

This set of minutes was approved at the Town Council meeting on October 15, 2007

**DURHAM TOWN COUNCIL
MONDAY, SEPTEMBER 10, 2007
DURHAM TOWN HALL – COUNCIL CHAMBERS
7:00 PM**

MEMBERS PRESENT: Chair Neil Niman; Councilor Karl Van Asselt; Councilor Jerry Needell; Councilor Diana Carroll; Councilor Julian Smith; Councilor Cathy Leach; Councilor Peter Stanhope; Councilor Henry Smith

MEMBERS ABSENT: Councilor Mark Morong

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

I. Call to Order

Chair Niman called the meeting to order at 7:03 pm

II. Approval of Agenda

Councilor Julian Smith MOVED to approve the Agenda as submitted. Councilor Van Asselt SECONDED the motion, and it PASSED unanimously 7-0. (Councilor Henry Smith was out of the room).

III. Special Announcements

IV. Approval of Minutes

August 6, 2007

Page 1, Councilor Morong should be listed as being present at the meeting.

Councilor Van Asselt MOVED to approve the August 6, 2007 Minutes as amended. Councilor Carroll SECONDED the motion, and it PASSED unanimously 8-0.

V. Councilor and Town Administrator Roundtable

Councilor Julian Smith said there was an error in the Friday updates, in that the next meeting of Mill plaza committee will be on Wed, Sept 19th, 430-630. He also said the Town had received the first sketches for the potential redevelopment at a public meeting last Saturday which was well attended. He said things were moving forward with the committee and its partners, the NLT chapter of the AIA.

Councilor Stanhope said in a recent Friday update, Administrator Selig had laid out a general proposal that the Council consider providing ad valorem assessment and code enforcement services to Lee and Madbury. He said he did some research on this, and provided details. He said this approach would mean Durham would be adding 141% more areas that had to be assessed, and also noted that there would probably be growth in these areas.

He reviewed growth rates in the 3 towns, and the number of housing units, and said there would be a 72% increase in housing they would be working with, in terms of assessing and enforcement. He said in order to accomplish this, the people presently doing these jobs must have pretty easy jobs, or there would be additional people needed. He said much more study was needed concerning this idea before even discussing it with Lee and Madbury.

Administrator Selig said that concerning code enforcement approaches, the suggestion was to work with Madbury, which had part time code officer who was going to be retiring. He said the Town didn't have the capacity to extend code enforcement services to Lee. He said it was realized that this would be an add-on to an already very busy employee, but said if the workload was small enough, the Durham code officer could perhaps take this on. He also said that if needed, perhaps the two towns together could hire another person.

Regarding the assessment, issue, Administrator Selig said there could be some tremendous benefits to a tri-town unit overseen by one assessor, where there would be similar assumptions and practices employed in each of the communities. He said initial discussions with Madbury indicated that it didn't want to make this change.

But he said the Town of Lee had had some assessment challenges over the past few years, so was very interested in this idea. He said there might be some capacity in the Durham assessment office to take this on, and said he would continue to evaluate this idea. He noted that he was charged with finding ways to be more efficient and innovative with the Town's resources, and was trying to do this wherever possible.

Councilor Needell noted that two significant projects had recently been approved by the Planning Board. He said one was a mixed use facility at 20 Strafford Ave, which would have 3 commercial spaces on the first floor, and 16 residential units on the second floor. He said the other application that had been approved was a 48 unit student housing complex at 53 Old Concord Road, across from Goss International.

Councilor Henry Smith said the Historic District Commission had met the previous week. He said there were no new applications, and also said an application form was being developed for historic structures.

Administrator Selig spoke about a number of recent issues and events in Durham:

- He noted that there had been a great deal of news coverage on Eastern Equine Encephalitis and West Nile Virus, and said the Town website had a great deal of information on both of these diseases. He also said that UNH had been testing water bodies around town, and there had been no positive tests for either virus. He said the number of mosquitoes around this year was much lower than in the past few years.
- He said Durham Day would take place on September 16th, from 1-4 pm.
- He said the University Day picnic would take place on Tuesday, September 13th, and said Durham residents were invited.
- He noted that in the August 31st Friday Update, there had been a blurb concerning assessed values in Town. He said some aberrations had been observed in downtown rental properties, noting that costs per bed had increased fairly drastically. He said they were also

monitoring changes in valuations of waterfront properties, especially those along Great Bay, and stated that sales were coming in at or below assessed values. He said there would be a statistical update of all properties in Town next year.

- He said the public hearing for the Stone Quarry Drive TIF would take place on September 17th
- He said the Depot Road parking spaces were sold out. He noted that Durham residents who would like to commute on the train would like to be able to park there for free, and said the Town would look at this. He said there was also a request that resident permit holders should be able to park at the front of the lot rather than at the back.
- He said there was a forum scheduled for October 16th on the State Right-to-Know law requirements, and said this would be broadcast live on DCAT.

Councilor Needell said he and Councilor Leach had been working on some ordinance revisions to establish a board of assessors. He said the Town Attorney would be reviewing the proposed language, so they were holding off on providing this language until the Council met in October.

Councilor Needell said he had traveled with the Police Department on Friday night as it made its rounds in the downtown area. He said the experience was enlightening, and said the staff was very professional at handling a large number of students, in situations that changed rapidly over the course of the evening. He said their focus was on keeping people safe, and he commended them for the way they handled this situation.

Councilor Carroll said it was good news that the Depot Road parking lot was sold out. But she said a bit of tweaking was needed with this project. She noted that she had received a call from a resident who worked in Cambridge, MA and had expected to be able to commute there from Durham, but had then found that all the parking spaces were sold out. She said it was important to make sure that there was sufficient space available to accommodate Durham residents who wanted to take the train.

Councilor Carroll also made note of the fact that Durham was looking a lot different these days, in that there were more and more students and faculty in Town from all over the world. She also spoke about a situation where she had seen a Durham resident welcome a student back to Town. She said this was the kind of community spirit that was a mark of this community.

Administrator Selig suggested that residents might want to meet the students who were their neighbors. He said it had been found that when this was done, students realized that real people lived next door to them, and they were therefore more apt to cooperate when there were noise and trash problems, or to think first before behaving badly.

There was discussion about the accuracy of the 2006 census figures on the non-student population provided by consultant Russ Thibeault. Administrator Selig said this was a difficult number to pin down, but he said it was the best number Mr. Thibeault was able to come up with.

Councilor Stanhope said that the Integrated Waste Management Advisory Committee would be losing another member, and he said if this trend continued, there would be no committee by the end of the year.

Councilor Leach said this was a good opportunity to put in a plug that the Council would like to see other people come forward to join this committee.

Chair Niman provided details on the upcoming Durham Day celebration. He then asked if the Council wished to speak about the tri-town meeting the following day. Some Councilors said they were going to the meeting. Chair Niman noted that members of the public were also welcome to attend this meeting, which would be held at the library of the Oyster River High School, at 7pm.

VI. Public Comments (NLT 7:30 PM)

Bill Hall, Smith Park Lane, provided his perspective on the way the 401 water permit for the Lamprey River had come into effect some years back. He said there was no discussion whatsoever on this matter by the Council that was in place at that time. He then provided details on what did occur at that time, and said that based on the process that had occurred, including no public hearings, the 401 permit was absolutely void. He also said the permit was never meant to prohibit the use of the Lamprey River as a water supply.

Mr. Hall also said that prospecting for water at Spruce Hole was foolish, noting among other things that there was no pipe there to take water to the water treatment plant. He said there was, however, a pipe and a pumping station at the Lamprey, and said he also believed the land near there was gravel, so it was also a good place to have a well, and would be less expensive in terms of operating costs. He said some test borings should be drilled to see if there was sufficient potential water, before going with Spruce Hole. He said the current approach and direction concerning the Town's water supply was ridiculous.

Ed Valena, 9 Bagdad Road, said he had written a harsh letter in support of land protection, and on the recent Council decision to change the use of Current Use penalty funds. He said he had planned to read the letter out loud at the meeting, but now had decided that he would simply let Councilors read it themselves.

Robin Mower, said she was present to discuss three issues. She said her first request was regarding the agenda item to formalize the Economic development Committee. She noted that one of the Council's core values, adopted on April 9th, was a fair and open-minded approach to issues. She said she therefore felt a change in the scheduling of EDC meetings was in order. She asked that the Council charge the EDC to come up with a regular meeting time that might be more conducive to attendance by the public, and that minutes be recorded and posted online in a timely manner. She said this was particularly important now that they were getting down to brass tacks on significant development issues such as TIF districts.

Ms. Mower said a second issue she wished to discuss was the TIF plan. She described the process with the TIF document in recent weeks, and said she hoped that in the future, every effort would be made to provide more time to review a document as complex and weighty as the TIF document, before it was brought forward to the Council.

She noted a good suggestion at the Sept 4th Council meeting that Administrator Selig should walk people through the numbers at the beginning of the Sept 17th public hearing on the TIF

plan. She asked that in addition to this, that a one page summary be prepared by someone other than the financial consultant, to cover the main points of the plan. She said this summary could be posted on the Town website and linked into the Friday Update in time for residents to read it prior to the public hearing. She also said it would also be helpful for residents to have a plain language reference crib sheet for terms used in the plan, such as UDAG, and Protected Valuation.

Regarding a third issue, the Council's recent vote on the Land Use Change Tax penalty funds, Ms. Mower noted a goal that was the first of the Council's 2007-2008 action goals, concerning the "preservation of open space, farmland, forest and conservation lands through land and easement purchase utilizing conservation bond and land use change tax proceeds in such a manner as to balance the benefits of such acquisitions against the broader tax implications these acquisitions and other municipal priorities have upon the community as a whole."

She questioned what had happened in the months since this goal was set, stating that in her professional career, goal setting was taken seriously. She provided details on this. She asked what had made the Council so radically change its mind about the Land Use Change Tax and to counter the state's legislated, intended purpose of helping preserve open space by the use of these funds. She said she would hope that when the Council reviewed its goals later on at the meeting, it would have a darned good explanation for this rapid apparent about-face.

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

Councilor Stanhope asked that Item E be taken off the Unanimous Consent Agenda

- A. Shall the Town Council approve a special event permit application submitted by New Hampshire Ducks Unlimited to conduct its "Ducker's Day" event on Saturday, September 15, 2007?
- B. Shall the Town Council approve the special event permit application submitted by the UNH Wildcat Marching Band to close a portion of Main Street in front of Thompson Hall to Cowell Stadium for the UNH Marching Band to march to home games scheduled during the months of September through November, 2007?
- C. Shall the Town Council amend the special event request submitted by the UNH office of Public Programs and Events and approved on July 16, 2007 to close a portion of Main Street between Edgewood Road and Garrison Avenue on Tuesday, September 18, 2007 for the annual University Day Picnic to extend the end time for the event to 8:00 PM?
- D. Shall the Town Council reappoint the Town Health Officer to serve as the Town of Durham's representative to the Southern Strafford Community Health Coalition for a one-year term as recommended by the Town Administrator?
- F. **RESOLUTION #2007-22** extending the Town of Durham's polling hours for all federal, state, and local elections by one hour at the beginning of the day and affirming that polling hours will begin at 7:00 AM and close at 7:00 PM

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

- E. Shall the Town Council reappoint the Director of Planning and Community Development to the Seacoast MPO Technical Advisory Committee as recommended by the Town Administrator?

Councilor Stanhope said the Council had repeatedly heard that Mr. Campbell was challenged by the workload he had.. He said he believed that the MPO TAC presently had a limited agenda, and one that Durham wouldn't benefit greatly from. He asked that Administrator Selig find another person to serve in this position so Mr. Campbell could devote his time to more critical issues before the Town now and anticipated in the coming months.

Administrator Selig said the Town had only one planner, and said Mr. Campbell was the only member of the Town staff with the background to be a member of this particular committee. He said he didn't see that he would have to be an especially active member of this committee at present, but said he would at least like to be able to monitor what was going on with this committee.

Councilor Needell MOVED to hereby reappoint the Director of Planning and Community Development to the Seacoast MPO Technical Advisory Committee as recommended by the Town Administrator. Councilor Henry Smith SECONDED the motion.

Councilor Needell said it was important to have at least some representation on this committee. He said he thought this appointment was an administrative decision, and said he accepted Administrator Selig's recommendation.

Administrator Selig noted that the Town had advertised to see if a resident of the community was interested in this position, but there had been no response.

Councilor Van Asselt said he would remain consistent with his previous position on this matter, and said he said he agreed with Councilor Stanhope.

Councilor Henry Smith said he could see Councilor Stanhope's point, but said given the difficulty of finding someone to take this position, he would prefer having some representation rather than none.

Councilor Carroll said what Councilor Stanhope had said had a lot of validity, but said she would like to see Administrator Selig and Mr. Campbell work this out.

The motion FAILED 3-5, with Councilor Needell, Councilor Carroll and Councilor Henry Smith voting in favor of it.

Councilor Van Asselt said he would like the Council to revisit this issue later, in order to provide Administrator Selig with a solution.

VIII. Presentation Items

- A. 2006 Audit Report – Plodzick and Sanderson

Greg Colby provided details on the audit document. He said that similar to the previous year, the government-wide statement of net assets did not include any of the Town's capital assets acquired in years prior to 2004, nor the accumulated depreciation of those assets, nor

depreciation expense related to those assets. He said the Independent Auditor's Report therefore reflected this one exception to the overall conformity of the Town's financial statements with accounting principles generally accepted in the US.

Mr. Colby then went through the Audit Report in some detail. He listened to Councilors' comments and answered their questions concerning the report. He then noted the *Independent Auditor's Communication of Control Deficiencies and Other Matters* at the end of the Auditor's Report, and said nothing had come to the firm's attention in the way of deficiencies in internal control that it considered to be material weaknesses. It said Town staff had done an excellent job with the audit, and said this made doing the report that much easier. He thanked them for their efforts.

After Mr. Colby responded to a few more questions from Councilors, Administrator Selig asked him to discuss the Town's water and sewer funds, and also asked him to discuss the financial health of the Town as a whole.

Mr. Colby provided details on the water and sewer departments. He noted the water department losses, but said he couldn't comment on why this had happened. He said that from the numbers, the Sewer department was going in the right direction, although it was still generally in worse shape than the Water department.

Concerning the \$1.4 million fund balance, Mr. Colby said that based on national recommendations, this was probably on the low side. In answer to a question from the Council concerning the Town's amount of bonded indebtedness, he said he would have to do more analysis in order to answer that question.

Councilor Needell said some of the same numbers came up each year concerning what the fund balance should be. He asked what form of government those number applied to, and if these were national numbers.

Mr. Colby said it was a national benchmark. He said the range had been as low as 5-10%, but said that with changing economic conditions, the number had increased over the last couple of years, so the recommendation was that the fund balance generally should be 8-18%. He said it was a bit unusual that Durham's fund balance was at the lower end of that scale.

Councilor Van Asselt asked why Durham was at the lower end of the scale. He also asked why the School's \$15 million got mixed in with that, when the Town didn't control the School budget.

Councilor Needell said the Council had the authority to raise money as it needed it, and asked if this changed the dynamics of the recommendation concerning the size of the fund balance.

Mr. Colby said yes, in that the Council could appropriate money for emergencies if it had to.

Administrator Selig made note of the fact that the percentage of Durham's population that paid taxes near the due date was quite high.

Councilor Van Asselt said he just wanted to be sure he could still argue to lower the fund

balance this year.

Chair Niman thanked Mr. Colby and Business Manager Gail Jablonski for their work on the audit.

B. Receive annual report from the Historic District Commission – Nick Isaak

Postponed

The Council stood in recess from 8:14 to 8:24 PM.

C. Proposal for a resident permit stickers – Kathryn Lilly

Chair Niman congratulated Ms. Lilly on the fact that she had recently received her Masters in Public Administration from UNH.

Administrator Selig explained that said as part of going for her Masters, Ms. Lilly needed to do a community related project. He said she therefore had approached him, and they came up with the idea of researching the idea of a resident sticker program. He said Ms. Lilly had subsequently conducted a lot of research on this concept, and would now walk the Council through some of her findings and recommendations.

Ms. Lilly started with her general recommendations. She said there should be a sticker for each resident, which would be placed on each vehicle. She said there would be a new sticker each year, and they would vary by color. She said it would cost about 24 cents to make a static cling type label, and said there would be a total cost of \$1,400 to produce and distribute the stickers.

She said a resident would be defined as someone who registered a car in Durham, but also said nonresident taxpayers could get stickers by showing their tax bill. She said this kind of system was used all across the country, including some places in New Hampshire. She said it would allow access for the transfer station, parking, etc.

She said this system would provide expanded opportunities for residents, noting among other things that the sticker could be used in a lot of places in Town for parking. She recommended that residents who got the sticker would be allowed to park for 2 hours rather than 1 hour downtown, which would allow them more time to shop and eat there, and to interact with other residents as well as the student population.

Ms. Lilly said that regarding ideas for using the sticker as part of recreational opportunities in Town, she hoped the Parks and Recreation Committee would look at her report more thoroughly. She said the sticker might be a way to introduce a system so that residents could use recreational areas in Town for free, while nonresidents would be charged a fee. She said this was certainly a debatable issue, but said the sticker could be a way to offset the costs of maintaining these areas and to encourage their use.

She said another recommendations was that the sticker would allow free access to the transfer station. She noted that the Integrated Waste Management Advisory Committee had proposed this for a long time. She said the way to offset the cost of this proposal would be to increase the

cost of bulky waste coupons to \$25.

Ms. Lilly said there were a lot of reasons why there should be free access to the transfer station, noting that it encouraged recycling and use of the swap shop. She also said people who didn't have curbside pickup should not be charged to drop off their garbage themselves. She said the sticker would also allow all residents to get the free woodchips that were available at the transfer station.

She said she believed the program could begin in January of 2008 if the Council endorsed it, and she provided further details on how it would work administratively. She said she hoped the Council would consider adopting the sticker program, stating that it was a simple way to provide taxpayers benefits they would appreciate, at a relatively low cost.

Councilor Stanhope asked how the Town would deal with residents whose registrations came due in December, if the program started in January of 2008. He received clarification that all residents could come in for stickers in January with proof of residency and could gradually transition to renewing the stickers with their annual registration

Councilor Julian Smith said the sticker program was an excellent idea, stating that it was better to go to Town Hall to get a free sticker than to have to go to the Public Works Department. He questioned the use of a static cling sticker, and also asked if the license number would be on the sticker. Ms. Lilly said it would be.

Councilor Van Asselt asked if there would be a sticker for each vehicle, and was told yes, with Ms. Lilly explaining that each car registrant in a household could receive a sticker. Councilor Van Asselt said this approach addressed the residents at Fitts Farm, who would get to use the transfer station for free if this system was approved.

But he said a bigger issue was the idea of the sticker being used to allow free access to recreational facilities. He noted that some people in Durham used recreational facilities in Dover, but this was paid for by the city of Dover. He questioned the idea of requiring non residents to pay to slide down Wagon Hill, as an example.

Councilor Leach noted that Ms. Lilly had not included a specific recommendation concerning recreational options. She provided details on this.

Councilor Needell noted that the Council hadn't even begun to have a discussion on the issue of whether to charge for admission to recreational facilities in Town.

Chair Niman said there was a possible positive spin on the recreational aspect of the sticker program. He said if people wanting to swim at the Wiswall reservoir had stickers, they could perhaps be allowed to park on the side of the road and wouldn't get ticketed. He asked Ms. Lilly if she had thought about whether the parking aspect of this program might also include allowing residents with stickers to park in the neighborhoods near the University. He said this approach might replace the current system where people had to get special permits in order to park there.

Ms. Lilly said she hadn't gotten too far into that idea.

There was further discussion on this idea, and Councilor Carroll said it was worth looking into, noting that it would simplify things for residents who were going to visit friends in these neighborhoods.

Councilor Stanhope said the parking issue was the one that most towns had stickers for, and provided details on this.

Administrator Selig spoke about the issue of people who parked on Cedar Point Road to access the Oyster River. He said the stickers would allow the Town to monitor this situation.

Councilor Henry Smith said he thought the recommendation of using the sticker to provide free access to the transfer station was a good one, as was the idea of using an increase in the bulky waste permit to offset the cost. He said he also liked the idea of using the stickers to allow residents to have expanded time for parking downtown. He said a question with charging non-residents to use places like Wagon Hill was how to enforce this.

Councilor Leach said that the report said that 410 bulky waste permits were purchased by residents in 2006. She noted that people had gotten these for free with their transfer station passes, and said if the Town decided to charge them \$25 for the permit, the number of bulky waste permits purchased might be cut in half.

Ms. Lilly said this was discussed with the Public Works Department, and she said although this was a hard thing to estimate, the Department was comfortable with the estimates.

Councilor Stanhope said it was important to keep the bulky waste permit as inexpensive as possible, stating that this cut down on the Town's annual pickup costs. He noted that spring cleanup had been lower in volume this year.

Councilor Leach asked Administrator Selig if he was supportive of these recommendations, from a financial and implementation standpoint.

Administrator Selig said he was. He said there would be a bit of a loss of revenue as a result of free access to the transfer station, but he said it provided a nice benefit for residents, and worked toward equality between residents. He said the swap shop had made the transfer station facility desirable for residents, and he said free access to the facility would encourage this further. He also noted that the wood chip pile was free to residents who actually had access to the facility.

He said it was time to move to free access to the transfer station. He said he would have a Council Communication on this for the Council as of January 1st. He also said an ordinance change for the parking aspect of this program could also go into effect at the first of the year.

Councilor Needell said he thought this should be enacted, and said if it was, people should be able to pay for bulky waste permits..

Councilor Carroll said one of the groups in Town that would be happy if this program went through was the restaurants. She also said it was absolutely ingenious that the stickers program

was tied in with car registrations.

Councilor Julian Smith noted that there were some people who owned property in Durham and had cars registered in other states. He received clarification that if someone owned land in Durham, he/she could get a sticker.

Administrator Selig also noted that if someone was a voter in Durham but didn't own a car or property, he/she could still get a sticker.

There was discussion that there might be less revenues from bulky waste permits as a result of these changes.

Administrator Selig said the Town was trying to support downtown businesses, and said hopefully, the sticker program could impact the kinds of businesses that were located downtown for residents. He said the program might also help get businesses to offer special promotions.

Councilor Van Asselt said he had no problem with the goals of such a program, but he said it would eat away at revenues. He said they all needed to understand that nothing was free in this world.

Administrator Selig said he wished to thank the Integrated Waste Management Advisory Committee, which had spearheaded free access to the facility. He also thanked Ms. Lilly, who had stayed with the project beyond her graduation to bring it to fruition. He said she had done a very professional job on it.

IX. Unfinished Business

- A. **PUBLIC HEARING ON ORDINANCE #2007-08** revising the definition for "Home Occupation" contained in Chapter 175 "Zoning", Section 175-7 of the Durham Town Code

Administrator Selig provided a brief overview on this proposed ordinance, which would take into account the fact that a lot of business was done these days on the Internet and by phone, which allowed businesses to increase the number of employees who were employed off-site.

Councilor Stanhope MOVED to open the public hearing on ORDINANCE #2007-08 revising the definition for "Home Occupation" contained in Chapter 175 "Zoning", Section 175-7 of the Durham Town Code. Councilor Julian Smith SECONDED the motion, and it PASSED unanimously 8-0.

Councilor Needell MOVED to close the public hearing. Councilor Stanhope SECONDED the motion, and it PASSED unanimously 8-0.

Councilor Henry Smith MOVED to adopt ORDINANCE #2007-08 revising the definition for "Home Occupation" contained in Chapter 175 "Zoning", Section 175-7 of the Durham Town Code. Councilor Stanhope SECONDED the motion.

Councilor Julian Smith said he had some minor, non-substantive changes to recommend. He

first said there should be a hyphen for the word on-site in the document. He also suggested that the first sentence of sections 175-7 A 1 c and 2 c should read as follows: “The activity is completely enclosed in a primary or access structure.”

Councilor Needell said he didn’t have a problem with this, but asked if perhaps Code Enforcement Officer Tom Johnson could check it see if this proposed change would have some meaning they weren’t thinking of.

Councilor Julian Smith also suggested that the second sentence in the definition of “premises” should read as follows: “Premises may be further defined as the principal use dwelling unit/residence, or non-residential building, and any structures accessory to that principal use, where there are multiple principal buildings on a single lot.”

There was discussion on this by the Council.

Mr. Johnson noted that the existing language reflected the definition of accessory structure in the Zoning Ordinance.

Councilor Needell agreed that the language Councilor Julian Smith was suggesting should be changed was not grammatically correct, but said he wanted to be sure that the wording that was suggested would be used and interpreted correctly. He then suggested taking out the phrase “to that principal use..”. in the definition of premises, and asked Mr. Johnson if this would affect the meaning of the definition.

There was discussion on this with Mr. Johnson. After further discussion, the consensus of the Council was to not take out the words “to that principal use” (the informal vote was 4-4)

Councilor Henry Smith MOVED to amend the motion, that a hyphen should be included in the word on-site wherever used in the whereas clauses; and in 175-7 A 1c and 2c, that the sentence should read, without parentheses: “The activity is completely enclosed in a primary or accessory structure.” Councilor Julian Smith SECONDED the motion, and it PASSED 6-2, with Councilor Van Asselt and Councilor Leach voting against it.

The original motion PASSED 7-1, with Councilor Stanhope voting against it.

B. Review and discuss status of 2007/08 Council goals adopted on April 9, 2007

Administrator Selig said it was important for the Council to revisit the goals that had been adopted earlier in the year. He said the Council had made substantial progress on a large number of these items. Regarding goal #6 concerning policing services, he said it would be beneficial to have some Council members participate with him and Ms. Jablonski in discussions with the University on this issue.

Chair Niman, Councilor Needell and Councilor Henry Smith agreed to participate in these discussions.

Administrator Selig said that initially, Town representatives would make a presentation to the University with consultant Russ Thibeault. He said that as part of this, the University would

have someone on their economics team look at the report and decide whether it took all its relevant assumptions into account.

Councilor Leach said she had been at the meeting where Mr. Thibeault had gone over his report with Town staff. She said she thought they all had felt there were a lot of issues with this report. She asked if perhaps there needed to be some kind of intermediate step.

Administrator Selig said the most productive approach now was to engage the University and to hear their point of view.

Councilor Leach said it was important that town representatives to know that whoever represented the Town should be challenging some things in the report. She said it wasn't written in stone.

Administrator Selig said the numbers from the report would be put on the table as a starting point, and they could be discussed in a thoughtful way.

Councilor Van Asselt said he appreciated Administrator Selig's summary of what the Council had accomplished in the first six months of 2007. He said he thought the Council could take credit for addressing all of its 11 goals in some way, with the exception of one of them.

He also said that when people came before the Council and talked about the Council's goals, it was important to be fair, and to make reference to not just goal #1, but also to goal # 7, etc. Councilor Van Asselt also said that under the goal of enhancing recreation, the wording in it was not what so far had been the decision concerning Jackson's Landing. He provided details on this.

He said his disappointment concerning the list of goals was regarding the work of the Housing Task force. He provided details on the fact that the group had almost stopped meeting, despite some initial good participation from some of the better landlords in Town. He said if the Council was really serious about this goal, someone needed to do something about it. He said there had been a lot of good ideas that had come out as a result of the Task Force.

Councilor Needell said he was taken aback when he saw a sentence in the goals summary that said the discussion on the more restrictive interpretation of the Zoning Ordinance had been taken beyond the Council. He said this had never been discussed by the Council, and said he wanted to be sure that if this issue was talked about, it was discussed by the Council. He said it would be good to get a legal opinion on the parameters of this discussion, but said he didn't want to put the cart before the horse.

Administrator Selig said this issue had come up numerous times at the Housing Task Force, as well as in other contexts. He also noted that Councilor Stanhope had raised some questions on this issue. He also said he had discussed this issue with Code Administrator Tom Johnson and Town Planner Jim Campbell. He said Durham was the most restrictive of all of the communities in the region.

He said this had caused him to ask why, and to talk with Attorney Mitchell about this, about what the options would be if Durham were to consider pulling back from this, and about what

the implications were of this most restrictive mandate. He said Attorney Mitchell had forwarded some very interesting information on this. He said he was currently gathering data on this issue.

Councilor Needell noted that it was Councilor Stanhope who had raised this issue, not the Council. He said there had been no direction to Administrator Selig from the Council to pursue this issue. He said he was very sensitive to the fact that when a Councilor made an impassioned argument, this did not indicate the direction of the Council, as valid as the argument might be.

Councilor Van Asselt said this was a specific topic that the Housing Task Force had spent hours talking about.

Administrator Selig said he thought this issue was ripe for exploration.

Councilor Stanhope said Administrator Selig has told him that the Town Charter gave him the authority to act in the best interest of the Town. He said this was an area he had asked Administrator Selig to explore, and said all Councilors had the right to ask for this kind of thing.

Councilor Needell said on the matter of a substantive, dramatic policy change for the Town, one voice was not enough to drive that. He said he wanted the public to know that this was occurring, and that this issue was not on the Council's table. He said he didn't want people to think there had been a motion about changing what was a fundamental part of the Zoning Ordinance, and said he wanted the public to have as much notice on this as possible. He said Administrator Selig had tremendous latitude, and said he was not questioning his authority. But he said he was saying that the Council needed to communicate as a body, especially concerning something as important as this.

Councilor Henry Smith said he agreed with Councilor Needell, but said Administrator Selig was exercising his prerogative in looking into this issue. He said there could later be Council discussion about this important issue. He also noted that the issue had come up several times at the Housing Task force.

Administrator Selig noted, concerning the Housing Task Force goal, that there simply hadn't been time to complete this. He said a number of draft documents had been developed by the Task Force, but said there were some flaws, so they had gone back to the drawing board.

Councilor Leach said she appreciated it that Administrator Selig had put down the status of each of the goals. She also said that concerning the goal on enhancing recreational opportunities, a lot of work had been done on the Churchill Rink, which was now a Town-owned facility. She said she wanted people to understand that there was still a long way to go with recreational initiatives, and she asked that this remain on the list of Council goals.

Councilor Leach also provided clarification that the priority goal on the list was preserving open space, etc., didn't mean that this was the number one goal for the year. She suggested that the following year, there should be a disclaimer that the number of a goal was not representative of its importance relative to the other goals.

Administrator Selig noted that there was work underway on goal #1, concerning the Fogg property. He said the Land Protection Working Group was continuing to work hard on this goal.

Chair Niman said there would be a nonpublic session on Sept 17th to talk about another conservation easement property.

Chair Niman asked when the due diligence concerning the Business Park would be completed.

Administrator Selig said Chinburg Builders was working on a national marketing campaign for the property, and was also working on right of way issues with NHDOT. He provided details on the NHDOT issues. He also said he and Attorney Mitchell had been working on the easements that had been part of the previously approved subdivision for the Business Park. He said these easements were in locations that Chinburg Builders didn't want them to be, so they needed to be extinguished.

Councilors agreed they were very happy with the goals summary Administrator Selig had developed.

Chair Niman said the Council should pat itself on the back that it had accomplished so much this year.

X. New Business

A. FIRST READING ON ORDINANCE #2007-10 amending Chapter 4, "Administrative Code", Article IV, Section 4-18 of the Durham Town Code by including provisions for an Economic Development Committee

Administrator Selig said this proposal had come out of a Council goal session, as well as an initiative of the existing Economic Development Committee. He said the Committee acted as a result of a charge of the Council, and said making this change now would bring focus to the work of the committee, and would allow dedicated residents to explore initiatives that could be beneficial to the Town.

Councilor Van Asselt MOVED on first reading ORDINANCE #2007-10 amending Chapter 4, "Administrative Code", Article IV, Section 4-18 of the Durham Town Code by including provisions for an Economic Development Committee, and schedules a Public Hearing for October 1, 2007. Councilor Needell SECONDED the motion.

Councilor Needell asked if the recommendation was to include the current makeup of the committee. He also noted that under the powers and duties of the Committee, it would have no authority to act, and could only make recommendations to the Council. He asked if these powers and duties should be clarified.

After discovering the "Powers and Duties" of the EDC, the Council members agreed on the following wording for Article IV, Section 4-18, of the Durham Town Code: "The Committee will make recommendations to the Town Council to foster the stabilization of the residential tax burden through economic development that encourages diverse business, commercial,

office, and research activities, maintain and create jobs, create a good mix of uses, and maintain the rural character of Durham.”

Councilor Van Asselt spoke about the membership of the Committee. He said it would be a good idea to have two Council members on it, and said he didn’t think the Town Planner should be a voting member.

There was detailed discussion on what the membership of the Committee should be, and about how many members it should have.

Councilor Needell said it would be one thing if this were a subcommittee of the Council. But he said he was concerned that this committee would be overpopulated with Town officials.

Councilor Henry Smith said citizen representation should be greater than the number of Town officials on the committee.

Councilor Van Asselt said an advantage of having two members of the Town Council on the committee was that there would be a guarantee that one would be at the meetings.

There was further discussion, and it was agreed that there would be 3 citizens on the committee, 2 Town Council members and 1 member of the Planning Board. It was agreed that the Town Planner would not be a voting member of the committee, and would coordinate the work of the committee. Councilors agreed there would be 3 year staggered terms for members. It was noted that there were already minutes for the meetings of the existing EDC.

There was discussion on the fact that the committee presently met early in the day. Councilor Leach said the Council could ask that EDC members discuss this at the next meeting. She said it seemed to work best for members to meet early right now.

Councilor Needell said it was worth asking the committee to hold public hearings in the evening when issues of importance came up, in order to encourage public participation.

Chair Niman suggest that if the committee decided to stay with the 7:30 am meeting time, it should be the same day each month, so people could plan for this.

Councilor Van Asselt MOVED to amend the motion to incorporate the changes that were discussed. Councilor Julian Smith SECONDED the motion, and it PASSED unanimously 8-0.

The motion as amended PASSED unanimously 8-0.

Councilor Julian Smith MOVED to extend the meeting past the 10:00 pm adjournment time. Councilor Henry Smith SECONDED the motion, and it PASSED unanimously 8-0.

B. Other Business

Administrator Selig explained that there were a small number of residents who were grabbing items of quality at the swap shop and were scavenging from the metal pile. He said this had

caused discomfort for volunteers and users at the swap shop. He said Town staff had tried to talk with these individuals, but they didn't want to curb their behavior. He noted that they had also waded through the scrap metal pile.

He said there were fines to address illegal dumping, etc., but said there were no provisions in the Town's regulations to rescind the transfer station permit of someone who was not following the regulations.

He provided details on what he was recommending. He said the first thing was that the permit for use of the transfer station would be rescinded for failure to adhere to the rules and regulations posted at the facility. He also said wording would be developed concerning usage of the Swap Shop. He said the idea with these changes was to limit the amount of time people could linger at the swap shop. He said if the Council agreed to these changes, the idea was to meet with the IWMAC the following day to develop new rules governing the use of the swap shop, in order to put limitations on the way they interacted with traders at the facility.

Chair Niman asked if Administrator Selig wanted a formal motion concerning this.

Administrator Selig said there should be a motion. He said he was proposing a modification to the solid waste rules, and said the advice and consent of the Council was needed as part of this.

Councilor Stanhope MOVED to endorse the amendments to the solid waste management facility administrative regulations as outlined in the memorandum to the Council dated September 10, 2007. Councilor Needell SECONDED the motion.

Councilor Stanhope said this issue had come up at the most recent IWMAC meeting. He provided details on it, and said he felt that the Town would lose volunteers at the swap shop if this issue wasn't addressed. He said he hoped Administrator Selig would come up with some fairly clear guidelines on the amount of time people could spend at the transfer station. He said the policing of this situation could be complex, and said he saw this as the biggest challenge. He said he wanted it to be clear that the guidelines would be enforced by the Police Department, and said he thought a fine would be more effective than pulling a permit.

Councilor Needell said he thought it was important that hours be limited, and if a permit was to be revoked, that there be enforcement. He said he assumed that whatever rules were put in place, that the Public Works Department, which was already charged with keeping an eye on people coming in and out of the transfer station, would call the police to do the enforcement.

Administrator Selig said what typically happened now was that Doug Bullen would come to the transfer station when people were causing these problems and they would then leave but would then come back another day. He said Town staff had been trying to be user-friendly, and had not called the police yet concerning this activity. He noted that the people involved had not broken any existing rules with the Swap shop yet, but had broken the rules concerning the use of the metal pile.

Councilor Leach said she was against imposing the rules for the Swap Shop, and questioned whether they would work.

Councilor Van Asselt said he thought this was something for Administrator Selig to handle.

Councilor Carroll said she would like to see Administrator Selig work on this, but said she agreed with Councilor Leach concerning having a list of rules for the Swap Shop. She said the people who didn't break rules would abide by them, and said this might turn out to be to their detriment. She provided details on this.

Councilor Stanhope said better signage was needed at the transfer station, especially for the metal pile. He also recommended that the police cruiser that went out to Durham Point Road should occasionally show up at the transfer station.

Administrator Selig said minimal rules could be developed.

Councilor Leach said making this change when there were just a few people causing problems seemed to be too much.

Councilor Needell said what the Council would be doing here was enabling Administrator Selig and the volunteers at the Swap Shop to figure out what they needed to do to improve the situation. He said having the ability to rescind a transfer station permit was a reasonable penalty, and also said he agreed that any rule changes should be thoughtfully and carefully put together.

Councilor Henry Smith noted that he had volunteered recently at the Swap Shop. He said the people causing the problems were not there all day, but took a lot of stuff while they were there.

The motion PASSED 7-1 with Councilor Leach voting against it.

XI. Nonpublic Session (if required)

XII. Extended Councilor and Town Administrator Roundtable (if required)

Concerning the issue of having a Durham representative to the MPO, Councilor Van Asselt said it was important that Durham have a representative for these meetings. He suggested that perhaps a member of the Council, or someone else in Durham could step forward.

Administrator Selig said that Steve Pesci, a transportation planner at UNH used to work for the Strafford Regional Planning Commission (SRPC). He said he was extremely knowledgeable, and suggested that he could approach him and ask him if he would be willing to represent Durham as well as UNH on the MPO. He said he felt Mr. Pesci could do an excellent job in this role. He said he could also ask him if he would be interested in being a Durham/UNH representative to the SRPC.

There was discussion as to whether Mr. Pesci was a resident of Durham. After further discussion, Councilors agreed that Administrator Selig should approach Mr. Pesci concerning these open positions.

Administrator Selig noted that perhaps UNH would be interested in paying a third of the dues

for membership in the SRPC, if Mr. Pesci became a Durham/UNH representative to the SRPC.

Councilor Needell noted that earlier in the meeting, resident Bill Hall had made some statements regarding how the 401 permit came about. He asked if the Council perhaps thought the claims that the process in the past concerning this was flawed should be investigated.

Administrator Selig said the 401 scenario occurred prior to his coming to Durham. He said Mr. Hall had raised this issue in many situations. He said questions concerning this matter had been forwarded to Attorney Mitchell, and he said the Town was bound by the existing certificate. He said Durham was the only community that operated under it, and was backed into it because of the Lamprey River hard pipe project.

He explained that as a condition of the wetland permits received, the Town had agreed to the certificate requirements. He said that at the time, there was a water/wastewater committee which had a representative from the Council. He said Attorney Mitchell had reviewed the history of this situation, and felt the Town was bound by the requirements. He said that when the Town applied for the wetland permits would have been the time to challenge the idea of the 401 certificate. He said it was hard to say why the Council at that time was not more involved in this issue.

Councilor Needell asked if Councilors could get copies of the information that Attorney Mitchell had looked at.

There was further discussion, and Administrator Selig said he would provide this information.

On another issue, Councilor Van Asselt asked what the plan would be if Lee, Madbury and the School Board were not interested in pursuing the issue of the funding formula.

Chair Niman said he felt that Councilors should welcome them to look at this issue, but if they weren't interested, should say they were forming their own committee, and should invite the other entities to be part of this.

Regarding the School Budget subcommittee that had been formed, he said he would like to make a presentation to the School Board. He said he didn't think this issue would go away, and said his guess was that Lee and Madbury would be very supportive of looking at this issue more closely.

He said he was waiting for Mr. Speidell to bring forward a proposal on a statutory budget committee, and said he would sign this. He also said that regarding the recreation subcommittee, his sense was that Lee and Madbury felt they were all set with playing fields. He said he thought the School Board was only interested in expanding fields for the School District. He noted that Durham was saying it wanted to expand playing fields for everybody, in all three towns.

Councilor Leach said when the subcommittees had met in July, the recreation committee was charged to look at the playing fields issue. She said at a meeting of the committee this summer, the other towns were open to being involved, even though they had their own fields. But she said it was not clear right now where this committee was going.

Councilor Needell said there was no agenda for the meeting the following day,

Councilor Leach said it was stated verbally that the subcommittees were supposed to report back, but she said the situation has gotten very muddy.

Councilor Van Asselt said he thought Chair Niman and Administrator Selig should take the lead in representing the Council at the meeting.

XIII. Adjourn

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

Adjournment at 10:34 PM.

Victoria Parmele, Minutes taker