

This set of minutes was approved at the January 6, 2006, Town Council meeting.

**DURHAM TOWN COUNCIL
WEDNESDAY, NOVEMBER 30, 2005
(Continued meeting of November 21, 2005)
DURHAM TOWN HALL – COUNCIL CHAMBERS
7:00 PM**

MEMBERS PRESENT: Neil Niman; John Kraus; Mark Morong; Karl Van Asselt; Julian Smith; Diana Carroll

MEMBERS ABSENT: Chair Malcolm Sandberg; Peter Smith; Gerald Needell

OTHERS PRESENT: Town Administrator Todd Selig, Business Manager Paul Beaudoin,
Town Planner Jim Campbell, Planning Consultant Mark Eyerman

I. Call to Order

Councilor Niman said he would be serving as Chair for the meeting, in place of Chair Malcolm Sandberg. He said this meeting would be a continuation of Item IX C. from the November 21st Council meeting. But he said before beginning this discussion, Administrator Selig would speak about some upcoming events in Town.

Administrator Selig provided details on the upcoming “Light up Durham” celebration, sponsored by the Durham Business Association, the Town of Durham, and the University of New Hampshire. He said the event would take place on Thursday, Friday, and Saturday, December 1, 2, and 3, 2005, and described the schedule of events.

IX. C. Continued Deliberation on Ordinance #2005-06 proposing amendments to Chapter 175 “Zoning” of the Durham Town Code, 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 noted that there was barely a quorum, but said the goal for the meeting was to finish deliberation on the Zoning Ordinance Sections that evening. He also said a memo had been circulated which contained the Council’s recommendations to the Planning Board regarding Section B, and said the Council would hopefully have time to discuss this under New Business, and could then pass it on to the Planning Board.

Section #2005-06 (C) Relative to the Shoreland Protection Overlay District

Chair Niman asked what the meaning was of the second sentence in 175-74 A concerning the shoreland setback for buildings and structures "This shoreland setback provision shall not apply to water dependent structures, nor to permitted uses...". He asked if it meant that if he owned a house within 125 ft. of one of the listed water bodies, he could not enlarge or modify his home without a variance.

Town Planner Jim Campbell said this meant that a property owner would need a variance if there were a house, but did not need a variance for uses listed under Sections 175-71 and 72.

Councilor Niman said he could see that if there was vacant land, a house should be placed further back on a property to meet the setback requirement in order to preserve the view from the water, or to protect the fragile land next to the shore. But he said if someone already had built a house, which already destroyed the view from the water as boats went by, and the impervious surface already existed, he didn't understand the reason why a variance would be needed to modify the house.

Mr. Campbell said the shoreland zone itself was 250 ft., but noted that the 125 ft. setback had already previously existed in the Ordinance, so a variance was needed in order to expand a building or build something else. He said what had now changed in the Ordinance concerning setbacks was that all of Bunker Creek and all of Johnson Creek now had setbacks of 125 ft. He also said that while College Brook and Pettee Brook didn't have setbacks before, they now both had 25 ft. setbacks.

Planning Consultant Mark Eyerman said it was important to understand that under the Zoning Ordinance, existing structures within the shoreland setback were nonconforming. He noted that under the Zoning Ordinance adopted in May of 2004, there were already provisions that dealt with enlargements of nonconforming uses. He said under these provisions, this expansion could occur, but not toward the water.

Councilor Carroll asked if a property owner wanted a variance for a use in the shoreland area whether he/she had to go to the ZBA for this or to some other government entity. She noted that the Conservation Commission was quite involved with the shoreland areas and would be contacted in certain circumstances.

Mr. Campbell said variances were only granted by the ZBA.

Councilor Carroll asked if bio-solids were dealt with in any of the overlays. She noted the "sludge" issue was becoming a concern in some communities in that sludge was sometimes allowed on farm fields. She asked if there were any restrictions on bio-solids or sludge in any overlay areas concerning this.

Mr. Eyerman and Mr. Campbell noted that pages 5-6 contained a list of prohibited uses and said most bio-solids would generally be covered under 175-73-1 h and j, so couldn't be applied within 250 ft.

Councilor Carroll asked if leachate waste was equivalent to bio-solids, and there was discussion about this. She noted Wastewater Treatment Plant wastes were sometimes made available, but it was being found that they sometimes includes heavy metals and other substances that weren't wanted, especially in these kinds of areas.

Administrator Selig said the current descriptions in the Ordinance were unclear, and that it would be good for the Planning Board to clarify this.

It was agreed this should be done.

Councilor Kraus suggested that on page 10, under 175-.75.1. H, the language should say "...but no greater than 50 feet of frontage may be used for a boat dock or ramp...". He also asked if the Ordinance said anything on how far a pier could project from the shore.

Administrator Selig said he believed it was 100 ft., and said this was regulated by the state.

Councilor Kraus noted the language "the facility shall comply with all applicable federal, state, and local requirements."

It was agreed that the language Councilor Kraus had mentioned should be clarified.

Councilor Julian Smith noted language on page 6 "All land, buildings, and structures to be used...", and asked how "land" could be in accordance with dimensional standards. He said he didn't know what this meant, and said something more precise than land should be used.

Mr. Campbell noted that one could alter land by adding fill. Councilor Carroll suggested the following wording "all land to be used...needs to be in accord with dimensional standards..."

Councilor Julian Smith suggested the following wording: "All land to be used, and all buildings and structures to be erected, altered and enlarged..."

Other Councilors agreed with this language.

Councilor Julian Smith said that on page 5, 175-72.A.6 "Outdoor recreational facilities not involving the construction of buildings or other structures" was ambiguous and sounded like the facilities themselves were involved with the construction of buildings. He said he thought what was meant was outdoor recreational facilities that did not require the construction of buildings..."

Councilor Niman said perhaps Councilor Smith's concern was that this provision would preclude having baseball fields with dugout structures, and would preclude snack bars.

Mr. Campbell said the provision was meant to exclude these things within the shoreland zone.

Councilor Van Asselt noted that some of the shoreland area in Durham was owned by UNH, for example Jackson's Landing, and the area near Pettee Brook, and he asked if it was the case that the shoreland overlay provisions did not apply to these areas.

Mr. Campbell said that was correct.

Councilor Van Asselt said the question then was what the Town could do about that.

Administrator Selig said under state statute, if there were a substantial change in use, the University was required to come to the Planning Board for an advisory consultation. He said the way to address this was to change the state statute. But he said the University was presently looked at as a subsection of state government, so was exempt from local zoning.

Councilor Van Asselt asked if was conceivable for the Town to take this issue to the state that it was concerned about what would happen as the University developed around areas like Pettee Brook.

Mr. Campbell noted that a few years back, the NH Municipal Association committee he was appointed to introduced a change to a bill that would have required the University to adhere to Durham's Ordinances. He provided details on this.

Administrator Selig said this had followed on the heels of the Moore Field issue, but said the legislation was either not introduced, or did not pass. He also said that the committee Mr. Campbell had been on had watered down the language somewhat, because it was felt that Durham's concerns weren't felt by other communities. He said the Town would now have to develop legislation on its own concerning this issue, and would then have to get consensus from other legislators to support this legislation.

Mr. Campbell made note of the fact that the University had been taking a lot of measures to clean up Pettee Brook, through Doug Bencks' planning office, and through the NH Office of Sustainability. He said he thought it would be worthwhile if the Town kept up the pressure that these kinds of steps should be taken, and for the University to show the Town when it had an application that it would meet the shoreland setbacks, and was trying to have a minimal effect on Pettee Brook and other areas.

Councilor Julian Smith asked if this meant that the University might restore the channel of College Brook, under the parking lot. He noted that College Brook was put in a culvert many years ago.

Mr. Eyerman said this issue was not unique to Durham. He noted similar situations where special authority was created which provided some kind of middle ground, where regulations could be created for an entity like the University, yet it could avoid being held hostage to "parochial local interests".

Councilor Van Asselt said people had spent a lot of time on the Ordinance, but he asked what it really meant when the University existed in Durham. He said the Council should bring this issue up in January or February when it developed its work plan.

Councilor Julian Smith noted there were some punctuation errors in Section C, and Councilor Niman recommended that Councilor Smith provide his corrections to Mr. Campbell and Mr. Eyerman.

Councilor Niman recommended that the Planning Board review the changes the Council had requested, concerning the frontage language and bio-solids, and develop a list of these changes.

Mr. Campbell asked if the frontage comment provided by Councilor Kraus was considered a minor substantive change, and suggested that if it was, the Council could make this change on its own and the Planning Board therefore wouldn't have to look at it again.

It was agreed that this made sense.

Section #2005-06 (D) - Relative to the Wetland Conservation Overlay District

Mr. Campbell noted something that had come up recently concerning this section, which the Council should remand back to the Planning Board. He said the Wetland Overlay provisions didn't have a setback requirement of 125 ft. for septic systems. He explained that septic system regulations were created for the Ordinance in 2004, but said this applied only to new subdivisions and not to existing lots.

Councilors agreed this would be a welcome addition, and should be remanded back to the Planning Board.

Administrator Selig noted the definition for somewhat poorly drained soils, and asked if this was now the correct definition.

Mr. Campbell said it was, and explained that the definition in Section A had been changed to match this one.

Councilor Van Asselt asked what it meant to a landowner to talk about somewhat poorly drained soils in the wetland overlay district.

Mr. Campbell said they were soils that were marginal, and provided details on this. He said the Planning Board had proposed a change to the Ordinance to allow these soils to be counted toward usable area, but in response to comments by the Council, had changed this back. He said these soils would therefore be taken out of usable area calculations, and said there would also be a setback from these soils.

Councilor Morong asked if it was fair to say that Durham was not the only community that was concerned about these marginal soils.

Mr. Campbell said that was fair to say, and said every year there were more.

Councilor Carroll said the Council had adopted the framework of being more cautious about soils. She noted they could always let up on this in the future, but said it was very hard to do the reverse.

Councilor Niman said he hoped they weren't going to re-debate the soils issue right now, and could focus on the content of the Wetlands Overlay District provisions.

Councilor Kraus noted concerns in Town about exceeding tree cutting limits, and said he saw that under 175-60.A - Permitted Uses on page 5, #5 referred to the removal of dead, diseased or fallen trees. He said page 11, under 175-65.D regarding performance standards for timber harvesting, it referred to removal of dead or diseased trees, and didn't say anything here about unsafe trees. He asked who it was that made the decision about unsafe trees, noting when property owners made this decision, it sometimes made other persons who saw this going on quite upset.

Mr. Campbell said this did happen. But he said the Town was usually made aware of tree cutting by a neighbor, and it then became an enforcement issue for Mr. Johnson. He said a cease and desist order could be issued, and if it turned out that a tree was cut that wasn't supposed to be cut, a person could be required to replace it. But he said it was hard to prove the tree had been diseased. Mr. Campbell said that before cutting trees in the Wetland Overlay District, landowners should contact Mt. Johnson.

Councilor Carroll asked if someone wanted a variance for anything relating to the Wetland Overlay District, if he had to go to the ZBA for this, and Mr. Campbell said yes.

Councilor Carroll said it was difficult as a citizen to read the newspaper and see how many wetlands were continually being destroyed. She said it was wonderful to have zoning like this, but said she hoped that in the future there would be even more ways to protect wetlands.

Councilor Carroll asked if these restrictions applied to both conventional and conservation subdivisions, and Mr. Campbell said yes, they applied to all subdivisions.

Councilor Niman summarized that the Council would remand to the Planning Board that there should be a 125 ft. septic setback requirement for the Wetland Overlay District.

Section #2005-06 (E) – Relative to the Aquifer Protection Overlay District

Mr. Campbell noted language on page 5, under 175-86.E Prohibited Uses, under #11 "Dumping, spreading or any other application or use of treated soils or sludge from sewage treatment plant", and asked if this was the kind of language Councilor Carroll was looking for to include for the shoreland zone.

Councilor Carroll said yes.

Councilor Kraus asked what was meant under 175-86.C Site Drainage "...holding pond must be located down the potentiometric gradient ...". He said if "potentiometric" was not defined somewhere, there should be an explanation in parentheses as to what it meant.

After Mr. Eyerman assured the Council that "potentiometric" was the right word, it was agreed that the Planning Board would either define it or explain it.

Administrator Selig noted the previous discussion on sludge concerning the shoreland district. He said under the Shoreland Overlay District provisions, 175-73-1 j dealt with the disposal of septage or other liquid or leacheate wastes, while the Aquifer Protection Overlay provisions had a definition for leachate wastes. He said this issue might therefore be addressed already.

Councilor Morong MOVED to adopt Section #2005-06 (E) – Relative to the Aquifer Protection Overlay District. Councilor Kraus SECONDED the motion, and it PASSED unanimously 6-0.

Section #2005-06 (F) - Relative to the Historic Overlay District

Councilor Julian Smith said he had developed a list of suggestions concerning this, some of them minor, and some that provided significant clarification. He provided copies of this list to Councilors.

Councilor Niman asked if Councilor Smith could identify which were the substantive changes so they could focus on those.

Councilor Smith noted that on Page 8, 175-91.A.5 – Planning said "Prepare historic resources components of local master plans and ensure that historical resources are considered at every level of local decision-making." He asked whether instead, this should say "...and ensure that impacts on historic resources are considered..." in order to consider historic resources separately from impacts upon those resources.

Councilor Morong said he thought consideration of impacts was implicit in this wording, and Mr. Campbell said he agreed with this.

Councilor Julian Smith noted a non-substantive change on page 10, and asked when and where these changes got made. There was discussion on this.

Councilor Van Asselt noted that on page 9, under 175-91.A.15 concerning Heritage Commission. He said there was some concern that the Commission would have powers to do things outside of the Historic District, and said this was not the case at all. He said the Heritage Commission was set up, as part of the Historic District Commission, to work throughout the community on historical buildings. He said it was important that people understand this.

Administrator Selig said that when there had been discussion about creating a kiosk downtown beyond the Historic District, there was concern about whether a modern design for it would fit with the historic character of the area. He said this would be the kind of thing it would be natural to consult with the Heritage Commission on.

Councilor Van Asselt also noted the demolition by neglect provisions, and said the bottom line was that these did not have regulatory authority, but simply encouraged property owners to improve the appearance of some of the buildings in the Historic District.

Mr. Campbell said he thought the provisions went a step further than this, and noted that page 22 said that "In the event that a building owner fails to comply...". He provided details on what these provisions meant, explaining that if a building owner refused to comply, the Code Enforcement officer may notify the Town Administrator and Town Council, who may authorize the Town to fix the building, and put a lien on the property for the cost of the improvements.

Mr. Campbell said that as originally written, the HDC was going to have the authority to do this. He also noted the wording said "may", and not "shall", which left it up to the Council whether this would happen. He also said there were some waivers and consideration for hardship cases.

Councilor Niman asked if this only applies to the neglect provision. He noted the issue he had previously raised that if he owned a building in the District, that needed painting, and he wanted to put up vinyl siding, he could do this. He said he didn't see anything in this Ordinance that said under those circumstances he had to do anything other than consult with the HDC.

Councilor Van Asselt said Mr. Campbell was saying was that Mr. Johnson could take this to Administrator Selig and to the Council.

Councilor Niman said if his building was falling apart, and he wished it to fall apart because he wanted to construct something modern on it, he couldn't simply let the building fall apart. But he said he wasn't talking about a situation like this, and was talking about a situation where he was tired of painting his building, or wanted to put in off the shelf windows that didn't look historical.

Councilor Julian Smith said he believed that page 12, under 175-94.A.1. covered "Activity affecting the exterior architectural appearance of the property including...". He said vinyl siding would affect the exterior architectural appearance of a property, unless it was designed to look like the old siding. But he also noted there was a provision in the Ordinance that a property owner couldn't build something designed to fool someone into thinking it was historic.

Mr. Campbell noted the language under 175-96.B on page 19, Elements of design, #3 on Proportions, #8 on Materials addressed this. He said the question was whether this addressed what Councilor Niman was speaking about.

Councilor Morong noted that the Town's parking regulations were specific as to what the penalty was if one didn't comply with them. He said he didn't see that concerning this issue.

Councilor Niman noted it only said this concerning demolition by neglect, and said he wondered if this applied to this issue he had been speaking about.

There was additional detailed discussion about the demolition by neglect process. Councilor Van Asselt asked who made the decision about the standard that applied.

Mr. Campbell said it was the Historic District Commission.

Councilor Van Asselt asked what happened if the owner said he still wouldn't meet the requirement.

Administrator Selig and Mr. Campbell noted that page 16 said that enforcement of the provisions for the Historic District Overlay would occur as provided for in Article III, Administration and Enforcement in the Zoning Ordinance.

Councilor Carroll said she hoped that people buying in this district understood they were buying a house with these restrictions. She said it seemed unfair to the community if owners stepped forward afterward, and said they didn't want the restrictions to apply.

Councilor Kraus said one of the things the Council should appreciate was the importance that there be a balance of people on the Historic District Commission, and not just zealots, so there was some flexibility in terms of meeting the requirements. He noted there were often terrific difference in the cost of some of these things, so there should be some understanding of that.

He also said he felt the map that had been provided as part of the Historic District Overlay provisions was incorrect, and needed to be done better.

Mr. Campbell said the GIS person was developing a spectacular map that would be much better. He acknowledged that the old map was very hard to read.

There was additional discussion on this.

Mr. Campbell noted that page 11 said that if there were any inconsistencies between the map and the listing of map and lot numbers, the latter would prevail.

Councilor Van Asselt noted there had been discussion of expanding the Historic District. He said the lines as presently drawn didn't make a lot of sense, pointing out for example that they went through the middle of a building.

Mr. Campbell explained that the Planning Board would work on this as part of the update of the Master Plan. He said the 2000 Master Plan didn't get into a lot of detail on this, and said the Planning Board's concern had been that the HDC wanted to expand the District, yet there was nothing to back it up. He said the Board had gone through the exercise of looking at the proposed expanded district, and going through the criteria for designation, to see how this worked.

Councilor Van Asselt noted that this wound up taking over the ORLI District.

Mr. Campbell said the Planning Board decided to keep the district boundaries as they were for the present time, and that it would be happy to work with the HDC to come up with an expanded district.

Councilor Julian Smith said he had passed on his list of suggested non-substantive changes to Mr. Campbell. He also noted that on page 13, under 175-94.A.10, most of the language indicated things that were not required, yet this was listed under a heading 175-94.A. concerning things that were required. He suggested that #10 be turned into a paragraph without a number, and included at the bottom of the list of required things.

Councilor Niman said this made a lot of sense. There was discussion about where this language could be placed.

Councilor Kraus noted Councilor Julian Smith's list of comments concerning page 20 of the Ordinance, that there should be a prohibition on barbed wire and razor wire fences. He said he would not find this appropriate, and said he believed there might be other regulations in Town relative to this.

Councilor Smith said he made this suggestion because chain link fences were prohibited, so why not prohibit these as well.

There was discussion about this, and that these fences didn't really apply to Durham.

Councilor Morong said he was very happy that Councilor Julian Smith had taken the time to make these grammatical corrections, and would be happy if these were given to Mr. Campbell. He said it would be a better document because of the corrections.

Councilor Niman said he agreed this should be done, with the exclusion of barbed wire and razor wire fences.

Administrator Selig said he was not sure that all of 175-94.A.10 on page 13 could be made into a separate paragraph. He provided details on this, and suggested that the Planning Board give more thought as to how to address this.

Council members agreed with this. There was discussion on this.

The Council agreed Section F should be remanded back to PB to make this and other changes.

Administrator Selig said that under #9 on page 13, it was important to note that Town properties would be required to comply with the Ordinance, unless this was overridden by a 2/3 vote of the Council. He said he didn't have a problem with this, but noted that in most of the other districts, the Town would be exempt unless it chose to comply.

Councilor Niman asked where this came from.

Mr. Campbell noted this Ordinance had already been drafted when he came to work in Durham, and said he was not sure it was already in there at that time, or not.

Councilor Van Asselt said that the HDC had recently thought this was a good idea, but was not sure where it had come from.

Councilor Niman said he was not happy with this provision, and asked if he was the only Councilor who felt this way. He said if the general policy was to exempt Town properties, why make an exception in this instance.

Councilor Van Asselt asked why the Town shouldn't be encouraged to treat this corner historically, when asking others to do so. He also noted that the Council could override this.

Councilor Kraus said the best government policy was for the Town to follow the rules that others followed. He said this provision seemed to say this, with an escape clause.

Councilor Niman said if other Councilors were happy with provision, it was fine with him.

Councilor Niman summarized that the Planning Board would work out how to handle 175-94.A.10, and would also address the minor changes recommended by Councilor Julian Smith.

Section #2005-06 (F) - Relative to the Personal Wireless Facilities Overlay District

Councilor Van Asselt asked if the way this was written, it avoided the "not in my back yard" issue that recently came up concerning the proposed cell tower in the Simon's Lane area.

Mr. Campbell said it didn't, but the Planning Board was trying to minimize the potential for this issue as much as it could. He provided details on this, and there was discussion about this. Mr. Campbell said part of the change was trying to discourage these facilities from locating in neighborhoods, by asking them to look elsewhere first, and if they couldn't find a commercial location, to then come back to the Board.

There was detailed discussion concerning language under 175-101 A.

Councilor Niman said if he provided empirical evidence that cell towers caused a reduction in the value of nearby houses, or that there would be radio frequency or noise impacts, if these were legitimate reasons why a cell tower should not be located in a certain location.

Mr. Campbell said yes, but said that aesthetics was not considered a legitimate consideration.

Councilor Kraus noted the Ordinance said that in no case could a PWSF be located in a designated conservation area. But he said such a conservation area might be located far from back yards, and if the tower was camouflaged a bit, this didn't make sense.

There was discussion about this. Councilor Kraus said this might need to be remanded back to the Board.

Mr. Eyerman said it was important that the Council understand that the proposed changes to the Ordinance tried to encourage people to use alternative tower structures. He said the Ordinance put the burden on the applicant to say it had looked at these first, and only allowed the applicant to use a conventional tower if there was no alternative.

He also noted the provisions in 175-101 E. concerning Location for Ground Mounted Facilities concerning this, which asked the applicant to show that a residential location was the location of last resort.

There was discussion about the appearance of cell towers.

Councilor Julian Smith noted the jargon of “alternative cell towers”, and said he hoped they could find an alternative phrase for this. He also noted that the terminology of “innovative siting techniques” had nothing to do with appearance of a cell tower, and said the phrase should actually be “innovative disguising techniques.” He provided details on this.

Councilor Smith said he hated the phrase “human made trees” and would prefer something else, perhaps artificial tree. He also said he didn’t like the term “Alternative design mounting structures”.

Councilor Niman suggested that Councilor Smith could work out t more appropriate language with the Planning Board.

Councilor Niman said he wanted to be sure this Ordinance was not a lawsuit waiting to happen, noting that there seemed to be a lot of discretion in the phrase “locations that do not adversely impact residential neighborhoods...”. He asked for further clarification on this, and also asked what “reasonable technologies” meant, noting what might seem reasonable to the Town might not seem reasonable for a cell phone company. He noted that these companies had fairly deep pockets

Mr. Campbell said he would prefer that that language be taken out.

Councilor Niman said he thought “adversely impact” needed to be defined. He also asked that the Planning Board check to see that there wasn’t any other language in the Ordinance that was subject to interpretation.

Councilor Van Asselt asked if Mr. Campbell could indicate, on a map, areas in Town where these facilities would not be located.

Mr. Campbell indicated these areas – the wildlife corridor areas, the Historic Overlay District, the Aquifer Protection Overlay District and the Shoreland Overlay District.

Councilor Morong asked what the rationale was for not allowing cell towers in the Aquifer Protection District.

There was discussion about this. Mr. Campbell said there could be concern about the fuel supply for the generators at the facility.

Councilor Van Asselt said that based on the map, one could probably put these facilities in areas of Town that would not impact any of the residential neighborhoods. He said perhaps they might have to sacrifice a bird nest instead of someone's backyard, and asked if there was a way to mitigate the location of these facilities in residential neighborhoods.

Mr. Campbell said part of the equation for some of the providers was capacity issues. He noted there might be 10,000 students downtown with cell phones, so the facility had to be located near there to meet this capacity as much as possible. He also said there was a list of 35 appropriate locations in Durham for locating cell towers, and said the cell phone companies were hitting all of them.

Councilor Van Asselt said that in other words, there was a consumer driven interest in using cell phones, so neighborhoods better have a cell tower.

Mr. Campbell said that's what every cell company would say.

Councilor Kraus said in theory, the University could put cell facilities on their buildings, and the Town couldn't do anything.

Mr. Campbell noted that the Planning Board had just approved an application from Verizon for such a location. He said it had to meet the Town's Ordinance, even though it was on a University building.

There was discussion about whether it was worthwhile to raise the issue of allowing cell towers in conservation areas, etc.

Mr. Campbell said it was the companies that were saying putting them in these outer locations wasn't going to do them any good.

Councilor Carroll said there were enough pressures on conservation areas already, and they were probably the wrong locations anyway. She said what might save the Town in the long run was changes in technology, noting that the facilities were getting smaller. She also said it was important that when the present towers weren't needed anymore, they should be taken down.

Mr. Campbell summarized the changes the Council was asking for, that "adversely impact" be more clearly defined, and that the word "reasonable" be removed from 175-101 F.

Councilor Van Asselt asked if passage of any of the Sections by the Council required a simple majority, and was told yes.

X. New Business (9:00 PM)

Discussion on Section B.

Mr. Eyerman reviewed the memo he had developed concerning Section B, where the comments of the Town Council had been summarized. He said they had been divided up into 3 areas, and provided details on this.

Councilor Carroll noted the Council had taken a vote to prohibit theaters in the Courthouse District, but this was not listed in the memo. She suggested this be remanded back to the Planning Board.

Councilor Niman suggested use of the word “believes”, as compared to “feels” throughout the memo.

Councilor Kraus said it was important that these items reflect the intensity of the Council, in some cases, on a particular issue.

Councilor Carroll noted concerning the last sentence of C. at the bottom of page 1 that the impervious surface ratio was one of the things that prompted this. She also said it was fine to see if there was more rationale for this that the Planning Board could provide, but said she didn’t think the strong consensus of the Council had been to change this.

Councilor Niman agreed there was no strong consensus to change the Ordinance concerning this, but he said some Councilors had asked for a rationale for it, and that if there wasn’t one, there needed to be one., and if wasn’t one, need one. He said that was what he was looking for.

Mr. Eyerman said that was what the memo said.

Councilor Van Asselt said he agreed there was not consensus on this issue, but said there was concern that the 50% requirement did not overlap with other requirements, so that the open space could wind up being more than 50%. He asked Mr. Campbell if he had interpreted the comments on this in that way, and Mr. Campbell said he did.

Councilor Niman asked if it was enough for the Council to now say this summary was ready to pass on to the Planning Board.

Councilor Kraus said the substance of the document was fine, and suggested that the changes that had just been suggested should be made to clean it up a bit.

There was discussion about what the schedule now was for completing the review of the proposed Zoning Ordinance amendments.

Mr. Campbell said the Planning Board had already discussed and held a public hearing on changes to Section A, and had forwarded these on to Administrator Selig. He said the plan was to bring these back to the Council for the December 5th Council meeting. He noted the Town Attorney had recommended that there be another hearing on the changes to Section A.

There was additional discussion on the schedule for finishing up the process. Administrator Selig said the Council had reserved December 28th and 30th for possible meeting on the Zoning Ordinance. There was discussion on this, and it was agreed that these dates could be released.

Councilor Van Asselt asked if the Council would vote on each of the Sections separately, and Councilor Niman said yes.

XI. Nonpublic Session (if required)

None

XII. Adjournment

Councilor Van Asselt MOVED to adjourn the meeting. The motion was SECONDED by Councilor Morong, and PASSED unanimously 6-0.

Adjournment at 9:20 pm

Victoria Parmele, Minutes taker