

**This set of minutes was approved at the Town Council meeting on July 2, 2007**

**DURHAM TOWN COUNCIL  
MONDAY, MAY 21, 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 Leach; Councilor Stanhope

**MEMBERS ABSENT:** None

**OTHERS PRESENT:** Business Manager Gail Jablonski (sitting in for Town Administrator Todd Selig); Michael Lynch, Director of Public Works

**I. Call to Order**

Chair Niman called the meeting to order at 7:00 PM.

**II. Approval of Agenda**

*Councilor Leach MOVED to approve the Agenda as submitted. Councilor Julian Smith SECONDED the motion, and it PASSED unanimously 9-0*

**III. Special Announcements**

Chair Niman said that Business Manager Gail Jablonski would be filling in for Administrator Selig, whose wife had just had a baby girl.

**IV. Approval of Minutes**

April 23, 2007

Page 2, 3<sup>rd</sup> paragraph from bottom, should read "Dave Howland" and "Mr. Howland"

Page 7, 2<sup>nd</sup> paragraph, should read "...to recommend local steps.." instead of "...to take local steps.."

Page 9, 3<sup>rd</sup> paragraph from bottom, should say "... and Richard Ozenich to a one-year term on the Planning Board, with a term expiration date of April 30, 2008."

Page 9-10, should read "...Susan Fuller to a one-year regular member term on the Planning Board, with a term expiration of April 30, 2008".

Page 11, first line, should say "There was discussion.."

Page 12, middle of page, should read "...Robbie Woodburn to a one-year alternate member term on the Zoning Board of Adjustment, with a term expiration of April 30, 2008" Also, should say "The motion PASSED 8-1, with Councilor Leach voting against it."

Page 20, 3<sup>rd</sup> paragraph from bottom, should read "She said she was uncomfortable with the idea of 5-8 unrelated occupants." The next sentence should be deleted.

Page 23, 6<sup>th</sup> paragraph, should read "...if the property in question abutted a residential zone."

***Councilor Julian Smith MOVED to approve the April 23, 2007 Minutes as amended. The motion was SECONDED by Councilor Henry Smith, and PASSED unanimously 9-0.***

**V. Councilor and Town Administrator Roundtable**

Chair Niman noted the upcoming meeting with the School Board and the Towns of Lee and Madbury, and that he had said he would calculate the apportionment formula for that meeting. He said it turned out that the School Board had already done this, but had not compared the 50/50 formula with the recommendations of the 2003 study committee, which had suggested that 100% average daily membership (ADM) should be used.

Chair Niman provided background information on how the apportionment formula was presently calculated, and said he had calculated how things would change if they went to 100% ADM instead of the 50/50 formula. He said that in terms of ADM, Durham had 47% of the enrollment, but 57% of the property value, and said when this was averaged together, Durham contributed 52%, compared to Lee and Madbury, which contributed 35% and 13% respectively.

He noted that he had also calculated that currently, the average cost per student was \$15,000, not including State aid. He said Durham paid about \$3,500 more per student than Lee, and about \$3,000 more than Madbury.

He said he had also calculated what Durham would pay under 100% ADM, as compared to the 50/50 formula, and said he had determined that going to ADM would save the Town about \$1.6 million. He noted that the numbers he had used were a few years old, but said this figure hadn't changed much with more recent numbers. He said enrollments were dropping, and were dropping faster in Lee and Madbury than they were in Durham. He also said property values were rising faster in the other two towns than they were in Durham, but not fast enough to change that number. He said this was potentially something to discuss with Lee and Madbury.

Councilor Needell said he appreciated the fact that Chair Niman had done these calculations. But he noted that the 2003 study was never adopted by the Council or anyone else, and said he wanted to be sure it was not represented at this point that the Council was moving in that direction.

Chair Niman said his point in doing these calculations was simply to show that the number had not changed dramatically.

Councilor Stanhope received clarification that the committee had recommended that 100% ADM should be used. He also asked what the \$1.6 million meant in terms of the tax rate, and Chair Niman said it represented about \$2.00 of the tax rate.

Councilor Carroll noted the Unanimous Consent Agenda item concerning the Seacoast Growers' Association, and said she anticipated that the Council would be welcoming the farmers back to Durham. She said the Farmers' Market would start up on June 4<sup>th</sup>, and said the Town could also look forward to the opportunity to buy local produce at Durham Marketplace. She said Chuck Cressy had been a real friend to local farmers.

Councilor Carroll said that some of the development projects currently before the Town, including

the development of the Durham Business Park and the possible TIF project on Stone Quarry Drive, were to occur on prime agricultural land or farmland of local significance, She also said there were several other projects being talked about that would occur on some excellent agricultural land in Town.

She said that good agricultural land was a resource that should be considered in terms of community planning, and said the Town was very lucky this farmland in Durham been passed on from generation to generation. She noted that Durham had historically been an agricultural community, and had better agricultural land than surrounding communities. She said the Council, the Planning Board and the Durham community needed to talk about this, and to decide how this land should be used.

She noted that former President Clinton had spoken about the issue of resource depletion at the recent UNH commencement, and she said forestry, water, farmland, etc., were all resource issues that needed to be discussed and addressed locally.

Councilor Morong said he had attended the recent UNH graduation, as a Councilor and because his daughter had graduated. He said the speakers were excellent, and also said the traffic and parking situation had been controlled very well, especially considering the number of people in Durham that day.

Councilor Needell updated the Council on the business before the Planning Board.

- He said the Emery Farms application to expand the farm stand had been approved at the Board's most recent meeting.
- He said the Planning Board's public hearing on the proposed changes to the forestry/timber harvesting provisions would be held on June 13<sup>th</sup>.
- He said that at the meeting on Wednesday, there would be a continuation of the Madbury Road site plan and subdivision applications, and the Bagdad Road conservation subdivision application. He also said the public hearing on the Strafford Ave. conditional use permit application would be held on Wednesday, and that there would be a conceptual consultation regarding the development plans for the Stone Quarry Drive property.

Councilor Needell said that at the previous Council meeting, Councilor Stanhope had suggested that the Council might want to review the Zoning Ordinance provision regarding the strict interpretation of the Ordinance, and the way Code enforcement approached this. He encouraged residents to pay attention to the Council's discussions concerning this issue, and said he felt there should be a more formal discussion by the Council on this topic. He said this should include the opportunity for public input, and he also said people could provide input on this issue now if they wished.

Councilor Julian Smith said that at its most recent meeting, the Conservation Commission had discussed the conservation-related initiatives it would like to pursue. He said these included the following:

- assistance with the work of the Carbon Coalition Advisory Committee
- water resource and conservation issues
- the Mill Plaza development, especially regarding the health of College Brook, and the need for a buffer area along it
- the Jackson's Landing improvements and trails

- the dredging of Mill Pond

Councilor Smith said the Mill Plaza Study Committee would hold a site walk at the Plaza on Wednesday, at 6 pm with the AIA team and other interested parties. He said a Committee meeting would follow. He also noted that some members of the public and the Committee had expressed concerns about visibility issues because of vegetation, when turning left out of Mill Plaza, and he provided details on this.

Councilor Stanhope noted some recent emails Councilors had received regarding some Councilors and Board members that seemed out of line. He said he was troubled that Administrator Selig had to be in the position of circulating this type of email that was out of line. He said he would like the Council's input concerning this issue, and he provided further details on this.

He also said that at a recent meeting of one of the local Boards, a member of that board had mocked a resident of Durham. He asked whether perhaps the Council should consider having a code of conduct that Council members were expected to adhere to, and that members of the public could be encouraged to adhere to.

Councilor Stanhope also spoke about a public health issue in Durham that he had observed, while jogging through the downtown area early in the day. He said that Durham had a serious rat problem, resulting from overflowing dumpsters for the food establishments on Main Street, Pettee Brook Drive, and up Madbury Road. He said that perhaps some regulations should be considered that would require timely emptying of dumpsters. He said he would like to know what the Council thought about this idea.

Councilor Leach said that perhaps the Durham Business Association could address this, and Business Manager Gail Jablonski said Administrator Selig would be bringing this issue forward to them.

Councilor Henry Smith said he would like the Council to discuss the email issue, but not that evening, and also said the Council should look at whether the mocking of a resident had actually occurred.

Councilor Carroll said she owed Mr. Mueller an apology, stating that when she had asked him a question, her tone had been overly aggressive. She provided details on this.

Councilor Van Asselt said the Rental Housing Commission had recently discussed the idea of changing a provision of the local noise ordinance, so that the cutoff hour would be 9 pm instead of 11 pm. He said he would like the Council to give some consideration to this issue.

Councilor Van Asselt also noted three articles he had provided Council members with copies of, one from the Boson Globe on the relationship between housing costs and school costs; a second from the Portsmouth Herald on what Maine and Vermont were doing concerning affordable housing; and a third from the Wall Street Journal regarding the need to find a middle ground concerning the green building/energy issue.

Chair Niman said that regarding Councilor Stanhope's comments on rules of conduct, the most recent Agenda setting meeting had looked at the issue of personal attacks on public officials and volunteers on local boards. He said he felt this kind of inappropriate behavior would ultimately

have a serious impact on the Town, in that people would be unwilling to serve on local boards and committees. He spoke about the importance of having a diversity of opinions and viewpoints, and said people were entitled to believe what they believed.

He said personal attacks were not healthy for the Town, and said he hoped this was not a trend. He noted that there were a number of potentially controversial issues the Town was dealing with, and said he was confident that the Council would treat each other respectfully as these issues were discussed. He said he hoped the public would extend the same courtesy, and also said he hoped the Council would discuss this issue if necessary.

Councilor Morong said this kind of thing had been going on in Durham for a number of years, but said he didn't see why the situation couldn't be improved.

Councilor Needell said he agreed. He said disagreement over issues and over the votes of Board members was natural and was to be expected. He also said if it was felt that someone on a public board was acting inappropriately, it was appropriate to bring this issue forward so it could be cleared up publicly. But he said it was not appropriate to attack people.

Councilor Henry Smith said it would be a good idea for the Council to have a discussion on this issue.

## **VI. Public Comments**

**Jerry Gottsacker, Madbury Road** first said he agreed with Councilor Morong regarding the management of traffic and parking on the day of the UNH commencement.

He also said that as an abutter to the property involved in the Madbury Road project, he had made a statement at the May 9<sup>th</sup> Planning Board meeting regarding property rights, and the rights of abutters. He provided details on this, and noted that resident Robin Mower had recently commented on these views and the fact that he was a member of the ZBA. Mr. Gottsacker also noted complaints being made at recent Council meetings regarding the actions of Planning Board members, and he provided details on this. He suggested that the Council should encourage Board members and members of the public to espouse their views whenever and wherever this was appropriate.

**Bill Hall, Durham,** said he had watched intently the good discussion on the funding formula at the previous Council meeting, but said he was concerned with the present course of action, based on past experience concerning this issue. He provided details on this, and urged the Council to get a legal opinion from a law firm that had had success with other NH towns regarding the funding formula issue. He said the Town needed a clear idea on where it stood, and what the climate of the courts was, in order to determine what kind of compromise was possible with the other towns concerning this issue.

## **VII. Unanimous Consent Agenda**

- A. Shall the Town Council approve a special event permit submitted by the Town of Durham and the Bourgoin-Reardon Unit 94 American Legion Auxiliary to conduct the annual Memorial Day Parade to be held on Monday, May 28, 2007?
- B. Shall the Town Council approve a special event permit application submitted by Seacoast Growers' Association to conduct its Farmer's Market during the period June 4-October 1, 2007?
- C. Shall the Town Council approve the water and sewer warrant for spring 2007 in the amount of \$421,000.35 and authorize the Town Administrator to sign said warrant?
- D. **FIRST READING ON ORDINANCE #2007-07** amending Chapter 124 "Street Vending, Peddling, and Soliciting" of the Durham Town Code by clarifying language to allow Durham businesses to conduct sidewalk sales without the need to adhere to Section 175-7 "Permit Procedure", subsections B, C, and D
- E. **RESOLUTION #2007-18** authorizing the Town of Durham to open a one million dollar (\$1,000,000) Tax Anticipation Note (TAN) line of credit through Citizens Bank
- F. Shall the Town Council schedule a Public Hearing for June 4, 2007 on **RESOLUTION #2007-19**, a resolution raising and appropriating an additional twenty thousand three hundred thirty-one dollars (\$20,331) in the FY 2007 Capital Fund budget for engineering services to repair the Wiswall Bridge with said funds to come from an initial FEMA reimbursement of \$524,434.16?
- G. Shall the Town Council award the bid and authorize the purchase of a new 41,700 G.V.W. sewer jet/vacuum truck to Liberty International Trucks of Manchester, NH for the sum of \$193,408 as recommended by the Town Administrator?
- H. Shall the Town Council award the bid for improvements to the Madbury Road water line to John Lyman & Sons of Gilford, NH for the sum of \$364,525 as recommended by the Town Administrator?

***Councilor Van Asselt MOVED to approve Unanimous Consent Agenda Items A- H. Councilor Leach SECONDED the motion.***

Councilor Needell said there would be public hearings on two of the unanimous consent agenda items, the proposed ordinance change regarding street vending, and the funding for the Wiswall Bridge repairs.

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

## **VIII. Committee Appointments**

- A. Interview candidates and make appointments to the Energy Steering Committee

Chair Niman provided background on the purpose of this committee, which had evolved out of the Climate Change resolution that had passed in March. He said there were to be eight members, and said there had been a wonderful response in terms of candidates for the committee.

He noted that Michael Carter had applied, but had then had to withdraw the application, and also said resident Kevin Gardner, who had offered to serve on the committee as a resident of Durham, had been asked by the University to serve as their representative to the Committee.

Councilor Carroll said Mr. Carter was sorry to have had to withdraw his application, but would like to be involved in the committee's work in the future.

Chair Niman asked each of the candidates who were present to speak briefly.

**Nat Balch, 20 Wiswall Road**, said it was exciting that this committee had been developed. He said the energy playing field was changing, and said there would be a lot of technology changes as a result of this. He said there was an opportunity for the Town to take a proactive approach, and to act as source of resources and support for the citizens of Durham. He said the Town could re-address its buildings, fleet vehicles, etc. and said it could perhaps develop an energy master plan for the next 5-10 years. He said he had a lot of experience with energy issues, and he provided details on this.

**Toby Ball, 4 Morgan Way**, said he was the grassroots coordinator for the Carbon Coalition, and explained that he was the Chair of a Carbon Coalition committee that provided support for local town energy committees. He said he was therefore excited about the opportunity to actually serve on such a committee. He also said he appreciated the fact that he had been allowed to apply to the committee even though he was technically not a resident yet.

**Don Brautigam, 122 Packers Falls Road**, said he was a physicist involved with space research, and said he was very interested in conservation issues. He said he had followed recent developments concerning increased awareness of global warming and peak oil, and said he was excited about the fact that momentum on this issue was building. He noted Councilor Van Asselt's comments on the fact that there were usually two sides to an issue, and said that as a scientist, he had been reading with great interest the various perspectives on energy issues. He provided details on this, and said it was important to keep a balanced perspective. He also said the issue of peak oil was real, and said it was important to make the change to more sustainable energy practices.

**Kevin Gardner, One Stevens Way**, said he was a civil engineer at UNH who was the director of an environmental research group that looked at life cycle analyses among other things. He noted that his perspective included more than energy issues and that he looked for sustainable approaches, but he said energy was a great place to start.

**Filson Glanz, 25 Orchard Drive**, said he had been a resident of Durham since 1965, and had been a computer engineer at UNH before his retirement. He said that for years, he had been interested in ways to save energy, and said he had come to believe that there were a lot of things that could be done with buildings to save energy. He said he saw challenges ahead for the Town and the nation concerning energy problems because of peak oil and climate change, and also said there was great opportunity to save money and protect the citizens of Durham in solving those problems. He said he was very enthusiastic as to what the committee could accomplish.

***Councilor Needell MOVED to appoint the following individuals to the Energy Steering Committee: Nat Balch, Toby Ball, Donald Brautigam, Filson Glanz, Kevin Gardner as the UNH representative, Dave Cedarholm as the Public Works Department representative, and Councilor Diana Carroll as the Town Council representative. Councilor Stanhope SECONDED the motion, and it PASSED unanimously 9-0.***

Councilor Leach noted that there was still one opening for a citizen member of the Committee, because Kevin Gardner was serving as the UNH representative to the committee.

B. Interview citizens and make appointments to the Churchill Rink Committee

Chair Niman explained that the development of this committee was part of the process of the Town taking over the rink. He asked those candidates to the committee who were present to say a few words.

**Cheryl Hoffman** said she was a big supporter of the Churchill rink, and provided details on this. She said she believed that the rink could be supporting, and noted that she had attended the ad hoc committee meetings that had been held concerning the rink.

It was noted that candidates Mike Mullaney and Bob Karelitz were not present.

***Councilor Van Asselt MOVED to appoint Cheryl Hoffman and Mike Mullaney to three year terms on the Churchill Rink Committee ending in 2010, Bob Karelitz to a three year term on the Committee expiring in 2009, and to appoint Councilor Catherine Leach as the Town Council representative to the Committee. Councilor Carroll SECONDED the motion, and it PASSED unanimously 9-0.***

Councilor Leach said there was one more opening on the Committee.

Break from 8:21-8:31 pm

**IX. Presentation Item**

Quarterly Financial Report - Business Manager Gail Jablonski

Ms. Jablonski said things were going very well, stating that the expenses were in line, with some expenses less than had been anticipated. She said revenues were low, as expected, and also said the semi-annual tax bills had recently gone out. She also said the water and sewer warrant had just been authorized and said these bills would be going out.

Councilor Van Asselt asked what kind of revenues the Depot Road parking lot was bringing in.

Ms. Jablonski said that the first quarter, about \$16,000 had come in, with \$7,000 of this coming from parking permits, and over \$8,000 coming from special event parking permits. She said all of these revenues went directly to the Town.

Councilor Henry Smith asked what the \$73,000 amount was for, under General Government, for the Town Council, and Ms. Jablonski explained that \$50,000 of it represented contingency funds, and the remaining \$23,000 was for conferences, salaries, etc., for the Council.

Councilor Carroll noted the debt service of \$364,000 listed on page 2. She said that represented a lot of interest, and said she would like to discuss this when the Council held its upcoming session on the Budget. She asked if perhaps there was some way the Town could find some money to put on the principle, so the amount of interest the Town was paying could be decreased.

Chair Niman noted that Ms. Jablonski was putting together information on the issues the Council would like to discuss in more depth at its upcoming meeting Budget session. He suggested that Council members could pass on some of their ideas at the present meeting.



Councilor Van Asselt said Councilor Carroll had made a valid point, and noted that more than 10% of the Budget went to the debt service. He said the Council needed to face the reality that this debt service wouldn't be going away for several years.

Councilor Stanhope asked if it would be possible to get the term rate and balance on each of the outstanding debt obligations, in order to see if any savings were possible, and Ms. Jablonski said it was possible to get this information.

Councilor Carroll said she realized that the TAN had been needed, but asked if there was any way to get around this so the Town wouldn't need to have them in the future except in an emergency situation.

Ms. Jablonski said the only way to avoid this was to build the fund balance. She also noted that the TAN this year was a line of credit, and said it was hoped the Town could get by without using it when the tax monies came in.

Chair Niman asked Ms. Jablonski to come up with a number for the fund balance that would mean the Town could avoid using a TAN.

Councilor Stanhope asked for a breakdown as to where legal expenses were expended, noting that the Town had more legal fees per capita than other towns of Durham's size.

## **X. Unfinished Business**

- A. Review Purchase and Sale Agreement between the Town of Durham and Chinburg Builders, Inc. for the Durham Business Park and schedule a public hearing on the document for June 4, 2007

Councilor Morong recused himself from further discussion on this issue, noting that as the discussion was narrowing down, he was more and more uncomfortable with participating in it.

Councilor Van Asselt said he understood that Councilor Morong did work for Chinburg Builders, but said he disagreed with his decision to recuse himself. He provided details on this, and said Councilor Morong's familiarity with the Durham Business Park and his work on the Economic Development Committee would be helpful to the Council as it moved forward.

Councilor Needell said he didn't disagree with Councilor Van Asselt, but said that concerning the idea of recusal, the reason for recusal did not have to be given. He provided details on this.

Councilor Morong said he didn't mind explaining his reasons for recusing himself, and said that if Chinburg Builders were a minor contractor he worked with, that would be one thing. But he said it was a major contractor he worked with, and said he felt the health and welfare of Chinburg Builders would affect him directly.

Councilor Stanhope said he too would recuse himself.

Chair Niman reviewed the process the Council had gone through to get to this point regarding the Durham Business Park. He said that over the past few months, a Purchase and Sale agreement

had been put together and revised, and said that if the Council felt comfortable with it now, it would schedule a public hearing for June 4<sup>th</sup>, and after this would vote on whether to move forward with the project.

There was discussion that Chinburg Builders' offer had been extended to June 5<sup>th</sup>, and that if the Council didn't vote on June 4<sup>th</sup>, another extension would be needed.

Councilor Van Asselt asked if the Town Charter required that there be a hearing on the Purchase and Sale Agreement. There was discussion that there was not such a requirement, but that Administrator Selig had recommended that there be a hearing.

Councilor Van Asselt asked if the hearing would give members of the public the opportunity to discuss the specific language in the Purchase and Sale Agreement, and Ms. Jablonski said the document would be posted on the Town web site so members of the public could look at it and send detailed comments by email to Administrator Selig.

There was discussion that the intent of the public hearing was to address the Agreement itself, and Councilor Van Asselt said he supported this. He encouraged other Council members and members of the public to submit detailed questions in advance of the meeting, so that this meeting could be more focused. Councilors agreed this was a reasonable approach.

Councilor Carroll said that if someone couldn't submit comments in advance, he/she should be able to comment at the hearing itself.

Councilor Needell noted that the Council had decided a while ago to move forward with this process, but he said members of the public could still provide their opinions as to whether the arrangement with Chinburg Builders was a good idea.

Councilor Van Asselt said that because of the way Chinburg Builders had agreed to develop the property, there would be several opportunities for the public to provide further input. He said he was simply trying to focus the discussion at the upcoming public hearing. Chair Niman agreed that the regulatory approval process would allow opportunities for the public to comment on the proposed building locations, buildings, etc.

Councilor Van Asselt noted that there would also be a committee that would be working on the projects.

Chair Niman asked Councilors to now focus on the Purchase and Sale document itself.

Councilor Needell noted section 2.03 on page 3, regarding the mode of payment, and received confirmation that it meant that the entire sale would not go forward unless the first aspect of the project, for at least 5000 sf, made it through the approval process.

Councilor Leach noted that this section related to section 4.02 on page 6. She also asked if the goal of obtaining approvals and permits by December 31, 2007 was reachable.

Steve Schuster of Chinburg Builders agreed that the two provisions were related. He provided details on this, and noted language that had previously been discussed "unless the parties agreed

upon a later date”. He suggested wording as part of section 4.02. “..becomes null and void unless the purchaser wishes to purchase the property without approvals or permits, or unless the parties shall agree upon a later date in writing.”

There was detailed discussion that the wording should reflect the fact that there might be a proposal coming to the Planning Board at a late date. Councilor Needell said this kind of situation would represent a burden on the Planning Board.

There was also discussion on the March 31<sup>st</sup> date in the Agreement, and that if the closing hadn’t occurred by that date, the deal would be off unless they all agreed to continue it.

Councilor Needell spoke about section 2.03, b, which indicated that once Chinburg Builders had gotten approval for phase I, it was committed to purchasing the property regardless of any future approvals. There was discussion about this.

Mr. Schuster said that this had been one of the more significant departures from the original negotiations, and said it was related to the guaranteed purchase price.

Councilor Van Asselt agreed that this was a significant change to the Agreement.

There was discussion as to how tax liability was impacted when large portions of the property were set aside for various easements.

Councilor Van Asselt noted that with this Agreement, the Council had the ability to develop a payment in lieu of taxes (PILOT) arrangement with a tenant of the Business Park. He said approval of such an arrangement by the Council would probably dictate whether an entity agreed to become a tenant, and asked how the PILOT affected the whole process.

Mr. Schuster provided details on the PILOT arrangement, and said it was a safeguard to the community, which had invested time and money in the Durham Business Park in order to get economic development on the property. He said if a tenant was then tax exempt, this would undermine the whole concept of what the Town was trying to do.

He said Chinburg Builders was saying in this Agreement that it would self-impose the condition that if there was a tenant that was tax exempt, it would have to agree to the PILOT, which would be in the deed. He said the Council had proposed the provision that gave it the ability to determine what that tax payment was, noting that the tenant might provide a service the Town really wanted, so there might be the incentive to make the PILOT a little less.

Councilor Needell spoke about section 4.04, which spoke about passive recreation. He suggested that examples of potential passive recreation uses shouldn’t be included there, noting that swimming especially shouldn’t be listed, since it may not be appropriate in this part of the river.

Mr. Schuster noted that the access easement could address the potential passive recreation uses, and there was discussion.

Chair Niman said they could take the examples of potential passive recreation uses out. Councilor Needell noted the condition in section 4.03, concerning financing for the construction

plans, and said he wanted to be sure everyone was comfortable with this.

Councilor Van Asselt said he didn't think this was a problem and provided details on this.

Mr. Schuster also provided his perspective on this, and there was further discussion.

***Councilor Julian Smith MOVED that the Durham Town Council schedule a public hearing on a Purchase and Sale Agreement for the sale of the Durham Business Park for Monday, June 4<sup>th</sup> 2007. The motion was SECONDED by Councilor Henry Smith, and PASSED unanimously 7-0.***

- B. Continued discussion on 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 noted that at the previous Council meeting, Councilors, including himself had agreed that instead of developing a new definition for Virtual Home occupation as he had originally proposed, it made more sense to revise the current definitions. He said Councilor Needell had provided some draft language on this, and said he had made some adjustments to this and Councilor Julian Smith had also taken a look at the draft. He said that if the Council voted that evening to move these proposed revisions forward, they would be remanded to the Planning Board and then would come back to the Council.

He said there had been disagreement on the Council concerning how to handle situations where there were home occupations and also accessory apartments, and said section e was an attempt to address this issue. He asked the Council for feedback on this section as well as the draft in general.

Councilor Morong said his main concern was higher density residential districts, where a property could wind up with too many cars, etc., but said he didn't think there wouldn't be much of a problem in other districts with larger lots. He also said he felt section e should be included for first class home occupations, but not for second class home occupations.

Chair Niman read the language in section e- "...if an accessory apartment is located on the premises, then one unrelated person will be deducted from the density table for each person employed on the site."

There was discussion as to whether enforcement of section e as currently written would be too cumbersome. There was also discussion about the fact that second class home occupations were not allowed in the RA and RB districts.

Councilor Needell noted that the provisions did allow someone who didn't have another employee to have a home occupation and an accessory apartment, and said he agreed with this.

There was discussion as to whether the wording in section e was not as much of an issue for the districts other than the RA and RB districts.

Councilor Carroll said perhaps the Council should wait to change this language until they had held the public hearing, explaining that members of the public would be able to provide possible scenarios that related to the provision as currently written. She also suggested that the Council might not want to take too much of a regulatory approach in this instance.

Councilor Julian Smith recommended that section e should be eliminated entirely. He said he understood the reason for suggesting it, but said that under present conditions, there were some people who had first or second class home occupations as well as accessory apartments. He said the question would come up as to whether these would be grandfathered.

Councilor Van Asselt agreed that Councilor Smith's point made sense.

Councilor Needell agreed as well, but said there was the issue of whether the grandfathering was implicit, or whether if the property was now nonconforming, grandfathering would not be allowed. He also noted that this was a Council initiated change to the Zoning Ordinance, and said the draft could change over time, as it went to the Planning Board and back to the Council.

Councilor Morong said he suspected that the grandfathering would be implicit, but said wording to this effect could also be included with the provisions. He also said it would seem that the grandfathering would be relatively easy to prove.

After further discussion, the consensus of the Council was to include section e, but for first class home occupations only. It was noted that there would still be future opportunities to change the draft.

Councilor Needell pointed out a clarification in the revised language that first class home occupations could occur in a primary or accessory structure. He said hopefully this change was something that was desired.

Councilors agreed they were happy with the wording.

***Councilor Needell MOVED that the Durham Town Council hereby sends to the Planning Board the proposed draft ordinance for its review and consideration, relative to changes to the definition of "Home Occupation" for inclusion in the Chapter 175 "Zoning", with the modification that the Council is striking section e under second class home occupation. Councilor Morong SECONDED the motion, and it PASSED 8-1, with Councilor Julian Smith voting against it.***

## **XI. New Business**

Chair Niman noted that a number of matters had not been ready for the Council to address at this meeting, including the density issue, and the Budget discussion.

The Council agreed that that the Budget discussion would be included in the Agenda for the June 18<sup>th</sup> Council meeting, and that if it later looked like it would be impossible to cover it that evening, a special Council meeting would be scheduled for June 25<sup>th</sup>.

Councilor Carroll made note of the fact that on Wednesday at 4 pm, there would be some speakers coming to Durham to address the issue of workforce housing. She said the public was welcome to attend this presentation.

**XII. Nonpublic Session**

None

**XIII. Adjournment**

*Councilor Leach MOVED to adjourn the meeting. Councilor Van Asselt SECONDED the motion, and it PASSED unanimously 9-0.*

Adjournment at 9:38 pm

Victoria Parmele, Minutes taker