

This set of minutes was approved at the February 5, 2008 Town Council meeting.

**DURHAM TOWN COUNCIL
MONDAY, JANUARY 8, 2007
DURHAM TOWN HALL – COUNCIL CHAMBERS
7:00 PM**

MEMBERS PRESENT: Chair Neil Niman; Councilor Peter Smith; Councilor Mark Morong; Councilor Gerald Needell; Councilor Karl Van Asselt; Councilor Julian Smith; Councilor Henry Smith; Councilor Catherine Leach

MEMBERS ABSENT: Councilor Diana Carroll

OTHERS PRESENT: Town Administrator Todd Selig, James Campbell, Planner; Peter O’Leary, Fire Chief; Thomas Johnson, Zoning & Code Enforcement Officer

I. Call to Order

Chair Niman called the meeting to order at 7:02 PM.

II. Approval of Agenda

Councilor Julian Smith MOVED to approve the Agenda as submitted. The motion was SECONDED by Councilor Henry Smith, and PASSED unanimously 8-0.

III. Special Announcements

Administrator Selig said the filing period for running for office in Durham opened on January 24th and ended on Friday, February 2nd. He said there were 3 openings on the Town Council, 3 openings on the Library Board of Trustees, and one Trustee of the Trust Funds opening. He noted that this time period was directed by State statute.

IV. Approval of Minutes

November 27, 2006

Councilor Morong MOVED to approve the November 27, 2006 Minutes. Councilor Julian Smith SECONDED the motion.

Page 7, 3rd paragraph, should read “He said he had voted for the projects that had come forward because the bond had been approved by the voters. He said it seemed that there was a disconnect on this.”

Page 9, 4th paragraph from bottom, should read “ Councilor Morong said that the cost of sewer improvements in the West end seemed to fall only on the water and sewer users...” Last line of paragraph should read “ He said that the users themselves didn’t need expansion of the water system...”

The minutes as amended PASSED unanimously 6-0-2, with Councilor Needell and Councilor Henry Smith abstaining because of their absence from the November 27, 2006 meeting.

December 4, 2006

Councilor Needell MOVED to approve the December 4, 2006 Minutes. Councilor Leach SECONDED the motion.

Page 7, 4th paragraph, should read “..Center at UNH, which is part of the Institute for the Study of Earth, Oceans and Space.”

The minutes as amended PASSED 7-0-1, with Councilor Van Asselt abstaining because of his absence from the December 4, 2006 meeting.

Councilor and Town Administrator Roundtable

Councilor Needell said the Planning Board would be meeting on Wednesday, and would be continuing the public hearing on the 78 unit age restricted building at 9 Madbury Road. He said this would be the second hearing, and said it was not clear how much longer the hearing sequence would go on. He also said Planning Board acceptance of an application for the reconstruction of the Emery Farm farm-stand was on the agenda.

Councilor Van Asselt asked Administrator Selig if there was information that could be provided on nonunion Town employees, and Administrator Selig said he could provide this.

Councilor Van Asselt asked for details on the route that the proposed UNH methane pipeline would take in Durham.

Administrator Selig said the pipeline wouldn’t come into the core of Durham via the railroad tracks, although it would follow the railroad right of way through other communities. He said the pipeline would go under the railroad trestle under Route 4, would then hop onto the State right of way on Route 4 and head west, and would then turn left, approximately where the Northern Connector would be. He said the pipeline would then come into the UNH campus area underground. He said this route would avoid impacting Town of Durham property.

Councilor Van Asselt said it was therefore clear that people living on Hampshire Ave. wouldn’t see the pipeline running across their backyards.

Councilor Peter Smith asked if the pipeline would run in the area where the Northern Connector allegedly would be located.

Administrator Selig said yes, in parts, but not along the entire length.

Councilor Peter Smith noted that a few years ago, steps had been taken so it would be clear that building projects wouldn't impact that area, allegedly to avoid arguments about this. He said what he was now hearing would represent a reversal of that policy.

Administrator Selig said at the initial meeting with UNH representatives he and Public Works Director Mike Lynch had attended, they had noted that the maps for the project didn't include the route of the Northern Connector. He said he had asked that this information be overlaid on the maps, so the Planning Board could see the degree of impact of the project on the Northern Connector. He said he was told that if the connector came to fruition at some point, there would not be a substantial cost to change the depth of the pipeline.

Councilor Julian Smith spoke concerning the recently proposed revisions to the Zoning Ordinance concerning timber harvesting. He asked Administrator Selig if he had given more thought to having a forester do an assessment of some Town lands where the forest was overgrown and needed trimming.

Administrator Selig said yes, and stated that he and Mr. Lunch had met with Charlie Moreno, who had done the forest management work on the Doe Farm. He said Mr. Moreno would be doing an inventory of the larger tracks of forest land owned by the Town, and would provide recommendations on them. He noted that he had previously provided some information to the Council on this.

Councilor Julian Smith said he had not seen this information.

There was discussion between Councilor Van Asselt said Administrator Selig on possible water and sewer infrastructure improvements on Mast Road, and what opportunities there were for property owners living in this area who wanted to develop their properties commercially to be involved in the process. Councilor Van Asselt said he hoped that someone would sort this out, stating that the key issue was a situation where someone out there wanted to do build a big development.

Councilor Morong said he found it interesting, concerning the discussion on the methane line, that the State wouldn't allow a sewer line there. He asked Administrator Selig if he had any information concerning this.

Administrator Selig provided details on how the methane line would run, explaining that the pipeline would actually hang under the trestle that already went under Route 4.

Councilor Morong noted that the Council continued to hear from the Durham Taxpayers Association regarding concerns about taxes, and he said he encouraged them to look at what the Council had been trying to do concerning taxes. He also said he found it interesting that there was no mention in these communications about the taxes paid to the School district.

In response to Councilor Julian Smith, Administrator Selig said the Town had received a communication from the School Board that it wanted to meet with the governing bodies of each community. He said it was his understanding that some years back, there were regular meetings like this. He said it had been suggested that such meetings might be helpful to do this year, and said he thought the School Board wanted feedback on whether there were issues that the three

communities in the district wanted to talk about. He suggested that Councilors who had such issues should send them to the School Board. He noted that he had been invited to participate in this process, and also said this would be a public meeting.

Administrator Selig noted that at the last Council meeting, the Council had not signed the election warrant properly, so would need to do the signatures again that evening.

He also said that over the last six years, there had been three occasions when the Legislature had introduced legislation concerning the ability of UNH police officers to be part of the State retirement system. He explained that the University currently had its own program for the police officers, but said they wanted instead to be part of the State system. He said he had been informed that a member of the State Senate planned to bring up this issue again, and said it was his understanding that there would be a communication on this at the next Council meeting.

Councilor Leach asked what the Council's involvement in this process would be.

Administrator Selig said in the past, the Town had opposed this approach, and said members of the Durham legislation to the Legislature wanted to know what the Council's perspective now was on this. He said the Council should let them know one way or the other whether it had a perspective on this, and if so, what this perspective was. He noted that in the past, the Council had dispatched him to argue against this.

Councilor Needell asked if the Council would be provided with thorough background information on this issue, and Administrator Selig said yes.

V. **Public Comments (NLT 7:30 PM)**

Chair Niman asked members of the public who were present to speak on public hearing agenda items to reserve their comments until those items were heard.

Bill Hall, Durham, said that Coe Drive had come to the attention of the Council again. He said there was a parallel drive there on private property that was often blocked, so cars and ambulances couldn't get through. He said there could be injury of emergency personnel trying to respond to an incident, and he said he recommended, as he had in the past, that this parallel drive be made into a fire lane. Mr. Hall noted among other things the difficulty of having fire departments from other towns respond to fires in Durham, and then not being able to get into sites and out because of parking issues.

He noted other areas of Town where he had previously recommended that parking be controlled for the same reason (at Wagon Hill, Davis Ave, and the skating rink) and he provided details on this, including recent incidents at some of these areas, where quick access and exit are important. He also noted that the road at Cedar Point should be a fire lane.

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

None

VII. **Presentation Items**

None

VIII. **Committee Appointments**

- A. Shall the Town Council appoint Wayne E. Lewis, 11 Edendale Lane, as an alternate member to the Planning Board?

Mr. Lewis said he had worked for the Army Corps of Engineers for many years, noting his career had spanned more than 35 years, with some time spent overseas. He said he had recently retired, and felt it would be good to give back in some way, so was here to offer his services. He noted that his wife was from New Hampshire, and that he was raised in Chicago, so knew all about snow.

Councilor Peter Smith asked if Mr. Lewis had a connection with the Army Corps of Engineers in this area, noting there was a project the Town needed help with.

Mr. Lewis said he did not have a local connection.

There was discussion with Mr. Lewis about particular areas of the planning process that he had an interest in.

Mr. Lewis also noted that he spent about 3 months per year in Florida, and this would happen on a yearly basis.

There was discussion that there was a precedent in Town that this kind of absence was permitted if the schedule of when a board member would be absent was known by the Board.

Councilor Needell said he didn't see it would be a particular problem that Mr. Lewis would be absent for a portion of the year.

Councilor Henry Smith MOVED to appoint Wayne Lewis, 11 Edendale Lane, as an alternate member to the Planning Board, for a term ending in April 2009. Councilor Julian Smith SECONDED the motion, and it PASSED unanimously 8-0.

Administrator Selig provided details on other positions on Town boards and committees that were currently vacant:

- **Conservation Commission** (1 alternate member vacancy)
- **Durham Cable Access Television (DCAT) Governance Committee** (2 vacancies)
- **Integrated Waste Management Advisory Committee** (3 vacancies)
- **Planning Board** (1 alternate member vacancy)
- **Strafford Regional Planning Commission (MPO Policy)**(2 vacancies)

- **Zoning Board of Adjustment** (1 alternate member vacancy)

B. Appoint a Council representative to the Mill Plaza Study Committee

Councilor Van Asselt MOVED to have Councilor Julian Smith serve on the Mill Plaza Committee. The motion was SECONDED by Councilor Leach.

Councilor Van Asselt noted Councilor Julian Smith had 14 more months on the Council. He said it made sense that the Councilors who served on the Committee would be on the Council long enough to be able to provide continued Council representation on the Committee.

Administrator Selig noted that Councilor Smith was a member of the Library Board of Trustees, so could bring that perspective to the process as well.

Councilor Julian Smith noted that when the original development of Mill Plaza had taken place, he had small children who watched the construction equipment on the site. He said he had attended a number of meetings concerning this original development, and said he had also followed recent discussions on possible redevelopment of Mill Plaza. He said he would like to see this redevelopment happen.

It was clarified that Ed Valena would be the Library Board of Trustees representative to the Committee.

Councilor Henry Smith noted an email concerning having representation from people at large in Durham, not just people from the neighborhood around Mill Plaza.

Administrator Selig said there were already 12 positions on the committee now. He said this would be a pretty open process, and said members of the public could attend the committee meetings and provide their input.

The motion PASSED 7-0-1, with Councilor Julian Smith abstaining from voting because of a conflict of interest.

IX. **Unfinished Business**

A. PUBLIC HEARING AND ACTION ON ORDINANCE #2005-06 adopting proposed revisions to Ordinance #2005-06, Section F, relative to the Historic Overlay District of Chapter 175 “Zoning” of the Durham Town Code

Councilor Van Asselt MOVED to open the Public Hearing on Ordinance #2005-06 adopting proposed revisions to Ordinance #2005-06, Section F, 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.

Councilor Needell MOVED to close the Public Hearing. Councilor Morong SECONDED the motion, and it PASSED unanimously 8-0.

Councilor Van Asselt MOVED to adopt Ordinance #2005-06 adopting proposed revisions to Ordinance #2005-06, Section F, relative to the Historic Overlay District of Chapter 175 “Zoning” of the Durham Town Code. Councilor Peter Smith SECONDED the motion, and it PASSED unanimously 8-0.

B. PUBLIC HEARING AND ACTION ON ORDINANCE #2006-07 amending the following sections of Chapter 175 “Zoning” of the Durham Town Code pertaining to timber harvesting/forestry:

1. Article II, Section 175-7 “Definitions”
2. Article XIII, Sections 175-60, 175-61, and 175-65 “Wetland Conservation Overlay District”
3. Article XIV, Sections 175-69, 175-71, 175-72, and 175-75.1 (A & C) “Shoreland Protection Overlay District”
4. Article XX, Sections 175-109 (L) “Performance Standards”
5. Article XII, Section 175-54 “Zone Requirements”

Councilor Henry Smith MOVED to open the Public Hearing. Councilor Julian Smith SECONDED the motion, and it PASSED unanimously 8-0.

Bill Hall read from Article XIII, and said there was no conflict between forestry and wetlands if the work was done properly. He also said that Durham did have a cutting problem along Great Bay, and he showed a picture of a property that he said demonstrated this. He said the current Ordinance didn’t address this, and he provided details on problems with the current provisions of the Ordinance relating to tree cutting and forestry. Mr. Hall said it had been represented that these provisions would help forestry, but he said that was not the case.

It was clarified that Mr. Hall was saying he had problems with the existing provisions, not the proposed changes to them.

There was discussion on the picture Mr. Hall had provided.

Councilor Henry Smith said he recalled from his time on the ZBA that the cutting that was shown in the picture was the result of a variance, and was not done without permission.

Mr. Hall said it was important for the Town to work with the forestry community. He said State forestry laws and enforcement were more than adequate, and said this wasn’t an area the Town should be in. He said whatever the existing rules imagined was happening in terms of tree cutting was something that wasn’t really happening, and said what was being recommended now in the Zoning Ordinance would probably do the job.

Ted McNitt, Durham Point Road, said the picture came about as a result of the fact that while the ZBA had approved a variance, it had done so for selected marked trees, and he had suspected that the cutting had gone far beyond that. He said his intention with it was that the Town should be careful that this didn’t happen again, and said at the time, it wasn’t a forestry question at all that he had in mind.

Don Quigley said he was a resident of Lee, a licensed forester, a Professor of Forest Technology, a citizen who was concerned about forestry practices, a member of the Timber Harvesting Council and a member of the NH Timberland Owners Association.

He said that on behalf of landowners in general, he applauded the process the Town of Durham had gone through in regard to forestry and timber harvesting issues, stating it had been a great opportunity to discuss these issues. He spoke of how being able to practice forestry was an incentive for landowners to stave off development, in that they could earn a modest income in doing so. He said he wholly supported the proposed reasonable changes to the Zoning Ordinance, and applauded the Planning Board and Zoning Rewrite committee for their efforts.

Mr. Quigley said Mr. Hall made a good point about confusing tree cutting for landscaping purposes with forestry. He said the main issue was that viable forestry practices slowed development, and were also a good opportunity to look at environmental practices, lot by lot.

Councilor Needell said with these changes, the Town was stepping back, and was relying on best forest management practices. He said the concern that had often been raised was that there were good and bad foresters, and that there could be some foresters who abused the spirit of these practices. He asked Mr. Quigley if he could give the Council any assurances concerning this.

Mr. Quigley said in general, foresters practiced within the law, as well as by a code of ethics. He said most foresters he knew didn't think they should encourage their clients to push the bounds of legality in order to meet a particular need. He said the shoreland protection piece and the wetland zone piece were carefully written, and met all the standards of the law. But he said the key issue was that the State spent a lot of money to enforce the state laws that were on the books.

He said someone could possibly push closer to the shoreland or wetland boundary with tree cutting, but he said foresters in general cared more about their reputations and the effect on the land than on their next dollar. He said the Town was well protected with the Ordinance provisions it was about to adopt, and he said if it were his town adopting them, he would be pleased.

Councilor Peter Smith said that in response to Councilor Needell, Mr. Quigley appeared to be saying he believed that State statutes appropriately served as regulation and protection, and that State monitoring of forestry activities was adequate.

Mr. Quigley said that was correct, and defensible. He said the State had defended its own forestry laws in the past with actions taken in different communities.

Councilor Peter Smith said with the State's legal system, there was not home rule, so the Town had such powers as it was granted by the State. He provided details on this, and on the various circumstances and choices that could be made to grant the town more powers. He asked if in this instance, it was Mr. Quigley's judgment that the Town had no legal power to regulate forestry because the State had occupied the field of regulation, thereby not allowing the Town to regulate. He also asked if instead of the previous position, it was Mr. Quigley's position that it would not be wise for the Town to exercise its own authority in this instance.

Mr. Quigley said he deferred to Chapter 672, Chapter 1, loosely called the Right to Harvest Law. He read from this, and said in this particular matter, what was proposed was a more reasonable approach for the Town to take.

Councilor Peter Smith asked if what the Council was doing in passing this was removing the Town from regulating in this particular area, and relying on State law for regulation.

Mr. Quigley said yes, noting that this did not include all the monitoring that needed to be done, which had to take place at the local level. But he said enforcement of the setbacks was a State responsibility.

Rob Keefe, Piscataqua Road, thanked everyone for the healthy discussion on this issue, and for hearing the concerns of citizens doing forest management now or planning to do it in the future. He said the majority of the proposed changes were very minor, and involved essentially undoing some recent modifications to the Ordinance that had occurred. He provided details on this, noting that especially the wetlands overlay provisions had been overly restrictive. He also said that some sections involving forestry/timber harvesting had needed clarification because they were hard to interpret.

Mr. Keefe stated that the proposed changes to the shoreland overlay were greater than the other proposed changes. He encouraged the Council to look carefully at these changes, and to proceed cautiously, noting that the shoreland was a sensitive area, for a variety of reasons. He said the changes to the shoreland overlay provisions made it clear that there were two separate standards that governed the cutting of trees along forested shores: the State's basal area law and the shoreland protection standards for development.

He said these were two fairly different standards, and said he wanted to be sure that everyone realized this. He said the forestry standard allowed cutting 50% of basal area, which could take place all the way down to the shore, and said there was no no-cut area in what was proposed. He said the shoreland development standard was quite the opposite, and didn't allow a single tree to be cut within 150 ft of the water.

He encouraged people to make sure there was a sufficient distinction made between these two standards in the Ordinance, so that someone reading it would know which standard applied in a particular situation. He said if further changes were needed to the Ordinance, he would be glad to participate in the process. He said he was a strong believer in forestry, and said his concern was the clarity in the language of the Ordinance.

Chair Niman asked Mr. Keefe whether it would therefore be reasonable to instead adopt one standard.

Mr. Keefe said one could do that, and said he would argue that this was basically the current Ordinance. But he said there were good reasons to do forest management in the shoreland area. He noted that a common situation that had occurred in other towns was that they defaulted to the minimum State shoreland protection standards.

Chair Niman said he wanted to do what was best for the Town, and asked what Mr. Keefe would recommend to someone in his position. He asked how the Ordinance could be written to protect the Town without impinging upon the rights of foresters in the shoreland area.

There was discussion on this with Mr. Keefe.

Councilor Van Asselt questioned the fact that there had been hours of discussion on this issue by the Planning Board and others, and that Mr. Keefe seemed to be now saying he had reservations about the Ordinance changes.

Mr. Keefe said he simply wanted to be careful, given the importance of this topic.

Councilor Needell said there had been discussion about these two standards by the Planning Board, and that this situation was essentially unavoidable, given the fact that according to State statute, forestry was exempt from the Shoreland Protection Act, so this act applied to landowners with property on the shoreland, but not to forestry. He said there had been concern by the Planning Board, as it considered drafting new language, that the existing Zoning Ordinance was not in compliance with State law, in using the Shoreland Protection Act to justify restrictions on forestry. He provided additional details on this.

Mr. Keefe said he believed he had been the only person who had come forward regarding the shoreland overlay provisions concerning forestry, noting specifically that he had been concerned about the backside of the buffer area, and that the buffer area covered about 26 acres of his parents' property. He said that as far as he knew, his parents had no plans to cut trees near the water.

He said the revised Ordinance provisions turned out to say that forestry would be allowed all the way down to the water, and stated again that the shoreland was a sensitive area. He said he felt that perhaps it shouldn't have been included in the discussion on forestry, or that he should have clarified his position on it better.

Councilor Needell said applying the basal area law to the shoreland might or might not be an issue. He said that when he had brought this issue forward, it seemed clear that the Planning Board had to let it go. But he said that now, if it was decided that the restrictions on forestry in the shoreland should be put back in the Ordinance, he was not sure that this could be defended. He said he was not a legal expert, but said he was hoping that in the whole discussion, this would be thought through carefully. He noted that this issue had nothing to do with a homeowner.

There was discussion as to whether forestry could actually be practiced on a one-acre lot.

Planning Board Richard Kelley stated that the Planning Board had looked at the State's basal area law, and at the exemption of forestry from the State Shoreland Protection Act, and had decided to get a legal opinion on this. He said he was reluctant to read from this opinion, explaining that it was privileged communication. He also noted that the Board had heard from various entities concerning the existing Ordinance provisions, but had not heard from anyone who was against changes to these provisions.

Chair Niman asked if the changes proposed were based in part on the legal opinion received from the Town Attorney.

Mr. Kelley said his support for the changes certainly was.

Councilor Peter Smith asked who had ordered this opinion, and Mr. Kelley said he believed the Zoning Rewrite committee had ordered it. Councilor Smith said he would like to move to remove any attorney/client privilege there was.

There was discussion on what the basis of the privilege was, and whether the letter from the Town Attorney should in fact be considered privileged communication.

Mr. Campbell explained that the Planning Board had asked for this letter, and he provided details on the Town Attorney's perspective on this.

Councilor Peter Smith said for the Council to limit its ability to discuss this issue based on the complete distortion of the concept of attorney client privilege was nonsense.

Chair Niman said the Council would take a break, and would read through the letter, and based on this, would decide whether to release the letter.

Councilor Morong questioned who would benefit from the letter not being released

Administrator Selig provide details on the Town's policy concerning privileged communications. He also spoke about how this particular letter had come about, and said he recommended that the Council be able to read it.

Break from 8:35 to 8:47 pm

Councilor Peter Smith MOVED to release the letter to the public. Councilor Julian Smith SECONDED the motion.

Councilor Van Asselt asked if releasing the letter would set some kind of precedent.

Councilor Peter Smith said it would be setting a major precedent that lawyers worked for clients rather than the other way around. He said this was a very important precedent to set.

Administrator Selig said releasing the letter would not set a precedent in terms of releasing communications from the Town Attorney to the Town, noting this was already done at times, on a case-by-case basis, and that the practice would continue.

Councilor Morong asked if Administrator Selig was comfortable with the relationship with the Town Attorney if this letter was released.

Administrator Selig explained the Town Attorney's perspective that if the letter were made public, it might assist those wanting to challenge the current provisions of the Zoning Ordinance. He said the Council needed to consider whether releasing this would inform the conversation for the community as a whole, and that this outweighed the interest of keeping the matter confidential in order to minimize challenges to the Ordinance.

Councilor Needell said notwithstanding the attorney's argument, he was comfortable releasing the letter. He provided details on this.

Councilor Peter Smith noted that he had been speaking sarcastically in his previous statement, and said there was always the choice to do this on a case-by-case basis. But he said the point here was that as a public body, the Council was not a private individual, and did not have the same

right of secrecy that an individual had. He said the notion of the need for secrecy in this instance was nonsense.

Councilor Van Asselt asked whether, if the Planning Board requested a legal opinion, he as a citizen couldn't see it, but could come to the Council and ask to see it.

There was detailed discussion about this.

Councilors provided their perspectives concerning the motion.

Chair Niman said he would vote against the motion, not because he wanted to run some kind of secret government. He said after the Council voted on whether to make these changes to the Ordinance, he would be more than happy to release the letter to the public. But he said he felt it would be irresponsible to do so now. He said if they didn't like the advice of the Town Attorney, they should hire a different attorney.

Councilor Peter Smith said he couldn't disagree more with this. He said saying that if there was disagreement with the Town Attorney, the choice was either to decide to agree with him or to dismiss him, was nonsense. He said it was up to the Council to decide what it wanted to do.

Councilor Morong said he thought the Council should be free to play the cards any way it wanted, and that this shouldn't matter to the attorney.

Chair Niman agreed, but said he still didn't feel the letter should be released at that time.

Councilor Julian Smith noted that the Town Attorney's letter said the opinion was being given under the assumption that it would not be shared. Councilor Smith said there was nothing binding about this, and also said he would vote to release the letter.

Councilor Henry Smith said he would vote against the motion, stating that he felt that releasing the letter was up to the Planning Board, since it had requested the letter originally.

The motion PASSED 6-2, with Chair Niman and Henry Smith against.

Planning Board Chair Richard Kelley said he felt the process had worked the way it should, with the result that the Council had decided to release the letter. Regarding whether with the revised Ordinance, they were doing the right thing in the sensitive shoreland area, he noted that in that district, in order to harvest within the buffer zone, a licensed forester had to develop a forest management plan.

Councilor Morong asked if the proposed provisions would allow a landowner to conduct forestry, and then down the road, to develop the property.

Mr. Kelley said that was the Board's greatest concern: that under the cloak of forestry, this kind of thing could happen. But he said the Board felt that this wasn't the place to deal with that. He said what they did deal with was legitimate forestry, not land development.

Councilor Needell noted that half of the basal area of the trees could be cut per year, but said it would take several years to clear the land, and people paying attention might see this was happening. He also said there was discussion by the Planning Board that it could see how the revised provisions worked, for a time.

Mr. Kelley said there was also discussion that re-vegetation could be required.

Councilor Morong provided additional details on the kind of scenario he had in mind, where a landowner might start out doing forestry and wind up developing a site.

Harvey Woodward, Nottingham, said he hoped the Council passed the revisions to the Zoning Ordinance. He said the trees would keep on growing over time.

Bill Hall said that in order to support being able to do forestry, one had to be able to cut enough trees. He also said that one should be able to cut some trees near the water, explaining that if not cut, these trees simply died and rotted on the shore, and said the same thing happened in wetlands. Mr. Hall also said he had no problem with saying that after one timber harvest, another cutting couldn't be done for 5-10 years.

Mr. Campbell noted that before introducing any of the proposed changes, the Ordinance hadn't included anything regarding timber harvesting/forestry. But he said the Town had not seen a lot of the kind of thing Councilor Morong had described.

Mr. Keefe noted that there was a no-cut rule in the regulations for a long time for the shoreland area. He said what he was simply pointing out now was that it was important to understand that the Ordinance changes, if passed, would say that forestry was a permitted use in the shoreland area.

Mr. Keefe said towns like Exeter had regulations that were a little stricter than the State basal area law. He provided some examples of such regulations, which promoted good forestry but also discouraged some of the things they were all talking about now. He said the Town might want to ease into changing the shoreland provisions rather than plunging in.

Councilor Needell said one group the Council hadn't heard from on this issue, because of a series of miscommunications, was the Conservation Commission. He said the Commission was planning to address this issue at its next meeting, and said he thought it was important for it to comment on these proposed changes. He said the question was whether the Council should therefore delay its vote, and continue its public hearing until these comments were received.

Councilor Henry Smith said this seemed like a reasonable idea.

Councilor Needell MOVED to continue the public hearing and action on Ordinance #2006-07 until the January 22, 2007 Town Council meeting. Councilor Peter Smith SECONDED the motion.

There was discussion on what would happen if the Conservation Commission had changes it wanted to make to the provisions.

Councilor Needell said if they were minor, they would come to the Council, but he said if they were more than minor, they had to be remanded to the Planning Board. There was further discussion about this.

Councilor Needell stated that his intention in making the motion was not to cut off debate on this issue at the present meeting.

Councilor Peter Smith explained that this issue was supposed to have been discussed by the Conservation Commission, but was not because of a memo from the Planning Director. He also said he agreed that debate on this issue should not be cut off at the present meeting.

The motion PASSED unanimously 8-0.

Chair Niman asked Councilors if they thought further debate should be put off until the Council heard back from the Conservation Commission.

There was agreement by the Council to postpone further debate until that time.

Councilor Peter Smith left the meeting at 9:13 PM.

C. PUBLIC HEARING AND ACTION ON ORDINANCE #2006-08 amending the Administrative Code, Article IV “Boards, Commissions and Subcommittees” by adding provisions for the creation of a Heritage Commission

Councilor Leach MOVED to open the Public Hearing on ORDINANCE #2006-08, amending the Administrative Code, Article IV “Boards, Commissions and Subcommittees” by adding provisions for the creation of a Heritage Commission. Councilor Van Asselt SECONDED the motion, and it PASSED unanimously 7-0.

Bill Hall, Smith Park Lane, said he had lived in the house he presently lived in, located in the Historic District, for 60 years. He said the work that had been done on this house would not have been allowed now by the HDC. He said he had watched the HDC make extremely bad judgments, and he provided examples of this. He said he did not know what authority this commission would have going around town, if there were a Heritage Commission. He said having a Heritage Commission was not in the best interest of the Town or anyone else.

Chair Niman said as he read the State statute concerning Heritage Commissions, he didn’t feel it was consistent with what Mr. Hall had just said. He said his understanding was that with a Heritage Commission, if he owned a 300 year old house that was not located in the Historic District, but was identified as important to the Town, the Town would have no authority through the Commission to tell him what color to paint the house, what windows could be used, etc.

Mr. Campbell said this understanding was correct. He said a Heritage Commission was not a regulatory body, but rather played an advisory role in speaking with property owners. He provided details on this.

Councilor Leach said what the HDC had put forward concerning a Heritage Commission was non-regulatory, and was not some kind of new policing for the Town. She also said the examples

Mr. Hall had provided concerning decisions of the HDC for the Historic District were from many years ago. He said the current group of members had never turned anyone down, but instead had provided a lot of good give and take to property owners concerning issues the HDC might have concerning a particular property.

Councilor Needell stated as well that the State statute didn't give a Heritage Commission regulatory authority.

Councilor Leach said regulatory authority was not the HDC's intent in wanting to create a Heritage Commission. She said that Linda Wilson, from the State's Division of Historical Resources, had come to talk with the HDC and had explained that the State was recommending that NH towns take this approach.

Administrator Selig read from the State statute regarding the duties of Heritage Commissions, and summarized that it was an advisory board.

Daniel Keefe, 59 Piscataqua Road, said from some of the things he and others had read, it sounded like the Heritage Commission would mean an expansion of the HDC. He said he would be uncomfortable about supporting it until he knew more about this.

Bill Hall spoke further about HDC actions in the past concerning a property, which he said the Council had allowed to happen. He said it was important to consider the Town they were dealing with, and said that sort of behavior shaped opinions of residents to this day.

Councilor Van Asselt MOVED to close the Public Hearing. Councilor Julian Smith SECONDED the motion, and it PASSED unanimously 7-0.

Councilor Leach MOVED to adopt ORDINANCE #2006-08 amending the Administrative Code, Article IV "Boards, Commissions and Subcommittees" by adding provisions for the creation of a Heritage Commission. Councilor Van Asselt SECONDED the motion.

Councilor Needell noted regarding Mr. Keefe's comment that he was trying to determine where this kind of concern was coming from.

Councilor Van Asselt said he would like to enforce what Councilor Leach had said. He said the HDC had spent hours talking with Linda Wilson of the State Division of Historic Resources about the concept of a Heritage Commission. He said the language that was proposed was taken from State statute, and was definitely non-regulatory. He said he understood concerns about creating yet another agency of local government, but said he would think the Town would embrace this approach, which was tied directly into the values of Durham relating to the Town's history and heritage. He said a Heritage Commission would be a positive thing for the Town.

Administrator Selig noted a previous initiative to develop a kiosk in Durham, where the HDC was asked to comment on it. He said the Commission was reluctant to do so at the time because the kiosk would be located outside the Historic District boundary. He said with a Heritage Commission, the HDC would be able to weigh in if asked, in a similar situation.

The motion PASSED unanimously 7-0.

X. New Business

A. Discuss the role and relevance of fire prevention services at the Durham Fire Department

Administrator Selig explained that at the previous Council meeting, he had announced that the Town's fire marshal, who had served for a decade, was leaving this position. He said some members of the Council had asked for the opportunity to discuss the position and the possibility of not filling the vacancy as part of reducing some of the cost of running the Fire Department. He said he had asked Chief O'Leary to come to discuss this with the Council. He also noted that Code Enforcement Office Tom Johnson was present to contribute to the discussion.

Chief O'Leary provided details on the process he had gone through in getting to know the members, and the operation, of the Fire Department, since taking the position as Chief approximately a year ago. He spoke in detail about his on-going analysis of the Department's operations, and spoke about the reorganization plan that was being worked on over time. He also spoke about the importance of the fire prevention bureau, and the fire marshal position.

Councilor Leach asked whether the fire marshal position was considered to be a part of the reorganization plan that was being worked on, or if instead, it would be more practical for Chief O'Leary to complete the process of looking at reorganization of the Department, and then revisiting the fire marshal issue.

Chief O'Leary provided details on the fire marshal position, and said his plan was to enhance the position, not eliminate it. He said the position might be renamed, depending on the job description that was developed, and he provided details on this. But he said the position, regardless of its name, would have to be there, and noted that the existing vacancy would cripple the Department in the short term. He said filling the position, which could involve a lengthy process, would not derail future reorganization efforts. He also said the person he put in that position would have the ability to go to the next level, so could move into a redefined position.

Councilor Van Asselt noted two separate aspects of the Fire Department, involving inspection and prevention.

Chief O'Leary said the inspection section was subordinate to the fire marshal. He said there were some parallel skills involved, and said both types of work were labor intensive.

In response to a comment from Councilor Van Asselt, Chief O'Leary provided details on the kinds of inspections that took place each year. He said inspection of new construction was only a small part of prevention efforts.

There was discussion on the fact that both the Code Enforcement Officer and the Fire Department did inspections concerning building permits.

Chief O'Leary said the Fire Department played a very active role concerning inspections for building permits, and said considering the large amount of work inspectors did, they were spread thin. He said he didn't think he could do his job effectively without those positions filled.

Councilor Morong asked for clarification of how Durham justified its staff size compared to towns like Keene, Dover, and Plymouth.

Chief O'Leary said he didn't know enough about these other towns yet to be able to speak about them. But he noted a recent fire in Berlin, and said the inspection program there was non-existent. He said he was passionate about the issue of fire prevention, and said it was one of the reasons he had come to work in Durham. He said he couldn't afford the time to do all the inspections himself, although he would like to be able to do them.

Chair Niman said his understanding was that Portsmouth had one fire prevention person, and a second position had been proposed but was cut from the budget. He asked how what they were doing in Portsmouth concerning fire prevention compared to what Durham was doing.

Chief O'Leary said he didn't know, but said his responsibility was to the Town of Durham. He provided details on how he saw his role.

Chair Niman said he had brought up this issue not necessarily to cut the fire marshal position, stating that he didn't have the expertise to make such a determination. But he said he did know that Durham had a very expensive Fire Department, that taxes were high, and that people on a regular basis asked him for ways to cut costs. He said he therefore was constantly asking if things could possibly be done a bit differently, at a lower cost.

He said he thought this instance was a good opportunity to look at a possible reconfiguration, and said he did not feel that was an irresponsible thing to do. He said the Fire Department was a very expensive department in a Town with a very narrow tax base. He said when he saw other towns doing things differently than Durham did, it was only natural that he would say the Town should look at what they were doing. He said when a person left a position, he thought it was a perfect opportunity to do that.

Administrator Selig asked Code Enforcement Officer Johnson to speak about other towns like Portsmouth.

Mr. Johnson said Portsmouth probably had a housing inspection bureau, and a code enforcement staff of 3-4 people. He said in Durham, there were two people who did code enforcement: the fire marshal and himself. He said the first person responsible for fire prevention was the fire marshal, and said it would be a mistake to cut this position. He said perhaps there might be other financing for this position, but he said cutting it would tremendously impact his department, and would mean he would need more staff. He explained that if he had to do more inspections, this would impact other aspects of his job, and he provided details on other negative impacts his department would see as well.

Mr. Johnson said Mr. Tetreault was a wealth of information, and said the Town was losing a great asset with his departure. He said he hoped the Town could find someone with his qualifications.

In response to a comment from Councilor Leach regarding the role of state inspectors, Mr. Johnson provided details on this role, relative to the role of local inspectors.

Councilor Leach MOVED to extend the meeting past the 10:00 pm adjournment time. Councilor Julian Smith SECONDED the motion, and it PASSED 6-1, with Councilor Henry Smith voting against it.

Councilor Needell said he had learned a lot from what Chief O’Leary had said, and said he would have been astounded to hear that the Chief supported reduction in fire prevention staff. He also said he questioned having a forum like this when a position was vacant, and said the tone of it had bothered him to some degree. He said there hadn’t been any suggestion with this forum that the fire marshal position was unnecessary, and also said he hoped the Council would be able to express its appreciation to Mr. Tetreault for his work.

Councilor Henry Smith said the Fire Department was an expensive proposition, but also covered UNH. He said it was important to keep this in mind when discussing the necessity of having a fire marshal.

Councilor Van Asselt said he heard what Councilor Needell had said. But he said it had been a year since Chief O’Leary had been hired, and said he had welcomed hearing from him on this issue. He said he hoped Chief O’Leary would have recommendations that might include this position in the future. He asked if there had been any thought given to a way of reorganizing how inspections were done.

There was discussion about fees charged for inspections, and whether perhaps the fee itself could be increased.

Mr. Johnson noted that the Housing Task Force, which had recommended that there should be a housing inspector position, had also recommended that a fee would be charged that would pay for this position.

Councilor Van Asselt said he thought this was the way the Town had to think, and said maybe there was a way the Town could end up with cost savings, and an even higher level of service.

Councilor Morong said perhaps what he had asked Chief O’Leary about what other towns did concerning fire prevention was unfair, but he said he did think it was interesting to learn these kinds of things. He noted that his son went to Keene State, and said he questioned the inspection process there.

Administrator Selig provided details on how the current process concerning evaluating the fire marshal position had come about. He also spoke about the challenging issues he and Chief O’Leary were continuing to look at concerning the operations of the Fire Department. He said they heard what the Councilors were saying, and were trying to be responsive. He provided details on this.

Councilor Leach asked what the timeline and responsibilities were concerning this process.

Administrator Selig said the broad charge was to find ways to more effectively allocate resources. He said he would keep the Council apprised as this process moved forward, and he provided some details on staffing changes being considered.

Councilor Henry Smith left the meeting at the end of this discussion (at 10:12 PM).

- B. RESOLUTION #2007-01** discontinuing the practice of listing candidates on the Town election ballot in alphabetical order as outlined in Article 2, Section 2.6 of the Durham Town Charter and instituting the method of listing candidates on the Town election ballot by drawing candidates' names out of a hat and listing them in the order by which they are drawn.

Administrator Selig provided background on Resolution #2007-01.

Councilor Julian Smith MOVED to adopt RESOLUTION #2007-01 discontinuing the practice of listing candidates on the Town election ballot in alphabetical order as outlined in Article 2, Section 2.6 of the Durham Town Charter and instituting the method of listing candidates on the Town election ballot by drawing candidates' names out of a hat and listing them in the order by which they are drawn. Councilor Van Asselt SECONDED the motion.

There was discussion about whether at some point, the Town Charter would have to be amended to reflect this change.

The motion PASSED unanimously 6-0.

- C.** What format shall the Town Council utilize as part of the Town Administrator's annual performance review for 2007?

Councilor Morong noted that Administrator Selig had said the entire Council would be participating in the performance review process. He suggested that instead, there should be some Council members and some representatives from other Town boards and committees.

Chair Niman explained for members of the public that the Council was trying to find a format for the evaluation process. He said the question was whether it would be interested in using the ICMA evaluation approach, and if so, whether it wanted to strictly follow the outline for how it was done, or wanted to add some things.

Councilor Needell asked if Administrator Selig was recommending that this approach should be used to get feedback from the Council.

Administrator Selig said yes, and he provided details on how it would work. He said the process would be useful for him, and could be informative for everyone involved.

Councilor Leach said to her, it was not so much the instrument used in the evaluation process, but instead, how the results would be used. She also said she felt there should be the opportunity to talk about things that might not be asked on the questionnaire.

Administrator Selig said the evaluation process didn't have to happen once a year, and instead could be an ongoing process.

Councilor Leach said if it turned out that the format wasn't helpful, they could find one that was.

Councilor Morong asked if Administrator Selig felt that all nine Councilors needed to be a part of this process.

Councilor Needell said he would think it should be required that all Councilors be invited to participate in the process, although the participation itself couldn't be required. He said he also thought it was a good idea to involve department heads, but said he didn't think it was appropriate to have other boards and committee representatives involved in this process.

There was discussion on other possible choices for an evaluation process.

Councilor Van Asselt said he agreed that all nine Councilors should be involved, but said he didn't think that residents should be part of the evaluation process. He said he felt strongly about this, and said he understood that the format of the ICMA process allowed the opinions of others to get mixed in.

Councilors agreed that they would try to work with the process that had been presented.

Councilor Julian Smith said there appeared to be a lot of fluff in the standards, criteria, etc. of the ICMA process. He also said he agreed with Councilor Van Asselt that it was the Council that should be evaluating Administrator Selig.

Administrator Selig provided details on the format that would be used, and as part of this, said he thought it might be useful for Councilors to see the input about him from Town staff.

Councilor Morong said he felt it was just as important to see how Administrator Selig worked with other people, such as University people. He said he was concerned that if 9 of the 20 participants were Council members, this kind of input would be limited.

Chair Niman said the Council could try the format that was proposed this year, and could talk later about possibly changing it.

There was consensus that this was the way to proceed.

Administrator Selig said he would provide ICMA with the email addresses of participants. He said once Councilors completed the questionnaire, he would get the results, and then they could all discuss them.

D. Other business

There was not other business.

XI. Nonpublic Session (if required)

XII. Adjourn

Councilor Van Asselt MOVED adjourn the meeting. Councilor Leach SECONDED the motion, and it PASSED unanimously 6-0.

Adjournment at 10:32 pm

Victoria Parmele, Minutes taker