it in August of 2005. He said it was appropriate to move to approve it, as a new ordinance.

Councilor Kraus MOVED to pass on first reading Ordinance #2005-10(A) 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, and to schedule a public hearing for Monday, November 21st, 2005. Councilor Julian Smith SECONDED the motion.

Councilor Needell asked whether the initial 3 violations had to be on the same vehicle.

Chief Kurz said that was the intention of the wording, and provided details on this. There was additional discussion about this.

Councilor Carroll asked if five days was sufficient time for notification of people with outstanding parking violations.

Chief Kurz said this amount of time should be sufficient.

The motion PASSED unanimously 9-0.

- B. 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, **Section #2005-06 (F)** - Relative to the Historic Overlay District and **Section #2005-06 (G)** - Relative to the Personal Wireless Service Facilities Overlay District

Councilor Julian Smith MOVED to table this Item until after Agenda Items XI A, B, and C were completed. Councilor Kraus SECONDED the motion, and it PASSED unanimously 9-0.

XI. New Business (NLT 9:00 PM)

- A. Public Hearing and Action on Resolution #2005-15** authorizing the acceptance and expenditure of grant funds totaling \$12,306.00 from the New Hampshire Department of Safety for the purpose of purchasing indoor and outdoor closed circuit security cameras for the Durham Police Department

Chief Kurz said this funding was available as part of the 2005 State of New Hampshire Strategy for Homeland Security. He noted the Department’s existing cameras would need to be replaced in a few years, but said the additional cameras were being requested now since the funding was available. He said that no matching funds were needed for the cameras

Councilor Kraus MOVED to open the public hearing. The motion was SECONDED by Councilor Julian Smith, and PASSED unanimously 9-0.

There were no members of the public who spoke at the public hearing.

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

Councilor Julian Smith MOVED to adopt Resolution #2005-15 authorizing the acceptance and expenditure of grant funds totaling \$12,306.00 from the New Hampshire Department of Safety for the purpose of purchasing indoor and outdoor closed circuit security cameras for the Durham Police Department. The motion was SECONDED by Councilor Kraus, and PASSED unanimously 9-0.

- B. Public Hearing and Action on Resolution #2005-16** authorizing the acceptance and expenditure of donated funds totaling \$949.95 from Skanska USA Building, Inc. for the purpose of purchasing a propane-fired fire extinguisher simulator to be used by the Durham Fire Department for public fire education

Interim Fire Chief Mike Blake provided details on the proposed expenditure.

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

There were no members of the public who spoke at the public hearing.

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

Councilor Kraus MOVED to adopt Resolution #2005-16 authorizing the acceptance and expenditure of donated funds totaling \$949.95 from Skanska USA Building, Inc. for the purpose of purchasing a propane-fired fire extinguisher simulator to be used by the Durham Fire Department for public fire education. The motion was SECONDED by Councilor Carroll, and PASSED unanimously 9-0.

- C. Public Hearing and Action on Resolution #2005-17** authorizing the acceptance and expenditure of grant funds totaling \$500.00 from the Wal-Mart Foundation to support the Durham Fire Department Child Safety Seat Inspection Program.

Interim Fire Chief Mike Blake provided details on this proposed expenditure.

Councilor Peter Smith asked what the money was for, and Mr. Blake said it was for the purchase of car seats.

Councilor Kraus MOVED to open the public hearing. Councilor Carroll SECONDED the motion, and it PASSED unanimously 9-0.

No members of the public spoke at the public hearing.

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

Councilor Kraus MOVED to adopt Resolution #2005-17 authorizing the acceptance and expenditure of grant funds totaling \$500.00 from the Wal-Mart Foundation to support the Durham Fire Department Child Safety Seat Inspection Program. Councilor Needell SECONDED the motion.

Councilor Julian Smith said he objected to accepting funds from Wal-Mart, and provided details on this.

There was discussion about exactly what the money was for, and about the program in general.

The motion PASSED 7-2 with Councilor Julian Smith and Councilor Van Asselt voting against it.

Councilor Carroll said this sounded like a good program, and also said that the more proactive the Town could be about using car seats correctly, the better.

Recess from 9:00-9:05 pm

X. Unfinished Business

- B. Continued Deliberation on Ordinance #2005-06** proposing amendments to Chapter 175 “Zoning” of the Durham Town Code, **Section 2005-06 (B).**

Councilor Julian Smith MOVED to take this Agenda Item from the Table, for continued deliberation. The motion was SECONDED by Councilor Kraus, and PASSED 8-0.

(Councilor Peter Smith was absent from the room and did not vote on this motion.)

Councilor Kraus said he stood by the change he had recommended at the previous meeting, concerning making plant nurseries a permitted use in the Durham Business Park District.

There was discussion about this.

Chair Sandberg asked if there was any particular reason why allowing wholesale plant nurseries would be objectionable in the Business Park.

Mr. Campbell said he thought the objection was that this was not the highest and best use for the Business Park, but said he didn't think the Planning Board would object to this land use.

Councilor Peter Smith asked if traffic issues at this location along Route 4 had been a consideration.

Mr. Campbell said he didn't think a plant nursery would cause traffic at peak times, as compared to offices. He noted that NHDOT had had some concerns about this location.

A consensus was taken of Councilors concerning Councilor Kraus's recommendation. Councilor Kraus, Van Asselt, and Councilor Niman said the Table of Uses should be changed to allow plant nurseries as a permitted use in the Durham Business Park District. The other six Councilors said the Table of Uses should not be changed concerning this.

Councilor Needell said the reason he didn't want to change this was that he wasn't being offered a reason why it should be changed.

Councilor Van Asselt said he didn't understand the idea that if this was what the Ordinance said, then so the Council shouldn't change it.

Councilor Needell said he believed there was a reason for every item in Section B, and said without a compelling argument to change them, he would defer to the Planning Board's recommendations. He said he would like to be convinced that something should be changed.

Chair Sandberg said he had a concern about allowing kennels as a conditional use in the RC District. He said allowing this land use on the shores of bodies of water was not always a good idea, since sound carried over the water, noting he had visited places where this had happened. He suggested that the CU should be changed to an X for these areas.

Councilor Peter Smith said it was true that sound carried on the water, but he noted a kennel might not necessarily be located on the water in the RC zone. He also asked if the conditional use mechanism would be adequate to deal with this land use, and to determine the appropriate location for a kennel.

Mr. Campbell said criterion #2 in Section 175-23 C of the Ordinance, concerning external impacts such as noise, traffic, etc., would address that issue.

Councilor Kraus said that barking dogs could be a problem for adjacent households in general, and he said there were already regulations in place to address this kind of problem. He also noted

that most kennel owners liked quiet kennels, and said he therefore didn't believe it was necessary to change the Ordinance concerning this land use.

Chair Sandberg said he would hope that this was true, and said he hoped kennels would be placed properly in the RC District.

Councilor Needell said there was an existing kennel in the RC zone, and asked if this had been discussed by the Planning Board.

Mr. Campbell said it was.

It was determined that the consensus of the Council was to leave kennel as a conditional use in the RC District.

Councilor Julian Smith said that commercial sawmills were not permitted in any zones in Durham. He said he knew there were properties in Town that had a good amount of acreage for woodlots, and said a landowner should be able to harvest wood from one of these properties more than 20 days out of the year. He said he would like to have the Planning Board explain why this land use was prohibited, at a time when it was important to make better use of natural resources.

Mr. Campbell said commercial processing of wood was prohibited in all districts because the Planning Board didn't want big commercial wood processing operations coming in, noting there were a lot of opportunities for this in Town. But he said the Board wanted to allow landowners to harvest some of their own wood, which was what the temporary saw mills category was for.

Councilor Julian Smith said he would like it if the Board, in fact, would reconsider allowing this as CU for all the residential districts. He noted that very few people would run a commercial operation in the RA or RB district unless they had a very big parcel, but said it might be appropriate to see this land use as a conditional use in the Rural and RC districts.

Councilor Peter Smith said he agreed with the Planning Board on this, but said that for legal reasons this land use shouldn't be prohibited by including it in the Table of Uses, but with X's for all districts.

Councilor Morong asked if this prohibition included cutting cordwood and selling it. He noted that the Ordinance didn't specifically include harvesting of cordwood under the timber harvesting definition.

Chair Sandberg read the definitions of commercial wood processing and timber harvesting, and there was detailed discussion about this.

Councilor Peter Smith spoke further about the problem of putting in a row of X's for this land use and others, noting that if there were other uses the Town didn't want but didn't delineate in the Table of Uses, it could then be said by someone that this use was not prohibited. He said the use of X's in the Table tended to undermine the concept of permissive zoning.

Councilor Julian Smith said putting X's across the board for this land use in the Table of Uses was a bad thing, and made Durham look like a very elitist town. He suggested that a resident might want to harvest firewood and sell it in order to help pay taxes, over the course of a year. He said in order to do this, the resident would have to go to the ZBA, and said that instead, this

land use should be allowed by conditional use, so that regulation of the use would be in the hands of the Planning Board.

Chair Sandberg said Mr. Campbell had indicated the Planning Board would be willing to look at the policy of using all X's in the Table of Uses. He asked if it was the consensus of the Council to ask the Planning Board to reconsider this policy.

It was determined that it was the consensus of the Council to reconsider this policy.

Mr. Campbell said the Planning Board had agreed that unless it was required by Statute to specifically prohibit a use in the Table of Uses, it would not use X's in the Table of Uses.

Councilor Morong said it was clear that timber harvesting was allowed in many zones, but said it wasn't clear to him that this covered cordwood. He asked if there would be a problem with anyone's usage of his land if they deleted the commercial processing of wood category from the Table of Uses, and provided additional details on this.

Councilor Morong said he wouldn't mind seeing the production of cordwood in some way under the timber harvesting definition, and asked what the consensus of the Council was on this.

Councilor Carroll said it seemed logical that a property owner should be able to harvest timber, turn it into cordwood, and sell it.

Chair Sandberg asked what the Planning Board was really trying to prohibit, and protect, with the X's.

Mr. Campbell said he thought it was the big operations that would come in and clear a site and process wood, as opposed to doing timber management on a site.

Chair Sandberg asked if the intention was not to infringe on private use of a wooded site.

Mr. Campbell said that was correct, which was why the Ordinance allowed timber harvesting and temporary sawmills.

Councilor Morong said he might not like it if someone living next to him came in and cut down all the trees, but asked if he owned the trees, what difference it made if the trees were cut into cordwood.

Councilor Peter Smith noted that in the shoreland zone, there were certain protections concerning how many trees could be cut. He said if they wanted to have some protection like that for areas other than the shoreland, they should do this upfront by adopting an overlay provision. He said the critical issue raised by Councilor Morong was when it came to timber processing, should this include allowing a person to cut a certain amount of wood on his property and sell it as cordwood. He said that presumably, this was very different than what the Planning Board had in mind by commercial processing.

He suggested the definition of "commercial processing of wood" should include wording that said "This shall not include"

Councilor Needell said Article 20 defined timber harvesting, and said there were limitations on how much of a parcel could be harvested. He said his reading of it was that if someone owned land in the Rural District, he didn't have the option to cut down all the trees there.

Mr. Eyerman asked what Councilors meant by the term “cordwood”, and there was discussion on this.

Mr., Eyerman said he thought the intention was that the provisions relating to timber harvesting and commercial processing of wood adopted the previous year would not change for the residential districts. He said he believed the intention of timber harvesting was that one could harvest, process and ship out wood from one’s property. He also said the 20% removal limitation related to leaving forested the portions of properties that abutted roads or other properties. He said the Board might want to revise the definition of timber harvesting, if it wasn’t clear.

He said for the land use of commercial processing of wood, the processing was considered the principal use. He said this was prohibited in the Ordinance to prevent people from bringing wood onto a site for processing.

Chair Sandberg asked if the existing language in the Ordinance satisfied that intention.

Councilor Peter Smith said he didn’t think the definition of commercial processing of wood made the point that the processing was the principal use. There was additional discussion about this.

It was noted that the commercial processing of wood category was going to be taken out of the Table, and it was agreed to move on to other uses in the Table.

Councilor Julian Smith noted that he had suggested at the last Council meeting how the category of “Rural Uses” in the Table of Uses might be reconsidered, so that the category could be entirely removed, and the uses themselves could be redistributed in the Table of Uses where appropriate.

He said he hoped the Council could come back to this idea, and he could then see if there was any sympathy on the Council to add some of these uses to the Natural Resources category in the Table of Uses. He distributed a document that showed how this might be accomplished.

Chair Sandberg said whether the Council would want to remand a portion of the Ordinance because of a formatting issue was a gray area in terms of what its mission was at the present time.

Councilor Peter Smith said he didn’t think this was the time to address that issue, noting that the Council had more than enough to do with what the Planning Board had sent it. He said the Council’s task was to refine that.

Council Carroll said these were very good suggestions Councilor Julian Smith had made, and said if this was not the time to address them, she urged Councilor Smith to bring this up to the Planning Board for future consideration.

Chair Sandberg said this was the kind of thing the Planning Board could consider at its quarterly planning meetings.

Councilor Needell said a zoning amendment concerning this could be developed in a relatively short period of time.

At 10:00 PM Councilor Needell MOVED to suspend the 10:00 pm Adjournment time. Councilor Julian Smith SECONDED the motion, and it PASSED 6-3, with Councilors Kraus, Van Asselt, and Morong voting against it.

There was discussion on what the plan was for the Council to complete its deliberations on the Ordinance in the upcoming weeks.

Administrator Selig noted that he couldn't make the November 21st Council meeting, and said it might therefore make sense to discuss the Zoning Ordinance at that meeting.

Councilor Niman said he wanted to know why non-elderly residential multi-unit development was not allowed in the ORLI and OR-108 Districts, but elderly housing was allowed, either by right or as a conditional use.

Mr. Campbell said allowing elderly housing there was an attempt to encourage more of that use, noting this was in the Master Plan. He also said it wasn't unanimously agreed by the Board that non-elderly multi-unit residential development should not be allowed in the ORLI District.

Councilor Niman asked what the rationale was for this, and Mr. Campbell said the rationale was that elderly housing would result in fewer students in Durham schools than non-elderly housing.

Councilor Niman read from page 8.15 of the Master Plan, and asked if the people who wrote this chapter knew something the Planning Board didn't know. He asked what factual basis they used for concluding that multi-unit residents would put more students in the Oyster River School district than elderly multi-unit residents.

Mr. Campbell said this pointed out that there were some contradictions in the Master Plan. He said in this case, it came down to the fact that they wanted to encourage elderly housing, and were also theoretically forming a zone where there could be student housing, but the ORLI District was not the district chosen for this.

There was detailed discussion about this by Councilor Niman and Mr. Campbell.

Councilor Needell said Councilor Niman raised a good point. He said there was no reason to exclude student housing because it didn't result in more school age children in Durham schools either. He said he tended to agree with Councilor Niman, and said he could understand why it was a close vote on the Planning Board. He said he was not opposed to taking another look at this, and perhaps polling the Council as to whether it wanted to weigh in on this.

Councilor Niman said he would like to make non-elderly residential multi-unit development a conditional use in the OR-Route 108 District and the ORLI District, and to provide parity with elderly multi-unit development.

Chair Sandberg said he had thought of the OR-108 and ORLI as being nonresidential, and that it was the Planning Board's specific intent to not make these districts residential.

Mr. Eyerman provided details on how the Planning Board had used the Master Plan as a guide, despite the fact that it was contradictory in places. He said the Master Plan provided specific recommendations concerning elderly residential development.

Councilor Needell said this was an example of where the Master Plan could be frustrating, noting the brevity and lack of specifics of the discussion in it on allowing elderly housing.

Chair Sandberg noted that the entire Master Plan did not have to be adopted at the present time. He said it was better to open the barn door gradually rather than to open it wide and have to close it later.

Councilor Van Asselt noted again his frustration about the small amount of land available in MUDOR for multi-unit apartments. He also expressed frustration that details on the amount of acreage were not available yet. There was discussion about this.

Councilor Van Asselt said in the last 7-8 years, there had been a significant increase in students living in residential areas of Town. He asked how they could deal with this problem if the only place where multi-unit apartments were allowed was in the MUDOR District and the Professional Office District, as a conditional use.

He said this was the community that was being created, and asked if the Zoning Ordinance provided the opportunity to make some changes to this trend. He said he realized the University's influence on all of this, but said the Zoning Ordinance provided at least the opportunity to work on this issue.

Councilor Van Asselt said Councilor Niman's suggestion for the OR-108 and ORLI districts was important, but said it was important to get information on how much land was available in these districts, and on the residences that already existed there.

Chair Sandberg asked if the Council could get this information soon, and Mr. Campbell said yes, noting that within a week, they would have the capability to touch on any lots in Town to get their acreage.

Councilor Peter Smith said he would like to get clarification on how the Zoning Ordinance would affect where University students would live. He said until the University was involved in addressing this issue, it was very difficult to make progress. But he said that having been on the Planning Board when the Master Plan was last worked on, the fundamental issue, in trying to minimize the downsides of student housing in Town without University involvement, was where housing for students should go that would do the least damage to Durham.

He said as a general principle, it should be located as close to University operations as possible, and asked what that said about the idea of putting student housing on Route 108. He said agreement was needed on what the underlying principles were.

Mr. Campbell said some Board members had pushed for multi-unit student housing, as a commercial land use developed by companies like Capstone Development that created large multi-unit developments. He said the Board didn't want this kind of development on Route 108.

Councilor Niman said he wouldn't want something like Stoke Hall lining Route 108, but said there were areas away from the road where such development was possible. He read from section 9.23 of the Master Plan, which spoke about the incompatibility of student rentals and residences, and recommended amending the Zoning Ordinance to allow new multi-unit districts. He said he thought it was important for the Town to move in this direction, by allowing more than just 15 acres in one district for multi-unit development.

Chair Sandberg asked if it was the sentiment of the Council that the OR -108 and ORLI districts should be changed.

Councilor Peter Smith said his sense was that there was an adequate amount of land to make available for student housing. He said he agreed that the Council should know what land could be utilized in the MUDOR District, and said he felt this was where the student housing should be located, near where the campus was. He said he would be willing to look at other properties that were as close as possible to where the University was, and would be less sympathetic to looking at locations further away from the campus.

Chair Sandberg said the University's plan was to increase student housing on the west side of the campus, and said the MUDOR District fit with this. He said if this happened the idea would be to build outward from the central core.

Councilor Kraus left the meeting at 10:32.

Councilor Peter Smith it was understandable that there was a level of frustration that the University was going much too slowly with this, and said there was a certain amount of resignation in the Master Plan about this. He said he would like to do more than just trying to make the best of things. He said to the extent the Master Plan was more discouraging of the possibilities, he would like to be more encouraging about them, and said he would like to encourage the concept he had just described.

Chair Sandberg noted that Councilor Van Asselt had raised the idea of needing more information on the land in these districts, and said he agreed.

Councilor Needell said it was worth asking the Planning Board if allowing elderly multi-unit housing, and excluding non-elderly multi-unit housing, was really the intent that was desired. He noted he would not vote against the Ordinance, regardless of the outcome on this issue.

Chair Sandberg said there had been a split vote of the Planning Board on this, and said it would continue to be a sticky issue. He said the Board was saying the growth should be allowed in these particular areas and that eventually, the Town might have it in other areas.

Chair Sandberg asked if elderly housing should be scattered around Town, or if instead it should grow out from the center of Town, given the services needed for this development. He said this was an issue of concern to him, and said more information on this issue was needed as well.

Councilor Niman said he didn't understand why elderly housing was allowed in the OR-108 and ORLI districts. He said it didn't make sense how one could create commercial districts, but say elderly single-family housing was a permitted use there. He also said he wasn't sure exactly when they were going along with the Master Plan, and when they weren't. He also said he didn't understand why his objections to the Ordinance were treated in one way, while another's objections to the Ordinance were treated in another way. He provided additional detail on his concerns.

Mr. Campbell provided details on how the Planning Board had approached this.

There was discussion on whether to continue the meeting to a future date.

Councilor Needell suggested that a list be developed of possible dates for continuing deliberation on the Zoning Ordinance.

XI. Adjournment

Councilor Julian Smith MOVED to adjourn the meeting. The motion was SECONDED by Councilor Niman and PASSED unanimously 8-0.

Adjournment at 10:35 pm

Victoria Parmele, Minutes taker