

**This set of minutes was approved at the Town Council meeting on June 18, 2007**

**DURHAM TOWN COUNCIL  
MONDAY, MAY 7, 2007  
DURHAM TOWN HALL - COUNCIL CHAMBERS  
7:00 PM**

**MEMBERS PRESENT:** Chair Neil Niman; Councilor Morong; Councilor Van Asselt; Councilor Needell; Councilor Carroll; Councilor Julian Smith; Councilor Henry Smith; Councilor Stanhope

**MEMBERS ABSENT:** Councilor Leach

**OTHERS PRESENT:** Administrator Todd Selig; Town Clerk Lorrie Pitt

**I. Call to Order**

Chair Niman called the meeting to order at 7:04 PM.

**II. Approval of Agenda**

*Councilor Julian Smith MOVED to approve the Agenda as submitted. The motion was SECONDED by Councilor Morong.*

Chair Niman said the Agenda was fairly light, but said the next Council meeting would be a long one. He also said that the special Budget meeting would most likely be held sometime in June, either as part of a regular meeting or as a special meeting.

*The motion PASSED unanimously 8-0.*

**III. Special Announcements**

None

**IV. Approval of Minutes**

April 9, 2007

Page 19, add Councilor Carroll's name under goal #5.

Page 23, add Councilor Carroll's name under goal #12.

*Councilor Van Asselt MOVED to approve the April 9, 2007 Minutes as amended. The motion was SECONDED by Councilor Stanhope, and PASSED unanimously 8-0.*

**V. Councilor and Town Administrator Roundtable**

Councilor Stanhope reported on the recent IWMAC meeting. He said there had been a

presentation by Kathryn Lilly, a UNH graduate student who had helped the Town develop the concept of a Durham smart card. He said this would be a universal card that would entitle residents to access a variety of Town facilities, including free access to the Transfer Station.

Councilor Stanhope also said that recycled paper was now hauled by a private contractor, which had resulted in significant savings in terms of Town labor and equipment. He also said the Public Works Department was in the process of finalizing the process of getting recycling containers downtown.

Councilor Stanhope suggested that Council meeting materials could be scanned and sent to Councilors by email, to save paper. He said this would save the Town money in terms of not having to buy the paper, and would also save energy and labor costs associated with copying.

There was discussion about whether this would work for all the Councilors. Councilor Stanhope suggested that those Councilors who could receive the materials electronically should have that option.

Administrator Selig said he would evaluate this issue, and would see what options were possible.

Councilor Julian Smith noted there was a memo in Councilors' packets from Dave Howland, Chair of the Mill Plaza Study Committee, regarding the 10 part vision statement that had been adopted by the Committee after a number of meetings and a lengthy public hearing. He said Mr. Howland had done an excellent job on the vision statement, and he noted that each of the principles included were backed by the Master Plan, the Community Development Plan, AIA principles, etc.

Councilor Smith distributed a photo of the downtown area taken in 1964 and three diagrams of the Mill Plaza area. He said the Town of Durham was extremely lucky to have the Plaza, stating that with current setbacks, etc., it would be very difficult to develop now what had been a wet meadow. He referred to a 40 year old site plan developed by Tamposi and Associates, and said it was worth studying. He provided details on this. He noted that at that time, there was discussion about extending Chesley Drive all the way to Mill Road. He said that plan was taken off the table, and said it was hoped it wouldn't come back again.

He said there had also been an idea in the past to have a road come from the Grange property to intersect the extension of Chesley Drive. He noted that there was a good chance the Council would be talking that evening about another possible way to get to the Plaza. He said he hoped Councilors would take a look at the material he had provided from time to time, and would provide advice to the Mill Plaza Committee as it moved forward with its work.

Councilor Needell thanked Mr. Howland for the excellent vision statement that had been developed, stating that he really liked the way it was put together, and found the Appendix to be very useful.

Councilor Needell reported on the Agenda for the upcoming Planning Board meeting, including:

- Canney Road and Bagdad Road conservation subdivision
- 20 Strafford Ave mixed-use development
- Continued public hearing on the Cuthartes application

Councilor Henry Smith said the HDC had met the previous Thursday, and had elected officers. He also said staff from the NH Historic Resources Division had spoken to the Committee about money available to help the Town get properties onto the Historic Register. Councilor Smith said the Committee was also told that the State would be willing to look at the Town's Design Guidelines to see how they could be updated and refined.

Councilor Carroll said she had 4 issues to discuss. She first noted the energy saving properties of compact fluorescent bulbs, but said the downside of them was that they contained a small amount of mercury. She said the bulbs therefore needed to be disposed of properly. She said they should be taken to the Durham Transfer Station, where they were collected and turned over to a company that removed the mercury from them, and then saw that the mercury was recycled. She noted that this issue was addressed in the most recent "Down to Earth" newsletter.

Councilor Stanhope said it was his understanding that there was a fairly significant charge per bulb which the Town incurred to recycle them. He also said he had read an article that indicated that the process of removing the mercury was extremely energy intensive. He said these kinds of issues needed to be thought through carefully.

Councilor Carroll said it would be a good idea to do a life cycle analysis on this. She also noted the existence of LED lighting, which involved no mercury, and was even more energy efficient than compact florescent bulbs. She said she also thought they would be seeing a new generation of lighting very soon.

Councilor Henry Smith said an upside of compact florescent bulbs was that they lasted a long time so wouldn't need to be brought to the Transfer Station for recycling very often. He said he realized there was a financial cost to recycling them, but he said this was offset by the savings in terms of carbon emissions.

Councilor Carroll said a second issue she would like to address was the existence of EPA's Energy Star Program for buildings. She explained that students in Professor Ihab Farag's class at UNH had rated 9 buildings on the UNH campus regarding energy efficiency, as well as some buildings in Town such as the Oyster River Middle School and the Durham Town Hall. She noted that the Town Hall got a pretty good rating, but said there was a lot of room for improvement at the Middle School. She said Professor Farag planned to go through this process again in the future, and said this was a good example of cooperation between the University and the Town.

She said a third issue was that the recent Mill Pond Center for the Arts event was a lot of fun, and raised a lot of money. She said Durham was very fortunate to have an active art center in the middle of Town. She noted that this successful event had been achieved with a very small staff, and a lot of volunteers, - as was the case with other events in Durham. She said volunteers such as these, as well as the volunteers active in sports and recreation programs in Town and the Durham Day/250<sup>th</sup> anniversary event were the lifeblood of the community. She said the Council owed them a lot of thanks for their efforts.

Councilor Carroll said a 4<sup>th</sup> issue was that she had been contacted by a group of residents concerned about Durham's gateways. She said the group wanted to ensure that when development

occurred, it was done with sensitivity to the Town's rural character, which was in keeping with the Master Plan. She said the group was looking at whether the current Zoning Ordinance was able to protect the gateways, and was also looking at what other Towns had done to protect their gateways. She said it was important to research and discuss this issue now, and said she was pleased that these citizens had begun to work on it. She said she hoped the Town Council and the Planning Board would also work on it.

Councilor Stanhope asked if this group had a name, and Councilor Carroll said it was not an official group, but instead was a group of residents who had attended various Town meetings in recent months. She said she didn't know what their plans were, but said they were people who were simply interested in these issues, and got together to discuss them.

Councilor Van Asselt said there were some exciting possibilities concerning the future of Mill Plaza. But he said he found it interesting that 4 of the 10 items listed in the Vision Statement were not discussed in great length. He said these 4 items struck him as being terribly important, and said he hoped that as the Mill Plaza Committee proceeded, the tougher issues would be addressed. He said a lot more work would be needed to deal with real mixed-use development of that site that was economically feasible, given its small size.

Administrator Selig provided the following updates:

- He said Town Clerk Lorrie Pitt was present to comment on the semi-annual tax process.
- He also said a meeting of the ORCSD Board and the governing bodies of Durham, Lee and Madbury would take place on June 5<sup>th</sup>, 7 pm, at the Oyster River High School.
- He said the Memorial Day Parade would be held on May 28<sup>th</sup>, and provided details on the route it would take. He noted that the new memorial stones at the Memorial Park downtown would be dedicated on that day.
- He said a new PA system had been installed in Council Chambers, so hopefully the people who sat at the back of the room would be able to hear the meetings better.
- He said the land owned by the Milnes on Mill Pond Road had been given to the Town, and said as part of this, there was a \$25,000 trust for perpetual care of the property as a nature preserve. He said there would be monument installed on the property in remembrance of the Milnes, and their love of nature and the community. He also noted that the Durham Public Library was included in the bequest, and he provided details on this.
- He said the closing on the Fogg property conservation easement was in the final stages. He noted that the Planning Board had recently approved a subdivision application involving the property.
- He said the Housing Task Force would meet on May 23<sup>rd</sup> at 4 pm, and would be discussing affordable housing. He said residents and Councilors were welcome to attend.

There was discussion as to whether there had been any communication to Councilors about the joint meeting with the 3 school districts. Councilor Needell said he was displeased with the way the meeting had been scheduled, and said he most likely wouldn't be able to attend on the date that had been arranged. He said this was unfortunate because the Council had an important role to play at this meeting.

Councilor Henry Smith agreed, and said he couldn't be at the meeting either.

Town Clerk Lorrie Pitt explained the semiannual tax billing process in detail. There was detailed

discussion about various aspects of this new system.

## **VI. Public Comments**

Dave Howland said he might be able to answer some of Councilor Van Asselt's questions. He noted that there was supporting information in the Appendix concerning the 4 issues Councilor Van Asselt had said had not been addressed in great length. He also said that more specifics on these issues would have to wait until there was some real data on them. He said some of the language in the Vision Statement was therefore intentionally general. He then reviewed the 4 issues in question

Mixed-use: He said most people on the committee, and members of the public agreed that a variety of uses - offices, shops, restaurants, etc. - would be the most attractive way to go

Linkages: He said they came up with this issue during brainstorming, and said the idea was to be able to come up with a design that connected the University, Main Street, etc. He said of the lot of things being considered as part of this concept were somewhat intangible, and said the Committee would be better able to picture the possible linkages further down the road.

Fiscal enhancement: He said the economic analysis, engineering studies, etc., would help with this, and he provided details.

Parking: He said this was a tricky issue, and said the answers concerning it would flow from things that preceded it. He said they first had to figure out what types of businesses, traffic patterns, etc., would be on the site.

Councilor Van Asselt said Mr. Howland's explanation had been helpful. He suggested, however, that in order to maximize the value of this land, some compromise would be required, in terms of some of the public statements that had been made concerning the Plaza. He said they would all need to be willing to make some of these compromises, if the project was to be able to do anything to fiscally help the Town. He said he thought that what had worked in the 1990s might not work in 2010. But he agreed that there were no easy answers at the moment.

Mr. Howland thanked the Council for the opportunity to speak, and said he hoped that within the next few weeks, the Committee would be working with the AIA to establish a collaborative plan. He said that there soon would be regular, evening meetings, so more members of the public could attend them.

## **VII. Unanimous Consent Agenda**

- A. **RESOLUTION #2007-15** recognizing outgoing citizens appointed to various town boards, commissions, and committees for their dedication and service to the Town of Durham
- B. **RESOLUTION #2007-16** correcting the fee amount for the electrical, plumbing, mechanical, fire suppression, and fire detection permits within the Town-wide Master Fee Schedule
- C. **RESOLUTION #2007-17** authorizing the Town Clerk-Tax Collector to waive/write off overpayments of under \$5.00 in accordance with RSA 80:57 and waive interest due amounts of

\$5.00 or less in accordance with RSA 76:13

- D. Shall the Town Council authorize the Town Administrator to sign the 2007 tax warrant and direct the Tax Collector to collect partial payment of property taxes assessed on April 1, 2007?

Councilor Needell said he would like to take Item A off the Unanimous Consent Agenda because he thought the names of those members of Town boards and commissions who were stepping down should be read out loud.

Chair Niman said he had planned on doing this anyway.

***Councilor Van Asselt MOVED to approve Unanimous Consent Agenda Items B-D. Councilor Julian Smith SECONDED the motion, and it PASSED unanimously 8-0.***

Chair Niman read the names of departing Board and committee members out loud.

Parks and Recreation Committee

Dennis Byrne	March 2001-April 2007
Frank Pilar	May 2000-Jan 2007
David Proulx	April 2006-Jan 2007

Planning Board

W. Arthur Grant	April 2005-April 2007
Kevin Webb	April 2004-Oct 2006

Zoning Board of Adjustment

Linn Bogle	March 2002-April 2007
Mylea Eng	Sept 2003-April 2007
Henry Smith	March 2001-March 2006

Integrated Waste Management Committee

Tracy Wood	July 2001-July 2006
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Lamprey River Advisory Committee

Judith Spang	1991-April 2007
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***Councilor Julian Smith MOVED to approve Unanimous Consent Agenda Item A. Councilor Needell SECONDED the motion, and it PASSED unanimously 7-0. (Councilor Van Asselt had briefly left the room)***

**VIII. Unfinished Business**

Discussion regarding the school apportionment formula.

Administrator Selig provided some history on this issue. (Please refer to the Town Council meeting minutes of July 8, 2002, April 7, 2003, May 5, 2003, May 19, 2003, June 2, 2003, July 7, 2003, September 8, 2003, October 6, 2003, November 3, 2003, January 5, 2004, April 19, 2004, October 4, 2004, January 10, 2005, and December 12, 2005, for details on this issue).

Councilor Henry Smith said he was impressed by the amount of work Chair Niman had done on this issue a few years back. He said this was a complex subject, and said he hoped the Council would continue to pursue solutions concerning it.

Chair Niman said he had recently spent some time at the State Department of Education website, and he invited those who were interested in this issue to go there. He then went through some tables he had recently put together, using data from this site.

He noted the statistic of spending per pupil, and said he had looked at how the figure for Durham had changed from 1999 to 2006. He noted there was almost a 75% increase in this amount over that period of time, and also noted a \$3,500 difference between the ORCSD per pupil number and the State average. He asked what was so special about this school district that explained this.

Chair Niman said a second table he had developed, “ADM in Residence”, was something to potentially be concerned about. He explained that numbers for each of the three towns was down, in terms of enrollment, which was something that the Council should probably talk about. He noted that Durham was losing fewer students than the other two towns.

Councilor Stanhope said the number of children in a town generally declined as the value of real estate increased. He said there may have been growth in the number of residential units in these towns, but the family units were smaller, and said this was probably driving the ADM down. He said he had seen this in other towns throughout the State. He also said he had thought that families leaving Durham had gone to Lee and Madbury, but said this apparently wasn’t happening.

Chair Niman next described the third table he had created, “Equalized Valuation per Pupil”. He said he wondered if the School board model included numbers like this. He noted that in 1999, Durham had \$473,000 to support a child in school, Lee had \$246,000 and Madbury had \$257,000. He said because of this, the argument had been that Durham was property rich, and therefore should share some of the wealth. He said this had been the underlying theory for the present situation.

He noted that when the district was initially formed, the cost of educating a child was very small, and the differences between towns therefore wasn’t very much. But he said that as education costs had expanded, this had exacerbated some of the differences between the towns. He also said Durham had traditionally had more kids in the school. But he said now Lee and Madbury combined had more kids in the school than Durham, and he also said Durham had become less wealthy, relative to Lee and Madbury.

He said how much taxable value there was to support each student had formed the basis of the argument. He said one way of looking at the data was to say the equalized valuation of Lee and Madbury had been growing faster than that of Durham, and students were leaving those two towns faster, so there was a larger imbalance in the formula as it affected Durham.

Chair Niman said that alternatively, one could say that Durham was not growing its property base relative to State averages. He said the Town was becoming increasingly poor, while State averages were becoming relatively wealthier. He said the question was whether Durham should continue to

use its greater real estate value to support Lee and Madbury as part of this cooperative arrangement. He said one could argue that Lee and Madbury were not as poor as they used to be, so the 50/50 formula shouldn't be used anymore, since the towns didn't need as much help as they did before.

He said one could also argue that Durham needed its increased evaluation for hosting the University, not for supporting Lee and Madbury. He said the State hadn't supported Durham, and the Town was inequitably burdened, noting that Lee and Madbury also received benefits from the proximity of the University. He provided further details on this.

He said he didn't think the citizens in Lee and Madbury were earning less money than the citizens of Durham, and said he didn't think the real estate there had a lower value. He said it therefore might be time for them to stand on their own two feet. He said the Council needed to figure out whether it wanted to do anything about this situation.

There was discussion that Durham and the other two towns had diametrically opposed views on how this situation should be looked at. It was noted that when the commission was formed to look at this issue a few years back, the question was how to reconcile these two points of view, and find a middle ground.

Councilor Needell said it would be good for the Council to have a discussion on this issue, and to try to understand the formula and what was fair. He said he would like to participate in such a discussion. But he said he would like to take issue with the idea that one town was aiding or subsidizing the others. He said in his mind, when the cooperative school district was formed, the boundaries of the towns became somewhat irrelevant in terms of how the school district was funded. He said the formula should be subject to review, but he agreed there were fundamentally different ways as to how to look at this issue.

Chair Niman said he didn't have a particular goal in mind. He said this issue was a Council goal to look at this year, and said he intended to support what the Council wanted to do concerning it. He said if the Council wanted to move forward, he would support this and lend what he could to the process. He said on the other hand, if the Council wasn't interested in moving forward, that would be the end of it.

Councilor Needell said he would be willing to work on this issue.

Councilor Van Asselt said the data Chair Niman had provided had huge implications for whatever policy Durham pursued for development. He provided details on this, and there was discussion with Administrator Selig. Councilor Van Asselt said if the three towns were joined at the hip concerning the School district, he didn't understand why they were not similarly joined for development purposes. He said that if one took a map, laid out the open space, traffic, and transportation, sub regional development would make a lot more sense from a planning perspective, as well as in terms of funding the cooperative school district.

Administrator Selig noted that this was, after all, New Hampshire.

Councilor Van Asselt said it was crazy, noting that boundaries stayed when development was done, which impacted on those who did the development.



Councilor Morong said he saw the boundaries in Durham more clearly than Councilor Needell apparently did. There was discussion about this, and how important the boundaries were and should be between the 3 towns concerning various town services.

Councilor Stanhope said he assumed that Durham had a legal contractual agreement with Lee and Madbury.

Administrator Selig said in 1954, Durham had formed the first cooperative school district in the State. He provided details on this.

Councilor Stanhope said he had read through the history of this issue. He said that at some point, the Council needed to look at all the options, and said if one of these was an opt out provision, it needed to be determined what the impact would be on the taxpayers of the Durham.

Chair Niman said the Statute concerning cooperative school district was amended in 1963 to say that articles of agreement were required between the cooperating towns. He said because Durham, Lee and Madbury developed their cooperative school district prior to this, there weren't any articles of agreement. He also noted that the State got the 50/50 formula idea from Durham.

He said Councilor Needell's point of view was legitimate. But he said his job as a Councilor was to focus on the people who lived in Durham. He also said that as an economist, he looked at the cost of staying in the school district, and what the Town would give up if it left, and based on these and other things, could make a choice. He said he felt the Town had the right to leave, if it made economic, educational and social sense to do so, but he noted he was not suggesting this now.

He said the economist in him said they should study what it would cost to leave the district, and what it would cost to form a new district, for example, with Newmarket, which was looking for a new high school. He said there might be an opportunity to negotiate better than a 50/50 deal, and to provide better educational opportunities that were also more advantageous to the taxpayers.

He noted he was not advocating this, but was only expressing his personal opinion. He said the question was whether the Council really wanted to do something about the current situation. He said he didn't think it was enough to say the Council would study the numbers again. He said if the Council wanted to move forward on this issue, there needed to be a charge to a committee that some goals actually be achieved.

Councilor Needell agreed that this was only Chair Niman's opinion. He said he too was looking at the best interests of the Town, and was willing to be involved in this issue, and to be convinced as to what was fair for the Town. He noted that when he had previously spoken, he was speaking more as a citizen of the school district, not as a Councilor. He said he understood that difference, and said it might represent conflicting interest. He said he needed to learn more about this issue.

Councilor Morong said the Council needed a new focus, and said there was no point in redoing the previous study. He also said they wouldn't get any further with the State until it sorted out what it was doing with school funding. He said he didn't think the other towns were going to vote to support Durham more with their taxes, and said he felt they therefore needed to look at other

options than were brought forth in the study.

Councilor Van Asselt said he was not interested in starting from the idea of possibly opting out of the cooperative school district. He said that politically, this would not happen. But he said he thought they should look at whether they wanted to examine the 50/50 formula, and what this meant in terms of the per pupil cost, and then should work backwards.

Councilor Needell said he tended to agree with Councilor Van Asselt, that calculating whether the formula was fair was something the Council could look at. He said that unless he heard a more compelling argument, withdrawing from the school district was very premature. He said he was not interested in investigating this, although he was willing to listen to arguments concerning it.

Chair Niman said he was not advocating the breakup of the school district, but said this was simply another perspective that could be taken.

Councilor Carroll noted that about 2 years ago, State Legislator Marjorie Smith had explained how difficult a task it was to break up a cooperative school district that had already been established.

Administrator Selig said there were some districts that had been dissolved, but said the State Board of Education, having noted a trend in this direction, had tried to put a moratorium on further breakups. He noted that there were some social benefits of pooling community resources for a cooperative school district, and suggested that the Council should focus on the fairness issue. He said he suspected that Durham was paying somewhat more than it should be paying.

Councilor Stanhope said he was not suggesting that Durham should opt out of the school district, but he said the taxpayers were entitled to see the numbers. He said going through this exercise would allow them to be better informed as to what a reasonable solution might be. He said he suspected that if the Town pursued the idea of opting out, it would wind up negotiating from a position of strength.

Councilor Van Asselt said this should be looked at, but said he didn't think the Council should start with it, and instead should start with whether the formula was fair. He asked how this could be done.

Administrator Selig said the Council could reach out to some residents who would be willing to take this on - people who were familiar with the history of this issue, the educational benefits of the cooperative approach, etc. He said they could also take the route of hiring a consultant.

Councilor Van Asselt asked if the data on the 50/50 formula could be pulled together, and Chair Niman said yes, But he said the question would then be what to do with this information. He also said figuring out what it would cost to break up the school district would be more difficult to accomplish.

Councilor Henry Smith noted that a year and a half ago, the Council had looked at the idea of hiring a consultant to look at the numbers. He asked if there was money set aside to help the Council look at this. He also said they should keep the idea of possibly opting out of the school district on the table, but said this should not be the first thing to focus on.

Administrator Selig said if the Town was getting reports of problems with the education provided by the school district, there would be good reason to consider opting out. But he said people often commented on the excellence of the school district. He said he thought there should only be discussion about breaking up the cooperative school district if the Town was convinced there was inequity in the formula, and it couldn't get anywhere with that.

Councilor Morong said he had been discouraged about this issue after the 2003 study. He said it had seemed at that time that a fair compromise had been developed, but it went nowhere. He said he was not blaming Lee and Madbury for this, and provided details on this. He said until something happened at the State level, he was discouraged about the possibility of producing any kind of change locally.

Councilor Needell said it was not only the formula that needed to be looked at, but also the school aid piece of that. He said the Town could opt to take this aid off the top. He asked if there had ever been a general discussion of the previous report and its implications, and suggested that the Council might start with reviewing this report.

Chair Niman said he believed the study committee had presented the report, and that was the end of it.

Administrator Selig said the results of the study were brought to a joint meeting of the representatives from the three towns to the school district. He said Lee and Madbury were offended that Durham had gone out and done this. He said the Council might want to start with a discussion at the upcoming joint meeting, and encourage further analysis, so everyone was at the table, and was aware of what was going on.

Chair Niman noted the State aid issue. He said Durham was above the State average in terms of equalized value per pupil, while Lee and Madbury were below this average. He said if legislation resulted in targeted aid, it was likely to target towns below the State average, and to give less to those towns that were above. He said right now, aid was based primarily on ADM. He said the disparities seen today would likely widen if there was legislation, and said if the State was interested in creating more rancor among school districts, this was a sure way to accomplish this.

He asked how the Council wanted to proceed.

Administrator Selig said this issue could be brought up at the June 5<sup>th</sup> joint meeting, and they could see where things went from there.

Chair Niman said this would allow him time to calculate the numbers of how much each town was contributing per pupil.

Councilor Needell said it was important that this be done at the district level from the start, or the work that was done wouldn't be useful or acceptable. He said people needed to sign on to trying to understand where things were, and once this was understood, they could decide whether they were comfortable with this. He said if the work that was done clearly indicated that Durham was contributing more than it should, various things could be done.

There was further discussion.

**IX. New Business**

**A. Proposed Ordinance to create a new definition “Virtual Home Occupation” for inclusion in Chapter 175 “Zoning”, Section 175-7 of the Durham Town Code and in the Table of Uses**

Chair Niman said he had initiated this proposed Ordinance change. He said he believed that when the definition of home occupation was adopted, people were thinking about home businesses possibly having a lot of employees on site, and generating a lot of traffic, thereby creating a public nuisance. He said it hadn’t been considered that a home business might instead have no or few employees who actually came to the home. He noted that he had a friend who ran a business at home and had employees who lived in India. He said people in his neighborhood probably didn’t even know he had a business.

He said when the Council saw something in the Zoning Ordinance that didn’t make sense and could negatively impact citizens, he thought it was appropriate for it to initiate a change to the Ordinance.

He said he would therefore like to create a third class of home occupation, “Virtual Home Occupation”. He provided details on this. He asked for the Council’s willingness to send this on to the Planning Board. He noted that as part of the proposed change, the Table of Uses would need to be updated to make this a permitted use in the residential districts.

***Councilor Stanhope MOVED to send the proposed draft ordinance to the Planning Board for its review and consideration relative to the creation of a new definition, “Virtual Home Occupation” for inclusion in Chapter 175 “Zoning”, Section 175-7 of the Durham Town Code and for inclusion in the Table of Uses. Councilor Van Asselt SECONDED the motion.***

Councilor Stanhope said he supported this motion, but said he also had some general concerns about the Town’s strict interpretation of the language of the Zoning Ordinance, which he said created an environment that denied the code officer the ability to find reasonable solutions. He said this particular situation might be a perfect example of this, and also said there were a number of areas where the Ordinance might need to be tweaked.

He said he wondered if this was the most efficient way to operate Town government, and said the Town might be better off giving the code officer some flexibility to find reasonable compromises. He said the Town had a very qualified code officer, and said he was very comfortable trusting him with that authority.

Councilor Henry Smith asked Councilor Stanhope if his perspective on the strict interpretation of the Zoning Ordinance was part of this motion, and Councilor Stanhope said it was not. Councilor Smith noted that the Paine application had come before the ZBA, and was allowed, with some conditions.

There was discussion that the motion was not specific to a particular application. Chair Niman said there was a general problem that existed concerning home businesses, and said this issue went beyond the Paine situation. He said the potential for this kind of thing to happen was great enough to warrant the Ordinance change.

Administrator Selig said the Paine situation had flagged this issue for Chair Niman, and had

caused him to look at whether Durham wanted to encourage virtual businesses. He said this was not an attempt to keep the Paine business in Durham. He said the Master Plan, written in 2000, didn't speak to the issue of virtual businesses, and he noted that the Zoning Ordinance had come out of that Master Plan.

He said when the Paine issue hit the papers recently, he and Chair Niman had seen that there was a problem with the existing Ordinance. He also noted that Durham had recently passed the Carbon Coalition resolution, so it was a good thing to encourage people to work from home as long as they didn't negatively impact the neighborhood.

Councilor Henry Smith said he was not against the motion, but just wanted to make note of the previous ZBA involvement. He also noted the wording of the proposed Ordinance change, "no more than 2 other persons working on site", and he asked if this referred to full time or part time employees.

There was discussion about this, with Chair Niman saying the key thing about the wording changes was to limit the number of people who could potentially show up at the home to work.

Councilor Julian Smith suggested that a better approach would be to simply add "on site", under the existing wording for first class home occupation. He said in this way, the number of employees became irrelevant.

There was detailed discussion about whether it made sense to take this approach or the one recommended by Chair Niman.

Councilor Needell said he agreed with Councilor Julian Smith to a large degree, and said perhaps the existing language could be fixed in a number of ways, instead of creating new language. He provided details on additional changes he saw that could be useful, noting among other things that the possibility that there could be weekly meetings at the site of the home business might need to be addressed.

Councilor Van Asselt said this was a valid comment, but noted that some people had weekly parties at their homes. He said he agreed with Chair Niman that there was a general need for the Ordinance changes, and that this idea was not specific to a particular resident. He said this was really the only way he could support such an Ordinance change.

He said he also thought this present scrutiny of the Ordinance also provided the opportunity to look at the larger issue Councilor Stanhope had brought up. He noted that the Housing Task Force had looked at it, and said Administrator had repeatedly told the group that Tom Johnson used the strictest interpretation of the Zoning Ordinance. He said Administrator Selig had said this was the correct approach because the language in the Ordinance required this.

Councilor Van Asselt said at some point, he would like the Council to discuss this larger issue, stating that from what he had heard during the past year from residents, the Town needed to rethink the strictest interpretation approach. He said he was not being critical of Administrator Selig in saying this.

Administrator Selig said this issue had been raised during the Zoning Rewrite process. He said a

more historical, reasonable interpretation of the Ordinance would make a world of difference, and said the people impacted by code enforcement would benefit greatly from this.

There was discussion that the wording ‘accessory structure’, “premises” and “customary” needed to be looked at.

Chair Niman asked what approach the Council would like to take concerning the possible Ordinance change.

There was discussion that the Planning Board could be asked to revise the Ordinance concerning this issue, but Councilor Needell noted that the Board already had a long list of other possible changes to the Ordinance it needed to look at. He also said the Board might or might not want to make this change. He said it was the Council that wanted this change, and said it therefore should be the entity to clean up the language. He said he thought this needed more thought, but he agreed it was a good concept.

Chair Niman agreed the whole section should be looked at and cleaned up, and said he would like some help with doing this. He asked Councilors to email him their suggestions.

Councilors Stanhope and Van Asselt withdrew their motion.

Councilor Stanhope said Mr. Johnson’s input was key to making these changes.

Councilor Carroll asked whether, if someone had a virtual home occupation, he had to pay taxes on this, and if so, how this was calculated. There was discussion on this.

***Councilor Julian Smith MOVED to suspend the 10:00pm adjournment time. Councilor Needell SECONDED the motion, and it PASSED unanimously 8-0.***

## **X. Nonpublic Session**

***Councilor Julian Smith MOVED to go into nonpublic session to discuss land matters in accordance with RSA 91-A:3 II (d). Councilor Henry Smith SECONDED the motion.***

There was discussion as to whether the Council wished to discuss some related policy issues in public after the nonpublic session. Administrator Selig noted his concern that if the entire discussion was in public, this could impact the price the Town would have to pay for the property in question. He suggested that they could start with the nonpublic meeting, and could decide to have the remainder of the discussion in public if this was desired. He noted that the nonpublic meeting Minutes would become public in 44 hours unless they were sealed.

***The motion PASSED 8-0 by roll call vote:***

<b><i>Chair Niman</i></b>	<b><i>Yes</i></b>	<b><i>Councilor Carroll</i></b>	<b><i>Yes</i></b>
<b><i>Councilor Morong</i></b>	<b><i>Yes</i></b>	<b><i>Councilor Julian Smith</i></b>	<b><i>Yes</i></b>
<b><i>Councilor Van Asselt</i></b>	<b><i>Yes</i></b>	<b><i>Councilor Henry Smith</i></b>	<b><i>Yes</i></b>
<b><i>Councilor Needell</i></b>	<b><i>Yes</i></b>	<b><i>Councilor Stanhope</i></b>	<b><i>Yes</i></b>

The Town Council entered into Nonpublic Session at 9:37 PM.

The Town Council returned to public session at 10:32 PM.

***Councilor Carroll MOVED to seal the Minutes of the nonpublic session. Councilor Van Asselt SECONDED the motion, and it PASSED unanimously 8-0.***

**XI. Adjournment**

***Councilor Julian Smith MOVED to adjourn the meeting. Councilor Henry Smith SECONDED the motion, and it PASSED unanimously 8-0.***

Adjournment at 10:33 pm

Victoria Parmele, Minutes taker