

**This set of minutes was approved at the February 5, 2007 Town Council meeting.**

**DURHAM TOWN COUNCIL  
MONDAY, APRIL 23, 2007  
DURHAM TOWN HALL – COUNCIL CHAMBERS  
7:00 PM**

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

**MEMBERS ABSENT:**

**OTHERS PRESENT:** Town Administrator Todd Selig; Business Manager Gail Jablonski; Code Enforcement Officer Tom Johnson

**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. Councilor Henry Smith SECONDED the motion.*

**Councilor Van Asselt** asked whether, when the Council reached the Agenda item on the discussion of the Durham Business Park, it could go into non-public session at that time, or had to decide that in advance under Approval of Agenda.

Administrator Selig said this could be decided later, under that Agenda item.

*The motion PASSED unanimously 9-0.*

**III. Special Announcements**

None

**IV. Approval of Minutes**

March 19, 2007

***Councilor Stanhope MOVED to approve the Minutes as presented. Councilor Leach SECONDED the motion, and it PASSED 7-0-2, with Councilor Needell and Councilor Van Asselt abstaining because of their absence from the March 19, 2007 meeting.***

**V. Councilor and Town Administrator Roundtable**

Councilor Needell summarized the April 18, 2007 Planning Board meeting:

- The Planning Board voted to have 3 alternates for the time being.
- The Board approved the site plan application for an expansion of Durham Market Place to allow a takeout ice cream stand out front.
- There was further discussion on proposed changes to the Zoning Ordinance on forestry/timber harvesting, and said these changes should be going to public hearing soon.
- The Board decided to take no action concerning the proposed changes in the Zoning District Map to incorporate Tax Map 9, Lots 1-1, 1-2, 2-1, 3-0 and 4-0 into the Office Research/Light Industry District.
- He said there would be public hearing on proposed renovations to Emery Farm at the April 25, 2007 meeting; a continued hearing on the 97-99 Madbury Road elderly housing complex; and two acceptance hearings, one on the Caldarola 9 lot subdivision at the corner of Bagdad and Canney Road, and acceptance consideration for a mixed use (residential up, retail down) facility on 20 Strafford Ave.

Councilor Carroll thanked the Fire Department for helping her and her husband, during the recent heavy rains. She provided details on this, and said she realized that the Department had also helped a lot of other people in Durham during this difficult period.

Councilor Julian Smith said the Conservation Commission had met the previous week, and discussed the plans for dredging Mill Pond. He said this matter would come forward in the near future, if all went well. He noted that the Conservation Commission would first like to have a public forum on the project so people would have a better understanding of it.

Councilor Smith complemented Mill Pond Study Committee Chair Dave Howland for the hard work he had done in putting together the recent public hearing. He said he and Mr. Howland would be meeting soon with the American Institute of Architects coordinator for the Mill Plaza project, to put together a charrette where the design plan for the Plaza would be discussed. He noted that Durham had recently received a grant from the AIA.

At the request of Councilor Stanhope, there was discussion of the Unanimous Consent Agenda Item concerning the Budget and Revenue Projections developed by the Public Works Department for the Churchill rink.

Councilor Leach explained that much of the reason that the expenses on this had gone down was that now that the rink was under the jurisdiction of the Public Works Department, the Department could undertake work concerning the rink that ORYA had previously had to contract out. She said the insurance had also gone down. Councilor Leach also provided details on the fact that the revenue might turn out to be higher than what was shown in the Budget. She said

those who had worked on the Budget and Revenue Projections felt fairly comfortable that the rink would break even or better.

Councilor Stanhope asked if the Town would continue to support ORYA at the same level as it had in the past.

Administrator Selig said that was the plan for 2007, and said they would have to discuss the plan for 2008. He noted that this funding level didn't cover the cost of operation of the rink.

Councilor Carroll said she had noticed that the largest expense was the rink manager and electricity. She said \$34,000 per year for electricity was a lot, and asked if anything could be done to conserve energy.

Administrator Selig said the Town had applied for and received a grant that would pay for half of the cost of electricity.

Councilor Carroll said it would be nice to have some advertising-free areas at the rink, and asked if this could be looked into.

Administrator Selig said they had been looking at the idea of promotion of local businesses at the rink, and Councilor Carroll said that was a much better idea.

Administrator Selig said there had been a recent meeting of the 275th Anniversary Committee, and said one of the topics discussed was Durham Day. He said a question had arisen as to whether they wanted to continue to have the Town Council host the barbecue, or instead have a picnic lunch where people brought their own food. He said the Town could provide the refreshments.

Councilor Morong said if they didn't do the barbecue, perhaps not as many people would attend. But he said he personally missed out on speaking with members of the public at the event, when he was busy barbecuing.

Administrator Selig said that perhaps the Durham Rotary Club could do a barbecue as a fundraiser. He explained that the group organizing the activities was thinking in terms of ways to save the available funds for more celebration types of activities. There was further discussion, and Administrator Selig said further work would be done on this.

Administrator Selig thanked the Town departments for doing such a wonderful job during the recent flood events. He noted an innovation that had been developed this year where information on roads that were closed because of flooding was funneled to the Fire Department, which then kept a running tally on this. He said this new system had worked very well.

Administrator Selig noted Unanimous Consent Agenda Item VII A, regarding the collective bargaining agreement between the Town and the Durham Professional Firefighters Association. He said the agreement provided for a 1½ % market adjustment the first year, and a 2% adjustment in years 2007-2009. He noted that the agreement also provided an educational stipend

for employees who achieved associate degrees and bachelors' degrees. He said the negotiations had gone smoothly this year, and said they had worked through a lot of different issues, with both teams seeing the contract as a step forward. He recommended that the Council ratify the contract.

Administrator Selig told the Council that the previous week, the NH Fish and Game Department had held a meeting at the request of the Natural Resource Conservation Service (NRCS). He explained that the NRCS had some substantial grant money available for a possible fish ladder on the Lamprey River.

He provided some history on the working group that had been put together about five years ago to consider possible options for improving the fish population on the river. He said the #1 idea was to remove the dam but the cost for this was high. He said the #2 idea was to construct a natural fishway, but he said there hadn't been the agreement that was needed from all parties in order for this to go ahead. He also said the total amount of funding for this approach wasn't available, and that the time frame was long.

Administrator Selig said the grant funding from NRCS would allow a fish ladder to be built within the next few years, and said the project could coincide with the repairs that were needed for the Wiswall dam and Wiswall bridge, thus allowing the Town to bid the work out as one complete project. He said this would result in a more competitive bid situation for the Town, and also would mean there would be less impact on the river.

He said he had asked the Public Works Department to discuss this concept with the Conservation Commission and the Lamprey River Advisory Committee. He noted that the fish ladder could perhaps be an interim step, and that there could continue to be study of alternatives at that location.

Councilor Stanhope asked if he could abstain during voting on the Unanimous Consent Agenda, given the items in it on fees, and was told that he could. He also noted comments made by the president of UNH that all fees should be included in tuition. In addition, he said that towns with fewer fees than Durham also had substantially lower property taxes. He said to burden the taxpayers of Durham with additional fees was therefore unreasonable.

## **VI. Public Comments (*NLT 7:30 PM*)**

**Jay Gooze, Meadow Road,** said he was there to speak on the proposed ordinance developed by the Housing Task Force, noting that he was the ZBA representative to this group. He said that as part of their most recent meeting, he had resisted the urge to ask for a further modification of the draft before it went to the Council. But he said he felt the ordinance would be much more likely to be accepted by Durham residents, if certain occupancy modifications were made before the ordinance got to the Planning Board. He noted that the residents of the neighborhoods were very attuned to any Ordinance changes related to the modifications to the 3 unrelated provision. He provided details on his involvement in the development of the 3 unrelated provision in the 1980's.

Dr. Gooze asked that in addition to what was proposed, there be some protection for abutting residential neighborhoods. He recommended that the number of unrelated occupants be limited to 3 unless there was professional office management on site, in which case there could be 4 unrelated occupants. He said the RA and RB districts would be most affected by this. He said it was key that there be onsite professional office management.

Dr. Gooze also said he was uncomfortable with the 5-8 number under #3 on page 2, and said this seemed like a lot of people. He said 4 seemed like a reasonable number.

Dr. Gooze also said the density issue had recently come to the attention of the ZBA, and said the Board appeared to be comfortable allowing an increase in density in certain areas, but that parking hadn't kept up regarding multi-unit infill development. He said this made it difficult for the ZBA when it had to decide what to do when looking at an individual application, looking at the spirit and intent of the Ordinance. He said this issue would be brought to the Planning Board as well, and said it was an area that needed to be tweaked.

Dr. Gooze said that overall, he still felt things were significantly improved in Durham in terms of the neighborhoods, and said thanks to code enforcement, the work of the Police Department and Fire Department, etc., Durham was now a better place to live. He said he could feel a sense of vibrancy as he walked around Town, and said he would like to help keep it that way for everyone involved.

**Peter Smith, Piscataqua Road**, noted that he was not able to be at the previous Council meeting. He said he had continued interest in serving on the Conservation Commission, and also urged that the Council reappoint regular members George Thomas and Duane Hyde.

**Jerry Gottsacker, 107 Mad bury Road**, noted that at the previous Council meeting, he had recommended that Mike Sievert would be a great candidate for the regular member position on the ZBA, and that he (Mr. Gottsacker) would like to take the alternate position. He said he had since discovered that there were two regular member positions open on the ZBA.

Chair Niman asked Mr. Gottsacker if would like to serve as a regular member of the ZBA, and Mr. Gottsacker said he would be fine with this.

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

Item E was, concerning the creation of the Energy Committee Steering Committee, was removed from the Unanimous Consent Agenda at the request of Councilor Carroll.

- A. Shall the Town Council ratify the Collective Bargaining Agreement between the Town of Durham and the Durham Professional Firefighters Association (DPFFA) for the period January 1, 2007 through December 31, 2009?
- B. **ACTION ON ORDINANCE #2007-05** amending Chapter 54 "Electrical Code", Section 54-10 of the Durham Town Code, and adding the fees of this section into the Town-wide Master Fee Schedule

- C. **ACTION ON ORDINANCE #2007-06** amending Chapter 97 “Plumbing Code and Regulations”, Section 97-10 of the Durham Town Code, and adding the fees of this section into the Town-wide Master Fee Schedule
- D. **RESOLUTION #2007-13** establishing a Rink Advisory Committee relative to the skating rink at Jackson’s Landing

***Councilor Leach MOVED to approve Unanimous Consent Agenda Items A-D. Councilor Carroll SECONDED the motion, and it PASSED unanimously 9-0.***

- E. **RESOLUTION #2007-14** creating the Energy Committee Steering Committee in accordance with the passage of Article 2 on the March 13, 2007 Town Election Warrant

Councilor Carroll requested an amendment to the recommendations that had been provided to the Council by herself, Councilor Needell and Councilor Morong concerning the development of the Steering committee. She said she would like the size of this committee to be 8 members, rather than 7, and she also recommended that 5 of those members should be Durham residents.

***Councilor Carroll MOVED that the Town Council adopts Resolution 2007-14, Creating the Energy Committee Steering Committee, with two changes, - that the number of members be 8 instead of 7, and that the number of Durham residents be 5 instead of 4. Councilor Needell SECONDED the motion.***

Councilor Carroll said a larger number of Steering committee members would be useful because there were a lot of activities the committee would be involved with, and because with a greater number of members, there could be greater diversity of skills available. She said it would not be a problem that there was an even number of members, because the committee would probably operate by consensus.

Councilor Leach asked for clarification on what role the Steering committee would play, relative to the Energy committee.

Councilor Needell said the people setting up the Energy Committee envisioned that there could be a lot of people involved, given the various energy related areas the committee could cover. He said the Steering committee would oversee how the Energy Committee was set up, including the creation of subcommittees to address various topics, and would provide the interaction with the Council. He said it didn’t make sense for the Council to have to be the entity to appoint the various people that would be involved.

He provided further details on possible options for the structuring of the Energy Committee, but said it would be up to the Steering committee to decide on this structure. He said it wasn’t felt that the Council should be spending time trying to design this.

Councilor Needell was asked if the Steering committee would determine what the mission of the Energy Committee was, and he said yes. He said the Council could then disagree with this, noting that it had to be able to sign on to what the Energy Committee was doing.

Councilor Leach said it was important to keep in mind what people had voted on: to recommend local steps to combat global warming.

Councilor Needell said that was the Energy Committee's primary charge: to take the warrant article and run with it

Councilor Van Asselt said a big piece that was missing was developers, builders and property managers, and the significant costs to them as a result of efforts to fight global warming.

Councilor Morong said there had been discussion on this, and said the hope was to get someone on the Steering committee with a background in the building industry.

Councilor Henry Smith asked what kind of authority the Steering committee had, and Councilor Needell said it had the authority that the Council gave it. He said right now it had the authority to create an Energy committee and tell the Council how that committee would be operated. He said the intent, if the creation of the Steering committee was approved, was that the applications for appointment to that committee would be solicited until May 11<sup>th</sup>. He said that at the May 21<sup>st</sup> Council meeting, the applicants would have the opportunity to introduce themselves, and the Council could make the appointments.

Councilor Stanhope said he was interested as to why 8 was considered the operating number in terms of membership on the steering committee. There was discussion on this. Councilor Stanhope said he wondered whether the Energy Committee might be set up as an umbrella committee for the various energy related issues Durham was addressing, and could even include the Integrated Waste Management Advisory Committee.

Chair Niman said that perhaps the Steering committee could make a recommendation concerning this.

Councilor Carroll said she would be happy to provide some information for Administrator Selig's Friday Update, so residents could read about the openings available on the Steering committee.

***The motion as amended PASSED unanimously 9-0.***

## **VIII. Committee Appointments**

Continue process for making appointments to vacancies on the various Town boards, commissions, and committees

Chair Niman provided details on the process the Council had followed, where a tally of each Councilor's favorites for the various positions had been developed. He said this tally

information, which was public information, had then been provided to Councilors for the present meeting to assist them with voting.

After some discussion, the Council agreed to vote first on the simpler appointments that could be made based on the tally sheet, and then take it from there.

### **Conservation Commission**

***Councilor Stanhope MOVED to appoint Duane Hyde and George Thomas to three-year regular member terms on the Conservation Commission, with term expirations of April 30, 2010. Councilor Van Asselt SECONDED the motion, and it PASSED unanimously 9-0.***

***Councilor Julian Smith MOVED to appoint Peter Smith to a three-year alternate member term on the Conservation Commission, with a term expiration of April 30, 2010. Councilor Morong SECONDED the motion.***

Councilor Julian Smith said that as the Council representative to the Conservation Commission, he supported this nomination.

Councilor Henry Smith noted that it was critical for Peter Smith to be on this committee, given his position on the State Right to Know Committee, and the requirement that one serve on a local board or committee in order to sit on that committee. He also said Peter Smith had served on the Conservation Commission for a long time, and had made important contributions to the Commission.

***The motion PASSED unanimously 9-0.***

### **Parks and Recreation Committee**

It was noted that there were three regular terms, and one alternate term.

***Councilor Henry Smith MOVED to appoint George Lamb to a three-year regular member term on the Parks and Recreation Committee, with a term expiration of April 30, 2010. Councilor Leach SECONDED the motion, and it PASSED unanimously.***

***Councilor Leach MOVED to appoint Sara Wilson to a three-year regular member term on the Parks and Recreation Committee, with a term expiration of April 30, 2009. Councilor Julian Smith SECONDED the motion.***

***Councilor Morong MOVED to appoint Greg Moore to a three-year regular member term on the Parks and Recreation Committee, with a term expiration of April 30, 2008. Councilor Stanhope SECONDED the motion and it PASSED unanimously.***

There was detailed discussion about whether Mr. Moore, or perhaps other candidates – Emily Slama and Katie Muth, should be considered for the position instead.



***The motion PASSED 5-4 with Councilors Julian Smith, Councilor Leach, Councilor Henry Smith and Chair Niman voting against it.***

***Councilor Van Asselt MOVED to appoint Emily Slama to a three-year alternate member term on the Parks and Recreation Committee, with a term expiration of April 30, 2010. Councilor Stanhope SECONDED the motion.***

Councilor Carroll said although she would love to see both Emily Slama and Katie Muth in this position, she would favor Katie, noting that with her work at the Mill Pond Center, she would bring a lot of background to the Parks and Recreation Committee. She said having Katie on the Parks and Recreation Committee would be quite valuable.

Councilor Henry Smith noted on the other hand that Ms. Muth was already actively involved, given her work at the Mill Pond Center, so one could therefore say that Ms. Slama should have this slot.

Councilor Leach noted that Ms. Muth was on the tri-town recreation committee, so even if she didn't make the Parks and Recreation Committee, she would still be involved with recreation issues in Town.

Chair Niman said Ms. Slama had been involved with Oyster River Parents and Preschoolers, and said he felt she would bring some perspective on young children that he felt had been missing on from the Parks and Recreation Committee.

Councilor Needell said both candidates were excellent, but would prefer to see Ms. Muth appointed for this particular position.

***The motion PASSED 7-2, with Councilor Needell and Councilor Carroll voting against it.***

Administrator Selig said the Parks and Recreation Committee had a lot of great projects in process, so there would be ample opportunity to participate.

### **Planning Board**

***Councilor Leach MOVED to appoint Lorne Parnell and Susan Fuller to the three-year regular member terms on the Planning Board, with term expirations of April 30, 2010, and Richard Ozenich to a one-year regular member term on the Planning Board with a term expiration of April 30, 2008.***

There was discussion that for seniority reasons, Richard Ozenich should be nominated for the 2010 term, and Susan Fuller should be nominated for the 2008 term.

### **Revised motion –**

***Councilor Leach MOVED to appoint Lorne Parnell and Richard Ozenich to the three-year regular member terms on the Planning Board, with term expirations of April 30, 2010, and***

***Susan Fuller to a one-year regular member term on the Planning Board with a term expiration of April 30, 2008. Councilor Needell SECONDED the motion.***

***Councilor Julian Smith MOVED that the Council divide the motion concerning the three-year terms and the one-year term for the Planning Board. Councilor Henry Smith SECONDED the motion, and it PASSED 7-2, with Councilor Van Asselt and Councilor Stanhope voting against it.***

***The motion to appoint Lorne Parnell and Richard Ozenich to the three-year regular member terms on the Planning Board, with term expirations of April 30, 2010 PASSED unanimously 9-0.***

Councilor Julian Smith said Susan Fuller appeared to be a valuable member of the Board, but said he would prefer to nominate and appoint Annmarie Harris to that regular one-year term. He said that five years when he was a member of the Planning Board, Ms. Harris had taught him a lot. He said she probably had more seniority on the Board than any other member other than Steve Roberts. Councilor Smith said he was aware that Ms. Harris had said something she regretted the previous year, concerning the Irving application. He said she was mellowing, and said the one-year appointment would give the Planning Board and the Council time to review her role as a regular member.

Councilor Carroll said Ms. Fuller came to meetings prepared, and said this was another situation where there were more good candidates than openings. She said she favored having Ms. Harris take the one-year regular member term, noting that her active participation in Town trumped most people on most Boards in Durham. She provided details on this, and also noted that if one watched the Planning Board meetings, Ms. Harris asked different kinds of questions, and could be very insightful in her comments to the Board. She said this was a rare talent, and one that most committees needed. She encouraged the Council to support Ms. Harris for the one-year regular member position.

Councilor Needell said he supported Ms. Fuller for this position, noting that he was not against someone else having the position. He said Ms. Fuller had been a very dedicated member of the Board, had been at almost every meeting, and was a full participant of the Board as an alternate. He also noted that she had been offered a regular member position previously, but declined at that point because she felt her commitments elsewhere were too great. He said he felt she had earned this position.

Councilor Stanhope said Ms. Fuller seemed to be a calming voice at meetings, and said she should be given full consideration for the regular member position.

Councilor Henry Smith recommended that Ms. Harris be appointed to this position because of her experience. He suggested that Ms. Fuller should be appointed as an alternate.

***The motion to appoint Susan Fuller to the one-year regular member term on the Planning Board with a term expiration of April 30, 2008 PASSED 6-3, with Councilor Carroll, Councilor Henry Smith and Councilor Julian Smith voting against it.***

There was discussion that Ms. Fuller's alternate position had expired, so the fact that she would now be moving up didn't make a difference in terms of the number of alternate positions that were open. It was clarified that only one alternate appointment needed to be made.

Chair Niman said he respect the view of the Planning Board that it only wanted to have three alternates right now. But he said he would like to see as many people involved in Town government as possible, and said he would like to find a place for Mr. Glidden.

Councilor Needell said his sense, from speaking with Mr. Glidden at the end of the previous Council meeting, was that he was simply interested in participating in Town government, and might be open to serving on another committee.

There was further discussion on the Planning Board's desire to have three alternates, not four.

Councilor Needell said the Planning Board had found that 3 alternates was a reasonable number, and said they could always come back to the Council to get another alternate if they needed one. He said he too thought that 3 alternates was a sufficient number right now.

***Councilor Needell MOVED to appoint Doug Greene to the three- year alternate member term on the Planning Board. Councilor Leach SECONDED the motion, and it PASSED unanimously 9-0.***

Chair Niman asked the Council if it wanted to appoint anyone else to the Planning Board. It was agreed that the Council would not do this, but that this could change in the future if necessary.

### **ZBA**

***Councilor Henry Smith MOVED to appoint Michael Sievert to the three-year regular member term on the Zoning Board of Adjustment, with a term expiration of April 30, 2010. Councilor Stanhope SECONDED the motion, and it PASSED unanimously 9-0.***

Councilor Stanhope said his understanding was that Mr. Welsh had not served as an alternate, and that historically, it was appropriate for alternates to move up the ladder.

***Councilor Stanhope MOVED to appoint Jerry Gottsacker to the three-year regular member term on the Zoning Board of Adjustment, with a term expiration of April 30, 2010. Councilor Leach SECONDED the motion.***

Councilor Carroll said she didn't know Mr. Welsh, but had spoken with someone who said Mr. Welsh should have no difficulty stepping in quickly as a new Board member. She also noted that Mr. Gottsacker had previously asked to be an alternate because he had only been on the ZBA for a few months. She said she felt Mr. Welsh should be appointed to this position.

Councilor Needell asked Mr. Gottsacker if he was comfortable moving up to the regular member position.

Mr. Gottsacker said he didn't agree that one could jump on the ZBA and quickly know what to do. He said he had done a lot of reading, since he had been an alternate. He also noted that he had a lot of business experience, and said this didn't necessarily qualify him to make land use decisions. He said he was comfortable with the idea of taking the regular position, noting that he had sat as a regular member at the most recent meeting, and felt better about this.

Councilor Van Asselt said he was a huge supporter of Mr. Welsh, but said he agreed with Councilor Stanhope that he couldn't remember the Council saying no to an alternate moving up who had done a good job. He suggested that Mr. Welsh could be an alternate on the ZBA.

Councilor Henry Smith said sitting on the ZBA was a real challenge, but said he thought Mr. Welsh could do it. He suggested that Mr. Gottsacker could be an alternate.

*The motion PASSED 7-2 with Councilor Henry Smith and Councilor Carroll voting against it.*

*Councilor Leach MOVED to appoint Carden Welsh to a three-year alternate member term on the Zoning Board of Adjustment, with a term expiration of April 30, 2010. Councilor Stanhope SECONDED the motion, and it PASSED unanimously 9-0.*

It was noted that since Mr. Sievert was moving up from the alternate to regular member position, there was an opening for another alternate.

*Councilor Morong MOVED to appoint Robbie Woodburn to a three-year alternate member term on the Zoning Board of Adjustment, with a term expiration of April 30, 2008. Julian Smith SECONDED the motion, and it PASSED 8-1, with Councilor Leach voting against it.*

The Council stood in recess from 8:34-8:44 PM.

## **IX. Unfinished Business**

- A. **ACTION ON ORDINANCE #2007-04** amending Chapter 38 "Building Construction", Sections 38-8 and 38-28 of the Durham Town Code, and adding the fees of these sections into the Town-wide Master Fee Schedule

Administrator Selig said this item had come before the Council two meetings ago, and several questions had arisen. He said one was whether the proposed driveway permit inspection fee and the septic fee were reasonable. He noted that the Town Engineer had provided a survey of what surrounding communities did concerning driveway permit fees, and said the cost ranged from 0-\$150, providing details on this. He said Durham currently charged \$20 for residential driveway permits, and \$50 for commercial-industrial permits.

He said the Town was trying to find ways to pass some of the burden of the cost of this work onto the users, in the form of a fee. He said an individual who requested an inspection paid a fee, which brought in revenue and thus offset the cost to those residents who were not using this service. But he said those residents having to pay the fee might be happy with the amount of the

fee, and said the question was whether \$100 fee for residential driveway permits, and a \$150 fee for commercial/industrial permits was reasonable

Concerning the issue of septic fees, he said the Durham fee schedule was higher than in most surrounding communities. But he said the difference was that Durham placed a lot of emphasis on respecting wetlands, groundwater, etc., so the Code Enforcement Office played a vital role in the inspection process. He said the proposal being brought forward was felt to be reasonable, given the work involved.

He said the third major issue concerned Section 38-8 D, the subsection that dealt with Exclusions. He explained that currently, the wording said “No building permit fee shall be required for repairs or maintenance necessitated by ordinary wear and tear”, and said this wording had created confusion.

Administrator Selig said that after discussion on this section at a previous Council meeting, Mr. Johnson had provided a version B that would specifically site sections of the State building code, which has added a few more pages to the Ordinance. He noted that version A simply struck the Exclusion language.

Chair Niman said the Council could adopt Version A, which it had already held a public hearing on, could adopt Version B, which inserted additional language into the code itself, or could do something else.

Councilor Stanhope said Section B represented a significant amount of new language, and said he felt this would necessitate an additional public hearing. He said he was also troubled by the fact that the first time he was made aware of changes, as a Council member, wasn't until Friday morning.

Administrator Selig said there was no harm in holding an additional public hearing, but said he felt the changes were not substantive. He said the intent in Version A was that all the add on language was implied, so if A were adopted, the language in B would also apply. He said his concern about Version B was that the language of the State building code changed over time, and said Town staff was therefore more comfortable not having the specific language in the Ordinance itself.

***Councilor Needell MOVED to adopt Version A of Ordinance #2007-04, amending Chapter 38 “Building Construction”, Sections 38-8 and 38-28 of the Durham Town Code by updating Permit Fees and Permit Fees for Building Construction Work. The motion was SECONDED by Councilor Henry Smith.***

Chair Niman said that if Councilors preferred Version B, they could simply vote down Version A right now.

Mr. Johnson said that Version B took language from the 2000 State Building Code, and noted that the State Senate had just passed the 2006 version of the State Building Code. He said when

that came on line, the Town would then have to revisit that updated Code. He said it would create a monster, in having to clarify these various provisions.

There was discussion that Version B had been developed at the request of the Council because of concern that if the Exemption language on ordinary wear and tear were eliminated, there would still be confusion as to what was allowed. He said Version B made things very clear.

There was further detailed discussion by the Council on the advantages and disadvantages of Version A and B.

Councilor Van Asselt asked how these fees related to some of the bigger projects coming along in Durham.

Mr. Johnson said the current fees for this kind of work were way down compared to fees in other towns.

Councilor Van Asselt asked if there was provision for any kind of elderly fee exemption, when residents qualified under other elderly exemptions.

Mr. Johnson said no.

Councilor Van Asselt asked when would be the appropriate time to discuss that issue.

Administrator Selig recommended that this be discussed when having a more general discussion on easing the burden on elderly residents. He noted that building permits could be looked at with that issue in mind.

Councilor Morong said Durham was unusual in the extent to which it wanted to have clean water. He suggested that the general funds should pay for this, instead of the water users.

Councilor Stanhope noted that he was the one who had had concerns about Section 38-8 D 2, and said he had hoped the language there would remain rather than all of these new pages in Version B. He said he thought there should be a reference to NH state building code as to what was exempted from having to get a building permit. He provided details on this.

There was further discussion on this.

Councilor Morong asked if Mr. Johnson had list of exemptions that were easy for the public to pick up.

Mr. Johnson said he had a binder that contained this information, and when someone came to his office, he took the individual sheet(s) and copied it.

Councilor Morong said it would be handy if a printout was readily available for residents, but Mr. Johnson said his office was already cramped for space, which would make providing the various printouts very difficult.

Councilor Stanhope asked if Mr. Johnson had a strong objection to retaining 38-8 D 2, and Mr. Johnson said no. But he said this had caused problems for some people.

***Councilor Stanhope MOVED to amend the original motion, and to retain Section 38-8 D.2. Councilor Van Asselt SECONDED the motion.***

Administrator Selig noted that D 2 would in effect become D 1.

Councilor Needell asked if this was a substantive change, stating that his sense was that it was not.

There was discussion on this, and Administrator Selig provided details to the effect that it was not a substantive change.

Councilor Needell noted that Mr. Johnson had initially recommended taking this language out, but did not object to leaving it in.

Mr. Johnson said that was correct, and provided details on this.

***The motion to amend FAILED 4-5, with Councilor Carroll, Councilor Julian Smith, Chair Niman, Councilor Leach, and Councilor Morong voting against it.***

Administrator Selig stated again that the goal of increasing fees was not to add to the Town's high tax burden, but to offset some of the costs, by shifting them to those using the particular Town service.

***Councilor Morong MOVED to make an amendment to the original motion, that the septic fee would not be raised to \$100 from \$50. Councilor Stanhope SECONDED the motion, and it FAILED 3-6, with Councilor Stanhope, Councilor Leach and Councilor Morong voting in favor of it.***

***The original motion PASSED 6-3, with Councilor Stanhope, Councilor Morong and Councilor Leach voting against it.***

- B. Discussion between Administrator and Town Council concerning the development of a Purchase and Sale Agreement between the Town of Durham and Chinburg Builders, Inc. for the Durham Business Park

Administrator Selig noted that there would be an extension of the original RFP for an additional 50 days. He said Chinburg had developed a term sheet at his request, and said the goal was to see if the terms discussed most recently were acceptable, and could translate to a Purchase and Sales Agreement.

He said a base purchase price of \$350,000 had now been established for the property, and said any square footage above and beyond 35,000 net sf up to 50,000 net sf would be at the rate of

\$10 per net sf, and \$7 per net sf in excess of 50,000 sf. He provided details on the process that would theoretically be followed if the relationship continued.

He said the terms sheet was a bit more of a straightforward purchase and sale document than the previous document, and said he wanted to be sure the Council was comfortable with it. He noted that this document had eliminated the option of the Town buying back the parcel, but in exchange, Chinburg Builders had offered to place a floor in terms of the purchase price.

Councilor Needell asked whether the paying off of the \$350,000 within 3 years was not dependent on securing any permits to build. He also asked why the numbers involved were not \$500,000 and 50,000 sf, which had been discussed previously. He asked why the floor was being set so low.

Administrator Selig said the sense was that the Council's goal was not just to maximize the site for its economic potential, noting that there might have to be some compromising in terms of the height of the buildings constructed there. He said he didn't want to pressure Chinburg Builders to force 50,000 sf onto the site if the Council was not comfortable with this.

Mr. Schuster said regarding the 50,000 sf issue, there was the recognition that there might be a limit in terms of what NHDOT would allow. He said the 35,000 sf amount was seen as an important starting point, in terms of risk vs. reward.

Chair Niman said his concern about the agreement was that Chinburg would build 35,000 sf and pay the Town \$350,000, and then would create a different LLC say it had completed its commitment to the Town, and would then sell its property to a second LLC, etc.

Mr. Schuster said the company's commitment ran with the property, and said there would be explicit language concerning this.

There was discussion about the payment in lieu of taxes (PILOT) language in the term sheet on page 4.

Councilor Van Asselt asked if there would be a way around this language if an enterprise appeared that the Town said it wanted, but it was tax exempt.

Administrator Selig suggested that there could be language that said the PILOT aspect could be waived, by mutual agreement of the parties involved.

Councilor Van Asselt said there were potential enterprises that could take one of the pods that were in the absolute best interest of the Town, where the Town might want to negotiate less than the full tax amount.

Mr. Schuster said this could certainly be included, and said he would provide some qualifying language on it.



Chair Niman asked if it was correct to say that in the previous, more convoluted agreement, there was a clause about public access, but that the term sheet didn't include anything on this.

There was discussion that it was in fact still included, but was simply not reflected in the term sheet. Mr. Schuster said the access agreement was a separate component in the previous document. He said these access provisions remained in the current, larger document, and were very much a part of the agreement with the Town. He explained that the term sheet was narrower, and said all of the other provisions that were part of the original agreement would be in the final agreement.

Councilor Needell said if this transaction went through, the entire property would be transferred to Chinburg Builders. He noted that the development might occur in stages, but said if it turned out that only one pod was built, Chinburg would retain the rest of the land. He said although the Town had assisted with the design of the site, it would no longer have any ownership rights.

Councilor Carroll asked how much the Town had paid for the water and sewer infrastructure that was put in on the site.

Administrator Selig said the Town paid \$500,000 to purchase the property, and invested \$92,000 in the infrastructure, noting that this was paid for with UDAG funds.

Councilor Van Asselt said it was important to note, for people wondering why the Town would now sell the property for \$350,000, that when Chinburg Builders developed 50,000 sf, the cost of the property would be up to \$500,000. He also said the property could provide \$180,000 to 200,000 annually in taxes at first, for a development of \$ 6 million with 50,000 sf, and then more over time.

Administrator Selig noted that the changes to the Zoning Ordinance since the property was purchased by the Town, which had resulted in the fact that there was now less developable area now than then. He also noted that the property had been purchased because it was located right next to the wastewater treatment plant. He said Chinburg had agreed to provide a provision in the Purchase and Sale Agreement to insure that no future owner would come back to the Town and complain about the odors coming from the plant.

Councilor Morong noted that some of the infrastructure improvements were no longer valuable to a developer because so much time had passed.

Councilor Needell said he appreciated the potential limitations to the site. He said one concern he had was that there would be an extra incentive, when a project for this site came before the Planning Board, to approve it in order to get economic development in Town. He said he hoped the Council wasn't therefore placing an additional burden on the Planning Board because of the agreement. He asked if he was wrong about that, and also said perhaps it was normal that the Planning Board should be responsive to the idea of economic development.

Chair Niman said he hadn't been thinking in these terms, and had been thinking about what it would take to entice Chinburg Builders to participate in this, knowing that Durham liked to kill

projects for sport in some sense. He said he viewed this as an incentive to get a quality partner like Chinburg Builders, and said his belief was that once the Purchase and Sale agreement was signed, the Planning Board and the developer would work together to build something nice on the property

Councilor Leach noted that the Design Guideline committee, which would include a Planning Board member, would be working on this, so they wouldn't simply be dumping this project on the Planning Board with this intermediary step.

Councilor Carroll said she echoed a word of caution. She said there was a built-in economic incentive to build here. She agreed there was good Zoning in place, and a good partner to work with, but there was some pressure involved.

Mr. Schuster said that comparing the term sheet to the previous draft of the agreement, that pressure got minimized. He said this issue had come up in many conversations, but said the company would still have to go to the Planning Board, with no strings attached. He said if the Town sold the property, it would be subject to the trust they had in the Master Plan, the Zoning Ordinance, the Planning Board, and other regulatory pieces. He said Chinburg Builders would be no different than anyone else coming in, in terms of being subject to the regulatory requirements.

Councilor Needell said this was reassurance that he wanted to be able to pass along to the Planning Board and the Design review committee. He said it was important for the Town Council to say as a body that it had a certain role to play, in negotiating the agreement, but that other groups had a role to play based on the Design Guidelines and the regulations.

Councilor Carroll asked if there might be any reason to sell the 5-6 buildable acres, and keep the rest of the acreage in the public domain, as a natural area.

Administrator Selig said a developer might need setbacks in order to move ahead. He said the idea had not been included in the RFP, but said the natural area on the site had been discussed as something that would be available for public access.

Councilor Van Asselt said this was an interesting question. He asked who would manage the 20 acres after the setbacks were taken out, and Administrator Selig said it would be the owner.

Mr. Schuster said the tool the company would use would be easements, and he provided details on this. He said they would need to keep the natural area intact because of the setbacks that were needed.

## **X. New Business**

- A. Proposed ordinance to amend Chapter 175 "Zoning", Sections 175-7 and 175-54 of the Durham Town Code by updating the definitions of habitable floor area and unrelated household and by changing the minimum lot area per dwelling unit in the Central Business District

Administrator Selig reviewed the fact that the Council had held a Housing workshop in 2006, which had resulted in the formation of the Housing Task Force. He said the first topic addressed

by the group was the impact of the Zoning Ordinance on rental properties downtown and some other areas of Town. He also noted that concern had been expressed by the Durham Landowners Association that because the Zoning Ordinance changes, there was a cloud hanging over some properties, including grandfathered properties, concerning the occupancy that was permitted.

He explained that the Town's position was that if landlords came in for a permit of some kind, they would find out the occupancy requirement, and this cloud would go away. He said there was disagreement among some of the members of the Landlords Association concerning this, who were concerned that this might result in decreased occupancy levels and would have a financial impact on them.

Administrator Selig said the Ordinance before the Council was a consensus document that had been developed within the past year, and he provided some details on it. He said the Council was being asked to decide if it was comfortable with it, and if it was, to forward it to the Planning Board as a Town Council initiated Zoning Ordinance change. He said after appropriate hearings were held by both entities, the Council would decide on adoption of the ordinance.

Administrator Selig noted the comments made by Housing Task Force member Jay Gooze earlier at the Council meeting, regarding his suggested change to the draft document.

Councilor Stanhope said this was great work that the Task Force had done. He also noted that the different Town departments treated the same property differently, in terms of the standards that were applied. He asked whether as part of this current initiative, some uniformity could be developed as to which standard prevailed. He suggested that some kind of umbrella authority could be created.

Mr. Johnson said that issue had been a big area of contention at the Housing Task Force meetings. He explained that the Task Force had considered ways that the Town could work with landlords who wanted to increase density, while not penalizing those who didn't, and provided details on this.

Councilor Stanhope noted again the disparity between different Town departments in terms of how they treated the same property.

Mr. Johnson said there would still be situations where this would happen, regardless of this Ordinance, especially concerning life safety issues. But he said the proposed ordinance could address land use more wisely, and give people different options.

Councilor Van Asselt said that Councilor Stanhope's question had been addressed by the Task Force. He said they were providing the opportunity, for those who wanted to make the change to allow greater density, within whatever guidelines the Council set. But he said the Task Force was not forcing landlords who didn't want increased density to have to come forward under increased scrutiny and do anything. He said the approach being recommended would not change the entire character of the landlord tenant relationship in Town. He also spoke about the proposed changes to the 3 unrelated rule, and the protections that would be put in place concerning this.

Mr. Johnson said the basic 3 unrelated rule still applied for pocket neighborhoods, and then provided details on the provisions of the proposed ordinance where greater density would be allowed in some other circumstances.

Councilor Needell said that as he read the ordinance, 3 unrelated had nothing to do with density, and said a dwelling unit couldn't have more than 3 people regardless of how much square footage there was.

There was detailed discussion as to who the language in the proposed ordinance should be interpreted.

Chair Niman said there were two issues: how to treat existing buildings, and how to treat new buildings. He said Table II-1 in the ordinance was to help clear up the cloud hanging over existing rental properties, for those landlords who wanted this. But he said for new rental buildings with a lot of square footage, the proposed ordinance made it clear what the limits were in terms of occupancy, regardless of what the square footage was.

***Councilor Julian Smith MOVED to suspend the 10:00 adjournment time. Councilor Needell SECONDED the motion, and it PASSED 9-0.***

Councilor Needell said the ordinance should state that density and 3 unrelated had to be treated separately, and there was discussion about this. There was also detailed discussion about the problem in Durham of people renting out bedrooms in single family houses to unrelated people, and that this Ordinance didn't address that.

Councilor Stanhope said a question was how to deal with the issue of same sex couples within this context.

Councilor Needell said he didn't think that issue had anything to do with the 3 unrelated issue, and could be discussed as a separate policy issue.

Chair Niman suggested that the Council focus its discussion on the proposed changes concerning multi-unit housing.

Councilor Leach said it was her understanding that 4 unrelated occupants would be allowed primarily in the downtown area. But she said page 2 said this could occur in any Zoning district, and said her concern was protection of the neighborhoods. She said she was uncomfortable with the idea of allowing 5-8 unrelated occupants.

Chair Niman suggested that in order to create consistency and avoid confusion, they should eliminate the mention of specific zones, under multiunit apartment buildings and sprinklered multiunit apartment buildings.

There was discussion about the need for consistency regarding the mention of specific zones for the various dwelling types.

Councilor Leach recommended that under note #2 on page 2, it should say “in any Zoning District where it was permitted.”

Chair Niman provided details on what the thinking was concerning allowing 5-8 unrelated occupants, if there was a professional manager.

Councilor Needell said that regarding note #3, that “no more than 5 to 8 unrelated occupants” would be hard to interpret. He also noted that density would still apply.

It was agreed that the wording should be “no more than 8 unrelated occupants”.

Councilor Needell noted that he was not ready to say he liked the idea of 8 unrelated occupants.

Councilor Needell said a definition was needed for “onsite resident and/or office property management”. There was discussion on this.

Councilor Van Asselt explained, concerning the “8” figure that those who provided multi-unit student housing argued that there was a configuration where there was a central core, with apartments off of this, that made a lot of sense. He said they felt that they could create student housing that was desirable to students with that larger number of occupants. He said this wasn’t just a figure that was pulled out of the air.

Mr. Johnson provided details on the flexibility this larger occupancy number provided for, for example, allowing some sports teams to live together.

Councilor Leach said it seemed that a lot of this proposed ordinance was based on the fact that there would be either renovated or new student housing buildings in Town. She asked if there was any sense that the landlords were really ready to do this, including building higher buildings in the downtown area.

Mr. Johnson noted that the Durham House of Pizza wanted to tear down a one-story apartment and build a 3-story building. He also said that the Laundromat had been purchased, and the new owner was looking to combine this footprint with the Outback footprint and build a higher building. He provided details on this.

Administrator Selig said that Sumner Properties had some possible plans for its buildings in the downtown area.

Councilor Van Asselt said the no more than 8 unrelated occupants related to properties where the owner was interested in doing a major development. He said he would hope that when these kinds of developments came forward, the Town would be able to give the developer this option to meet student housing demands while also addressing the issue of student housing in the neighborhoods. He said the feeling at many of the Housing Task Force meetings was that students would prefer this kind of development, and that there were some developers who were interested in providing it.

Chair Niman said the fact that some of the landlords were operating with a cloud over their properties made it difficult to turn their properties over. He said the properties' value was based on how they had been functioning, not on what the current Zoning Ordinance said. He said in clearing up the cloud over them, these landlords could then go to a bank to borrow money, or sell the property to someone who would develop it because this was now a more attractive proposition.

There was further detailed discussion about this issue.

Mr. Gooze said his recommendation was intended to protect all the Zoning districts, given the big changes that were proposed in this Ordinance. But he said he was very much in favor of getting more density in order to increase the tax base.

He said he had talked to a lot of people about this issue, and said if this kind of protection wasn't there, he didn't think the proposed ordinance would get the support of residents.

Councilor Van Asselt said if abutting properties were protected from being placed where new development happened, unfortunately that abutting property abutted another property, so there was no end to possible abutters.

There was discussion on this.

Councilor Van Asselt said he liked what Mr. Gooze had come up with. He asked if it had been clearly identified where this kind of thing could take place

Mr. Gooze said the reality was that any property was capable of being redeveloped, noting that some multi-unit developments were in the middle of residential areas, and were grandfathered. He also noted that the "cloud" issue didn't pertain to single-family homes.

Councilor Stanhope asked if parking had been addressed in this proposed ordinance. He said it was a critical aspect of this issue.

Mr. Gooze agreed that parking needed to be addressed, but was not addressed in the proposed ordinance.

Mr. Johnson explained that Mr. Campbell was working on this, and said that what happened with this proposed ordinance would give him some guidance concerning parking requirement changes that were needed.

Councilor Julian Smith asked what the Council was now going to do with this draft document.

Administrator Selig suggested that the document be brought back to the Council with a few minor changes, such as inclusion of a definition for professional office management, elimination of the citations in Table II-1 regarding the specific Zoning districts, the change from "no more than 5 to 8 unrelated occupants" to "no more than 8 unrelated occupants", etc.

Councilor Leach said that in terms of abutters, she was not sure what Mr. Gooze's recommendation was supposed to accomplish. She also asked whether the Council felt this would be easy to implement. There was discussion about this.

Councilor Needell said there was no language on page 2 for existing buildings, and asked if a property owner had an existing building, he could go to the Technical Review Committee to ask for an increase in the number of occupants, or whether there was language in the Ordinance that prevented this.

Chair Niman said yes, he thought the property owner could go to the Technical Review Committee for this.

Councilor Needell asked if the Council wanted to prevent this.

Chair Niman said someone could clear up a cloud over the property by going to the Technical Review Committee, and if all the conditions were met, could get permission for the increase in occupancy.

Councilor Needell asked what happened if the property in question abutted a residential zone.

There was discussion as to whether permission for an increase in occupancy to 4 could be granted unless an existing building was torn down, or a variance was received.

There was further discussion that this issue needed to be clarified.

Administrator Selig said the intention was that for existing buildings, if a property owner went through the Technical Review process, he would be allowed the increase in density to 4 unrelated occupants. He said the intention was that a property owner proposing a new development would have to go through the site plan review process with the Planning Board, and could get up to 8 unrelated occupants.

Councilor Van Asselt said the Housing Task Force had come a long way with this document. He suggested that the proposed ordinance be sent back to the Task Force, and that the changes the Council had discussed, and the questions that had been raised should be considered. He said the document could then be brought back to the Council a few meetings down the road.

Councilor Needell said it sounded like there was general support from the Council for this ordinance, but he said clarification was needed on the issues he had brought up. He said he hoped he had conveyed that this proposed ordinance was an excellent step that had been taken.

Councilors agreed that no motion was needed at the moment concerning the ordinance.

It was noted that the next Housing Task Force meeting, which had not been scheduled yet, was supposed to address affordable housing, but would now instead address the questions and proposed changes to this proposed ordinance.

Mr. Johnson provided details on the proposed change to the Table of Dimensional Requirements, from a 1,200 sf minimum lot area for a dwelling unit in the Central Business District to 900 sf. He noted that Tom Christie had recently come before the ZBA to get a variance concerning the current 1,200 sf requirement.

Councilor Needell noted that the number of people didn't change with this, just the number of units that were allowed.

B. Other business

**XI. Nonpublic Session (if required)**

**XII. Adjourn**

*Councilor Henry Smith MOVED to adjourn the meeting. Councilor Leach SECONDED the motion, and it PASSED 9-0.*

10:52 pm adjournment

Victoria Parmele, Minutes taker