

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

**DURHAM TOWN COUNCIL MINUTES
MONDAY, NOVEMBER 21, 2005
DURHAM TOWN HALL – COUNCIL CHAMBERS
7:00 PM**

MEMBERS PRESENT: Neil Niman; Peter Smith; John Kraus; Mark Morong; Gerald Needell; Karl Van Asselt (arrived at 7:09 PM); Julian Smith; Diana Carroll

MEMBERS ABSENT: Chair Malcolm Sandberg

OTHERS PRESENT: Paul Beaudoin, Acting Town Administrator

I. Call to Order

Councilor Niman said he would serve as Chair for the meeting, in place of Chair Malcolm Sandberg.

II. Approval of Agenda

Councilor Julian Smith MOVED to approve the Agenda as submitted. The motion was SECONDED by Councilor Kraus, and PASSED unanimously 7-0.

III. Special Announcements

A. Introduction of new Town Engineer, David Cedarholm

Public Works Director Mike Lynch introduced David Cedarholm, the new Town Engineer. He said Mr. Cedarholm lived in Lee, NH, and had a Masters in Civil Engineering, with a Bachelors in Geology. He noted that Mr. Cedarholm was the engineer who was involved with the transfer station closure, and said he was familiar with Town politics.

Mr. Cedarholm said he was thrilled to be on the staff of the Public Works Department. He also said he was honored to have the opportunity to serve the residents of Durham, and hoped that his common sense and technical expertise would be of use to the Town. He said he really appreciated the welcome he had received in Town over the past three weeks.

B. Presentation of award to Steven Goodwin, Department of Public Works

Councilor Niman explained that Mr. Goodwin had worked for the Town for 1½ years. He said the Department had been looking for someone who was talented in a number of mechanical and other trades, and said the Town was delighted to have him on staff.

Mr. Lynch said that within the past year, Mr. Goodwin had designed and constructed a mechanical brush system, using common components available at the hardware store, which had solved an algae problem with the clarifiers at the Wastewater Treatment Plant. He said it had turned out to be a terrific system, and had worked well for 4-5 months without any problems. He said this was the kind

of creativity the Town liked to see in Town employees, and noted that Mr. Goodwin had said he wanted to build some more things that solved problems.

Councilor Niman presented Mr. Goodwin with a Certificate of Appreciation, and said the Town was very appreciative of his excellent work.

Councilor Van Asselt arrived at the meeting at this time (7:09PM).

Councilor Peter Smith asked if the patent rights had been investigated for the brush system Mr. Goodman had developed.

IV. Approval of Minutes

October 20, 2005

Councilor Needell MOVED to approve the October 20, 2005 Minutes as presented. The motion was SECONDED by Councilor Kraus.

Page 9, 6th paragraph, "POD" should be spelled out as "Professional Office District".

Page 10, 3rd paragraph from bottom, should read "...and said he was not convinced to accept or reject..."

The Minutes as amended PASSED 6-0-2, with Councilors Morong and Kraus abstaining because of their absence from the October 20, 2005 meeting.

October 24, 2005

Councilor Julian Smith MOVED to approve the October 24, 2005. The motion was SECONDED by Councilor Kraus.

Page 9, 3rd paragraph, should read "He asked if the Ordinance was adopted...."

The minutes as amended PASSED unanimously 8-0.

V. Report of Administrator

- Mr. Beaudoin said they were still having problems with the Town List server, and provided details on this. He said these problems would hopefully be fixed in the near future.
- Mr. Beaudoin said the Town Offices would be closed on Thursday and Friday for the Thanksgiving holiday.
- Mr. Beaudoin said the annual "Light Up Durham" celebration would take place on December 2nd and 3rd. He said the schedule of activities was available on DCAT, the Town web site, and at the "Durham It's Where U Live" web site.
- Mr. Beaudoin said the Cumberland Farms business had closed and that the property was in compliance with Town regulations. He said the building was for sale and there had been a lot of inquiries as to acceptable uses for the property.

- Mr. Beaudoin said volunteers were being sought to help replace a seriously leaking roof on a house owned by a resident of Durham, whose husband died the previous winter. He said contributions of supplies were also being requested, and citizens interested in helping out should contact Fire Department Captain Mike Hoffman.
- Mr. Beaudoin said that a smaller volume of leaves had been collected this year during the Fall Cleanup than in previous years. He also said there had been 100% compliance in terms of using leaf bags, which were easier to compost, and made the whole process more cost effective.
- Mr. Beaudoin provided details on the fact that UNH would be hosting football playoff games, and said the Town would be working closely with the University concerning this.

VI. Reports and Comments of Councilors

Councilor Needell noted the Council Communication regarding the Planning Board's first reading of a proposed amendment to the Zoning Ordinance at its October 26th meeting. He said because there were some time requirements, it would be good if the Council had its first reading of the proposed amendment at the present meeting.

Councilor Needell said the State of New Hampshire had approved the expenditure of \$1.6 million in federal money to improve the tracks for the Downeaster train system. He noted that the Town Council had passed a resolution in support of this the previous year. He said the improvements would mean that a 5th train would run on the tracks every day, and said it was hoped this 5th train would be functional some time in 2006.

Councilor Carroll encouraged everyone to shop in downtown Durham during the holiday season, noting that these were locally owned, independent businesses, and there were many benefits to shopping at them. She said if residents wanted to contribute to the economy of Durham, a dollar spent downtown stayed in the community a lot longer than a dollar spent at a chain store. Councilor Carroll said downtown Durham could only be vibrant if residents supported the businesses there, and said the holiday season was an excellent time to do this.

Councilor Kraus asked why the Zoning Ordinance Council Communication had not been brought up when the Council approved the Agenda. It was agreed to address the proposed definition change for fraternity/sorority house later in the meeting.

VII. Public Comments

Edward Valena, Bagdad Road, said the Swap shop at the Transfer Station was also a good place to shop for the holidays.

He noted Councilor Kraus's recent speech on what the people of Durham really cared about. He said the people of Durham can care about the creature comforts of Town employees when the administration or Council was unconcerned about this or made light of this; can care about forming or not forming relationships with hideously built public works projects; and can care about how the Council spent the Town's money. He said they can care about all of these things at the same time, and can, in fact, multi-task.

Mr. Valena said he supported the increase in spending for the Library, as this institution continued to grow into a dynamic community enterprise. He questioned the need for a full-time MIS position, and wondered if other Towns Durham's size had such positions. He questioned whether the Town Engineer job had been managed as designed.

Mr. Valena also said that although he agreed the Council as a group shouldn't review the 2006 Budget line by line, it would be an enriching homework task for Councilors to address this individually or in pairs to get a good grasp on where Town funds were being spent. He said mistakes happened, and the Council was the final line of defense in spotting them.

He asked whether the Durham Business Park was on the market, and if there had been any interest in the property. He asked if the idea of payment in lieu of taxes had been addressed in recent negotiations with the University. He asked if in the zoning discussion, there had been any mention of expanding allowed uses in the OR District to allow student housing. He said a well-managed student housing complex could help expand the tax base, and might relieve rental pressures on Town neighborhoods. He asked if there was a place for this kind of development in Town, or if it instead would wind up on state land, and would be exempt from taxes.

Nate Smith, UNH, 40 Gables Way, noted that it was the first anniversary of the death of a UNH student by a drunk driver in Durham, and was something to reflect on. He then informally invited the Council to the upcoming Student Senate/ Town Council Pot Luck Dinner to be held on December 4th at 6:00 pm, and said more formal invitations would follow.

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

Councilor Kraus asked that Item B. be removed from the Unanimous Consent Agenda.

- A. Shall the Town Council approve the Special Events Permit application to close a portion of Main Street for the annual "Light Up Durham" celebration on December 2, 2005 from 4:00-9:00 PM as requested by the Durham Business Association?

- C. Shall the Town Council accept the proposed 2006 Holiday Schedule submitted by the Town Administrator in accordance with the Town's Personnel Plan?

Councilor Kraus MOVED to approve Unanimous Consent Agenda Items A and C. Councilor Julian Smith SECONDED the motion, and it PASSED 8-0.

- B. Shall the Town Council appoint Pamela Weeks (Worthen) as an alternate member to the Durham Public Library Board of Trustees for a one-year term as recommended by the Library Trustees?

Councilor Morong MOVED to appoint Pamela Weeks (Worthen) as an alternate member to the Durham Public Library Board of Trustees for a one-year term as recommended by the Library Trustees?

Councilor Kraus explained that the reason he had pulled this Item off the Unanimous Consent Agenda was that he thought there was an informal policy not to make appointments as part of this Agenda.

Councilor Kraus SECONDED the motion.

Ms. Weeks (Worthen) spoke before the Council, and said she had served on the Budget Committee, and was currently a member of the Durham Historical Association. She said she was currently the Executor Director of ABC Quilts, located in Northwood, NH. She said she believed that a Library said a lot about a Town, and that she would work as hard as she could toward the goal of having an excellent Library.

The motion PASSED unanimously 8-0.

IX. Unfinished Business (NLT 8:00 PM))

- A. Public Hearing to obtain input from citizens on a grant application under the Brownfield Cleanup Grant Program to be used for the remediation and cleanup costs associated with the former Craig Supply Company site located on Depot Road, Durham, NH

Public Works Director Mike Lynch briefly discussed the clean up project and the proposed grant. He said this was the same grant the Town had applied for the previous year, and the application would ask for an additional \$200,000 for 2006.

Councilor Kraus MOVED to open the Public Hearing to obtain input from citizens on a grant application under the Brownfield Cleanup Grant Program to be used for the remediation and cleanup costs associated with the former Craig Supply Company site located on Depot Road, Durham, NH. Councilor Carroll SECONDED the motion, and it PASSED unanimously 8-0.

There were no members of the public who wished to speak at the public hearing.

Councilor Kraus MOVED to close the public hearing. Councilor Needell SECONDED the motion, and it PASSED unanimously 8-0.

- B. **Public Hearing and Adoption of 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 said this proposed Ordinance had already been before the Council for review, and said it had recently been reworded in some areas. He said the Ordinance essentially allowed the Police Department, after due notification, to remove a vehicle after its owner had not paid three parking tickets.

Councilor Kraus MOVED to open the Public Hearing amending Chapter 153 “Vehicles and Traffic”, Section 153-32 (C) “Penalties for Offense” of the Durham Town Code by changing the language relating to parking violations. Councilor Julian Smith SECONDED the motion, and it PASSED unanimously 8-0.

There were no members of the public who wished to speak at the public hearing.

Councilor Morong MOVED to close the public hearing. The motion was SECONDED by Councilor Kraus, and PASSED unanimously 8-0.

Councilor Julian Smith MOVED to adopt Ordinance #2005-10(A) to amend 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. The motion was SECONDED by Councilor Kraus.

Councilor Kraus asked if it was the case that if the car in question was parked on private property, that it wouldn't be towed.

Chief Kurz said the car would not be towed if it was on private property.

Councilor Kraus asked if the car was in motion, would it be towed?

Chief Kurtz said no, and provided details on this.

The motion PASSED unanimously 8-0.

- 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, 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 Niman said the Council had received a communication from the Planning Board concerning the ORLI District. He read from this, in which Board Chair Richard Kelley said that at the most recent meeting, a poll had been taken to see whether members of the Planning Board agreed with the idea of allowing multi-unit housing in the ORLI District. He said Board members unanimously agreed with this idea.

Councilor Niman said he had downloaded portions of the University's Master Plan concerning housing and wanted to make note of two points, which should be followed up on with the University. He said it appeared the University was planning to put multi-unit housing in the area near the ORLI District and to create a transportation corridor to move students to the core of campus. He said it therefore seemed that if the Town allowed this kind of housing in the ORLI District as a conditional use, it could leverage this with the University's plan to move mass transit that way, which hopefully could reduce traffic.

Councilor Niman also said the housing section of the University Master Plan spoke about “Consideration of off-campus, public-private neighborhood development in coordination with Durham and private landowners in the vicinity of Madbury Road. Development might be modeled as a mixed-use neighborhood with a variety of taxable uses in a traditional New England village

pattern.” He noted that the Town, on the other hand, was looking to turn a portion of Madbury Road into Professional Offices and to reduce residential density in that area.

Councilor Morong said the next sentence Councilor Niman had not read from the University Master Plan could be interpreted to include professional offices.

Councilor Niman said that was a point well taken. He said it was important to get the ORLI issue resolved, and asked what other Councilors thought about it.

Councilor Needell said that having listened to separate conversations on this issue by the Planning Board and the Town Council, allowing multi-unit housing development in the ORLI District seemed like a reasonable thing to do. He said a poll was taken of Planning Board members at the most recent Board meeting, and they agreed this should be allowed. But he said there was a mix of opinion as to whether it should be allowed as a permitted use or conditional use, so this was still to be resolved.

Councilor Peter Smith said before answering this question, he would like to know why the Planning Board had changed its mind on this issue.

Town Planner Jim Campbell said one reason was the lack of land area available for multi-unit housing in the MUDOR District. He also said the previous OR zone had allowed this kind of housing, and that Arthur Grant had decided in retrospect to change his vote because he said there was no reason not to allow it now if it was allowed there before.

Councilor Peter Smith asked what the reason was that the Board had reached its previous view on this issue that it should not be allowed.

Mr. Campbell noted that there were 4 or 5 new members on the Planning Board now. He also said the reasoning before was that the Board wanted to limit the ORLI District to light industrial use, and thought there was enough land in the MUDOR District to support multi-unit housing.

Councilor Needell said there was concern that multi-unit housing would be the more desirable kind of development, and would displace potential office research and light industry in the ORLI District. He noted that student housing was a major industry in Town, and said it was recognized that commercial development hadn't happened in the previous OR District.

Councilor Peter Smith said the tipping point for him was where ORLI was located, and that it was logical to encourage student residences in that area which was quite close to the campus.

Councilor Julian Smith said he also thought multi-unit housing should be permitted in the ORLI District.

The consensus of the Council was that this change should be made.

There was discussion as to how to handle whether multi-unit housing should be allowed as a conditional use or a permitted use, and Councilors agreed this should be remanded to the Planning Board.

Councilor Kraus voiced concern about the process being drawn out, and there was discussion about this process.

Councilor Niman said the Council was saying it didn't want this land use to be prohibited in the ORLI District, and the Planning Board would decide if it should be a permitted use or conditional use.

Councilor Van Asselt asked if the 180 acres of undeveloped land listed for the ORLI District was buildable.

Mr. Campbell said this was the total acreage for the site.

Councilor Van Asselt questioned how significant it really was to say that there could be multi-unit housing in the ORLI District. He said there were essentially three areas of Town that could have this kind of land use, a few areas in the MUDOR District, about 100 acres in the ORLI District, and some potential areas for multi-unit housing in the Professional Office District.

Mr. Campbell said it was hoped that some of the developed properties in the ORLI District would be converted to another use. He also said that if there were an 8-acre property in the ORLI District, and half of it was buildable that this would allow quite a bit of density for multi-unit housing.

Councilor Van Asselt said that based on what it had been determined was the land available in the OR-108 District, unless someone combined a lot of parcels, he wasn't sure it was worth considering multi-unit residential housing for this area.

There was discussion between Councilor Van Asselt and Mr. Campbell on some of these parcels.

Councilor Van Asselt said he was not as interested in getting multi-unit housing in the OR-108 District as he had been, and said if other Councilors were not interested in this idea, he thought it should remain a prohibited use there. He said he would have argued for allowing multi-unit housing there if it hadn't been agreed that it should be allowed in the ORLI District.

The consensus of the Council was that multi-unit housing should remain a prohibited use in the OR-108 District.

Councilor Needell noted that elderly housing in various forms was a permitted use, and asked if the Council was comfortable with this.

Councilor Van Asselt said the Master Plan was clearly designed to do this, but he said there were enough studies to show that the costs related to elderly housing weren't what they were made out to be.

Councilor Needell said the various forms of elderly housing were permitted uses in several zones because that was what the Master Plan recommended. He said to him, the Master Plan spoke about elderly housing generally, but not in the kind of detail reflected in the Table of Uses, and said this seemed out of balance to him.

Councilor Niman said there was the question of whether it made sense in the limited commercial districts in Town to allow single-family elderly housing, and whether this was the best use of that land. He asked whether this should be either prohibited or allowed by conditional use where it was now a permitted use.

Councilor Needell said he was not advocating anything specific, and asked what other Councilors were comfortable with. He said he was looking at whether there should be the same level of scrutiny of elderly housing as there was for other housing. But he said he wouldn't vote against the Ordinance based on what was decided concerning this issue.

Councilor Peter Smith asked what it was about the OR-108 District that caused the Planning Board to allow single-family elderly housing as a permitted use as compared to a conditional use.

Mr. Campbell said there were not a lot of single-family residences in either the MUDOR or ORLI District, but there were in the OR-108 District.

Mr. Eyerman said the description of OR-108 District was functionally different than the description for the ORLI and MUDOR Districts. He provided details on this, and said the OR-108 District was seen as having a more rural, open space character, so a different kind of development was envisioned for this area.

Councilor Peter Smith agreed there was a different view of the area where the OR-108 District was, and said this vision went back to before the 2000 Master Plan, when special interest was attached to how to handle the corridors coming into Town. He asked how allowing single-family elderly housing as a permitted use advanced this vision more than allowing it as a conditional use.

Mr. Eyerman said it was envisioned there would be fewer conflicts here as compared to in the ORLI District.

Councilor Peter Smith said he believed it was the other way around, noting that by allowing this land use as a conditional use, an added level of concern would be applied to how the OR-108 District, as a corridor leading into Town, should be used. He said it seemed that more control than less would be warranted, to make certain that a development turned out the way the Town wanted.

There was detailed discussion about this with Mr. Campbell.

He noted that specific development standards for the OR-108 District, which were much more restrictive than those for the MUDOR or ORLI Districts.

Councilors indicated their preference concerning whether single-family elderly housing should be a permitted use in the OR-108 District. Councilor Kraus, Councilor Julian Smith, and Councilor Morong said it should be left as it was. Councilor Carroll and Councilor Van Asselt said it should be a conditional use, for consistency. Councilor Niman said he would prefer it was a prohibited use, but said he would agree it could be made a conditional use.

Councilor Needell said he was ambivalent about this, but said he would be okay with it if it came back as a conditional use.

Councilor Peter Smith said he was ambivalent about this, and said he was not convinced which classification better advanced what were supposed to be the interests of the Route 108 corridor. He provided details on this, and said he would like the Planning Board to determine which classification was most consistent with what the underlying standards were from 1995 up through the Master Plan.

Councilor Niman said he agreed, and said this item should be remanded to the Planning Board, so it could determine why this land use should be a permitted use or a conditional use.

Councilor Needell said he didn't think it was the Council's purview to re-investigate this and to re-open the entire discussion. He said during the Zoning Rewrite process there was a lot of discussion about the conditional use process, and about making the Ordinance more enabling where possible. He said there was a push to use more P's where possible.

Mr. Eyerman said what Councilor Needell had said was a very important policy question as the Council went through the balance of the Table of Uses. He said the Master Plan spoke about reducing the number of regulatory hoops to go through, for the kinds of land uses the Town wanted to have, and said one of the hoops was the old conditional use process. He noted some of this process had now been changed. He said there had been a lot of discussion by the Planning Board about the conditional use process, as part of the Zoning Rewrite, and said different views on this were expressed.

He said the tension on this still remained. He said that as an outsider, he could see that the Master Plan clearly said the Town had a problem in that it created too many obstacles/ hurdles for the kinds of land uses it wanted, so the review process should be simplified, and made more certain.

Councilor Peter Smith said simplification, including removing the Town Council from the conditional use process, was very important, and noted this should be passed on to the private sector. But he said the protection of the corridors leading into Town, and the desire to prevent sprawl, had been an important issue for over 10 years, and said he didn't want to be in the position of deciding which method was best for dealing with this. He said the Planning Board had the expertise to do this, but said he simply wanted the Board to know he was aware of the underlying issues involved for this area, and also wanted to know the Board had made a selection that was consistent with this.

Councilor Kraus asked the Planning Board to be clearer about the words it used concerning the various kinds of elderly housing, stating that the current words such as single-family and duplex, as used in this context, confused things. He provided details on this, and noted that the kind of housing that existed at a place like Sprucewoods didn't fit into any of the current categories.

Councilor Niman asked if the Planning Board had a response concerning whether there was a terminology issue involved here.

Mr. Campbell said he would prefer to get back to the Council on this issue.

Councilor Van Asselt said nine of the thirteen zones allowed some kind of elderly housing, either single-family or duplex. He said if this was the kind of community they wanted to encourage with the Zoning Ordinance, the Council should say so. But he said the price of this was the impact on the

budget of needing to provide emergency medical services and other services, when the Town encouraged elderly single homes and duplexes. He said every study on this issue showed that multi-unit elderly housing was much less costly to a community than the others. He said the Ordinance was going to encourage, or at least not discourage, single home and duplex elderly housing. He said it was fine if that was the kind of community they wanted Durham to be, but said this carried a price tag.

Councilor Needell said Councilor Kraus had brought up an interesting point, and noted that it related to Councilor Van Asselt's point. He said the OR-108 District was a good example of where there were now single-family homes, and where the Ordinance would now allow single-family elderly homes. He asked what the difference was between single-family housing and single-family elderly housing, and whether it was possible to convert one to the other.

There was detailed discussion about this issue.

Councilor Kraus said the Council didn't have any idea what it was talking about because of the wording confusion.

Councilor Julian Smith suggested the Council could remand to the Planning Board the question about the terms single unit versus single-family.

Mr. Eyerman noted that definition of residence single-family, duplex, and multi-family in the Ordinance already addressed this distinction.

Councilor Niman noted that Councilor Van Asselt was concerned about the limited land available for building multi-unit residences of any consequence, and whether lots with existing buildings could be transformed for this use as well. Councilor Niman said if there was interest in supporting larger units, it made sense to consider where accessory apartments and accessory dwelling units were permitted, as indicated on page 36 of the Table of Uses.

He said it seemed that if accessory apartments and accessory dwelling units were permitted in commercial districts, this encouraged property owners to hold onto their properties and continue their current use. He said if these uses weren't allowed in the ORLI or MUDOR District, this would make it more attractive for property owners to sell their land, or combine it with neighboring land to put in larger housing units that would create more tax revenues.

Councilor Morong noted that if this was changed, it would only apply to new development, and those property owners with accessory apartments would be grandfathered.

Councilor Niman said he was referring to properties with existing single-family residences without accessory apartments in the commercial zones, and said changing this might encourage them to do something else with their properties.

Councilor Needell asked if the current Ps and Xs were consistent with the current Zoning Ordinance. He provided details on this, and there was some discussion.

Councilor Niman said his own point was that from a policy perspective, if the goal was to turn a limited amount of land in these zones to their best and highest use, in a way that was more consistent

with generating tax dollars, then he would want to ask the Planning Board to take a look at the Zoning Ordinance concerning this. But he said if other Councilors didn't agree with his ideas on this, they should keep things the way they were, and move on.

Councilor Needell noted this would apply to future uses, and would not change the current uses.

Councilor Van Asselt said he would like to encourage the Planning Board to rethink this issue.

Councilor Carroll said she was on the fence on this issue. She said she would hate to see this result in people not being able to rent a portion of their house for income in the future, and said she didn't want to encourage people having to sell their house because of this.

Mr. Eyerman said if the idea was to create opportunities for additional multi-family housing, what Councilor Niman was suggesting might actually reduce the amount of units allowed in those areas. He provided details on this, and said conversion to offices might make more sense.

Councilor Niman asked if the Council wanted the Planning Board to consider this issue.

Councilor Needell said he didn't think leaving the proposed Ordinance as it was concerning this did any immediate harm, so he was hesitant to give it back to the Planning Board, as compared to other issues that had been remanded because more immediate impacts might result from them.

The Council agreed to move on from this issue, for the time being.

Chair Sandberg called for a five-minute recess at 8:49 PM.

The meeting resumed at 9:00 PM.

Councilor Peter Smith noted that boarding houses were prohibited in the Ordinance by putting a line of X's in the Table of Uses, which was inappropriate.

Mr. Eyerman said it was agreed this procedure of putting a line of X's where a land use was prohibited would not be used, and said all of the land uses for which this had been done had been noted.

Councilor Peter Smith said the Planning Board should consider putting a paragraph in the Ordinance that established the rules of the game on permissive zoning.

Mr. Eyerman said it was in there.

Councilor Julian Smith noted that a Library was not permitted in the RA District, yet this was one of the most likely areas of Town where land for a Library might be found. He asked why it was prohibited there.

Councilor Needell said that as a public building, a Library would be a permitted use everywhere in Town.

Councilor Morong noted the Table of Uses must be referring to private libraries.

Councilor Carroll suggested that under the Central Business District, fraternity and sorority houses should be allowed as conditional use-adaptive reuse. She said this was one of the denser areas in Town, so one would want to see many different businesses and uses there. She said this would match what the Town was trying to do with the Professional Office District.

Councilor Niman asked if there were currently any fraternities or sororities in that district, and was told there were.

Councilor Van Asselt said he agreed with what Councilor Carroll wanted to preserve the Central Business District for, but noted this area was very close to the campus. He said he felt that the closer one could put the students to the core campus, the better, and asked whether using the CUA approach would discourage this.

Councilor Needell said that if this were made a CUA, there would then be no place where a new structure for a fraternity or sorority house could be built. He asked if this was a policy decision the Council wanted to make.

Councilor Carroll said the University's Master Plan spoke about the desire to make an area on campus for fraternities and sororities, so this was another area where there could be new development.

Councilor Van Asselt noted that the University Master Plan did say it intended to make an area near the Gables a location for fraternities and sororities.

Councilor Peter Smith said he was in favor of restricting, as much as possible, the existence of fraternities. He said if UNH wanted to put them on campus and oversee them, this would be a great improvement. But he said there was too much overwhelming history to the lack of benefit of the existence of these fraternities.

Councilors Niman and Carroll said this should be changed to CUA, but the consensus of the Council was to move on concerning this issue.

Councilor Van Asselt received clarification that as indicated by the previous discussion on the Library, it could be built at the Durham Business Park, even though it was listed as a prohibited use for that District.

Councilor Julian Smith noted that under Recreational Uses, there was nothing about hunting for any of the districts. He asked if it was prohibited if it was not specifically permitted. Councilor Niman said he didn't believe the Town had the authority to prohibit hunting.

Councilor Kraus said hunting was covered under State law.

Councilor Julian Smith asked if someone wanted to establish a hunt club in Durham, if this would be possible.

Councilor Niman said he assumed this would be an outdoor recreational use.

Mr. Eyerman said the definition of outdoor recreational facility precluded recreation that used firearms.

Councilor Niman asked if Councilor Julian Smith wanted to allow a shooting parlor in Durham, and Councilor Julian Smith said no.

It was noted that the line of X's had to be maintained for Heliports, and there was discussion about this. Councilor Niman said the Planning Board would eliminate the row of X's for private and commercial airports, which were prohibited land uses.

Councilor Carroll said she would like to change Hotel to a conditional use in the Courthouse District. She said the Hotel New Hampshire was a nice looking structure because the conditional use process had been used to review the proposed development.

Councilor Niman asked if Councilor Carroll wanted to change all uses in the Courthouse District to conditional use, as a general policy.

Councilor Carroll said she was very concerned about the Courthouse District, and said this area needed to be developed very carefully, in order to remain the way the Town wanted it to look. She said if it was the will of the Council to look at this as a general policy issue for all uses in the district, that was fine too.

Councilor Niman suggested that the Council have a general policy discussion on this.

Councilor Needell said he thought this discussion would be helpful. He said his understanding was that the prevailing decision of the Planning Board was to make most of the uses permitted uses, but to use design standards, in order to make it easier to bring commercial development into the District.

He said it was often brought up that the kind of development that occurred with the Hotel New Hampshire, and the development approved for the Irving site was possible because of the conditional use process. But he said it was not clear what difference it would have made if the process hadn't been in place for these applications, because there were also design standards in place. He said that for most of the uses listed for the Courthouse District, site plan review was required if there was a change of use, and said the design standards addressed architectural, landscaping and other issues as part of this process.

Mr. Campbell went through these design standards.

Councilor Needell said the only real difference between the two processes was the threshold of the vote. He said the Planning Board also had a lot more discretion under the conditional use process to restrict an activity, which was why the changes were made, to take that away.

Councilor Kraus said he thought allowing Hotels as a permitted use in the Courthouse District should remain. He said he was against the New Williamsburg concept, and holding the Courthouse as a sacred place, and said Gasoline Alley was more appropriate to describe this area. He also said

there were development standards in place that would prevent something obnoxious in this area, and said the new Irving station would be a big improvement.

Councilor Morong asked what latitude a developer would have, coming in under the revised Ordinance. He noted that some of the new Irving stations in the area didn't fit well with their surroundings and asked if the design standards would address this for future development.

Councilor Peter Smith said if it was in fact true that allowing a land use as a permitted use, along with design standards, was precisely equivalent to the conditional use, it didn't make a difference how this was handled. He said if this was true, it didn't matter to him which was used. But he said if it was not, he wanted to know exactly what the differences were, not only for the Courthouse District, but also for the Coe's Corner and OR-108 Districts.

He said one of the most important functions of the Zoning Ordinance was to preserve the entry to the Town. He said he had heard people say that if the conditional use process hadn't existed for the Courthouse District, the Town wouldn't have ended up with what it got in terms of the Hotel and the Irving development. He said the Council needed more precise factual information on this issue.

Councilor Carroll said she did ask Mr. Eyerman at a Planning Board meeting which approach would make a development more attractive, and would give the Town more control over it.

Mr. Eyerman said Councilor Carroll's question was not about aesthetics, it was about the idea of giving the Town more control over a development. He said the conditional use process created an additional set of approval criteria, and said the design standards for the Courthouse District were not as broad as this. He said he was not sure there was a right answer as to which process provided more control.

Mr. Campbell said when the Hotel was built, it was good to have the conditional use process because the new development standards weren't yet in place. But he said when the Planning Board went through the Irving application, it turned out that the majority of what the Board went through was the design standards as part of the site plan review process, and not the conditional use process.

Councilor Niman said his concern was that the harder the application process was, the more likely it would be that gas stations and fast food businesses would come in, because they were the ones that would be more able to work their way through the process. He said he wanted to encourage a diversity of commercial activities, other than gas stations and drug stores, which would strengthen the Courthouse District, and said his preference was therefore to keep the P's for the Courthouse District, and to rely on the Planning Board and the design standards to make sure that the buildings constructed were attractive and desirable. He said he didn't want to make the review process more complicated for those businesses without corporate parents.

Councilor Needell said he was not suggesting that the two processes were equivalent, but the real question was whether what was being recommended was sufficient. He said things like the impact of a proposed development property on values and the fiscal impact on the Town would not be considered under the site plan review process, and said this should be considered. He said he didn't think these were concerns for the Courthouse District, but said they did want to maintain some control over how new uses looked. He said he didn't think the Irving application would have been

handled differently without the conditional use process, but said the threshold would have been lower.

Councilor Peter Smith said part of his view on this came from having sat on the Planning Board for nine years, and seeing the reality of how things happened. He said that Irving knew that it had to meet both applications, and it still proceeded. He also noted that Paul Berton, a local developer, had developed the Hotel. He said he was speaking cautiously on this, and said the experience of the last year had shown that good facilities would come to this area despite the existence of both provisions.

After some additional discussion, it was determined that the consensus of the Council was to move on concerning this issue.

Councilor Van Asselt said he was absolutely confused about the uses that were allowed and not allowed for the Durham Business Park. He provided details on this.

Councilor Kraus made reference to his previous comments concerning the possibility of allowing a plant nursery there. He also noted that one of the goals of the Council was to decide what the Business Park was supposed to be used for, and said this hadn't yet happened.

Councilor Peter Smith said he didn't think most of the uses listed in the Table of Uses were what the Durham Business Park land should be used for, but said he understood he was in a small minority concerning this.

Councilor Niman asked if the Council should get a consistent rationale from the Planning Board on the uses that were allowed and not allowed in the Business Park, and if it couldn't, it should change the uses to something that was rational and consistent.

Councilor Needell said part of the problem the Planning Board had with this land parcel was that the signals from the Council on this were confusing. He suggested the Council should move on concerning this issue now, and when it decided to give clear guidance on this, the Table of Uses could be looked at again concerning this district.

Councilor Van Asselt said he didn't have a problem with doing this, but asked if it made sense to adopt this hodge-podge of uses, or to put all Xs under the Durham Business Park for the time being.

Mr. Campbell said some of the uses listed there presently were worth keeping, in order to be able to move forward with the property.

Councilor Van Asselt asked if something could happen with that property, given the way the Ordinance was written, and Mr. Campbell said he thought it could.

Councilor Carroll said she would love to see a theatre in Durham, but not in the Courthouse District. She noted it was now proposed as a permitted use for this district, and said this didn't make sense because almost everyone in Durham would have to drive there to see a movie, which would require a large parking area.

Councilor Julian Smith said there was no danger of a theatre chain coming into that district.

Councilor Morong said this reminded him of the MUDOR District, where some things were permitted, but one couldn't imagine where they could actually happen.

Councilor Niman said he didn't think allowing Theatres in the Courthouse District was feasible, and asked if it was the consensus of the Council that this should be prohibited.

Councilors agreed this should be prohibited.

Councilor Niman noted the use "Warehouse, mini-storage" on page 45 of the Table of Uses. He said Chuck Cressy had said he would like to develop a nice looking mini-storage facility in Durham. Councilor Niman asked if this might be a viable commercial opportunity in the OR-108 District, if it was set back properly on a site, noting that the Town was looking for taxable commercial development.

Councilor Needell said he had the same thought when he read that this was currently a prohibited use in Town, and said he wasn't sure why this was the case. He said he would be amenable to looking at this, but questioned whether this should be addressed during the current process.

Mr. Eyerman said the Planning Board was concerned about allowing this land use, given the limited amount of commercial land available in Town, and that it was a relatively low value land use.

There was discussion about drive-through facilities, and what the consensus of the Council was on this.

Councilor Needell said the consensus of the Council had been that uses like drive-thru banks were ok, but drive-thru restaurants were not. But he said the Table of Uses prohibited these other possible drive-thru uses.

After some discussion, it was agreed to move on concerning this issue, for the time being.

There was discussion as to whether the Council should try to finish looking at the Table of Dimensional Requirements that evening, which would complete the review of Section B. It was agreed to table this discussion temporarily so the Council could discuss the proposed fraternity/sorority house definition proposed by the Planning Board.

Councilor Needell MOVED to table the discussion on Section B. Councilor Kraus SECONDED the motion, and it PASSED 8-0.

Mr. Campbell provided brief background on the proposed change that had been developed by the Planning Board for the definition of fraternity/sorority house.

Councilor Peter Smith MOVED to pass on first reading Ordinance #2005-11 on first reading as presented, and schedule a public hearing for December 5th, 2005. The motion was SECONDED by Councilor Julian Smith.

Councilor Peter Smith said this proposal was not to change the substance of the Zoning Ordinance, but rather was to remove some misperceptions of what the meaning of the Ordinance had been all

along. He said the confusion was what the word “primarily” referred to, – persons or uses of the building. He said the Zoning Administrator had determined that it pertained to uses of the building, so persons who were not members could not live in the fraternity or sorority house. He said that was the decision that was appealed before the ZBA, and said that Board affirmed the administrative decision, and the applicant then went on to request a variance.

Councilor Van Asselt said there were some private landlords who had both fraternity and non-fraternity people living in their building. He said he hoped Mr. Campbell would invite those people to discuss the situation they would find themselves in with this proposed revised definition in the Ordinance.

Councilor Kraus said that the term “bona fide” was likely to have legal ramifications, and said it might not hurt to use something that was clearer.

Councilor Needell said this was dealt with in the definition of fraternity/sorority, so the distinction had already been made.

Councilor Julian Smith noted that the word “employees” was dropped from the definition, and asked if this was intentional.

Mr. Campbell explained the reasoning behind doing this.

Councilor Morong said he had no problem with bringing this revised definition forward, But he said he didn’t want to go as far as assuming how previous Town boards had read the Ordinance before.

The motion PASSED unanimously 8-0.

Councilor Niman noted it was 10:00 pm, so a motion was needed to extend the meeting.

Councilor Kraus MOVED to extend the meeting until 10:30 pm. The motion was SECONDED by Councilor Van Asselt, and PASSED unanimously 8-0.

Councilor Needell MOVED to take the discussion on Section B off the table. The motion was SECONDED by Councilor Kraus, and PASSED unanimously 8-0.

Councilor Van Asselt asked what the impervious surface ratios listed in the Table of Dimensional Requirements really meant, and how they got into the Table. He also asked who came up with a 30% impervious surface ratio for Coe’s Corner

Mr. Campbell provided some general details on the reason for the use of impervious surface ratios, but said he needed to review some things in order to provide more detail on the 30% ratio for Coe’s Corner.

Councilor Peter Smith noted the proposed absence of a front yard setback for the Church Hill District. He said the Planning Board had said it wanted buildings to be allowed to build right up to the sidewalk, but said a member of the public who lived in this district said there should be at least some setback there. Councilor Smith said he wasn’t sure the Council had discussed this.

Mr. Campbell said several Planning Board members had walked the street and saw the buildings there came right up to the sidewalk, so they wanted to keep that character.

Councilor Van Asset said in keeping with the historic character of Town, this dimensional requirement should be left alone.

The consensus of the Council was to leave it alone.

Mr. Campbell read from section 4.7 of the Master Plan, and said the 30% ratio came from the fact that the Coe's Corner District abutted the Oyster River.

Councilor Niman said he didn't want to shortchange environmental concerns, but said his concern with this ratio was whether it would result in the kind of development at the entrance to the Town that people would be happy with.

Mr. Eyerman said the Master Plan provided the least guidance, and the most conflict in terms of the guidance it provided, for the Coe's Corner District. He said how one viewed the 30% ratio depended on the particular vision one had for that area.

Councilor Peter Smith said he was comfortable with the 30% ratio, noting his previous comments on the importance of this corridor leading into Town. He said there could be substantial tax revenue gained from this District, while limiting the amount of impervious surface coverage of a site.

There was additional discussion on what the appropriate impervious coverage ratio for Coe's Corner was, according to the Master Plan, the Planning Board, and Councilors. Councilor Niman said this was really a policy issue, since the appropriate number depended on one's vision for this area. He said the Council needed to say whether it was comfortable with the way the Planning Board was approaching this.

Councilor Van Asselt said his own recurring theme was that the Town needed to maximize the use of the limited amount of commercial land it had. He said he thought this could be done while still keeping things attractive and historical.

Councilor Julian Smith said there should be no change to the ratio.

Councilor Kraus said the impervious surface ratio allowed should be 50%.

Councilor Carroll said this should be left as it was for the time being, and further discussion could follow.

Council Niman said according to his vision for a New England village, more land that could be built on was needed in order to accomplish this.

Councilor Morong said in order to make a good decision on this policy issue, he would need to see maps and charts on this area. He said discussion on this could occur later.

Both Councilor Needell and Councilor Peter Smith said the impervious surface ratio was all right as it was.

There were no comments from the Council concerning the proposed performance standards for light manufacturing.

Councilor Niman asked if Councilors had any additional comments on Section B.

Councilor Peter Smith said he would like the memo prepared for the Planning Board concerning the Council's comments on Section B to be reviewed by the Council before being provided to the Planning Board.

Councilor Needell said Section A would be coming back to the Council from the Planning Board, and said at that point the Council should either accept it or reject it. He said the same thing should happen with Section B, noting the Council couldn't keep sending the sections back and forth. He said his sense was that Sections C through G would go a lot of faster.

Councilor Needell said he hoped Councilors had addressed the things that were stopping them from voting to adopt the Ordinance, and were planning to adopt it.

Councilor Niman provided details on the process, and said he thought the Council could be done with the Ordinance in January.

Mr. Eyerman said Section A was ready to come back to the Council, and said the Planning Board would probably handle the list of items on Section B the way it had handled the items on Section A. He said the Board would also make sure that the two sections conformed with one another.

Councilor Needell MOVED to continue the meeting to November 30th. Councilor Kraus SECONDED the motion, and it PASSED unanimously 8-0.

The meeting was continued at 10:28 PM.

Victoria Parmele, Minutes taker