

This set of minutes was approved at the August 21, 2006 Town Council meeting.

**DURHAM TOWN COUNCIL
MONDAY, JULY 3, 2006
DURHAM TOWN HALL – COUNCIL CHAMBERS
7:00 PM**

MEMBERS PRESENT: Councilor Morong; Councilor Peter Smith; Councilor Needell; Councilor Van Asselt; Chair Pro Tem Carroll; Councilor Julian Smith; Councilor Catherine Leach; Councilor Henry Smith

MEMBERS ABSENT: Chair Niman

OTHERS PRESENT: Town Administrator Todd Selig; Business Manager Gail Jablonski; Town Planner Jim Campbell

I. Call to Order

Chair Pro Tem Carroll called the meeting to order at 7:02 PM.

II. Approval of Agenda

*Councilor Needell **MOVED** to approve the Agenda as submitted. The motion was **SECONDED** by Councilor Morong, and **PASSED** unanimously 6-0 (Councilors Leach and Van Asselt had not yet arrived).*

III. Special Announcements

- Administrator Selig said the annual fireworks celebration would be held the following day, and he provided details on what was planned. He said the celebration would be postponed to July 5th if there were a storm.
- He said the Packers Falls Bridge had been re-opened to travel, noting that the railing system was nearly completed, and said the pedestrian railing for the walkway was still to be completed. He said informal feedback on the bridge had been very positive, and he thanked all those who had been involved in the process.
- He said the Town had made arrangements to install a temporary Bailey bridge on top of the existing span on the Wiswall Bridge. He said it was expected that NHDOT engineers would be on site within about 2 weeks, and said the installation process would take about 5 weeks. He noted that the engineers doing work on the Wiswall Dam would do some test borings, as information that could be used in future repair or replacement of the bridge

IV. Approval of Minutes

June 5, 2006

Page 2, 3rd paragraph under Reports of Councilors, should read “Chair Pro Tem Carroll suggested using air conditioning in the Council chambers only when necessary, and otherwise to open the windows, which were all equipped with screens.”

Page 6, 4th paragraph from bottom, should read, “...other vendors were charged fees for...”

Councilor Needell MOVED to approve the June 5th, 2006 Minutes as amended. Councilor Peter Smith SECONDED the motion, and it PASSED unanimously 6-0-2, with Councilor Henry Smith and Councilor Leach abstaining because of their absence from the June 5th meeting.

V. Reports and Comments of Councilors

Councilor Needell noted a recent Planning Board quarterly planning session on the Zoning Ordinance provisions related to timber harvesting and forested buffers in the wetland and shoreland overlay districts. He said the discussion on this topic would be continued at the next meeting.

He said there would be a hearing at the next Planning Board meeting on the idea of changing mixed residential/commercial uses from a permitted use to a conditional use in the Professional Office district.

Councilor Needell said that on July 19th, the Board would re-convene the Zoning Rewrite subcommittee to begin looking at a laundry list of suggested Zoning changes.

Councilor Henry Smith said he had attended the recent DCAT meeting, and noted that Tom Merrick was elected Chair of the DCAT committee. He said there was discussion as to whether a video was available on the spring cleanup session. He also noted there was a video available on the recent flooding situation in the Town. He said a member of the public had asked how residents could see other board meetings, such as Conservation Commission meetings, on DCAT. He said there was also discussion on membership opportunities on the Committee.

Chair Pro Tem Carroll said the Town welcomed people who wished to serve on DCAT and other Town committees, and also said residents were welcome to attend the various board meetings. She also noted that the spring cleanup forum would be rebroadcast on DCAT.

Administrator Selig reminded residents that dog licenses were due.

He also stated, as a follow-up to the public concerning the Wednesday Hill Road/ Packers Falls Road safety issue that the Traffic Safety Committee had recently discussed this issue, and would be going to the site itself to discuss the matter further. He said a recommendation would be developed based on this further study.

Councilor Henry Smith agreed that this road did present a hazard.

Councilor Julian Smith commended the Public Works Department for the fine work that had been done on the changes to the bridge at Packers Falls. He noted he had heard comments from many people who were happy with the bridge. He thanked resident Dick Lord especially, for the fine work he had done documenting the changes to the bridge, and for sharing this with people in Town, including posting photos of the bridge on the Town web site.

He said he was confident that the Bailey bridge for the Wiswall Bridge should go forward smoothly, given this. He said he hoped that a group of neighbors of the Wiswall Bridge and others would soon have a group that would be ready to study the design of a new bridge within the next 5-6 years.

Councilor Needell noted that the Council had previously discussed the idea of the removal of the western span of the Wiswall Bridge.

Administrator Selig said the Public Works Department had looked at NHDOT's schedule, and how long this kind of work would take. He said it was determined there would be a 5 week wait, which would have pushed the installation of the Bailey bridge back. He said NHDOT engineers had come up with a solution regarding the western span that they could do themselves, and he provided details on this. He said the repair wouldn't provide enough support to allow cars on the bridge, but should prevent the bridge from collapsing, even if there were rushing water.

Councilor Henry Smith provided details on a recent event he had attended, along with other Durham residents, to celebrate the opening of the new Great Bay office of the Nature Conservancy in Newmarket, which included significant expansion of its Lubberland Creek Preserve. He noted that the project was made possible in part by a grant from Lowe's Charitable and Educational Foundation.

Chair Pro Tem Carroll said she too had attended the event, and said it was a wonderful day and a beautiful spot, and said it was good to know it would be available for the future.

Chair Pro Tem Carroll also thanked Dick Lord for keeping the Town up to date on the work on the Packers Falls Bridge.

VI. Public Comments

Luci Gardner, Chair of the Library Board of Trustees, said she had read the space needs report on Town Hall. She said the Trustees had discussed the possibilities, and said they were in favor of a joint Town Hall/Library building, and said all of the emails the Trustees had received from the public on this topic had been supportive.

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

Shall the Town Council award the proposal for a financial software package to MuniSmart Systems, LLC for an amount not to exceed \$90,000 as recommended by the Business Office?

Councilor Peter Smith asked that this matter be taken off the Unanimous Consent Agenda. He said this was a matter of considerable importance, and said it would be useful if the Town's Business Manager could provide some brief comments to the public on it.

Gail Jablonski explained that the current system was an MSDOS system, and said a more sophisticated, windows-based system was needed. She said a lot of research was done on what kind of system was needed, and it was determined that the MuniSmart system would provide the most support for the Town.

Councilor Peter Smith asked Ms. Jablonski to briefly describe the elements of the system, and she explained the various modules for motor vehicle licensing, property taxes, etc. She said there were 20 modules to start with.

Chair Pro Tem Carroll noted that the project would be coming in \$30,000 under budget.

There was discussion that an additional \$10,000 needed for the project would not have to come back to the Council for approval.

Councilor Peter Smith MOVED that upon the recommendation of the Town Administrator, the Town Council hereby awards the purchase of a Financial Software Package to MuniSmart Systems, LLC of Dover, NH for a cost not-to-exceed \$90,000; to be paid from Capital Fund Account #07-4300-2001-999-03. Councilor Henry Smith SECONDED the motion, and it PASSED 7-1, with Councilor Van Asselt voting against it.

VIII. Presentation Items

Report on the Space Needs Assessment prepared by Sumner Davis Architects, Inc. as it relates to the Durham Town Hall and Durham Public Library – Kelly Davis, Sumner Davis Architects, Inc.

Administrator Selig provided background on the development of the report. He explained that 3 years ago, the Library Board of Trustees had come up with a concept for a library on the Town Hall's site, and said the concern at the time was whether there would be sufficient parking. He said it had been determined at that time that there was not. He said since that time, the Trustees had created a site selection committee.

He said he had decided it would be useful to look at the idea of a joint facility, including whether as part of this the existing Town Hall structure should be demolished. He said he thought such an analysis could also look at the deficiencies of the Town Office building, and provided some detail on this.

Kelley Davis, Sumner Davis Architects, Inc., said when he met with the Public Works Department, he was asked to look at the existing Town Hall, and talk with staff to review the deficiencies in the building. He said he was also asked to look at the needs of the library. He noted that a needs assessment had been done in 2002 for the Library, and said that from that report, a set of drawings was done in 2002. He said he had used these drawings as the basis for the square footage numbers in the report.

He said he had also met with the Public Works Department and Administrator Selig to look at the site plan information done by Public Works for this site. He said he had come up with the maximum footprint one could get that would keep the existing number of parking spaces, and said from that, he had created a dual purpose building, with the Library needs on one side, and the Town Hall needs on the other, as well as a shared central core.

He said this central core would be beneficial because it would include common central spaces like bathrooms, circulation corridors, meeting rooms that could be used in common, which would save money on square footage.

Mr. Davis provided details on the concept of a joint facility, including the fact that it would have a full first floor, a full second floor, a basement, and a third floor built into the roof structure so that the building wouldn't be too high. He said 4-5 renditions had been developed and sent back and forth to Town staff.

He noted that a formal site plan had not been done yet, and would be a further step in terms of seeing what such a facility would actually look like. Mr. Davis said he felt that keeping the existing Town hall could work, as part of the combined facility, but noted the deficiencies of the building, including old mechanical systems.

There was discussion that this was a concept that could be taken to another site than the Town Hall site.

Councilor Henry Smith said some deficiencies in terms of safety in the existing Town Hall building had been noted in the report, and asked for clarification concerning this.

Mr. Davis said some Town staff had said they would like to see some kind of separation from the public. He noted that a lot of communities were more security-oriented now.

Administrator Selig provided details on concerns some staff members had expressed in terms of having more privacy and safety at the Town Hall. There was discussion about what kind of separation might be developed.

Councilor Needell noted the largest common space that was proposed in the new design, and said the expectation had been that there would be a larger meeting space of some kind. He asked if this had been taken out of the picture.

There was discussion about this. Administrator Selig said the focus on looking at a possible joint facility was to look at something that would be within the Town's means, and would be the minimum that the Town would need.

Mr. Davis said the desire to be able to fit a building of a certain size on the site was part of the considerations on this.

Councilor Needell asked how many people would fit in the smaller conference rooms that were proposed in the preliminary design, and was told about 20 people would fit in one of these rooms.

Tom Madden, Director of the Durham Public Library, provided suggestions on how the proposed meeting rooms could be used by the Library and the Town.

There was additional discussion on the space needs for meetings.

Councilor Van Asselt said a dual facility was an interesting concept, but he asked if there would really be the savings anticipated as a result of the central shared core.

Mr. Davis provided details on where the savings would come from as a result of the shared space. In answer to a question from Councilor Van Asselt as to whether there were savings from having shared infrastructure, Mr. Davis said he hadn't done a cost estimate of this, and said the next step would be to do a feasibility study to come up with these kinds of costs.

Councilor Peter Smith said he assumed that the concept of cost savings applied to the pieces of the project that were shared, said there appeared to be a sufficient mass of commonality to be able to make the statement that there would be cost savings. He asked if there were examples of towns in New Hampshire where there were town-built buildings that served two purposes, specifically a library and a town hall, and how this had worked out.

Mr. Davis said he had not seen this, but said there were many municipal buildings that shared two functions.

Councilor Peter Smith asked Mr. Davis for clarification of what the parameters of his exploration concerning the idea of a joint facility in Durham had been.

Mr. Davis said he was originally asked to look at Town Hall space needs, then was asked to look at library needs, and whether a library could fit on the Town Hall site. He said the essential intent was to determine whether both facilities could fit on the site, including the parking that would be needed.

Chair Pro Tem Carroll asked if Ms. Gardner wished to comment concerning the idea of a dual facility.

Ms. Gardner said she had presented to Town Administrator Selig and Chair Niman an extensive list of combined Town offices/libraries around the State. She said there were a significant number, and also said there were a number of communities where there were semi-detached town hall/library facilities. She noted a dual facility in Seabrook, which had a substantial amount of square footage at a relatively modest cost, and describe other facilities in Newcastle and Stratham.

Councilor Leach asked about the issue of safety in these kinds of shared buildings, and there was discussion about this.

Councilor Van Asselt asked if there was any way to accommodate both a Library and a Town Hall as part of a renovation of the Town Hall building.

Mr. Davis said anything was possible, and described some possible ways that this could be accomplished. In answer to a question from Councilor Van Asselt as to whether rehab or new

construction would be more expensive, Mr. Davis said this depended on the particular project and building type. He said he was hesitant to discuss costs until a feasibility study was done.

Councilor Morong said assuming that with a combined facility, the existing Town Hall building would have to be torn down, he wanted to know what other towns did to keep things running when their town hall was gone.

There was discussion about this, and about the fact that this was part of the cost of doing such a project.

Councilor Julian Smith asked if there had been any discussion on building a combined facility further back on the site, and parallel to Schoolhouse Lane. He said this would mean the existing Town Hall building could be left in place until the new building was finished.

Mr. Davis said although this was an excellent suggestion, there had been discussion of the importance of keeping the building close to the front of the lot so it would be more visible, as a civic building. He said that from an architectural perspective, although the building could be placed somewhere else on the lot, in terms of civic architecture, he recommended placing it on the front portion of the lot.

Councilor Henry Smith said it would be ideal to have a library facing the road, with parking in the back.

There was discussion of other possible scenarios for constructing a building while still having use of a facility for the Town offices.

Councilor Van Asselt asked where things went from here.

Administrator Selig said it had been helpful to get an impartial look at the situation. He said it was now known that it was possible to do a combined facility on the site. He said he had also wanted to be sure there was a portable plan, if it was decided that a joint facility should be built somewhere else in Town.

He said there were more benefits from a combined facility than just the cost issue of combining facilities. He noted the economies of scale regarding mechanical systems, and also said there would be other benefits resulting from the fact that the two uses were combined. He said the prediction was that there would be dramatic increase in people using the library, and also said it would be great to have the facilities together because of the linkage of the services provided by each. He provided some examples of this. He said there also could be savings in terms of staffing, noting there might be a centralized reception area.

Administrator Selig said that previously, the question of whether such a facility could fit on the Town Hall site seemed to be holding the project back, but said they now had the answer that it could fit. He said there was more work to be done, but said the report had helped answer some basic questions.

Councilor Peter Smith said he was not inclined to get into the issues much deeper that evening, but said at this point, he was not convinced that an appropriate facility for the Town government

and the library could be produced on this site. He said it was important to be realistic, and said he didn't see this report as doing more than the consultant was asked to do.

Councilor Henry Smith said he agreed that this was a work in progress.

Councilor Leach said there was a work session scheduled for August 28th on the library, and said perhaps the Council should think about how to use this report as a starting point at that meeting. She said they should also make sure there was a plan in place to make this a really productive meeting.

There was discussion about this, and also about a comment made by Chair Niman quoted in the papers that there were other sites in Durham where a combined facility could be located.

Administrator Selig noted that the report was available on the Town website. He stressed that this was simply a basic study, intended to answer some basic questions, and could be used to consider the next steps that should be taken.

Councilor Needell noted for people who might see the report on the Town website that it was not a proposal for the facility, and was a fact-finding exercise.

Councilor Van Asselt asked if the site had been surveyed, and was told it hadn't been done yet. He said this might be a good first step, before talking further about this corner.

Councilor Julian Smith said concerning the size of a large public meeting room that it was estimated that the common meeting room could be 880 sf whereas there were currently 760 sf. He said there were a number of possible ideas on how to provide more usable space in a meeting room, including having a smaller Council table or a removable table. He said the devil would be in the details. There was discussion about this.

Chair Pro Tem Carroll thanked Mr. Davis, the Library Board of Trustees, and others for being present to discuss this issue. She said the report had generated a lot of discussion, and had gotten things moving.

Recess from 8:30-8:41 pm

IX. Unfinished Business

A. PUBLIC HEARING ON AND ADOPTION of Planning Board amendments to ORDINANCE #2005-06 (F) adopting the proposed revisions to Ordinance #2005-06 relative to the Historic Overlay District of Chapter 175 "Zoning" of the Durham Town Code

Councilor Morong MOVED to open the public hearing on the Planning Board amendments to ORDINANCE #2005-06 (F) adopting the proposed revisions to Ordinance #2005-06 relative to the Historic Overlay District of Chapter 175 "Zoning" of the Durham Town Code. Councilor Julian Smith SECONDED the motion, and it PASSED unanimously 8-0.

No members of the public spoke at the hearing.

Councilor Julian Smith MOVED to close the public hearing on the Planning Board amendments to ORDINANCE #2005-06 (F) adopting the proposed revisions to Ordinance #2005-06 relative to the Historic Overlay District of Chapter 175 “Zoning” of the Durham Town Code. The motion was SECONDED by Councilor Van Asselt and it PASSED unanimously 8-0.

Councilor Peter Smith explained that he had some proposed changes to the Ordinance, and apologized for any confusion this may have caused. He said most of the proposed changes were drafting matters that couldn't be seen until the Ordinance draft had been substantially cleaned up. He said these were dozens of technical changes dealing with minor reorganization, grammar, erroneous citations, etc., that were technical or non-substantive corrections

He said he wished to call attention to those changes other than the technical drafting matters. He first spoke about the section of the HOD Ordinance on creation of a Heritage Commission. He noted that the Ordinance currently said that the current membership of the HDC could also assume the duties of a Heritage Commission, although this didn't have to happen. He said the HDC had chosen that the membership of the Heritage Commission would be the members of the HDC.

He also explained that the Ordinance set forth the powers and duties of the Heritage Commission, noting the wording was taken from State statute.. He said the problem he had with the section as now written was that the Heritage Commission was not an entity that dealt with zoning, whereas the Historic District Commission was, and in fact was the lead enforcing agency regarding what went on in the Historic District.

Councilor Smith said he had checked with the State Division of Historic Resources on where in their codes other communities had put the powers and duties of the Heritage Commission, and was told they were located in the administrative section of the codes. He provided the City of Concord as an example of this, and said he had concluded that Article IV of the Administrative Code for Durham was where the wording on the creation of the Heritage Commission should be, rather than in the Zoning Ordinance.

He noted that he had also looked at whether a Heritage Commission could be created without amending the Town Charter, and had determined the Town could do this without having to amend the Charter.

He said his first recommended change was therefore to transfer to the Administrative Code the material in section 175-91.C dealing with the creation of the Heritage Commission, and provided details on how the HOD Ordinance would change accordingly.

Councilor Smith noted that the HDC Ordinance currently said the HDC would assume the duties of the Heritage Commission, and he said he had recommended shortening the language up a bit, but had left a new section 175-100, the very last section of the Ordinance, which said the HDC would also assume the composition and duties of a Heritage Commission, as set forth in Article 4, Section 4-17 A.8 of the Durham Administrative Code. He said someone seeing the HDC code would see that reference, and therefore would not be confused that it didn't exist.

Councilor Smith handed out a revision to what had been in Councilors' packets reflecting this and other changes that he was recommending should be made to the Ordinance.

Councilor Smith also explained that he thought suggested language under Powers and Duties of the Heritage Commission concerning appropriation of funds was not proper to put in either the HDC section or the Administrative section, because it had nothing to do with the powers and duties of the Heritage Commission. But he said he did think it was relevant to include language from the State statute on the creation of a Heritage Fund. He said the piece he had left in referred to what the Heritage Commission did, as opposed to the piece the Council did concerning appropriation of money, which he said did not belong in the HOD Ordinance.

He said the changes he had recommended were important organizational changes.

Councilor Needell asked if the Town Council could create a Heritage Commission without changing to the Town Charter, and Councilor Peter Smith said it could create a Commission by Ordinance, but didn't have to change the Charter. Councilor Needell received clarification that the Council couldn't simply create a Heritage Commission as a resolution. He then said it struck him as odd that the HOD contained this huge paragraph about the Heritage Commission.

But he said the substantive question he had was concerning #8 in the most recent list of powers and duties of a Heritage Commission provided by Councilor Smith., - regarding receiving gifts of money and property, which he said was a substantial reduction from what was in the State statute.

There was detailed discussion about the fact that language from the State statute on acquisition of properties was not included in the Ordinance. There then ensued discussion on whether it perhaps made more sense to simply reference the RSA in the Historic District Ordinance, rather than include some or all of the wording from the Statute in the Ordinance.

Administrator Selig said he recommended referencing the RSA, noting that it changed over time.

Councilor Leach said her thinking, in leaving the wording from the Statute in the Ordinance, was that it made it more reader-friendly, but she said she understood Administrator Selig's point. She also noted that the Heritage Commission was new, so it might make sense to spell things out a bit more for a few years.

Councilor Peter Smith said practically speaking, he didn't think it was a concern that the RSA would change.

Mr. Campbell agreed it would be easier for users of the HOD Ordinance if the provisions of the RSA were spelled out. He also explained that the reason the HDC had not included a provision on acquiring properties was that it wanted to ease into the idea of having a Heritage Commission.

Councilor Van Asselt said he thought referencing the State statute was the right approach, and said there would be a pamphlet to describe these kinds of details. He said most people wouldn't read the Ordinance.

Councilor Julian Smith said he agreed with Councilor Van Asselt, and said he didn't think referencing the State statute would cause much trouble for members of the public, but would only cause trouble for those people looking for trouble. He recommended leaving 8 A as it was, and referencing the RSA in 8 B.

Chair Pro Tem Carroll asked if there was a consensus of the Council concerning this, and there was discussion. There was also detailed discussion on what process would need to be followed in terms of moving forward with the proposed changes.

Councilor Peter Smith recommended another change to the HOD Ordinance, to delete the current language in 175-92.A. authorizing the Historic District Commission to initiate changes to Article XVII – Durham Historic District Overlay District. He said the Zoning amendment process was already sufficiently complicated, so that before adding another layer to it, the whole amendment process should be looked at.

Councilor Leach asked if this was something the Zoning Rewrite committee could look at, while allowing the HOD Ordinance to be passed.

There was discussion as to why this provision was in the Ordinance. Mr. Campbell said his sense was that the HDC wanted to be able to initiate some changes to the Ordinance.

There was additional detailed discussion about this, including whether this was a substantive or non-substantive change. Councilor Needell said a concern he had was that this would open the door to a complete rewrite of this part of the Zoning Ordinance.

Councilor Van Asselt said leaving the current wording in the HOD Ordinance could force the issue that changes were needed concerning the amendment process.

Councilor Peter Smith said it was plausible to think the HDC should have some initiating authority, but he stated again that the key point was that the amending process was sufficiently complicated that before another layer was added to it, the whole process should be looked at. He described some of his concerns about the current amendment process, and said the occasion existed to look at this now. He noted that the Planning Board hadn't really had on its agenda looking at the amending part of the Zoning Ordinance, which was somewhat ironic.

Councilor Needell said he didn't see that there was an urgency to including this language, noting the HDC could get an amendment process going in another way if it wanted to, so was not excluded from the amendment process.

There was discussion about the proper process to follow concerning this issue. Councilor Peter Smith said he would be more comfortable with sending this back to the Planning Board and saying that the Council urged it to take the language out.

Councilor Peter Smith said another substantive change he was recommending was expansion of one of the criteria for designation of an historic district in section 175-92.B.4, to read “The site is identified as the work or representing the work of a master builder, designer architect or landscape architect...” He provided details on this.

The consensus of the Council was that this change was appropriate.

Councilor Smith recommended another substantive change, to Section 175-94.A.6 concerning signage in the Historic District, - removal of “contractor” from the list of signs that were not excluded in the District. He said he thought there should be a somewhat higher standard concerning contractor signs in the Historic District.

Councilor Needell said it could also be argued that letting people know the names of contractors who were successful in doing historic preservation work was not necessarily a bad thing, and might even serve a useful purpose.

Councilor Leach provided details on why contractor signs had not been excluded from the District in the Ordinance, which included not forcing contractors to have to go through the process of getting approval for their signs.

Councilor Van Asselt said he agreed with Councilor Needell, and noted that contractors doing this work were usually more skilled than other contractors, so having their names visible was a good idea.

Councilor Peter Smith said he would not vote against this, if “contractor” was left in as being excluded concerning signage (contractors signs are allowed).

The consensus of the Council was to leave “contractor” in, in Section 175-94.A.6

Councilor Smith said his final recommended substantive change was the deletion of the words "from a public way" from section 175-94.B.4. He said that as currently written, if certain things like outbuildings, antennas, swimming pools, etc. were visible from a public way, they had to go before the HDC, but if they were not visible from a public way, they did not. He said if one of these things could be seen, but not necessarily from a public way, this was still important. He also noted that he didn't think the only reason for having an historic district was to protect historic views from a public way. He said the district was meant to protect the history of what was there.

He said he thought the line of distinction between the inside and outside of a house in the District, in terms of what was exempt from review, was appropriate to draw. But he said he was not in favor of drawing a line of distinction between a view from a public way and other views of an historic property in the District.

Councilor Julian Smith said he would leave in “from a public way” or would say “from other properties in the Historic District.”

There were additional detailed commentary and discussion among Council members and Mr. Campbell on Councilor Peter Smith's recommended change.

Councilor Morong left the meeting at 10:02 PM.

Councilor Leach noted that this issue had come up in HDC reviews involving properties in the District. She said that in the final analysis, she thought the wording should be taken out, in order to allow more control, noting that the intent of the Historic District was not just to protect the front of a building that the main road went by, but was to protect the entire building. She stressed that this did not mean that something like a swimming pool could not be put in, it just meant that a review by the HDC would be required if this was proposed.

Administrator Selig said it would be good to get some kind of consensus of the Council on this.

Councilor Needell said he thought making this change to the Ordinance would be significant, and said he would like to hear more comments on it. He said he was not against bringing it forward, but said he was not ready to vote on it. He said he would like the Planning Board and the HDC to look at it, and come back with their recommendations.

The Council agreed that this was not a minor substantive change, and was a substantive change.

Councilor Peter Smith said if there was consensus that at least this should be further reviewed, the Ordinance draft should go back to the Planning Board.

Councilor Van Asselt MOVED to continue the meeting past the 10:00 pm adjournment time. Councilor Needell SECONDED the motion, and it PASSED unanimously 7-0.

Councilor Needell noted that in Councilor Peter Smith's most recent draft of the Ordinance, Section 175-99 said "...the Durham Town Council may, [by a two-thirds vote of its members,] override any vote of the Commission..." He said this wording, if adopted, meant 6 people, which was different than 2/3 of those Council members present at a meeting.

Councilor Peter Smith said his intent in inserting "members" was to make clear what he thought the HDC had not made clear. He said he was operating under assumption that the HDC's view was that a 2/3 vote of the entire membership of the Council should be required, and said he would argue that not requiring this was not good policy. He said he did think it should take a vote of 2/3 of the members of the Council to decide it would disregard obeying the Ordinance.

Councilor Needell said before this was changed, the wording was in fact ambiguous.

There was discussion as to whether it was consistent with other parts of the Ordinance, with Councilor Leach stating that this was her main concern.

Mr. Campbell said the wording made sense, and clarified things. He also said it was consistent with what the Planning Board did regarding the conditional use process.

Administrator Selig noted that the Council had talked about this in recent years, and had implied that 2/3 meant 2/3 of the full Council.

Mr. Campbell recommended a renumbering change to the Ordinance. He also said that because this was going to be sent back to the Planning Board he would like to gather all the recommended changes now and get them to the Planning Board, and to try avoid having to receive further changes to the Ordinance.

Councilor Peter Smith said if his recommended changes could get through the Planning Board in the next few months, he would promise not look at the Ordinance during that time. But he said there needed to be some kind of transmittal that made clear what the substantive changes were that the Council was now expressing a position on.

Councilor Needell said he assumed such a transmittal would also go to the HDC, and that they would be able to provide input to the Planning Board.

Administrator Selig said the Council should refer the Ordinance back to the Planning Board. He said he would develop the transmittal letter for the Board, and copy this to the HDC outlining the discussion that evening. He said he would include with the transmittal letter the changes Councilor Peter Smith was recommending.

It was clarified that the two sheets Councilor Smith had handed out concerning the Ordinance changed the July 3rd document. There was discussion that the recommendation to transfer to the Administrative Code the material in section 175-91.C dealing with the creation of the Heritage Commission didn't have to go back to the Planning Board.

Administrator Selig said it would still be a good idea to note for the Planning Board this recommended change, while not actually sending it back to the Planning Board.

Councilor Peter Smith withdrew his objection to the inclusion of "contractor" in section 175-94.A.6.

The Council agreed to send the following additional substantive changes to the HOD Ordinance, recommended by Councilor Peter Smith, back to the Planning Board.

- 1) expanding one of the criteria for designation of an historic district in section 175-92.B.4;
- 2) deleting the words "from a public way" from section 175-94.B.4;
- 3) deleting the language in 175-92.A. authorizing the Historic District Commission to initiate changes to Article XVII.

Councilor Peter Smith MOVED that the Town Council remands to the Planning Board the most recent draft of the HDC Historic Overlay District Ordinance changes, which carries the date of May 24, 2006, with a transmittal that presents the Planning Board with technical changes that the Council requests be made, as well as the substantive changes, and set forth with the position of the Council with respect to them. Councilor Needell SECONDED the motion.

Following a question from Councilor Julian Smith, it was clarified that the transmittal itself would include the proposed revisions in the July 3rd document, except as modified by the

document submitted that evening by Councilor Peter Smith, and the action of the Council that evening.

The motion PASSED unanimously 7-0.

Councilor Julian Smith asked if the Planning Board would take suggestions from Council members concerning additional minor editing changes, and there was discussion as to how this could be done.

Councilor Peter Smith asked that the Council be copied on these suggested changes.

Councilor Van Asselt reflected on the amount of time taken for this discussion, on an Ordinance that had been looked at in detail by various entities over the past few years. He said this was not a criticism of Mr. Campbell and Councilor Peter Smith, but said he couldn't believe this was the best use of the Council's time.

Councilor Peter Smith said he was not unsympathetic to what Councilor Van Asselt was saying, but he said it was complicated to draft ordinances, and required a lot of time, noting more staff, or different use of staff was required. He said he had spent a lot of hours on the Ordinance, and wished there was a more efficient way to do this.

There was further discussion on the involved process that had been undergone concerning the update of the Historic Overlay District Ordinance.

Councilor Leach said the process needed to be wrapped up, so additional hours didn't have to be spent on this ordinance.

Councilor Henry Smith left the meeting at 10:28 PM.

B. PUBLIC HEARING ON AND ADOPTION OF ORDINANCE #2006-02 amending Chapter 175 "Zoning", Article XIV "Shoreland Protection Overlay District", Section 175-72 (A)(4) of the Durham Town Code

Councilor Van Asselt MOVED to open the Public Hearing on ORDINANCE #2006-02 amending Chapter 175 "Zoning", Article XIV "Shoreland Protection Overlay District", Section 175-72 (A)(4) of the Durham Town Code. Councilor Julian Smith SECONDED the motion, and it PASSED unanimously 6-0.

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

Councilor Peter Smith MOVED to close the Public Hearing on ORDINANCE #2006-02 amending Chapter 175 "Zoning", Article XIV "Shoreland Protection Overlay District", Section 175-72 (A)(4) of the Durham Town Code. Councilor Julian Smith SECONDED the motion, and it PASSED unanimously 6-0.

After a brief discussion, it was agreed to postpone deliberation on adoption of the Ordinance until the next Council meeting.

Councilor Peter Smith MOVED to postpone deliberation on adoption of ORDINANCE #2006-02 amending Chapter 175 “Zoning”, Article XIV “Shoreland Protection Overlay District”, Section 175-72 (A)(4) of the Durham Town Code until the next meeting. Councilor Van Asselt SECONDED the motion, and it PASSED 5-1, with Councilor Julian Smith voting against it.

X. New Business
Other business

There was no new business.

XI. Council and Administrator Roundtable

Administrator Selig provided details on the fact that Holiday Inn’s rules concerning its signage were stringent which impacted the options concerning the current Holiday Inn Express signage on the hotel. He said the Town would be following up on this.

There was discussion about the sign, and the fact that the color conflicted with all the other colors put on the hotel building. Mr. Campbell provided some details on his discussions with the company concerning this.

Administrator Selig asked Council members to start thinking about how they would like to structure the upcoming work session, and also about what topics they would like to bring forward for discussion.

Administrator Selig noted that about two years ago, the Town had entered into a conservation easement arrangement with the Merrick property, and said that in the near future, this would be executed.

He provided details on the Verizon vs. Town of Durham case concerning damage to the cable during roadwork and said after a number of stages to the process, Durham’s portion of the settlement, to be paid to Verizon, was approximately \$13,000, which would be paid by the Town’s insurance company. In answer to Councilor Peter Smith, he provided details on how this would not negatively affect rates, going forward.

Administrator Selig noted a petition from residents on Cedar Point Road and Dame Road asking that these roads be paved, noting that neither of these roads had been included in the CIP as work the Public Works Department was planning on doing. He said this kind of issue seemed to be happening more, and he suggested that the Council should think about how it wanted to approach it. He said he was not sure what to tell the residents.

There was some discussion on this by Council members.

Administrator Selig stated that the Town and UNH had an interim law enforcement agreement that included a condition that UNH’s police department would be accredited by CALEA by July 1st. He said this had not happened, and said he did not have a clear sense of how far along the department was concerning the process of getting accredited. He said he planned to ask for more specifics on this, and asked the Council how it would like Town staff to proceed concerning this.

Councilor Peter Smith asked Administrator Selig to request the permission of the University to contact CALEA directly to get full documentation of what contacts there had been between the organization and the University. He said if the University did not give this permission, it would be in bad faith. He said the law enforcement agreement between the Town and the University police department was now essentially void because the terms of it had not been met. He said this created a major problem, and put the Town of Durham in a very difficult position in terms of liability. He also said it raised issues concerning the merger idea, in terms of credibility, etc.

Councilor Leach asked for details on what this non-accreditation meant.

Administrator Selig said it raised serious questions as to why the department was not accredited. He said he had felt that the timetable that was set by the University to get accredited was too long, but said he had been willing to work with its police department concerning the process. But he said the department had not lived up to its plan, and said this raised the question of how sincere the department was about getting accredited. He said the department should be working very hard at this, and said he didn't see evidence that it had been doing so. He said this was a real concern.

Administrator Selig said he didn't have assurances that the University Police Department was managed appropriately, and said he was not confident that he would get this assurance. He said the only way to know if the Town would receive this assurance was to find out where the department was, concerning the accreditation process. He said depending on what he found out on this, this would get to the issue of the credibility of the department in fulfilling its obligations.

Councilor Needell noted that the CALEA accreditation process was quite involved, and he said it was worth finding out where the University police department was concerning this process.

Councilor Van Asselt left the meeting at 10:54 PM.

Councilor Needell asked whether, if the law enforcement agreement between the Town and the University were severed, this severed the University's policing authority.

Administrator Selig said if the agreement was severed, this would mean withdrawal of policing authority from University police personnel, which would then mean that Durham's police department would be the sole police authority in Town.

It was noted that there was no longer a quorum, so the rest of the meeting would be an informal discussion.

Councilor Peter Smith provided more details on his concern about the implications of the University police department not having the accreditation, and said he thought there was no question that the Town could bring the agreement to a halt. He said the problem was serious, stating that he didn't like the fact that there was an agreement protecting from the Town from liability that was not now legally in effect.

He said he believed that this was a matter within the University police department, said he had good reason to believe that there had been no meaningful intention to pursue meaningful accreditation. He noted that this was why he wanted to get reliable information on what was going on.

Councilor Peter Smith said this matter was very disturbing, and creating a very difficult situation for the Town. He also said he want to link the matter with the idea of getting on with a unitary police department in Durham that was properly funded.

Councilor Needell said it needed to be clarified what the legality of the current police department operations was.

XII. Adjourn

There was no formal motion to adjourn because there was not a quorum.

The meeting ended at 11:00 pm.

Victoria Parmele, Minutes taker